

Neutral Citation Number: [2024] EWHC 1090 (Ch)

Case No: CR-2022-001919

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

Rolls Building
Royal Courts of Justice
7 Rolls Buildings
London EC4A 1NL

Date: 10 May 2024

Before:

INSOLVENCY AND COMPANIES COURT JUDGE GREENWOOD

IN THE MATTER OF PARANOID EXPEDITION ENGINEERING LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Between:

**THE SECRETARY OF STATE FOR BUSINESS
AND TRADE**

Claimant

- and -

HELEN ANDERSON

Defendant

Ms Giselle McGowan (instructed by the Insolvency Service, Legal Services Directorate) for the
Claimant
The Defendant, Ms Helen Anderson in person

Hearing dates: 29-31 January 2024

This judgment was handed down remotely at 10.30 am on 10 May 2024 by circulation to the parties or their representatives by e-mail.

JUDGMENT

ICC JUDGE GREENWOOD:

Introduction

1. This is the trial of an application made by the Secretary of State for Business and Trade for a disqualification order under s.6 of the Company Directors Disqualification Act 1986 (“**the CDDA**”) against Ms Helen Anderson (“**Ms Anderson**”) in consequence of her conduct as a director of Paranoid Expedition Engineering Limited (“**the Company**”).
2. The Company was incorporated on 3 June 2014 and went into administration on 13 January 2021 on the application of Mr Robert Pearson (“**Mr Pearson**”, a director, albeit in that respect acting in his capacity as a creditor); its administrators are Mr Matthew Hardy and Mr Andrew Turpin, both of Poppleton & Appleby in Birmingham. Its business comprised the manufacture and sale of engineered parts and accessories for motor vehicles, as well as the maintenance and repair of motor vehicles; it operated from premises at Units 2, 8, 11 and 18, Waterloo Park, Waterloo Rd, Bidford on Avon, Alcester, Warwickshire B50 4JG, which comprised a factory, a workshop, storage facilities and offices. The joint administrators’ proposals dated 8 March 2021 stated an estimated deficiency as regards creditors of £1,339,979.02.
3. As at administration, the Company’s directors were Ms Anderson (appointed on incorporation), her husband, Mr William Anderson (“**Mr Anderson**”, appointed on 17 November 2015) and Mr Pearson (appointed on 17 January 2017). Each of Mr and Ms Anderson held 30% of the Company’s issued shares; Mr Pearson held 25%.
4. Mr Anderson is an engineer; he was responsible for the design, manufacture and installation of the Company’s products.
5. Until about 2017, when her involvement in the Company’s business became her sole professional occupation, Ms Anderson had pursued (in addition to her directorship) an independent career in financial services; from about 2017, if not before, she was primarily responsible for the management of the Company’s financial affairs and administration. Progressively, in the course of 2018/2019, Mr Anderson became extremely unwell; he was diagnosed with a serious and life changing disease. By the end of 2019, he was unable to work at all, four of the Company’s seven employees had left, and Ms Anderson had assumed responsibility for the Company’s day to day management. On 23 March 2020, the government introduced the first national lockdown measures in response to the Covid Pandemic. By about May/June 2020, according to Ms Anderson,

the Company's remaining three employees (a factory manager, a "production operative" and an administrator) had also left.

6. Mr Pearson invested in the Company in about 2016 (and introduced further sums subsequently). In addition to providing investment, he was responsible, as a director, for sales and marketing.
7. On 2 September 2016, a second company, Paranoid Engineering Limited ("**PEL**") was incorporated. Its original purpose was to be the corporate medium through which Mr Anderson worked on a specific project which involved the design of his own vehicle, but it was subsequently used more broadly, in respect of his consultancy work and other discrete projects. As at 1 September 2018, its shareholders were Mr and Ms Anderson. Its directors were Ms Anderson (from incorporation), Mr Anderson (from 18 September 2017) and Mr Pearson (between 18 September 2017 and 11 December 2020, when he resigned). PEL's "*Micro-entity Accounts*" to 30 September 2019 (approved on 12 May 2020) recorded current assets in the sum of £13,700, and net current assets in the sum of £13,100; no subsequent PEL accounts were in evidence.
8. On 20 December 2019, Ms Anderson (alone) met with an insolvency practitioner, Mr Adrian Allen ("**Mr Allen**") of RSM Restructuring Advisory LLP, and was given some advice, albeit informally and not in writing. Although there was a dispute regarding the events of that meeting (of which there were no contemporaneous notes or records) it was essentially common ground that at least part of its purpose was to discuss the possibility of a sale of the business. During 2020, according to Ms Anderson, that possibility was pursued. Although there was little detail, and no documents, she said that there were three potential buyers, two of which began a process of due diligence, neither of which came to fruition. Again according to Ms Anderson (although her recollection and the evidence in this respect was unclear) the first apparently withdrew interest at some point after the first lockdown, in about June 2020, and the second withdrew later, at about the end of August 2020, after which she said that she advanced an alternative proposal, to sell the Company's intellectual property and brand rights, with a separate sale of physical assets.
9. Also in 2020, the Company applied for and was given two loans.

10. First, on 23 April 2020, it applied to Art Share (Social Help Association for Reinvesting In Enterprise) Limited (“**Art Share**”). According to its documents and correspondence, Art Share operates a scheme that “*provides loans between £10,000 - £150,000 to West Midlands based businesses that have been unable to raise sufficient, if any funding from their bank*”. The Company’s application, completed by Ms Anderson, stated, amongst other things, that a loan had been sought from HSBC under the Coronavirus Business Interruption Loan Scheme (“**the CBIL Scheme**”) but that the Company “*had not heard anything back*”. It stated the “*Cost of the Project*” as £140,000, and sought a loan of £50,000 (the Company’s proposed contribution was said to be £100,000). It said that “*We are a specialist automotive engineering company based in Bidford-on-Avon. We have been trading since June 2014. Our business has grown year on year (as have our profits) which is demonstrated in our registered accounts, and this trend is continuing*”; that “*We have a team of highly skilled Engineers who have studied in this field at University. Each member of our Engineering team has had several years of employment within similar fields, prior to joining Paranoid. The skills of our Engineering Director are unrivalled within the industry and his R & D capabilities have pushed the business to the forefront of the sector*”; and that “*there are currently 7 people within the business although our staff are currently furloughed*”.

11. The intended purpose of the loan was said to be: “*... for cash flow purposes to help us through the down-time in the business as a result of the Covid-19 crisis. The funds will be used to cover overheads, until such a time as we can return to work and receive payment in from our contracts*”; in addition, it was said that “*Part of the funding will be used to clear all back-log in payments to suppliers*”. It made no reference to the crisis precipitated by Mr Anderson’s illness, or to any current proposal to sell the business, or indeed, to the fact of various employees having by then left the business. Instead, it stated: “*We have previous funding from ART, in the form of 2 loans. A small one from 4 years ago which we intend to completely repay before drawdown of any new facility and a larger one which we took out 18 months ago. We have had a repayment holiday on the current loan as we were planning to sell the business and repay in full, however, we have re-evaluated the situation and now feel it is best to continue within the business and build it back to a position of strength to reassure any potential future buyers that we have the ability to weather any storm and still come out strong.*”

