Neutral Citation Number: [2022] EWHC 1589 (Ch)

Case Nos: CR-2021-MAN-000024/25/27/28

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

In the matter of The Insolvency Act 1986

Manchester Civil Justice Centre
1 Bridge Street West
Manchester M60 9DJ

Date: Thursday 12 May 2022

Start Time: 11.40 Finish Time: 13.08

Before:

HIS HONOUR JUDGE HODGE, QC
Sitting as a Judge of the High Court

- -

Between:

SECRETARY OF STATE FOR BUSINESS, ENERGY AND INDUSTRIAL STRATEGY

Petitioner

- and -

VANGUARD INSOLVENCY
(2) MDN CONSULTANCY LTD.
(3) NEWTCO LTD.
(4) KIS FINANCIAL CONSULTANCY LTD.

Respondents

- -
- -

Miss Lucy Wilson-Barnes (instructed by **TLT LLP**) for the **Petitioner**
The Respondents were not present or represented

- -

APPROVED JUDGMENT

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HIS HONOUR JUDGE HODGE:

1. This is my extemporary judgment on the final hearing of four related public interest winding-up petitions presented by the Secretary of State for Business, Energy and Industrial Strategy pursuant to section 124A of the Insolvency Act 1986, in each case on 15 January 2021, in relation to four companies. The principal company is Vanguard Insolvency Practitioners Limited (which is petition no. CR-2021-MAN-000025). The other three companies are Newtco Limited (petition no. 24), which is the holding company of Vanguard; MDN Consultancy Limited (petition no. 28), which was a service company, and finally KIS Financial Consultancy Limited (petition no. 27), which was the successor business of MDN.

2. In the case of all four companies, Mr Michael Noblett was the sole director and the person with significant financial control through either his shareholding in the company or, in the case of Vanguard, his shareholding in its holding company, Newtco Limited. The petitions were, as I say, all presented on 15 January 2021 and followed on from investigations pursuant to section 447 of the Companies Act 1985. In relation to Vanguard and MDN, those investigations had commenced on 5 August 2019 in conjunction with investigations into two other companies, Arch Hall Limited and Arch Hall South Limited. In the case of Newtco Limited, the investigation had commenced on 7 February 2020; and in the case of KIS, the successor to MDN, the investigation had commenced on 10 March 2020.

3. One of the investigators was Ms Sarah Heath and it is her first witness statement, dated 15 January 2021, which forms the principal evidence in support of each of the four petitions. Ms Heath's witness statement extends to some 2,161 paragraphs, covering 270 pages; and the exhibit to her witness statement (exhibit SLH 1) runs to some 4,183 pages.

4. The Secretary of State also relies on the first witness statement of Mr David Hope, a Chief Investigator for the Company Investigations Branch of the Insolvency Service, also dated 15 January 2021, which verified all of the winding up petitions. Mr Noblett filed a first witness statement in response to the petitions on 9 July 2021. Ms Heath and Mr Hope responded to that evidence in the form of their second witness statements dated 18 August 2021. Mr Noblett then made a second witness statement dated 20 September 2021 to which the petitioner filed responsive evidence in the form of the first witness statement of Ms Georgina Maskell, dated 15 October 2021. She is a Senior Policy Adviser in the Insolvency Practitioner Regulation Section of the Insolvency Service. The documentation before the court on the final hearing of this petition extends to some 22 lever-arch files.

5. Although the respondent companies have filed evidence in opposition to the petition in the form of Mr Noblett's two witness statements, on 21 April 2022 the solicitors instructed by the company, JMW Solicitors LLP, wrote to the Secretary of State's solicitors, TLT LLP, informing the petitioner that the petitions were no longer opposed. It was made clear that the respondent companies were simply unable, for commercial reasons, to fund the continuing defence of the petitions. In those circumstances, the writer confirmed that the respondents no longer defended the petitions and would not object to an order that the companies be wound up. That

position, however, was said to be premised on the clear basis that the respondent companies make no admissions in relation to the allegations made within the various petitions, and that that should be the subject of a recital in any court order. The writer of the letter was conscious that three days' reading time, and five days of trial time, had been allotted to this matter. To avoid court time being wasted, the writer agreed with a suggestion apparently made by TLT LLP that the matter should be listed for a hearing with an estimated length of, say, two hours, to be listed as quickly as possible. It was agreed that the petitioner's costs of the petitions should be paid out of the companies' assets.

