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Case No: CR-2016 -001622

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES LIST (ChD)

In the Matter of Angelic Interiors Limited (in administration)

And in the Matter of the Insolvency Act 1986

Royal Courts of Justice
Rolls Building, Fetter Lane
London EC4A 1NL

Date: 29 November 2022

Before :

Deputy Insolvency and Companies Court Judge Frith

Edoardo Lupi (instructed by **Jones Day**) for **Ian Colin Wormleighton and Daniel Francis Butters** in their capacity as the First and Second Joint Administrators of Angelic Interiors Limited.

Andrew Mace (instructed by **JMW Solicitors LLP**) for **Andrew Lawrence Hosking and Carl Jackson** in their capacity as the Third and Fourth Joint Administrators of Angelic Interiors Limited.

Robert Amey (instructed by **Herbert Smith Freehills LLP)** for Lloyds Bank plc.

Hearing dates: 7 October 2022 and 29 November 2022

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APPROVED JUDGMENT

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This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be sent to the National Archives for publication. The date and time for hand-down is deemed to be 10.30 a.m. on 29 November 2022.

Deputy Insolvency and Companies Court Judge Frith:

1. This is an application for directions made pursuant to Paragraph 63 of Schedule B1 of the Insolvency Act 1986 (the **"Act"**) by Ian Colin Wormleighton and Daniel Francis Butters of Teneo Financial Advisory Limited in their capacity as the First and Second Joint Administrators of Angelic Interiors Limited (the **"Company"**). The directions they seek concern the issue as to whether they should send a notice to the Registrar of Companies pursuant to paragraph 84(1) of the Act to the effect that the Company has no property which might permit a distribution to its creditors. They further seek directions pursuant to paragraph 76(2)(a) of Schedule B1 of the Insolvency Act 1986 for an order, if appropriate, that the term of office of their appointment and that of Mr Andrew Hosking and Mr Carl Jackson of Quantuma LLP as the Third and Fourth Administrators of the Company, should be extended to a date to be fixed. I shall refer to Messrs Wormleighton and Butters as the "**Teneo Administrators**" and Messrs Hosking and Jackson as the "**Quantuma Administrators**". They were represented by Mr Edoardo Lupi and Mr Andrew Mace, respectively at the hearing before me.

2. The administration of the Company is one of several administrations involving related companies. These administrations have in turn led to the issue of several highly contentious proceedings involving commercial lenders, the office holders that were appointed and other parties that became embroiled within their insolvent estates. Most were instigated by the former director and principal shareholder, Ms Julie Davey. It was at her behest that the Quantuma Administrators were appointed pursuant to the order of Charles Hollander QC (sitting as a Deputy High Court Judge) by an order dated 1st July 2016. Their principal role was to act as "conflict" administrators with a view to investigating potential claims that may exist against Lloyds Bank plc (the **"Bank"**) as the principal secured creditor and other potential defendants including McBrides Accountants LLP, a firm of accountants who had provided financial advice to the Company. These included *inter alia* claims arising from alleged mis-selling of Interest Rate Hedging Products ("**IRHP**") and allegations of professional negligence. The relationship between the Teneo Administrators and the Quantuma Administrators was governed by a Memorandum of Understanding dated 7 December 2016 (the **"Angelic MoU"**). The Angelic MoU defined, in considerable detail the role of both pairs of administrators and the division of administrator responsibilities between them.

3. The Bank appeared as an interested party to the application in its capacity as the principal and only current secured creditor of the Company. In evidence filed on behalf of the Teneo Administrators and the Bank, I was informed that to date, the Bank has been paid £19.4 million in the administration, with a further final payment of approximately £500,000 expected. On present calculations it currently faces a £17 million shortfall in its claims against the Company. The Bank's claims represent in the region of 95% of the Company's aggregate debts. It is by far the largest creditor, and it is supportive of the position that is adopted by the Teneo Administrators in their application. The Bank was represented by Mr Robert Amey at the hearing before me. I am grateful to all Counsel for their detailed oral and written submissions.

The application and its history.

4. In essence the dispute on the application can be simply stated. The Teneo Administrators consider that the purpose of the administration has been substantially achieved and there is no further property to be realised that may enable a further distribution to creditors. They are of the view that the administration should end, and the Company should move to dissolution pursuant to the provisions of paragraph 84(1) of Sch. B1 of the Act forthwith. The consequence of registering such a notice would be to terminate the appointment of all the Administrators immediately and for the Company to be dissolved three months later. However, by virtue of the division of responsibilities between themselves and the Quantuma Administrators, the Teneo Administrators have no visibility over the present position of the potential claims that the Quantuma Administrators were appointed to pursue and can express no view on their merits. In those circumstances, the Teneo Administrators considered it appropriate for the Court to consider the bases on which the Quantuma Administrators appear to continue to think that there is property which might permit a distribution to creditors other than the Bank. The Quantuma Administrators disagree with this approach. They believe that there are further potential claims they wish to pursue which do constitute property of the Company, and which may enable a further distribution to be made to the general body of creditors. Discussions between the pairs of administrators have not resolved matters. Accordingly, on 30 November 2021, the Teneo Administrators issued the Application so that the Court can give further directions as appropriate.

5. When the hearing was initially listed before ICC Judge Prentis in December 2021, the Quantuma Administrators filed evidence in the two days that preceded the hearing. To deal with the issues raised in that evidence, the Learned Judge made an order that: (a) the Application should be treated as one for general directions; (b) the parties be given leave to file sequential lists of issues for determination; and (c) the matter be listed for a day, with ½ day judicial reading time. The parties complied with those directions and the hearing before me was the final hearing of the Application pursuant to that Order.

The issues for the Court.