12. In the event, a Loan Facility Agreement was entered into on 4 June 2020 (“**the CBIL Agreement**”) between the Company and Art Share, by which Art Share agreed a facility not exceeding £105,000, for use “*for the provision of working capital and to pay off*” the two existing loans. By Clause 19.1, Art Share’s ability to provide the loan was made dependent upon receipt of a guarantee from the government under the CBIL Scheme. On 4 June 2020, £60,729.85 was received into the Company’s bank account at HSBC from Art Share.
13. The second loan was a “*Bounce Back Loan*” in the sum of £50,000 from HSBC dated 14 May 2020, and made for “*the purpose of providing economic benefit to your business including, but not limited to, working capital or investing in your business*” (“**the BBL Agreement**”). None of the prior application documents were in evidence. The whole sum was paid into the Company’s bank account on 14 May 2020, at which point the account had been in credit in the sum of £2,241.41.
14. Subsequently, between 8 June 2020 and 12 September 2020, the following payments (for which Ms Anderson accepted sole responsibility) were made by the Company, from its bank account, to PEL, in the aggregate sum of £137,810 (“**the Payments**”):

8 June 2020	£99,000
29 June 2020	£150
30 June 2020	£100
2 July 2020	2 x £40
3 July 2020	£500
5 July 2020	£80
17 August 2020	£35,000
5 September 2020	£500
11 September 2020	£200

12 September 2020	£2,200
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15. Immediately after the last payment was made, on 12 September 2020, the Company’s account was in credit in the sum of £4,949.28. In the period from the date of the first payment to 13 January 2021, when the administrators were appointed, the total sum paid from the Company’s account was £164,112. Of the creditors listed in the administrators’ proposals, the only creditor who received any payment in that period was Mr Anderson, who received a total of £2,420. In the same period, the only receipts of any substance (apart from the two loans) were a VAT repayment of £8,648.41 on 27 May 2020, and a Corporation Tax repayment of £49,312.53 on 29 July 2020.
16. The Claimant’s case concerned the Payments made by the Company to PEL. It comprised two parts, with some common ground.
- 16.1. First, that the Payments were to the detriment of the Company’s general body of creditors, at a time when the Company was insolvent, and when Ms Anderson knew or ought to have known that it had (in the language of the first affidavit of Ms Jennifer Connor of the Insolvency Service, in support of the application) “*no reasonable prospect of success*”. It was alleged that the Payments were gratuitous, or not adequately explained, and in any event, that they were detrimental to the Company’s creditors.
- 16.2. Second, that sums borrowed under the BBL Agreement and the CBIL Agreement were used in breach of those agreements, because they were used neither as “*working capital*” nor for “*the purpose of providing economic benefit to [the] business including, but not limited to, working capital or investing in [the] business*”, but were instead used to make the Payments either gratuitously or for reasons not adequately explained, and in any event, for no economic benefit and not for the purposes of the Company’s business.
17. Ms Anderson’s defence was the Payments were made to PEL in repayment of a debt owed to it by the Company incurred as a result of financial support having been provided by PEL to the Company, and in order to “*allow for*” PEL to provide “*ongoing support ...*

if necessary, dependent upon the trajectory of the pandemic which at the time was completely unknown"; indeed, she said that in the period after the Payments began, PEL had *"reintroduced"* further funds of £35,689 to support the Company.

18. In their Director Questionnaire dated 25 June 2021, Mr and Ms Anderson (who jointly completed a single Questionnaire) referred to and incorporated a letter from their solicitors at that time, Morgan Phelps LLP (also dated 25 June 2021, and also sent on behalf of PEL) in response to a letter before action sent on behalf of the joint administrators. Morgan Phelps said, amongst other things, *"Given its low overheads, PEL was cash rich compared to the Company. It was therefore able to provide financial assistance to the Company on an ad hoc basis to ease cash flow pressures, for example, by making payments directly to suppliers, covering finance repayments and/or covering payroll. Upon advice from its accountant, the Company and PEL recorded these payments as an intercompany loan"*. Enclosed with that letter was a document purporting to be a breakdown of the alleged intercompany loan, and which Ms Anderson said showed sums paid both to PEL by the Company, and by PEL on behalf of the Company and/or for its benefit (**"the Payment Schedule"**). That document stated as follows:

Inter Company Account PEL: PEEL

Date Funds to PEEL; £ Fund received from PEEL; £ Outstanding balance; £ Purpose; Direct Payment Y/N

07/08/2018	10,000.00	10,000.00	Osbourne Clark on Account	Y
07/08/2018	12,915.00	22,915.00	Avon Capital	Y
07/08/2018	1,925.04	24,840.04	RAA Invoice	Y
07/08/2018	1,661.43	26,501.47	Upton Steel Invoice	Y
07/08/2018	1,162.40	27,663.87	Battery Megastore Invoice	Y
09/08/2018	1,320.00	28,983.87	Trumpf Invoice Payment	Y
29/08/2018	1,198.60	30,182.47	Payment to ART	Y
29/08/2018	292.24	30,474.71	Payment to ART	Y

31/08/2018	755.70	31,230.41	Payment to Armada Y
01/02/2019	1,226.70	32,457.11	J Close Salary Payment Y
27/02/2019	4,277.25	36,734.36	Dometic Invoice Y
30/04/2019	4,100.00	40,834.36	Osbourne Clark on Account Y
03/05/2019	266.84	41,101.20	FCS Invoice Y
15/05/2019	669.38	41,770.58	Hitachi Capital Invoice Y
18/05/2019	234.00	42,004.58	Newtown packaging Invoice Y
21/05/2019	51.29	42,055.87	Richards Packaging Invoice Y
23/05/2019	129.48	42,185.35	Polymax Invoice Y
27/05/2019	24.00	42,209.35	AEW Paddock Invoice Y
27/05/2019	36.30	42,245.65	AEW Paddock Invoice Y
14/11/2019	215.25	42,460.90	Proplant Invoice Y
21/11/2019	219.98	42,680.88	FCS Invoice Y
26/11/2019	2,576.42	45,257.30	Armada Invoice Y
26/11/2019	178.00	45,435.30	Bidford MOT Invoice Y
26/11/2019	167.04	45,602.34	In2 Components Invoice Y
28/11/2019	192.10	45,794.44	FCS Invoice Y
29/11/2019	238.51	46,032.95	WDS Invoice Y
29/11/2019	139.34	46,172.29	Elesa Invoice Y
29/11/2019	11,488.64	57,660.93	PEEL net Payroll Y

02/12/2019	1,670.32	59,331.25	Funding Circle payment Y
26/12/2019	12,953.22	72,284.47	Avon Capital Y
31/12/2019	1,316.61	73,601.08	PEEL payroll N Consolante Y
31/03/2020	6,000.00	79,601.08	PEEL payroll Y
22/04/2020	666.61	80,267.69	PEEL payroll N Consolante Y
23/04/2020	2,315.00	82,582.69	Avon Capital Y
30/04/2020	6,000.00	88,582.69	PEEL payroll Y
29/05/2020	6,000.00	94,582.69	PEEL payroll Y
08/06/2020	16,000.00	110,582.69	T Roberts Loan Payment Y
08/06/2020	75,765.18	34,817.51	REPAYMENT
08/06/2020	23,234.82	11,582.69	REPAYMENT
29/06/2020	150.00	11,432.69	REPAYMENT
30/06/2020	100.00	11,332.69	REPAYMENT
30/06/2020	6,000.00	17,332.69	PEEL payroll Y
02/07/2020	40.00	17,292.69	REPAYMENT
02/07/2020	40.00	17,252.69	REPAYMENT
03/07/2020	500.00	16,752.69	REPAYMENT
05/07/2020	80.00	16,672.69	REPAYMENT
08/07/2020	11,500.00	28,172.69	T Roberts Loan Payment Y
31/07/2020	6,000.00	34,172.69	PEEL payroll Y

07/08/2020	4,011.00	38,183.69	Avon Capital
07/08/2020	35,000.00	3,183.69	REPAYMENT
19/08/2020	155.00	3,338.69	Budget Skips Invoice Y
31/08/2020	6,000.00	9,338.69	PEEL payroll Y
05/09/2020	500.00	8,838.69	REPAYMENT
11/09/2020	200.00	8,638.69	REPAYMENT
12/09/2020	2,200.00	6,438.69	REPAYMENT
24/12/2020	255.00	6,693.69	HMCTS Payment Y
24/12/2020	528.00	7,221.69	HMCTS Payment Y
11/01/2021	1,240.80	8,462.49	Bermans Solicitors Invoice

19. In connection with that document, Ms Anderson produced no supporting invoices, no documentary proof of payments made by PEL, and no other contextual documents or correspondence of any variety, whether with the alleged payees or otherwise. She said that she (and presumably PEL and her husband) had been told by Morgan Phelps that there was “*no requirement*” to provide anything more, despite requests made subsequently in correspondence by the Insolvency Service, in letters dated 22 July 2021, 10 September 2021 and 8 November 2021, in which they said that they were not able to accept the explanation given, and amongst other things asked for copies of PEL’s bank statements, details of the alleged “*payroll*” payments, and details of the alleged relationship with “*T Roberts*” (who had not appeared as a creditor in the list of creditors in the administration).

