Claim No B30MA966

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

In the Matter of Smooth Financial Consultants Limited
And in the Matter of the Company Directors Disqualification Act 1986

Before His Honour Judge Halliwell sitting as a High Court Judge at Manchester on 8th August 2018

B E T W E E N:

THE SECRETARY OF STATE FOR BUSINESS ENERGY AND INDUSTRIAL STATEGY

Claimant

AND

(1) MARK JOHN BROADSTOCK
(2) JOSEPHINE LESTER BROADSTOCK
(3) ROBERT MAREK JONES

Defendants

Miss Lucy Wilson-Barnes (instructed by Womble Bond Dickinson (UK) LLP) for the Claimant
The Second Defendant in person
Mr Louis Doyle (instructed by Shoosmiths LLP) for the Third Defendant

Hearing dates: 4,5,6,9,10,11 July 2018

(1) Introduction

1. By these proceedings, the Secretary of State seeks disqualification orders, under *Section 6* of the *Company Directors Disqualification Act 1986*, against two former directors of Smooth Financial Consultants Limited ("the Company") which went into administration on 2nd August 2013. In the Administrators' Statement of Proposals, the total deficiency to creditors was estimated to be £967,759. On 24th July 2014, the Company went into creditors voluntary liquidation. The overall deficiency has been revised upwards to £1,026,881.

2. The proceedings were originally commenced against three directors, Mark John Broadstock ("Mr Broadstock"), his wife, Josephine Lester Broadstock ("Mrs Broadstock") and Robert Marek Jones ("Mr Jones"). However, having accepted a disqualification undertaking from Mr Broadstock, the Secretary of State served notice

dated 9th February 2018 discontinuing the proceedings against him. The specified disqualification period was 10 years.

3. The trial before me was thus confined to the claims against Mrs Broadstock and Mr Jones. Miss Wilson-Barnes appeared on behalf of the Secretary of State. Mrs Broadstock presented her case in person and Mr Louis Doyle appeared on behalf of Mr Jones.

(2) Factual Sequence

4. The Company was incorporated on 28th January 2005. On 1st March 2005, Mr Broadstock was appointed director of the Company and remained in office when the Company went into administration. From 1st March 2005 to 1st May 2005 and, subsequently, 1st October 2009 until 26th May 2011, Mr Broadstock was sole director. On 1st May 2008, Mrs Broadstock and an employee, Mr Gerard Ryan, were together appointed directors and remained in office until 1st October 2009. On 26th May 2011, Mrs Broadstock was re-appointed.

5. The Company's principal trading activity was the provision of debt management services for its customers. This involved arranging and implementing debt management plans in return for the payment of monthly fees. Monies would be transferred to the Company and held on client account ("the Client Account") so that they could be applied or utilised in the payment of the Company's fees and the amounts due to the clients' creditors.

6. Abbreviated accounts for the Company were filed in respect of the years ending on 31st January 2010, 2011 and 2012. During these periods, the Company's annual turnover increased from £690,456 to £2,666,943. However, this was accompanied by a sharp increase in administrative expenses, rising from £482,859 to £2,245,774. For each year, the Company respectively made an operating profit of £65,589, £91,119 and £113,718. Although the Company's reserves of capital were modest, a dividend of £79,500 was declared in respect of the Company's accumulated profits for the year ending on 31st January 2011.

7. The Company experienced severe cash flow difficulties which are reflected in its balance sheet for each year end. The Company's net current liabilities increased from £23,500 for the year ending on 31st January 2010 to £192,188 for the year ending on 31st January 2012. Whilst there was a positive balance of net total assets, this was only achieved by relying on intangible and tangible fixed assets, such as fixtures and fittings and computer equipment, which could form no part of the working capital of the business.

8. The Company's abbreviated accounts for the years ending on 31st January 2011 and 2012 were prepared by Harold Sharp Accountants (HSA"). When preparing the accounts to 31st January 2011, it appeared to them that funds had been incorrectly transferred between the Client Account and the bank account held by the Company for ordinary business purposes. On 16th March 2011, Mr Richard Evans ("Mr Evans"), of HSA, thus met Mr Broadstock to alert him to the issue. Together, they were unable to perform the necessary reconciliation and, at a meeting on 26th May 2011 between Mr Evans and Mr and Mrs Broadstock, it was agreed that HSA would take further steps to reconcile the accounts. Arrangements were also to be made for the appointment of a new finance director at a senior level.

9. During June 2011, HSA carried out further work on the Company's accounting records including the Client Account bank statements and determined that, as at 31st January 2011, there was a shortfall, on Client Account, of £188,400.20.