6. The Teneo Administrators filed their list of five issues on 27 January 2022. The Quantuma Administrators filed their list of 7 issues on 1 March 2022. Not surprisingly, there was some duplication. Mr Lupi helpfully condensed these issues in the following manner with which the other interested parties did not demur and which I now adopt.

    i) The first key issue is whether the purpose of the administration has been sufficiently achieved, such that the administration should come to an end. The wording here tracks that of Sch. B1, para 79(3) pursuant to which an administrator "*shall*" make an application for the cessation of their appointment if the administrator thinks that the purpose of administration has been "*sufficiently achieved*" in relation to the company (the "**End of Administration Issue**").

    ii) The second key issue is whether there is property in the Company's estate, including any "Third and Fourth Administrators' Potential Claims" and/or any "Third and Fourth Administrators' Potential McBrides Claims" (both as defined in the Angelic MoU) which might permit a distribution to the Company's creditors. The wording here follows Sch. B1, para 84(1). It is concerned with establishing whether the Company has any property which might permit a distribution to creditors (the

"**Property Issue**"). If there is no such property, the administrator "*shall*" give notice of dissolution under para 84(1). There is no discretion to do otherwise.

iii) There is then a series of sub-issues which ultimately relate to the Property Issue and the question of whether the Company has any property, particularly in the shape of the Quantuma Potential Claims (defined below) or the Quantuma Potential McBrides Claims (defined below) – which might permit a distribution to the general creditors. These are:

a) whether the expected value of the Quantuma Potential Claims and the Quantuma Potential McBrides Claims is sufficient to survive the effect of the doctrine of circuity of action. This issue arises, in circumstances where any recovery from their claims would need to exceed £17 million (the value of the Bank's outstanding claims against the Company) to create any tangible financial benefit for the general body of creditors (the "**Circuity Issue**").

b) the Quantuma Administrators seek "*clarification and detail*" as to a settlement agreement entered by the first and second liquidators of the Angel Group companies (not the Company) with McBrides Accountants LLP ("**McBrides**") (the "**Settlement Agreement Issue**").

c) the Quantuma Administrators raise 7 issues which are specific to the Bank and appear loosely to concern the prospects of claims they may wish to bring against it (Quantuma List, Issue 7 and the further six "*Specific issues pertaining to the Bank requiring investigation by the Third and Fourth Administrators*" (together with Issue 7, the "**Bank Issues**")).

iv) The third key issue is whether in all the circumstances (including having regard to the Property Issue): (a) the Administration should now be ended; and (b) if the Administration should be brought to an end, the appropriate exit route. In this case, the choice is between (a) dissolution or liquidation, and (b) if the latter, a liquidation on what terms (the "**Exit Issue**").

v) There is then a series of sub-issues which ultimately concern the Exit Issue. In particular:

a) which of the Company's creditors have an economic stake in the Company's estate such that their views should be considered in determining the Company's future (Teneo List, Issue 3.2). This is couched slightly differently in the Quantuma List, which asks the extent to which the Bank's views should

be considered in the circumstances of this case (Quantuma List, Issue 3). This is referred to as the "**Bank's Views Issue**".

b) the extent to which the Bank requires and/or should be afforded protection to "*maintain the status quo*" (Quantuma List, Issue 4). This is referred to as the "**Status Quo Issue**".

c) There was a further matter that needed to be dealt with at the hearing before me. The order extending the administration time expired on either the 8th or 9th October 2022 (i.e., over the weekend immediately following the day of the hearing). It was therefore necessary to ensure that the administration should continue for a short period of time to ensure that it did not expire by effluxion of time before either of the exit routes could come into effect. That was achieved by the making of an order extending the administration until 16:00 on 2nd December 2022 which I made with the agreement of all the interested parties.

Positions on the key issues and recent developments.

7. Mr Lupi went on to consider the interested parties' positions as he understood them to be at the date of his skeleton argument. He said:

(1) First, it appeared to be common ground that a creditors' voluntary liquidation pursuant to Sch. B1, para 83 was not possible or appropriate here. This was stated in the sixth witness statement of Mr Hosking dated 26 May 2021 and the first witness statement of Mr Wormleighton.

(2) Second, until a letter dated 13 September 2022 (though wrongly dated 13 February 2022) from JMW Solicitors, the Quantuma Administrators' solicitors to the Bank's solicitors, it was thought to be common ground that all interested parties considered that the administration should come to an end. The letter signified a change of approach on their part in this regard which developed both before and after the hearing before me. In that letter, they asked the Bank for certain original documents in relation to its banking arrangements with the Company. The bank agreed to conduct a search, and this continued after the hearing before me. An original copy of an International Swaps and Derivatives Association Master Agreement (the **"ISDA Agreement"**) was discovered and disclosed by the Bank on 27 October 2022, shortly before I was preparing to circulate a draft judgment. I invited the parties to file and serve written submissions. This resulted in the Quantuma Administrators changing their position to seeking an extension of one year with themselves as the joint administrators.

8. However, on the date of the hearing before me, the parties' positions on the key issues were as follows

(1) **The Quantuma Administrators' position.**

I was taken to the evidence filed by Mr Hosking who in his earlier witness statements indicated that he anticipated that the administration would be succeeded by a dissolution. No doubt for understandable reasons, that position subsequently changed, so that by the time the matter came before ICC Judge Prentis, his evidence showed the Quantuma Administrators' position to be that the Company should be placed into Compulsory Liquidation and that they would seek the appointment as joint liquidators to ensure the above matters are properly investigated. As there had been no winding up petition presented nor any application under Sch. B1, para 79 made, the Quantuma Administrators invoked the Court's inherent jurisdiction to wind up the Company and sought their own appointment as liquidators pursuant to Section 140 of the Act. They relied upon the view expressed by the Teneo Administrators that the purpose of the administration (being the pursuit of the objective set out in para. 3(1)(c) of Sch, B1 of the Act – *"...realising property to make a distribution to one or more secured or preferential creditors*.") had been achieved and that apart from making a final distribution to the Bank, there was nothing further for them to do. If the administration was to continue, the Teneo Administrators should cease to act with the Quantuma Administrators assuming complete control. This position was not entirely abandoned by Mr Mace in his submissions to me at the hearing, no doubt motivated by the request for original documents that had by then been made.

In Mr Hosking's most recent evidence prepared for the hearing before me, he raised the possibility of a joint appointment with the Teneo Administrators as liquidators, retaining the existing delineation of powers under the Angelic MoU. He did challenge the notion that the Teneo Administrators should remain involved but also submitted that if the court was minded to order a liquidation, his clients would accept a joint appointment with the Teneo Administrators. He also made it clear that they would continue to participate in negotiations to agree a revised memorandum of understanding which had commenced shortly before the hearing before me.

(2) **The Bank's position**.

The evidence filed on behalf of the Bank shows that its primary position is to support the view of the Teneo Administrators that subject to the Court considering the position adopted by the Quantuma Administrators, the Company should be dissolved. Alternatively, if there is to be a liquidation, the Bank requests a joint appointment of the Teneo Administrators on the same scope as the Angelic MoU. The Bank strongly objects to any suggestion that the Quantuma Administrators be left in office as principal administrators, or that they be appointed sole liquidators if the court makes a winding up order.