6. All the necessary formalities required by the Insolvency Rules 2016 have been duly complied with: The petitions were duly served on 22 January 2021 and were advertised on 17 February 2021. Certificates of compliance were filed on 23 August 2021, and the requisite forms required by Insolvency Rule 7.15 (in form Comp 5) have been filed recently indicating that there are no supporting or opposing creditors.

7. The letter from JMW Solicitors LLP was forwarded to the court on 27 April and was referred to me. On 28 April, I directed that the reading time allotted on the first of the three days (Tuesday 10 May) should remain in the diary and that the matter should be listed for hearing today (Thursday 12 May) before me, that being the second of the reading days set aside to prepare for what had been anticipated as the contested hearing of these public interest winding up petitions. The remaining days have been vacated.

8. Although I made that direction on 28 April, for some reason - no doubt because of pressure of court business - hearing notices were not sent out until Monday 9 May. However, it is clear that the substance of my directions must have been conveyed to the petitioner's solicitors because late on the evening of Friday 6 May I received an email from Ms Claire Graham of TLT LLP informing me that I would shortly be receiving a link to a site which would host the electronic hearing bundles. That link was in fact sent at 09.47 on Saturday 7 May; and I confirmed by email, timed at 13.44 on Sunday 8 May, that I had received the link and had safely accessed the site.

9. I requested the skeleton argument in advance of the reading day on 10 May. On that morning, at 10.05, I received an email from Miss Lucy Wilson-Barnes (of counsel), who appears for the petitioner, telling me that her skeleton argument would be available later that morning. In fact it was not received until 10.23 on the following day, 11 May (which was the day following that which had been set aside for my pre-reading). Miss Wilson-Barnes explained that she had only known about the hearing on the afternoon of Friday 6 May; and she had only received instructions, and the 22 trial bundles, on that Friday evening. As a result, because the work was more extensive than anticipated, she had understandably been unable to produce her skeleton argument in advance of the reading day. That is regrettable; but I fear that it was inevitable in view of the court's apparent failure to notify the petitioner's solicitors of the new arrangements for the hearing any earlier. Miss Wilson-Barnes had, however, provided a helpful reading list in advance of her skeleton argument, together with a diagram showing various payments between connected entities.

10. I confess to having been a little annoyed that the skeleton argument was not available in time for the reading day but I was nevertheless able to put that day to good use; and I acknowledge that it was no fault of Miss Wilson-Barnes that she had been unable to

produce the detailed skeleton argument that, in the event, she produced yesterday morning in advance of my reading day.

11. This judgment leans heavily upon Miss Wilson-Barnes's skeleton argument and also the oral submissions which she advanced before me this morning for about an hour and 20 minutes. There is a solicitor representative of JMW Solicitors LLP present in court but purely in an observational capacity. In addition to representatives of TLT LLP, and of the Company Investigation Branch of the Insolvency Service, there is also present in court a representative of the Official Receiver's office.

12. The background to these petitions is as follows: Vanguard Insolvency Practitioners Limited (**VIP**) trades as a provider of individual voluntary arrangements. It commenced trading around the end of 2016 and beginning of 2017 when Mr Noblett, the company's sole director from 27 May 2015 to 31 October 2019 and again from 1 September 2020 up until the present time, repurchased a group of companies that he had previously owned and sold, which included another insolvency business, Kingsgate Insolvency.

13. About 80% of VIP's business was packaged IVA cases which had been bought in from third party introducers, and the remaining 20% of its business was generated from its own sales internally through a website. As at 30 April 2020, VIP had some 14,631 IVA cases under management. Part of the way through the section 447 investigation, on 28 August 2020, the company's solicitors, on behalf of Mr Noblett, advised the investigators that all of VIP's then current IVAs had been outsourced to a company incorporated in Mauritius known as Ebenegate. It is a material consideration that VIP no longer has any active IVA cases under its management.

