



Neutral Citation Number: [2025] EWHC 284 (Ch)

Case No: CR-2022-003504

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

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

Date: 14/02/2025

Before :

ICC JUDGE MULLEN

IN THE MATTER OF INSIGHT DEVELOPMENT & CONSULTANCY LTD

**AND IN THE MATTER OF THE COMPANY DIRECTORS DISQUALIFICATION
ACT 1986**

Between :

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

Claimant

- and -

CARL THOMAS RODERICK

Defendant

Mr Thomas Cockburn (instructed by **The Insolvency Service**) for the **Claimant**
Mr James Saunders (instructed by **Neil Davies & Partners**) for the **Defendant**

Hearing dates: 5th to 8th November 2024

Approved Judgment

This judgment was handed down remotely at 10.00am on 14th February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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ICC JUDGE MULLEN

ICC JUDGE MULLEN :

Introduction

1. This is my judgment following the trial of a claim brought by the Secretary of State for Business and Trade against Mr Carl Thomas Roderick under sections 1 and 6 of the Company Directors Disqualification Act 1986 (“the CDDA 1986”). Mr Roderick was a director of Insight Development & Consultancy Ltd (“Insight”), which went into creditors’ voluntary liquidation on 18th October 2019. It is the conduct alleged in relation to Insight that leads the Secretary of State to contend that he is unfit to be concerned in the management of a company.
2. The claim was issued on 5th October 2022. Filed with it was the affirmation of Mr Mark Bruce, a chief investigator in the investigations directorate of the Insolvency Service, dated 4th October 2022. Mr Bruce’s affirmation contains the statement of the matters by reference to which the respondent is alleged to be unfit to be concerned in the management of a company required by rule 3(3) of The Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987 (“the 1987 Rules”) as follows:

“In his capacity as a director of Insight Development & Consultancy Limited, Mr Roderick failed to ensure that Insight complied with its obligations under its agreement with the Education & Skills Funding Agency, (in particular pursuant to clause 5 of that agreement which, among other things, required Insight to record and maintain up to date information about the Apprenticeship Training), being the ‘ESFA Apprenticeship Agreement for Training Providers’. As a consequence, Insight submitted inaccurate and unsupported funding claims to the detriment of the ESFA who suffered a net loss of £447,934.46 and it was further discovered that the ESFA had made an overpayment of £43,491, in that:

- in respect of the funding year 2017-2018, Insight submitted funding claims in respect of the provision of training, totalling £536,580.83, and received payments totalling £536,580.83.
- in respect of the funding year 2018-2019, Insight submitted funding claims in respect of the provision of training, totalling £874,369.09 and received payments totalling £917,860.49.
- the ESFA undertook a funding assurance review (“Review”) of Insight for the funding years 2017/2018 and 2018/2019 which revealed issues with the data provided by Insight including lack of evidence of start dates, end dates, learning evidence, hours incorrectly calculated/recorded and individual learner records (ILR) data inconsistencies, resulting in overclaims of funding by Insight.
- as a result of the Review, the ESFA found errors in funding claims totalling £956,946, of which £296,853 was incorrectly

claimed in the funding year 2017-2018 and £660,093 was incorrectly claimed in the funding year 2018-2019.

- as the academic year 2017/2018 had closed when the errors were discovered by the Review, no reconciliations or adjustments could take place within that year and therefore the sum of £296,853.69 was invoiced to Insight and remains unpaid.
- in respect of the incorrect funding claims of £660,093 for the 2018/2019, as the errors were discovered within the academic year, the ESFA were able to offset £509,013 of this amount through non-payment of subsequent monthly claims by Insight. This resulted in a reduction in the amount due back to the ESFA, to £151,080.77.

This amount was duly invoiced to Insight and remains unpaid.

- the total invoiced and outstanding to be re-paid to the EFSA is £447,934.46.
- in addition, and following the Review, the ESFA identified subsequent overpayments of funding of £43,491 made to Insight in the year 2018-2019 and which remains unpaid.
- total payments made to Insight over the funding years 2017-2018 and 2018-2019 were £1,454,441.31 of which £956,946 was incorrectly claimed.”

That statement is clear on its face, but it is perhaps helpful to explain that Insight was a registered apprenticeship provider, providing training to employees of various companies under a scheme administered by the Education & Skills Funding Agency (“the ESFA”), the funding for which training was, at least in significant measure, derived from an “apprenticeship levy” payable by certain employers. For that reason, the company traded under the styles “Levytate” or “Levytate Skills” during the period that I have to consider.