(3) **The Teneo Administrators' position**.

The Teneo Administrators consider that the purpose of the administration has been sufficiently achieved. Moreover, having regard to their powers and responsibilities under the Angelic MoU, they consider that from their point of view, there is no property which might permit a distribution to creditors. However, given its terms of confidentiality, they have had little visibility over the Quantuma Potential Claims and the Quantuma Potential McBrides Claims, as well as the Bank Issues. Thus, and in view of: (a) the time that has elapsed since commencement of the administration; (b) the fact that the Quantuma Administrators have brought no claims to date, and (c) the lack of any concrete expression from them as to the viability of their relevant claims, the Teneo Administrators believe that it is appropriate for the Court to consider the bases on which the Quantuma Administrators appear to continue to think that there is indeed property which might permit a distribution to creditors other than the Bank.

(4) As to the possibility of liquidation in the alternative to dissolution, whilst reserving their position that the primary position is for there to be a dissolution, the Teneo Administrators' position is that they would be content to take an appointment as joint liquidators, retaining the existing division of powers and responsibilities under the Angelic MoU.

The progress and conduct of the administration.

9. The administration has now been in place for over 6 years. The circumstances that prevailed when it was made have changed significantly. Initially, Ms Davey was an active participant in the original application for the Administration Order. It was because of her efforts that the Quantuma Administrators were appointed. The Administration Order records her confirmation that she would be responsible for their remuneration and provided an indemnity for their expenses. The clear intention was that the costs and expenses of the Quantuma Administrators would be borne by her and not by the general body of creditors. However, she was made bankrupt on 12 February 2019. Since then, it appears that the Quantuma Administrators have borne the costs and expenses of their appointment personally.

10. The Administration Order also gave direction as to the functions that each set of administrators should perform, recording that the Teneo Administrators (then of Deloitte LLP) should have the sole and exclusive conduct of all matters in the administration. The powers of the Quantuma Administrators were confined to the investigation of the potential claims against the Bank and others as set out in detailed draft particulars settled by Ms Davey's Leading Counsel and dated June 2015 (the **"Draft Particulars of Claim")**. Their role was therefore that of conflict administrators. Of course, this did not mean that the Teneo Administrators were the "Bank's administrators" by virtue of their nomination by it any more than the Quantuma Administrators were "Ms Davey's administrators" by virtue of her nomination by her. All administrators are of course Officers of the Court, and it is to the Court that their duties primarily lie. The purpose of appointing conflict administrators is to avoid any suggestion of bias in the future rather than any perceived acknowledgement that such bias already existed.

11. The Administration Order gave the parties liberty to enter and execute the Angelic MoU. It proved to be a detailed and comprehensive document designed to preserve confidentiality between the two pairs of administrators. It defined, in some detail the claims that had been

asserted by Ms Davey on behalf of the Company against the Bank by reference to the Draft Particulars of Claim.

12. There were some differences between the two pairs of administrators in relation to their liberty to act and the ability of one set of administrators to control the actions of the other. The Teneo Administrators were entitled to exercise all functions and powers under the Act and the Insolvency Rules 1986 (as subsequently replaced by the implementation of the Insolvency (England and Wales) Rules 2016 on 6 April 2017) without seeking the Quantuma Administrators' prior consent. The Quantuma Administrators were appointed to have sole conduct of all and any potential claims that the Company might have against Lloyds Bank Plc and others directly or indirectly arising out of or in any way connected with the matters set out in the Draft Particulars of Claim. This also set out potential claims against McBrides in respect of professional services it rendered to the Company. The right to pursue those matters was not unencumbered so far as the obligations it imposed upon the Quantuma Administrators. However, in contrast to the unencumbered powers conferred upon the Teneo Administrators, there were conditions imposed upon them to ensure that to pursue the Quantuma Potential McBrides Claims, they were first required to obtain the Teneo Administrators' consent. This was no doubt to ensure that the Teneo Administrators could not be exposed to a risk of adverse costs without their express consent should any such claim be pursued to an unsuccessful conclusion. Further protection was provided by the Angelic MoU which required the Quantuma Administrators, prior to commencing any proceedings, to satisfy themselves that they held sufficient funds or had access to sufficient funds or could obtain sufficient insurance to meet the costs of such proceedings, including any adverse costs order that may be made against them.

13. There were document sharing arrangements between the two pairs of administrators. These effectively involved the creation of "siloes" for the documents created during the administration. In essence, each pair of administrators was prevented from inspecting or taking copies of documentation created by the other during the administration to prevent any breach of confidentiality occurring and to protect any privilege that may arise.

14. As regards remuneration, the Angelic MoU mirrored the undertakings given by Ms Davy to the Court when the Administration Order was made. The Quantuma Administrators undertook not to have recourse to the Company's property to pay for their remuneration fees or costs other than from the proceeds of the Quantuma Potential Claims and the Quantuma Potential McBrides Claims. In this regard, the evidence is that the Quantuma Administrators have received no remuneration since their appointment and following the bankruptcy of Ms Davey, and that they continue to meet costs, expenses and disbursements personally. It is not known whether they have submitted a proof of debt in her insolvent estate for these outstanding sums.

15. The environment in which each set of administrators was operating was therefore very tightly defined and controlled in the Angel MoU.

16. The administration has since July 2017 pursued the third statutory objective to make distributions to secured and preferential creditors. The terms of office have been extended four times in the case of the Teneo Administrators and six times in the case of the Quantuma

Administrators. What is clear from the applications to extend the administrations that have been made is that the Court has been increasingly concerned to ensure that matters are dealt with expeditiously. In her judgement of 17 December 2020 in relation to an application to extend issued by the Quantuma Administrators, District Judge Mauger said:

> [*6] "The investigation of the claims against the bank is dealt with in Mr Hosking's statement but I have to say the information as to what has happened in the last year and, indeed, since the administration commenced in 2016, it now being the end of 2020, is really quite thin. All that it says is that they have been investigating and having Pre-Action discussions with the bank's solicitors…"*

17. The present position of the Quantuma Administrators' investigation into the potential claims is less straightforward. They have yet to issue any claim. They did execute an assignment of the IRHP claims to Ms Davey who then issued proceedings on 30 September 2016 which were then served on the Bank on 30 January 2017. The Bank filed and served a defence on 10 April 2017. There has been no further action taken to prosecute the action ever since. Because of her bankruptcy in February 2019, the right to pursue those proceedings or any other claims or choses in action that she may have had, vested in her trustees in bankruptcy by operation of law. I was referred to a progress report to creditors dated 3 April 2020 by her trustees in bankruptcy. This revealed that advice had been taken from Leading Counsel on the merits of the claim. This cast considerable doubt on the merits of the claim including issues of limitation and further issues concerning the validity of the assignment. The claim has not been actively pursued ever since.

