Neutral Citation Number: [2021] EWHC 633 (Ch)

Case No: CH-2020-000308

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS OF
ENGLAND AND WALES
APPEALS LIST
On appeal from the order of District Judge Smith dated 254 July 2019

Rolls Building, Fetter Lane
London EC4A 1NL

Date: 19/03/2021

Before :

HIS HONOUR JUDGE JARMAN QC

- -

Between :

LYDIA NDYABAHIKA	**Appellant**
- and -	
HITACHI CAPITAL UK PLC	**Respondent**

- -
- -

Ms Beatrice McCauley Slowe (of **MLS Legal**) for the **appellant**
Mr Brian Addlestone (of **Addlestone Keane Solicitors**) for the **respondent**

Hearing dates: 2 March 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and released to BAILII. The date and time for hand-down is deemed to be 10.00am on the 19 March 2021

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HIS HONOUR JUDGE JARMAN QC

HH JARMAN QC:

1. The appellant seeks to appeal a bankruptcy order made against her as long ago as 19 September 2019 in the County Court at Medway by District Judge Smith. The appellant appeared in person on that occasion assisted by her husband. The petitioning creditor, the respondent in this appeal, was represented by an agent employed by its solicitor Brian Addlestone of Addlestone Keane.

2. The recording equipment was not working during the hearing, and so all that there is available by way of record is the judge's very brief handwritten note taken during it, a note of the respondent's agent, the appellant's notes thereon and the judge's further comments on the parties' notes.

3. Once these were obtained, Fancourt J by order dated 31 July 2020 gave directions for the listing of the appellant's application to bring the appeal out of time, and subject to permission being granted, for permission to appeal, with the hearing of the appeal (subject to permission) to follow. Paragraph 3 of the order provided that the parties must be prepared at that hearing to address whether the hearing before the district judge was the first hearing of the bankruptcy petition, the amount of the debt at that hearing and correspondence (including any offers) between the parties.

4. It is these applications which came on for hearing before me. The appellant was represented by Ms McCauley Slowe. The respondent was represented by Mr Addlestone, who does not have Higher Court Advocates rights and applied for permission to appear. This was not objected to, and given his long involvement in the matter and having regard to the overriding objective I granted permission.

5. The background to the bankruptcy order is that the appellant entered into a fixed sum loan agreement regulated by the Consumer Credit Act 1974 with the respondent dated 22 July 2008 for credit of £3689 to repair facias soffits and guttering at the family home at 120 Poplar Road Strood Kent NE2 2NT (the property). The loan was to be repaid by 96 monthly payments of £80.73 and the agreed interest rate was 13.7% per annum variable.

6. The respondent's account statements shows that the first three payments due in the last three months of 2008 by direct debit were rejected, leading to the imposition of rejected direct debit charges, letter charges and other fees. The appellant says this is because she fell ill and could not work, and witness statements she has filed in this appeal exhibit documents to corroborate that. A payment of £150 was made in April 2009 but on 4 July 2009 the respondent obtained default judgment against the appellant for £7815.42 plus costs of £405. Legal costs of £547.80 were added to the account. On 19 October 2009 the respondent obtained a charging order on the property.

7. In her witness statement dated 16 October 2019 in support of the appeal, the appellant says that when she found out about the judgment she approached Eurodebt Financial Services and exhibits letters from that organisation in July 2009 on which it is stated that that name is a trading style of Pentagon (UK) Ltd (Pentagon) and that it is a licenced debt adjuster. Subsequent letters confirm that a single payment plan was due to commence in November 2009. Her bank statements are also exhibited which show monthly payments to Pentagon. The respondent's statement shows that between December 2009 and December 2010 payments of £111.84 were made most months by

cheque, but then stopped. The appellant says that she made payment to Pentagon for two years and believed the debt to the respondent had been paid off. It appears that that company is now in administration.

8. She then says that in September 2018 out of the blue the respondent sent her a demand with an account summary showing that she was in debt in the sum of £7092. By letter dated 12th of that month Mr Addlestone's firm wrote to the appellant address at the property. Its wording, which appears to give some support to the appellant's version on this point, included the following:

> "We act on behalf of the [respondent]. We attach a Final Charging Order obtained in the Medway County Court on 19 October 2009 for ease of reference. The sum of £7205.02 remains due and owing. It is now our client's intention to remove the security and proceed with bankruptcy proceedings unless satisfactory proposals have been received into our offices in within the next seven days."

