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Case No: 3184 of 2017

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

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

Date: Thursday, 5 January 2023

Before:

HIS HONOUR JUDGE HODGE KC
(Sitting as a Judge of the High Court)

IN THE MATTER OF TOROTRAK PLC (IN LIQUIDATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between:

SCOTT CHRISTIAN BEVAN
SIMON DAVID CHANDLER
(as the Joint Liquidators of Torotrak Plc (in Liquidation))

Applicants

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MS LISA LINKLATER KC (instructed by **Eversheds Sutherland (International LLP**) for the **Applicants**

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APPROVED JUDGMENT

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JUDGE HODGE KC:

1. This is my extemporary judgment on an application by Mr Scott Christian Bevan and Mr Simon David Chandler (in their capacity as the joint liquidators of Torotrak Plc) in proceedings pending in the Insolvency and Companies List of the Business and Property Courts in Manchester under case number 3184 of 2017.

2. By an Application Notice, dated 28 November and issued on 7 December 2022, the applicant joint liquidators seek the court's directions, pursuant to section 112 of the Insolvency Act 1986, in respect of a surplus of some £304,859.20 (before deduction of costs and expenses) in the creditors' voluntary liquidation of the company.

3. The company had first entered into administration on 8 December 2017, and the joint liquidators were appointed as such when the administration was effectively converted to a creditors' voluntary liquidation following the creditors' refusal to approve the original administrators' proposals. There are understood to be in the region of some 8,759 members of the company, some 96% of which are individuals. The liquidators' concern is to make a timely distribution of the surplus and to bring the liquidation to a close so as to minimise the costs, which will ultimately fall to be borne by, and thus reduce, the surplus available to members.

4. The joint liquidators are represented by Ms Lisa Linklater KC. There is no respondent to the application. The applicants have sought to assist the court by suggesting possible ways forward in the matter, and by drawing matters of fact,

and issues of law, to the court's attention; but the applicants have, subject to that, taken a neutral stance on the directions that are sought.

5. The application is supported by two witness statements of Mr Bevan, one of the joint liquidators, dated 28 November 2022 and 4 January 2023, together with various documents exhibited within Exhibits SCB1 and SCB2. The documentary material before the Court extends to a little more than 500 pages, and, in addition, Ms Linklater has produced a bundle of authorities, extending to a further 180 pages. Ms Linklater has produced a helpful written skeleton argument dated 3 January 2023. I have had the opportunity of pre-reading both that and the recommended reading outlined therein (at paragraph 3); and I have also pre-read the second witness statement of Mr Bevan, which post-dated the assembly of the hearing bundle. The hearing has taken place remotely by Teams, having been converted from an attended hearing in order to avoid the effects of today's industrial action by ASLEF members affecting train services throughout the country.

6. Mr Bevan's first witness statement describes the background to the liquidation, and the earlier administration, and the progress in the liquidation to date. In particular, he explains (at paragraphs 28 through to 33) how the surplus in the liquidation has come about, and the difficulties in distributing that surplus among the members according to their rights and interests in the company, in accordance with section 107 of the Insolvency Act 1986. Mr Bevan elaborates upon these difficulties at paragraphs 30 through to 33. He addresses the difficulties in distributing the surplus amongst all the company's members, in proportions equal to the number of shares held by them, as required by section

107, at paragraphs 34 through to 45, which include a costs analysis of making a distribution to all 8,759 members.

7. In short, the estimated costs would leave a very small dividend of only 0.64 pence in the pound available to each member, and that on a very conservative estimate. There is feared to be a real likelihood that, in reality, the liquidators' costs of making a distribution to all the members of the company would, in fact, exceed the surplus available to them.

8. Mr Bevan therefore considers an alternative proposal at paragraphs 46 onwards. That alternative would involve making a distribution to the top 81 members, who would then receive a dividend of more than £25. Those shareholders are said to represent 92.17% of the total shareholding, as explained in the table at paragraph 47 of Mr Bevan's first witness statement. A costs analysis follows at paragraphs 48 to 55. In particular, at paragraph 48 it is said that restricting the distribution to only the top 81 members of the company, who would receive the greatest proportion of the surplus in any event, would significantly reduce the associated costs. To distribute a dividend to all 8,759 members would cost a minimum of £210,216 even on a best-case scenario. However, to distribute a dividend to only the top 81 members, representing 92.17% of the total shareholding, would only cost some £1,944.