10. On 1st August 2011, Mr Jones was informally appointed finance director of the Company. However, he was not formally appointed and registered, at Companies House, as a director until 31st January 2012. At about the time Mr Jones was informally appointed, he attended a meeting with Mr Evans at which Mr Evans advised him about the shortfall. They have a difference of recollection about some of the details of the meeting. Mr Evans maintains that the identified shortfall was £188,400.62 although an additional £75,828.90 of "over-transfers" was subsequently identified in respect of the period from 31st January 2011 to 12th August 2011. Mr Jones maintains that the identified shortfall was £262,667, ie the amount attributed to "client matters" under the heading "creditors" in the notes to the Company's abbreviated accounts for the year ending on 31st January 2011.

11. Following the appointment of Mr Jones, the issues in relation to cash flow and the apparent misuse of client monies continued. This is reflected in contemporaneous correspondence, including an email message dated 11th November 2011 from Mr Jones to Mr Broadstock in which Mr Jones stated "…we have to balance the books as well. Cash is still not great this week. We have got 14k of cheques this week…and we have just under 20k in the bank. Then we have pay tax man next week 40£k. So we have to get those sales in sooner." Later in the email, Mr Jones advised that "…suppliers have been chasing for invoices going as far back as July".

12. Nevertheless, by the end of 2011, four associated companies had been incorporated, namely Citizens Claims Limited ("CCL") (11th March 2010), Contingence Limited ("CL") (28th June 2011), Smooth Investment Group Limited ("SIGL") (20th October 2011) and Smooth Media Limited ("SML") (20th October 2011). From the outset, Mr Broadstock and Mrs Broadstock were directors of SIGL. Mr Broadstock was also a director of CCL, CL and SML. From 31st January 2012 until 28th June 2013, Mr Jones was formally registered as a director of the Company and each of the associated companies. None of the associated companies operated the same business as the Company itself. However, SIGL was established as sole shareholder of the Company: 160 and 40 "A" ordinary shares in SIGL were respectively allotted to Mr and Mrs Broadstock and 10 "B" shares were allotted to Mr Jones. The Company was thus under Mr Broadstock's overall control.

13. However, the Company's cash flow difficulties continued as did the misuse of client funds. From 13th April 2012, Mr Gerard Ryan, an employee in the Company's accounts department, regularly prepared "Client Account Reconciliation" statements showing that insufficient amounts were credited to the Company's Client Account to meet un-presented cheques. Ultimately a practice developed in which cheques were prepared and recorded on the Company's accounts system but kept in a cupboard so that they could be withheld from the Clients' creditors. The date on which this practice commenced is obscure. In all likelihood, it had already commenced by the time that Mr Ryan endeavoured to prepare his Client Account Reconciliation statements and, as the Company's cash flow difficulties intensified, increasing numbers of cheques were withheld in this way. The Insolvency Service have calculated that, between 12th February and 26th July 2013, the value of cheques raised and withheld from creditors amounted to some £572,001.

14. The Company's cash flow difficulties and misuse of client monies is reflected in contemporaneous correspondence, including exchanges of email dated 7th November 2012 and 12th February 2013 to which I shall refer later.

15. Mr Jones and Mr Broadstock were acquainted with one another before Mr Jones was appointed as a director. They were once on good terms. However, following Mr Jones's appointment, their relationship became increasingly strained. During May 2013, there were discussions between them in which Mr Jones explored the possibility of third party investment. However, this was on the footing that Mr Broadstock would resign as a

director and cease to have any role in the business. However, on the evening of 22nd May 2013, Mr Broadstock apparently called Mr Jones, by telephone, to advise him that he was being placed on gardening leave. From that point, Mr Jones ceased to be involved in the management of the Company. On 28th June 2013, he resigned as a director and, by letter dated 1st July 2013, he advised the directors of the reasons for his resignation citing, amongst them, "the dire financial position" of the Company and the failure of the "attempt to rescue the Company". In the letter, he also stated that he had "been denied the opportunity to act in [his] capacity as a director as a result of…groundless allegations against[him] and resulting suspension".

16. On 1st July 2013, RPS II A LLP presented a winding up petition in respect of the Company based on amounts due in respect of the Company's historic lease of premises at Jackson House, Sale. The petition debt was in the sum of £49,317.50. On 25th July 2013, the petition was advertised. On 26th July 2013, the Company's Client Account with Barclays Bank was frozen and the Company ceased trade. Mr and Mrs Broadstock then applied to the Court for an administration order and, on 2nd August 2013, Messrs Coleman and Withinshaw were appointed joint administrators of the Company.

17. On 14th August 2013, CCL followed the Company into administration and, on 3rd February 2014, SIGL, SML and CL went into compulsory liquidation. In their Final Progress Report dated 29th July 2014, the joint administrators of the Company advised that there were outstanding loans from the Company to SIGL, SML and CL in the sums of £122,330, £113,251.62 and £70,684.74.

(3) Witnesses

18. Affidavits or witness statements from some eleven witnesses were originally filed and adduced as evidence in the Trial Bundle, including two witness statements from Mr Broadstock. However, I heard the oral testimony of some seven witnesses only. I have read the evidence of the other witnesses. It was not submitted that their evidence should be entirely excluded. However, I have given minimal weight to such evidence and, in practice, it has not assisted me in reaching my conclusions.