14. Before outsourcing its IVAs to Ebenegate, VIP had employed two licensed insolvency practitioners, a Mr Peter Jackson, who was employed under a contract dated 20 November 2017 and a junior licensed insolvency practitioner, Ms Laura Stewart. Mr Jackson was the sole appointment-taker who acted first as nominee and then as supervisor for VIP's IVAs. Ms Stewart, who was appointed on 1 April 2019, assisted with compliance issues.

15. Miss Wilson-Barnes points out that the terms of Mr Jackson's contract contain no reference whatsoever to the need for compliance with the relevant Statement of Insolvency Practice, which is SIP 9. Before Mr Jackson's employment as the insolvency office-holder, the licensed insolvency practitioners employed by VIP had been a Mr Stephen Clark and a Mr Jim Gibson.

16. VIP generated its income from nominee and supervisor fees, together with other income in the form of other fees and disbursements. The supervisor fees had to be approved by the IVA creditors and were included in the proposals sent to creditors for approval. The contract of engagement between the debtor and client and the nominee (and later the supervisor) is between the debtor and VIP and not Mr Jackson personally.

17. Initially, VIP operated IVAs where the supervisors' fees were a percentage of the contributions received from the debtor. According to Mr Noblett, since the summer of 2019 new cases proceeded on a fixed fee basis, and around 60% were being accepted on that basis. From March 2020, all cases were to be on a fixed fee model

with the intention that expenses, such as credit searches, software licence fees, anti-money-laundering searches, would be paid directly by VIP as a business expense. Any payments to claims management company providers were to continue to be paid from any awards on a no win/no fee basis.

18. Between July 2018 and March 2020, VIP's income from sales was some £13,626,000 odd. VIP used various third parties in relation to the conduct of the IVAs. These were stated as being employed to assist with the realisation of assets and the provision of additional support services. VIP also used introducers, and paid introduction fees, which were included in its accounts as costs of sales, being a fee per lead of around £700 to £1,300.

19. These third parties included three claims management companies (Arch Hall Limited, Allay Claims Limited and Front Row Claims Limited), My Insolvency Report, The Select Partnership, HTEC Solutions Limited, Insolvency Analysis Consultants FZC, and Horizon Insolvency Software Development Limited. These provided various services such as the investigation of payment protection insurance claims by the debtor, the review of IVAs to identify potential packaged bank account claims, the realisation of claims for mis-sold products, for debt arrangements, and various other services, including document portal services, creditor portal services for the secure uploading of reports, valuation services, and the provision of case and software management systems

20. Of those companies, a number of them - six in total - also entered, in effect, into profit-sharing agreements with MDN, five of which were later carried over to its successor company, KIS. Under these, a high proportion of the fees received by the third parties from VIP were then paid over to MDN. There are relevant tables at paragraphs 91 to 92 of the petition in relation to VIP.

21. MDN is a company wholly owned by Mr Noblett, who was its sole director. He has described it as himself with his *"Mike Noblett hat on"*. According to Mr Noblett, MDN's revenues were generated from commission or revenue share agreements that were based on and derived solely from third party company revenues. Thus, MDN was apparently providing introductions to these companies in return for receiving a commission or revenue share. Of MDN's receipts of some £3.3,000 odd between 1 August 2018 and 31 January 2020, over £1 million was obtained from the six third party companies used by VIP in respect of various expenses. Of that £1,000,000 odd, some £495,000 was made up of receipts from Allay Claims Limited, Arch Hall Limited and My Insolvency Report, of which 70% related to the fees from VIP's IVAs.

22. As the successor to MDN, KIS also entered into third party agreements with five of the six third party companies. Of the £445,000 odd paid from VIP insolvency estates to those five companies over the period from 20 November 2019 to 30 June 2020, those five companies have passed on some £331,000 odd to KIS, equating to some 74%.