9. At paragraphs 56 and following, Mr Bevan also addresses the issue of the liquidators' remuneration. In summary, the liquidators' fees have currently been capped at £260,000. The point is made that the liquidators only have creditors' support at present, on that capped basis, for a distribution to no more than the top 100 members. Should the court direct that the liquidators are to

seek to identify and distribute to **all** the members, the liquidators would therefore ask the court also to approve the associated fees, which to date have been rejected by creditors. As all creditors have now been paid, there are no longer any creditors to approve fees above the present agreed cap of £260,000. The liquidators therefore require the court's approval, under Insolvency Rules 18.24 and 18.28, for an order increasing the amount of their fees if a distribution is required to all members. Following the distribution to members, the liquidators would intend to wind-up the company's affairs and proceed to dissolution.

10. Mr Bevan's first witness statement concludes with the liquidators seeking directions from the court for a distribution of the surplus pursuant to section 112 of the 1986 Act. The liquidators consider that making a distribution to the company's top 81 members would represent a cost effective solution in all the circumstances since they represent those who hold the highest proportion of shares in the company, and those who would receive a sum greater than the liquidators' anticipated fees if there were to be an individual distribution to all the shareholders. Should the court not be prepared to make an order in those terms, the liquidators would seek directions, pursuant to section 112 of the Act, to distribute the surplus remaining in the liquidation to the company's members, and for the approval of a mechanism to achieve that; and also that the court should approve an increase in the fees associated with such distribution.

11. Mr Bevan's second witness statement provides further evidence on a number of matters: First, the difficulties there have been in ascertaining up-to-date details of the members of the company from Link Asset Services, who were the

company's registrar whilst it was still trading. At paragraph 9, Mr Bevan confirms that the members of the company, both individual and corporate, are primarily based in the United Kingdom and the United States of America, but there are members resident in a number of other countries in addition.

12. At paragraph 10, Mr Bevan relates the views of the majority creditors, Mr Cross and Mr Hilton, who also hold shares in the company representing approximately 4.3% and 10.1% respectively of the entire share capital. Mr Bevan describes previous communications to members at paragraphs 11 to 14 of his second witness statement. He also provides an estimate of the costs of writing to all known members at paragraph 15. He estimates that the costs involved in doing so would total some £9,390. There might then well be further costs in following-up members who had moved, and whose letters were returned, or who had since passed away and whose affairs were now in probate or administration. Those costs are said to be impossible to estimate until the level of response is known; but Mr Bevan would expect them to be significant.

13. At paragraph 16, Mr Bevan addresses the alternative communication method of placing notice in the London Gazette. That is said to be the method that Mr Bevan would usually use to communicate the liquidators' intention to declare a dividend to creditors, in addition to a letter to the creditors themselves. Both the notice and the letter would include a last date for proving. Mr Bevan would use that method, notwithstanding the existence of any creditors who might be based outside the jurisdiction, given that the Gazette is a well-established public record, which can be accessed easily online, and is commonly recognised and used by international investors. Mr Bevan estimates (at

paragraph 17) that the costs associated with giving notice of an intended distribution to members by way of a notice in the Gazette would be less than £1,000.

14. The exhibit to Mr Bevan's second witness statement includes the only response the joint liquidators have received regarding the proposed distribution. Following the dispatch of the progress report dated 8 June 2022 for the period April 21 to April 22– which (at paragraph 6.4) had set out the joint liquidators' proposed approach to the distribution of the surplus, and their intention to apply to the court for directions pursuant to section 112 – that response is said to have come from a shareholder holding 1,000 shares, who would be entitled to a distribution of only 38p or less. In that shareholder's email, he stated that it was regrettable that it appeared that the liquidators were now prepared to change the shareholder distribution by obtaining a court order to limit the allocation to the top 100 shareholders. The writer strongly objected to that, believing that all shareholders should be treated equally, and without favour. If the costs of tracing all the shareholders was a major issue, then the writer suggested that the allocation should be limited to those shareholders - like himself - who had bothered to register in order to be kept informed of the company's situation, and those who had recorded up-to-date contact details.