19. On behalf of the Secretary of State, Anthea Simpson and Richard Evans gave oral evidence.

    19.1. Ms Simpson is a Chief Investigator in the Insolvent Investigations Department of the Insolvency Service. She did not have direct personal knowledge of the

substantive evidence. Her knowledge was derived from information provided by the Joint Administrators or obtained from the Insolvency Service together with the Company's accounting records and information publically available. However, she was examined at some length and the inferences she drew from the available evidence were logical and internally consistent.

19.2. Mr Evans is a chartered accountant and partner of HSA. He was instructed by the Company between November 2011 and 2013 although he confirmed, in evidence, that his professional colleague, Mr Ansar Mahmood, did most of the work. Mr Evans gave evidence in relation to the Company's accounting records and the reconciliation exercise that his firm carried out in 2011 in relation to the transactions on Client Account. I am satisfied that he was an honest and reliable witness.

20. Mr Jones gave evidence himself. On his behalf, Kimberley Ann Newton and Martin Scott also gave evidence.

20.1. Mr Jones is himself a qualified accountant. He gave evidence about the full history of his involvement in the affairs of the Company from the time when he was first approached by Mr Broadstock to deal with the financial side of the business. He was cross examined at length. He was an excitable witness who was frequently prone to argue his case rather than address the specific questions referred to him. As a witness of fact, I formed the view that his testimony was not always reliable and, on the more contentious issues, I have thus exercised a measure of caution before accepting his account in the absence of corroboration from the evidence elsewhere. Where his evidence was inconsistent with the testimony of Mr Evans, I preferred the evidence of Mr Evans.

20.2. Ms Newton was employed as Finance Assistance in the Finance Department of the Company. Her responsibility was to keep the Sage office accounts up to date and to maintain the pay rolls. However, she confirmed that she was aware, at the time, that the Company was making "over-transfers" from its Client Account to its own business account, ie amounts in excess of the management fees to which it was entitled. She candidly confirmed that, once cheques were drawn up and recorded, they would frequently be placed in a cupboard and thus withheld from the Clients' creditors so that they could not be presented for payment. Ms Newton's oral

testimony was straightforward and direct and, in my view, her factual account was honest and generally reliable.

20.3. Mr Scott was employed by the Company as a data manager. He was able to give evidence in relation to the operation of the Client Account and, at least some of the steps initiated by Mr Jones with a view to reconciling the same. He gave evidence that he never got to the bottom of it and, over time, discovered that there was a "bigger hole" than first thought. Again, I have formed the impression that his factual account was generally reliable.

21. Mrs Broadstock herself and Steven Marshall gave evidence on her behalf.

21.1. Mrs Broadstock held office as a director for two distinct periods (see Para 4 above). She gave evidence that from May 2010, she was employed by the Company as "HR Director". She also gave evidence, more generally, about her background and role within the Company. When giving her evidence, she sought to minimise her involvement and eschew any responsibility for the management of the Company's accounts functions. Notwithstanding her background as a lawyer, she frankly stated that she was unaware that, as a director, she owed duties to the Company and accepted that she omitted to do anything to satisfy herself about its financial position on the basis that she thought that she could rely on others. Her account was prone to exaggeration and over-simplification.

21.2. Mr Marshall was engaged as an operations manager. In addition to his witness statements, he was cross examined on an email dated 22nd September 2016 in which he advanced serious allegations against Mr Jones. These were apparently coloured by a sense of grievance. Aspects of his evidence were plausible and consistent with the evidence as a whole. However, I have exercised a measure of caution when taking his evidence into consideration.

(4) Misuse of the Client Account

22. The Company contracted with its clients upon its standard terms and conditions. With effect from 22nd February 2012, these provided *inter alia* that:

22.1. both parties would produce a Debt Management Programme under which the Company's clients would make a single monthly payment to the Company from which the Company would deduct a monthly fee (Condition 4.2);

22.2. the Company would make monthly repayments to their clients' creditors within a time scale of five business days (Condition 4.5); and

22.3. the Company would make all incoming payments into the Client Account (Condition 4.9).

23. It was expressly provided that the Client Account would be separate from the Company's own business accounts and funds held for distribution to its clients' creditors would be retained only for that purpose subject only to the deduction of the Company's monthly fee (Condition 4.9). Unless otherwise agreed, the monthly fee was a gross fee equal to 17.635% of the monthly repayment to the clients' creditors (Condition 5.3).

24. It was provided, in terms, that "at all times funds held for distribution to your Creditors will be classed as client monies" (4.9). On this basis, the funds were held on trust for the Company's clients subject only to the contractual provisions for distribution and the deduction of the Company's monthly fee.

25. In March 2012, the Office of Fair Trading issued "Debt management (and credit repair services) guidance" which provided *inter alia* as follows.