23. Newtco Limited is the holding company of VIP and has been involved in providing funding to VIP via Mr and Mrs Hughes, respectively the brother-in-law and the sister of Mr Noblett, and via receipts from MDN. According to Mr Noblett's evidence, none of the respondent companies continue to trade. MDN ceased trading in

November 2019, and KIS commenced trading at that time as the successor to MDN. That company is said no longer to be trading due to a restructuring of the group of companies. Newtco Limited is said no longer to be trading due to the same restructuring; and VIP's IVA book was outsourced to Ebenegate with effect from 17 August 2020. That is the background to these four petitions.

24. The petitions are presented on public interest grounds. The Secretary of State relies principally on a lack of commercial probity and also a lack of transparency in VIP's business methods. These matters are said to extend also to the other three companies, MDN, KIS and Newtco Limited because they are all said to be intrinsically part of the same web of arrangements. MDN and KIS were involved as recipients of funds from third party companies; and, as the holding company of VIP, Newtco has received funds from MDN, and also from Horizon Insolvency Software Development Limited, apparently by way of loans.

25. The Secretary of State asserts that VIP's business methods have operated contrary to the public interest because they lack transparency and commercial probity. The evidence establishes that VIP's business model has involved the payment of monies (either directly or indirectly) from IVA estates which, although described in the IVA as expenses or disbursements, are, as a matter of substance, payments which end up for the benefit of Mr Noblett and individuals related to him or with whom he has a close and personal relationship. That business is said to be particularly objectionable because the monies from which these expenses are paid are trust monies. Because they are trust monies there is a need for the utmost transparency. That is required not only by SIP 9 but also from the very fact that the debtor and their creditors have an interest in the trust monies and their destination.

26. The evidence, I am satisfied, establishes that VIP's trading has displayed the following characteristics: First, it has from the IVA estates which it manages made substantial payments to three case management companies, which have, in turn, paid substantial sums to MDN and then to its successor, KIS, either by way of commission or revenue-sharing arrangements. Substantial payments have also been made to Select, a company providing valuations on properties within the IVAs. Select in turn has paid monies on to MDN. VIP has made substantial payments to Horizon Insolvency Software Development Limited, the largest single recipient, which only has two clients (which are VIP and another company, also owned by Newtco Limited, called Campbell Wallace Fraser Limited), apparently for licence fees in respect of a case management system and software maintenance fee. VIP has also made payments to Insolvency Analysis Consultants FZC (**IAC**), a Dubai company owned by Mr Hughes, who is Mr Noblett's brother-in-law, for a variety of services. IAC is the second single largest recipient of monies paid from VIP's IVAs. Payments have also been made to My Insolvency Report for the provision of an electronic document creditor portal, and to HTEC Solutions Limited for a document request portal.

27. The second characteristic of VIP's trading model on which the Secretary of State relies is that VIP has never, either through its own literature or the licensed insolvency practitioner acting as nominee or supervisor, made clear, either to the customer debtors or their creditors, that Mr Noblett, as the director and effective owner of VIP, benefits indirectly from these payments to 'third party' companies by reason of the commissions or revenue shares which are then passed on to his own company, MDN.

28. The third aspect of the business model of which complaint is made is that it has never been made clear to debtors or to creditors that the Dubai entity, Insolvency Analysis Consultants FZC, which acts as the provider of several services to the insolvency estates, is owned by Mr Noblett's brother-in-law, who has received almost £3 million from the monies paid out of the IVA estates.

29. In her oral submissions, Miss Wilson-Barnes emphasised that Mr Jackson could not be said to have been acting in any way as an informed gatekeeper of monies within the IVAs. It is common ground, on the evidence, that Mr Jackson was not aware of the involvement of MDN. Miss Wilson-Barnes also emphasised that Mr Jackson had played no part in creating these arrangements or in negotiating them. Neither Mr Jackson nor any other insolvency practitioner had played any part in the making of the third party payments or the onward payments to MDN. The choice of the third party providers had already been made before Mr Jackson had been appointed to act as the relevant nominee or supervisor of the various IVAs, and he had played no part in regulating the arrangements. It was Mr Noblett who was at the centre of the making of all of these arrangements, and he has provided no information as to the basis upon which these third parties were selected. There was no suggestion that Mr Jackson had shopped around for any alternative providers, nor that he had considered the value of these third party services.