9. Her husband in his witness statement says that he tried to contact the debt adjuster and the respondent many times but received no reply or was told he could not deal with the matter. It is not clear what happened so far as the respondent or Pentagon were concerned between 2010 and 2018.

10. On 6 February 2019 the respondent says it served a statutory demand on the appellant in the sum of £7365.02. Initially the appellant denied receiving this but the respondent filed a certificate of personal service dated 7 February 2019 signed by a process server who says the appellant identified herself to him at the time of service, and this point does not appear to have been pursued before the district judge and was not pursued before me.

11. On 21 June 2019 the respondent filed a petition for bankruptcy in the County Court at Medway based on the failure to comply with the statutory demand. It is not in dispute that the petition was duly served on the appellant. The petition indicated that the debt was secured, but that the respondent was willing to give up that security for the benefit of all the creditors on the making of a bankruptcy order pursuant to section 269 of the Insolvency Act 1986.

12. The endorsement on the petition completed by the court indicated that it would be heard on 30 September 2019 at 15.30 at Medway. It also gave notice to the appellant that if she intended to oppose the petition, she must, not later than 5 business days before the day fixed for the hearing, file a notice with the court and deliver a copy to the respondent's solicitor. Such a notice is required, by rule 10.19 of the Insolvency (England and Wales) Rules 2016 (the 2016 Rules), to identify the proceedings, to state that the making of a bankruptcy order is opposed, and to state the grounds

13. No such notice was filed. However, by letter dated 9 September 2019 to Mr Addlestone, the appellant's husband wrote to confirm that his wife had been ill and off work and that he had tried to contact the respondent during this time but received no response. He said that she had resumed work on the fourth of that month, and that he would "take full responsibility in paying the outstanding debt…" He made an offer to pay the debt

by monthly instalments of £168 so that after 12 months £2016 would be paid and that the total would be paid over three and a half years. He added:

> "In the meantime, it would be helpful if you could hold action [by] your client as we act in resolving this situation."

14. On 17 September he and the appellant wrote again giving full details of the family's financial budgets, saying that:

> "This is to state that this is our financial position and we can be able to make repayments to [the respondent] for the outstanding debt if agreed. During this period if we get any change of circumstances, we will have no choice other than to sale our house and pay off all the outstanding."

15. By letter dated 20 September Mr Addlestone replied simply saying that regrettably the proposal was not accepted and that he was instructed to proceed with the bankruptcy hearing on 30 September.

16. The appellant and her husband attended the hearing on 30 September. The appellant's husband indicated to the respondent's agent before the hearing that his mother in law was willing to pay off all the debt. It had been hoped that she would attend the hearing but she had been taken ill that morning. They also said that they had recently appointed agents, Robinson Jackson, to sell the property and that there was an interested buyer.

17. The judge's comments on the parties' notes of the hearing indicates that it was listed as part of a busy possession list (as per local listing protocol) with a time estimate of 10 minutes. The hearing was called on, and these three offers to pay the debt were repeated, as her handwritten note confirms. There is no reference in any of the notes of the hearing to a certificate that the debt remained due (as required by rule 10.24 of the 2016 Rules) or to a list of supporting or opposing creditors (as required by rule 10.20). Mr Addlestone told me that he emailed copies of such documents to his agents under email dated 24 September 2019 according to his usual practice and although he himself was not present during the hearing his agents were experienced agents whom he had engaged on many such hearings. It did not form part of the grounds of appeal that these documents were not duly handed in and it is likely on the information before me that they were, although I have not had sight of copies.

18. The judge's handwritten note indicates that the respondent submitted that the offer to pay the debt by instalments over such a period was "unsatisfactory." The note then goes on to deal with appellants submissions and records "family member will pay" and then refers to mother in law, the property being on the market with the agents and that an offer had been accepted. The note continues:

> "house on market-Robinson Jackson – 1 mth ago. – 24;9;19 - offer. Accepted the offer. RJ processing with solicitor."