20. The only response to those requests was Morgan Phelp’s somewhat intemperate letter of 3 August 2021, in which they said that their clients considered that they had provided everything available to them, and accused the Insolvency Service of having pre-judged

the case and having acted covertly for the benefit of the administrators. Their response concluded, “*our clients are exhausted with the entire affair and, what they consider to be, the unjust, partisan and orchestrated witch hunt against them*”, and said that it might need to be left to the court to resolve the matter.

21. Ms Anderson denied that the Company was insolvent when it made the Payments, although she accepted that it had been affected by the government’s lockdown measures, which had severely interrupted its ability to trade; in any event she denied that it would have been reasonable to predict or anticipate administration (or any other insolvency regime) – and in particular, that it was not possible to predict an administration precipitated by Mr Pearson, a director and shareholder; instead, her case was that when the Payments were made, she genuinely believed in the prospect of a solvent sale of the business, and that she was engaged in the pursuit of that prospect.
22. The events that resulted eventually in Mr Pearson’s administration application arose out his personal guarantee of the Company’s obligations under a “*Finance Lease Agreement*” made with Armada Asset Finance (“**Armada**”) on 10 September 2019. That Agreement had been terminated by Armada on 16 April 2020, and on 7 May 2020, Armada had sent Mr Pearson a Letter Before Action threatening to serve on him a statutory demand within 7-10 days, and therefore threatening bankruptcy proceedings in the event of his failure to pay £61,145.95, the sum due, in short order.
23. In that context, on 27 May 2020, Ms Anderson emailed Sarah Ainley at Armada, and said, amongst other things:

“I have had a meeting via TEAMS this morning with the potential buyer for the business. It was very productive and they have confirmed that they do wish to move ahead with the purchase, which will allow us to fund the amounts owing to Armada. Unfortunately, our efforts to sell had ground to a halt amidst the Covid lock-down crisis as people waited to see what would happen and the impacts on our sector.

Obviously there is a process that now happens and we have been advised that it is possible that the sale could take up to 12 weeks to complete, even though both parties are keen to expedite this. We are in a fortunate position that the

company who are buying are interested in our IP catalogue and branding (rather than the physical business) and are absorbing it into their current, much larger business which means that the due diligence process will be reduced as they are interested in acquiring the assets as opposed to the actual condition of the underlying business.

Once this completes, we will be in a position to repay all amounts outstanding to Armada. In the short term, it would be possible for us to make monthly payments towards the balance to help to reduce and demonstrate our commitment.”

24. The following day, 28 May 2020, Ms Ainley replied, and said that *“You have asked if it is possible to make monthly payments towards the total debt due, now that the agreement has been terminated. We would of course accept interim payments towards the debt whilst the sale proceeds, so can you confirm the level of monthly payment you are proposing”*; she said that *“You are no doubt aware we have taken steps to enforce Robert's guarantee in light of the lack of response from anyone following failure to pay the contractual rentals, and so we cannot agree to allow matters to drift. Time will very much be of the essence in bringing matters to a conclusion and the debt being repaid in full”*.
25. On 14 May 2020, HSBC paid £50,000 into the Company's account under the BBL Agreement; on 4 June 2020, the Company received £60,729 from Art Share. However, no payment was made to Armada, and no agreement was reached with it. Accordingly, on Monday 8 June 2020 - the day on which the Company paid £99,000 to PEL - Mr Pearson emailed Ms Anderson, and said:

“Morning Helen,

Just wondered how things were progressing?

Sarah, at Armada, agreed to postpone legal proceedings till Friday 12 June (this coming Friday). If she's anything less than satisfied with progress she'll recommence immediately. Put simply, she wants the house equity and intends to get it.

It seems that there are 2 options:

Best Option: You (or I) supply details of the deal & regular updates. If she was getting regular updates she'd probably hold off legal although not confirmed. If possible it would help if we could make the interim payments you mentioned to her.

Only Other Option: Apply for a "Solvent Liquidation" and put an Insolvency Practitioner in to oversee the sale. This is far from ideal as it adds cost and unnecessary red tape but in the absence of feedback, it's the only thing that will prevent Sarah going for the house.

If you could give me a call that would be great."

26. Two days later, on 10 June 2022, Neil Davis & Partners Solicitors (“**NDP**”) wrote on behalf of Mr Pearson to Ms Anderson at the Company. Amongst other things, they recorded that Mr Pearson had been told by Ms Anderson “*that an offer has been received for part of the Company's IP, namely the sheet metal products supplied to Dometic UK ('the IP'). We understand that offer to be in the region of £275,000.00. You have advised our Client that such sale is likely to take place within 8 to 12 weeks' time*”, but that without any details or supporting documents in connection with that offer and proposed sale, Armada would continue with the proceedings threatened against Mr Pearson. They asked therefore whether, before 4pm on 11 June 2020, the following day, Ms Anderson could:

“1. Please confirm that an agreement has been reached in principle for the sale of the IP. In doing so, please provide any draft heads of terms or schedules of sale.

2. Please provide full and complete details of the sale of the IP to include the potential purchaser and when in fact the sale will be completed.

3. If however the sale of the IP is not likely to happen, please confirm why and if this is the case.

4. We are aware that you previously indicated to Armada that you were ready and willing to make monthly payments towards their claimed debt. Armada have communicated that they would be open to accept interim payments whilst awaiting the outcome of the sale of the IP. Please therefore confirm whether it is still your intention to make monthly payments to Armada. If so, how much will those monthly payments constitute and when can Armada expect to receive the first payment?"

27. On 25 August 2020, nothing of substance having been provided, NDP wrote again to Ms Anderson, again in connection with the action (still) threatened by Armada (and by another creditor, Peac (UK) Ltd) and again asking for details of the proposed sale, this time by noon on 27 August 2020.
28. According to her evidence, at the end of September 2020, as a result of the events and circumstances of the previous 12 months, including her husband's illness and the impact of the Pandemic on the business, Ms Anderson suffered a breakdown. She said that as a result she was unable to engage actively or properly with Mr Pearson. Having not received any response to their correspondence, on 6 October 2020, NDP wrote again, to Ms Anderson and said, amongst other things:

"Our previous letter contained a number of requests that pertained to the sale of the Company's Intellectual Property. Those requests remain unanswered.

The last time our Client heard from either you or Mr Anderson was six weeks ago, when Mr Anderson stated that the sale of the IP was at the latter stages of discussion. Nothing has been heard since. Given the lack of communication, our Client is concerned that the sale has either fallen through or that there never was a sale in relation to the Company's IP. We can only assume yours and Mr Anderson's silence and refusal to engage in correspondence follows from the assumption that our Client will bear the brunt of the creditor claims of the Company; he will not.