30. Inevitably, questions are raised as to why these sums have been paid out from the IVA estates when the ultimate recipients of the not inconsiderable monetary benefits are either Mr Noblett or his brother-in-law. The Secretary of State relies very much upon the lack of any transparency as to these payments.

31. The Secretary of State points out that VIP's business model has involved MDN, KIS and the holding company, Newtco Limited. Miss Wilson-Barnes submits that MDN and KIS have afforded an artificial layer of distance to give the impression that the arrangements between VIP and the six third party recipients of payments are not in some way partly for Mr Noblett's benefit. Mr Noblett has accepted that MDN was Mr Noblett. The suggestion that MDN or KIS ever seriously introduced VIP cases to the claims management companies is wholly artificial. There is said to be no evidence that either MDN or KIS has ever done anything to warrant the payments to them of significant portions of monies paid to the third party companies from the IVA estates. The involvement of MDN and KIS in VIP's business model has been integral to the device by which monies are paid by VIP through the third party companies from the IVA estates. MDN and KIS have had no other function. Newtco, as the holding company, has both received and provided funding from and to VIP.

32. Almost £9 million has been paid to eight third party companies. Of that, some £3,166,000 has been paid to the Dubai company of Mr Noblett's brother-in-law, Insolvency Analysis Consultants FZC. Some £1.5,000 odd has been paid to another six companies, which, in turn, have paid just over £1 million to MDN, and five of the third party companies have subsequently paid some £331,000 to KIS. Horizon Insolvency Software Development Limited has received almost £3,500,000 from VIP estates for apparent software licensing, and this has enabled Horizon Insolvency Software Development Limited to lend almost £1,250,000 to VIP.

33. There are said to be four elements to this particular ground for winding up: First, there is no sufficient evidence of value to the IVA estates in the making of these

payments. In many instances there is simply no evidence of any work, or any meaningful contribution, being carried out or made by a third party. Secondly, these payments have in fact benefited Mr Noblett, or those connected with him; and they constitute a mechanism by which he has personally received wholly undisclosed benefits which are equivalent to undisclosed commission payments and/or a mechanism for an indirect and opaque method of funding VIP. Third, the payments not only lack transparency but they are not, in terms of the full circumstances of the payments, ever disclosed to those financially interested in the IVA, namely the IVA debtors and creditors, nor are they even disclosed to the insolvency practitioner, employed by VIP, who is the supervisor of the actual IVA. Fourthly, and finally, this conduct is said to be contrary to SIP 9 or, at the very least, to its spirit. It is said that all four companies have either caused or facilitated breach of SIP 9 or its spirit.

34. Dealing with each of those four elements in turn, first, in terms of lack of value to the IVA estates, between November 2018 and December 2019 the sum of £3,827,000 odd was invoiced by Insolvency Analysis Consultants to VIP in respect of the various services that the former had contracted to provide. £3,166,000 odd was in fact received by the Dubai entity from VIP during that period.

35. The Dubai entity has been used to obtain regular, and huge, payments from VIP, yet no documentary evidence has been provided to the investigator which would support any payments being made by the Dubai entity to sub-contractors from these funds. There is therefore no objective evidence justifying in any way the substantial payments made to the Dubai entity. To the contrary, and by way of example, in relation to Land Registry searches the only expenditure has been some £14,748 which inexplicably has been paid not by the Dubai entity but by Horizon Insolvency Software Development Limited and has never been reimbursed to it by the Dubai entity.

36. The court is invited to note that the activities of Insolvency Analysis Consultants are entirely opaque because it is a Dubai company with no place of business in the UK.