18. The recent evidence filed by the Quantuma Administrators in this application does tend to vary. In his seventh witness statement dated 15 December 2021 prepared for the hearing before ICC Judge Prentis, Mr Hosking candidly stated:

> *"Whilst the possibility of claims against Lloyds Bank remains, including the possibility of effecting an assignment of those claims, the focus is presently on us hearing whether or not the professional indemnity insurance of McBrides, the Company's former auditors, will respond…"*

19. In his tenth witness statement dated 22 June 2022, Mr Hosking's evidence prepared for the hearing before me, it was suggested that the focus had shifted towards the pursuit of a claim that may arise from a judicial review of the IRHP redress scheme in respect of which he stated:

> "*I anticipate being in a better position to assess the viability of assigning claims to third parties once the Judicial Review process has completed*".

I should mention that the consequences of a successful challenge in the judicial review on the context of the insolvent estate of the Company is not fully explained.

20. In the same witness statement, he refers to information obtained from a "whistle blower" concerning the veracity of signatures on documents and further procedural irregularities. These were relied upon by Mr Mace in his submissions at the hearing before me concerning the need to allow further time for additional investigations to conclude. He also stated that

the outcome of those investigations including the (then) possible delivery up of documents that have been requested of the Bank and which it had (at the date of the hearing before me) agreed to search their records for, may assist. If they provided evidence that would assist the Quantuma Administrators on the merits of the potential claims, it was submitted on his behalf that this would increase the prospects of funding the claims. In turn, this would have consequences that would deal with the circuity argument by producing a possible recovery in excess of the £17m required to produce a figure that would result in a dividend being paid to the unsecured creditors. I asked Mr Mace in submission for the reasons why the statutory remedies available under Section 234 and 236 of the Act had not previously been deployed. This was put down to a lack of funding to which I will further refer in due course.

21. It is also relevant to point out that the issue of forgery was raised in the Draft Particulars of Claim served in 2015. This of course may have consequences relating to limitation issues of the claims that were made which were very cogently pursued by Mr Amey in his submissions on behalf of the Bank. He also forcefully drew my attention to the lively funding market that exists, drawing the conclusion that despite the contentions put forward on behalf of the Quantuma Administrators, there had apparently been no real enthusiasm shown by potential funders to become involved in the potential claims.

Should the administration continue and what are the options if it should not?

22. The first issue for the Court's consideration is whether this administration can be permitted to continue at all. The amendments to the Act since its enactment make it clear that the process of administration should progress timeously. The extension provisions recognise the necessity for the Court to be actively involved and to carefully monitor the progress of each administration. Therefore, extension applications are always carefully considered and the discretion to extend or not is a wide one. I have already referred to a careful judgment delivered by District Judge Mauger in the context of the investigation of the potential claims in the context of an application to extend the administration by a year made by the Quantuma Administrators. The fact that she acceded to an extension, but only for 6 months, is reflective of the desire on the part of the Court to maintain such active supervision of each administration. On a similar vein at the December 2021 hearing of the Application before ICC Judge Prentis, he observed that the obligation to find an appropriate exit "*must weigh heavier month by month*".

23. Unless a further application to extend is made, the administration will now come to an end by effluxion of time on 2 December 2022, consistent with the Order for extension I made on 7 October 2022. It is what happens next that is where the real dispute now lies.

24. Subject to the Court considering the basis of the views adopted by the Quantuma Administrators, the Teneo Administrators, supported by the Bank argue that the administration should come to an end and that the Company should proceed to dissolution. The Quantuma Administrators' position is a little ambiguous and has changed since the hearing in the light of recent developments. In the evidence filed prior to the hearing, they appeared to accept that the administration should come to an end, thereby terminating the appointments of all the administrators. They submitted that the Company should then proceed to a liquidation. In his skeleton argument, Mr Mace argued that it should only be the Quantuma Administrators who should assume office as joint liquidators. However, at

the hearing, it was made clear that if the Court ordered a winding up, the Quantuma administrators would not object to the Teneo Administrators being appointed as joint liquidators with them. Indeed, I was informed that there had in fact been discussions concerning a revised liquidation MoU on similar lines to the Angelic MoU adopted in the administration. That position has changed because of the disclosure by the Bank of the ISDA Agreement to the Quantuma Administrators. By way of contrast to the position adopted at the hearing, Mr Mace in his subsequent written submissions to me now seeks an extension of the administration for a further 12 months, with his clients in sole control.

25. The Bank argues that the administration should end, and no useful purpose would be served by moving to liquidation. It submits that this would result in a delay in distributions to creditors, and result in further officeholder fees being incurred, with no benefit. They further argue that the potential claims are statute barred and fraught with difficulties. They also rely on the circuity argument relying on the need for the potential claims to yield a sum of at least £17m to produce any benefit to creditors, a point Mr Hosking appeared to accept in evidence.

26. In answer to this point, at the hearing, Mr Mace challenged the position of the Bank. He referred me to the potential impact of the disclosure of the original banking documents. He submitted that if they are of evidential value and support the potential claim, this would have consequences in relation to the circuity argument. He also submitted that the motivation of the Bank in preferring dissolution was to stifle litigation. I had some trouble in reconciling this submission with the way in which the Bank had, through its solicitors, consistently and properly addressed the requests for information when they received them. In their measured submissions they had focussed their intentions on pointing out the significant evidential and procedural problems that the potential claims involved.

The legal principles and their application to this case.

27. The issue is therefore does the company proceed to dissolution or does it proceed into liquidation. Pursuant to Sch. B1, para 79(3), where administrators think that the statutory objective has been "*sufficiently achieved*" they shall apply for their appointment to cease.

28. There was no real issue between the parties as to the interpretation of the statutory provisions. I shall take them in the order suggested by Mr Lupi in his skeleton argument.