15. The response from the joint liquidators was that the costs of distributing the funds to shareholders had been weighed against the value of the funds likely to be distributed. It was pointed out that, in the case of that writer's shareholding of 1,000 shares, the potential distribution he would receive would only be 38p. The decision had been made to distribute to the highest 100 shareholders, who

comprised 1.1% in number of the shareholding, but who made up 93.2% in value. The point was made that any decision had not yet been finalised as the liquidators were still awaiting the court's final decision. The shareholder's response to this was that it was interesting to see the figures quoted by the liquidators, but what mattered to the shareholder was the principle of repayment. He awaited the decision of the court, which he was sure would be communicated to all shareholders.

16. That, in summary, is the evidence presently before the court.

17. In her skeleton argument, Ms Linklater summarises (at paragraphs 6 through to 12) the factual background which has led to the present application. In summary, now that all the company's creditors have been paid in full, together with statutory interest, the joint liquidators hold a surplus of £304,859.20. The liquidators have calculated that out of the 8,759 shareholders, 8,354 would be entitled to receive a dividend of less than £1, whereas the top 81 members would receive a dividend of more than £25. The liquidators are said to be very concerned as to proportionality given the large number of members, the lack of traced members, and the likely low dividend payable to the vast majority of members. The liquidators have made a conservative estimate of administration costs of £23 and postal costs of £1 for each shareholder if there were to be a distribution to all of the company's shareholders. That assumes that there are no complications, or any issues in contacting members listed within the register. That would amount, in total, to some £269,737. The liquidators' concern is that this would reduce the funds available for distribution to members to 0.64 pence

in the pound, and would also result in an undesirable delay in effecting such a distribution.

18. It is to that end that the liquidators have suggested, in the most recent progress report for the period April 2021 to April 2022, that one option might be to apply to the court for an order that only the top 100 shareholders should benefit from any distribution: see paragraph 6.4. That coincided with a revised fees estimate by the liquidators, which was capped at £260,000 and was agreed by creditors, subject to certain caveats, which are set out at paragraph 9.4 of that progress report.

19. At paragraph 13 of her skeleton argument, Ms Linklater identifies the issues to be determined by the court as follows:

(1) Whether further steps should be taken to trace members, what steps are proportionate, and how the cost of taking those steps should be financed?

(2) To whom the Liquidators may make a distribution of the surplus, and when?

(3) In what proportions the Liquidators may make any such distributions?

(4) Generally, in respect of the proposed distribution of the surplus by the liquidators?

20. Ms Linklater has directed me to section 112 of the Insolvency Act 1986, which enables liquidators to apply to the court to determine any question arising in the winding-up of a company. She also points out that the court has the power to exercise, as respects any matter, all or any of the powers which the court might

exercise if the company were being wound-up by the court. Section 112 (2) provides that:

> "(2) The court, if satisfied that the determination of the question or the required exercise of power, will be just and beneficial, may accede wholly or partially to the application on such terms and conditions as it thinks fit, or may make such other order on the application as it thinks just."

Ms Linklater emphasises that the test to be applied by the court is whether it is just and beneficial to make the order.

21. If the company were being wound-up by the court, it would settle a list of contributories, with power to rectify the register of members in all cases where rectification was required, and would cause the company's assets to be collected and applied in discharge of its liabilities. The court, as well as the liquidator, retains the power to adjust the rights of contributories. In a winding-up by the court, the liquidator could apply to the court for an order authorising the return of capital.

22. In the case of *Re Powertrain Ltd* [2015] EWHC 3998 (Ch), and reported at [2016] BCC 216, Newey J noted (at paragraph 7) that:

> "…a balance has to be struck between the desirability of distributing assets to known creditors sooner rather than later and the potential injustice of leaving someone who has a valid claim with no effective remedy."

Newey J further noted (at paragraph 9):

> "…the need for liabilities to be dealt with within a reasonable time and the fact that Parliament cannot have intended liquidations to last for ever."

Those observations were made in relation to a distribution to creditors, but Ms Linklater submits that they apply equally in relation to a distribution to a

company's members. I note that in that case, the company had been in an insolvency process for 10 years, rather than the five years in the present case.

23. Ms Linklater has drawn my attention to section 107 of the Insolvency Act 1986, which provides (so far as material) that:

> "…the company's property in a voluntary winding up shall, on the winding up, be applied in satisfaction of the company's liabilities *pari passu* and, subject to that application, shall (unless the articles otherwise provide) be distributed among the members according to their rights and interests in the company."

