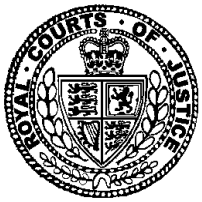

Neutral Citation Number: [2024] EWHC 2208 (Ch)

Claim Nos: CR-2021-MAN-000698

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

IN THE MATTER OF MTA PERSONAL INJURY SOLICITORS LLP (IN ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Civil Justice Centre
1 Bridge Street West
Manchester M60 0DJ

Date: 23 August 2024

Before:

HHJ CAWSON KC
SITTING AS A JUDGE OF THE HIGH COURT

- -

Between:

MTA PERSONAL INJURY SOLICITORS LLP (IN ADMINISTRATION) (ACTING BY ITS JOINT ADMINISTRATORS ANDREW LAWRENCE HOSKING AND SEAN BUCKNALL)	**Applicant**
- and –	
STEVEN WISEGLASS (FORMER ADMINISTRATOR OF MTA PERSONAL INJURY SOLICITORS LLP)	**Respondent**

- -

Stephen Davies KC (instructed by **Eversheds Sutherland (International) LLP** for the **Applicant**

Steven Fennell (instructed by **Myerson Solicitors LLP**) for the **Respondent**

Hearing date: 9 July 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 23 August 2924 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HHJ CAWSON KC:

Contents

Introduction

1. On 5 April 2023, I determined an application dated 10 November 2022 ("**the Remuneration Application**") brought by Steven Wiseglass ("**Mr Wiseglass**"), the former administrator of MTA Personal Injury Solicitors LLP ("**LLP**"), pursuant to rr. 3.52(5) and 18.23 of the Insolvency (England and Wales) Rules 2016 ("**the 2016 Rules**"). By my order of that date ("**the 2023 Order**"), I fixed Mr Wiseglass's remuneration as administrator of the LLP and approved his pre-appointment costs and expenses. The transcript of my extempore judgment determining the Remuneration Application on 5 April 2023 ("**the 2023 Judgment**") is reported at [2023] EWHC 3521 (Ch).

2. On 10 January 2023, a decision procedure of the creditors of LLP had removed Mr Wiseglass as administrator of LLP and had appointed Sean Bucknell ("**Mr Bucknell**") and Andrew Hosking ("**Mr Hosking**") of Quantuma Advisory Ltd (together "**the Joint Administrators**") as joint administrators of LLP in his place.

3. By an application dated 23 February 2024 ("**the Review Application**"), the Joint Administrators have applied:

    i) Pursuant to r. 3.70(1) of the 2016 Rules, for an order that Mr Wiseglass immediately account to the Joint Administrators for all of the assets of LLP; and

    ii) Pursuant to r. 12.59(1) of the 2016 Rules, for an order that the 2023 Order be *"varied or set aside"*, and that, if requested by Mr Wiseglass, the basis of his remuneration, pre-administration costs and Category 2 disbursements be determined at a detailed assessment hearing.

4. I heard the Review Application on 9 July 2024, when the Joint Administrators were represented by Stephen Davies KC, and Mr Wiseglass was represented by Steven Fennell of Counsel. I am grateful to both Mr Davies KC and Mr Fennell for their thorough and helpful written and oral submissions.

5. Mr Wiseglass had been represented before me on 5 April 2023 by Mr Fennell. Although the Joint Administrators had, by then, already been appointed, they were not present or represented. However, a major creditor in the administration of LLP, namely Speed Medical Examination Services Ltd ("**Speed Medical**"), was represented at the hearing

on 5 April 2023 by David Williams of Counsel, who made submissions in respect of the level of remuneration and expenses claimed by Mr Wiseglass. For this purpose, Speed Medical instructed the same Solicitors, Eversheds Sutherland (International) LLP, as now instruct Mr Davies KC to appear on behalf of the Joint Administrators.

6. This judgment requires to be read together with the 2023 Judgment.

Background and procedural history

7. LLP was incorporated on 12 May 2010 with the name MTA Solicitors LLP. It changed its name to its present name on 5 July 2016. It carried on business as a solicitors' practice specialising in high volume personal injury work under the day-to-day management of its designated member, Michael Taylor ("**Mr Taylor**"), a solicitor. Latterly the other designated member of LLP was Volume Resources Ltd, a company controlled by Mr Taylor.

8. Mr Taylor is shown at Companies House as having been director or designated member of some 41 companies and LLPs. One such LLP is MTA Solicitors LLP ("**MTA Solicitors**"), which entered into liquidation on 21 March 2023. MTA Solicitors was incorporated as Acorn Law LLP on 13 October 2011, and having earlier changed its name to MTA Law LLP, changed its name to MTA Solicitors LLP on 5 July 2016, the same day as LLP changed its name from MTA Solicitors LLP to MTA Personal Injury Solicitors LLP.

9. LLP ran into financial difficulties, said to have been exacerbated by the Covid 19 pandemic. In May 2021, LLP commissioned a report from Zebra LC Ltd that suggested that its WIP had an indicative value of somewhere between £361,000 and £611,000.

10. On 4 June 2021, Mr Wiseglass and his firm, Inquesta Ltd ("**Inquesta**"), were engaged to advise LLP in relation to its financial difficulties. As I shall return to, Mr Wiseglass had previously acted as office-holder in relation to a number of earlier insolvencies concerning companies controlled by Mr Taylor. The strategy agreed upon in respect of LLP was to market its practice on a going concern basis and to instruct JPS Chartered Surveyors ("**JPS**") for that purpose.

11. The marketing exercise resulted in some 16 expressions of interest, with one particular offer being pursued until 22 November 2021, when the relevant (unconnected) party withdrew from the negotiations. In consequence of the failure to achieve a disposal on a going concern basis, agreement was reached for the transfer of client files to 5 different firms of solicitors under an agreement with Recovery First Ltd ("**Recovery First**") under which LLP would receive deferred consideration in respect of the WIP relating to the files transferred, with Recovery First accounting to LLP in respect thereof, subject to a fee of between 15% and 20%, after the files had been worked upon by the firms of solicitors to which they had been transferred.

12. Following the transfer of the files, Mr Wiseglass was appointed as administrator of LLP on 30 November 2021 by the members of LLP pursuant to paragraph 22 of Schedule B1 to the Insolvency Act 1986 ("**the 1986 Act**").

13. Mr Wiseglass sent his proposals to creditors ("**the Proposals**") on 7 January 2022. A number of points in respect of the Proposals should be noted at this stage:

i) It was disclosed in the Proposals that:

> *"The Member, Michael Taylor is known to lnquesta by virtue of his position as director and shareholder of Rubix IT Solutions Ltd, Taylor Green Recruitment Limited, Angel & Bowden Limited and Medesol UK Limited which was placed into Liquidation on 5 December 2017, 14 September 2018 and 23 September 2020, whereby Steven Wiseglass was appointed Liquidator on the same dates respectively. The Administrator considered his position prior to accepting the appointment and having regard to the Insolvency Guide to Ethics, considered that there were no circumstances preventing him from accepting the appointment."*

ii) Under the heading *"Progress since the Administrator's appointment"*, creditors were informed that:

> *"Investigations into the LLP's affairs are currently ongoing. The Administrator also has a duty to investigate antecedent transactions which include transactions to defraud creditors, preference payments and transactions at an undervalue."*

iii) Subsequently, under the heading *"Investigations"*, it was stated that the Administrator was undertaking investigations into LLP's activities to ascertain whether there were other potential avenues for recovery of funds, and mention was made of the Administrator's duty to report on the conduct of the LLP's members to the Insolvency Service in connection with the bringing of disqualification proceedings.

iv) Under the heading *"Land and Buildings"*, it was noted that draft accounts ended 30 June 2021 detailed Land and Buildings of £19,476, relating to improvements made to leased premises, and that it was anticipated that the amount would depreciate and be written off over the life of the lease so that no value could be attributed thereto.

v) The Administrator's remuneration and expenses, including pre-administration costs, were dealt with in Part 13 of the Proposals:

a) So far as pre-administration costs were concerned, these were identified as being Inquesta (a fixed fee of £40,000), Pannone Corporate LLP ("**Pannone**") (£34,075.50) and JPS (£4,635).

b) With regard to remuneration as administrator, Mr Wiseglass sought a fixed fee of £50,000, a further fixed fee of £15,000 per annum, and 35% of all realisations. A fairly short explanation was provided as to the basis for seeking a fixed fee of £50,000, and a further £15,000 per annum. So far as realisations were concerned, an estimate was provided of: WIP (£611,000 as anticipated at that stage); cash at bank (£4,268); debtors-disbursements (uncertain); trade debtors (£14,348.74); and payment plan debtors (which I explained in paragraph 11 of the 2023 Judgment) (£123,338.92). On the basis of these figures, 35% was shown as resulting in a total fee of £263,634.48. It was further explained that any potential

misfeasance claim against the members of LLP would be reviewed, and that the quantum of any such claim could not be determined until the Administrator had fully investigated the position on review of LLP's available books and records, together with bank statements and any other LLP documents or information. I noted in paragraph 50 of the 2023 Judgment that in arriving at the figure of 35%, account had been taken of the potential recovery from misfeasance claims against the members of LLP.

14. In his evidence in support of the Review Application, Mr Hosking refers to Quantuma first having been approached by Speed Medical following its receipt of the Proposals out of concern, amongst other things, with regard to Mr Wiseglass's proposed basis for his remuneration. Correspondence ensued in which Speed Medical's Chief Financial Officer, Ian Robins ("**Mr Robins**"), raised a number of questions in relation to both pre-administration costs, and the remuneration that Mr Wiseglass proposed to charge.

15. There was a physical meeting of creditors on 9 February 2022 convened for the purpose of considering the Proposals. This meeting was adjourned and reconvened on a remote basis on 23 February 2022. At this latter meeting, the Proposals were approved and a creditors' committee was appointed, which included Mr Robins/Speed Medical.

16. A meeting of the creditors committee took place on 16 March 2022 at which consideration was given to the pre-appointment costs claimed by Mr Wiseglass and the basis of Mr Wiseglass's remuneration as administrator of LLP. Mr Wiseglass was unable to obtain at this meeting the approval in respect thereof that he sought. Further, Speed Medical (by Mr Robins) requested, pursuant to r. 15.19 of the 2016 Rules, a decision procedure for the replacement of Mr Wiseglass as administrator by the Joint Administrators. A transcript of the meeting records Mr Robin stating that he was aware that a reasonable deposit would be required in respect of the expenses of the procedure, and that he considered that it was appropriate to have *"another pair of eyes"* look at the matter. Later, the transcript records Mr Robins having made clear that he did not wish Mr Wiseglass to carry out an investigation in respect of a transfer of £525,000 from client to office account, after Mr Wiseglass had, prior thereto, stated that he was happy to undertake that investigation.

17. In paragraph 23 of his third witness statement, that was before me on 5 April 2023, Mr Wiseglass stated that potential claims against Mr Taylor had been considered, but that he had delayed undertaking work beyond the initial investigation required by Statement of Insolvency Practice ("**SIP**") 2 because he did not think it appropriate to undertake such work and incur legal costs when it appeared that the creditors wished to have a different practitioner in office.

18. In the event, Speed Medical did not press the matter of Mr Wiseglass's replacement as administrator until a deposit was provided in December 2022, leading to the appointment of the Joint Administrators in place of Mr Wiseglass on 10 January 2023.

19. By application dated 21 October 2022, and with the administration in respect of LLP due to expire on its first anniversary on 30 November 2022, Mr Wiseglass made an application to extend his term of office for a period of 2 years, i.e. until 30 November 2024. The application was supported by Mr Wiseglass's first witness statement dated 19 October 2022 ("**Wiseglass 1**"). Wiseglass 1 referred to the meeting of the creditors'

committee on 16 March 2022, and to the formal request pursuant to r. 15.19 for a decision procedure in respect of his replacement by the Joint Administrators, but it stated that Speed Medical's request did not proceed because it did not pay the required deposit. Apart from the need for Mr Wiseglass to make an application to the court in respect of pre-administration costs, and his remuneration, paragraph 17 of Wiseglass 1 identified a need to remain in a formal insolvency process to recover the outstanding sums due to it in relation to the transferred files. There was no mention therein of investigations in respect of the conduct of, or proceedings against, the members of the LLP.

20. On 11 November 2022, HHJ Hodge KC, sitting as a Judge of the High Court, ordered that Mr Wiseglass's term of office be extended to 23:59 pm on 30 November 2024.