29. As to the use of the word "thinks" for the purposes of Sch.B1, para 79(3), and its implications, I was referred to the decision of Snowden J (as he then was) in *Davey v Money* [2018] Bus LR 1903, (one of the many cases that arise from the insolvency of the Angel Group of Companies). The learned judge accepted (at [255]-[256]) that the word "*thinks*" in Sch. B1 imports a good faith and rationality standard of review to the administrator's decision-making. In this respect it is comparable to test applicable to liquidators as set out in in *Re Edennote Limited* [1995] 2 BCLC 248 and [1996] 2 BCLC 389 (CA) (the "**Edennote Test**").

30. Further assistance on this point is provided in Lightman & Moss on the Law of Administrators and Receivers (6th ed.). Para 12-039 puts the point in this way:

> *"Where Sch.B1 refers to what the administrator "thinks" as the trigger for a statutory duty or discretion, it is suggested that the court will similarly only intervene where the administrator has either formed a view that no reasonable practitioner would have formed or avoided a conclusion that no reasonable practitioner could possibly have avoided. On the basis of the presumption that a word or phrase is not to be taken as having different meanings within the same instrument unless the intention is evident, the court can be expected to apply the same standard of review to all of the provisions in Sch.B1 which refer to the administrator's "thinking". See Insolvency Act 1986 Sch.B1 paras 3(3), 3(4), 49(2)(b), 52(1), 66–67, 79(2), 80(2), 83(1) and 84(1)".*

31. As to the meaning of "*sufficiently achieved*", Lightman & Moss, para 27-055 note that this represents an objective test having regard to whether a reasonable insolvency practitioner would think that the purpose of the administration had been sufficiently achieved (by reference to *Joint Administrators of Station Properties, Petitioners* [2013] CSOH 120 [17] *per* Lord Hodge).

32. As to the proper approach to extending an administration, the familiar test is set out in *Re Nortel Networks UK Ltd* [2017] EWHC 3299 (Ch) at [22] and *In re TPS Investments (UK) Limited (in administration)* [2020] EWHC 1135 (Ch). where HHJ Hodge (sitting as a Judge of the High Court) accepted the following summary of the relevant factors for the Court's consideration:

"on applications of the present kind, four questions tend to arise:

(1) Why has the administration not yet been completed?
(2) Is any other alternative insolvency regime more suitable?
(3) Is the extension sought likely to achieve the purpose of administration?
(4) If an extension is appropriate, for how long should it be granted?".

33. As I have mentioned, the Quantuma administrators think that the potential claims constitute property of the Company that remains to be realised for the benefit of creditors. They assert that they have further investigations to carry out before the administration can conclude, particularly having regard to the disclosure of the ISDA Agreement. In a further witness statement filed by Mr Hosking after the hearing, he explains that they now wish to engage the services of a handwriting expert to consider the signatures on that document. However, their position does appear to have moved again in another direction once more. Whilst at the hearing, Mr Mace informed me that they have actively participated in negotiations with the Teneo Administrators concerning a revised MoU if the Company proceeds into liquidation (and would continue to do so), and that they would accept an appointment to act as joint liquidators with the Teneo Administrators if the Court is minded to order a liquidation, they have now reverted to the position that the administration should now be extended for a period of one year with them in sole charge.

34. It is not in dispute that since July 2017, the objective of administration has been the realisation of property to make a distribution to one or more secured or preferential creditors. Once the final £500,000 is paid to the Bank, that purpose will be achieved, there

being no preferential creditors and no other secured creditors. It seems to me perfectly clear that if there are any claims to pursue, they can be dealt with, one way or another in a liquidation.

The current position of the potential claims and the request for further disclosure.

35. So, what is the current position of the potential claims? And do they justify an extension of the administration and if they do, how long should any extension be? The primary argument advanced by the Quantuma Administrators is that the current position is that the investigation into the potential claims continues following the latest disclosure of the ISDA Agreement. They seek an order that the administration should be extended for a further period of one year with them in sole control that the enquiries can be concluded one way or another.

36. In his skeleton argument, Mr Mace argues that the cause of the delay in relation to the investigations of the Quantuma Administrators is a perceived unwillingness on the part of the Bank to provide certain documentation. The Bank denies that this is the case. In response, Mr Amey took me to the *inter-partes* correspondence which clearly show that rather than there being a consistent push for information by the Quantuma Administrators, the requests that were made were sporadic. When they were made, they were promptly and comprehensively dealt with by the Bank, only for there to be further lengthy periods of silence from the Quantuma Administrators. He went on to submit that the Bank received a request relating to original documents shortly before the hearing before me. These documents were the subject of an ongoing search to establish their current existence which ultimately gave rise to the production of the ISDA Agreement.

The use of the statutory investigatory powers by the Quantuma Administrators and their reasons not for using them.

37. To the extent that there was any refusal to provide documents (which I do not accept), I expressed my surprise during submissions that the investigative powers conferred by Act on the Quantuma Administrators were not deployed by them. They rely on an inability to fund as their reason. I do not find that to be persuasive. The importance of the funding arrangements provided to them by Ms Davey was critical to their being appointed in the first place and their clear recitation in the Administration Order underlines their importance. Once the bankruptcy order was made against her, it was clear that the only source of funds for the payment of their costs, expenses and disbursements would be from the proceeds of a successful claim or from the funding of the potential claims from an alternative source. This is not a case where the inability to fund is due to the lack of realisable assets in their hands. The lack of funding was caused by the bankruptcy of the sole funder of the Quantuma Administrators. Once that occurred, there was a choice. Either the Quantuma Administrators could resign by giving notice in writing to the Court under Sch. B1, para 87(2)(a) or, if they decided to remain in office, they would have to fund their costs and expenses personally to the extent they were unable to obtain litigation funding from the market. They elected not to resign but to continue in office at their own expense. Having adopted that course, it is simply not open to them rely on an inability to fund an application to justify a delay in making progress in the delivery up of documents and to place the blame on the Bank for that delay. The decision not to pursue an application to utilise the

investigative powers conferred upon them by the Act was down to a decision not to fund such an application themselves. Whilst that is an entirely understandable commercial decision that they are perfectly entitled to take, it is no justification for failing to utilise the powers conferred upon them under the provisions of the Act and subsequently then to attempt to blame the Bank for a lack of perceived cooperation as the true cause of the delay.

Do the Quantuma Administrators have locus standi to pursue the assigned claims?