3. That period is relatively short. While the company was incorporated on 1st April 2003 and started trading in the financial year that followed, Mr Roderick’s involvement with the company began in April 2018. The contract with the ESFA was terminated on 2nd August 2019 and the company ceased trading on 9th August 2019.
4. Mr Roderick filed an eight page statement, dated 4th April 2023, in answer to the claim. It appears to be a document written without professional assistance. In it, he said he was one of four directors of the company, the others being Mr James Cronin, Mr Richard Sobol and Ms Christine Barton, otherwise known as Christine Barton Walsh. He accepted that there had been errors in the funding claims made to the ESFA, which he described as “technical”. He said that similar issues had been experienced, according to the ESFA auditor who considered the company’s claims in March 2019, Ms Linda Walsh, by a number of providers in interpreting the rules under which funding was provided. He emphasised the role of others in the company, in particular Ms Barton, in

dealing with these matters and expressed surprised that he alone had been the subject of a disqualification claim. As he put it:

“It is surprising that no weight at all was placed upon the board minutes when making recommendations for Director strike off action. Christine interfaced with all of the ordered items as well as was responsible for the on boarding of all the learners in partnership with Gemma Beech”.

As I shall explain, the role of Ms Barton in the company is contentious and she was not, in fact, registered as a director of it. Mr Roderick further asserted that the company was a creditor of the ESFA rather than a debtor. He denied that his conduct had fallen short of that expected of a reasonable person in his role.

5. Following receipt of that statement, evidence in reply was filed on behalf of the Secretary of State. Ms Katie Marshall, deputy head of investigations at the Insolvency Service, filed an affirmation dated 3rd May 2023, which addressed the contentions in Mr Roderick’s statement. Mr Nicholas Beacock, an investigations manager at the ESFA, made an affirmation dated 24th April 2023, in which he set out the course of the two investigations into the company’s claims carried out by the ESFA and the findings of those reviews.
6. Mr Roderick’s evidence of 4th April 2023 was not in the form of an affidavit as required by the 1987 Rules and, on 16th May 2023, ICC Judge Burton gave permission for a further round of evidence. Following that order, Ms Marshall made another affirmation, dated 24th May 2023, in which she adopted the evidence of Mr Bruce, who was due to retire from the Insolvency Service. Mr Roderick made an affidavit in answer on 30th June 2023 in which he set out his case more fully. This affidavit was evidently prepared with professional assistance and expressly denies that, to the extent that it was demonstrated that the company submitted inaccurate and unsupported funding claims, he caused that to happen or otherwise failed in his duties as alleged in the Secretary of State’s allegation. He further contended that his conduct did not fall short to the extent required to justify a finding of unfitness.
7. The affidavit broadly relies upon the same matters as Mr Roderick’s earlier unsworn statement, though it sets his case out in greater detail. Mr Roderick contends that the impression that he received from Ms Walsh of the ESFA was that the errors identified were commonplace. He anticipated that the errors would be resolved as matters progressed and was surprised when the agreement with the ESFA was terminated on 2nd August 2019, bringing the business of the company to an end. Indeed, Ms Barton was in the process of rectifying the errors that had been identified. The errors that had triggered the ESFA’s initial review of the company’s records, in relation to the provision of training to a company called Teconnex Ltd, had been inherited from an earlier training provider called Talent Training (UK) LLP.
8. He again highlighted the role of Ms Barton, whom he stated was responsible for the submission of the funding claims that the ESFA determined were inaccurate, and said that she reported to all three directors of the company. As I shall explain later, he relies on what he contends was her extensive experience in the delivery of apprenticeships and government funded learning schemes. She was responsible for leading the company’s day-to-day operations. His own role, despite that of managing director, was

focused on introducing clients, understanding their requirements and then moving them on to Ms Barton and her team. He asserts that Ms Barton was a *de facto* director of Insight, that is to say a person who is in substance a director although not formally appointed as such, and “played a key and significant role on the part of the Company in relation to data collection, management and compliance with the ESFA regulations.”

9. Further affirmations were filed by Ms Marshall and Mr Beacock, dated 21st November 2023 and 29th November 2023 respectively. These principally respond to Mr Roderick’s affidavit. For present purposes I need only say that they maintained their positions.

