**Neutral Citation Number: [2026] EWHC 2308 (Ch)**

**CR 2023 000067**

**IN THE HIGH COURT OF JUSTICE**
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**
**INSOLVENCY AND COMPANIES LIST (CHD)**
**IN THE MATTER OF THE INTERACTIVE MEDIA GROUP LTD**
**AND IN THE MATTER OF THE COMPANIES ACT 2006**

Royal Courts of Justice
7 The Rolls Building
Fetter Lane
London
EC4A 1NL
Date: 11/9/2026

**Before** :

**ICC JUDGE BARBER**

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**Between :**

**MR RICHARD PADUN** — **Petitioner**

**- and –**

**(1) MR NEIL DICKINSON**
**(2) INTERACTIVE MEDIA GROUP LTD** — **Respondents**

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**Mr Alex Kennedy** (of **Gannons Commercial Law Limited)** appeared for the **Petitioner**
**Mr Justin Perring (instructed by Kennedys Law LLP) appeared for the First Respondent**
**Hearing dates: 23 February 2026 and 18 May 2026**

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# Approved Judgment

This judgment was handed down remotely at 9.30am on 11 September 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**ICC Judge Barber**

1. On 18 May 2026, I made an order dismissing the Petitioner's specific disclosure application, with written reasons to follow. This judgment sets out my reasons for that order.

**Background**

2. Interactive Media Group Ltd was incorporated on 2 February 2009 under the name Arcstream Media Group Limited and shortly thereafter commenced trading in the supply and installation of audio-visual equipment and related services. It changed its name to Interactive Media Group Ltd ('the Company' or 'IMG') in May 2009.

3. The First Respondent has been a director and shareholder of IMG at all material times since its incorporation. He also has a longstanding association with the trading name 'Arcstream' pre-dating IMG's incorporation.

4. On 20 November 2013, Integrated Logic Limited ('Integrated Logic') was incorporated. Its original directors were the First Respondent and Craig Woodhams, who held 50 shares each. According to Companies House filings, Integrated Logic remained dormant for all accounting years up to and including the year ending 30 November 2019.

5. On 16 May 2017, the Petitioner was appointed as a director of IMG. He also became a shareholder in IMG.

6. During September 2018, Mr Chris Weeks was engaged via The F D Centre Limited ('FDC') to act as a part-time external financial director of IMG. According to the Amended Petition, the Petitioner and the First Respondent would frequently argue about their different management styles and future plans for the business. It was to address these issues that it was agreed that Mr Weeks would be retained on a part-time basis via FDC, to provide 'strategic' advice and support to IMG's directors, which they were free to follow or reject (Amended Petition, para 16; Points of Defence, para 27).

7. In July 2019, the Petitioner was appointed as a director of Integrated Logic, replacing Mr Woodhams, who had stepped down as director in January 2019. According to Companies House filings, on 3 January 2019 Mr Woodhams transferred his 50 shares to the Petitioner and on 29 July 2019, the Petitioner and First Respondent transferred their respective 50 shares in Integrated Logic to IMG, making Integrated Logic the wholly owned subsidiary of IMG.

8. On 17 July 2019, Arcstream Limited ('AL') was incorporated. IMG was the sole subscriber. The Petitioner and the First Respondent were appointed as directors of AL in July 2019. Following AL's incorporation as a wholly owned IMG subsidiary, IMG transferred its business to AL and became a non-trading parent.

9. On 8 October 2020, Arcstream Systems Limited ('ASL') was incorporated under the name Interax AI Ltd as a wholly owned subsidiary of IMG. The First Respondent was its sole director. It did not trade initially.

10. On 9 October 2020, HD Golf UK Ltd was incorporated as a wholly owned subsidiary of IMG. The Petitioner was at all material times its sole de jure director.

11. On 16 April 2021, IMG purchased the entire share capital of a company known as Philharmonic Audio Visual Limited ('Philharmonic') from Mr and Mrs Turner (who held the 'A' shares) and Mr Harper (who held the 'B' shares), pursuant to a Share Sale and Purchase Agreement executed that day ('the Philharmonic SSA'). Stock Transfer forms in favour of IMG were executed on 16 April 2021.

12. On the same day (16 April 2021), the Petitioner and the First Respondent were each appointed directors of Philharmonic, replacing Mr Turner and Mr Harper.

13. The consideration for the shares held by Mr and Mrs Turner in Philharmonic comprised an initial payment of £170,000 and three further annual payments of £85,000 payable on 16 April 2022, 2023 and 2024. The consideration for Mr Harper's 'B' shares was to be an issue of 'B' shares in IMG.

14. The deferred consideration payable under the Philharmonic SSA to Mr and Mrs Turner was later secured by way of debentures over the assets of IMG and Philharmonic, dated 16 September 2021 and 14 February 2022 respectively.

15. By September 2021, IMG was in serious financial difficulty. Its numerous debts included a sum in the region of £370,000 owed to a commercial lender, the Funding Circle (which had issued a demand letter in May 2021) and £255,000 owed to the Turners in respect of the outstanding purchase price for the Philharmonic shares. In addition the IMG group had accumulating tax liabilities. The management account cashflow records for IMG for 2021/2022 would later show a cumulative shortfall in IMG of £119,402 by February 2022, reflecting regular shortfalls before July 2021 and consistent shortfalls from that month onwards.

16. According to the Petitioner's pleaded case (Amended Petition, para 22), by September 2021 the Petitioner, the First Respondent and Mr Weeks had formulated a plan to 'carve out' AL and Philharmonic from the IMG group, in the expectation that IMG would be placed into insolvent liquidation ('the extraction plan'). The First Respondent denies any part in formulating the extraction plan and says that it was the Petitioner's idea (Points of Defence, para 31(b)). The extraction plan envisaged putting IMG's shares in AL and Philharmonic into the names of the Petitioner and First Respondent for no consideration, in order to dissociate the subsidiaries from the parent in the context of its financial difficulties. The plan was highly irregular for a number of reasons later addressed by ICC Judge Jones in his judgment reported at [2024] EWHC 528 (Ch).

17. Further to the extraction plan, Mr Weeks made various filings at Companies House suggesting that the Petitioner and the First Respondent held the shares in AL and Philharmonic in place of IMG. It is now common ground that these filings were of no effect and that IMG remained the sole shareholder in AL and Philharmonic notwithstanding the same.

18. In late 2021, the Petitioner, the First Respondent and Mr Weeks approached an insolvency practitioner, Mr Neil Money, for advice, with a view to placing IMG into liquidation.

19. The Petitioner was plainly privy to plans to place IMG into liquidation. On 12 January 2022, for example, the Petitioner sent an email to Thomas Higgins Limited, a debt recovery company, stating that IMG was ‘in the process of filing for liquidation’.

20. The liquidation of IMG was also discussed at a board meeting of IMG held on or around 25 January 2022 which the Petitioner attended. The First Respondent took notes at that meeting.

21. By February 2022, IMG had reached its overdraft limit. IMG’s staff payroll was transferred to AL as IMG was no longer able to pay its outgoings, including wages.

22. In March 2022, the Petitioner and the First Respondent fell out. They have different views on why the fall out occurred.

23. In broad summary, the Petitioner maintains that the First Respondent was secretly planning all along to use the extraction plan and the liquidation of IMG as a means of ousting the Petitioner from the businesses and taking control of them for himself. He alleges that the First Respondent put that plan into effect ‘on 17 March 2022 and thereafter’ by taking a series of steps which included excluding the Petitioner from the management (Amended Petition, para 28).

24. Again, in broad summary, the First Respondent denies any secret plan of that sort. He maintains that it was only in early 2022 that he discovered that the Petitioner had acted in breach of his duties as a director of IMG and/or its subsidiaries and/or was guilty of gross misconduct as an employee of IMG and/or AL. Among other things, he says that in early 2022 he discovered that the Petitioner had allowed AL to run up significant tax debts which he had concealed from the First Respondent and the group’s finance controller - and that the Petitioner had without authority caused IMG and/or its subsidiaries to take on onerous leasehold contracts for new, unnecessary office premises which IMG could not afford. (I pause here to note that the Petitioner denies any wrongdoing). The First Respondent admits excluding the Petitioner from management on or about 17 March 2022 but says that he had good reason to exclude him. He denies removing the Petitioner as a director of IMG (as a matter of record, the Petitioner remained a de jure director of IMG throughout). He admits taking steps to remove the Petitioner as a director of AL and Philharmonic in April 2022. He maintains that the subsequent liquidations of IMG and its trading subsidiaries were legitimate and that the companies were genuinely insolvent (Points of Defence, paras 31(a), 32, 38, 39(b), 39(f), 45).

25. According to Companies House filings, IMG entered CVL on 17 June 2022 and Mr Neil Money was appointed as liquidator. At the time of Mr Money’s appointment, both the Petitioner and the First Respondent remained directors of and shareholders in IMG.

26. Some 3 months after IMG entered CVL, on 23 September 2022, the First Respondent purchased IMG’s shares in Philharmonic and ASL from IMG acting by its liquidator, Mr Money. The purchase price in each case was £100.

27. There was a suggestion in the papers before me that the First Respondent also purchased IMG’s shares in Integrated Logic Limited for £100 in October 2022. The transfer of

shares was conditional on payment however and it is unclear whether the purchase price was ever paid. The progress reports and final accounts of IMG's liquidator (including R & Ps) filed at Companies House make no mention of the sale. The statement of affairs dated 7 November 2022 filed at Companies House in connection with Integrated Logic's subsequent entry into CVL names IMG as the sole shareholder.

28. The First Respondent did not purchase IMG's shares in AL. AL remained a wholly-owned subsidiary of IMG at all material times following IMG's entry into CVL on 17 June 2022.

29. According to Companies House filings, AL (as IMG's wholly-owned subsidiary at the time) entered CVL on 17 November 2022.

30. Shortly thereafter, the First Respondent purchased the name, website and goodwill of AL from its liquidator, Mr Money. The date mentioned in the evidence for the purchase is 24 November 2022. According to Mr Money's progress report for AL for the period ending 16 November 2023, as filed at Companies House, the date of purchase was 10 January 2023. The difference in timing is not material for present purposes. According to the AL liquidator's progress reports, there was no third party interest in the asset.

31. According to Companies House filings, Integrated Logic Limited (as IMG's wholly-owned subsidiary - see [27] above) entered CVL on 18 November 2022.

32. HD Golf UK Limited was dissolved on 20 December 2022 following a compulsory strike-off.

33. According to Companies House filings (in particular Mr Money's final account to creditors in the Integrated Logic liquidation), the First Respondent purchased the website and goodwill of Integrated Logic on 10 January 2023 from Integrated Logic acting by its liquidator. The consideration paid was £100. The liquidator's final account states that there was no third party interest in these assets.

34. According to Companies House filings (in particular the IMG liquidator's progress report for the period ending 16 June 2025 and his final account to creditors and members for the period ending 23 February 2026), the First Respondent purchased the website and goodwill of IMG from IMG (acting by its liquidator, Mr Money) for £100 on 3 April 2023. Both reports state that there was no third party interest in the asset.