Our Client last working week visited the Company's premises. There was no one present nor was there any sign of activity. After speaking with the neighbouring businesses, they confirmed that they had not seen anyone at the

premises since last Christmas. Our Client expected the premises to be empty on the assumption that rent has not been paid, this however does not appear to be the case. We can assume all of the Company's assets remain at the Company's premises.

Our Client has to date held off pursuing any action against you, Mr Anderson or the Company so as to allow the sale of the IP to progress and complete. However, the assurances by you/Mr Anderson have dried up and our Client is now left with no other option than to take such action as is necessary to protect his position. Unless you update our Client and respond to the requests contained within our letter dated 10 June 2020 within 14 days of the date of this letter (i.e. by 20 October 2020), we are instructed to issue a winding-up petition against the Company on behalf of our Client in his capacity as a creditor.”

29. The reference to Mr Pearson’s capacity as a creditor, was to the sums that he had lent to the Company, to support its business.
30. On 10 November 2020, NDP wrote again to Ms Anderson. Amongst other things, they said that they had not received a response from Ms Anderson to previous correspondence, and that therefore Mr Pearson, “*on Friday, 06 November 2020 entered the Company's premises with both a locksmith and an asset valuer to ascertain and take control of the assets of the Company, in circumstances where the Company's business has apparently halted and Personal Guarantees are being called upon to pay Company debts*”. They said that Mr Pearson intended to realise the value of the Company's assets and have that value distributed amongst its creditors, and they suggested a voluntary liquidation.
31. Following an emailed response from Ms Anderson on 17 November 2020, in which she expressed her objections, on 4 December 2020, Mr Pearson wrote to demand repayment of £330,000, the aggregate sum which he claimed to be owed. On 8 December 2020, Mr Pearson emailed Mr and Ms Anderson, and told them that the goods he had seized were to be auctioned, and that he intended to apply for an administration order. Although Ms Anderson at that point sought legal advice, reported Mr Pearson to the Police, and sought an injunction to stop the goods being auctioned (some of which she said belonged to third parties) nonetheless, as stated above, on 13 January 2021, on Mr Pearson’s application, an administration order was made against the Company. Ms Anderson’s case was that the

Company would have recovered, had it not been for the Pandemic, together with the actions of Mr Pearson. The Claimant's case was that the events of November 2020-January 2021 were essentially irrelevant to her case.

32. Against that background, the principal issues of fact were as follows.

32.1. What was the purpose of the Payments: were they gratuitous, or in repayment of sums paid on behalf of the Company by PEL, and in order to allow PEL to give further support in the future? In any event, were they detrimental to the Company's unsecured creditors as a class?

32.2. Were the Payments made in breach of the BBL Agreement and/or the CBIL Agreement?

32.3. Was the Company insolvent in 2020, and in particular, during the period of the Payments? The Secretary of State's case was that as Ms Anderson knew, it was insolvent because it could not pay its debts as they fell due; Ms Anderson's case was that the Company was not insolvent because she had reached agreement with its creditors, and that in any event, she was engaged in negotiations for a solvent sale.

The Law

33. The principles were not in dispute.

34. S.6 of the CDDA provides, so far as relevant, that the Court shall make a disqualification order against a person, on an application under that section, where it is satisfied that: (i) that person is or has been a director of a company which has at any time become insolvent (defined as including entering administration) and (ii) that person's conduct as a director of that company makes that person unfit to be concerned in the management of a company.

35. In Re Structural Concrete Ltd [2001] BCC 578 at 586E-G, Blackburne J held that consideration of the issue of unfitness involved a three-stage process:

35.1. Do the matters relied upon amount to misconduct?

- 35.2. If they do, do they justify a finding of unfitness?
- 35.3. If they do, what period of disqualification should result?
36. In Re Grayan Building Services Ltd [1995] Ch 241 at 253E, Hoffman LJ (as he then was) said:
- “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 Unfit Directors) Proceedings Rules 1987. It must decide whether that conduct, viewed cumulatively and taking into account any extenuating circumstances, has fallen below the standards of probity and competence appropriate for persons fit to be directors of companies.”*
37. More specifically, causing a company to enter into a transaction (or transactions) to the detriment of the relevant company or its creditors may amount to misconduct sufficient to warrant disqualification. In Re Deaduck Ltd [2001] 1 BCLC 148, in allowing an appeal against a disqualification order based upon a charge of causing a payment to the detriment of the general body of creditors, Neuberger J (as he then was) took a two-stage approach to considering whether the charge was made out: (i) by considering the position of the company’s creditors immediately before and immediately after the payment was made, and (ii) then considering whether there was another reason why – even though the position of the creditors was plainly worse after the payment – the payments could still be said not to be to the detriment of creditors as a whole: [2001] 1 BCLC 148 at 156a - 158b.
38. Relevant to the issue raised by the allegation that the Payments were made in breach of the BBL Agreement and the CBIL Agreement, in Secretary of State for Business, Energy and Industrial Strategy v DEEA Construct Ltd [2023] EWHC 2084 (Ch), Chief ICC Judge Briggs held that a director had fallen below the standards of probity and competence appropriate for persons fit to be directors of companies where the director had given an inflated turnover when applying for a bounce back loan and the loan obtained under the scheme had not been used for the purpose for which it had been made: [19]-[21].

39. Ms Anderson sought to rely on the suspension of liability for wrongful trading that was effected by s. 12 of the Corporate Insolvency and Governance Act 2020 (“CIGA”) for certain periods, the first of which began on 1 March 2020 and ended on 30 September 2020, and the second of which was from 26 November 2020 to 30 April 2021.
40. Section 12(1) of CIGA provided: “*In determining for the purposes of section 214 or 246ZB of the Insolvency Act 1986 (liability of director for wrongful trading) the contribution (if any) to a company’s assets that it is proper for a person to make, the court is to assume that the person is not responsible for any worsening of the financial position of the company or its creditors that occurs during the relevant period*”.
41. Ms Anderson’s submission was that, in effect, in substance, she was being accused of wrongful trading under s.214 of the Insolvency Act, but that because of s.12 of CIGA, that accusation was impermissible. I do not accept that submission. Insofar as relevant, the effect of s.12 was, in effect, to prevent recovery under s.214, by compelling the court to proceed on the basis that the relevant director was not responsible for any deterioration in the position of the company’s creditors, and was not therefore liable to a contribution order. However:
- 41.1. it made no provision at all in respect of the CDDA, or for example, in respect of directors’ duties generally; in that regard it was silent;
- 41.2. there is no reason to think (and good reason not to think) that there was an intention to relieve directors of their obligations to act properly and in accordance with their duties during the Pandemic, or to relieve them of their obligations to meet “*the standards of probity and competence appropriate for persons fit to be directors of companies*”, or of the consequences of failing to do so under the CDDA; that a company is not solvent in consequence of government imposed lockdown measures, or more broadly, in consequence of the Pandemic - is no justification for a failure to meet required standards of conduct, although conceivably, the conduct appropriate to the standard, or required by or in satisfaction of it, might have been affected by the conditions of the Pandemic: in every case, a director’s conduct must be assessed in context.

42. The present case was not brought under s.214 or s.246ZB, and the Claimant does not accuse Ms Anderson of wrongful trading, whether formally or in substance; s.12 is therefore not relevant; it affords no excuse for acting to the detriment of a company's creditors, or causing a company to act in breach of contract (although in principle, whether or not certain conduct was in fact to the detriment of a company's creditors, or was excusable, or renders a director unfit, might be affected by the circumstances of the Pandemic).