25.1. "Any monies held on behalf of consumers should always be kept in a separate ring-fenced client bank account and not used by the licensee for its own purposes. "Any interest earned on a client bank account shall accrue to the benefit of the consumer, not the licensee." Moreover "we would expect consumer client monies to be held in a separate ring fenced bank account in such a way as to be 'protected' in the event of a licensee holding such monies ceasing to trade. Any such monies, held prior to disbursement to creditors should also be promptly refunded to the client (excluding any reasonable administration fees) where the client withdraws from a debt management plan or other non-statutory debt management option" (Condition 3.42).

25.2. "Examples of unfair or improper business practice include:"

25.2.1. "failing to inform the consumer of the reasons for any delay in distributing payments to creditors in accordance with the contract, whether or not the delay is outside its control" (3.43(b));

25.2.2. "holding monies for consumers, which should otherwise be distributed to creditors to pay off their debts:

25.2.2.1. without the express agreement of the consumer to do so;

25.2.2.2. without having fully explained the associated risks and implications to the consumer;

25.2.2.3. without ensuring that the consumer's monies held are appropriately protected in the event that the licensee holding such monies ceases to trade and

25.2.2.4. without having advised creditors that this is the case" (3.43(g)).

25.2.3. "making unauthorised withdrawals from the consumer's bank accounts" (3.43(h)).

26. The Company maintained at least two accounts systems. The office accounting system was maintained using Sage software. Transactions in connection with the Client Account were separately recorded on the Company's Casemaster system. However, as deployed, the Casemaster system did not, in itself, provide a comprehensive record of the progress of such transactions. It would record payments from the Clients themselves. It would also record the initiation of payment to the Clients' creditors at the point when cheques were initially prepared with a view to delivery. However, it did not record the dates on which the cheques were delivered or presented for payment. Ultimately the application of monies on Client Account were recorded on the Company's bank statements but there was no proper system in place to trace the progress of specific transactions from the date on which cheques were initially prepared. This issue had become apparent to HSA by June 2011 when they discovered that there was an accumulated shortfall on Client Account of £188,400.20 at the end of January 2011.

27. There was a continuing shortfall on Client Account because the Client Account was not simply being utilised for the purpose of meeting the Company's agreed monthly fees or distributing monies to creditors. Substantial amounts-well in excess of the Company's agreed monthly fees-were being transferred from the Client Account to the Company's ordinary trading account so as to accommodate the Company's own needs for working capital. This amounted to a breach of the Company's standard contractual conditions. It also amounted to a breach of trust and, with effect from March 2012, unfair or improper business practice as specified by the Office of Fair Trading's Debt Management Guidance.

28. Having calculated that the shortfall amounted to £188,400.20 by the end of January 2011, HSA discovered that, by August 2011, it had increased to £264,229.10. By the time that Mr Jones ceased to be involved in the management of the Company-in May 2013-the shortfall amounted to some £670,076 and, by 2nd August 2013, when the Company went into administration, the administrators have calculated that the Company owed some £848,690 to its clients.

29. However, the increasing shortfall on Client Account-or at least the scale of the shortfall-was obscured because there was no proper system in the Company's accounting records to trace the progress of cheques to Client creditors and, under the supervision of Mr Gerard Ryan (an employee within the Company's accounts department), cheques were frequently kept in an office cupboard so that the delivery of such cheques could be delayed or altogether withheld from creditors to relieve the demands on Client Account. Once the Company had been placed in administration, a box containing some 1583 cheques was delivered to the administrators with an aggregate value of £146,056.

(5) Unfitness

30. *Section 6(1)* of the *Company Directors Disqualification Act 1986* requires the Court to make a disqualification order in respect of a director of an insolvent company if "his conduct as a director of that company (either taken alone or taken together with his conduct as a director of one or more other companies…) makes him unfit to be concerned in the management of a company".

31. In *Re Grayan Building Services Limited (in liquidation) [1995] Ch 241*, Hoffman LJ observed, at *253*, that "the court is concerned solely with the conduct specified by the Secretary of State or official receiver under rule 3(3) of the Insolvent Companies (Disqualification of Unit Directors) Proceedings Rules 1987. It must decide whether that conduct, viewed cumulatively and taking account of any extenuating circumstances, has fallen below the standards of probity and competence appropriate for persons fit to be directors of companies".

32. As grounds of unfitness, the Secretary of State relies on the failure of Mrs Broadstock and Mr Jones to ensure that the Company "made all payments due to Clients' creditors and caused or allowed transfers in excess of [the Company's] fees from the Client Account…to the detriment of the Clients" and for their own benefit. In the case of Mrs Broadstock, the Secretary of State relies on the period from 12th February 2013 until 2nd

August 2013. In the case of Mr Jones, he relies on the shorter period from 12th February 2013 until May 2013.