35. According to Companies House filings, Philharmonic entered CVL on 20 October 2023.

**Proceedings and complaints pursued by the Petitioner**

36. The Petitioner has pursued a number of complaints and proceedings since his exclusion from management of IMG. These include the following:

(1) In 2022, the Petitioner brought unfair dismissal proceedings against AL and the First Respondent in the Employment Tribunal under case number 2301632/2022. The claim against the First Respondent was struck out by order of Employment Judge Wright dated 8 February 2023 on the grounds that it had no reasonable

prospect of success. In a later judgment dated 6 April 2023, the Petitioner was found to have been unfairly dismissed as an employee of AL and was awarded compensation against AL for such dismissal. AL did not defend the proceedings. By the time of judgment it was in CVL.

(2) The Petitioner issued proceedings in the county court against a corporate vehicle used by Mr Weeks, Chris Weeks Ltd, under case number K90CL122. These proceedings were dismissed by Order of DJ Wilkinson dated 3 July 2023. The Petitioner has also since issued or intimated further proceedings against Mr Weeks and one or more corporate vehicles connected with him.

(3) The Petitioner has pursued complaints of impropriety with the Insolvency Practitioners Association (the 'IPA') against Mr Money, the liquidator of IMG and its trading subsidiaries. The IPA dismissed the Petitioner's complaints of impropriety. The Petitioner has since commenced judicial review proceedings against the IPA under case number AC 2025 LON 002815.

(4) In addition, in January 2023, the Petitioner presented three s.994 petitions, in respect of IMG, AL and Philharmonic respectively. The petitions in respect of AL and Philharmonic were later dismissed for want of standing.

**The IMG petition**

37. In the surviving petition regarding IMG, the Petitioner's pleaded case (at paragraphs 28, 32 and 36(3)(iii) of the Amended Petition) alleges that on 17 March 2022 and thereafter, the First Respondent excluded the Petitioner from the management of IMG, AL and Philharmonic and orchestrated the insolvency of IMG and its trading subsidiaries in order to divert their business and assets to another (hitherto non-trading) subsidiary of IMG, ASL, thereby extracting value from IMG at the Petitioner's expense. (As will be recalled, ASL was incorporated on 8 October 2020 under the name Interax AI Ltd as a wholly owned subsidiary of IMG with the First Respondent as its sole director. It did not trade initially). Interax AI Ltd changed its name to ASL and started active trading in or about April 2022.

38. By his pleaded case, the Petitioner also alleges that the liquidations of IMG and its three trading subsidiaries, AL, Integrated Logic Limited and Philharmonic ('the trading subsidiaries') are not valid: Amended Petition at paras 28, 29 and 31; Reply at paras 2, 18, and 20. As matters stand, however, it is unclear whether the Petitioner wishes actively to pursue a challenge to the validity of these liquidations. Mr Kennedy vacillated on this issue when asked in submissions before me. No specific relief, declaratory or otherwise, regarding the validity of any of the four liquidations in question is sought by the Amended Petition and the liquidator of IMG and its trading subsidiaries, Mr Money, has not been joined as a party.

39. The First Respondent maintains that IMG and all three of its trading subsidiaries (AL, Integrated Logic Limited and Philharmonic) were genuinely insolvent, that their creditor voluntary liquidations (entered into on 17 June 2022, 17 November 2022, 18 November 2022 and 20 October 2023 respectively) were legitimate, and that any subsequent business was rebuilt by the First Respondent from the ground up, using his own efforts and resources after the liquidations.

40. IMG's liquidator, Mr Money, concluded that IMG had no value. His assessment was upheld even after a misapprehension about subsidiary ownership was corrected and was endorsed by the IPA on the Petitioner's complaint. (As noted above, the Petitioner has since commenced judicial review proceedings against the IPA).

41. IMG had an estimated deficiency as regards creditors of £655,011 on entering CVL (albeit this figure took no account of the value of its subsidiaries). All three trading subsidiaries entered CVL with net liabilities as well: AL (−£231,465.33), Philharmonic (−£352,776.41) and Integrated Logic Limited (-£67,000).

42. The First Respondent was granted retrospective permission to act as a director of ASL pursuant to section 216 of the Insolvency Act 1986 by order of ICC Judge Burton dated 9 January 2026, following written confirmation from both the Insolvency Service on behalf of the Secretary of State and the liquidator of AL that they had no objections to the relief sought.

**Procedural History**

**The strike-out/summary judgment applications**

43. In March 2023, the First Respondent issued an application for strike-out/summary judgment in respect of the three s994 petitions presented in January 2023 by the Petitioner regarding IMG, AL and Philharmonic.

44. The petitions presented in respect of AL and Philharmonic were struck out for want of locus.

45. In relation to IMG, the strike-out/summary judgment application was made on the ground that IMG was insolvent and facing inevitable entry into a formal insolvency process prior to the Petitioner's exclusion in March 2022, with the consequence that the Petitioner's shares in IMG were at all material times of no value and the Petitioner could not have suffered any prejudice, even on his own case. In this context the First Respondent relied upon In re Tobian Properties Ltd [2012] EWCA Civ 998 in which Arden LJ (as she then was) had stated at [11] that, given that shares in an insolvent company are ordinarily of no value, a petitioner pursuing unfair prejudice proceedings in respect of such a company must generally:

(1) show that the company has claims against the respondent to the petition which will eliminate the deficiency and produce a surplus for members; or

(2) demonstrate that the petitioner's shares would have had a value but for the wrongdoing of the respondent.

46. The First Respondent has since pleaded Points of Defence, averring that the Petitioner's shares in IMG were worthless by September 2021 at the latest.

47. The strike-out/summary judgment application was heard by ICC Judge Jones in February 2024. At paragraphs 18–45 of his judgment dated 11 March 2024 ([2024] EWHC 528 (Ch)), ICC Judge Jones addressed the available evidence in considering whether the Petitioner had a real prospect of success in establishing that his shares in IMG had a value before the First Respondent's alleged wrongdoing.

48. The judge concluded (at para 27) that IMG was cashflow insolvent as at 17 March 2022 (the date of exclusion). He went on to hold, however, that there was insufficient evidence before the court at that stage to determine whether the Petitioner's shares in IMG had any value as at 17 March 2022. This was largely due to a misunderstanding on the part of the Petitioner and the First Respondent, both of whom had earlier proceeded, incorrectly, on the basis that IMG had no subsidiaries as at 17 March 2022.

49. At paragraph 28 of his judgment, ICC Judge Jones went on to outline certain 'Issues for Valuation' that he considered required determination. These were in summary as follows:

(1) what were the group's assets and liabilities as at 17/03/22;

(2) which assets and liabilities are relevant to the valuation of IMG's shares; and

(3) what is a fair value for the Petitioner's shares in IMG.

50. At paragraph 46, ICC Judge Jones stated (with emphasis added) that

> 'It cannot be concluded on the current evidence that the shares of IMG had no value *as at March 2022*. There simply is insufficient evidence for such a decision to be made. *The impact of the value of the subsidiaries needs to be addressed within the context of the Issues for Valuation (identified in paragraph 28 above)*. What is required are *management accounts at or around that period not only for IMG but for its subsidiaries*.'

51. The conclusions reached on the strike-out/summary judgment application in relation to IMG were that:

(1) the Petitioner 'has not established an estimated valuation even at a real prospect of success level' (at para 47);

(2) the Petitioner's 'evidence does not go so far as to establish a real prospect of succeeding with the claim that IMG's shares had more than nominal value taking into consideration its liabilities' (at para 48); and that

(3) the Petitioner 'has not over-turned the shifted, evidential burden to establish a real prospect of succeeding with the claim that IMG's shares had more than nominal value taking into consideration its liabilities. Absent appropriate amendment (if this can be achieved) this petition will not establish unfair prejudice' (at para 51(d)).

52. ICC Judge Jones directed the Petitioner to apply to amend the petition so as 'to identify a valuation'. Directions were also given for a stay, during which the Petitioner was to make reasonable requests for documents to enable him to draft his amended petition and estimate the value of his shares in IMG. Again, whilst not setting out a definitive list of the documents he had in mind, at paragraph 49 of his judgment, the judge made reference to '*the relevant management accounts of IMG and its subsidiaries*.'

## The amendment application

53. On 25 June 2024, as envisaged by ICC Judge Jones' order, the Petitioner applied for permission to amend the petition. The amendment application was heard by Deputy ICC Judge Schaffer in October 2024.

54. The draft amended petition did not include an estimate of the value of the Petitioner's shares, stating simply (at paragraph 35) that it was the Petitioner's case that his shares in IMG 'have more than nominal value'.

55. The grounds upon which the Petitioner contended that his shares in IMG had more than nominal value, as set out at paragraph 36 of the draft amended petition, were rather thin. In summary these were as follows:

(1) At all material times up to the summer of 2022, all parties had been proceeding on the erroneous basis that the shares in IMG's subsidiary companies (in particular AL and Philharmonic) had been transferred from IMG to the Petitioner and the First Respondent. Accordingly, no value was attributed to those subsidiaries for the purpose of considering whether or not IMG was solvent;

(2) In fact, the shares in IMG's subsidiaries had continued to be held by IMG (until 'purportedly' transferred to the First Respondent by IMG's liquidator);

(3) Those subsidiary companies had a real value, and were in a position to generate income for IMG. In support of that, the Petitioner averred (in summary) that

(a) In September 2021, IMG's financial adviser Mr Weeks advised that AL had an EBITDA of just under £1m;

(b) In January 2022, the Petitioner and the First Respondent agreed their aim was for Philharmonic to deliver £1m turnover and for AL to deliver £1m turnover;

(c) IMG had acquired the shares in Philharmonic in April 2021 for a purchase price of £425,000, of which £255,000 remained unpaid as at March 2022. It was to be inferred that the value of Philharmonic was no less than £425,000 at all material times;

(d) The business formerly carried on by IMG's subsidiaries was now being carried on by ASL profitably.

56. The First Respondent opposed the Petitioner's amendment application, arguing that the proposed amended pleading still did not identify a valuation and failed adequately to engage with the Issues for Valuation specified by ICC Judge Jones. Addressing the points summarised above in turn:

(1) With regard to 55(3)(a) above, the First Respondent argued that even if that figure were accurate and undisputed (which it was not), EBITDA is not net value. A company with significant EBITDA can still be balance sheet insolvent if its liabilities exceed its assets.

(2) With regard to 55(3)(b) above, the First Respondent argued that the meeting note recorded nothing more than an aspiration, explored in the context of a meeting at which IMG's entry into CVL was also being planned.

(3) With regard to 55(3)(c), the First Respondent argued that Philharmonic's acquisition price represented historic cost and not current value, noting that, by the date of the s 994 petition, Philharmonic had entered CVL with net liabilities of £352,776.41.