21. Having been unable to obtain the approval of the creditors' committee in respect of pre-administration costs and his remuneration as administrator, Mr Wiseglass issued the Remuneration Application on 10 November 2022 whereby he sought an order that his pre-administration costs be approved pursuant to r. 3.52(5) of the 2016 Rules, and that the basis of his remuneration to be determined pursuant to r. 18.23 of the 2016 Rules. The application was supported by Mr Wiseglass's second witness statement dated 9 November 2022 ("**Wiseglass 2**"). Speed Medical was notified of the application, as was another creditor, Civil and Commercial Costs Lawyers Limited ("**CCCL**").

22. In response to the application, Mr Robins made a witness statement on behalf of Speed Medical dated 1 December 2022. Directions were given in respect of the Remuneration Application on 8 December 2022. The directions provided for the filing and service of further evidence in response to the application, and for Mr Wiseglass to serve evidence in reply thereto. In the event, Speed Medical filed a further witness statement of Mr Robins dated 23 December 2022, CCCL filed and served a witness statement of Andrew Mark Thomas dated 23 December 2022, and, by way of reply, Mr Wiseglass filed and served his third witness statement dated 3 February 2023 ("**Wiseglass 3**").

23. Mr Wiseglass filed progress reports in respect of the administration of LLP on 29 June 2022, and 29 November 2022. In each of these reports, Mr Wiseglass said this under the heading, *"Investigation into the affairs of the LLP"*:

> *"I undertook an initial investigation into the LLP's affairs to establish whether there were any potential asset recoveries or conduct matters that justified further investigation, taking account of the public interest, potential recoveries, the funds likely to be available to fund an investigation, and the costs involved.*
>
> *Specifically, I recovered, listed and reviewed the LLP's accounting records; obtained and reviewed copy bank statements for the 3 years prior to the LLP ceasing to trade from the LLP's bankers; and compared the information in the LLP's last set of accounts with that contained in the statement of affairs lodged in the Administration and made enquiries about the reasons for the changes and confirm that investigations are still on going.*
>
> *Within three months of my appointment as Administrator, I am required to submit a confidential report to the Secretary of State to include any matters which have come to my attention during the course of my work which may*

indicate that the conduct of any past or present Director would make them unfit to be concerned with the management of the LLP. I would confirm that my report has been submitted."

24. The Remuneration Application came before me on 5 April 2023 with the representation that I have referred to above. By then, Mr Wiseglass had ceased to act as administrator of LLP, and so the claim for a fixed fee in respect of remuneration was limited to £50,000, with the claim for a further fixed fee of £15,000 per annum being dropped. Further, by the time that Mr Wiseglass ceased to act as administrator, realisations had crystallised at £196,778.17, and so Mr Wiseglass limited his claim to 35% of this figure, namely £68,872. Thus, in addition to the pre-appointment costs, Mr Wiseglass claim for remuneration post appointment was limited to £118,872.

25. As appears from the 2023 Judgment, I was taken to paragraph 21 of the Practice Direction: Insolvency Proceedings [2020] BCC 698 ("**the IPD**") and a number of authorities as therein identified as to the correct approach to take.

26. I set out in paragraphs 43 to 45 of the 2023 Judgment the key points taken by Speed Medical in objecting to the costs and remuneration sought by Mr Wiseglass. The key points were, in summary, as follows:

    i) Speed Medical contended that, contrary to paragraph 21.4.4 of the IPD, there was no proper breakdown sufficient to justify the fees claimed, a particular point being taken that this was somewhat surprising in the light of the criticism made in respect of the remuneration sought at the meeting of the creditors' committee on 16 March 2022.

    ii) The claim for 35% of recoveries that was sought was criticised on the basis that the principal recoveries were anticipated to be WIP/the consideration for the transfer of the client files and payment plan debtors, and WIP was to be collected by Recovery First and payment plan debtors were to be dealt with by Mr Taylor's new firm for an agreed fee. On this basis, so it was said, Mr Wiseglass had little further to do in the course of the administration so far as these major realisation items were concerned.

    iii) On the basis that one of the *"guiding principles"* identified in paragraph 21.2 of the IPD was *"value of the service rendered"*, reliance was placed upon a number of criticisms made in respect of Mr Wiseglass's conduct, which it was said required to be taken into account. The primary criticisms advanced were in relation to an alleged failure to properly investigate misappropriation of client monies, and an alleged failure to engage a solicitor manager.

27. I considered that, on the evidence available and given the conflict of evidence, I could not really get into and determine the complaints in relation to Mr Wiseglass's conduct in considering the pre-appointment costs and remuneration, and that any such complaints were more a matter for investigation by the Joint Administrators. However, I did consider that there was considerable force in the other points taken by Speed Medical and, in particular, I was critical as to the failure of Mr Wiseglass to comply with the requirements of paragraph 21.4.4 of the IPD.

28. Doing the best I could with the materials before me, I decided that I should reduce the fixed fee sought in respect of pre-appointment work from £40,000 to £30,000, and that I should reduce the overall amount sought in respect of remuneration post-appointment from £118,872 to £60,000, i.e. virtually halving the same. I did, during the course of the hearing, raise the possibility of there being a detailed assessment of the remuneration that was being sought, but neither Mr Wiseglass nor Speed Medical expressed any enthusiasm for such a course of action, both suggesting that I should do the best that I could on the information before me.

29. Thus, my Order dated 5 April 2023:

    i) Approved a fee of £30,000 for Inquesta, Pannone's fees of £34,075.50, and JPS's fees of £4,635 in respect of the costs of pre-appointment work pursuant to r. 3.52 of the 2016 Rules;

    ii) Fixed Mr Wiseglass's remuneration as administrator at £60,000 plus VAT pursuant to r. 18.23 of the 2016 Rule (the Joint Administrators indicated in their skeleton argument dated 5 July 2024 that they were now no longer pursuing recovery of the pre-appointment fees to Pannone and JPS);

    iii) Permitted Mr Wiseglass to draw Category 2 disbursements in accordance with his charging policy set out in the Proposals; and

    iv) Provided that the costs of each of Mr Wiseglass and Speed Medical of and occasioned by the Remuneration Application be costs in the administration of LLP, subject to the prior agreement of the Joint Administrators and in default of agreement to be determined by the court on the standard basis.

30. Mr Wiseglass's costs referred to in paragraph 29(iv) above were not agreed, and by application dated 9 January 2024, he applied to the court for these costs to be determined. His application was supported by his fourth witness statement dated 9 January 2024 ("**Wiseglass 4**"). This application was listed to be heard on 1 March 2024.

31. On 23 February 2024, the Joint Administrators caused LLP to issue the Review Application, supported by the first witness statement of Mr Hosking ("**Hosking 1**"). I will return in more detail to the basis for the Review Application, but by this application, LLP, acting by the Joint Administrators, seeks an order that Mr Wiseglass accounts immediately to the Joint Administrators for all the assets of LLP pursuant to r. 3.70(1) of the 2016 Rules, and that the 2023 Order be set aside or varied pursuant to 12.59(1) of the 2016 Rules, leaving it to Mr Wiseglass to have the relevant costs and remuneration assessed at a detailed assessment hearing should he wish to pursue the same.

32. Hosking 1 identified a number of further issues in relation to the conduct of the administration of LLP by Mr Wiseglass including how he dealt with under-leasehold premises held by LLP and a claim made by the landlord thereof for rent in respect thereof to be paid as an administration expense, how he dealt with the VAT treatment of rent, it being alleged that he had failed to investigate potential misuse of LLP's VAT registration number, his alleged failure to properly investigate transactions involving Mr Taylor and connected entities, issues concerning a lack of records relating to LLP and how Mr Wiseglass dealt with the same, and the operation of bank accounts post-

administration. Further, it was alleged that Mr Wiseglass was guilty of a number of non-disclosures, inconsistencies and misrepresentations in connection with the above issues and how they had been presented to the court.

33. At paragraph 129 of Hosking 1, it was said that whilst it was not for the Joint Administrators to speculate about the reasons for Mr Wiseglass's failure to perform his functions, it *"can certainly be said that he acted too favourably and leniently towards [Mr Taylor] in a manner and to an extent that was unjustifiable given the circumstances."* In paragraph 130 of Hosking 1, it was alleged that despite clear and obvious suspicious circumstances, Mr Wiseglass appeared to accept explanations as provided by Mr Taylor without any substantive independent investigations into the books, records or affairs of LLP, and in paragraph 131 it was alleged that not only did Mr Wiseglass's conduct throughout the administration demonstrate an apparent disregard for the elementary duties of an administrator, but that such conduct had led to a number of consequences that were set out in sub- paragraphs 131.1 to 131.7, including, at subparagraph 131.4, an allegation that he had failed to review adequately or take any action to recover various transactions entered into by LLP prior to its entry into administration, including substantial debts owed by Mr Taylor and MTA Solicitors, various loans granted to connected companies and unsubstantiated third party payments.

34. At paragraph 138 of Hosking 1, it was stated that the Joint Administrators considered that I had determined the Remuneration Application without disclosure to the court of facts and matters which Mr Wiseglass, as applicant/administrator/officer of the court and fiduciary, was under clear professional obligations to disclose, and that those facts and matters are likely to have affected to a high degree the court's approach to the application dated 10 November 2022 and its outcome.

35. By my Order dated 29 February 2024, by consent, I vacated the hearing on 1 March 2024, and adjourned Mr Wiseglass's application dated 9 January 2024 to be determined after the determination of the Review Application, and I gave directions in respect of the latter. So far as those directions are concerned, I provided for Mr Wiseglass to serve evidence in response to the Review Application and Hosking 1 by 30 April 2024, and for the Joint Administrators to serve evidence in reply (if so advised) by 31 May 2024. Further, I listed the Review Application to be heard on 9 July 2024.

36. There was some delay, in respect of which an extension of time was agreed, in the service by Mr Wiseglass of his evidence in response to the Review Application and Hosking 1. Ultimately, Mr Wiseglass served a fifth witness statement dated 13 May 2024 ("**Wiseglass 5**"). This sought to deal with the various issues that had been identified in Hosking 1 and that were relied upon in support of the Review Application. In addition, the point was taken by Mr Wiseglass that the Review Application had come very much out of the blue and late in the day.

37. It is relevant to note how Mr Wiseglass dealt in Wiseglass 5 with his alleged failure to properly investigate transactions involving Mr Taylor and connected entities. At paragraph 30, he said that he did not accept the criticisms. He said that Mr Hosking was wrong to say that he conducted no investigation into these matters, and he specifically identified that prior to his appointment he had posed questions to Mr Taylor such as those contained in an email dated 17 June 2021 (11:09 am) that he produced together with the relevant email chain. Further he said that post-appointment he made telephone

enquiries of Mr Taylor that provided some explanations that *"made sense"* to him. However, he produced no documentary records of these enquiries or of the conclusions reached in consequence of them.

38. Mr Wiseglass further said in Wiseglass 5 that if he had remained in office, he would have investigated matters further, but that there was nothing to suggest that there was any particular urgency which required action to be taken before replacement administrators were appointed. He said that he had made clear in Wiseglass 3 that he had not carried out a lot by way of investigation, referring in particular to paragraph 23 thereof referred to in paragraph 17 above and considered further below.

39. Mr Hosking responded to Wiseglass 5 with a witness statement dated 21 June 2024 ("**Hosking 2**"). It is fair to say that this significantly upped the ante so far as the case against Mr Wiseglass was concerned, and further new evidence was advanced that had not been referred to in Hosking 1, including, in particular, as to what Mr Wiseglass had said in his DCRS (conduct) report on the management of LLP sent to the Insolvency Service on 22 March 2022 ("**the Conduct Report**").

40. The new allegations contained in Hosking 2 included that:

    i) The Joint Administrators, having made further enquiries, were now of the view that Mr Wiseglass had been too close to Mr Taylor, either as a matter of fact or as a matter of reasonable perception, such that they considered that he should not have taken the appointment (paragraph 10).

    ii) Reliance was placed upon Mr Taylor having already brought in Mr Wiseglass to act as liquidator in respect of 4 other companies that he had controlled (paragraph 11). It was said that Mr Taylor was therefore a lucrative source of work for Mr Wiseglass (paragraph 12), and that whilst Mr Wiseglass might have said in the Proposals that he considered that there were no circumstances that *"prevented"* him from accepting an appointment, that was not the same as a conclusion that it was *"appropriate"* for him to do so (paragraph 13).

    iii) Reference was made to what Mr Wiseglass had said, or rather had not said in the Conduct Report, including answering *"no"* to whether Mr Taylor had been involved in 3 or more failures in the last 5 years, when, in fact, Mr Wiseglass had acted as liquidator in respect of the 4 liquidations referred to above (paragraph 18 et seq).

    iv) It was said that, based on Wiseglass 5, it was now considered that there were signs that Mr Wiseglass had approached LLP on a *"cut and shut"* basis, this being a pejorative expression for a light touch appointment where the insolvency office-holder does not approach the performance of his functions with due rigour, but with a view to taking a fee and then closing the entity down (paragraph 29).