The Witnesses

43. On behalf of the Claimant, Ms Jennifer Connor of the Insolvency Service made two affidavits, dated 16 June and 12 December 2022; not having herself been involved in the events in issue, she was cross examined only briefly; the substance of her evidence was comprised in the documents which she exhibited.
44. Ms Anderson represented herself, made three affidavits, and was cross-examined. In the assessment of her evidence, I accept that together with her husband she invested a good deal of time and effort in the business of the Company; I also accept that the events and circumstances of 2019/2020, both personal and commercial (and more generally, financial) were unusually demanding and that in the effective absence of her husband (from whom, at some point, she separated) she assumed much of the responsibility for the Company's business – Mr Pearson was not involved in the Company's engineering or mechanical repair operations, or in its day to day management or financial affairs; I also accept that a disqualification order would have serious consequences for her, and for her ability to work as an accountant, should that be what she wishes.
45. Having said that, possibly as a result of those circumstances, Ms Anderson gave evidence that I was unable to accept, and overall, I have treated her evidence with caution, particularly where unsupported by contemporaneous documents, or inconsistent with known or accepted facts. In support of that conclusion, one important example is as follows (others are referred to below).
46. Central to the case was the purpose of the Payments made to PEL. In that regard, in addition to the Payment Schedule explained above, and sent by Morgan Phelps to the administrators, were certain documents retrieved from the Company's own internal financial records (produced using SAGE accounting software) for which Ms Anderson

was responsible: first, a “*List of Purchase Payments & Bank Payments by Bank*”; second, a record of “*Supplier Activity (Detailed) Excluding No Transactions*”- the supplier in question being PEL (“**the PEL Supplier Activity Ledger**”); and third, a record of “*Nominal Activity*”, “*Temporary Overdraft Loan from PEE*” (“**the Temporary Overdraft Ledger**”). I shall consider those documents further below, and their inconsistency with the Payment Schedule, but for the moment, I refer to the accepted facts that: (i) all of the entries in respect of the period 11 July 2019 - 11 September 2020 included in the PEL Supplier Activity Ledger, and (ii) six of the eleven entries in respect of the period 28 February 2019 – 8 June 2020 included in the Temporary Overdraft Ledger, were added by Ms Anderson to the Company’s records on 14 January 2021 – the day after the administration order was made. That fact was referred to in Ms Connor’s first affidavit, and previously, in the Insolvency Service’s letter to Morgan Phelps dated 10 September 2021 (which asked for an explanation) but was not explained by Ms Anderson in either pre-action correspondence, or any of her three affidavits.

47. However, when asked about these entries in cross-examination, Ms Anderson, for the first time, advanced the explanation that she had been specifically asked to make them, after the administration began, by the administrators themselves – she said that she had not previously realised that she had been expected to give an explanation. I do not accept her evidence in either respect.

47.1. First, whilst not impossible, it would have been wholly unprofessional and improper for the administrators to have asked Ms Anderson to change the Company’s internal accounting records in these respects after the commencement of the administration; further, they had no obvious reason to do so. It is therefore inherently unlikely that they made the alleged request.

47.2. Second, the circumstances of the commencement of the administration, and Ms Anderson’s own evidence about it, are inconsistent with Ms Anderson’s allegation. The administration was ordered against her wishes, on Mr Pearson’s application; she resisted it wholeheartedly, and she was not the person who instructed the administrators. Consistently, she has been strongly critical of the administrators, saying that she was treated “*in a bullish and condescending manner*”, and “*an accusatory and stand-offish manner*”, and complaining that although she offered her co-operation to the administrators on the day of the

order itself, Mr Hardy, “*did not seem keen to engage with me and refused the offer of a meeting*”. In her second affidavit, she said:

“The securing of company records was another issue. I was not allowed on site to oversee the handover of documents and records. There was no communication to confirm what documents had been accessed until April 2021, two months after the administration had started I was sent a blank document inventory by email and told to tick-off what I thought had been in the office. This was too late to be able to query anything as by this point, the building had been cleared and returned to the landlord. As such, I have had very little access to documents and information and it has made it incredibly difficult for me to answer questions ...”

- 47.3. In those circumstances, it would be extremely surprising had one of the administrators, at the same time, suggested to Ms Anderson that she should add references to various transactions (recorded, said Ms Anderson, on a separate spreadsheet which she maintained, but which was not in evidence) that had apparently taken place in the past year.
- 47.4. Third, Ms Anderson’s explanation was not given until she was cross-examined at the trial – despite the point having been raised explicitly both before the action began, and in evidence, despite it being of obvious importance, and despite an explanation being sought.
48. In the circumstances, I am driven to conclude that Ms Anderson’s explanation of these important late entries – comprising a serious allegation against the administrators - was not correct; as stated above, I shall treat her evidence with caution.
49. Relevant to my assessment of Ms Anderson’s evidence and of her case generally was the absence of supporting documentary evidence (as I have set out above and elsewhere in this judgment). In that regard, I note that in an order made by ICCJ Barber on 27 January 2023, was a recital, “*AND UPON it appearing to the Court that the Defendant may be assisted by being afforded an opportunity to inspect the books and records held by the administrators and to take copies of such documents as the Defendant considers she*

requires to defend the Claim". Whilst I was told and acknowledge that Ms Anderson's personal circumstances (in particular, surrounding the birth of her child on 26 May 2023) have not been entirely untroubled during the course of the proceedings, she has had enough time in which to examine the Company's records, if that is what she wished, but has not sought to do so. In any event, PEL's documents were within her own power to produce.

The Purpose and Nature of the Payments

50. Central to the case was the purpose of the Payments, and whether or not they were made - as alleged by Ms Anderson - in satisfaction or reduction of debts owed by the Company to PEL, in order to allow for PEL to provide financial support in the future. In my judgment, for the reasons that follow, it is far more probable than not that they were not made for the reason given by Ms Anderson; I am driven to conclude that they were made gratuitously.
51. First, I have referred to PEL's accounts to 30 September 2019. According to those accounts, for which Ms Anderson was responsible, PEL had current assets of £13,700. However, according to the Payment Schedule relied on by Ms Anderson, as at 30 September 2019, the Company owed PEL £42,245.65. The two documents are therefore inconsistent. Repeatedly in pre-action correspondence, Ms Anderson was asked for an explanation of this inconsistency, but refused and failed to provide one. The point was referred to again in the Claimant's evidence. In cross-examination, Ms Anderson suggested that the debt would have been included somewhere else in PEL's "*full accounts*", but no such accounts or documents were provided or produced in evidence. Ms Anderson's explanation was not satisfactory.
52. Second, the Payment Schedule referred to various payments said to have been made on behalf of the Company or for its benefit. However, no documents whatever were provided or produced in evidence by Ms Anderson (or previously, by PEL) to support the suggestion that those payments were (a) in fact made, and (b) if so, were made for the benefit and purposes of the Company. That refusal was striking; had those documents existed, for example, invoices, bank statements, receipts and correspondence, they would have been readily available to Ms Anderson. From her failure to provide them, I infer that they do not exist and/or do not support the content of the Payment Schedule.