19. The note of the respondent's agent included the following:

> "[The appellant's] husband then spoke on her behalf and made reference to a series of offers made to the [respondent] all of

> which were essentially the same and had been refused because of the timescale for repayment. [The appellant's] husband then stated that a family member had offered to pay the whole debt although there was no evidence in support of this assertion and stated that the family member was ill and could not attend the hearing…The Judge was apparently concerned at the absence of documentary evidence in support of this assertion and stated that there was insufficient evidence to show that the debt could be paid off in order to grant an adjournment and hence the decision to make a Bankruptcy Order. Our agent states that [the appellant's] husband expressly stated that [the appellant] had a "spinal dislocation" rendering her bedridden for 5.5 years but the Judge made the Bankruptcy Order, stating that, if you client had an offer to make, it should be made to the Official Receiver."

20. By the time the district judge gave her note commenting on the parties notes some four months had elapsed since the hearing and, unsurprisingly, by then she had no independent recollection of the hearing. She continued:

> "I can only say that it would have been my usual practice to have concentrated on offers of repayment and whether there was any evidence of a realistic proposal. It is also likely that I would have explained that personal circumstances would not impact upon the decision but, as I say, I cannot categorically say that this is what happened."

21. Subject to one minor difference as to the timescale for payment and the caveats which she had expressed she was prepared to approve the note of the respondent's agent. It is not in dispute that the hearing was a short one, in the order of about 15 minutes. The appellant's husband in his witness statement says that he told the judge that his mother in law could pay the debt in 24 hours. However, the bankruptcy order was made.

22. On 11 October he contacted Mr Addlestone and offered to pay the debt in full. However, in response he was told that he could not do that as his wife had been made bankrupt. She then obtained legal representation by MLS Legal Services and an appellant's notice dated 18 October was filed at the County Court at Medway on 21 October and a fee paid. She filed a witness statement dated 16 October 2019 in support in which she repeated that her mother could lend her the full amount to pay off the outstanding debt and this could be effected in one day.

23. The notice was referred to a circuit judge there and by email dated 24 October it was indicated that such an appeal lay to the High Court. That is the correct route of appeal from a district judge in a personal insolvency matter (see Practice Direction – Insolvency Proceedings July 2018 (IPD), which came into force on 4 July 2018). MLS contacted the High Court on 4 November and was told that an appellant's notice needed to be re-issued in that court and the appropriate fee paid, and a refund sought in respect of the fee paid to the county court. Such an appellant's notice was duly filed on 5 November.

24. Such a notice should have been filed in 21 days after the bankruptcy order under Civil Procedure Rules (CPR) Part 52.12(2)(b), but by rule 52.15(1) an application to vary the

time limit may be made to the appeal court and reference is made to rule 3.1(2)(a) which provides that the court may extend time even if the application is made after time for compliance has expired.

25. Neither party referred me to authority in relation to the principles to be applied when dealing with such extensions, but the Court of Appeal has given guidance in respect thereof in a practice note dealing with *R (Hysaf) v Secretary of State for the Home Department* and other cases, see [2014] EWCA Civ 1633, which is confirmed in a further practice note of the Court of Appeal in *McDonald v Rose* [2019] EWCA Civ 4. The guidance confirmed that the three stage test set out in *Denton v TH White Ltd* [2014] EWCA Civ 906 should be applied and that in most cases the court should not embark on an investigation of the merits unless without much investigation it is clear that those are very strong or very weak.

26. The first stage is to identify the seriousness or significance of the failure to comply. The time limit for an appeal notice is deliberately strict in the interest of finality of judgments, and a delay in the order of two weeks is serious, although not in my judgment at the top end of seriousness. The second stage is to ask why the default occurred. This was not fault of the appellant. She engaged MLS promptly who filed an appellant's notice with a supporting witness statement promptly. In most cases an appeal from a district judge will lie to a circuit judge, but an appeal in insolvency proceedings will lie to the High Court, as MLS should have known or checked.

27. The third stage is to evaluate all the circumstances of the case, so as to deal justly with the application. In this respect, in my judgment the subsequent delay cannot fairly be laid at the door of the parties. It arose initially due to the failure of the recording equipment at the hearing and the need for the parties and the judge to do their best to provide notes of what happened. That took some time, after which the court's listing of the appeal took its course. Looking at matters in the round, in my judgment the delay in filing the appellants notice is relatively insignificant and it is not submitted that any particular prejudice has been caused by it.

28. In my judgment, it is just having regard to the above matters to grant permission to vary the time for filing the appellant's notice to the time filed in the High Court. I have reached that conclusion without having regard to the merits. However, as all matters were listed before me, I have been able to go into those in greater detail than if the application to vary time had been heard on its own. Having done so, and if it were necessary to look for further factors, I would hold that the merits are such as to lend weight to the granting of such permission.