38. The question now arises as to whether the Quantuma administrators have any *locus standi* at all to bring any claim against the Bank in the light of the assignment of such claims to Ms Davey on 23 September 2016. In its reply to the submissions of the Quantuma Administrators, the Bank reiterated its concerns that as a result of the Quantuma Administrators' assignment of the claim by them to Ms Davey and the vesting of the right to pursue it in her bankruptcy becoming vested in her trustees in bankruptcy in 2019, their right to pursue it was unclear to say the least. This was a matter that I put to Mr Mace at the hearing. He was unable to deal with it at the hearing and it was not included in his subsequent submissions no doubt because he had not seen the submissions of the Bank on this point when he served them. I asked for the matter to be clarified which resulted in an explanation being circulated by the Quantuma Administrators to the parties on this point. They complied with my request by the circulation of a letter on 22 November 2022. I am obliged to them for their clarification.

39. It appears that there is a degree of uncertainty, and a dispute exists between the parties as to the terms and effect of the assignment in the context of the terms of the administration order, the ability for the claims under the various agreements to be assigned without the permission of the Bank under their terms and the consequence of so doing if this is indeed the case. In the light of that dispute and the fact that this might be the subject of a further application should the claims be pursued, I am disinclined to comment further other than to acknowledge that these are matters of interpretation for another occasion should the need arise.

Should the Teneo Administrators step down from their involvement completely.

40. Mr Mace submitted that as the Teneo Administrators have concluded their work is done and the company should be dissolved, they should simply step down and leave the Quantuma Administrators to deal with the liquidation as sole liquidators. This is a position that the Bank vigorously contests. They are the principal secured creditor with a substantial shortfall, whatever the outcome. The Act recognises the importance of the views of secured creditors in the administration process, particularly after the amendments introduced by the Enterprise Act 2002 which effectively promoted the procedure of administration above administrative receivership. Mr Mace sought to persuade me that as the potential respondents to the potential claims, that in some way disenfranchised them. I do not accept that this is the case. The conspicuous delay in prosecuting those claims is at the very least, noteworthy. There is some doubt as to whether the potential claims will ever be pursued. In the meantime, the Bank are, in reality the secured creditor and the only party with an economic interest. There is no justification for disregarding their views. There is no evidence of the Bank seeking to impede the investigation. Indeed, the reverse is true by the continuation of its engagement with the requests for information raised by the Quantuma Administrators. There is no evidence of them seeking to adopt anything other than a constructive engagement with the process, which I find is driven by a desire to recover what they are entitled to receive from the insolvent estate and then to move on.

41. To the extent that Mr Mace pressed the point, I decline to follow his invitation to place the Company into liquidation and to appoint the Quantuma Liquidators as sole liquidators. The issue is whether it is appropriate to order a liquidation at all, bearing in mind the obligation imposed on administrators is to ensure that once the purpose of the administration has been achieved, the administration process will come to an end. The Teneo Administrators believe that once the final distribution to the secured creditor is made, the objective of the administration will have been achieved and the company should proceed along the dissolution route.

Should dissolution be ordered and the application of the relevant authorities.

42. If dissolution is to be ordered under Sch. B1, para 84(1) must be engaged. This is in turn determined by whether there is property to distribute to the general body of creditors. This question turns on whether the Quantuma Administrators' assertions that the potential claims and the claims against McBrides do constitute unrealised property capable of funding a distribution. The Bank has made it clear that it denies all liability should any claims be pursued. In his submissions Mr Amey set out in some detail the views of the Bank that that any such claims lack merit; that all claims issued by Ms Davey and the companies she controls have been unsuccessful and that any such claims are either ill-founded on the facts or potentially statute barred. I was referred to Sealy & Milman's *Annotated Guide to the Insolvency Legislation 2022* notes that:

> "*Once the administrator has reached a conclusion that the property is insufficient,* ***he has no discretion to do otherwise than proceed to a dissolution****: only the court can determine that the administration should continue"* [emphasis added].

43. The court may disapply Sch. B1, para 84(1) upon an application issued under the provisions of Sch. B1, para 84(2) which confers a discretion to disapply the otherwise mandatory obligation imposed by Para 84(1).

44. Mr Lupi referred me to the decision of Sales J (as he then was) in *Re Hellas Telecommunications (Luxembourg) II SCA (In Administration)* [2011] EWHC 3176 (Ch). Once again there was no issue between the parties as to the principles that apply in this case which both Mr Lupi and Mr Mace adopted in their written submissions. This case also involved a dispute as to the future direction of an administration, this time involving an informal creditors' committee and the administrators. Applying much the same approach as described above in relation to the meaning of "*thinks*" in relation to Sch. B1 para 79, Sales J noted (at [83]) that the Edennote Test applied to a conclusion by an administrator under Sch. B1 para 84(1), stating:

> *"It was common ground that it is possible to challenge a conclusion of an administrator under paragraph 84(1) that he thinks there is no property of a company available to make a distribution on the basis that the conclusion is irrational,* ***in the sense that no reasonable administrator in the particular circumstances could properly reach that conclusion***."

45. As to whether there were viable claims in that case, the administrators had concluded that there were no such claims "***which would offer any reasonable prospects of success so as to be worth pursuing***" (at [54]). This followed extensive investigations, and the instruction of suitable legal advisers (at [53]). It was not disputed by the ICC that the administrators' conclusion was rational in that case (at [83]). On this issue, Sales J concluded (at [90]):

> "*It is also the case that the Administrators have conducted appropriate investigations of the affairs of Hellas II and have reached the rational and lawful conclusion as a result that, in their judgment, the company has no viable claims likely to result in an increase in the property available for distribution to creditors*".

46. However, on the facts of that case despite the conclusion drawn on the viability of the claims, there were other valuable cash assets that the administrators had overlooked.

47. In this case the Teneo Administrators acknowledged that the Quantuma Potential Claims and the Quantuma Potential McBrides Claims are carved out from the Teneo Administrators' responsibilities and powers under the Angelic MoU. They are neutral on the Property Issue. They say that it is for the Court to decide that they constitute available property and/or it is rational for the Quantuma Administrators to consider that the relevant claims offer any reasonable prospects of resulting in distributions for creditors to be worth pursuing.