Legal principles

10. Having set out the broad nature of the dispute I should turn to the legal principles that I have to apply. The basic principles are very well known but this case also raised some questions as to how the Secretary of State’s case must be put and the effect that this has on how a defendant is expected to respond to it.

The CDDA 1986

11. Section 6(1) of the CDDA 1986 provides:

“The court shall make a disqualification order against a person in any case where, on an application under this section,

(a) it is satisfied—

(i) that the person is or has been a director of a company which has at any time become insolvent (whether while the person was a director or subsequently), or

(ii) that the person has been a director of a company which has at any time been dissolved without becoming insolvent (whether while the person was a director or subsequently), and

(b) the court is satisfied that the person's conduct as a director of that company (either taken alone or taken together with the person's conduct as a director of one or more other companies or overseas companies) makes the person unfit to be concerned in the management of a company.”

If the requirements of section 6(1) are met, the court must make a disqualification order of between two and fifteen years.

12. In considering whether a person is unfit, the court is required to consider the matters set out in Schedule 1 to the CDDA 1986. These are:

“(1) The extent to which the person was responsible for the causes of any material contravention by a company or overseas company of any applicable legislative or other requirement

(2) Where applicable, the extent to which the person was responsible for the causes of a company or overseas company becoming insolvent

(3) The frequency of conduct of the person which falls within paragraph 1 or 2

(4) The nature and extent of any loss or harm caused, or any potential loss or harm which could have been caused, by the person's conduct in relation to a company or overseas company

(5) Any misfeasance or breach of any fiduciary duty by the director in relation to a company or overseas company.

(6) Any material breach of any legislative or other obligation of the director which applies as a result of being a director of a company or overseas company.

(7) The frequency of conduct of the director which falls within paragraph 5 or 6.”

13. That list is not exhaustive. The court's task is to consider:

“whether [the defendant's] conduct, viewed cumulatively, and taking into account any extenuating circumstances, has fallen below the standards of probity and competence appropriate for persons to be directors of companies.”

(see *Re Grayan Building Services Ltd* [1995] 1 BCLC 276 per Hoffmann LJ). It is not every failing that will justify disqualification, however. As Blackburne J put it in *Secretary of State for Trade and Industry v Reynard* (2001) 98(27) L.S.G. 38, at paragraph 13:

“The threshold requirement is conduct which can fairly be described as demonstrating a lack of commercial probity or as constituting incompetence or negligence in a very marked degree.”

14. The court has to adopt a three stage process –

- i) Do the matters relied upon amount to misconduct?
- ii) If they do, do they justify a finding of unfitness?
- iii) If they do, what period of disqualification, being not less than two years, should result?

(*Re Structural Concrete Ltd* [2001] BCC 578, 586).

15. The burden of proving that a director is unfit lies of course with the Secretary of State, although it may be the director relies upon facts in his defence which fall to him to

prove (*Re Javazzi Ltd* [2021] 2 BCLC 82, at paragraphs 14 to 15, per Judge Mithani QC).

Framing the allegation

16. In considering a defendant's conduct, the court does not engage in a roving inquiry. It must concentrate on the misconduct alleged by the Secretary of State, having a degree of "tunnel vision" in this regard. The Secretary of State must not only set that out in the statement of matters determining unfitness but also set out the evidence on which he relies. In *Re Finelist Ltd* [2003] EWHC 1780 (Ch), Laddie J explained:

"It is not sufficient for the director to know and understand the allegations he has to meet. There is an obligation on the SOS to set out in the affidavit or affirmation in support the main parts of the evidence on which she is to rely. This is all the more important because, as noted above, there is no particulars of claim which will identify the key facts upon which the court will be asked to exercise its powers. Fairness to the defendant demands that he knows not only the allegations of unfitness but also the essential facts which are to be relied on in support of them."