41. In Hosking 2, particular reliance was placed upon the email exchange on 17 June 2021 that had been identified by Mr Wiseglass in Wiseglass 5 at paragraph 30. In essence, the correspondence produced by Mr Wiseglass shows that, on 16 June 2021, Mr Wiseglass had written to Mr Taylor enquiring as to what an *"other debtors"* figure of £2.4 million in LLP's accounts related to. Mr Taylor forwarded the enquiry to LLP's

accountant/auditor, Richard Zoltie (**"Mr Zoltie"**). The following day, at 10:48 am, Mr Zoltie emailed Mr Taylor with a breakdown, showing that of the figure for debtors in LLP's 2019 accounts of £2,443,341, £935,799 was shown as owed by Mr Taylor, and £760,308 was described as *"historic loans to other companies"*, principally ones that Mr Taylor was associated with, albeit described as irrecoverable. Mr Taylor then forwarded this latter email to Mr Wiseglass who, in his reply to Wiseglass at 11.09 am, responded to say: *"This appears (sic) that you personally owe £995k are you in a position to repay this to the company? Are the other companies able to repay as well?"* Mr Taylor responded to this by saying: *"Thanks Steven in a word no. Does this matter?"*

42. Mr Wiseglass took exception to the Joint Administrators raising new matters and making new allegations in Hosking 2. Mr Wiseglass thus issued an application dated 3 July 2024, supported by a sixth witness statement dated 3 July 2024 ("**Wiseglass 6**"), by which he sought an order striking out paragraphs 10, 11, 12, 13, 18, 24, 29, 65, 83, 95.4, 95.7 and 100 of Hosking 2. Mr Hosking responded to Wiseglass 6 with a third witness statement dated 7 July 2024 ("**Hosking 3**").

43. I dealt with Mr Wiseglass's application dated 3 July 2024 as a preliminary matter at the hearing on 9 July 2024. For reasons contained in an extempore judgment given at the time, I declined to strike out any part of Hosking 2, but I rejected the suggestion made on behalf of the Joint Administrators that it was incumbent upon Mr Wiseglass to seek an adjournment in order to respond to Hosking 2. I took the view that if the Joint Administrators wished, by Hosking 2, to rely upon anything therein that went beyond the permission granted by my Order dated 29 February 2024 to file and serve evidence in reply to Wiseglass 5, then the onus was on the Joint Administrators to seek permission to do so, which they had not done. In these circumstances, I decided that it would not be appropriate for me to take into account for the purposes of determining the Review Application anything in Hosking 2 that could not properly be described as evidence in reply to Wiseglass 5 falling within the permission to serve evidence in reply provided for by my Order dated 29 February 2024, and therefore that I would not do so. Further, I considered that I should be careful in any event in my consideration of the evidence to take into account the fact that Mr Wiseglass may not have had a fair and proper opportunity to deal with new matters raised in Hosking 2 that could have been dealt with in Hosking 1 such as, for example, the evidence in respect of Conduct Report.

Legal Framework

44. Before considering the parties respective submissions, I consider it appropriate to consider the legal framework against which I must decide the Review Application. I will deal firstly with the principles that apply concerning the application to vary or set aside the 2023 Order pursuant to r. 12.59(1) of the 2016 Rules, before considering much more briefly the requirements of r. 3.70(1) of the 2016 Rules and that element of the Review Application.

45. The jurisdiction under r. 12.59(1) of the 2016 Rules is equivalent to the jurisdiction in bankruptcy under s. 375(1) of the 1986 Act. Rule 12.59(1) provides that:

> *"Every court having jurisdiction for the purposes of Parts A1 to 7 of the Act and the corresponding Parts of these Rules, may review, rescind or vary any order made by it in the exercise of that jurisdiction."*

46. Following the hearing, I was referred by Mr Davies KC to the recent decision of HHJ Paul Matthews, sitting as a Judge of the High Court, in *Broom v Aguilar* [2024] EWHC 1764 (Civ), where Judge Matthews reviewed the equivalent bankruptcy jurisdiction under s. 375 of the 1986 Act, and referred to a number of authorities relating to the same, namely:

i) *Re a Debtor (No 32 of 1991)* [1993] 1 WLR 314, where Millett J (as he then was) referred to the jurisdiction under s. 375, and said at 318-19:

> *"Where an application is made to the original tribunal to review, rescind or vary an order of its own, however, the question is not whether the original order ought to have been made upon the material then before it but whether that order ought to remain in force in the light either of changed circumstances or in the light of fresh evidence, whether or not such evidence might have been obtained at the time of the original hearing."* [My emphasis]

ii) *Papanicola v Humphreys* [2005] 2 All ER 418, where Laddie J, having referred to a number of authorities on s. 375, said at [25]:

> *"25. It seems to me that a number of propositions can be formulated in relation to s 375. Some of them are derived from the passages cited above:*
>
> *(1) The section gives the court a wide discretion to review vary or rescind any order made in the exercise of the bankruptcy jurisdiction.*
>
> *(2) The onus is on the applicant to demonstrate the existence of circumstances which justify exercise of the discretion in his favour.*
>
> *(3) Those circumstances must be exceptional.*
>
> *(4) The circumstances relied on must involve a material difference to what was before the court which made the original order. In other words there must be something new to justify the overturning of the original order.*
>
> *(5) There is no limit to the factors which may be taken into account. They can include, for example, changes which have occurred since the making of the original order and significant facts which, although in existence at the time of the original order, were not brought to the court's attention at that time.*
>
> *(6) Where the new circumstances relied on consist of or include new evidence which could have been made available at the original hearing, that, and any explanation by the applicant gives for the failure to produce it then or any lack of such explanation, are factors which can be taken into account in the exercise of the discretion."*

iii) *Holtham v Kelmanson* [2006] EWHC 2588 (Ch), where, on appeal, Evans-Lombe J held that the fact that the bankrupt was present and represented by counsel before him, whereas the bankrupt had not been present or represented at an earlier hearing at a previous hearing at which the relevant order had been made, constituted a material difference capable of engaging the jurisdiction under s. 375.

47. These authorities do, I consider, provide helpful guidance as to how I might exercise the jurisdiction under r. 12.59(1) in the circumstances of the present case, recognising that it is an exceptional jurisdiction and that there must be some material difference with regard to the evidence that was before me on 5 April 2023, that justifies me in overturning the 2023 Order, either in whole or in part, either in the form of new evidence, or the identification of matters that ought to have been brought to the attention of the court on that occasion.

48. In the light of these considerations, it is necessary to consider the proper approach of the court to the entitlement of an office-holder to remuneration, and the position of office-holders in respect of matters such as objectivity, and the investigation of the conduct of those who had been involved in the management of the relevant company or LLP.

49. So far as the entitlement of an office-holder to remuneration is concerned, although I was not referred to it, at least in any detail, at the hearing of the Review Application, I consider that the starting point remains paragraph 21 of the IPD whereunder:

i) Sub-paragraph 21.1 provides that the objective in any remuneration application is to ensure that the amount and/or basis of any remuneration fixed by the court is fair, reasonable, and commensurate with the nature and extent of the work properly undertaken or to be undertaken by the office-holder in any given case and is fixed and approved by a process which is consistent and predictable.

ii) Sub-paragraph 21.2 sets out a number of *"guiding principles"*, including: (1) *"justification"*, requiring the office-holder essentially to justify their claim for remuneration; (2) "*benefit of the doubt"*, providing for the benefit of doubt generally to be resolved against the office-holder; (4), *"the value of the service rendered"*, requiring consideration to be given to the value of the service provided by the office-holder; (5) a *"fair and reasonable"* requirement, requiring the remuneration to represent fair and reasonable remuneration for the work properly undertaken or to be undertaken; (6) *"proportionality of information"*; and (7) *"proportionality of remuneration"*.

iii) Sub-paragraph 21.4 then sets out what an office-holder is required to provide so far as information is concerned on any remuneration application, including:

a) A narrative description and explanation of the various matters set out therein, including the amount of time to be spent or that has been spent in respect of work to be completed, or that has been completed, and why it is considered to be fair, reasonable, and proportionate (sub-paragraph 21.4.1);

b) A statement of the total number of hours of work undertaken or to be undertaken in respect of which remuneration is sought, together with a breakdown of such hours by individual members of staff and individual tasks or categories of tasks to be performed or to have been performed (sub-paragraph 21.4.3); and

c) A statement of the total amount to be or likely to be charged for the work to be undertaken or that has been undertaken in respect of which remuneration is sought (sub-paragraph 21.4.4), which such statement should include:

i) A breakdown of such amounts by individual member of staff, and individual task or categories of task performed or to be performed;

ii) Details of the time spent, expended, or to be expended, and remuneration charged or to be charged in respect of each individual task or category of task as a proportion respectively of the total time expended, or to be expended, and the total remuneration charged or to be charged.

iv) Sub-paragraph 21.4.4 goes on to provide that in respect of an application pursuant to which some or all of the amount of the office-holders remuneration is to be fixed on a basis other than time properly spent, the office-holder should provide, for the purposes of comparison, the same details as are required under sub-paragraph 21.4.4 but on the basis of what would have been charged had they been seeking remuneration on the basis of the time properly spent by the office-holder and their staff.

50. In the course of submissions, Mr Davies KC took me to the decision of the Court of Appeal and the judgment of David Richards J (as he then was) in *Brook v Reed* (Practice Note) [2012] 1 WLR 419, where the Court of Appeal considered, at some length, the principles to be applied by the court when fixing or approving the remuneration of an office-holder, in that case of a trustee in bankruptcy, and how the relevant principles had developed historically. At [52]-[53], David Richards J said this, under the heading *"Fiduciary status"*:

> *52. The ground of appeal refers also to the fiduciary status of a trustee in bankruptcy. This underpins the proper approach to the remuneration of a trustee or other office-holder. They have no entitlement to any remuneration or other benefit from their position as office-holder, save to the extent expressly permitted by law. This right to remuneration is governed by the Insolvency Rules. In seeking remuneration or claiming it on the basis allowed to them they are under a duty to be frank with the court and creditors and not to advance a claim for any payment beyond that to which they conscientiously consider themselves entitled. It is part of their duty to avoid the incurring of unreasonable costs, whether by reference to the task undertaken or the grade of employee who undertakes it.*

> *"53 It is because of their fiduciary position that the onus lies on them to justify their claim: see Maxwell [1998] 1 BCLC 638, 648D-H. Even where the issue comes before the court on a challenge to remuneration drawn on a previously approved basis, it will be for the office-holder to provide a sufficient and proportionate level of information to explain the remuneration and to enable the objector to identify with reasonable precision his points of dispute."*

51. Mr Davies KC relied upon this passage as demonstrating that an office-holder such as an administrator is a fiduciary, the onus is fairly and squarely on them to justify their entitlement to remuneration and to provide a sufficient and proportionate level of information to explain the remuneration that is sought, and also to be frank with the court and creditors in the way that the case as to remuneration is advanced.

52. Mr Fennell relies upon a passage from Bowstead and Reynolds on Agency, 23rd Ed, and the decision of the High Court and the judgment of Vos J (as he then was) in *Bank of Ireland v Jaffery* [2012] EWHC 1377 (Ch) therein referred to, in support of the proposition that breach by a fiduciary of his duties will not inevitably lead to the forfeiting of his entitlement to remuneration, and will not do so where to do so would be *"disproportionate and inequitable"*. Mr Fennell relies upon this in support of a submission that it would be wrong to deprive Mr Wiseglass of remuneration that he would otherwise be entitled to simply because allegations of breach of duty might be being alleged against Mr Wiseglass. He submits that any such allegations should be pursued by way of misfeasance claims rather than through an application to set aside the 2023 Order.

53. However, this approach does, to my mind, serve to address a rather different question than that which we are presently concerned with, namely whether a breach of duty might deprive an office-holder of remuneration. Mr Davies KC's point is that because an office-holder is a fiduciary, their only entitlement to remuneration in the first place is as provided for by law, and, as *Brook v Reed* (supra) at [52]-[53] demonstrates, the onus is on the office-holder to justify their entitlement, to be frank with the court in seeking to do so, and to provide sufficient information of a sufficient level of detail to enable the court to reach a view as to whether the claim for remuneration has been justified.

54. It is necessary for present purposes to have regard to the relevant provisions of SIP 2, and of the Insolvency Code of Ethics given what I consider must be their relevance to Mr Wiseglass's entitlement to pre-administration costs and remuneration, and whether the same can, in fact, be justified.