53. Third, Ms Anderson referred in her evidence to a spreadsheet on which, apparently, the transactions were recorded contemporaneously. However, she did not provide or produce that document. Accordingly, no proper explanation was given of the Payment Schedule's creation as a document.
54. Fourth, in any event, the Payment Schedule was not consistent with the Company's internal records. For example:
- 54.1. it stated that as at 11 January 2021, the sum due to PEL was £8,462.49. However, the PEL Supplier Activity Ledger stated that the sum outstanding to PEL was £327.32, and the Temporary Overdraft Ledger stated that nothing was due;
- 54.2. it stated that the payment of £35,000 to PEL on 7 August 2020 was a "REPAYMENT", whereas the Supplier Activity Ledger described it as a "Purchase Payment" for "Consultancy" (which was itself unlikely, given the evidence about Mr Anderson's illness and incapacity, and notwithstanding Ms Anderson's (unheralded) oral evidence, which was that the work might have been done by another person, or was perhaps work done previously, or that Mr Anderson was at least able to do some work even during 2020, albeit there was no suggestion of what that work might have been given the state of the business);
- 54.3. it contained numerous entries that were not included in either the PEL Supplier Activity Ledger or the Temporary Overdraft Ledger - to take one example, a payment of £215.25 said to have been made on 14 November 2019 in respect of a "Proplant Invoice", but which was not in either the PEL Supplier Activity Ledger or the Temporary Overdraft Ledger; similarly, numerous entries in the Temporary Overdraft Ledger (for example, "Suppliers Paid Direct by PEL" in the sum of £4,791.08 due on 28 February 2019) were not included in the Payment Schedule, and the same was true of the Supplier Activity Schedule, which also included entries which were not in the Payment Schedule;
- 54.4. in any event, as I have said, numerous entries made in the Company's records were not made until after the commencement of the administration, and in that

regard, enough in itself to cause me to doubt the accuracy of these records, I have rejected Ms Anderson's evidence.

55. Fifth, Ms Anderson's explanation of certain entries in the Payment Schedule was unconvincing. For example, it stated that "*Payroll*" payments had been made, of £6,000, on each of 30 April 2020, 29 May 2020, 30 June 2020, 31 July 2020 and 31 August 2020, albeit that her evidence (consistent with HMRC records) was that little if any business was being conducted during that period. In cross-examination, Ms Anderson suggested – for the first time - that these payments were of dividends rather than remuneration. I reject that explanation which had no support in the documents, and which would, for example, have entailed payment to the other members (for example, Mr Pearson) of which there was no evidence (and which was most unlikely, given the state of Ms Anderson's relations with Mr Pearson at that time, and given that no mention of a dividend payment was made in their correspondence, the gist of which was wholly inconsistent with the notion of monthly dividends).
56. Sixth, the entire premise of Ms Anderson's case was wholly unconvincing: there was no logical or evidenced sense in which there was any need or legitimate benefit to be derived from transferring money back and forth between the two companies. For example, on 8 June 2020, the Company paid £99,000 to PEL, and on the same day - so it was said - PEL paid £16,000 to "*T Roberts*" in respect of a loan (made, presumably, to the Company, although again, unevidenced by any documents); if the Company needed to make that payment, there was no sense in transferring money to PEL first in order that PEL might do so – it could simply have done so itself; the same was true more generally – there was no good reason for paying substantial sums to PEL only for PEL, for example, to pay the Company's "*Payroll*".
57. The argument that it was necessary to pay PEL in order that PEL might be able thereby to support the Company prospectively made equally little sense: first, there was no evidence about PEL's own needs, and what had become of most of the money transferred, and second, even on Ms Anderson's case, in the periods after the first Payment, on 8 June 2020, PEL made payments for the benefit of the Company amounting only to £51,689.80 (including the payment of £16,000 on 8 June) – there was, as I have said, no evidence to explain what became of the balance of £86,120.20 paid to PEL, and how the Company might have benefitted from paying it away. Indeed, the evidence was

to the contrary; the Payments to PEL were positively disadvantageous. For example, the Company was under great pressure from Armada, and from Mr Pearson - pressure which might, at least to some extent, have been relieved by a part payment - and yet, despite having received the two loans into its account, and despite holding £116,834.43 to the credit of that account as at 4 June 2020, Ms Anderson elected to pay nothing to Armada, but instead to transfer £137,810 to PEL.

58. Finally, it was said that historically, PEL had made payments on behalf of the Company because it was, unlike the Company, “*cash rich*”. However, that too was unsupported by any documentary evidence, and was to some extent, contradicted. The PEL accounts to 30 September 2019 recorded current net assets of only £13,700; they recorded creditors with debts falling due after more than one year, in the sum of £440,000. Whilst I accept, of course, that those accounts stated the position as at a moment in time, Ms Anderson’s evidence was that Mr Anderson was extremely unwell during 2019, and certainly after 30 September 2019. It was not likely - and certainly I am not willing to accept without some better evidence and documents – that PEL, which was essentially the medium through which Mr Anderson provided services, would have been in any position to generate profit or cash during 2019/2020 with which it might have supported the Company in return for a reduction of the debt it was said to have been owed by the Company. I reject that explanation.
59. For all of those reasons, as I have said, I reject the case that the Payments were made in reduction of debts owed to PEL, and in any event, I reject the suggestion that insofar as they were made, their purpose was in some fashion to enable PEL to give further support prospectively.
60. In that regard, part of Ms Anderson’s case was that she believed that PEL’s continuing support was necessary or useful in the context of a possible sale of the business. In addition to finding that the Payments were of no benefit to the Company (and plainly therefore of no assistance to the negotiation of a sale) I also reject, for the following reasons, the suggestion that a sale (whether solvent or substantially solvent) was ever, in fact, genuinely or realistically in prospect.
61. First, in this regard, Ms Anderson sought, in her written evidence, to rely on her meeting with Mr Allen on 20 December 2019. She said, “*The meeting was to discuss the finances*

of the business and a potential exit strategy, if Mr Anderson was unable to return to work for a considerable period of time. RSM advised that they believed a solvent sale of the business was realistic and attainable and recommended that as the most suitable way forward over and above insolvency proceedings.”

62. In his letter to the Insolvency Service dated 27 September 2021, Mr Allen contradicted that suggestion. Amongst other things, and although he said that he no longer had access to any notes or records of the meeting (which had been destroyed) he said, relying on his memory, that he had *“advised that the Company was technically insolvent as its liabilities exceeded its assets, and furthermore that insolvency was also evident where liabilities could not be paid as and when they fell due. In these circumstances I explained that it was better that the directors remained in control of the Company’s situation and entered dialogue with creditors in order to manage their expectations, especially the landlord, if the sale of the Company’s business and or assets were possible. At such time Administration or Liquidation would protect the directors from making the creditors’ position worse, if creditors were intent on pursuing the Company and issued winding up proceedings.”* He also said that he had, *“explained to Mrs Anderson the Company’s options and insolvency processes such as Administration, Company Voluntary Arrangements and Liquidations. I advised that Administration was likely to be the preferred alternative, if there were potential buyers for the Company/its business or assets, and to pursue an AMA sale process, in the hope of achieving a prepackaged sale of the company’s assets”*.
63. Mr Allen did not make a statement or give evidence, and as I have said, no longer holds any record of the meeting. I do not therefore attach any real weight to the content of his letter. However, in cross-examination, in seeking to dispel the suggestion that Mr Allen had advised that the Company was insolvent, Ms Anderson said (as indeed, in his letter, Mr Allen also said) that Mr Allen had not been given any detailed financial information about the Company. That being common ground, the likelihood is that Mr Allen’s advice was at least provisional if not tentative, and certainly, that it was not - as Ms Anderson suggested - that a solvent sale of the business was *“realistic”* or *“attainable”* - he would have been in no position to give that advice, although he might have advised on possible means of achieving a sale in different circumstances, or by different routes. I therefore

reject the suggestion, if and to the extent made, that in some sense Ms Anderson was acting, during 2020, pursuant to Mr Allen's advice.

64. Second, simply, in support of the various suggested negotiations, their course and progress and their suggested terms, Ms Anderson provided no documents (for example, correspondence or records of due diligence processes) and no real detail. Although for example Armada and Mr Pearson were certainly told about the possibility of some variety of sale, neither of them - despite repeated requests, despite the urgency, and despite the obvious good sense of its provision - were ever given any details. There was no good reason for withholding that information at the time, and there was no good reason for failing to provide it in these proceedings. Again, I am, in the circumstances, driven to infer and conclude that there was, during 2020, no real or genuine prospect of a substantially solvent sale of the business – had there been, it would have been revealed and described. But in any event, more fundamentally, as I have said, even if such a prospect existed, it would not have been improved by making the Payments; the possibility of a prospective sale does not to any extent justify the Payments to PEL.