(4) With regard to 55(3)(d), the First Respondent contended that post-valuation-date performance data from an entirely separate company was irrelevant on RICS valuation principles and that, in any event, ASL had been entirely built from the ground up following the liquidations. Any subsequent profitability reflected the First Respondent's own post-liquidation efforts and not the value of the IMG group as at 17 March 2022.

(5) The First Respondent further contended that none of the four factors relied on was capable of generating a positive net value for IMG without an expert methodology that accounted for admitted liabilities, including at least £372,193.34 owed to the Funding Circle, the exhausted Barclays overdraft, the HMRC liabilities of the group and the onerous office leases that the Petitioner had caused IMG and/or the group to take on (allegedly) without board approval. The First Respondent also observed that an independent liquidator had considered all of this and had found no value.

57. The Petitioner sought to excuse the paucity of his proposed amendments on value on the expressly pleaded (but contested) basis (at para 37) that the First Respondent had not complied with the Petitioner's reasonable requests for information.

58. Deputy ICC Judge Schaffer considered the strength of the proposed amendments to be finely balanced, but ultimately granted permission to amend. In doing so the deputy judge declined to decide the contested issue whether the First Respondent had or had not refused to comply with reasonable requests for information, instead indicating that an application for specific disclosure might be required if the Petitioner maintained his position on that issue.

59. The order of Deputy ICC Judge Schaffer dated 22 October 2024 provided that if a specific disclosure application was not made, (1) the petition was to be relisted before him for consideration of whether it should be permitted to proceed, and (2) the First Respondent would have liberty to reapply for reverse summary judgment or to strike out the Petition.

60. The Petitioner's specific disclosure application was then issued on 11 November 2024.

**Specific disclosure - principles**

61. The principles to be applied on a specific disclosure application were largely uncontentious.

62. CPR r.31.12(1) and (2) provide:

(1) The court may make an order for specific disclosure or specific inspection. (2) An order for specific disclosure is an order that a party must do one or more of the following things – (a) disclose documents or classes of documents specified in the order; (b) carry out a search to the extent stated in the order; (c) disclose any documents located as a result of that search.

63. On behalf of the Petitioner, Mr Kennedy referred me to the guidance summarised in the White Book commentary at 31.12.2.

64. On behalf of the First Respondent, Mr Perring referred me to the following principles and caselaw, some of which was reflected in the White Book commentary relied upon by Mr Kennedy.

65. The application should set out the documents or classes of documents for which disclosure is sought, carefully defined so as to be limited to what is relevant and proportionate: City of Gotha v Sotheby's [1998] 1 WLR 114, CA.

66. The evidence in support must explain in relation to each class or category why it is reasonable and proportionate for those items to be disclosed.

67. The relevance of documents is analysed by reference to the pleadings and the factual issues in dispute: Harrods Ltd v Times Newspapers Ltd [2006] EWCA Civ 294 per Chadwick LJ at [12]:

> 'In my view the judge was plainly correct to approach the application for further disclosure on the basis that it was essential, first, to identify the factual issues that would arise for decision at the trial. Disclosure must be limited to documents relevant to those issues. And, in seeking to identify the factual issues which would arise for decision at the trial, the judge was plainly correct to analyse the pleadings. The purpose of the pleadings is to identify those factual issues which are in dispute and in relation to which evidence can properly be adduced. It is necessary, therefore, to have in mind the issues as they emerge from the pleadings and are relevant in the present context.'

68. Mr Perring also referred me (by way of analogy) to the recent case of Cohen v Co-Operative Group Ltd [2025] EWHC 526 (Ch) at [29] and [32], in which Fancourt J (as he then was) refused permission to adduce expert valuation evidence sought to advance a case which had not been pleaded.

69. In deciding whether to exercise its discretion in favour of specific disclosure, the Court has regard to: (i) whether the party seeking disclosure has made a prima facie case that the documents sought are relevant to a pleaded issue; and (ii) whether an order is in accordance with the overriding objective and is proportionate in all the circumstances: Soriano v SEBDO [2022] EWHC 3370 (KB), at [17], [45]; PD31A para.5.4.

70. Before the Court will order specific disclosure it will need to be satisfied, at least prima facie, that the documents are not only relevant but also that they are (or have been) in the control of the party: Portman Building Society v Royal Insurance Plc [1998] PNLR 672, CA.

71. It is not usually open to the Court to reject the evidence of a party's solicitor after due enquiry that the requested documents do not exist: Henderson v Overall, unreported, 13 December 2001.

72. I am grateful to Mr Kennedy and Mr Perring for their researches and shall apply the foregoing guidance when determining this application.

**The Petitioner's specific disclosure application**

73. The Petitioner's specific disclosure application was made against the First Respondent alone, initially supported by the first witness statement of Alex Kennedy dated 11 November 2024 ('Kennedy (1)').

74. Kennedy (1) at [17] stated that in order to place an estimate of what the shares in IMG might be worth, taking into account the alleged unfairly prejudicial actions of the First Respondent, it was necessary for the Petitioner to review a number of categories of financial information regarding the businesses of (i) IMG (ii) AL (iii) Philharmonic (iv) ASL and (v) Loop Associates Limited, for the period 2019 to date.

75. Kennedy (1) stated at [17] that the Petitioner had 'instructed an expert'. The expert was not named but was said to have 'provided a list of the classes of documents which have not yet been provided but which would be necessary to provide a valuation of IMG's shares'. The list of classes of documents sought, of each of the five companies referred to above, for the period 2019 'to date', was reproduced in Kennedy (1) at [18] and provided as follows:

(a) Financial Statements

  (i) Complete Balance Sheets

  (ii) Complete Profit and Loss Statements

  (iii) Copy of Full & Final Annual Unfilleted Accounts

  (iv) Cash Flow Statements or Access to Google Sheets

  (v) Corporation Tax Returns

(b) Detailed Financial Information

  (i) Accounts Receivable Aging Reports

  (ii) Accounts Payable Aging Reports

  (iii) Monthly Bank Statements

  (iv) Contracts and Agreed Payment Arrangements For All Outstanding Loans and Debts

(c) Sales and Customer Information

  (i) Sales by Customer Reports

(ii) Fixed Customer Contracts and Agreements

(iii) Customer List by Revenue Contribution

(iv) Sales Forecast for FY25, 26 & 27

(d) Organisational Information

(i) List of Employees / Directors with Roles and Compensation & Payroll

(ii) Organisational Chart

(e) Business Operations

(i) Shareholder Agreements/Members Registers

(ii) Property and Equipment List

(iii) List of all Owned and Leased Properties for both 1st and 2nd Respondent

(f) Intellectual Property

(i) List and Details of all Patents, Trademarks, Copyrights and Sold Software Licenses.

76. It will be noted that the list of companies in respect of which these categories of documents are sought is not confined to IMG and its three trading subsidiaries (AL, Philharmonic and Integrated Logic Limited); the list includes ASL and Loop Associates. It will also be noted that the list sought documents from 2019 'to date' (at that stage 2024 - a period of 5 years). In some cases this period pre-dated the date of the relevant company's incorporation/commencement of trading and/or post-dated the relevant company's entry into liquidation and/or dissolution.

**The specific disclosure application: first hearing: 17 November 2025**

77. The application first came before the court for substantive disposal on 17 November 2025. At that stage the court concluded that the application was in no fit state to proceed. Among other things, the disclosure sought was impossibly wide, there was no updated document list acknowledging documents already disclosed (or confirmed not to exist or be in the possession/control of the First Respondent) and no coherent explanation linking the documents sought to valuation or pleadings.

78. From the third witness statement of Ms Emily Clift dated 25 November 2024 ('Clift (3)') and the correspondence exhibited to it before the court at that time, it was clear that the following categories of documents had already been disclosed to the Petitioner, in May 2024, prior to the issue of the disclosure application:

| | |
|---|---|
| IMG | Management accounts for y/e 2020 and 2022<br>Cashflow spreadsheets for y/e 2020, 2021 and 2022 |
| Philharmonic | Management accounts for y/e 2021 and 2022 (draft)<br>Cashflow spreadsheets for y/e 2020, 2021 and 2022 |

| | |
|---|---|
| AL | Management accounts for y/e 2020, 2021 and 2022<br>Cashflow spreadsheets for y/e 2020, 2021 and 2022 |
| ASL | Accounting information for 2022 |

79. It was also clear from Clift (3) and the correspondence exhibited to it that the First Respondent had informed the Petitioner long before the November 2025 hearing that numerous of the categories of documents sought by the Petitioner either did not exist or were not in the First Respondent's possession or control. These included the following:

| | |
|---|---|
| IMG | Any trading financial information post-dating IMG's entry into CVL on 17/06/22 |
| Philharmonic | Any financial information pre-dating IMG's acquisition of Philharmonic in April 2021<br>Any trading financial information post-dating Philharmonic's entry into CVL on 20/10/23 |
| AL | Any trading financial information post-dating Arcstream's entry into CVL on 17/11/22 |
| ASL | Any documents pre-dating incorporation on 08/10/20<br>Any financial information pre-dating commencement of trading (post-17/03/22) |
| Loop Associates Limited | Any documents pre-dating incorporation on 16/03/23 |

80. The Petitioner had not revised the list of documents sought to exclude any of these.

81. In addition, the period by reference to which disclosure was sought was not adequately explained in the Petitioner's evidence. Kennedy (1) proffered no proper explanation of why disclosure was sought from 2019 to '*date*' (by that stage 2025), when, for example, (i) IMG had entered into CVL on 17 June 2022 and (ii) AL and Philharmonic had followed suit in November 2022 and October 2023 respectively.

82. There was also no adequate explanation why the disclosure sought extended to Loop Associates Limited. Loop Associates Limited was not a subsidiary of IMG and was not incorporated until March 2023, a year after the Petitioner's exclusion from IMG and after IMG had entered liquidation. The Petitioner had not pleaded a case against Loop Associates Limited. Whilst the Amended Petition refers to the *existence* of Loop Associates Limited, it does not allege that it is carrying on, or has ever carried on, what was formerly the business of IMG or its subsidiaries. To the contrary: the Petitioner's pleaded case (at paras 32 and 36(3)(iii) of the Amended Petition) alleges that the business formerly carried on by IMG and its trading subsidiaries is now operated by ASL.

83. There was also no adequate explanation in the Petitioner's evidence as to why the following classes of documents were or might be relevant to the solvency or valuation issues:

i) Lists of employees/directors with roles and remuneration;

ii) Organisational charts;

iii) Shareholders Agreements;

iv) Registers of members; and

v) A list of property personally owned or leased by the First Respondent.

84. Further, there was no evidence from the valuation expert whom the Petitioner claimed to have instructed. All that was exhibited to Kennedy (1) in that regard was a one-page, undated, unattributed list of document categories sought. The list contained no reasoning or methodology.

85. Overall, there was no coherent explanation linking documents to valuation or pleadings.

86. Rather than dismiss the application at the November 2025 hearing, the court allowed the Petitioner a final opportunity to narrow his application and to file proper evidence in support of it. The application was adjourned to a further hearing, subsequently listed for February 2026 ('the February 2026 hearing').