55. The full title of SIP 2 is: *"Investigations by Office Holders in Administrations and Insolvent Liquidations and the Submission of Conduct Reports by Office Holders"*. Mr Davies KC drew my attention to the following specific provisions thereof:

    i) Paragraph 2, identifying that an administrator has a duty to investigate what assets there are, including potential claims against third parties including directors, and what recoveries can be made, and the need for an office-holder to make appropriate investigations.

ii) Paragraph 4, setting out relevant principles, including that an office-holder should report clearly on the steps taken in relation to investigations, and the outcomes, and that conduct reports should be submitted in a timely manner.

iii) Paragraph 5, referring to the requirement for an office-holder to locate the company's books and records (in whatever form), and ensure that they are secured, and listed as appropriate.

iv) Paragraphs 9-11, outlining what is required on the part of an office-holder in relation to an *"initial assessment"*, referring, amongst other things, to:

a) A requirement to make enquiries of the directors and senior employees, by sending questionnaires and/or interviewing them, as appropriate; and

b) A requirement to make an initial assessment as to whether there could be any matters that might lead to recoveries for the estate and what further investigations may be appropriate.

v) Paragraphs 12-15, outlining what is required so far as the taking of further steps is concerned, identifying, amongst other things, that an office-holder may conclude that there are matters, such as the conduct of management, which require early investigation, either as a matter of public policy or because there are real prospects of recoveries for the estate.

vi) Paragraph 18, concerning record-keeping, and requiring that an office-holder should document, at the time, initial assessments, investigations and conclusions, including any conclusion that further investigation or action is not required or feasible, and also any decision to restrict the content of reports to creditors.

vii) Paragraphs 19-22, concerning conduct reporting requirements, setting out, amongst other things, that the office-holder should base any conduct report on information coming to light in the ordinary course of their enquiries, and specifying that the office-holder is not required to carry out investigations specifically for the purpose of fulfilling their statutory reporting obligations.

56. Mr Davies KC drew to my specific attention the following provisions of the Insolvency Code of Ethics (effective from May 2020) ("**the Ethics Code**"):

i) The general requirement at paragraph R2000.5 that, to protect and promote the public interest, an insolvency practitioner should observe and comply with the Code.

ii) The requirement at paragraph R2101.1 that an insolvency practitioner should comply with the principle of integrity, which requires an insolvency practitioner to be straightforward and honest in all professional and business relationships.

iii) The requirement at paragraph R2102.1 with regard to objectivity, requiring that an insolvency practitioner should comply with the principle of objectivity, which requires an insolvency practitioner not to compromise professional or

business judgment because of bias, conflict of interest or undue influence of others.

iv) The requirement at paragraph R2104.2 that an insolvency practitioner in the role as officeholder should report openly to those with an interest in the outcome of an insolvency: *"An Insolvency Practitioner should always report on his acts and dealings as fully as possible given the circumstances of the case, in a way that is transparent and understandable. An Insolvency Practitioner should bear in mind the expectations of others and what a reasonable and informed third-party would consider appropriate."*

v) The introduction, at paragraphs 2110.1 and 2110.2, to the *"conceptual framework"* as specifying an approach for an insolvency practitioner to identifying threats to compliance with the fundamental principles, evaluating the threats identified, and addressing the threats by eliminating or reducing them to an acceptable level.

vi) Paragraph 2114.1 A4 as identifying various categories of threats to compliance with the fundamental principles, including, at sub-paragraph (d), a *"familiarity threat"*, i.e. a threat that due to a long or close relationship, an individual within the firm will be to sympathetic or antagonistic to the interests of others or too accepting of their work.

vii) The requirement at paragraph R2116.1 that if an insolvency practitioner determines that identified threats to compliance with the fundamental principles are not at an acceptable level, then the insolvency practitioner should address the threats by eliminating them or reducing them to an acceptable level by, amongst other things, declining or ending the insolvency appointment if appropriate to do so.

viii) Paragraph 2130.1 A1, concerning record-keeping, and setting out that it will always be for the insolvency practitioner to justify their actions. Thus: *"An insolvency practitioner will be expected to be able to demonstrate the steps that they took and the conclusions that they reached in identifying, evaluating and responding to threats, both leading up to and during an insolvency appointment, by reference to written and contemporaneous records."*

ix) The requirement at paragraph R2130.2 in respect of record-keeping, that the insolvency practitioner should document:

a) The facts;

b) Any communications with, and parties with whom the matters were discussed;

c) The courses of action considered, the judgements made and the decisions that were taken;

d) The safeguards applied to address the threats when applicable;

e) How the matter was addressed; and

f) Where relevant, why it was appropriate to accept or continue the insolvency appointment.

x) The requirement in paragraph R2140.2 that where there is an ethical conflict that requires to be resolved, the insolvency practitioner should document the substance of the issue, the details of any discussions held and the decisions made concerning that issue.

57. I do not understand there to be any dispute between the parties that Mr Wiseglass was under an obligation, as administrator, to act within the requirements of SIP2 and the Ethics Code. The issue between the parties is as to whether Mr Wiseglass did so, and to the extent that he might have fallen short of the requirements thereof, and whether, and if so to what extent, that impacts upon his entitlement to recover pre-administration costs and post-administration remuneration in such a way as to require the 2023 Order to be varied or set aside.

58. So far as r. 3.70 of the 2016 Rules is concerned, this provides that where an administrator ceases to be in office as a result of, amongst other things, their removal, then they must, as soon as reasonably practicable, deliver to the person succeeding as administrator, amongst other things, *"the assets (after deduction of any expenses properly incurred and distributions made by the departing administrator)"*.

59. As Mr Wiseglass's obligations so far as r. 3.70(1) is concerned may depend upon whether, and if so to what extent the 2023 Order is disturbed, I will defer consideration of the effect of r. 3.70(1) until after I have considered whether or not the 2023 Order ought to be varied or set aside, either in whole or in part.

The Joint Administrators' case

Introduction

60. As identified in paragraph 33 above, a key feature of the Joint Administrators' case as articulated in Hosking 1 is an allegation that Mr Wiseglass's conduct as administrator showed that he had: *"… acted too favourably and leniently towards [Mr Taylor] in a manner and to an extent that was unjustifiable given the circumstances."* It is alleged by the Joint Administrators in Hosking 1 that, despite clear and obvious suspicious circumstances, Mr Wiseglass appears to have accepted explanations provided by Mr Taylor without any substantive independent investigation into the books, records or affairs of LLP, that his conduct throughout the administration demonstrates an apparent disregard for the elementary duties of an administrator, and that this had led to a number of consequences as set out in sub-paragraphs 131.1 to 131.7 of Hosking 1. There is included, at sub-paragraph 131.4, an allegation that he had failed to review adequately or take any action to recover various transactions entered into by LLP prior to its entry into administration, including substantial debts owed by Mr Taylor and MTA Solicitors, various loans granted to connected companies and unsubstantiated third party payments.

Specific matters alleged in Hosking 1

61. Earlier in Hosking 1, a number of distinct matters were raised which were subsequently relied upon in paragraph 113 et seq thereof as showing that Mr Wiseglass had not been

open and transparent with the court as a result of non-disclosures, inconsistencies and misrepresentations that are relied upon as showing that he cannot properly justify his claims, in particular, to remuneration as administrator.

62. So far as these distinct matters are concerned, these can be summarised as follows.

63. Leasehold Premises - LLP was party to an underlease dated 10 June 2016 whereby premises at Northside House, Bromley ("**the Demised Premises**") were demised to LLP for a term of 10 years from 10 June 2016. As noted in sub-paragraph 13(iv) above, reference was made in the Proposals to leased premises. It is to be further noted that the underlease in question was granted when LLP was known as MTA Solicitors LLP, with LLP changing its name to its present name just over a month after the grant of the underlease, on 15 July 2016.

64. The landlord's solicitors wrote to Mr Wiseglass on 21 September 2022 claiming that £107,699 was due to the landlord by way rent payable as an administration expense with priority as such on the basis that use had been made of the Demised Premises for the purposes of the administration. As well as raising doubts as to whether the relevant leasehold interest was vested in LLP based upon what he said that he had been told by Mr Taylor, it was Mr Wiseglass's position, in response to the letter dated 21 September 2022, that no use had been made of the Demised Premises for the purposes of the administration of LLP, and therefore that nothing could be due by way of administration expense. This remains Mr Wiseglass's position.

65. The position is that a sub-underlease of part of the Demised Premises had been granted to an entity known as SpaMedica Ltd, but that rent had, at least during the administration of LLP, been paid by the latter to either Mr Taylor or MTA Solicitors. Further, MTA Solicitors had occupied another part of the Demised Premises until August 2022.

66. The Joint Administrators complain that Mr Wiseglass had, on appointment, failed to make proper enquiries with regard to the ownership of the under-leasehold interest in the Demise Premises, and that he had failed to make proper enquiries as to the use being made thereof by MTA Solicitors. Further, the Joint Administrators complain that Mr Wiseglass did not disclose the issues that had arisen in relation to the Demise Premises, and in particular the landlord's administration expense claim, and the apparent misappropriation of the rent due from the sub-tenant, in making the Remuneration Application.

67. Vat Issues - The Joint Administrators raise a number of issues concerning the use of LLP's and MTA Solicitors' respective VAT registration numbers. The principal issues raised are that:

    i) By letter dated 18 March 2022 addressed to *"MTA Solicitors LLP"*, HMRC notified the addressee that the VAT return and payment for the period from 1 November 2021 to 31 January 2022 had not been sent within the required timeframe. Although the letter was addressed to *"MTA Solicitors LLP"*, it referred to LLP's VAT registration number. The letter thus raised the possibility that LLP's VAT registration number had been misused.

ii) In or about December 2022, Mr Wiseglass obtained invoices that had been addressed to SpaMedica Ltd, the sub-tenant of the Demise Premises, for rent. The first of the invoices purported to be sent by *"MTA Solicitors"* and was undated. Whilst it included a charge for VAT, it made no reference to any VAT registration number. The other three invoices were sent by MTA Solicitors, and each referred to MTA Solicitors' company registration number and to MTA Solicitors' VAT registration number. The invoices were sent in the name of MTA Solicitors notwithstanding that LLP was party to the relevant underlease, as evidenced by the fact that LLP's company registration number was used for the purposes thereof. The sums sought to be recovered by these invoices were significant, totalling significantly in excess of £60,000.

68. The Joint Administrators complain that the apparent misuse of the respective VAT registration numbers by the person controlling LLP and MTA Solicitors, namely Mr Taylor, represented a red flag which ought to have been investigated, but was not. Further, the Joint Administrators complain that the issues that arose ought to have been drawn to the attention of creditors of LLP, and also the court in making the application to have remuneration fixed, but were not.

69. Transactions with Mr Taylor and/or connected parties - The email exchange on 17 June 2021 referred to in paragraph 39 above making reference to £935,000 being apparently due from Mr Taylor to LLP had, as I understand it, yet to be produced by Mr Wiseglass when Mr Hosking made Hosking 1. What is alleged in Hosking 1 is that draft accounts for LLP to June 2020 showed Mr Taylor as owing £614,724, and that draft accounts for LLP to June 2021 showed Mr Taylor as owing £539,818. Further, there is reference to £1,094,940.60 being received into LLP's Business Account on 19 March 2019, and to two amounts of £500,000 being paid out to Mr Taylor out of the same account on 22 March 2019. Further, Hosking 1 makes reference to various amounts as having been advanced to entities controlled by Mr Taylor. So far as MTA Solicitors is concerned, reference is made to the fact that the statement of affairs of the latter as at 6 March 2023 refers to LLP as being a creditor in the liquidation of MTA Solicitors in an amount of £1,071,064.

70. The Joint Administrators complain that no reference was made to any indebtedness of Mr Taylor, or to any intercompany balances as being due from other entities controlled by Mr Taylor in the Proposals or the subsequent progress reports. Further, it is alleged that Mr Wiseglass has appeared to have carried out no significant investigation in relation to these matters, and that they should have been brought to the court's attention on the making by Mr Wiseglass of the Remuneration Application.

71. Lack of Records - The issues raised by the Joint Administrators in this respect are, in essence, that whilst Mr Wiseglass might have reported that LLP's computer system had been rendered inaccessible by a cyber-attack, there is no evidence of him having sought to investigate this attack, with Mr Wiseglass simply having placed reliance upon what he had been told by Mr Taylor. There is further a complaint that Mr Wiseglass failed to deliver up other physical books and records relating to LLP, it being the Joint Administrators' case that when they sought to recover the records of LLP held by the liquidators of MTA Solicitors, who they had been led to believe were in possession of the same, they were informed that many of the records were lost in transit in a move to *"the new property"*, or destroyed because of their age or condition.