The Company's Solvency

65. The Claimant's case, which I accept (if for no other reason than that it could not pay Armada, as explained) was that during the period of the Payments, and indeed, from a time before then, and at all times after they were made but before the administration, the Company was, as Ms Anderson knew, at least cash flow insolvent, unable to pay its debts as they fell due. It follows that I reject Ms Anderson's case that she could not reasonably have anticipated administration or some other insolvency regime or proceeding; that possibility was obvious, and was, repeatedly, brought directly to her attention.
66. I have described the Company's bleak circumstances at the end of 2019. Ms Anderson accepted that even if not "*impossible*", it was certainly "*difficult*" to continue to trade in the effective absence of Mr Anderson, although with her own involvement, the assembly and retail component of the business was at least for some time continued (unlike the vehicle repair component, which ceased); she agreed that business had been dramatically pared back, "*substantially reduced*", meaning that it was "*a struggle*" to deal with creditors. She said that of the Company's seven employees, four had departed and the other three were to do so in the following months, in and around the period of the first

national lockdown, such that by about May/June 2020, only she remained, possibly with some *ad hoc* assistance from a sub-contractor. Although she attributed the cessation of trade to lockdown (rather than to other commercial reasons) she accepted that in the event, the Company had effectively ceased to trade to any meaningful or substantial degree by about April 2020 – and certainly, by 8 June 2020.

67. The Company's own VAT records were consistent with that conclusion. Its returns showed that from May 2020, the Company made no, or negligible sales; Ms Anderson agreed.
68. Furthermore, Ms Anderson's own evidence was that at some point in about April/May 2020, "*one of our commercial customers stole IP belonging to [the Company] and had one of our product lines copied and manufactured elsewhere more cheaply. Whilst we made initial steps to pursue the company, we could not afford to become embroiled in a lawsuit against a large multi-national and unfortunately, this resulted in the collapse of another sale*" (the reference being to the second alleged prospective purchaser of the business). In support of that evidence, Ms Anderson relied on a letter before action which she sent to Dometic UK Ltd ("**Dometic**") at about the end of May 2020, and a further letter to Dometic dated 2 June 2020. From that (limited) correspondence, it was apparent that Dometic had served a statutory demand on the Company on 19 May 2020, and had alleged insolvency and a failure to supply goods in breach of contract; in response, amongst other things, Ms Anderson alleged that Dometic had appropriated the Company's intellectual property, and "*handed [it] to a competitor for them to copy, which has had a huge financial impact on our business*". I cannot assess the merits of that dispute, but its mere existence and - on Ms Anderson's own evidence - significantly damaging effect on the Company, must have seriously compounded the Company's financial and commercial problems, at a time when it had effectively ceased to trade, and very shortly before the first substantial payment (of £99,000) was made to PEL on 8 June 2020. I was not told of any subsequent agreement or settlement of the dispute with Dometic.
69. On 13 January 2021, an administration order was made by the High Court in Birmingham on Mr Pearson's application, acting as a creditor. Two things follow from that (albeit I was not shown any documentary evidence): first, that the court was satisfied that Mr Pearson had standing, as a creditor, and second, that the Company was or was likely to

become unable to pay its debts. There was no reason to think that the Company's insolvency had resulted from events since 8 June 2020.

70. The administrators' proposals dated 8 March 2021, amongst other things, stated that as at their appointment, the Company's "*premises did not seem to have been utilised for some considerable time. ... there was a substantial amount of unopened post and customer vehicles that remained on site*"; "*I have liaised with Creditors following my appointment, a number of whom have welcomed the commencement of formal insolvency proceedings, due to their inability to engage with the Company prior to my appointment*". Whilst there was no evidence from the administrators as such, the impression of a company that had simply stopped operating and communicating with customers and creditors was entirely consistent with the correspondence from NDA referred to above, for example, their letter of 6 October 2020, in which they complained of having not heard from Ms Anderson, or the Company, and said, "*Our Client last working week visited the Company's premises. There was no one present nor was there any sign of activity. After speaking with the neighbouring businesses, they confirmed that they had not seen anyone at the premises since last Christmas*".
71. The proposals listed creditors with claims amounting in aggregate to £1,478,962.55, and an estimated (and I acknowledge that the amount was estimated only) deficiency as regards creditors of £1,339,979.02. Subsequently, in their progress report dated 9 August 2022, the administrators said that they did not anticipate that there would be a dividend whether to fixed or floating charge holders or unsecured creditors. In their final report (to 19 December 2023) they noted that "*As previously advised, it would seem that the Company appeared to have ceased trading some considerable time prior to my appointment. I therefore attempted to piece together the events and the extent, if any, to which the company traded between December 2019 and the administration order*". Nonetheless, as a result of limitations on their funding, the administrators had ultimately decided that the administration would have to end, and the Company be dissolved. Although Ms Anderson referred to the fact, recorded in that report, that 17 creditors listed in the March 2021 proposals (with aggregate claims of £436,858) had not ultimately lodged claims, I do not infer from that fact that those claims were unfounded; it is equally consistent with those creditors having abandoned any hope of recovery. In addition, the

report stated that other creditors not originally listed had made claims, and in any event, that there had not been a distribution to unsecured creditors.

72. Without more, the evidence considered and referred to above makes plain that during the period of the Payments, the Company was insolvent (and undoubtedly, if not insolvent, was at very serious risk of imminent insolvency) as Ms Anderson must have known, particularly given that she was the person having to deal with customers and creditors. But in addition, albeit unnecessary to the conclusion, there was further evidence of insolvency, that I can deal with comparatively summarily.
73. First, in respect of its premises at Unit 2, owned by Mr and Mrs Lyons, Ms Anderson accepted that the Company had not paid any rent since 10 December 2019, when it had paid £3,750. According to a letter from the owners' solicitors, Spratt Endicott, dated 18 November 2020, to NDA, at that time, the Company owed £18,000, in respect of which they "*require[d] your client's urgent proposals in relation to the substantial rent arrears*". They noted that Mr Pearson had apparently "*taken back control of the site from the absconding directors*" - which I take to be a reference to Mr and Ms Anderson. Ms Anderson's evidence was that Mr and Mrs Lyons were relatives (Mr Anderson's Aunt and Uncle) and that the relationship was not typically commercial, rent being paid "*as and when*" possible, it being the Lyons' intention to support the business. Whether or not that was so (and although contradicted by the Lyons' solicitors' letter) it was a fact that no rent had been paid since December 2019 (and during the course of 2019, nothing before 29 July, and then only £11,250, in respect of liabilities equal to £15,000). Even on Ms Anderson's premise, the facts showed that payment in full was not "*possible*". Moreover, however informal or indulgent the Lyons might once have been, the letter of claim showed that by November 2020, they had decided upon more formal action.
74. Similarly, in respect of Units 8, 11 and 18, owned by Avon Capital Estates, the last payment made by the Company was of £7,414 on 14 February 2020. On 3 December 2020, Avon wrote to NDA, asking them to "*confirm [Mr Pearson's] plans for the business premises going forward. We also have concerns about security, insurance and the condition of the building as we believe it has been left vacant.*" As at that date, the sum outstanding was, according to Avon, £47,103.41, sums having fallen due in June, August and November 2020. Other than suggesting that a small part payment had been made, of about £1,400, Ms Anderson was not able in her oral evidence to dispute the

debt, or that it was unpaid. In fact, the Payment Schedule contained reference to payments to Avon of £12,953.22 on 26 December 2019, £2,315 on 23 April 2020 and £4,011 on 7 August 2020. That those payments: (i) were not referred to by Avon, and (ii) were inconsistent with Ms Anderson's evidence that if anything, a much smaller sum had been paid, I take, if anything, to be further evidence of the unreliability of the Payment Schedule. In any event, they would not have been enough to meet the Company's liabilities to Avon, which were approximately £11,000/month.