87. Following the November 2025 hearing, the Petitioner filed the second witness statement of Alex Kennedy dated 8 December 2025 ('Kennedy (2)').

88. Regrettably, Kennedy (2) still suffered from many of the shortcomings of Kennedy (1) addressed above.

89. Kennedy (2) failed adequately to explain, still less to exhibit expert evidence confirming any valuation methodology said to justify, the wide ranging disclosure sought across numerous entities for a period of (by then) six years.

90. Included as 'Annex A' to Kennedy (2) was what was described at paragraph 38 of the statement as a 'refined' list of documents sought by the specific disclosure application. Whilst the list did introduce three categories labelled 'A', 'B' and 'C', it could not sensibly be described as a 'refinement' of the original list; overall, the number of documents sought by it was greater, rather than fewer, than the original.

91. In addition, the list of documents sought by Annex A to Kennedy (2) still included (i) documents which the Petitioner had already been told either did not exist or were not in the First Respondent's possession or control and (ii) documents which had already been disclosed.

92. The three categories of A-C were described at paragraph 38 of Kennedy (2) as follows:

'Category A – Documents concerning the solvency of the IMG group Companies

Category B - Documents evidencing value extracted by First Respondent from IMG group, which may be "added back" for the purposes of valuation; and

Category C – Documents evidencing value of loss incurred by Petitioner by virtue of loss of employment/opportunity'

93. As later summarised in Ms Clift's sixth witness statement ('Clift (6)'), of the list sought by Kennedy (2):

(1) 735 items were requested in total;

(2) 361 (49%) items had been *added* by Kennedy (2), after the November 2025 hearing at which the Petitioner had been encouraged to *narrow* the list;

(3) 315 (43%) items concerned documents that did not exist (as the Petitioner either knew or ought to have known by then; some overlap with the above category);

(4) 159 items concerned documents that were not in the First Respondent's possession or control (some overlap with the above);

(5) 81 items were duplicative; and

(6) 217 (29%) items related to companies that were not pleaded in the operative paragraphs of the Amended Petition (Loop and Innovate Live Ltd).

**The February 2026 and May 2026 hearings**

94. In the event, the February 2026 hearing went part-heard; by close of play, Mr Kennedy had concluded his submissions but the court had yet to hear from Mr Perring in answer or Mr Kennedy in reply. As the matter was going part-heard in any event, at the conclusion of the February 2026 hearing, the court suggested that the parties might cooperate in producing a Scott Schedule over the course of the adjournment, with a view to narrowing the issues. The part-heard application was thereafter listed for further hearing on 18 May 2026.

95. Following the February 2026 hearing, the First Respondent's solicitors took the lead in preparing a Scott Schedule, in which each document request was treated as a discrete item, with rows allocated to the First Respondent's position and (in colour) to the answers and disclosures already provided to the Petitioner. The Scott Schedule was sent to the Petitioner's solicitor on 5 March 2026 with an invitation to add the Petitioner's response; a follow-up email on 6 March 2026 invited him to confirm or to amend the schedule.

96. No substantive response was received from the Petitioner until Sunday 11 May 2026, over 2 months after the Scott Schedule was sent to the Petitioner and only a week before the resumed hearing. Rather than adding the Petitioner's responses on given documents in the columns provided for that purpose within the Scott Schedule meticulously prepared by the First Respondent's solicitor, the Petitioner's solicitor instead circulated a *competing* Scott Schedule, headed 'Petitioner's Scott Schedule', on 11 May 2026. This lengthy document was not exhibited to a witness statement and was not filed with the Court.

97. The Petitioner's Scott Schedule was put together in a way which rendered it of no utility whatsoever as a tool for narrowing issues. Document numbering and formatting were altered, meaning that the First Respondent's recorded positions in his own Scott Schedule could not be cross-referenced. In addition, over fifty pages of new factual assertions were advanced in the Petitioner's Scott Schedule. These included assertions of materially overstated accounts, a £25,000 "NEIL DICKINSON PAV" payment of 24 December 2021, and an asserted connection between Pixel Kartel invoicing and the development of Loop Associates Limited. None of those matters were pleaded or supported by a witness statement.

98. The Pixel Kartel issue, raised in the Petitioner's Scott Schedule for the first time, is a pertinent example of the undisciplined approach adopted by the Petitioner to this application. In several rows of his Scott Schedule, the Petitioner relied on a £1,920 invoice said to have been paid by ASL on 5 January 2022 to a company called Pixel Kartel, for 'web Loop animation', as evidence that Loop Associates Limited 'was being developed within the IMG group'. Yet Loop Associates Limited was not incorporated until 16 March 2023, fourteen months after the invoice. The chronology was incapable of supporting the inference advanced.

99. As rightly observed by Mr Perring, the Petitioner's Scott Schedule was more of a 'vehicle for assertion', rather than a constructive tool, based on the pleadings and evidence, for narrowing the issues with a view to an efficient disposal of the disclosure application.

100. Against the backdrop of that somewhat complex history, I turn now to consider the parties' respective submissions.

**Submissions and discussion**

**Petitioner's submissions**

101. Mr Kennedy had made accurate reference in his February skeleton argument to CPR 31.12 and to a passage from the White Book commentary at 31.12.2 summarising the principles to be applied when determining an application for specific disclosure. Regrettably, however, his written and oral submissions on the specific disclosure application before the court often paid little regard to such principles.

102. At paragraph 22 of his February skeleton argument, for example, in an opening paragraph appearing under the heading 'D. Submissions. D1 Specific Disclosure', Mr Kennedy submitted that (with emphasis added):

> 'In this case, an order for specific disclosure of the [Annex A] Documents would be an appropriate exercise of the Court's discretion, as they will allow the Petitioner to address the question "*What happened to the value held in the subsidiary companies?*"…'

103. As will be readily apparent from the authorities considered at [63] to [71] above, this approach does not accord with the principles governing an application for specific disclosure. The disclosure sought must be anchored to the pleadings, not used as a

'fishing' tool, for fact-finding or constructing a case: Harrods at [12] and (by analogy) Cohen v Co-operative Group at [29] and [32].

104. Mr Kennedy sought to support his suggested approach by drawing on selected passages from the judgment of ICC Judge Jones (at paragraphs 38-40) and the judgment of Deputy ICC Judge Schaffer (at para 33 (vi) and (vii)) on the strike -out and amendment applications respectively. Neither judgment, however, related to a specific disclosure application.

105. The passages relied upon in ICC Judge Jones' judgment (at paras 38-40) did not support the 'fishing' approach adopted by the Petitioner in this application in any event. The passages in question must be read in the context of ICC Judge Jones' judgment as a whole, including for these purposes paragraph 28, summarised at [49] above, and paragraph 46, quoted at [50] above.

106. Similarly, the references in the judgment of Deputy ICC Judge Schaffer (at paragraph 33 (vi) and (vii)) to other areas said to 'require investigation' must be read in the context of the judgment as a whole. Paragraph 33 formed part of a section of the judgment in which Deputy ICC Judge Schaffer was explaining the basis upon which, taking into account the overriding objective, he was minded to exercise his discretion in favour of allowing the amendments, notwithstanding that their strength was 'finely balanced'. Having considered (at para 29) a passage from Scott v Singh [2020] EWHC 1714 (Comm) suggesting a lower threshold for an amendment application than that applied in the context of a summary judgment application (*sed quaere*), Deputy ICC Judge Schaffer had next referred (at para 31) to Easyair Ltd v Opal Telecom Ltd [2009] EWHC 339 (Ch) in which Lewison J (as he then was) had confirmed that even on a summary judgment application, the court should take into account not only the evidence placed before it on the application itself, but also the evidence that could reasonably be expected at trial - and had acknowledged the value of a full investigation into the facts at trial. It was against that backdrop that Deputy ICC Judge Schaffer had at paragraph 33 of his judgment listed 'other areas which require investigation', including, at paragraphs 33 (vi) and (vii):

> '(vi) The assertion, to be tested on the evidence, as to what was or is the true value of the subsidiaries or their succeeding entities.
>
> (vii) The request for additional financial information which would clearly have to be produced on disclosure…'

107. Deputy ICC Judge Schaffer made clear when listing such matters at paragraph 33 of his judgment (which in any event were caveated to an extent by the opening sentence in para 34), that he was not setting the boundaries for any subsequent disclosure application. At paragraph 33(vii) he went on to state:

> 'I make clear that I make no determination as to whether the obstacles put in place by the First Respondent's solicitors to refuse disclosure, are sustainable. This may mean an application for specific disclosure if that position is to be challenged, the Petitioner having to show why the documents are germane to the

> issue of valuation and the First Respondent as to why they are not. Absent that application, I am not prepared to tread down that path today. However, I sound a warning to the Petitioner, that if any such application for specific disclosure fails and no further documents are required to be produced, he would have to nail his colours to the mast on value or be at considerable risk on costs.'

108. The 'fishing' approach adopted by the Petitioner in this application informed a number of Mr Kennedy's other submissions.

109. At paragraph 33 of his February skeleton, for example, Mr Kennedy contended (with emphasis added) that the Annex A documents were:

> 'necessary to provide a useful expert valuation of the shares which accounts for the value of the subsidiary and *successor businesses* (*including, for example*, [ASL], …)'.

110. The reference to 'successor businesses' in the plural did not accord with the Petitioner's pleaded case, which alleges, in terms, that the business formerly operated by IMG and its subsidiaries is now operated by ASL: see paras 32 and 36(3)(iii) of the Amended Petition.

111. Again, in oral submissions at the February hearing, when asked why disclosure was being sought of documents relating to Loop Associates Limited, Mr Kennedy was unable to point to any operative provisions in the Amended Petition warranting such disclosure. Instead he told the court that the Petitioner 'believed' that Loop Associates was a successor entity, adding,

> 'We don't know exactly how it has been divvied up. What we are trying to do is find that out… we need to establish what happened to the business. The documents in Category B are designed to answer that question. What happened to the business. Did it go to [ASL] and Loop Associates as we believe… we don't think the business of IMG only went to [ASL]. So we need to look at Loop Associates.'

112. In reply submissions in May, when asked by the court to explain how the range of documents sought in the application had widened rather than narrowed between Kennedy (1) and Kennedy (2), notwithstanding the court's clear indication at the November hearing that the list should be narrowed, Mr Kennedy stated that this was because between the November and February hearings, 'we identified more entities through which the business was being conducted'. None of this was reflected in the pleadings.

113. The Petitioner strayed yet further from his pleadings in his pursuit of Category C documents. Disclosure of Category C documents was sought in relation to '*all entities*'; a term not adequately defined in the pleadings or the evidence in support of the disclosure application. When asked at the February hearing what 'all entities' meant in context, Mr Kennedy struggled to come up with an answer, ultimately (somewhat

clutching at straws whilst on his feet) alighting on the companies listed in paragraphs 5 to 6 of the Amended Petition as 'the most accurate list'. Yet no substantive case was pleaded in respect of numerous of the companies listed at paragraphs 5 to 6 of the Amended Petition, still less a substantive case warranting the extensive disclosure sought by Category C. As previously noted, the Petitioner's case as pleaded was that ASL was the successor entity. I also note (by way of example - there are other examples which in the interest of brevity I shall not address) that the companies listed at paragraphs 5-6 of the Amended Petition included Paper 2 Pixel Limited, a company of which the First Respondent was neither director nor shareholder and which had never traded. The sole director and sole shareholder of Paper 2 Pixel was the Petitioner himself.