37. In her written skeleton argument, at paragraph 28, Miss Wilson-Barnes proceeds to analyse the services said to have been provided by the Dubai entity. By reference to the supporting evidence in Ms Heath's first witness statement, Miss Wilson-Barnes has, I am satisfied, demonstrated that the payments made to the Dubai entity have no justification, either in terms of value to the debtors or the creditors in the various IVAs, or in terms of substantiation in company records. I am satisfied that there is an absence of evidence to support these payments. The payments that have been made to the Dubai entity have either been inflated, or appear to have been provided for non-existent services, in the sense that the Dubai entity has provided no service of value to the paying IVA estates or any service which would justify the amount of these payments. I am satisfied, on the evidence, that, in truth, these so-called services are no more than a device which has been used to pay monies out of the IVA estates for the benefit of the Dubai entity, which is under the control of Mr Noblett's brother-in-law indirectly.

38. At paragraphs 30 through to 35 of her skeleton, Miss Wilson-Barnes analyses the evidence concerning payments to other third parties. I am satisfied, by reference to that analysis, that payments have been made from IVA estates to claims management companies in circumstances where it is not clear from VIP's own records whether

those claims management companies were actually instructed, or responsible for the successful claiMs No rationale has been provided as to how the fee rates have been calculated other than the description of them as being 'industry standard', and that IVA providers share information about the general costs of third parties through word of mouth.

39. I agree with Miss Wilson-Barnes that that provides no explanation of whether any service has been provided, and also tends to support a construction of the arrangements whereby charges have been made wherever they can be made, irrespective of what has actually taken place within each individual IVA. I am satisfied, on the evidence and by reference to Miss Wilson-Barnes's analysis, that there is no sufficient evidence of value to the IVA estates in the making of these payments.

40. I turn then to the second element of the winding up petition which is that the payments have been made for the benefit of Mr Noblett and of those connected with him. I am satisfied, on the evidence, that both Mr Noblett and his brother-in-law have received substantial sums from insolvent estates within the IVAs. I am also satisfied that Horizon Insolvency Software Development, which has been the single largest recipient of monies from VIP, has made informal and undocumented loans approaching £1,250,000 to VIP, and has also credited VIP with over half-a-million pounds for what has been described as 'commission'.

41. The director of Horizon, Ms Hulme, told the investigator that she believed that the loans had been made to increase that company's client base. The effect is that Horizon has returned funding to VIP from the monies paid to it from the IVA estates and has seemingly also paid (by way of credit) commission to VIP. Ms Hulme has sought to explain that this represented management charges from VIP, but no detail of these charges has been provided.

42. Miss Wilson-Barnes submits that the payments from VIP to the various third party companies, and the onward payments and repayments back to VIP or to another connected entity, are simply a mechanism used to extract monies from the IVAs for the benefit of Mr Noblett and those connected with him, either for his own personal benefit, or in order to provide funding to VIP. Mr and Mrs Hughes, who are behind the Dubai entity, have also provided, out of those monies, a loan facility of £2,000,000 to VIP.

43. Miss Wilson-Barnes submits that those payments are little more than opaque, and undisclosed, benefits or commissions from trust monies. In substance, they are an objectionable manner of trade. She draws an analogy with the secret commissions which were found to be objectionable by His Honour Judge Pelling QC in the case of *Varden Nuttall Limited v Nuttall* [2018] EWHC 3868 (Ch). Miss Wilson-Barnes has referred me to what was said by Judge Pelling at paragraphs 69 through to 72 of his judgment. I am satisfied that that aspect of the Secretary of State's case has been made out on the evidence.

44. The third element of the petition is the lack of disclosure of the full circumstances attending those payments. The information which VIP provided to its customers and debtors as to category 1 and 2 expenses included the statement that there were no business or personal relationships or financial connections with the parties who had

provided services to the office-holder which could give rise to conflicts of interest. In respect of PPI reclaim fees, the table in the information provided referred to *"Various [claims management] companies appointed based on the criteria of the case"*.