48. Mr Lupi in his skeleton argument and his oral submissions did point out that the real issue is whether the relevant claims would offer reasonable prospects of success to be worth pursuing. He drew my attention to the absence of funding. Counsel's advice on the merits does not appear to be available and that any such claims would have to exceed £17 million

to generate any benefit under the circuity argument; a point that Mr Mace challenged on the basis of his interpretation of the potential recovery if the allegations of forgery were made out. This was a potential claim that may be directed at the very essence of the banking arrangements that the Company had originally agreed to. This was slightly at odds with the evidence that had been filed, where in his statement of 26 May 2021, Mr Hosking described the combined quantum of the Quantuma Potential Claims and the Quantuma Potential McBrides Claims as being "*into seven figures*". On its face, that would be insufficient to resolve the circuity issue. This said Mr Lupi would not satisfy the circuity argument which required the total quantum to be in eight figures rather than seven. However, in fairness to Mr Hosking, it is relevant to point out that this was before the search for documents had been instigated by the Bank.

49. Mr Lupi did draw my attention to the latest evidence where it is unclear as to whether the Quantuma Administrators are as a matter of fact of the view that the likely quantum of these claims would exceed £17 million. Further, no figure appears to be put on the maximum value of the Quantuma Potential McBrides Claims. If that is so, Mr Lupi invited me to consider that if the concerns outlined above cannot be addressed, there would be some doubt as to the rational basis for concluding they are "*worth pursuing*" in the circumstances of this case.

50. No proceedings have been issued by the Quantuma Administrators. Some enquiries do continue. Whether they will render anything productive is very much in dispute. Both the Bank and Teneo have made submissions concerning their views of the prospects of success in the context of the test set out by Sales J in *Hellas.*

51. The recent searches are directed to a new investigation concerning the allegation of forgery some time ago in respect of signatures on significant documents. The Bank have quite rightly engaged with this request and produced a wet ink version of the original ISDA Agreement. The Quantuma Administrators do not accept that the signature on that agreement is genuine. They wish to continue their investigations into the potential claims. Whilst there are several compelling reasons to believe that the claims are speculative to say the least, the issues over the veracity of signature of the ISDA Agreement just get over the line for me to allow the investigations to continue. I must bear in mind that they are before me in the context of a submission that their pursuit by the Quantuma Administrators would be irrational. This is not an application to strike out on the grounds of limitation. Such an application may be issued in due course if the circumstances deem it appropriate to do so. Whilst their pursuit by the Quantuma Administrators might be described in all the circumstances as ambitious, I cannot dismiss it as irrational

52. I make no criticism of the Teneo Administrators or the Bank as to the positions they adopted. However, I feel that in the interests of justice, I should allow these investigations to continue. The question now is under what regime should they now proceed.

(1) Sales J in *Hellas* considered that there was property available for distribution. He then set out the considerations that the court should consider when exercising its discretion to order a winding-up. Again, there was no dispute between the parties as to the application

of the relevant legal principles and I shall rely on Mr Lupi's summary in which he set out the following factors that the Learned Judge took into account:

(a) In general, administrators have no proper interest of their own at stake when addressing the question whether the company should be dissolved or put into liquidation (at [93]).

(b) The views of a significant proportion of the unsecured creditors, who were unopposed and would have been entitled to petition for winding up were taken into account (at [87]). There would be nothing to stop such creditors from petitioning to put the company into liquidation. Sales J continued at [88]: "*In the ordinary course, if creditors wish an insolvent company to go into liquidation in order for its affairs to be examined by a liquidator and there is no significant opposition from other creditors, the court will accede to such an application*".

(c) The court will not order a winding up though after an investigation by administrators if to do so would serve no useful purpose. This was based on the principle that "*the court will not act in vain*" (at [90]).

(d) However, the Court should also ask itself whether there is a fair or reasonable prospect of a liquidation being able to push further down the same avenues of inquiry as the administrators or being able to explore additional avenues which may potentially be relevant, but which do not appear to have been the subject of close critical evaluation by the administrators (at [91]).

(2) Having concluded that it was appropriate for the company to go into compulsory liquidation on the facts (at [95]), Sales J ordered that the administrators have their Sch. B1, para 98 discharge from liability to take effect 28 days from the filing of the final report (at [96]-[97]).

53. The Teneo Administrators are neutral on this issue. They have no proper interest in the outcome of the question. The next point is whether and to what extent the Bank's views should be considered. It is their position that if there is to be a liquidation, it should be on the basis that its views should be considered. Mr Mace invites me to disregard them. He relies on the position of the First and Second Administrators, there are no realisations to be made and as a result, I should disregard the interests of the Bank. He relies on the decision of the Court of Appeal in *Edengate Homes (Butley Hall) Ltd, Re* [2022] EWCA Civ 626 at [36] where delivering the judgement of the Court, Males LJ stated:

"In my judgment these authorities demonstrate that the judge's approach to the issue of standing was correct. It is not sufficient that an applicant for relief under section 168(5) is a creditor of the insolvent company. It must in addition have a legitimate interest in the relief sought. Where the application is to set aside a disposal of property by the liquidator, including the assignment of a claim, an applicant will have a legitimate interest if it is acting in the interests of creditors generally. Typically, that will be the case when the effect of the relief sought will be to maximise the assets of the estate. But an applicant will not have standing if the relief sought is contrary to the interests of the creditors as a class, as it will be where that will result in a lesser recovery. This concept can be expressed in a variety of ways. "Where an application may be made as 'a creditor' then it must be made by that creditor in his capacity as such (and not in any

other capacity)": Re Zegna III Holdings Inc [2009] EWHC 2994 (Ch), [2010] BPIR 277 at [24] per Mr Justice Norris; "whether an application in a liquidation or other insolvency process is really for the benefit of the creditors as a whole": Nero Holdings Ltd v Young [2021] EWHC 1453 (Ch), [2021] BPIR 1324 at [59] per Mr Justice Michael Green; or as the judge put it at [34], the applicant's "interest in the outcome of the application must also be aligned with the interest of the class as a whole and it must not have a collateral interest which transcends the class interest". However, it is put, the essential point is clear."

What is the appropriate weight to be given to the views of creditors on these issues?

54. Mr Lupi met this point by adopting the starting point as described in *Hellas* where, if there is to be an end to the administration, creditors' views as to next steps are entitled to be accorded weight by the Court. The weight to be accorded will vary from case to case depending on the circumstances. But where the creditor in question has the primary interest in the administration, he submitted that the weight to be accorded to its views as to the exit route is considerable. He took me principally to the decision of Norris J in Re *Graico Property Co Ltd (In Administration)* [2016] EWHC 2827 (Ch) which was another case where the secured creditor was in favour of the conversion to a winding up, Norris J noted (at [9]) that "*the administration is effectively being conducted now, as always, for the benefit of LWL* [the secured creditor]. *The unsecured creditors, in the sum of some £507,000, do not stand to get anything out of the administration*." In providing justification for this conclusion, Norris J said at [20]: "*LWL supports the course taken by the administrators. The administration is being conducted for the benefit of LWL*."