24. In the present case, rather than providing otherwise, that section is reinforced by article 184 of the articles of the present company. Article 184 of the articles in the present case provides for the distribution of the assets by the liquidator on a winding-up, as follows:

> "Subject to the provisions of the Statutes and to any special rights for the time being attached to any class of shares, on a return of assets on liquidation or otherwise the surplus assets of the Company remaining after payment of its liabilities shall be distributed in proportion to the amounts paid up or deemed to be paid up on the ordinary shares of the Company then in issue."

25. As Ms Linklater points out, article 184 reinforces section 107 by providing for the distribution of surplus assets to members to be made according to their rights and interests in the company unless, under article 185, there is a special resolution to divide up the assets of the company in specie or kind, when the liquidator has a qualified power to vary how much members may receive, depending on what he deems fair. In such a case, however, members are given rights of dissent similar to those under section 110 of the Act.

26. Ms Linklater has also directed me to section 250 of the Insolvency Act 1986, which provides, in the present context, that a person who is not a member of a

company, but to whom shares in the company have been transferred or transmitted by operation of law, is to be regarded as a member of the company, and that references to a member, or members, are to be read accordingly. That definition is wider than that contained within section 112 of the Companies Act 2006, which effectively limits the definition of members of a company to those on the register of members.

27. Ms Linklater points out that the relevant date for ascertaining who is a member of the company is the date of the commencement of the relevant winding-up.

28. At the outset of the hearing, I indicated that whilst I could see the pragmatic advantages of limiting a distribution of the company's surplus assets to the top 81 of its members, I did not see that I had any power to adopt that course.

29. Within her bundle of authorities, Ms Linklater had included a copy of my decision in the case of *Re Border Counties Farmers Limited* [2017] EWHC 2610 (Ch). At paragraph 32 and following, I considered the position of untraced, and unresponsive, members in a members' voluntary winding-up. I noted that extensive efforts had been made to communicate with, and to trace, members on the original list of members held by the company but that 86 members had failed to respond; and in the case of a further 98, correspondence had been returned to the joint liquidators.

30. At paragraph 37 of my judgment, I recorded that counsel had raised the question whether the court would have jurisdiction under section 112 of the Insolvency Act 1986 to direct that the proceeds of uncashed cheques should be redistributed amongst the known members. I considered that counsel had been right to raise

that question. Having set out the terms of section 112 (1) and (2), at paragraph 39 I stated that I shared counsel's concerns as to whether section 112 was sufficiently wide to enable the court to order the redistribution of monies to persons who would not otherwise be entitled to them. It seemed to me that that would run counter to the provisions of section 107, which provide that, unless the articles otherwise provide, the company's assets are to be distributed among the members according to their rights and interests in the company. It did not seem to me that section 112 permitted the court to make any adjustments to the rights and interests of the members in the company.

31. I adhere to that view. It is reinforced by the provisions of section 107 of the Insolvency Act 1986, and by the approach that has been taken to distributions out of the prescribed part in two authorities: by Blackburne J in *Re Courts plc* [2008] EWHC 2339 (Ch) and by HHJ Purle QC, in *Re International Sections Ltd* [2009] EWHC 137 (Ch). Those cases are authority for the proposition that it is not possible to limit a distribution out of the prescribed part to only that limited number of shareholders who would stand to benefit the most from such a distribution.

32. In *Re Courts plc*, Blackburne J held that the court did not have jurisdiction to make an order selectively to disapply section 176A(2), so that a distribution of the prescribed part would only be made to creditors with a claim against the company that was greater than the cost of making the distribution.

33. In *Re International Sections Limited*, HHJ Purle QC refused to disapply section 176A(2) on the basis that, after the liquidators' significant costs of

making the distribution had been accounted for, only a small dividend would be available to all creditors.

34. Ms Linklater acknowledges that, even where the court has been considering the exercise of a discretion to make a payment out of the prescribed part, the court did not have the jurisdiction to require a distribution to be made to only some unsecured creditors and not to others.

35. At the outset of this hearing, when I pointed out my concerns in that regard, Ms Linklater accepted that she would not seek to dissuade me from that view. However, she emphasised that the court could take a proportionate approach to the distribution of surplus monies to a company's members. She reminded me that, at paragraph 17 of my judgment in the *Border Counties Farmers'* case, I had referred to the need to avoid involving liquidators in incurring costs out of all proportion to the potential benefit to any member. She also reminded me that, at paragraph 31 of my judgment in that case, I had considered it appropriate, in the case of deceased and dissolved members, to identify a longstop date before which any further information was to be provided in response to further enquiries or advertisement by the joint liquidators.