72. In essence, the Joint Administrators complain that Mr Wiseglass failed to get to grips with the situation so far as the books and records of LLP, both electronic and physical, were concerned. As it is put in paragraph 87 of Hosking 1:

> *"… We do not accept that there are no books or records of the LLP (either electronic or physical) available. [Mr Wiseglass] was bound to investigate the claims of [Mr Taylor] and seek to recover whatever information was available in order to maximise the realisations in the administration for the benefit of creditors, including from MTA Solicitors as successor practice. [Mr Wiseglass] took no such steps. Had he not been replaced, this may well have led to a shortfall in the ultimate distribution to creditors."*

73. Operation of the Accounts Post-Appointment - The allegation is, in essence, twofold, namely:

    i) LLP operated 12 separate accounts at the time that it entered into administration, but Mr Wiseglass's enquiries following his appointment only revealed the existence of a number of these accounts, leaving others undiscovered; and

    ii) Various payments were made out of client account following the entry of LLP into administration without Mr Wiseglass's authority as administrator, and that whilst Mr Taylor might have maintained that he had authority from the Solicitors' Regulation Authority ("**the SRA**") to operate the client account, Mr Wiseglass never made any proper enquiry as to his entitlement to do so, or with regard to whether it was appropriate for Mr Taylor to continue to operate the client account.

74. It is the Joint Administrators' case that the above, potentially at least, resulted in loss to the administration estate, and is therefore a relevant consideration so far as any entitlement of Mr Wiseglass to remuneration is concerned.

Mr Davies KC's submissions at the hearing

75. In the course of submissions, and by reference to *Brook v Reed* (supra) at [52]-[53] per David Richards J, Mr Davies KC developed the point that the onus was on Mr Wiseglass, as office-holder subject to fiduciary duties and obligations, to justify his remuneration, and in doing so to be frank with the court, and to provide a sufficient and proper level of information to explain the same.

76. As to the provision of information in the context of an office-holder's duty to investigate the affairs of a company (and thus an LLP) and the conduct of its officers identified in particular in paragraphs 2, and 9-11 of SIP 2, Mr Davies KC pointed to the obligation to report clearly on the steps taken in relation to investigations, and the outcome thereof identified in paragraph 4 of SIP 2, and the obligation concerning record-keeping identified in paragraph 18 of SIP 2.

77. Mr Davies KC referred to what he described as a *"deafening silence"* in the reports to creditors, and in the evidence placed before the court in respect of the Remuneration Application to the £935,000 referred to in the email to Mr Wiseglass dated 17 June 2021, or to the amounts shown as due from Mr Taylor in the draft accounts of the LLP to 30 June 2020 and 30 June 2021, or to the two payments of £500,000 paid out of

LLP's business bank account to Mr Taylor on 22 March 2019 following receipt by LLP of the sum of £1,094,940.60 on 19 March 2019. The overriding point was made that Mr Wiseglass had identified in his email dated 17 June 2021 that Mr Taylor owed significant sums to LLP, but that there was no explanation provided by Mr Wiseglass as to how, if at all, this was followed up and taken into account in assessing the likely recoveries in the administration of LLP, if indeed it was, and no written record, as there ought to have been, of initial assessments, investigations and conclusions in relation thereto complying with paragraphs 4 and 18 of SIP 2 .

78. A similar point was made in respect of the various amounts owed by other corporate entities controlled by Mr Taylor.

79. Mr Davies KC referred to the Conduct Report as submitted by Mr Wiseglass to the Insolvency Service on 22 March 2022. In particular, Mr Davies KC identified that the report had been completed so as to answer:

    i) *"Yes"* to the questions: *"Did the company use electronic records?"*, and *"Are these records secure?";* and

    ii) *"No"* to a question as to whether Mr Taylor had been involved in *"3 or more failures in 5 years"*.

80. As is now clear, these answers were, at best, misleading because the ability to access the electronic records had, on Mr Wiseglass's case, been lost in the cyber-attack, and Mr Taylor had been involved in 3 or more failures in the last 5 years. I note that the questionnaire was also completed so as to answer *"No"* to the question as to whether Mr Taylor had *"Benefited unreasonably from the company?"*. In answering this latter question, Mr Wiseglass was impliedly representing that he was in a position to do so.

81. Mr Davies KC referred to the way that Mr Wiseglass had dealt with the position in relation to the underlease of the Demised Premises, apparently readily accepting Mr Taylor's explanation that there was a mistake as to the party to the underlease, or at least some confusion in that respect, in circumstances in which MTA Solicitors was using part of the Demised Premises until August 2022, and the rent paid by the sub-tenant was not being received by LLP, but rather by Mr Taylor or MTA Solicitors which was submitting invoices for the same. Mr Davies KC relied upon this alleged lack of rigour in support of the case that Mr Wiseglass was acting at least unreasonably favourably and/or leniently towards Mr Taylor. A similar point was made by Mr Davies KC in relation to what was submitted to be the failure to investigate the use made of the respective VAT registration numbers of LLP and MTA Solicitors.

82. Further, Mr Davies KC complained that Mr Wiseglass's lack of attention to detail in respect of the underlease had resulted in the landlord making a claim for administration expenses under the salvage principle of in excess of £107,000, none of which was reported to creditors or disclosed to the court.

83. The light touch treatment of Mr Taylor is thus said by Mr Davies KC to be evidenced by a lack of proper investigation as to whether, and if so to what extent Mr Taylor and other entities controlled by him were indebted to the LLP as well as amongst other

things, the alleged lack of rigour on the part of Mr Wiseglass in respect of ascertaining the position in respect of the underlease and the apparent misuse of VAT registration numbers by LLP and MTA Solicitors respectively, and what had become of LLP's records.

84. Mr Davies KC identified that it is these considerations that have led the Joint Administrators to consider that: *"… there are signs that Mr Wiseglass was approaching the LLP on a "cut and shut" basis"* – see paragraph 29 of Hosking 2.

85. Further, it was Mr Davies KC's case that the evidence is demonstrative of a familiarity between Mr Wiseglass and Mr Taylor that should have caused him to properly consider the *"familiarity threat"* identified in paragraph 2114.1 A4 of the Ethics Code, and to address the same, if necessary, by declining the appointment - see paragraph R2116.1 ibid. Further, Mr Davies KC pointed to the requirement to document the process in considering whether it was appropriate to act - see paragraphs R2130.2 and R2140.2 ibid. The point is made that whilst Mr Wiseglass might have touched upon the familiarity threat in the paragraph of the Proposals referred to in paragraph 13(i) above, there is no evidence of Mr Wiseglass having properly considered whether it was appropriate to act, rather than whether there was anything preventing him from acting, and in any event no evidence of any record of him having gone through the process as required by the provision of the Ethics Code that I have referred to.

86. Dealing with Mr Wiseglass's suggestion that matters would have been further investigated had it not been made clear to him at the meeting of the creditors' committee on 16 March 2022 that there was a desire to replace him as administrator and that it was appropriate to have *"another pair of eyes"* to investigate matters, Mr Davies KC points to what he referred to as the *"massive amount of time"* from and after the correspondence of 17 June 2021 to investigate matters, and he submits that it is simply not explained why Mr Wiseglass did not at least interview Mr Taylor in relation to the relevant issues prior to the meeting of the creditors' committee. Further, Mr Davies KC made the point that such a decision by Mr Wiseglass to *"down tools"* is not recorded in any contemporaneous record of the kind envisaged by paragraphs 4 and 18 of SIP 2 and was not reported to creditors.

87. In his submissions in reply, Mr Davies KC focused upon what he submitted had been the non-disclosure by Mr Wiseglass to creditors, and to the court in the determination of the Remuneration Application, in respect of the evidence that there was with regard to the £1 million paid out to Mr Taylor on 19 May 2019, monies owed to LLP by Mr Taylor, the intercompany balances, the position in respect of the underlease, the landlord thereunder and the use of the Demised Premises, the position in respect of the use of LLP's and MTA Solicitors' VAT registration numbers, and the position in respect of the books and records of LLP.

88. In short, it was submitted that the onus was on Mr Wiseglass to be frank with the court, and to provide a sufficient and proportionate level of information to explain and justify the remuneration that he was seeking and that, with the benefit of the evidence now before the court, it can be seen that Mr Wiseglass has failed to justify the remuneration that he persuaded me to fix at an amount of £60,000 plus VAT, as well as approving the fee of £30,000 in respect of pre-appointment work, when I determined the Remuneration Application on 5 April 2023.

89. It is submitted that on the basis of the new evidence now before the court, it is appropriate to exercise the jurisdiction under r. 12.59(1) the 2016 Rules, and to vary or set aside the 2023 Order, and to require Mr Wiseglass, if he wishes to pursue his claim for remuneration, to have such claim subject to a detailed assessment.

Rule 3.70(1) of the 2016 Rules

90. Mr Davies KC's position so far as r. 3.70(1) of the 2016 Rules is really very simple. Upon the appointment of the Joint Administrators in January 2023, Mr Wiseglass ought, pursuant thereto, to have delivered to the Joint Administrators all the funds then in his hands. Whilst the obligation under r. 3.70(1) to deliver the assets is expressed in r.3.70(1)(a) to be *"after deduction of any expenses properly incurred … by the departing administrator"*, it is submitted that this could only have permitted the deduction of remuneration and other expenses once duly approved by creditors or the court. Thus, as soon as the Joint Administrators had been appointed, all the realisations in Mr Wiseglass's hands ought to have been paid over to them notwithstanding the Remuneration Application. Whilst the 2023 Order, when made, might, subject to the Review Application, have justified at that point the retention of the amounts specifically authorised and approved thereby, this could not justify the retention of any amounts held over such amounts as some form of security for, for example, the costs that Mr Wiseglass seeks to recover by his application dated 9 January 2024.

91. Mr Davies KC identifies the statutory charge provided for by paragraph 99(3)(a) of Schedule B1 to the 1986 Act as the proper mechanism for securing the position of a former administrator given that this provides for the former administrator's remuneration and expenses to be *"charged on and payable out of property of which he had custody or control immediately before cessation."*

92. On this basis, it is submitted that Mr Wiseglass ought to be required to pay over the sums that he now holds, at least save to the extent that the same might remain approved and authorised following the determination of the Review Application.

Mr Wiseglass's case

Procedural issues

93. As I have already identified, Mr Wiseglass complains that Hosking 2 advances, by way of reply, allegations of bad faith/concealment/deliberate misconduct which should have been made, if at all, in Hosking 1, or after having obtained further directions in relation to the conduct of the Review Application.

94. Mr Fennell on behalf of Mr Wiseglass identified the following specific matters and allegations that were said to be new to Hosking 2, namely:

    i) The allegation that Mr Wiseglass was too close to Mr Taylor and should not have taken the appointment as administrator at all (paragraph 10);

    ii) The concern raised regarding Mr Wiseglass's appointment in four previous insolvencies involving Mr Taylor and there being no suggestion that the LLP would be the last (paragraphs 11, 12, 13);

iii) The attempt to draw a distinction between there being nothing *"preventing"* Mr Wiseglass taking the appointment and it being *"appropriate"* for him to do so (paragraph 13);

iv) The suggestion that Mr Wiseglass deliberately withheld information from the Insolvency Service in the Conduct Report (paragraph 24);

v) The allegations of a *"cut and shut"* (paragraphs 29 and 95.7);

vi) The allegation that Mr Wiseglass did not investigate Mr Taylor's dealings "*due to his closeness to Mr Taylor*" (paragraph 65);

vii) The allegation that *"Mr Wiseglass allowed his longstanding relationship with Mr Taylor to cloud his impartiality and, by consequence, his integrity"* (paragraph 83);

viii) The allegation *that "Mr Wiseglass appears to have taken steps to conceal the prior corporate failures with which Mr Taylor was associated as a corporate director"* (paragraph 95.4);

ix) The allegation that *"there was an element of Mr Wiseglass not wanting to bite the hand that fed him"* (paragraph 100).

95. As I have said, I rejected Mr Wiseglass's submission that I should strike out the relevant paragraphs of Hosking 2, but I did hold that the relevant paragraphs of Hosking 2 could only be relied upon to the extent that they generally represented reply evidence, rather than new evidence that might been contained within Hosking 1, and I held that I should, in any event, take into account the limited opportunity that Mr Wiseglass had had to deal with new evidence, including, for example, in relation to the Conduct Report.

96. Mr Fennell took a further point, namely that a number of the issues raised by the Joint Administrators were issues that were disputed by Mr Wiseglass that could only satisfactorily be resolved by cross examination, and that a number of matters raised by the Joint Administrators, whilst potentially relevant to misfeasance or similar proceedings that the Joint Administrators might seek to bring against Mr Wiseglass, were not allegations that could be satisfactorily resolved within the context of the Review Application.