55. As things presently stand, the Bank is the largest secured creditor. Even after the payment of £500,000 there will still be a shortfall of some £17 million. Whilst the Bank has been threatened with proceedings, none have been issued. The investigations are continuing.

56. As Mr Lupi submitted, it does seem to me that it is plain from the cases cited above that the Bank's views should be considered when it comes to a choice as to an exit route from administration. Neither the Quantuma Administrators nor the Teneo Administrators are properly interested in this question. With that starting point, it would be surprising if the views of the secured creditor, for whose benefit the administration is being conducted pursuant to the third statutory objective, are entitled to anything other than considerable weight; particularly given the comments of Norris J in *Re Graico*. I do accept that the views of the Bank do carry considerable weight in this case and I note their strong desire that the Teneo Administrators should be appointed joint liquidators if I order a liquidation.

57. As previously stated, the Bank's primary position is for dissolution. If I decide that dissolution is not appropriate, it has a strong preference for the appointment of the Teneo Administrators as joint liquidators. Mr Amey for the Bank submits unsurprisingly that it accepts that it cannot use its position as a creditor to stifle a legitimate claim. It is however perfectly entitled to protect its position by inviting the court to adopt its strong preference for the appointment of joint liquidators. It is understandably concerned that if the liquidation is to be ordered it should be subject to certain obligations that the Court can

impose pursuant to its powers of supervision over its Officers. It prays in aid of its position the following points. First, the Teneo Administrators are familiar with the estate and issues that have arisen over the course of the administration since 2016 and that strangers to the liquidation would incur unnecessary cost for them to get up to speed and second, Teneo (as Deloitte) were originally nominated by the Bank as administrators. I am not sure that the second point adds much to their position. As I have mentioned, administrators are officers of the Court and owe their duties to it as such. In addition, the Bank requests a reporting requirement for the liquidators to report to Court every six months to provide updates as to the progress of their investigations and why their appointment is still required.

58. In his fourth witness statement, Mr Wormleighton has confirmed that the Teneo Administrators are prepared to take an appointment as joint liquidators with the Quantuma Administrators based on the existing delineation of powers and responsibilities under the Angelic MoU. Mr Mace submitted that the administration should come to an end and that any subsequent liquidation should be conducted by the Quantuma liquidators alone. That position had changed by the hearing before me, and Mr Hosking stated in his evidence that the Quantuma administrators would not object to a joint appointment as joint liquidators with the Teneo Administrators. To that end, a draft liquidation memorandum of understanding was circulated to the Quantuma Administrators' solicitors for comments on 4 October 2022, shortly before the hearing before me on 7 October 2022. I was informed that this procedure mirrors the position adopted by Rose J in *Re Angel Group Limited*, where she approved entry into the Angel Group MoU in respect of the Angel Group companies.

59. Consistent with their obligations of full and frank disclosure, the Teneo Administrators drew my attention to the following matters which are revealed in the ninth witness statement of Mr Hosking. First, they referred me to an email exhibited to that witness statement from Mr Kevin Hollinrake MP in support of the Quantuma Administrators' opposition to the dissolution. Mr Hollinrake is chairman of the All-Party Parliamentary Group on Fair Business Banking. Having considered it, I do not think that it assists me in the determination of this application other than simply to note the disclosure of the interest of the APPG in this case.

60. Second in his tenth witness statement Mr Hosking refers to the possibility of a private prosecution by Ms Davey against undisclosed parties in respect of criminal actions pre-dating the Company's administration. An email giving notice was copied to both the Quantuma Administrators and the Teneo Administrators in this regard on 10 June 2022. It is understood that a further letter was received from Ms Davey's solicitors in this regard on 3 October 2022. This again does not add a great deal. Ms Davey is not prevented from pursuing the individuals whatever the outcome for this application

61. Finally, I was referred to a putative claim by AHDL against the Company, referred to in Hosking-7 and Hosking-8, which appears not to have been progressed since December 2021 when it first came to light. Again, save to acknowledge its existence, it does not assist me in determining the issues of this application.

62. For completeness, I should also mention the settlement agreement issue. This appears to relate to the settlement of certain claims by Teneo in their capacity as administrators of the Angel

Group Limited which is not a party to this application. To the extent that the Quantuma Administrators consider that they have certain rights concerning the disclosure of this document, they must issue a fee paid application in that liquidation which is not before me on this application. In any event it was not pursued by Mr Mace in either his written or oral submissions. Above and beyond that I need say no more.

Disposal.

63. Having considered all the points above, it does seem to me that I should not order dissolution at this stage. Whilst I note with some concern the length of time this administration has taken, the comments that other judges have made on the extension applications, the fact remains that enquiries are continuing. I should allow them to continue. Given that the administrators performing their functions, have achieved the third objective listed in in Para. 3 of Sch. B1 of the Act and that the only matters that remain are the enquiries to which I have referred, the administration should now come to an end and any investigations should be allowed to continue, but in a subsequent liquidation.

64. I will make a compulsory winding up order without a petition needing to be presented pursuant to the decision of Neuberger J (as he then was) in *Lancefield v Lancefield* [2002] BPIR 1108 at [111F].

65. In making the order I shall appoint both the Teneo Administrators and the Quantuma Administrators as joint liquidators. I have considerable sympathy with the position of the Bank in enduring a further period of uncertainty whilst the current enquiries continue. The Bank remains a creditor in respect of the substantial shortfall. There is no reason to disregard its views in relation to the identity for the joint liquidators; particularly in relation to claims where substantial uncertainty remains over their merit and their pursuit. There will be an obligation on the Quantuma Liquidators (as they will then be) to report to the Court every six months so that the court can be informed as to the progress that has been achieved and the steps they propose to take. I should record the concern of the Court as to the time that these investigations have taken to date. I trust that this will be taken on board moving forward. I note the position adopted by the Bank concerning the issues that surround the claims in the context of limitation and delay. The position of the Bank could not be made clearer. However, the question as to how to deal with any proceedings will be decided on another occasion.

66. I am grateful to all counsel for their submissions both written and oral. I will hear further submissions on any other consequential relief that many be appropriate.