33. The Secretary of State has apparently selected 12th February 2013 as his commencement date on the basis that, by email messages that day, Mr Jones was aware that there was an overall shortfall of £454,979 on Client Account in respect of the amounts due to creditors and demonstrated a willingness to utilise the Client Account to meet the Company's cash requirements. The Secretary of State maintains that, by then, at the latest, it ought to have been obvious to Mrs Broadstock and Mr Jones that the Client Account was being misused. However from that time, the misuse of the Client Account continued. On 22nd May 2013, Mr Jones was suspended from his role as finance director and ceased to have a role in the management of the Company from that time. However, Mrs Broadstock remained in office as a director until 2nd August 2013 when the Company was placed in administration.

34. At all material times, Mr Broadstock exercised overall control of the Company. It is plain from the evidence that he was a dominant figure who was generally successful in getting his own way. Until Mr Jones's appointment, Mr Broadstock entrusted the day to day financial management to Mr Ryan, a close friend. At that stage, Mr Ryan was directly responsible to Mr Broadstock who can be taken to have made all the strategic decisions. Following Mr Jones's appointment, Mr Ryan was answerable to Mr Jones but continued to be involved in the financial management of the Company. Although Messrs Broadstock and Ryan were not called to give evidence and a measure of caution must thus be exercised in relation to this aspect of the case, there was plainly continuing communication between them and Mr Ryan can be taken to have had a measure of loyalty towards Mr Broadstock. Whilst Mr Ryan was not called to give evidence, it is notable that he prepared witness statements in support of Mr and Mrs Broadstock for use in these proceedings.

35. On behalf of the Secretary of State, Ms Wilson-Barnes thus refers me to the following propositions from the collective judgment of the Court of Appeal in *Re Westmid Packing Services, Secretary of State for Trade and Industry v Griffiths [1998] 2 BCLC 646* at *653b-c*.

"…Collegiate or collective responsibility must…be based on individual responsibility. Each individual director owes duties to the company to inform himself about its affairs and to join with his co-directors in supervising and controlling them.

A proper degree of delegation and division of responsibility is of course permissible, and often necessary, but total abrogation of responsibility is not. A board of directors must not permit one individual to dominate them and use them…"

36. Consistently with these propositions, Neuberger J observed, as follows, in *Re Park House Properties [1997] 2 BCLC 530 at 554d-555a.*

"Directors have duties, and if, having been knowingly appointed a director, a person does nothing, he is likely to be in breach of his duties, and if the company is involved in inappropriate activity, he risks associating himself with, and taking some responsibility for that inappropriate activity.

I have reached the conclusion that that argument is, at least in principle, correct. As a matter of principle, it appears to me that it cannot be right that a director of a company involved in activities which justify a disqualification order against the director directly responsible for those activities can escape liability simply by saying that he knew nothing about what was going on. The court must inquire whether in the circumstances the failure to discover what was going on was attributable to ignorance born of culpable failure to consider or appreciate the results of those inquiries: if such culpability is established, then the court would have to go on to decide whether, in all the circumstances, the culpability was sufficient to justify the conclusion that the conduct of the person concerned was such as to make him unfit to be concerned in the management of a company.

This view seems to be supported by two decisions of Chadwick J. In *Secretary of State for Trade and Industry v Arif [1997] 1 BCLC 34 at 45-46*, he said:

'I accept that Mr Saleem Arif, at the relevant time, was likely to rely heavily upon his father and was not likely to be in a position to form an independent or informed judgment as to his duties as director. I think it most unlikely that Mr Saleem Arif would have been in a position to take any step which did not have his father's approval during the [relevant] period….In my view it should be clear that those who assume the obligations of directors, which they know they cannot fulfil, are persons whose conduct makes them

unfit to be concerned in the management of a company. It is no answer to state "I did what I could". If a director finds that he is unable to do what he knows ought to be done then the only proper course is for him to resign.'"

37. Before me, Mr Doyle rightly submitted that it does not follow that a failure to resign in such circumstances will necessarily lead to a finding of unfitness. In support of that submission, he relied upon *Secretary of State v Taylor [1997] 1 WLR 407* in which Chadwick J drew a distinction, at *414 G-H*, between cases in which a director remains in office once a company has started to trade whilst insolvent and cases in which the company is in breach of its statutory obligations.

38. This lends support to the proposition that it is, in each case, necessary to assess the conduct, as a whole, of each director to determine whether such conduct makes him unfit to be concerned in the management of a company. Where a director remains in office whilst a company is involved in inappropriate activity, it remains necessary to consider the merits of his explanation for doing so. If the director is aware of such activity and does nothing, he is likely to be in breach of his duties. If the director remains in office with a view to bringing such activity to an end and can be seen to have attempted to do so, it by no means follows that there will be a finding of unfitness. It then becomes necessary to assess what he achieved and set out to achieve together with his explanation for doing so. Conversely, if he is entirely unaware of the relevant activity, it becomes necessary to ask why.