17. In this case, Mr Cockburn, who appeared for the Secretary of State, quite properly accepted, and indeed emphasised, that it was no part of the Secretary of State's case that the inaccurate filings were dishonest or intentional. Nor does the Secretary of State say that Mr Roderick had any direct knowledge of any particular inaccurate filing when it was made, still less that Mr Roderick made the filings himself. The misconduct alleged is that Mr Roderick "failed to ensure" that the company complied with the requirements of the funding agreement entered into with the ESFA.
18. Mr Cockburn further, again quite rightly in my view, accepted that there was not an absolute duty "to ensure" compliance with the funding agreement, at least for the purposes of these proceedings. The focus of this case is thus not whether there was a breach of contract entitling the ESFA to terminate the contract or reclaim monies paid, although the absence of such a breach would be fatal to the Secretary of State's case; it is about whether Mr Roderick breached his duties to the company or otherwise acted in such a way that fell below the standards of probity and competence required of a company director in the management of the company so as to lead to the failure to adhere to the agreement and give rise to the liabilities alleged.
19. Once it is accepted that there is not an absolute duty "to ensure" compliance with the funding agreement, one must ask what the nature of the misconduct relied upon is. As I have explained, the Secretary of State does not allege direct responsibility for the alleged inaccurate claims. Nor, Mr Roderick complains, does the allegation say that the staff who processed the claim were incompetent, or improperly supervised. The way in which Mr Cockburn put the case in his skeleton argument is as follows:

"4.16 As well as being the managing director, D was the person in whose name ILR submissions were made, using his account, which was linked to his email address... Payments from the

ESFA were made to a company named Debann Limited, which was solely owned and controlled by D.

4.17 D cannot escape personal responsibility for the unsupported funding claims, and the court will assess his competence in that context.

4.18 D's response is that he relied upon the work of Ms Barton and Gemma Beech (and their team) to whom responsibility for maintaining records was delegated. He asserts that:

"They were well paid, highly skilled, and experienced individuals. I had no query or reason to question whether or not their work was accurate."

4.19 It will be submitted that this was a culpable failure to make inquiries by the person with responsibility for the day to day running of the company's business, and its finances. Such a culpable failure justifies a finding of unfitness.

4.20 That conclusion is also supported by the matters to which the court is to have regard under Schedule 1 of the CDDA 1986:

- (1) The failure was in breach of D's obligation to act with reasonable care and skill under section 174 of the Companies Act 2006 (relevant under paragraph 6 of Schedule 1).
- (2) The failure was a cause of the company becoming insolvent (relevant under paragraph 2). D acknowledges that the ESFA's decision to cut off funding cause Insight to go into liquidation, and ESFA's decision to do so was caused by the extent of errors in the Company's funding claims.... Had appropriate controls been in place, the errors would not have been so extensive, and the company could have avoided insolvency.
- (3) The harm to public finances has been significant (relevant under paragraph 4). £447,934.46 of public funds wrongly paid to Insight are now irrecoverable. They could have been put to use in delivering effective training, or otherwise put to good use in the public interest, but have now been wasted.

4.21 The nature of the breach of the company's obligations is also relevant. The arrangement for payment of apprenticeship funding under the ESFA Contract was dependent on the trust placed in the company (and those controlling it) to submit accurate and evidenced information. It is in the public interest that *"the courts see to it, as far as possible, that such trust is not undermined"* (per Chief Registrar Baister in *Re Media Print and Investments Plc* (2012) unreported (but digested in *Mithani*

Disqualification Newsletter Bulletin 52 in relation to the sale of assets subject to a charge).”

20. The Secretary of State’s case is therefore focused on the duty set out in section 174 of the Companies Act 2006:

“(1) A director of a company must exercise reasonable care, skill and diligence.

(2) This means the care, skill and diligence that would be exercised by a reasonably diligent person with—

(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the functions carried out by the director in relation to the company, and

(b) the general knowledge, skill and experience that the director has.”

The Secretary of State’s case is thus that Mr Roderick did not exercise such care and skill as was reasonable in the circumstances to ensure compliance with the funding agreement with the ESFA. I should say in passing of course that breach of duty is not strictly necessary to demonstrate misconduct, but:

“the court has to be careful before holding that a director is unfit because of conduct that does not amount to a breach of any duty (whether contractual, tortious, statutory or equitable) to anyone, and is not dishonest.”

(*Secretary of State for Trade and Industry v Goldberg* [2004] 1 BCLC 597, 611, per Lewison J, as he then was).

21. Whether the director is in breach of duty will depend on context. A director is responsible for all aspects of the company’s business and is obliged to participate in them but the degree of care required of him will be affected by a number of factors, including the size and nature of the business, his own skills and experience and the particular management responsibilities assigned to him. Companies come in all shapes and sizes. In some companies it is inevitable that a director must delegate the carrying out of some aspects of the company’s operations to staff and, indeed, that the directors must apportion areas of primary responsibility between themselves. As noted in *Re Barings Plc* [1999] 1 BCLC 433, 487, per Jonathan Parker J, as he then was:

“Some degree of delegation is almost always essential if the company’s business is to be carried on efficiently: to that extent there is a clear public interest in delegation by those charged with the responsibility for the management of a business”

22. As he went on to note at 489, however, where a director’s functions are delegated, they must continue to exercise an appropriate degree of supervision:

‘(i) Directors have, both collectively and individually, a continuing duty to acquire and maintain a sufficient knowledge

and understanding of the company's business to enable them properly to discharge their duties as directors.