97. Mr Fennell took the further point that the Joint Administrators had been in office for some 3 months as at the date of the hearing on 5 April 2023, had been in contact at least with Speed Medical for some time prior thereto having been engaged in relation to the Proposals , and could have intervened for the purposes of the hearing on 5 April 2023, if only to ask for time in order to investigate the position before making substantive submissions in relation to the Remuneration Application. It is said that had the Joint Administrators intervened at that stage, significant time and expense would have been saved. In the event, they left it until nearly a year after the hearing on 5 April 2023 before bringing the Review Application, very shortly prior to the hearing date fixed to determine Mr Wiseglass's application dated 9 January 2024. It is submitted that these are considerations relevant to the exercise of my discretion which go against now setting aside or otherwise interfering with the 2023 Order pursuant to r. 12.59(1) of the 2016 Rules, particularly so long after the event.

Legal principles

98. Realistically, Mr Fennell does not challenge the locus standi of the LLP, by the Joint Administrators, to seek to vary or set aside the 2023 Order pursuant to r. 12.59(1), and nor does he seek to challenge the legal principles relied upon by Mr Davies KC, save that, as referred to in paragraph 52 above, Mr Fennell seeks to rely upon the passage from Bowstead and Reynolds on Agency, 23rd Ed, at 7-050 therein referred to as to the circumstances in which it might be appropriate to deprive a fiduciary of remuneration in support of an argument that breach of duty on the part of a fiduciary will not lead to a fiduciary being deprived of remuneration where to do so would be disproportionate and inequitable. However, as I held in paragraph 53 above, I do not consider that this addresses the point that Mr Davies KC seeks to make, namely that the obligation is upon Mr Wiseglass to justify his remuneration in the first case, and that we are not concerned with whether it is appropriate to deprive Mr Wiseglass of remuneration to which he might otherwise have been entitled, but rather whether, and if so to what extent, he is entitled to it in the first place.

99. Mr Fennell accepts the application to an office-holder such as Mr Wiseglass of SIP 2 and the Code of Ethics, but he questions the relevance thereof to the present circumstances whilst recognising that Mr Wiseglass is both a fiduciary and an office the court and, as such, that the highest standards are expected from him.

Pre-appointment costs and expenses

100. Mr Fennell observes that the Review Application seeks to set aside the whole of the 2023 Order. He submits that the 2023 Judgment and the 2023 Order made consequential thereupon require separate consideration so far as they dealt with pre-appointment costs and expenses on the one hand and Mr Wiseglass's remuneration as administrator on the other hand.

101. Mr Fennell points out that the Review Application makes no specific criticism of Mr Wiseglass's pre-appointment conduct, other than an overarching criticism that he should not have been appointed at all. Thus, it is not, for example, suggested that the sale of LLP's WIP through Recovery First represented a bad outcome for creditors, or that there was anything wrong with the way in which the transaction was negotiated and completed.

102. Mr Fennell observes that arguments in respect of pre-appointment costs and expenses were advanced by Speed Medical at the hearing on 5 April 2023, as referred as set out in paragraphs 19 to 35 of Speed Medical's Skeleton Argument for that hearing. The particular arguments that were raised related to an alleged failure to provide the information required by the IPD in respect of Mr Wiseglass's own fees, a criticism of the level of detail of the breakdown of Pannone's fees, and criticism of Mr Wiseglass's pre-appointment strategy concerning an abortive sale to an unconnected third party. Mr Fennell submits that these various issues were taken into account by me in determining this aspect of the Remuneration Application on 5 April 2023, and he relies upon the fact that I rejected at paragraph 58 of the 2023 Judgment the criticism of the work done in respect of the abortive sale, and, adopting a broad brush approach, determined the level of pre-appointment costs that I considered that it was appropriate for Mr Wiseglass to recover having made a not insignificant reduction in the amount sought, and having found that the fees charged by Pannone were not, on the face of them, excessive, and

were supported by sufficient detail - see paragraphs 4 to 6 and 56 to 64 of the 2023 Judgment.

103. In the circumstances, it is submitted that there are no grounds at all on which the court should vary the terms of the 2023 Order in respect of pre-appointment costs and expenses of Inquesta, Pannone or JPS. In this regard, and as I have indicated at paragraph 29(i) above, the Joint Administrators are not now pursuing recovery of the pre-appointment fees to Pannone and JPS.

Post-appointment remuneration

104. So far as investigation work is concerned, Mr Fennell submitted that the *"initial assessment"* provided for by paragraphs 9-11 of SIP 2 in fact required very little to be done, and Mr Fennell referred to the progress reports produced by the Joint Administrators themselves which show them having, after having taken over from Mr Wiseglass, committed only 3.1 hours to investigation work between 10 January 2023 and 29 May 2023, and only 7.2 hours to investigation work between 30 May 2023 and 29 November 2023, and to the absence of evidence that after their limited inquiries, the Joint Administrators had been able to form the view that a good and sustainable claim lay against Mr Taylor.

105. Mr Fennell submits that Mr Wiseglass was, in the light of the approach of the creditors taken at the meeting of the creditors' committee on 16 March 2022, entitled to take the view it would not have been appropriate for him to have carried out extensive investigations at a cost to creditors if they were saying that *"new eyes"* should look at the matter, and that he should be replaced by the Joint Administrators.

106. Mr Fennell disputed that the court had, in any way, been misled in relation to him carrying out investigatory work, and he referred to paragraph 23 of Wiseglass 3, where Mr Wiseglass had said this:

> *"Mr Robins is also wrong to suggest at paragraph 23 that I have not considered whether a claim against Mr Taylor is viable. Potential claims against Mr Taylor have been considered. It is certainly true that I delayed undertaking any work beyond the initial investigation required by Statement of Insolvency Practice 2. That was because I did not think it appropriate to undertake such work, and incur legal costs in relation to it, when it appeared that the creditors wished to have a different practitioner in office."*

107. In short, so far as investigatory work is concerned, Mr Fennell's submission on behalf of Mr Wiseglass was that no one had misled anybody with regard to this.

108. As to the question as to whether Mr Wiseglass should have taken the appointment in any event, apart from the objection that this is a new point taken by way of reply which ought to have been advanced in Hosking 1, Mr Fennell points to the fact that Mr Wiseglass did, in the part of the Proposals referred to in paragraph 13(i) above, disclose his previous connection with Mr Taylor, and other companies in which Mr Taylor had been involved, and which had entered into liquidation. This particular passage referred to Mr Wiseglass having considered his position prior to accepting the appointment, having had regard to the Code of Ethics, and to having considered that there were no circumstances preventing him from accepting the appointment. It is said behalf of Mr

Wiseglass that the Joint Administrators' point that there is a distinction between there being nothing *"preventing"* Mr Wiseglass from accepting the appointment and it being *"appropriate"* for him to do so, to use the wording of the relevant paragraph of the Code of Ethics, is a new point that could have been taken earlier but, in any event, is not of such moment as to make the 2023 Judgment and the 2023 Order unsafe, and liable to be set aside.

109. As to the Joint Administrators' point that Mr Taylor had provided no answer to the email dated 17 June 2021 contending that he owed £935,000, Mr Fennell submits that the position is plainly not as simple as suggested on behalf of the Joint Administrators. There may have been a point following Mr Taylor's receipt of the 2 payments of £500,000 on 19 March 2019 when a figure of this magnitude was owed and thus reflected in accounts for the year ended 30 June 2019, but Mr Fennell points to the 2020 and 2021 draft accounts as showing a significantly reduced sums as outstanding, the figure shown as due from Mr Taylor in the draft 2021 accounts being £539,818, with the amount due from members being £458,733 once a sum owed to Volume Resources Ltd is taken into account.

110. Thus, it is submitted on behalf of Mr Wiseglass that the position was nothing like as obvious as the Joint Administrators now appear to contend was the case, and that it was entirely appropriate for Mr Wiseglass to take the view that any detailed investigation should be postponed to be carried out by new administrators if appointed. It is said that had not there been this intervention on the part of the creditors at the Creditors' committee meeting on 16 March 2022, then Mr Wiseglass would have investigated all the matters raised in Hosking 1, including the amounts owed personally by Mr Taylor, and the sums owed by the companies with which he was connected, and the extent to which those monies might have been recoverable given the circumstances of those companies.

111. It is submitted on behalf of Mr Wiseglass that there is no evidence that any loss has been suffered by LLP or its creditors as a result of a detailed investigation in relation to these matters being deferred, a consideration being that there is no indication from the progress reports filed by the Joint Administrators following their appointment to suggest that they have done anything about these matters themselves, still less made any realisations.

112. So far as the underlease is concerned, and the claim made by the landlord in relation to the rent being an administration expense, Mr Fennell submits that the position is very straightforward. Mr Wiseglass's unchallenged evidence is that the Demised Premises were not used for the purposes of the LLP in administration, and so there can be no question of there being a good claim by the landlord for the rent to be so treated. It is pointed out that the Joint Administrators' own progress reports indicate that they do not regard the landlord as an expense creditor. The issue, it is submitted, is therefore something of an irrelevance and a red herring.

113. So far as the use of LLP's VAT registration number is concerned, the point is made that, in response to HMRC's letter dated 18 March 2022, Mr Wiseglass pointed out to HMRC the use of LLP's VAT registration number. It is said on behalf of Mr Wiseglass that it is not contended that these matters have caused the Joint Administrators to embark upon any particular line of enquiry that Mr Wiseglass did not pursue.

114. So far as bank account statements are concerned, and the use of the client account, it is said that Mr Wiseglass duly wrote to Lloyds Bank seeking details in respect of the bank accounts held by LLP and was provided with a list by Lloyds Bank. To the extent that Mr Wiseglass did not ascertain the existence of other bank accounts, this is, it is said, down to Lloyds Bank not providing a full answer to his enquiry.

115. So far as the operation of the client account is concerned, it is submitted that Mr Wiseglass was entitled to rely upon what he was told about Mr Taylor being authorised by the SRA. In any event, it is pointed out that the monies standing to the credit of any client account of LLP would not be an asset of the latter for the purposes of its administration, and that the purpose of the sale involving Recovery First was to achieve a transfer of the WIP to new firms of solicitors, and no complaint has been made with regard to this and the circumstances behind it, and there is no suggestion that it has not achieved a proper level of recovery for the benefit of the creditors of LLP.

116. With regards to the books and records of LLP, it is submitted that the evidence of Mr Hosking miscategorises Mr Wiseglass's correspondence with the Joint Administrators in relation to books and records. It is said that the Joint Administrators do not say what, if anything, Mr Wiseglass should have done differently in his dealings with Mr Taylor, or what different outcome may have been achieved.

117. Further, it is submitted that Mr Wiseglass was entitled to have regard to the fact that Mr Taylor was a practising solicitor in considering the explanations that he gave in respect of the cyber-attack.

118. So far as the Conduct Report is concerned, it is submitted on behalf of Mr Wiseglass that the allegations made in Hosking 2 in relation thereto could have been made in Hosking 1, in which case Mr Wiseglass would have had the opportunity, which he has not had, to provide a full and comprehensive answer in respect of the points taken by the Joint Administrators in respect thereof. However, in short, it is said by Mr Wiseglass that there was an innocent mistake in the preparation of the Conduct Report, and he vehemently denies any suggestion that he suppressed information that ought to have been revealed to the Insolvency Service.

119. With regard, more generally, to the allegations of *"cut and shut"* and *"line of least resistance"* advanced by the Joint Administrators, it is submitted that these amount to allegations of bad faith and wilful breach of duty, and that it would be quite inappropriate for the court to make any adverse findings in relation thereto given the circumstances in which they have been raised by way of reply evidence, and without a proper process, including cross examination, for the determination of these issues.

120. Indeed, it is submitted that the matters complained of more generally by the Joint Administrators are wholly unsuitable for determination as part of the Review Application. It is submitted that the appropriate course of action would be for the Joint Administrators, if they wish to pursue the allegations that they have made, to issue freestanding proceedings, e.g. under paragraph 75 of Schedule B1 to the 1986 Act, and for those proceedings to be case managed so as to enable proper particularisation of the allegations, Mr Wiseglass to have a fair and proper opportunity to respond to the allegations, for there to be expert evidence if appropriate, and for there to be cross examination.

121. In the circumstances, I am invited by Mr Fennell, on behalf of Mr Wiseglass, to dismiss the Review Application.

Rule 3.70(1)

122. As I understand Mr Fennell's position, it is that there are, essentially, three categories of expenses to be considered:

    i) The pre-appointment costs and expenses that I approved pursuant to the 2023 Order;

    ii) Mr Wiseglass's costs of the Remuneration Application that I determined on 5 April 2023 and directing be paid as an expense of the administration in an amount to be agreed, or determined by the court, that now form the subject matter of Mr Wiseglass's application dated 9 January 2024; and

    iii) The category 2 disbursements referred to in paragraph 3 of the 2023 Order.