(a) Mrs Broadstock

39. Mrs Broadstock accepts that she was appointed as a director in anticipation that she could be relied upon to support her husband on the board and thus ensure he had control during the periods in which Mr Ryan and Mr Jones were also directors. With her assistance, Mr Broadstock exercised control of the Company until it was placed in administration.

40. From January 2008 to May 2010, Mrs Broadstock was employed by the Company as a debt management adviser. During that period, she was also appointed Head of Sales. In July 2010, she took maternity leave. She did not return as an employee until September 2011. When she did so, she returned part-time owing to the need for her to give particular attention to her newly born son who was affected, from the outset, by a congenital condition which gave rise to severe visual impairment. From the time she returned, if not before, she maintains that she concentrated on "HR" and was designated

as "HR Director". She did not work in the accounts department and was not directly involved in the financial management of the Company.

41. Nevertheless, she would have been well aware that her family's livelihood was bound up with the Company. Although Mr Jones was appointed whilst she was on maternity leave, it is inconceivable she was unaware he had been appointed owing to concerns about the financial management of the Company. Moreover, following her return, she attended at least one Board meeting at which the issue was specifically raised of late payments to the creditors of the Company's clients. The minutes for a Board Meeting of August 2012 specifically recorded under the heading "Critical Issues", "…late payments increased creditor contact", "broken arrangements increased amount of client calls" and "paying creditors BACS run and cheques causing massive issues". In cross examination, she did not deny that she was aware of these issues; indeed she stated that, as a result, she sought re-assurances from Mr Ryan and, on one occasion, Mr Jones.

42. On 7th November 2012, Mrs Broadstock emailed Mr Broadstock to ask as follows: "do you know what is going on with payments to creditors-there are apparently clients cancelling left right and centre due to creditors increased hassle due to no payment-Kate says she has asked Ged and he says they have gone out but nothing showing cash on the system since mid September-she says the collections staff need amo to objection handle with but at the moment they don't really know what is going on? Just left Ged a voicemail to ask him-but had Lee in asking them same question this morning and I don't know the answer". Mr Broadstock responded with a message stating "Sorted now?", to which Mrs Broadstock replied: "sorted". However it is plain that, at this stage, Mrs Broadstock was well aware that the Company was failing to pay the creditors of clients on time and that this amounted to an important issue for the Company and its clients.

43. In my judgment, there is no room for any doubt that, by 12th February 2013, Mrs Broadstock knew that the Client Account was being misused and, in the absence of sufficient funds, the clients of the Company's creditor were not being paid promptly within the agreed time scale. There was no evidence before me from which I can reasonably infer that Mrs Broadstock was aware that cheques for the Company's creditors were being kept in an office cupboard. However, she was aware of the Company's cash flow difficulties, she was aware that creditors of clients were not being paid in accordance with the Company's contractual commitments and it ought to have been obvious to her that monies earmarked for the creditors of clients were being used to meet financial

demands on the Company. From her past experience as a debt management adviser and, indeed, her knowledge of the business, she knew or ought to have known that the funds held on Client Account were held on trust for the clients subject only to the contractual provisions for distribution and the deduction of the Company's monthly fees and that the misuse of such monies was a breach of the Company's contractual arrangements with its clients under which the monies had originally been transferred.

44. By continuing in office without doing anything to prevent the monies being misused in this way or, indeed, investigate and pursue the issue or explore the options that might be available, Mrs Broadstock's conduct fell below the standards or probity and competence that could reasonably have been expected of her as a director. By this time, she ought to have been aware that there was a significant risk that the Company was insolvent in the sense that it could not pay its debts as and when they fell due without recourse to the monies that were due to the creditors of its clients. She was willing to expose the Company's clients and their creditors to serious risk in this way without doing anything to satisfy herself about the Company's financial position. Such conduct makes her unfit to be concerned in the management of a company within the sense envisaged in *Section 6(1)* of the *1986 Act.* In cross examination, Mrs Broadstock candidly stated she was unaware that, as a director, she owed any duties to the Company notwithstanding that she had studied company law for her law degree. If this is correct, it is consistent with the stance which she took but her ignorance of the law does not justify her conduct. The Insolvency Service has calculated that between 12th February 2013 and 26th July 2013, the value of the cheques that were raised or prepared for the clients' creditors but withheld amounted to some £572,001.

(b) Mr Jones

45. Mr Jones was appointed as finance director following the accounting issues identified by HSA during the Summer of 2011. At the outset, Mr Evans advised Mr Jones that he had identified a historic shortfall, as at 31st January 2011, of £188,400.62 on Client account and Mr Jones was appointed with a view to putting the Company on a proper financial footing. He was appointed with the intention and expectation that he would resolve the shortfall on Client Account.

46. It is true that the Company's accounts system was put in place well before Mr Jones was appointed. This includes the Casemaster system. It is also true that, following Mr

Jones's appointment, Mr Broadstock remained in overall control of the affairs of the Company and Mr Gerard Ryan continued to be heavily involved in the day to day financial management. Moreover, the Secretary of State concedes that, whilst in office as finance director, Mr Jones was unaware that large numbers of cheques were being stored in a cupboard to relieve the demands on the Company's client account.