114. A further issue explored in submissions with Mr Kennedy related to the scope of unfair prejudice relied upon for the purposes of these proceedings.

115. The issue arose because a number of the acts and events complained of (expressly or by implication) in the Amended Petition, culminating in 'portmanteau' provisions set out at paragraphs 33-34, *post-date IMG's entry into CVL*. The sale by IMG (acting by its liquidator, Mr Money) to the First Respondent of IMG's shares in ASL and Philharmonic is one example. The entry of Philharmonic into CVL (after the share sale) is another. The entry into CVL of each of AL (as a wholly owned subsidiary of IMG in liquidation) and Integrated Logic (again, according to Companies House filings at least, as a wholly owned subsidiary of IMG in liquidation) is a further example; as is the sale by AL (by then acting by its own liquidator, Mr Money) to the First Respondent of AL's goodwill, name and website. The timing of such acts and events raises the question whether they can be relied upon as unfairly prejudicial 'conduct of IMG's affairs', for the purposes of a s 994 petition presented against the First Respondent when, at the time of their occurrence, IMG was in CVL, the directors' powers had ceased (s 91(2) IA 1986) and the conduct of IMG's affairs had passed to IMG's liquidator, Mr Money.

116. Mr Kennedy was in some difficulty assisting the court on this issue. In fairness, it was not his pleading. At one stage in submissions at the February hearing, he acknowledged that 'once the liquidator was appointed there may be some actions which may properly be regarded as the liquidator's actions rather than the First Respondent's', adding that if that was the thinking, 'we may need to seek permission to add the liquidator as an additional respondent'.

117. At another stage in his submissions at the February hearing, Mr Kennedy submitted that conduct of the affairs of the subsidiaries was capable of being regarded as conduct of the parent. He also made reference to the Petitioner's pleaded case (in context a reference to paragraph 28 of the Amended Petition) that the First Respondent had a secret plan all along (ie prior to IMG's entry into CVL) to use the intended liquidation of IMG as a means of ousting the Petitioner from the businesses and taking control of them for himself.

118. Notwithstanding the adjournment of the application from February to May and the exchange of supplementary skeleton arguments in the interim, Mr Kennedy's second skeleton argument dated 13 May 2026 did not address this aspect further.

119. In reply submissions in May, however, Mr Kennedy attempted to 'row back' from the suggestion in his February skeleton (at para 25(3)) and in his February oral submissions that post-CVL acts and events were unfairly prejudicial conduct, contending that 'the crux of the petition – the thing that we are complaining about - is the exclusion on or about 17 March with a view to gaining control of the whole business'. Again, however, this was at odds with the Petitioner's pleaded case and in particular the 'portmanteau' provisions set out at paragraphs 33 to 34 of the Amended Petition, read in the context of paragraphs 28-32 of the same.

120. I can deal with other points arising during Mr Kennedy's submissions somewhat more briefly.

121. Another point raised by Mr Kennedy at the February hearing related to the period in respect of which the disclosure sought should be ordered. He argued that the only basis upon which the First Respondent's solicitors had refused disclosure of 'many of the requested documents' was that they remained 'wedded to a valuation date in March 2022'. He contended that whilst ICC Judge Jones had referred to 17 March 2022 (date of exclusion) as a date of valuation, he had made no finding that 17 March 2022 was the only possible date of valuation; a point noted by Deputy ICC Judge Schaffer in his judgment on the later amendment application. He submitted that on the authorities it was clear that the court could choose some other date, depending on the facts, citing Profinance Trust SA v Gladstone [2002] 1 WLR 1024 at [61], Gibbins v Tierney and another [2025] 1 BCLC 433 and Otello Corp ASA v Moore Freres and Co LLC [2020] EWHC 3261 (Ch).

122. By the time of his reply submissions at the May 2026 hearing, however, Mr Kennedy submitted that (with emphasis added) as far as the specific disclosure application was concerned, he was 'only seeking … post-exclusion documents for the purpose of placing a value on the business *as at 17 March 2022*'.

123. In relation to the Category C documents, Mr Kennedy argued that these were relevant to the Petitioner's potential claim as an employee, which both ICC Judge Jones (at para 41 of his judgment) and Deputy ICC Judge Schaffer (at para 36 of his judgment) had made clear was a claim capable of being pursued in the petition.

124. In relation to the extensive bank statements sought by way of disclosure across multiple entities for multiple years in Annex A, Mr Kennedy argued that such disclosure was required 'to verify some of the information already provided', referring in particular to what was described as an 'unexplained expense' in a profit and loss statement which had been provided for AL addressed in the Points of Reply ('PoR'), paragraph 4 of the Petitioner's witness statement dated 20 February 2025 and Kennedy (2) at paragraphs 30-36.

125. In relation to the documents that the First Respondent had confirmed did not exist or were not in his possession/control, Mr Kennedy argued (with some emphasis added) that 'it would be a proper response to say so in light of the disclosure order, but it is not *per se* a reason for the order not to be made if there is a *prima facie* case that the documents *may exist*': skeleton, February 2026, para 25(2). I pause here to note that this approach does not accord with the guidance given in Portman Building Society v

Royal Insurance Plc [1998] PNLR 672, CA and Henderson v Overall, unreported, 13 December 2001 addressed at [70]-[71] above.

126. Mr Kennedy also contended by his supplemental skeleton argument dated 13 May 2026 (at para 6) that even if given Annex A documents are not in the possession or control of the First Respondent but are instead (to the extent that they exist) in the control of the liquidator, that 'should not defeat the application' as 'IMG is itself a Respondent'. This was simply incorrect however. The specific disclosure application was *against the First Respondent alone*. IMG was not a party to it.

127. A further point raised by Mr Kennedy in his supplemental skeleton (at paragraph 8) was that in relation to documents said to be in Xero, 'the Respondents [sic] should identify who has access to the Xero organisation, whether exports can be obtained, and what steps have been taken to obtain them'. The First Respondent's solicitors had already addressed this issue, however, prior to the issue of the specific disclosure application. In this regard I refer by way of example to their detailed 7 page letter dated 17 May 2024. At page 5 of that letter, in response to point 12, the First Respondent's solicitors state as follows:

> 'We are instructed that our client's Xero subscriptions have expired, however it would cost only £60 to purchase a one-month's subscription, which we are informed should restore access. We propose that your client pay this, and then the audit trail (showing the various postings, which we are instructed were done by your client and the bookkeeper) can be viewed to confirm the authenticity of the sums in the management accounts. Alternatively, the liquidator might have access and be able to supply the Xero records to you on request'.

128. I was taken to no substantive response to that suggestion in the correspondence in evidence. Indeed, over the period 17 May 2024 to the issue of the amendment application on 24 June 2024, the correspondence in evidence appears to have gone largely one way, from the First Respondent's solicitors to the Petitioner's solicitors, with little if any substantive engagement from the Petitioner's solicitors.

129. On the issue of proportionality, Mr Kennedy argued (by paragraphs 9 and 10 of his supplemental skeleton) that whilst a 'significant' number of documents was sought, this was partly due to the 'unusual procedural history' of the petition, which meant that the specific disclosure application had been brought 'prior to standard disclosure'. Pausing there, as rightly noted by Mr Perring, the reference to 'standard disclosure' in context is inaccurate, as PD57AD would apply.

130. Mr Kennedy further maintained that the disclosure application was proportionate as the documents sought were 'targeted financial and transactional records going to the central valuation and relief issues'.

131. He also contended that the burden of searching for them would be limited as 'many of the documents should be held electronically in accounting systems, bank records, Xero exports, email correspondence and company files'.

**The First Respondent's submissions**

132. Mr Perring first addressed me on the issue of whether and to what extent acts and events postdating IMG's entry into CVL could constitute conduct of IMG's affairs for s 994 purposes.

133. Mr Perring observed that the various acts pleaded in paragraphs 28 to 34 of the Amended Petition as constituting conduct of the affairs of IMG included, in particular: (i) the Petitioner's exclusion from management on 17 March 2022; (ii) the placing of IMG's wholly-owned subsidiaries (AL, Philharmonic, and Integrated Logic) into CVL; (iii) the First Respondent's purchase of the shares of ASL and Philharmonic from IMG's liquidator; (iv) the First Respondent's purchase of AL's goodwill from AL's liquidator; and (v) the subsequent trading of ASL. Mr Perring argued that only (i) pre-dated IMG's entry into CVL on 17 June 2022. The remainder, he argued, post-dated that event, in several cases by many months.

134. He submitted that the post-CVL acts and events could not be characterised as 'conduct of [IMG's] affairs' for the purposes of a s.994 petition brought against the First Respondent in circumstances where the validity of the appointment of IMG's liquidator (Mr Money) was not being actively challenged and where the acts in question were transactions by, or sequelae of transactions by, the liquidator rather than the First Respondent in any capacity in which he acted on behalf of IMG.

135. Mr Perring developed his argument as follows.

(1) The affairs of the company

136. First, he submitted, whilst the words 'affairs of the company' are wide and to be construed liberally, with regard to business realities rather than to a narrow legalistic view: R v Board of Trade, ex p St Martin Preserving Co Ltd [1965] 1 QB 603 at 613c (Phillimore J), they are not unbounded.

137. One key limitation, he argued, is that the conduct relied upon must be the conduct of the company itself, not the personal acts of its members or other parties. As Harman J explained in Re Unisoft Group Ltd (No 3) [1994] 1 BCLC 609 at 611c, 'shareholders' rights to deal with or vote their shares are separate from the rights of the company as a corporate entity and shareholders' relationships with it'. Reference was also made to Graham v Every [2014] EWCA Civ 191 per Arden LJ at [38].

138. A further limitation, Mr Perring submitted, is that the conduct of one company, even where that company has a relationship with another, is not, without more, the conduct of the other's affairs. In Arrow Nominees Inc v Blackledge [2000] 2 BCLC 167, at [21], Chadwick LJ explained the position as follows (with emphasis added):

> 'It is important to keep in mind that the basis upon which the court grants relief on a petition under [s 994] is that 'the company's affairs' are being

> or have been conducted in a manner which is unfairly prejudicial to its members or to some part of its members. The fact (if it be established) that the affairs of some other company (say, company B) which is a member of the company (company A) in respect of which the petition is presented and which is, for example, a supplier or a lender to company A are being conducted in a way which is prejudicial to company A is, of itself, no basis for relief. It is necessary to show that company B is *using its position as a member* of company A to obtain some advantage for itself; and that, in doing so, it is acting contrary to the articles of association or to some collateral agreement on the basis of which it (or others) became a member (or members) of company A, or is using its powers as a member of company A in a way which equity would regard as contrary to good faith.'