123. As I further understand Mr Fennell's position it is that Mr Wiseglass is entitled to retain and pay the expenses falling within paragraphs 122(i) and (iii) above, and his post-appointment remuneration approved by the 2023 Order. So far as the costs falling within paragraph 122(ii) are concerned, I understand his position to be that, pending determination of his application dated 9 January 2024, he should be entitled to hold sufficient to cover the same pursuant to the undertaking agreed for the purposes of the Consent Order dated 29 February 2024.

124. It is Mr Wiseglass's case that he is entitled to retain/pay the relevant sums in that they fall within the expression *"expenses properly incurred"* within the meaning of r. 3.70(1)(a) that he is entitled to deduct.

Determination of the Review Application

The correct approach

125. The authorities referred to in paragraph 46 above provide guidance as to how the court's discretion in respect of the review jurisdiction under r. 12.59(1) of the 2016 Rules ought to be exercised. As I see it, the key considerations are the following:

    i) The court has a wide discretion to review, vary or rescind an order made in the exercise of the relevant insolvency jurisdiction, but the jurisdiction is one reserved for exceptional circumstances;

    ii) The onus is on the applicant to demonstrate the existence of circumstances which justify and require the exercise of the discretion under r. 12.59(1);

    iii) Those circumstances must involve a material difference to what was before the court which made the original order, the key consideration being whether the order ought to remain in force in the light either of changed circumstances or of fresh evidence;

    iv) There is no limit to the factors which may be taken into account in order to justify exercising the jurisdiction, and they could include developments or

changes which had occurred since the making of the original order, but also significant facts which might have been in existence at the time of the original order, but were not then brought to the court's attention.

v) Where the new circumstances relied upon consist of or include new evidence which could have been made available at the original hearing, that, and any explanation by the applicant for the failure to produce it at that time, or any lack of such explanation in respect thereof, are factors which can be taken into account in the exercise of the discretion.

vi) The fact that an interested party was not present or represented at the previous hearing is capable of constituting a material difference sufficient to allow the jurisdiction to be exercised.

126. In considering whether and to what extent there are changed circumstances, and/or whether and to what extent there is fresh evidence before the court sufficient to justify the exercise of the discretion under r. 12.59(1), it is important to bear in mind the parameters under which the court was, on 5 April 2023, ought to have determined the amount to be approved in respect of pre-administration fees and expenses, and the amount to be fixed in respect of Mr Wiseglass's remuneration as administrator.

127. As *Brook v Reed* (supra) at [52]-[53], per David Richards J, demonstrates, the onus was upon Mr Wiseglass to justify his remuneration, to be frank in the presentation of his evidence to the court, and to provide a sufficient and proportionate level of information to explain the remuneration sought to be justified. This does, as I see it, resonate with the relevant provisions of paragraph 21 of the IPD referred to in paragraph 49 above, and the overall objective provided for thereby of ensuring that the amount and/or basis of any remuneration fixed by the court is fair, reasonable, and commensurate with the nature and extent of the work properly undertaken as reinforced by the need to apply the *"guiding principles"* set out in sub-paragraph 21.2 of the IPD, the first of which is *"justification"*.

128. As set out in sub-paragraph 49 (ii) above, the application of these guiding principles requires *"the benefit of the doubt"* generally to be resolved against the office-holder, the court to have regard to *"the value of the service rendered"*, and the court to be satisfied that the remuneration as fixed represents *"fair and reasonable"* remuneration for the work properly undertaken. The guiding principles also, as referred to, provide for *"proportionality of information"*, and *"proportionality of remuneration"*.

129. I consider all these guiding principles to be highly relevant for present purposes as is, I consider, the requirement on an officeholder to provide the information set out in sub-paragraph 21.4 of the IPD. As to the latter, I was, on the basis of the evidence and information before me on 5 April 2023, prepared to give Mr Wiseglass not inconsiderable leeway so far as the requirements thereof were concerned and adopt a broadbrush approach. A consideration for present purposes is as to whether the evidence now before the court that I am entitled to take into account requires a different approach.

130. I was not referred to the terms of SIP 2 or the Ethics Code in submissions on 5 April 2023, albeit that passing reference was made to SIP 2 in paragraph 23 of Wiseglass 3, and to the Ethics Code in the Proposals. I consider that, for present purposes, the

provisions of SIP 2 are important in highlighting an administrator's duty to investigate what assets there are, including potential claims against third parties including directors, and what recoveries can be made. Paragraphs 9-11 of SIP 2 highlight the requirement to make an *"initial assessment"*, which envisages the making of enquiries of and/or interviewing directors and senior employees as appropriate and making an initial assessment as to whether there could be any matters that might lead to recoveries, and what further investigations may be appropriate. I consider paragraphs 4 and 18 of SIP 2 to be significant in their requirement to report clearly on steps taken and outcomes, and to document initial assessments, investigations and conclusions. As I see it, an administrator who fails to follow these latter evidential requirements is liable to face difficulties in justifying their remuneration if challenged.

131. Thus, I consider that whether the requirements of SIP 2 have been satisfied may be relevant to the application of the guiding principles set out in paragraph 21 of the IPD, thus a factor that may go to the question as to whether remuneration has been justified.

132. I would note paragraphs 19-22 of SIP 2 concerning conduct reporting requirements. Whilst it is specifically provided that the office-holder is not required to carry out investigations specifically for the purpose of fulfilling their statutory reporting obligations, the fact that an office-holder is required to report, and by definition to report accurately, must in itself, as I see it, assume a certain level of investigation without the need for investigations specifically for the purpose of producing the report.

133. So far as giving effect to the guiding principles in paragraph 21 of the IPD is concerned, I consider that similar considerations apply concerning a number of the provisions of the Ethics Code that I was referred to, including the need to assess in the appropriate way any *"familiarity threat"*, and to record the decision-making process involved as provided for by paragraph R2130.2 of the Ethics Code. In other words, a failure by an office-holder to follow the requirements of the Ethics Code may make it more difficult, from an evidential perspective if nothing else, to justify their remuneration.

134. In dealing with the case and evidence presented by the Joint Administrators, I am mindful that I must be careful to give effect to my ruling at the hearing on 9 July 2024 that the Joint Administrators should be limited to evidence that can properly be regarded as evidence in reply to evidence served by Mr Wiseglass, rather than new evidence that could more appropriately have been produced in support of the Review Application in Hosking 1. Further, I must be careful to take into account that Mr Wiseglass may not have had the opportunity to properly deal with new matters raised by the joint Administrators, e.g. in respect of the Conduct Report. Further, I must bear firmly in mind that this is not a case where the evidence has been tested by cross-examination.

The Joint Administrators and the hearing on 5 April 2023

135. I regard it as a relevant consideration that the Joint Administrators had been appointed nearly 3 months prior to the hearing on 5 April 2023, and that they had been lined up to replace Mr Wiseglass as early as the meeting of the creditors' committee on 16 March 2022. Further, the evidence is to the effect that the Joint Administrators were in contact with, if not formally advising the major creditor who attended and was represented at the hearing on 5 April 2023, namely Speed Medical.

136. It is clear that the Joint Administrators have, since the hearing on 5 April 2023, had much more of an opportunity to investigate the factual basis behind the Review Application. However, as Mr Fennell pointed out in submissions, it would have been open to them to have attended at the hearing on 5 April 2023, or to have made representations prior thereto, and to have then asked for the hearing to be adjourned in order for them to fully and properly consider the position, something that Mr Wiseglass would, I anticipate, have had some difficulty in resisting.

137. Further, I consider it to be a relevant consideration that the possibility of there being a detailed assessment of Mr Wiseglass's remuneration was, as I have said, raised at the hearing on 5 April 2023 but did not find favour with either Mr Wiseglass or Speed Medical because of the cost involved of such a process.

138. These are factors that I take into account in the exercise of my discretion under r. 12.59(1) of the 2016 Rules.

Pre-appointment costs and expenses

139. I am not persuaded that there is any proper basis for varying or setting aside paragraph 1 of the 2023 Order approving pursuant to r. 3.52 the pre-appointment costs therein set out.

140. As Mr Fennell submitted, there was no specific criticism in the Joint Administrators' evidence in support of the Review Application of how Mr Wiseglass had dealt with matters pre-appointment, and unconnected with his functions as administrator once appointed as such. There had been some criticism in the evidence relied upon by Speed Medical when I determined the issue on 5 April 2023, but I dealt with this in the 2023 Judgment as well as dealing with the criticism that there was insufficient evidence to support the claim in respect of Inquesta's pre-appointment costs of £40,000. Further, I dealt with the criticism that there had been insufficient particularisation so far as Pannone's costs of £34,075.50 were concerned.

141. On the basis of the arguments presented to me on 5 April 2023, I decided that the appropriate course was to approve Inquesta's costs in a reduced amount of £30,000, and to approve the costs of Pannone of £34,075.50 and the costs of JPS of £4,635 in full (as indicated in paragraph 29(i) above, these last two sums are not now challenged by the Joint Administrators). I see no good reason to interfere with this decision, which is, I consider, distinct from the decision that I reached so far as Mr Wiseglass's remuneration as administrator is concerned, where specific new matters are raised in relation to the same.

142. In reaching this conclusion, I have taken into account the Joint Administrators' objections that Mr Wiseglass ought not to have taken the appointment as administrator, and that it might be said that he ought not to have acted on a pre-appointment basis either. Apart from my reluctance to decide whether Mr Wiseglass ought to have taken the appointment given that it was only raised by the Joint Administrators in reply, I do not consider that the familiarity threat issues raised have been shown to have been at risk of affecting the tasks performed by Mr Wiseglass pre-appointment. Consequently, I do not consider this to be a relevant consideration.

Remuneration as administrator

143. The principal issue is as to whether I should set aside pursuant to r. 12.59(1) of the 2016 Rules paragraph 2 of the 2023 Order whereby I fixed Mr Wiseglass's remuneration as administrator of LLP in a fixed sum of £60,000 plus VAT and, instead, require Mr Wiseglass's claim for his remuneration to be subject to a detailed assessment should he wish to pursue the same. By paragraph 3 of the 2023 Order, I permitted Mr Wiseglass to draw Category 2 disbursements in accordance with his charging policy as set out in the Proposals. As I understand the Joint Administrators' case, they submit that these Category 2 disbursements should also be subject to a detailed assessment.

144. As I have already observed, and as is apparent from the 2023 Judgment, in fixing Mr Wiseglass's remuneration at £60,000 plus VAT, I granted him a not inconsiderable indulgence in the light of his failure to comply with the requirements of paragraph 21.4.4 of the IPD - see paragraph 48 et seq of the 2023 Judgment. As referred to in paragraph 137 above, I had in mind when considering the position on 5 April 2023 that an option was to direct a detailed assessment, but as neither party before me expressed any enthusiasm for this course of action, it was not one that I took any further - see paragraph 52 of the 2023 Judgment. Nevertheless, I consider that the possibility of directing a detailed assessment is an issue that is brought back into focus by the evidence now before the court and given that this is a course of action that is now specifically contended for by the Joint Administrators who were not formally before the court on 5 April 2023.

145. I do have very real concerns with regard to the evidence now before the court concerning what may or may not have been done by Mr Wiseglass, as administrator, in respect of investigating the affairs of LLP, and in particular investigating the extent to which Mr Taylor might have been indebted to LLP. Given the circumstances in which these allegations have come to be made, late in the day through Hosking 2, I do not consider it appropriate to make any findings as such as to whether Mr Wiseglass had adopted a strategy of *"cut and shut"*, or to the effect that his relationship with Mr Taylor was so close that he ought not to have accepted the appointment as administrator in the first place. However, I do consider there to be credible evidence in support of the assertion in Hosking 1 that Mr Wiseglass acted unfavourably leniently towards Mr Taylor in a manner and to an extent that was not justified in the circumstances.

146. In any event, given the absence of a contemporaneous record of Mr Wiseglass's actions and thinking so far as even his preliminary investigations of the affairs of LLP are concerned, I consider that I am entitled to be concerned that matters concerning his investigation of the affairs of the LLP were not pursued with the rigour required not least by SIP 2. On this basis I feel bound to conclude that matters may not have been fairly and frankly disclosed to the court when I considered the position on 5 April 2023, and that the remuneration that I then found that Mr Wiseglass was entitled to cannot be properly justified, at least on the evidence presently before the court.