75. According to HMRC's internal records, as at 25 November 2019, £10,353.96 was outstanding, and HMRC was taking or about to take recovery action. Although Ms Anderson referred in her oral evidence to a possible cross claim for "*R&D credits*", HMRC's records stated that on 24 April 2020, she had called and confirmed that a claim had been made but that it was "*much less than expected*". Ms Anderson agreed that the Company was in arrears. HMRC's records as at 17 February 2020 recorded as due "*direct taxes*" in the sum of £27,756.02, which Ms Anderson agreed, and VAT of £3,463, which she disputed. Some of that debt (£5,372.88) dated from 2018/2019, and some (£15,936.67) from 2019/2020. Ms Anderson said that she knew that sums were due, but "*not at that level*". However, the sums stated were based not on estimates, but on the Company's own returns. Again, the conclusion that the Company was unable to pay its debts (certainly from 8 June 2020, but also well before) was effectively irresistible.
76. On 6 November 2020, a winding up petition was presented against the Company by PEAC (UK) Ltd, based on a debt of £57,335.40 due under a hire agreement which had been terminated on 6 December 2019 (sums having been unpaid since 3 December 2018) and took into account the sale proceeds of the recovered goods, in the sum of £45,000. Again, this debt, which the Company could not and did not pay, was not disputed.
77. On 10 November 2020, Westfield Fasteners Ltd began proceedings in the County Court for £1,962.46 plus costs, which was said to have been outstanding since about the end of 2019, in circumstances where the Company was said to have been "*unresponsive to our regular requests for payment and have been for some time*", "*formal reminders*" and demands having been sent on 27 February, 6 March, 18 April and 19 October 2020. The Claim Form named Ms Anderson as the "*contact person*". Ms Anderson's evidence was that she had been told not to pay by Mr Anderson because there was a dispute, which he had been dealing with, although she could not give any details of that dispute. In any

event, she had to accept that she had not communicated with Westfield, or reached any form of agreement with it, despite its various unsuccessful efforts to recover payment, and that there were no documents to suggest the nature of any dispute or that it had been communicated to Westfield. Ms Anderson's evidence in this respect was not satisfactory: in the context of this case, far more likely was that Westfield's claims and communications were ignored because of the Company's parlous financial position; even comparatively small debts went unpaid.

78. Finally, I was shown a letter from Taylor Walton solicitors, acting for Trumpf Ltd, dated 17 November 2020, and sent to NDA. It referred to a letter before action to the Company dated 10 June 2020 (which Ms Anderson accepted that she had seen) and an open letter including draft Claim Form and Particulars of Claim dated 11 November 2020. It said that until then, they had been communicating with Mr and Ms Anderson. The claim was substantial, for at least £462,001.06, including sums unpaid since 2018. Although Ms Anderson emailed Mr Lee Moakes of Trumpf on 28 May 2020, proposing that it should repay deposits to the Company, and collect its equipment from the Company's premises, in full and final settlement, that proposal was rejected by email on 3 June 2020. Ms Anderson accepted that no compromise was reached (and Trumpf was included in the administrators' list of creditors, with a claim for £463,000). Whilst again, I cannot assess the merits of Trumpf's claims, which at least to some extent Ms Anderson disputed, the mere fact of the threatened action for such a substantial sum, was part of the context in which the Payments were made, the first of which being five days after Trumpf's rejection of Ms Anderson's settlement offer.
79. On the evidence, the Company failed, in some instances refused, and in any event was unable, to pay its debts as they fell due throughout 2020, and indeed before: it was insolvent, and manifestly so. Ms Anderson was responsible for its financial affairs, and knew of its inability, and thus of its insolvency. I reject her evidence that she could not reasonably have anticipated administration or any other insolvency regime until after the Payments were made. On the contrary, those possibilities would have been obvious to her (even more so given her experience and professional training) and must surely have been known in fact to her given the nature, number and scale of the claims being made, and given that, for example, she had (even on her own evidence) had a broad discussion with Mr Allen about administration and liquidation in December 2019.

The First Allegation:

Transactions to the Detriment of the Company's Creditors

80. I have concluded, on the evidence, that:
- 80.1. the Payments made by the Company to PEL (of which Ms Anderson was a director and shareholder) in the period from 8 June to 12 September 2020 were made gratuitously, not in repayment of a debt or debts owed to PEL by the Company, and in any event, not for the purposes of the Company's business, or in any fashion to its advantage; there was nothing in the circumstances of the Pandemic to justify them;
 - 80.2. when the Payments were made, the Company was insolvent, as Ms Anderson must have known, and indeed, as in fact she knew; in substance, it had ceased to trade, and Mr Anderson was seriously unwell; most if not all of its other employees had departed; creditors were taking or threatening to take formal action; it was at serious risk of insolvency, and of formal insolvency proceedings – whether voluntary or otherwise; the Payments depleted the assets of the Company available for its unsecured creditors;
 - 80.3. there was no prospect of a solvent or substantially solvent sale, but in any event, even if there had been, the Payments were or would not have been advantageous to its negotiation.
81. It follows that the Payments were to the detriment of the Company and its creditors, and I would have reached the same conclusion even if the Payments had been made in repayment of debts owed to PEL (there being no obvious or established reason to favour repayment of PEL in preference to other creditors, of which there were many). Ms Anderson accepted responsibility for having caused the Company to make the Payments – she was, at the time, the Company's sole or certainly principal controller. In this regard, Ms Anderson's conduct amounted to misconduct: notwithstanding the difficulty of the circumstances in which she found herself, it fell below the standards of probity and competence appropriate for persons fit to be directors, and it justifies a finding of unfitness.

The Second Allegation: Breach of the BBL and CBIL Agreements

82. Similarly, it follows inevitably from my findings that that sums borrowed under the BBL Agreement and the CBIL Agreement were used in breach of those agreements, because they were used neither as “*working capital*” nor for “*the purpose of providing economic benefit to [the] business including, but not limited to, working capital or investing in [the] business*”, but were instead used to make the Payments either gratuitously or for reasons not adequately explained, and in any event, for no economic benefit and not for the purposes of the Company’s business.
83. Again, I accept that in this regard, Ms Anderson’s conduct amounted to misconduct: it fell below the standards of probity and competence appropriate for persons fit to be directors, and it justifies a finding of unfitness.

Conclusion

84. In conclusion, I shall make a disqualification order against Ms Anderson as sought by the Claimant. As to the period, where the court makes a disqualification order pursuant to s.6 of the CDDA, the minimum period of disqualification is 2 years and the maximum period is 15 years.
85. In Re Sevenoaks Stationers (Retail) Ltd [1991] Ch 164, the Court of Appeal held (per Dillon LJ at 174E-G):

“I would for my part endorse the division of the potential 15-year disqualification period into three brackets ... (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 yet again. (ii) The minimum bracket 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.”

86. In this case, the Claimant sought a 7 year order. I agree that this was not (in the context of cases brought under s. 6) a “*particularly serious case*”, but neither was it a case meriting only an order in the lowest bracket. In particular, the Company’s assets were

deliberately depleted at a time when it was insolvent, including by misuse of sums provided with government backing at a time of national crisis by payment to a company of which Ms Anderson was a director/shareholder. In the event, I shall make the order sought, for a period of 7 years.

Dated 10 May 2024