29. I will deal with the issues of permission to appeal and the substantive appeal together.

30. It is not in dispute that the hearing of 30 September 2019 was the first hearing of the petition. Moreover, it was not submitted at the hearing that the conditions of which the court is required by section 271 of the 1986 Act to be satisfied before making a bankruptcy order were not made out. That section provides, so far as material:

> "(1) The court shall not make a bankruptcy order on a creditor's petition unless it is satisfied that the debt, or one of the debts, in respect of which the petition was presented is either-(a) a debt, which, having been payable at the date of the petition or having

> since become payable, has been neither paid or secured or compound for, or (b) a dent which the debtor has no reasonable prospect of being able to pay when it falls due.
>
> …
>
> (3) The court may dismiss the petition if it is satisfied that the debtor is able to pay all of his debts or is satisfied-(a) that the debtor has made an offer to secure or compound for a debt in respect of which the petition is presented, (b) that the acceptance of that offer would have required the dismissal of the petition, and (c) that the offer has unreasonably refused; and in determining for the purposes of this subsection whether the debtor is able to pay all his debts, the court shall take into account his contingent and prospective liabilities."

31. Rather, Ms McCauley Slowe focussed her oral submissions before me on the ground that the district judge should have granted an adjournment, in particular in order to obtain evidence from the appellant's mother of her willingness and ability to pay the respondent's outstanding debt within a very short period time, and in relation to the property being on the market. Although it was accepted, as Mr Addlestone submitted, that there was no confirmatory evidence of that or of the mother's illness before the district judge, Ms McCauley Slowe submitted that an opportunity should have been given to the appellant to file such evidence, given that this was the first short hearing of the petition.

32. In the appellant's skeleton argument prepared by MLS , reference was made to section 266(3) of the 1986 Act and the general power of the court to dismiss or stay the hearing of the petition and to authorities to the effect that an adjournment may be ordered where there is credible evidence of a reasonable prospect of the petition debt being paid within a reasonable time, namely *Anderson v Kas Bank NV* [2004] BPIR 865 and *Ross and another v HMRC* [2010] BPIR 652).

33. I was not referred to any particular passages in these authorities or referred to other authorities. These and others, however, were referred to by the Court of Appeal in *Edgington v Sekhon and Sekhon* [2015] EWCA Civ, in which Lewison LJ gave the lead judgment. In paragraph 15, he observed that the power to adjourn bankruptcy petitions is derived from the general power to adjourn in CPR Part 3(2)(b).

34. In the following two paragraphs he set out two differences between insolvency proceedings and an ordinary civil action as follows:

> "First, insolvency proceedings are class actions designed to secure distribution of an insolvent's assets pari passu between all his creditors. They are not merely a debt collection process. The primary purpose of the proceedings is to enable an independent person to ascertain and preserve the debtor's assets and to achieve that pari passu distribution."
>
> Second, the presentation of a petition has the effect that any disposition of property made without the consent of the court by

> a person who is subsequently adjudicated bankrupt is void: see Insolvency Act 1986, section 284. Accordingly, delay in dealing with a petition is liable to have adverse consequences for creditors generally see Re: A Debtor (Number 72 of 1982) [1984] 1 WLR 1143 applied in Judd v Williams [1998] BPIR 88."

35. He then set out in paragraphs 18 and 19 the practice in relation to an adjournment where the debtor asks for time to pay;

> "The starting point is that if the petitioning creditor establishes that the statutory conditions are fulfilled, he is prima facie entitled to a bankruptcy order see Re: A Debtor (Number 452 of 1948) [1949] 1 All ER 652 and Re: A Debtor (Number 72 of 1982), both referred to in Judd v Williams.
>
> The court, of course, has to power to adjourn the petition, but the practice is to do so only if there is credible evidence that there is a reasonable prospect that the petition debt will be paid within a reasonable time."