147. My concerns primarily stem from the following:

i) There is clear evidence of the two sums of £500,000 being paid out of the office account of LLP in favour of Mr Taylor on 22 March 2019, and of LLP's draft accounts to 30 June 2020 and 30 June 2021, the latter relating to a period shortly prior to LLP entering into administration, showing Mr Taylor as owing very substantial sums of money to LLP. In addition, there is the evidence of very substantial sums of money being owed to LLP by MTA Solicitors and

companies controlled by Mr Taylor, albeit insolvent in many cases. It may be that, in the light of the draft 2021 accounts, the figure of £935,000 odd referred to in Mr Wiseglass's email to Mr Taylor on 17 June 2021 was an overstatement of Mr Taylor's liability. However, it is a striking feature of the case that there is no evidence of Mr Taylor's response to this email having been followed up by Mr Wiseglass, and there is no suggestion in the statement of affairs made on LLP entering into administration, the Proposals, the Conduct Report or in Mr Wiseglass's subsequent progress reports as to even the possibility of very significant sums being owed by Mr Taylor to LLP.

ii) The striking silence in relation to such matters is notwithstanding that, as referred to in paragraph 23 above, in his progress reports filed on 29 June 2022 and 22 December 2022, Mr Wiseglass had, under the heading *"Investigations into the affairs of LLP"*, referred to having recovered, listed and reviewed LLP's accounting records, and to having obtained and reviewed copy bank statements for the 3 years prior to LLP cease to trade. Further, reference was made to comparisons and enquiries being made, and it was confirmed that investigations were *"still ongoing"*, i.e., as late as the progress report filed on 22 December 2022. A difficulty from Mr Wiseglass's perspective is that there is no evidence of any outcomes being reported for the purposes of paragraph 4 of SIP 2 or, perhaps more significantly for present purposes, of there being any documentary record of initial assessments, investigations or conclusions as required by paragraph 18 of SIP 2 that might have shown the extent of the investigations that were, in fact, carried out even for the purposes of the initial assessment envisaged by paragraphs 9-11 of SIP 2.

iii) On this basis, I consider that it is impossible for the court to be satisfied that any proper investigation, even of an initial kind, was carried out in relation to the affairs of the LLP, and in particular to follow-up on the evidence that indicated that Mr Taylor, and companies that he controlled, owed significant sums of money to LLP.

iv) The position in relation to the underlease and the use of the Demised Premises does, I consider, create further difficulties for Mr Wiseglass. It may be that his response to the landlord that the LLP had made no use of the Demised Premises for the purposes of the administration was correct, which would, prima facie, mean that the rent could not be recovered as an administration expense. However, there is the oddity that in his email dated 4 October 2022 responding to the landlord's solicitors, Mr Wiseglass referred to having been *"entirely unaware"* prior to receipt of the landlord's Solicitors' letter of 21 September 2022 of a lease of the Demised Premises in the name of LLP, and suggested that Mr Taylor had been confused as to which LLP, either LLP or MTA Solicitors, held the relevant underlease of the Demise Premises. This accords with paragraph 23.1 of Wiseglass 5 where Mr Wiseglass refers to having been informed by Mr Taylor that LLP had no leasehold property. However, this does not accord with what was said in the Proposals as referred to in sub-paragraph 13(iv) above where reference was made to leased premises, and to the draft accounts ended 30 June 2021 having included improvements made to leasehold premises of £19,476 as well as showing rent as a major item of expenditure. I am concerned that Mr Wiseglass was either presenting a false picture in relation

to who held the relevant leasehold interest, or at least failed to properly investigate and ascertain the position in circumstances where, until August 2022, Mr Taylor's other LLP, MTA Solicitors, was apparently using part of the Demised Premises, as well as invoicing the subtenant for rent that was received either by MTA Solicitors, or by Mr Taylor himself. This is all, as I see it, consistent with there having been what was, at least, an inappropriately light-touch approach to the administration that favoured Mr Taylor.

v) Similar observations might, I consider, be made in respect of the lack of apparent investigation as to the use of VAT registration numbers by the respective LLPs, LLP and MTA Solicitors, and the acceptance without further enquiry of explanations given by Mr Taylor in relation to the cyber-attack that was said to have rendered LLP's electronic records inaccessible. I would however add that I was not persuaded that the evidence pointed towards anything untoward in Mr Wiseglass having accepted the information provided by Lloyds Bank as to the bank accounts held by LLP, or in respect of the operation of the LLP's client account during the course of the administration.

148. So far as investigating the affairs of LLP was concerned, and any liability of Mr Taylor, I take on board that Mr Wiseglass may have been placed in a difficult position once it was made clear to him at the meeting of the creditors' committee on 16 March 2022 that creditors wished him to be replaced as administrator by the Joint Administrators, and that they wanted any investigation to be carried out by the latter, or at least by *"new eyes"*. However, by then, Mr Wiseglass ought to have carried out and documented the conclusions reached for the purposes of the required initial assessment, and he made the Conduct Report only a matter of days later. Further, Mr Wiseglass told creditors in his progress reports, the latest of which was filed on 22 December 2022, that enquiries in relation to the affairs of LLP were *"ongoing"* as referred to in paragraph in the passage therefrom referred to in paragraph 147(ii) above.

149. In the circumstances, I do not consider that it provides an answer for Mr Wiseglass to now say, particularly given the absence of documentary evidence of the kind required by paragraph 18 of SIP 2 recording what Mr Wiseglass had actually done, that the obligations imposed upon him by paragraphs 9-11 of SIP 2 so far as any initial assessment was concerned required very little to be done, and that following the meeting of the creditors' committee on 16 March 2022, he was entitled to, effectively, down tools so far as investigating the affairs of LLP was concerned if, contrary to what he had suggested in his report to creditors with regard to investigations being *"ongoing"*, that is what he did.

150. I take on board that, for the purposes of the Remuneration Application, Mr Wiseglass had, as referred to in paragraph 106 above, said in paragraph 23 of Wiseglass 3 that potential claims against Mr Taylor were considered, but that he delayed undertaking work beyond the initial investigation required by SIP 2 because he did not think it appropriate to undertake the same, and incur the legal costs in relation to same, when it appeared that creditors wished to have a different administrator in office. However, no explanation, documented or otherwise, has been provided as to what conclusions were reached in consequence of the consideration of the potential claims against Mr Taylor, and what is said in paragraph 23 is inconsistent with creditors being informed in the progress reports that investigations were *"ongoing"*.

151. Further, there is the point that there was significant delay between the meeting on 16 March 2022 and Speed Medical coming up with the required security to invoke a decision-making process for the removal of Mr Wiseglass. In paragraph 15 of Wiseglass 1 made in support of the application by Mr Wiseglass to extend his term of office for two years, Mr Wiseglass referred to Speed Medical's request pursuant to r. 15.19 of the 2016 Rules not proceeding because it had not paid the deposit. This suggests that, by that stage at least, he envisaged not being removed.

152. Consequently, even if Mr Wiseglass may have been entitled to scale down any investigation into the LLP, and in particular as to whether a claim against Mr Taylor ought to be pursued, in the period following the meeting of the creditors' committee on 16 March 2022, this does not, as I see it, provide an answer to the point.

153. I further take on board that there is no evidence of the Joint Administrators, once they were appointed, having conducted more than a limited initial assessment of the potential claims against Mr Taylor, or to them, in their conduct of the administration of LLP, having treated a claim against Mr Taylor as *"low hanging fruit"*. This is, clearly, a consideration. However, it is, I consider, necessary to bear in mind that there are limited resources within the administration, a position compounded, the Joint Administrators would no doubt say, by the fact that the realisations made whilst Mr Wiseglass was in office as administrator have not been accounted for to the Joint Administrators. Further, what the Joint Administrators might have done as replacement administrators is not the issue, but rather whether remuneration of £60,000 plus VAT provided for by paragraph 2 of the 2023 Order can properly be justified on the evidence now presented to the court.

154. Taking into account the above considerations, and in the light of the evidence now before the court, I am left with a sense of real unease and concern as to the basis upon which I determined that Mr Wiseglass's remuneration as administrator ought to be fixed in a sum of £60,000 plus VAT. As I have said, I was, perhaps to an extent inconsistent with the *"guiding principles"*, prepared to give him the benefit of the doubt notwithstanding his inability to provide documentary evidence to satisfy the requirements of paragraph 21.4.4 of the IPD 1. However, in the light of the evidence now before the court that at least seriously questions whether Mr Wiseglass carried out, even on an initial basis, the investigations that he ought to carried out with regard to the affairs of LLP, in the light of the somewhat deafening silence from Mr Wiseglass as to what, exactly, was done, and given the absence of a documented narrative of the kind envisaged by paragraph 18 of SIP 2, I feel bound to conclude that the remuneration as sought by Mr Wiseglass, even if limited to the amount as fixed on 5 April 2023, has not been properly justified in the manner required by the authorities and by paragraph 21 of the IPD.

155. I would add that in determining the amount at which Mr Wiseglass's remuneration should be fixed on 5 April 2023, I proceeded on the footing, as reflected in what creditors had been informed in the progress reports about Mr Wiseglass's investigations of the affairs of LLP, that Mr Wiseglass had carried out the sort of inquiries as to the affairs of the LLP, and as to the liabilities of Mr Taylor and his connected entitles to LLP, that might reasonably have been expected to have been carried out by a reasonably diligent administrator acting on an objective basis. Unfortunately, on the evidence now before the court, I fall a long way short of being able to satisfy myself that this was the case, and I have a very real concern at least that it was not the case.

156. In these circumstances, notwithstanding that the Joint Administrators could potentially have intervened on 5 April 2023, and that one of the options then open to me was to direct a detailed assessment, I am persuaded that the proper course, in the exercise of my discretion under r.12.59(1), is to set aside paragraphs 2 and 3 of the 2023 Order, and direct that if Mr Wiseglass wishes to pursue his claim for remuneration and Category 2 expenses, then his claim should be subjected to a detailed assessment.

157. I reach this conclusion because I am persuaded that it is appropriate to exercise the exceptional jurisdiction to set aside this aspect of my earlier order on the basis of the changed circumstances, and the new evidence before me which does, I consider, make a material difference to what was before me when I made the 2023 Order.

158. It is possible that the evidence that I have relied upon in order to come to the conclusion that the relevant provisions of the 2023 Order should be set aside could have been made available at the hearing on 5 April 2023. However, I am satisfied that, for legitimate reasons, the key evidence now relied upon by the Joint Administrators had yet to be sufficiently considered by them, and whilst I take this into account in the exercise of my discretion, as I take into account that the Joint Administrators could have intervened on 5 April 2023 and sought further time, this does not lead me to conclude that I should refrain, on that basis, from setting aside paragraphs 2 and 3 of the 2023 Order, which I shall do. I regard it as an important consideration that, with a view to seeking to maintain high professional standards, the court should be slow to approve remuneration in circumstances, such as the present, where there is apparent significant failure to comply with the requirements of professional guidance such as that provided by SIP 2 and/or the Ethics Code.

Application of r. 3.70 of the 2016 Rules

159. On the basis of my findings above, I consider that Mr Wiseglass is entitled to deduct from the monies that he continues to hold representing realisations of the assets of LLP sufficient to cover the costs of Inquesta, Pannone and JPS approved pursuant to paragraph 1 of the 2023 Order in order to enable those sums to be paid.

160. However, I consider that Mr Wiseglass is liable to account to the Joint Administrators pursuant to r.3.70 for the balance even though Mr Wiseglass may have a claim thereupon for his remuneration and Category 2 expenses, as well as the costs provided for by paragraph 4 of the 2023 Order, subject to a detailed assessment and the determination of his application dated 9 January 2024. Such interest as Mr Wiseglass might have in such moneys is, as Mr Davies KC points out, protected by the statutory charge provided for by paragraph 99(3)(a) of Schedule B1 to the 1986 Act.

Overall conclusion

161. The effect of this judgment is as follows:

i) The application to vary or set aside paragraph 1 of the 2023 Order is dismissed, and this paragraph of the 2023 Order stands;

ii) The application to vary or set aside paragraphs 2 and 3 of the 2023 Order succeeds, and those paragraphs of the 2023 Order are set aside, or at least varied so as to provide that Mr Wiseglass's claim for remuneration as administrator

and Category 2 expenses should be subject to a detailed assessment if Mr Wiseglass elects, within a period of say 28 days, to pursue these claims;

iii) Mr Wiseglass is entitled to retain and pay the costs of Inquesta, Pannone and JPS approved as referred to in paragraph 1 of the 2023 Order, but the balance of the funds in his hands being assets of LLP should be paid over forthwith to the Joint Administrators.

162. This judgment is to be handed down remotely by email to the parties or their legal representatives, and by provision of a copy thereof to the National Archives. No attendance is required on hand down.

163. I would invite the parties to agree an order dealing with consequential matters, including the form of order and costs. Further, consideration requires to be given to what now happens to Mr Wiseglass's application dated 9 January 2024. In the event that matters cannot be agreed, or if either party should wish to seek permission to appeal, then I will adjourn consideration of consequential matters to a hearing to determine the same as soon as possible, and if possible, within 28 days. In that event, I will extend the time for applying to the Court of Appeal for permission to appeal to 21 days after my determination of consequential matters.