36. Ms Linklater considered the possible options available to the court in the present case. Those involved writing to members at their present last-known addresses, although Ms Linklater pointed out that those addresses were only current as of June 2019, and thus were some three-and-a-half years out of date. She also addressed the use of the portal which the Liquidators have been using as a means of communication with those creditors and members who had opted into that mode of communication. However, she pointed out that Insolvency Rule 1.50

(2) (a) excluded any notice of intention to declare a dividend to creditors being given through such a website.

37. Ms Linklater also considered the possibility of advertisement under Insolvency Rule 14.28, which empowers a liquidator to 'gazette' (by advertising once in the London Gazette) a notice of an intended dividend to creditors, with a date by which, and place to which, proofs must be delivered, and a statement that the distribution may be made without regard to the claims of any person in respect of any debt not proved. She also reminded me of the use of advertisements in the context of tracing the beneficiaries of a trust, or claims in relation thereto, under section 27 of Trustee Act 1925.

38. Ms Linklater also addressed the possibility of giving a deadline in any advertisement for responses, similar to a last date for proving under Insolvency Rule 14.28 in the case of claims by creditors. She pointed out that *In re Compania de Electricidad de la Provincia de Buenos Aires Limited* [1980] Ch 146, Slade J had held that the present and former shareholders of a company, to whom the company owed money by way of dividends or repayment of capital, were to be treated in any winding-up as creditors for the purposes of the applicable provisions of the Companies Act 1948 (which are now reproduced in the 2006 Act). On that basis, Slade J held that it was possible for liquidators to fix a certain date by which shareholders, or former shareholders, must prove their debts or claims, and to exclude those who had failed to do so from the benefit of any distribution of assets.

39. Ms Linklater also referred to the possibility of a bespoke order, similar to a *Benjamin* order in respect of a trust. She referred me to the decision of David

Richards J in the case of *Re MF Global UK Limited (No 3)* [2013] EWHC 1655 (Ch), reported at [2013] 1 WLR 3874. There, David Richards J had made an order, applying *Re Benjamin*, giving directions to administrators to distribute property on a particular basis when it was just and expedient to do so. However, Ms Linklater did acknowledge that in *Re MF Global UK Limited*, the fund in question had been held in trust, and thus lay outside the insolvency estate. In the present case, the surplus held by the liquidators is part of the insolvency estate and is not held on trust.

40. I have considered all the possible alternative ways for the liquidators to deal with the surplus that remains in the liquidation after the creditors have been paid in full, subject to the payment of the relevant costs and expenses of distribution.

41. As I have already indicated, I do not consider that it is open to the court to adopt the pragmatic approach of limiting a distribution to those members who happen to hold the most shares in the company. As Ms Linklater recognises, neither the Insolvency Act 1986, nor the Insolvency Rules, permit such an outcome. Indeed, it seems to me that such an outcome is precluded by section 107 of the Insolvency Act 1986, as reinforced (in the present case) by article 184 of this company's articles of association. It is not possible for the court, effectively, to seek to readjust the rights as between the individual shareholders. However, that should not blind the court from seeking to adopt a cost-effective, and pragmatic, approach to the distribution of surplus assets, in a way which will assist in bringing a relatively speedy end to this insolvency, which already dates back to the end of 2017.

42. In my judgment, the appropriate solution in the present case is to require the liquidators to write to the known shareholders at their last-known addresses, inviting claims to be made within an appropriate period of time, and making it clear that no such claims will be considered after that cut-off date. The letter should make clear the limited amount that is likely to be payable, by way of dividend, which may discourage those who have only a very small economic interest in any dividend from seeking to pursue the matter. The letter should also make it clear what form of evidence is required in the case of those who may have succeeded to any interest of a deceased or dissolved member of the company.

43. In addition to such letters, a single advertisement should be placed in the London Gazette, also containing a similar cut-off date for claims, and similar information.

44. Finally, notice should be given on the portal maintained by the joint liquidators, in respect of this company. Whilst advertising on the portal alone might not be sufficient, it seems to me that it is a useful mechanism in support of the letters to members and the advertisement in the London Gazette.