45. Miss Wilson-Barnes submits that that is simply incorrect and, in any event, it was entirely lacking in transparency and frankness. She submits, first, that nowhere does the information provided to customers or to creditors state that the entity which has carried out Land Registry searches, credit check fee and fact-find packs is in fact a company owned and controlled by the brother-in-law of VIP's director and ultimate controller. The various CMC companies in fact pay, from the monies taken out of their respective IVA estates, a large percentage of that to MDN or, since November 2019, its successor, KIS, and that those are companies owned and controlled by VIP's director and controller. Miss Wilson-Barnes points out that in those circumstances, there is a financial connection, in terms of benefit, between VIP's director and the companies to which monies from the IVA estates in respect of expenses and disbursements are paid, and, in essence, that part of those monies ends up with another of the director's companies. Payments to Horizon have enabled it to lend substantial monies to VIP on a wholly informal basis. Horizon has also seemingly paid commission, or at any rate management charges, which have not been drawn to the attention of creditors and have not been particularised in IVA proposals or reports; all that has been referred to is the Horizon licence fee. Whilst the two companies may not be connected companies, the somewhat circular nature of the payments raises questions as to the value of the work done by Horizon for the IVAs. Miss Wilson-Barnes submits that those financially interested in the IVAs should have been made aware of the uncommercial, and very flexible, arrangements between VIP and Horizon.

46. Secondly, Ms Wilson-Barnes submits that the reality is that the 'criteria' by which there is a purported choice of claims management company are wholly unknown and are not even made clear or recorded in debtors' files. She submits that the suggestion of any 'criteria' for choice is a total fiction. She points out that the insolvency practitioner, Mr Jackson, is in fact already bound to use one of the selected claims management companies. He undertakes no independent choice as the agreements between the claims management companies and VIP have already been decided upon by Mr Noblett, and, in some instances, were entered into before Mr Jackson was even employed by VIP. Although Mr Jackson has indicated that as the insolvency practitioner, he has the final say over what is paid from the IVA estate, the reality is that he has played no part in negotiating the agreements with third parties and has had no power to choose any other supplier. He has effectively been presented with a *fait accompli*. He has been presented with a choice that has already been made, and made for the benefit of VIP and Mr Noblett. The personal connections between the Dubai entity and VIP, and the financial arrangements between VIP and the third party companies, and then MDN and KIS, were never known by Mr Jackson, nor were they ever disclosed to the debtors and their creditors in the IVAs. The suggestion that there is no detriment to those debtors and creditors because the companies are third parties entirely misses the point about the need for transparency in order that value and objectivity are seen to be paramount. Moreover, given the questions arising as to what services have in fact been performed, it does not at all follow that there has been no detriment.

47. As Miss Wilson-Barnes pointed out in her oral submissions, even though personal protection insurance and package banking claims may have been realised for the benefit of the IVA estates, the upside might well have been greater but for the arrangements entered into by VIP. The debtors and creditors might well, had they known the true facts, have questioned why payments were being made, in part, for the benefit of Mr Noblett and entities connected with him.

48. Finally as to the fourth element of the petition, whether one has regard to the version of SIP 9 in force during VIP's trading or the revised SIP 9 issued in April 2021 containing and expressing in substance the same principles, the arrangements between VIP and the third party companies have operated contrary either to the letter or certainly to the spirit of SIP 9. That is because they have given rise to a potential threat to the objectivity of the insolvency practitioner. The financial position of VIP and its director have been inextricably linked to his employment, and the obligation to ensure that those interested in the IVA receive clear and full information before approval of what is to be paid and to whom has never been fulfilled.

49. Whilst strictly it may be correct that none of the third party companies is connected with Mr Noblett, it is wholly artificial to suggest that there is no business relationship between VIP and those companies. To Mr Noblett's knowledge, and as he intended, those companies have been involved in a commission and revenue-sharing arrangement with another of Mr Noblett's companies which has operated to a substantial degree by way of VIP paying monies out of the IVA estates through the third party companies ultimately, in part, for the benefit of MDN and KIS as other companies owned and controlled by Mr Noblett. Any ordinary and interested observer would wish to know about those arrangements as they would clearly have an impact on the perception of why fees were being paid in the IVA, whether they represented value for money, and whether they were necessary payments.