47. However, the obvious explanation for the shortfall was that the Company had drawn more from the Client account than the amounts to which it was contractually entitled. If he was not aware of this at the outset, Mr Jones certainly ought to have been aware of it by 12th February 2013.

47.1. In evidence, Mr Jones said that, when he initially joined the Company, he attended a meeting with Mr Broadstock and Messrs Richard Evans and Ansar Mahmood of HSA at which he was advised that the shortfall had nothing to do with the misuse of client monies rather it was attributable to a failure to properly record commission that was due to the Company. This is contrary to the evidence of Mr Evans who maintained that he gave no such advice or assurance. On this issue, I prefer the evidence of Mr Evans. It seems to me inherently implausible that he would have entirely ruled out, in this way, the possibility that the misuse of client monies had contributed to the shortfall.

47.2. It is true that, as deployed, the Company's Casemaster system did not comprehensively record the progress of transactions on Client Account. However, once he had been appointed as finance director, Mr Jones had access to the Company's bank statements, including its own current account and the Client Account which ultimately showed that substantial amounts were being transferred from the Client Account on a daily basis to meet the Company's ordinary financial needs without any reference to the Company's right to a monthly fee. During cross examination, Mr Jones was referred to Company bank statements during the period 24th January to 24th April 2013 in which a series of payments were made in round figures, such as £2,000, £3,000, £7500, £10,000 and £20,000 without any calculation the Company's monthly fees. Mr Jones accepted that these payments had been made and did not suggest that they had been specifically calculated with reference to the Company's monthly fees. However, he stated that he did not know that, collectively, they amounted to an "overpayment". In view of the scale and pattern of the payments, he was at the very least furnished with reason to believe that they

amounted to more than the Company was entitled in respect of its fees. Any suggestion to the contrary is implausible. In any event, by that stage, Mr Jones ought to have put in place a system to ensure that the Company's monthly fees were only drawn in the amounts to which it was contractually entitled. Mr Jones did not put in place such a system nor, indeed, did he take action to put such a system in place.

47.3. By an email message timed at 18:03 on 12th February 2013, Mr Ryan apparently attached a Client Account reconciliation showing that, as at 31st January 2013, a total of £454,979 had been "over-transferred" from the Client Account. Mr Ryan indicated in his email that it looked "grim but its as we expected". By an email timed at 19:33 that evening, Mr Jones advised Mr Broadstock that he was "looking for around 50k but the business doesn't have it. Got the recs from ged and showing 450k deficit on client account so don't want to touch any working capital in the business. Obviously Paul is not aware of the situation". By a further email timed at 20:32, Mr Jones advised Mr Broadstock that "I only got it tonight just before I was leaving but it is highlighted on the board report case flow every month. I am very disturbed that it has got to this stage but we have had no option but to use the case as all year sales have not performed including cit claims. Anyway on wards and upwards it starting to pick up so that is good. We will go through to see what we can record as fees to be able to reduce the deficit from a P&L point of view but it doesn't help the cash. Is there a way we can use one month to charge clients their full DI for one month which will leave nearly 1/5m in the client account and ultimately solve the problem? What would happen if we held off all payments to creditors for one month and took it as a fee like we would if we purchase a book?" The reference to the clients' "full DI" was a reference to their disposable income.

47.4. By an email message dated 14th February 2013, Mr Jones forwarded the Client account reconciliation to Mr Broadstock stating as follows: "See attached. Here are the numbers for the client account rec. Needs urgent action. So lets discuss".

48. Whatever the outcome of his discussions with Mr Broadstock, Mr Jones did not take action to stop the Company from transferring Client Account monies to which it was not contractually entitled to its current account. Indeed, by his emails dated 12th February 2013, he had already demonstrated a readiness to use the money to meet the Company's immediate cash requirements.

49. From that time, substantial amounts were repeatedly transferred from the Client Account to meet the Company's ordinary financial needs without any reference to the Company's right to a monthly fee. This is obvious from the Company's bank accounts and it would have been obvious to Mr Jones at the time. To the extent that he failed to challenge the payments, he can be taken to have authorised them. It is overwhelmingly likely that between 12th February and 15th May 2013, the overall shortfall continued to accumulate and increase. Whilst evidence was not adduced as to the overall shortfall on 15th May 2013, the Insolvency Service have calculated that the shortfall had increased to £670,076 by 30th April 2013. They have also calculated that between 12th February and 15th May 2013, cheques to client creditors in the sum of £69,223 were raised or prepared but withheld.