45. Such steps are likely to involve the joint liquidators in costs and expenses in excess of those on which the latest costs' cap of £260,000 was based. Since the court is directing that a distribution should be made to more than the top 81 members, it is appropriate for the court also to consider increasing the present agreed cap on the liquidators' remuneration, and the costs associated with distributing the surplus.

46. By Insolvency Rule 18.24:

> "18.24 An office-holder [such as a liquidator] who considers the rate or amount of remuneration [already] fixed to be insufficient or the basis fixed to be inappropriate may—
>
> (a) …
>
> (b) apply to the court for an order increasing the rate or amount or changing the basis in accordance with [insolvency] rule 18.28."

47. In the case of a creditors' voluntary winding-up where there is no creditors' committee (which is the case here), Insolvency Rule 18.28 (6) (a) (ii) requires:

> "(6) The [insolvency] office-holder [to] deliver a notice of the application at least 14 days before the hearing…
>
> (a) …
>
> (i) …
>
> (ii) …to such one or more of the creditors as the court may direct;"

48. Since all the creditors have now been paid in full, I consider it appropriate to direct that no creditor need be given notice of the present application. This is a somewhat unusual situation, where what is formally a creditors' voluntary winding-up has now effectively been converted into a members' voluntary winding-up for all practical purposes, since it is only the members who now stand to receive any further sums by way of distribution from the company's assets. In those circumstances, it seems to me appropriate to require the inclusion in the court order of a notice giving any interested member the right to apply to vary or set aside the order within a set period of (say) 14 or 28 days after notice of the proposed distribution, in accordance with the terms of this order.

49. In her draft order submitted this morning, Ms Linklater had proposed that the applicants' remuneration should be increased so as to be on a time-costs basis in respect of this application and the distribution of the surplus. I do not consider that this is appropriate because it ignores the agreed cap of £260,000 on the liquidators' remuneration, and the caveats subject to which that had been agreed with the creditors.

50. I have, therefore, proposed – subject to any minor drafting amendments – that the applicants' remuneration should be increased from the present capped fee of £260,000, and be on a time-costs basis, for any **additional** work involved in the distribution of the surplus in excess of the work assumed by the caveats set out at paragraph 9.4 of the applicants' progress report, dated 8 June 2022, in respect of the period April 2021 to April 2022. It seems to me that that is the appropriate basis for increasing the liquidators' capped remuneration.

51. It seems to me appropriate to go on to include within the order, after including directions along the lines I have indicated for tracing members and for distributing the assets to those members who submit claims within the longstop date, for there to be provision that any distribution on that basis should be deemed a good and sufficient receipt for the applicants, and to release the applicants, and relieve them from any liability in distributing the surplus in accordance with those provisions.

52. I am satisfied that the court has the necessary power to make such an order. It is consistent with the approach adopted by David Richards J in the *MF Global UK Limited* case; and it seems to me that it is warranted by the terms of section 1157 of the Companies Act 2006. That gives the court power to grant relief to

a liquidator in respect of proceedings for negligence, default, breach of duty or breach of trust.

53. In *Re Powertrain Limited* [2015] EWHC 3998 (Ch), reported at [2016] BCC 216, Newey J accepted (at paragraph 11) that by reason of section 1157 (2):

> "…the court can prospectively relieve an officer from a claim that might in future be made against him in respect of negligence, breach of duty or breach of trust."

Notwithstanding a previous decision of HHJ Behrens to the contrary, Newey J was satisfied that a liquidator was an 'officer' of the company for the purposes of section 1157, noting that HHJ Behrens had not been referred to all the relevant authorities.

54. I am satisfied that this is an appropriate case for the court to give the liquidators prospective relief in respect of the distribution of the surplus in accordance with the court's order. That is consistent with the equitable jurisdiction that has been recognised in the case of trusts under the *Re Benjamin* jurisdiction.

55. That, I think, addresses all of the issues raised by the present application. So I conclude this extemporary judgment, subject to any points that Ms Linklater may wish to raise with me. I will invite her to submit a minute of order directly to me by email, which I can then amend, if appropriate, and approve, and direct that it should be sealed. This is not a case where there is a C-E file, because this insolvency has been going on since a date that preceded the introduction of CE-filing.

(Proceedings continued – see separate transcript)