50. Whilst it is Mr Jackson who is the supervisor of the IVAs, he is an employee of VIP, and he has been placed under no contractual obligation by his employer to do anything to ensure adherence to the letter, or the spirit, of SIP 9. I am satisfied that the spirit, if not the letter, of SIP 9 has been breached, and that it is not in the public interest for a company such as VIP to be allowed to continue to operate in that way. It is particularly a matter of concern that the relevant insolvency practitioner was kept unaware of the financial benefit which the director of his employer company, and its ultimate controller, have derived from the existence of the arrangements that have been reached with the third party companies, and then with MDN and KIS.

51. I am satisfied that all four elements of the Secretary of State's complaint of lack of commercial probity on the part of all four companies have been made out. There is no sufficient evidence that the IVA estates, and those interested in them, the debtors and the creditors, have derived any value from the arrangements which Mr Noblett has created, and from which he has derived personal financial benefit. Those payments are wholly lacking in transparency, not only to debtors and the creditors, but also to the supervisor of each IVA. In proceeding in this way, the four companies, and Mr Noblett, have all contravened the spirit, if not the letter, of SIP 9.

52. There are also complaints of lack of transparency as to who was responsible for, or involved in, the management of VIP at the time when Mr Noblett was not officially shown as a director, in the period from 1 November 2019 to 31 August 2020. During

that period, although Ms Pickford has confirmed that she was the sole director, she has also made it clear that decisions would be made jointly by herself and Mr Noblett, and that his status effectively gave him the final say.

53. It is also said that the nature of VIP's actual dealings with the third party companies remains unclear, particularly in the light of the lack of any detail or commercial documentation. The fact that the director of Horizon, Ms Hulme, has had dual access to VIP's bank account, and has been prepared to make informal, and undocumented, loans, and to pay management charges without providing any particulars, is also said to have raised serious questions as to what has taken place within VIP and the other respondent companies. It is said that in the context of the size and the role of VIP, the number of IVAs, and the level of monies passing through VIP in those IVAs, that this is a matter of serious public interest.

54. Those matters, of themselves, would certainly not be sufficient to lead to winding up orders in relation to any of the four companies. They are matters of some concern; but I view them simply as adding weight to the principal ground for seeking a winding up of each of the four companies, founded upon the lack of commercial probity and the lack of transparency as to the way in which the IVAs have been conducted.

55. Miss Wilson-Barnes has reminded the court of the general principles that govern the court's decision as to whether or not it is just and equitable to wind up a company on public interest grounds. That jurisdiction has to be exercised with a view to the protection of the public. It involves balancing all the relevant interests against each other in order to arrive at the just and equitable result, considering both those matters which constitute reasons why a company should be wound up compulsorily and those which constitute reasons why it should not. I have to consider whether it is expedient in the public interest for each of these four companies, considered separately, to be wound up in order to protect members of the public dealing with that company from suffering inevitable loss, whether such loss derives from activities that are illegal or not.

56. I am satisfied in the present case that sufficient reasons have been made out for winding up each of the four companies in the interests of the public. Effectively, on the evidence, monies falling within the scope of IVAs have been applied, not for the benefit of those interested in the IVAs, but for the benefit of the person owning and controlling the company charged with the administration of the IVAs, and persons connected with him, who have then gone on to provide benefit for the company with the conduct of the IVA. That is something which I am entirely satisfied is contrary to the public interest.

57. I am satisfied that there are no sufficient competing reasons for refusing winding up orders in the present case. I am satisfied that there is nothing in Mr Noblett's two witness statements which militates against the making of winding up orders. It is a particular matter of concern that Mr Noblett seems incapable of seeing anything wrong in the failure of VIP to disclose to creditors and to debtors the machinery that has been used to pay monies falling within the IVA estates effectively for the benefit of himself and his companies. None of the companies is continuing actively to carry on business, and therefore there is no countervailing consideration in that regard.

58. For all the reasons I have given, I am satisfied that the Secretary of State has made out his case that it is in the public interest for all four companies to be wound up, and I will therefore make the usual compulsory winding up orders.

This judgment has been approved by the Judge.