139. Mr Perring submitted that this passage is significant for the present case because it identifies precisely the link that must be shown if conduct of one party in relation to a second company is to be treated as conduct of the second company's affairs: the first party must be *using its position as a member* of the second company, contrary to the articles, a collateral agreement, or good faith, to obtain an advantage. He argued that the Petitioner had not alleged in the Amended Petition any such use by the First Respondent - and could not, because the post-CVL acts complained of were not acts in any capacity 'as a member' of IMG.

(2) The parent/subsidiary line of authority requires control

140. Mr Perring next referred the court to caselaw addressing the circumstances in which the affairs of a subsidiary may be treated as the affairs of the parent (and vice versa).

141. It has long been recognised that, in appropriate circumstances, the affairs of a subsidiary may be treated as the affairs of its parent (and vice versa): Scottish Co-operative Wholesale Society Ltd v Meyer [1959] AC 324.

142. In Rackind v Gross [2005] 1 WLR 3505 at [26], Sir Martin Nourse held:

> '[T]he expression 'the affairs of the company' is one of the widest import which can include the affairs of a subsidiary. Equally, I would hold that the affairs of a subsidiary can also be the affairs of its holding company especially where, as here, the directors of the holding company, which necessarily controls the affairs of the subsidiary, also represent a majority of the directors of the subsidiary.'

143. Mr Perring submitted that the qualification of 'especially where … the directors of the holding company … necessarily controls the affairs of the subsidiary' has since been treated as an essential limit on the cross-company principle.

144. In Re Grandactual Ltd [2006] BCC 73, Sir Donald Rattee considered Rackind v Gross and Nicholas v Soundcraft Electronics Ltd [1993] BCLC 360, and held at [29] (with emphasis added):

> 'The essence of the decisions of the Court of Appeal in the two cases I have cited was in my view that it may in certain cases be possible to say that conduct of the affairs of one company also constitute conduct of the affairs of another *when the first company either is controlled by or has control of the other*. That, if I may say so, is perfectly understandable. However, that principle is of no avail to [Ps] in the present case, in which [the other company] had no power to control the company and was subject to no power of control by the company … the fact that they also had control over the company cannot be said to make the affairs of one company the affairs of the other, and I so decide.'

145. That statement of principle has been accepted by the Court of Appeal: see Re Neath Rugby Ltd (No 2), Hawkes v Cuddy [2009] 2 BCLC 427 at [50] (Stanley Burnton LJ), accepting Sir Donald Rattee's propositions 'with some qualification' not material for present purposes.

146. Lewison J at first instance in Re Neath Rugby Ltd (No 2) [2008] BCC 390 went further and identified the practical content of the control requirement, at [214]:

> 'The remedy afforded by s 994 is, in my judgment, essentially a remedy for the unfair management of the internal affairs of a company. It is not designed to deal with the situation where one company deals with another on an arms' length basis. Many decisions made on an arms' length basis by one company may have enormous impact on another … [That fact] does not, to my mind, support the general proposition that the affairs of O should count as the affairs of NRL.'

147. Drawing these cases together, Mr Perring submitted that the key feature of 'control' for s.994 purposes was not formal voting control, but *practical control of the internal affairs of the company*. Where one party deals with another on an arms' length basis, he argued, that is not the conduct of the second's affairs, however significant the consequences.

(3) Application of these principles: post-CVL of IMG, the First Respondent did not conduct the affairs of IMG

148. Mr Perring went on to submit that, on the principles set out above, the post-CVL acts pleaded were not capable of constituting conduct of IMG's affairs for present purposes, in the context of a s 994 petition presented against the First Respondent.

149. Mr Perring argued that from 17 June 2022, the First Respondent had no practical control over the internal affairs of IMG. On the appointment of Mr Money as liquidator in IMG's creditors' voluntary winding-up, the directors' powers ceased and the conduct of IMG's affairs passed to the liquidator: s.91(2) Insolvency Act 1986. There was no pleaded allegation that the First Respondent retained, or sought to assert, any directorial control over IMG after that date. On the test in Re Grandactual Ltd and Re Neath Rugby Ltd (No 2), he submitted, the necessary nexus was absent.

150. Mr Perring went on to argue that the First Respondent's acquisitions from the liquidators of IMG and its subsidiaries were, on their face, arms' length transactions

between distinct legal actors: the First Respondent in his personal capacity and Mr Money, in his statutory capacity as liquidator. Mr Perring submitted that these transactions were precisely the kind of transactions that Lewison J in Re Neath Rugby Ltd (No 2) held to fall outside s.994. They were not the internal management of IMG's affairs by the First Respondent.

151. Mr Perring next argued that no causal mechanism of the kind required by Arrow Nominees v Blackledge had been pleaded or was available. The Amended Petition did not allege that the First Respondent used 'his position as a member' of IMG to obtain advantage from the post-CVL transactions, contrary to the articles, a collateral agreement, or good faith. The First Respondent could not have done so, Mr Perring contended, as by the time of the relevant transactions, the First Respondent was a member of a company under independent administration; his acts in respect of those transactions were not the acts of IMG, and were not done in any capacity in which his acts could be the acts of IMG.

152. Mr Perring went on to submit that the subsequent trading of ASL was yet further removed. It had not been a trading subsidiary of IMG. ASL began trading in or about April 2022. Loop (another company said by the Petitioner to be in his sights, although no substantive case was pleaded against it) was not a subsidiary of IMG at all, trading or otherwise. It was not even incorporated until 16 March 2023, nine months after IMG's entry into CVL. Mr Perring argued that, whatever the position as to the affairs of those companies *inter se*, they could not, by virtue of Re Grandactual Ltd and Re Neath Rugby Ltd (No 2), be treated as the affairs of IMG; the First Respondent's control of those companies was not control over IMG; and IMG had no control of them.

153. Mr Perring next addressed Mr Kennedy's attempts to cast the post-CVL acts complained of as part of a single course of conduct that pre-dated CVL, observing that, even taken at its highest, the alleged 'secret plan' as pleaded supplied no *mechanism* by which the post-CVL acts of an independent liquidator, or of the First Respondent in his personal commercial affairs, could properly be attributed to the First Respondent as *conduct of IMG's affairs*. Mr Perring argued that the independent liquidator either acted properly (which was the unchallenged position) or he did not (a case not pleaded against him). On either view, he argued, the liquidator's acts were not the acts of the First Respondent and they were not conduct of IMG's affairs by the First Respondent.

154. Mr Perring was also highly critical of the 'portmanteau' provisions set out in Paragraphs 33 and 34 of the Amended Petition. These, he observed, gathered together acts of differing kinds, performed by different actors at different times, and alleged that they all comprised conduct of IMG's affairs. He maintained that as presently drawn, the Amended Petition does not distinguish between (i) acts of the First Respondent as director of IMG; (ii) acts of the First Respondent as director of IMG's subsidiaries while those subsidiaries were within IMG's group; (iii) acts of an independent liquidator following IMG's entry into CVL; and (iv) acts of the First Respondent in his own personal commercial affairs following the liquidations. The portmanteau form, he argued, wrongly conflated the four categories. It did not, he argued, supply the missing causal or attributive link, the practical control identified in Re Neath Rugby Ltd (No 2) or the use of position 'as a member' identified in Arrow Nominees v Blackledge, between (iii) and (iv) on the one hand and the conduct of IMG's affairs on the other.

155. Mr Perring went on to argue that the portmanteau-style pleading adopted in this case did not satisfy the requirements of precision in s.994 proceedings. At the pleading stage, he argued, it was incumbent upon a petitioner to identify the acts impugned with sufficient specificity (i) to allow the respondent to know what is alleged against him and (ii) to allow the Court to evaluate, by reference to the authorities, whether each act so identified is properly conduct of the company's affairs. He submitted that the Petitioner had failed to do so in this case.

156. Turning next to the consequences for the specific disclosure application, Mr Perring maintained that if his analysis was accepted by the court, any categories of disclosure said to be necessary to investigate post-CVL acts would fall outside the necessity and relevance requirements of CPR r.31.12, on the ground that the acts in question were not capable of supporting a complaint under s.994.

157. In particular, he argued that:

a. Category B in its entirety would fall away. All documents in Category B post-date 17 March 2022 and a substantial majority post-date IMG's entry into CVL on 17 June 2022. They also concerned ASL and Loop, which were not trading subsidiaries of IMG at the points to which the disclosure relates.

b. The post-March 2022 parts of Category A would also fall away, including ASL bank statements, ASL corporation tax returns, and Loop documents of any description (Loop being incorporated in March 2023).

c. The bulk of Category C, which seeks documents in respect of "all entities" over a multi-year period, would also fall away. The position ultimately adopted by the Petitioner at the February hearing on the meaning of 'all entities' had been that the term referred to all companies listed at paragraphs 5-6 of the Amended Petition. To the extent that any of those entities traded only post-CVL (such as Loop Associates) and to the extent that Category C seeks records for the post-CVL period, he argued, the same analysis would apply.

158. Mr Perring stressed that these submissions were not advanced as a technical objection but rather to highlight that the Amended Petition, as drawn, does not engage the s.994 jurisdiction in respect of the conduct on which the specific disclosure application most heavily depends.

159. Mr Perring turned next to address me on the other factors relied upon by the First Respondent in opposition to the specific disclosure application, as helpfully set out in Mr Perring's February skeleton argument. In summary, these were as follows:

(1) no expert evidence or valuation methodology had been provided across three court-supervised investigatory stages, and a reorganised document list (Annex A) was not a substitute;

(2) the Petitioner's pleaded valuation evidence did not, even taken at its highest, generate a positive net value for IMG once its admitted liabilities were brought into account;

(3) the 'add-back' theory underlying Category B failed because, whilst the court has a broad discretion to adjust share valuation to reflect the impact of unfairly prejudicial conduct, that jurisdiction requires clear evidence of the conduct alleged, a quantified counterfactual, and an expert methodology identifying why the documents sought are necessary inputs — none of which had been provided;

(4) the accounting discrepancy allegation, even taken at face value, had no forensic foundation;

(5) the Category C documents, including those said to relate to loss of employment and opportunity, could not be shown to be necessary inputs to any identified quantification exercise in the absence of expert evidence; and

(6) ordering a further round of extensive disclosure, after the procedural history of this petition, would be wholly disproportionate.

**Discussion and conclusions**

160. In my judgment Mr Perring is correct in submitting that on the Amended Petition as pleaded, the acts and events relied upon which post-date IMG's entry into CVL do not constitute conduct of IMG's affairs for the purposes of a s 994 petition presented against the First Respondent.

161. The validity of the appointment of the liquidator of IMG and its trading subsidiaries has not been successfully challenged and no specific relief on that issue is sought by the Amended Petition. In the absence of a successful challenge, Mr Money's appointment as liquidator of IMG and its trading subsidiaries stands.