36. He then went on to observe that there are many statements to this effect in the cases and gave recent examples:

> "A debtor clearly has no right to an adjournment in these circumstances, although it may be that a court will grant one if he could produce convincing evidence that the debt would be paid within a very short period."
>
> Addison v CAS Bank NB [2004] EWHC 532 Ch, [2004] BPIR 685, David Richards J.
>
> "A petitioning creditor has a prima facie right to obtain a bankruptcy order on, as this was, a duly presented petition where the liability of the debtor for the petition debt is, as it is here, clearly established. Equally, the court hearing the petition has a discretion to adjourn the petition for payment if but only if there is a reasonable prospect of the petition debt being paid in full within a reasonable time: see Re: Gilmartin [1989] 1 WLR 513 at 516 and much subsequent authority to a similar effect. There must be credible evidence to support such a prospect if the court is to grant an adjournment for payment."
>
> Harrison v Seggar [2005] EWHC 411 (Ch), [2005] BPIR 583, Blackburne J.
>
> "There is no doubt that the court retains a discretion not to make a bankruptcy order even where the petition debt has been clearly established and any grounds of opposition have been dismissed. However, the authorities establish that in such circumstances the discretion to adjourn should only be exercised if there is a

> reasonable prospect of the petition debt being paid in full in a reasonable period... Furthermore, there must be credible evidence to support such a prospect if the court is to grant an adjournment for payment."
>
> Ross & Anr v HMCC [2010] EWHC 13 (Ch), [2010] 2 All ER 126, Henderson J.
>
> "If the debtor does not produce any evidence of his ability to pay, he takes the risk that the court will not accept his bare assertion as to his means and ability to pay."
>
> See Dickens v Inland Revenue [2004] EWHC 852 (Ch), [2004] BPIR 718.
>
> A decision whether or not to grant an adjournment is, of course, a discretionary case management decision and consequently, the judge's exercise of his discretion in this case cannot be impugned on appeal except on the usual grounds for impeaching a judicial exercise of discretion**.** ”

37. Lewison LJ drew the following conclusions in paragraphs 20 and 21.

> “A decision whether or not to grant an adjournment is, of course, a discretionary case management decision and consequently, the judge's exercise of his discretion in this case cannot be impugned on appeal except on the usual grounds for impeaching a judicial exercise of discretion.”

38. That case concerned Mr Edington, a debtor who was a solicitor and who opposed the making of a bankruptcy order on jurisdictional grounds. When at the hearing the judge rejected those, the debtor asked for time to pay, but was refused. The Court of Appeal dismissed his appeal.

39. At paragraphs 26- 29, Lewison LJ gave the reasons:

> “While I accept that some judges might allow a short adjournment without requiring evidence of the debtor's ability to pay, I do not consider that this court should cast any doubt on the validity of this longstanding practice.
>
> Certainly, in my judgment, it cannot be said to be wrong to require evidence of ability to pay. Even in the case of a modest debt owed by a professional person, without knowing about the overall liabilities no court can be confident that the debt will, in fact, be paid within a reasonable time.
>
> Mr Attaras goes on to argue that the overarching consideration in the present case was whether Mr Edginton was able to pay the petition debt within a reasonable time. That was undoubtedly a relevant consideration at a high level of generality, but the

> difficulty for Mr Edginton in the present case was that he had no formulated proposal about the time which he considered reasonable or the offer he proposed to make, let alone any evidence in support.
>
> The argument is that the modest size of the petition debt was such that it was inconceivable that Mr Edington would have been unable to pay it within a reasonable time, but without knowing anything about either his assets or his other liabilities, that is no more than speculation."

40. There are important differences between the facts of that case and this. The appellant here did not rely on jurisdictional issues before the district judge. Through her husband she engaged with Mr Addlestone, albeit somewhat late in the day, to set out firm proposals to pay and to set out financial details. Perhaps unsurprisingly, the proposal to pay over three and a half years was not accepted, although it is also noteworthy that those proposals would mean that the debt would be reduced to the bankruptcy limit of £5,000 within about 12 months. The important point however was that these were serious attempts to address the debt, as was the recognition on behalf of the appellant that otherwise her family home would have to be sold. At this point the respondent retained a charging order over her home, which they had had for some 10 years.

41. In my judgment it is not surprising that after the appellant had made these attempts which had been rejected and had accepted that failing agreement the family home might have to be sold, an offer from a family member to pay the debt was forthcoming at the hearing. That particular offer was last minute, although the recognition of the need to pay and attempts to do so was not out of the blue. In those circumstances, together with the fact that the debt was fairly modest and the impact of a bankruptcy order on the appellant and her family potentially severe, in my judgment the case for a short adjournment to see if the debt would be paid was strong, especially given that this was the first short hearing of the petition.