50. Mr Jones contends that, since the Company remained under the overall control of Mr Broadstock, Mr Jones did not have real control over the financial management of the Company. He points out that Mr Broadstock did not show any scruple in debiting the Company's credit card for his own personal benefit without first seeking authority from Mr Jones and that, where Mr Broadstock did so, Mr Jones would remonstrate with him. Mr Jones also maintains that he could not always rely on the co-operation of the accounts staff, including Mr Ryan. However, as finance director, Mr Jones was given overall responsibility for the Company's financial affairs and the accounts staff were ultimately responsible to him. If he had serious concerns about issues of financial control, including any perceived defects in the Casemaster system, it was open to him to raise this at board level and carry out the reforms that were required or at least to canvass and initiate such reforms. However, whilst Mr Jones maintains that he came to the Company with the intention of implementing a robust financial structure and that he did implement new processes in connection with the financial administration, he did not introduce any reforms of a fundamental nature to alter the management of the Client Account and prevent it being misused. Nor indeed did he take any steps to do so. Had he sought to take such steps and been blocked by Mr Broadstock, it would at that stage have been open to him to resign as a director.

51. Between 12th February and 15th May 2013, Mr Jones remained in office in the knowledge that there was a substantial accumulated shortfall in respect of the amounts owed to the creditors of clients without taking any steps to prevent the Company from continuing to misuse trust monies to meet its own cash requirements. By that stage, it ought to have

been obvious to Mr Jones that the Company was in severe financial difficulty; indeed that it could not pay its debts as and when they fell due without recourse to such monies. It is all the more serious that Mr Jones himself appreciated that it was "…essential to the integrity of the Company…that client funds were segregated and not used as the Company's cash". By conducting himself in this way, I am satisfied that Mr Jones's conduct fell below the standards or probity and competence that could reasonably have been expected of him as a director. Such conduct makes him unfit to be concerned in the management of a company within the sense envisaged in *Section 6(1)* of the *1986 Act.*

(6) Disqualification periods

52. In *re Sevenoaks Stationers (Retail) Limited [1991] Ch 164,* Dillon LJ (with whom the other members of the Court of Appeal agreed), endorsed the proposition that the potential 15-year disqualification period should be divided into three brackets, namely "(i) the top bracket of disqualification for periods over 10 years should be reserved for particularly serious cases. These may include cases where a director who has already had one period of disqualification imposed on him falls to be disqualified again. (ii) The minimum of two to five years' disqualification should be applied where, though disqualification is mandatory, the case is relatively, not very serious. (iii) The middle bracket of disqualification for from six to 10 years should apply for serious cases which do not merit the top bracket".

53. In the present case, I am satisfied that Mrs Broadstock and Mr Jones should each be disqualified for a period in the middle bracket. For the full length of the periods on which the Secretary of State relies, they permitted the Company to repeatedly misuse the Company's Client Account. This amounted to a serious breach of trust at a time when the Company was insolvent or on the verge of insolvency. From 12th February 2013, the Company was only able to successfully carry on business by utilising, as its own working capital, the funds that it held on trust for its clients. Many of the clients were vulnerable in the sense that they perceived it was necessary for them to engaged the Company to manage their debts. Between 12th February 2013 and 26th July 2013, cheques to a value of £572,001 were withheld from creditors at the risk of the creditors themselves and the Company's clients to enable to Company to remain in business.

54. Mr Jones was culpable for a significantly shorter period than Mrs Broadstock, namely 12th February to 15th May 2013; during that period the Company's clients and their

creditors were thus exposed to risk for a narrower time scale and the amounts withheld were significantly lower in value, amount to £69,223. Through her office as director, Mrs Broadstock enabled her husband to maintain control. However, as finance director, Mr Jones was appointed to put the Company on a proper financial footing and better placed to do so. He obviously had a greater knowledge than Mrs Broadstock of the Company's financial position and the extent of the misuse that was being made of the Company's client account.

55. By way of mitigation, Mrs Broadstock has filed an affidavit maintaining that she has learnt from her experience. She maintains that she is harmoniously married and is seeking to provide a loving home for her son, Alfred, but believes that she has the skills and responsibility to be concerned in the management of a business. There is, of course, no reason to limit this to a company and it would be open to her to apply for leave under *Section 1(1)* of the *1986 Act.* Mr Jones maintains that he has assisted the administrators and Insolvency Service in relation to the Company's finances. He maintains that the matter has caused considerable stress for himself and his young family and that a disqualification order will have a serious impact on his career prospects. He says that he is extremely sorry for the Company's creditors.

56. Mr Jones was more closely involved than Mrs Broadstock in the financial administration of the Company and was more intimately aware of the full extent of the Company's financial difficulties and the misuse of client monies. However, Mrs Broadstock effectively abdicated responsibility at a time that she was aware of the Company's financial difficulties and the difficulties that were being experienced by its clients and their creditors. She remained a director for significantly longer than Mr Jones and exposed them to greater risk and higher losses. Taking full account of the matters on which Mrs Broadstock and Mr Jones rely as mitigation, I shall make an order disqualifying Mrs Broadstock for a period of eight years and Mr Jones for a period of seven years.