162. No causal mechanism of the kind required by Arrow Nominees v Blackledge has been pleaded. The Amended Petition does not allege that the First Respondent used 'his position as a member' of IMG to obtain advantage from the post-CVL transactions, contrary to the articles, a collateral agreement, or good faith. In any event, by the time of the relevant transactions, the First Respondent was a member of a company under independent administration. In my judgment the First Respondent's acts in respect of those transactions were not the acts of IMG for the purposes of s 994.

163. On the appointment of Mr Money as liquidator in IMG's creditors' voluntary winding-up on 17 June 2022, the directors' powers ceased and conduct of IMG's affairs passed to the liquidator: s.91(2) Insolvency Act 1986. There is no pleaded allegation that the First Respondent retained, or sought to assert, any directorial control over IMG after that date.

164. In my judgment the parent/subsidiary line of authorities does not assist the Petitioner on the Amended Petition as pleaded. Whilst the affairs of a subsidiary may in certain circumstances be treated as the affairs of the parent, conduct of the affairs of a subsidiary cannot be treated as conduct of the affairs of the parent in the absence of the essential element of practical control: Re Grandactual Ltd and Re Neath Rugby Ltd (No 2). In the present case, following IMG's entry into CVL, that nexus is absent.

165. In my judgment the First Respondent's purchases of (i) IMG's own goodwill and IMG's shares in ASL and Philharmonic from IMG acting by its liquidator; (ii) AL's goodwill from AL acting by its liquidator and (iii) Integrated Logic's goodwill from Integrated Logic acting by its liquidator do not comprise the internal management or conduct of IMG's affairs by the First Respondent for the purposes of these s 994 proceedings. Each company was represented by its liquidator in these transactions. In my judgment Mr Perring is right in submitting that such transactions are precisely the kind of transactions that Lewison J in Re Neath Rugby (No 2) held to fall outside s 994.

166. In my judgment Mr Kennedy's attempts to cast the acts complained of as part of a single course of conduct that pre-dated CVL do not assist the Petitioner on this issue. As rightly observed by Mr Perring, it substitutes the rhetoric of a secret 'plan' for the legal analysis that the s 994 jurisdiction requires. Even taking the Petitioner's case at its highest, the alleged secret 'plan' as pleaded supplies no mechanism by which the post-CVL acts of an independent liquidator in selling given assets to the First Respondent can properly be treated as conduct of IMG's affairs by the First Respondent. There is no allegation of wrongdoing or conspiracy pleaded against the liquidator and he has not been joined as a party.

167. I pause here to observe that the pleaded allegation of a secret plan in any event faces other challenges. IMG's entry into CVL was not of itself a covert exercise; on his own case the Petitioner was aware of and party to plans to place IMG into liquidation. The Amended Petition does not allege that, following IMG's entry into CVL, the Petitioner was wrongly prevented from making offers himself to purchase given assets from the liquidator of IMG, AL and Integrated Logic respectively, or that he made offers which were wrongly rejected. Mere exclusion from management would not of itself prevent the Petitioner from making such offers; the Petitioner remained a de jure director of IMG and in any event it is open to any third party to make an offer to purchase assets from a liquidator. In this regard I note that the First Respondent's various purchases from the liquidator of IMG and its subsidiaries did not happen overnight; the First Respondent's purchase from IMG (acting by its liquidator, Mr Money) of the shares in ASL and Philharmonic, for example, took place in September 2022, some 3 months after IMG's entry into CVL. The First Respondent's purchase of the website and goodwill of IMG from IMG (acting by its liquidator, Mr Money) did not take place until April 2023, some 10 months after IMG's entry into CVL; Mr Money later confirmed in his progress report that there had been no third party interest shown in purchasing the same.

168. I turn next to the portmanteau provisions set out in paragraphs 33 and 34 of the Amended Petition. Read in the context of paragraphs 28 to 32, in my judgment these 'portmanteau' provisions are deeply problematic. As rightly submitted by Mr Perring, as presently drawn, the Amended Petition does not distinguish between (i) acts of the First Respondent as director of IMG; (ii) acts of the First Respondent as director of IMG's subsidiaries while those subsidiaries were within IMG's group; (iii) acts of an independent liquidator following the respective entries of IMG, AL and Integrated Logic into CVL; and (iv) acts of the First Respondent in his own personal commercial affairs following the liquidations. The portmanteau form adopted wrongly conflates these four categories.

169. Such conflation is unacceptable. The need for precision in defining the 'conduct of the company's affairs' relied upon for the purposes of a s 994 petition has been emphasised on numerous occasions by the Court of Appeal: see by way of example Primekings v King [2021] EWCA Civ 1943 per Snowden LJ (as he then was) at [66]-[67]. See too the specific observations of Snowden LJ regarding portmanteau pleading in Primekings at [70]:

> 'Moreover, paragraph 234 simply asserts in a generalised manner that,
>
> "the matters set out in V, VII and IX-XIV of these Points of Claim constitute unfairly prejudicial conduct of the affairs of the Company."
>
> That portmanteau style of pleading is inappropriate. It even includes, for example, the allegation to which I have referred in paragraph 36(ix) above, namely that the Petitioners paid the amount of the Interim Costs Order to the defendants to the Misrepresentation Claim (paragraph 195 of the Points of Claim). How that conduct by the Petitioners themselves in (finally) complying with an order of the court could constitute conduct of the affairs of the Company, or could have resulted in any such conduct, entirely escapes my understanding.'

170. The need for precision in a s 994 context extends beyond the universal requirement that a case must be sufficiently pleaded to allow the respondent to know what is alleged against him. The reason for this was made clear by Arden LJ (as she then was) in Re Coroin (No. 2) [2013] EWCA Civ 781 at [11]: *s 994 is a purely statutory jurisdiction*. It cannot be exercised unless the threshold requirements of s 994 are fulfilled. Those threshold requirements, comprising (1) conduct of the company's affairs, which is (2) unfairly prejudicial to the Petitioner as a member, are *cumulative*. If the first requirement is not satisfied, the second requirement *does not arise*: Re Coroin (No. 2) at [13]-[14]. Observing the 'substantive frame of reference' is thus of paramount importance: Primekings per Snowden LJ at [68], addressing submissions summarised at [51].

171. I turn next to consider the consequences for the specific disclosure application. Mr Perring maintained that if, (as I have concluded), the post-CVL acts pleaded do not qualify as conduct of IMG's affairs by the First Respondent for the purposes of the petition, any categories of disclosure said to be necessary to investigate post-CVL acts would fall outside the necessity and relevance requirements of CPR r.31.12, on the ground that the acts in question were not capable of supporting a complaint under s.994.

172. I see the force in that submission. After careful consideration however, I have come to the conclusion that it is neither necessary nor appropriate to dismiss the specific disclosure application on this narrow basis and I decline the invitation to do so. For the reasons addressed below, the specific disclosure application fails in any event.

173. Addressing the sub-categories in category A of Annex A to Kennedy (2) in turn, on the evidence as a whole, my findings and conclusions are as follows. To the extent that they exist and/or are in the possession/control of the First Respondent:

(1) A1 (balance sheets) and A2 (P&L management accounts) for IMG, AL and Philharmonic over the period 2020-2022 have already been disclosed. They were disclosed in May 2024 and are in evidence, exhibited at RP1–RP5 to the Petitioner's witness statement dated 20 February 2025;

(2) A3 (cash flow statements): formal standalone cash flow statements were not prepared by IMG, AL and Philharmonic in ordinary course. The management accounts and bank statements disclosed verify the cash position;

(3) A4 (bank statements, January 2021-June 2022 for IMG, AL and Philharmonic): these were provided in the 2024 disclosure exercise;

(4) A5 (corporation tax returns for IMG, AL and Philharmonic): these are in liquidator control;

(5) A6 and A7 (accounts payable and receivable aging reports as at 17 March 2022 and 30 June 2022): formal aging documents at specific dates were not prepared by IMG, AL and Philharmonic in the ordinary course and do not exist as discrete documents. The underlying creditor and debtor positions are derivable from the management accounts and bank statements already disclosed;

(6) A8 (complete accounting ledgers -GL and sub-ledgers), A9 (journal entries and reconciliations) for each of IMG, AL and Philharmonic over the periods January 2021 to June 2022: to the extent that these exist, they are under liquidator control;

(7) A10 (supporting documents for key entries of more than £5k); no persuasive case for specific disclosure of such documents has been made out;

(8) A11 (tax documentation - VAT, PAYE - for each of IMG, AL and Philharmonic for the year ending December 2021): to the extent that these exist, they are under liquidator control.

174. On the evidence before me I am also satisfied that the Petitioner was provided with information and documentation relating to ASL for the year 2022 under cover of Ms Clift's letter dated 22 May 2024 to the Petitioner's solicitors. A copy of the letter of 22 May 2024 is exhibited to Kennedy (1).

175. Despite repeated requests in correspondence and numerous opportunities afforded to him by the court, the Petitioner has failed properly to focus, particularise and justify his requests for further documentation at any stage since.

176. I have already addressed a number of the points raised by Mr Kennedy on behalf of the Petitioner when summarising his submissions in an earlier section of this judgment. In the interests of brevity, I shall not attempt to address every point made in turn, but confirm that I have taken all submissions made on behalf of both parties into account.

177. On the evidence as a whole, I reject the Petitioner's claim that the management accounts provided to him in May 2024 had been 'filleted' or were somehow incomplete. This contention is not supported by the documentary evidence. In my judgment it is clear from the First Respondent's evidence, including the sixth witness statement of Ms Clift at [13], that the management accounts disclosed were complete.

178. On the evidence before me, the Petitioner's attempts to argue that given accounts were inaccurate (which he in turn relies upon as justification for seeking further document categories), do not hold water either. The accounting discrepancy allegation (pleaded at para 20.2 PoR), relating to the 2021 P&L for AL is not supported by any persuasive evidence and I reject it. The specific document said to support that allegation is an incomplete Xero P&L extract for AL dated 17 November 2021, produced from the Petitioner's own records. This purports to show net profit of £251,204.28, which the Petitioner contends is inconsistent with the formal AL P&L for 2021 disclosed in May 2024 showing a £57,182.32 loss, including a 'Direct Expenses' line of £283,320.16 absent from the November 2021 extract. Paragraphs 30–36 of Kennedy (2) advance this as justification for further documents sought in Categories A8–A11 of Annex A.

179. In my judgment this alleged accounting discrepancy does not bear close scrutiny and certainly does not of itself justify the wide ranging further categories of documents sought by way of specific disclosure on the back of it. The November 2021 document is an admittedly incomplete draft – Kennedy (2) itself acknowledges (at paragraph 31) that it is not a 'final statement'. The First Respondent's solicitors by their letter of 3 March 2025 to the Petitioner made clear the obvious shortcomings of the document. Among other things, it records wages and subcontractor costs of only £11,000 - for a business achieving £295,332 annual turnover – and makes no reference at all to office rent. These are plainly unworkable figures for an operating business in normal trading conditions. On the evidence as a whole, it is clear that the November 2021 document is simply an incomplete accounting system snapshot. In my judgment Mr Perring is right in contending that the Petitioner cannot found an allegation against the First Respondent based on the Petitioner's own incomplete records, particularly when the First Respondent has already disclosed the contemporaneous Xero audit trail.