42. Nevertheless, the decision whether or not to adjourn remained within the discretion of the district judge. In my judgment the personal circumstances of the appellant raised by her or her husband were relevant to the decision whether or not to adjourn. If she did have an illness which prevented her from working and thus making payments off the debt, and she had shortly before the hearing returned to work, that may impact upon why the debt had not been paid and whether there was credible evidence to show that there was a reasonable prospect that the debt would be paid within a reasonable time.

43. The district judge accepts that it was likely that she indicated that personal circumstances would not impact upon her decision. In my judgment such circumstances must sensibly include the circumstances put forward at the hearing as to why the debt had not been paid and the financial circumstances of the appellant and her family. It is likely therefore that the district judge failed to take into account material considerations, namely the personal circumstances referred to above. Accordingly her discretion was not properly exercised and is amenable to appeal. In my judgment on this basis the appeal should be allowed.

44. Moreover, in my judgment that decision might well have been informed by reference to the IPD. As far as could be ascertained from the notes relating to the hearing before

the district judge or from the submissions of the parties before me it is unlikely that the district judge referred to, or was referred to, the IPD.

45. That was brought into force in the wake of the creation of the Business and Property Courts in England and Wales in October 2017. In Practice Direction 57AA relating to such courts, paragraph 4.1 deals with specialist work in the County Court and sets out the appropriate venues for hearing work undertaken in those courts, including the Central London County Court. Paragraph 4.2 sets out exceptions, which included at sub-paragraph (b) unopposed bankruptcy petitions.

46. The IPD sets out new provisions for the distribution of insolvency work. Paragraph 3.6 provides, so far as material, that upon a petition for the commencement of insolvency being issued in a County Court hearing centre located in the South-Eastern circuit, then unless it is Local Business, it shall be transferred to the Central London County Court to be listed before a judge specialising in Business and Property Court work. Local Business is defined in paragraph 3.7 to include unopposed bankruptcy petitions. Paragraph 3.8 provides that upon transfer the specialist judge shall determine where the proceedings can most fairly be determined have regard to a number of factors set out and all other circumstances of the case. The options are set out in paragraph 3.9 and include retaining the proceedings in the receiving court or returning them.

47. The IPD was not expressly referred to me by either party, but after I had given time for the parties to consider it, Mr Addlestone submitted that the petition in question was not unopposed within the IPD and the district judge was entitled to deal with it as such. Whilst it does not appear that the jurisdiction to make a bankruptcy was opposed, and that a notice was not sent to the court in the time required by the rules, it was clear from the letter of the appellants husband dated 9 September 2019 in my judgment that Mr Addlestone was put on notice that whilst the debt was not disputed, the making of a bankruptcy order at the hearing set for 30 September was very much opposed.

48. In my judgement once that became apparent at the hearing the procedure for transfer to a specialist judge ought to have been considered. At the least, it should have been taken into account by the district judge and may well have informed her decision whether or not to make a bankruptcy order that day, or to adjourn, or to transfer to the Central London County Court. The latter course would have given the appellant time to pay the debt or to seek to file evidence.

49. Accordingly, I conclude that this amounts to another material consideration which was not considered, namely the procedure set out in the IPD and is amenable to challenge on appeal. Alternatively, the failure to follow the procedure, or at least to have regard to it, amounts to a serious procedural or other irregularity in the lower court.

50. I give permission to appeal and I allow the appeal. The bankruptcy order must be set aside. The parties agreed that if that were my conclusion the proper course would be to order a new hearing of the petition in the Central London County Court. It was also agreed that the appellant must file any updated evidence within 28 days of handing down of this judgment.

51. That leaves the issue of the costs of the Official Receiver and the former trustee in bankruptcy. Neither are presently parties to the proceedings, and the parties agreed that I should not make an order in that respect without giving an opportunity to them to join

in the proceedings and to make submissions on that issue. In my judgment having regard to the overriding objective that issue should also be referred to the Central London County Court to be heard at the same time as the petition. A copy of this judgment should be served upon them by the appellant within 7 days of handing down and any application to join or be joined should be made within 28 days of service together with any witness statement setting out any submissions in respect of such costs.

52. Finally, it was agreed that any consequential matters which cannot be agreed should be dealt with on the basis of written submissions to be filed and exchanged within 14 days of handing down of this judgment. Insofar as a draft order can be agreed that that should be filed within a similar timeframe.