180. To the extent that any documents in Category A (or B and C, for that matter) are sought in respect of Loop Associates Ltd, the Petitioner is plainly not entitled to these on his case as currently pleaded, for the reasons already addressed in [82] above.

181. I turn next to consider the documents in category A sought in respect of ASL (over and above those already disclosed – see [174] above). The Petitioner's pleaded case (at paragraphs 28, 30, 32 and 36(3)(iii) of the Amended Petition) alleges that the First Respondent wrongly excluded the Petitioner and orchestrated the insolvency of IMG and its trading subsidiaries to divert their business and assets to ASL, thereby extracting value from IMG at the Petitioner's expense. At paragraph 28 of the Amended Petition, it is alleged (with emphasis added) that the First Respondent 'put that plan into effect *on 17 March 2022 and thereafter*' by taking a series of pleaded steps, including excluding the Petitioner on 17 March 2022 (para 28), 'purporting' to place IMG into liquidation (para 28) and '[b]etween June and November 2022', 'purporting' to acquire the share capital of various of the trading subsidiaries and ASL from IMG's liquidator (para 30).

182. At paragraph 32 of the Amended Petition, ASL is thereafter described (with emphasis added) as 'effectively *a phoenix* of the business *formerly* operated by IMG and its subsidiaries'.

183. Reading the Amended Petition as a whole, it is clear that according to the Petitioner's pleaded case, any alleged extraction of value from IMG and its subsidiaries took place *after* the date of the Petitioner's exclusion.

184. This in turn begs the question of why the accounting documentation already disclosed to the Petitioner in May 2024 in relation to IMG and its trading subsidiaries for the accounting periods 2020 to 2022 inclusive does not of itself suffice for the purposes of assessing whether the Petitioner has a real prospect of success in establishing that his shares in IMG had a value before the First Respondent's alleged wrongdoing. Such documentation of itself (together with other publicly available documents) should be sufficient to determine the value of the business of IMG and its trading subsidiaries at or around the date of exclusion for the purposes of the limited valuation exercise at this stage envisaged. If IMG or its subsidiaries had assets that were removed *post-exclusion*, those assets would still appear in their books and records for the 3 years *up to the point of exclusion*, so would be included in the valuation.

185. Consideration of management accounts for IMG and its subsidiaries *at or around the point of exclusion* certainly appears to have been what ICC Judge Jones had in mind: see paragraph [46] of his judgment, reproduced at [50] above. As will be recalled, in the strike-out/summary judgment application, ICC Judge Jones noted the significance of 17 March 2022 as a potential valuation date for the purposes of assessing whether the Petitioner had a real prospect of success in establishing that his shares in IMG had a value before the First Respondent's alleged wrongdoing. Whilst not excluding the possibility of other valuation dates, it is clear that he treated the date of exclusion as the most obvious for the purposes of the limited early valuation exercise at that stage envisaged.

186. This accords with the conventional approach adopted on quantum following a finding of unfair prejudice on a s 994 petition. In Profinance Trust SA v Gladstone [2002] 1 WLR 1024, for example, Robert Walker LJ (as he then was) confirmed at [61] that the general starting point for valuation in s 994 proceedings is the date of the unfairly prejudicial conduct, with discretion to select a different date where fairness requires. See too Hollington on Shareholders' Rights, 9th ed at paragraph 8-59.

187. I accept that the court has a discretion to select a date other than the date of the alleged unfair prejudice and a related discretion to value shares on an 'add-back' basis, treating them as though identified wrongdoing had not occurred: Scottish Co-operative Wholesale Society Ltd v Meyer [1959] AC 324. The mere existence of such discretions does not, without more, however, enlarge the basis upon which a specific disclosure order can be made.

188. In this regard I accept Mr Perring's submission that, before granting specific disclosure based on a different valuation date or an 'add-back' basis, the Petitioner should be required to identify (i) the conduct alleged to have affected share value; (ii) how such alleged conduct affected share value; and (iii) in summary at least, the proposed mechanism or methodology for translating that into a valuation adjustment. An add-

back approach without (i) to (iii) above (in some shape or form) is simply meaningless. It is not a valuation exercise to which given documents can be shown to be necessary inputs.

189. I am fortified in these conclusions by the approach adopted in the RICS Valuation Global Standards (Red Book) at IVS 104 to which I was referred. Whilst such guidance is not binding on this Court, it does serve to demonstrate what any valuation expert would be expected to apply as a matter of professional methodology. Valuation is anchored to a given date; any departure from that anchor, whether by use of post-date trading data or by treating subsequently transferred assets as having already been removed, requires the expert to identify and justify the specific basis for doing so.

190. In the present case the Petitioner has not by his pleaded case or evidence in support of the disclosure application identified any specific conduct or mechanism by which the value of IMG and its trading subsidiaries was being *suppressed* prior to 17 March 2022, as at 17 March 2022, or at any material date thereafter. Nor has he pleaded or evidenced a case warranting an 'add-back' approach on any other basis.

191. On the Petitioner's case as currently pleaded, the management accounts and attendant documentation relating to IMG and its subsidiaries for the years 2020-2022 already disclosed to the Petitioner (together with other publicly available documents) should of themselves suffice for the limited purpose of establishing whether the Petitioner has a real prospect of success in establishing that his shares in IMG had a value at or around the date of his exclusion on 17 March 2022.

192. In my judgment the Petitioner has not made out a persuasive case for the additional Category A disclosure which he continues to seek in respect of ASL and others over and above the documents already provided.

193. For reasons already given, the Petitioner has also failed to make out a persuasive case for the Category B 'add back' disclosure which he seeks (variously) against IMG, its trading subsidiaries, ASL, Loop Associates Ltd and others.

194. The Petitioner's application for specific disclosure of Category C documents in respect of 'all entities' similarly fails. The Petitioner's purported justification for seeking the Category C documents - that they evidence the 'value of loss incurred by Petitioner by virtue of loss of employment/opportunity'- is little more than bald assertion. No proper attempt was made to demonstrate, by reference to the pleadings or the evidence in support of his application, how any given Category C document would contribute to quantification of any such loss. As rightly submitted by Mr Perring, disclosure is not ordered under CPR 31.12 to enable a claimant to construct a head of loss that has not yet been identified; it is ordered where specific documents are shown to be necessary inputs to a valuation or quantification exercise that has already been coherently pleaded and framed.

195. In addition, in constructing Category C, no proper attempt has been made (i) to confine the companies in respect of which such disclosure is sought to those against whom a substantive case is pleaded (see [113] above); (ii) to limit time periods for disclosure to cater for the dates on which any given company was incorporated, commenced trading,

or went into liquidation; or (iii) to exclude documents or categories of documents already disclosed in relation to given companies.

196. In considering the specific disclosure application, I am also required by CPR 1.1(2)(c) and PD31A para 5.4 to consider the issue of proportionality and the overriding objective.

197. As demonstrated by the matters addressed in this judgment, the Petitioner has made no proper attempt by his application and by his evidence in support to carefully define the documents or classes of documents for which disclosure is sought so as to be limited to what is (i) relevant, by reference to the pleadings and the factual issues in dispute and (ii) proportionate: Harrods Ltd v Times Newspapers Ltd [2006] EWCA Civ 294 and City of Gotha v Sotheby's [1998] 1 WLR 114, CA.

198. Category B alone requests, for independent trading companies with which the Petitioner has no connection, unredacted monthly bank statements from March 2022 to the present, four years of confidential banking records (B1); schedules of all personal payments to the First Respondent including salary, dividends, loans and expenses over the same period (B2); all inter-company payment schedules (B3); all board minutes and asset transfer documentation (B4); all customer contracts and revenue records with analysis of customer origins (B5); all goodwill and IP transfer records (B6); and complete general ledgers, sub-ledgers and bank reconciliations (B7).

199. Category C extends this further, seeking, across ‘all entities’, (a term only latterly defined in oral submissions – see [113] above), an extremely wide range of documents including (1) C1 ‘complete annual accounts’ for 2019-2023 and ytd 2025, (2) C2 ‘Management Accounts’ 2019 to present (3) C3 ‘Budgets and Forecasts’ 2022 to present (4) C4 ‘Corporation Tax Returns’ 2019 to 2023 (5) C5 ‘Customer Contracts and Revenue Analysis’ 2022 to present (6) C6 ‘Key Supplier and Service Contracts’ 2019 to present (7) C7 ‘Salary and Payroll Records’ 2019 to present (8) C8 ‘Property, Plant and Equipment Register’ 2019 to present (9) C9 ‘Intellectual Property Register’ 2019 to present and (10) C10 ‘Shareholders/Members Agreements’ 2022 to present.

200. Such extensive disclosure is plainly not proportionate given the sums at stake, even putting the Petitioner’s case at its highest.

201. In considering the overriding objective, I also have regard to the unreasonable manner in which the Petitioner has pursued this application.

202. In both evidence and submissions put forward in support of the specific disclosure application, the Petitioner has repeatedly paid little or no regard to his pleaded case. A pertinent example of this is the Petitioner’s continued pursuit of documents relating to Loop Associates Limited. A further example relates to certain of the Category B documents - and all of the Category C documents - sought across ‘*all entities*’.

203. The Petitioner has adopted a similarly dogged approach in his continued pursuit of categories of documents from the First Respondent relating to given companies for periods post-dating those companies’ entries into liquidation. The First Respondent has already made clear on numerous occasions that, even putting to one side the Petitioner’s failure to demonstrate the relevance of such documents, they are not in the

First Respondent's possession or control - to the extent that they exist, they would be with the liquidator. I was taken to no evidence to suggest that the Petitioner had sought the same from the liquidator and in the absence of any such evidence consider it legitimate to conclude that he had not.

204. The Petitioner has been given several opportunities to narrow the scope of his specific disclosure application and to adduce cogent evidence in support and has failed to do so. The scope of his application was entirely unjustified at the outset and remained so throughout. It widened rather than narrowed. In my judgment the manner in which the Petitioner has pursued this application has been unreasonable and vexatious. The Petitioner's obdurate refusal to engage constructively with the Scott Schedule prepared by the First Respondent and his production of an utterly unworkable alternative at the eleventh hour are but two of a number of examples of his approach to this application.

**Conclusion**

205. For all these reasons, I conclude that:

(1) on the evidence before me the Petitioner has failed to make out a prima facie case that the documents sought by his application, over and above those already disclosed by the First Respondent, are relevant to a pleaded issue and are in the possession or control of the First Respondent; and

(2) given the procedural history of this case and the Petitioner's vexatious and unreasonable conduct of this application, as outlined in this judgment, it would not be in accordance with the overriding objective and proportionate in all the circumstances to grant the relief sought in any event: Soriano v SEBDO [2022] EWHC 3370 (KB), at [17], [45]; PD31A para.5.4.

**The Way Forward**

206. I shall hear submissions on costs and any consequentials on the handing down of judgment.

**ICC Judge Barber**