(ii) Whilst directors are entitled (subject to the articles of association of the company) to delegate particular functions to those below them in the management chain, and to trust their competence and integrity to a reasonable extent, the exercise of the power of delegation does not absolve a director from the duty to supervise the discharge of the delegated functions.

(iii) No rule of universal application can be formulated as to the duty referred to in (ii) above. The extent of the duty, and the question whether it has been discharged, must depend on the facts of each particular case, including the director's role in the management of the company.'

23. This is a delegation case. Mr Roderick's defence is based on his contention that Ms Barton had principal responsibility for the "operations side" of the business, including the provision of training and the associated keeping of records. He says that she was competent and experienced and there was no breach of his duty to supervise.
24. Mr Saunders thus criticised the way in which the allegation was put. He relied, first, on the observations of ICC Judge Barber in *In Re IT Protect Ltd (in liquidation)* [2020] EWHC 2473 (Ch), which was not a disqualification case. ICC Judge Barber there considered an allegation of abdication of duties and failure to supervise. She said:

"232. I have some concerns over the manner in which the Applicants have presented their alternative case on the Payments in their re-amended application notice and written evidence. As made clear by Chadwick LJ in *Cohen v Selby*, in a case based on abdication of duties, it is necessary to set out with some particularity what it is that the director ought to have done that he did not do; and what it was that he failed to do that caused the loss which the company suffered. These matters should be fully pleaded or, in the absence of pleadings, set out clearly in the written evidence in support."

25. In that case, ICC Judge Barber considered that an allegation of "failure to supervise" had been adequately pleaded, but Mr Saunders says that, in this case, no attempt has been made to say what Mr Roderick should have done that he failed to do. The nearest that the Secretary of State gets to this is Ms Marshall's affirmation in response to Mr Roderick's informal evidence which says:

"The Defendant's representations also imply that he failed to monitor and scrutinise funding claims made by the Company."

Mr Cockburn conceded that there was no allegation of failure to supervise but the allegation was sufficiently clear from the use of the word "ensure".

26. Allegations in disqualification proceedings are however often framed in quite general terms. Mr Saunders took me to *Secretary of State v Keeble* [2022] EWHC 2503. There ICC Judge Jones considered such an allegation. He noted:

“35. In this claim the Three Grounds do not rely upon specific acts or omissions by Mr Keeble but rather upon the general proposition that they evidence his unfitness because as a director with day to day management duties, he was responsible for the conduct of CFO. That included its compliance with the CCA, its regulations and the requirements and guidance of the regulators. The Three Grounds each involve material contraventions of the CCA and its extensive regulation and guidance for ‘payday loan’ businesses. Therefore, it follows from his appointment as a director that those contraventions were his responsibility and demonstrate his unfitness through incompetence.”

27. In that case, the Secretary of State, as here, relies upon the general proposition that the director with day-to-day management duties was responsible for the conduct of actions of the company. ICC Judge Jones emphasised that, as a matter of the considerations of fairness highlighted in *Re Finelist*, the presentation of the allegation in general non-specific terms requires the court to consider the allegation at that high level and not descend into consideration of specific acts and omissions not forming part of the allegation. He said:

“40... The Three Grounds continue to rely upon Mr Keeble's overall responsibility as a director for the conduct of CFO. In other words, they and the key pieces of evidence continue to present a claim without reliance upon his specific actions or omissions. It is based instead upon: establishing that CFO committed the acts relied upon within the Three Grounds; if so, upon Mr Keeble's overriding responsibility to ensure that each of the problems identified should not have occurred or were appropriately corrected if they did; and if that responsibility applies to the acts of CFO the conclusion that he must have failed to fulfil those responsibilities to the extent that his conduct was unconscionable.

41. My conclusion is that provided the claim is approached on that basis, the obligation prescribed in *Re Finelist Ltd & Another* (above) will be met and there should be no unfairness. That means the decision must be based upon general allegations of responsibility and conduct. Any temptation to address specific actions or omissions or to redefine the Grounds by reference to them must be resisted. That is not only because of the *Re Finelist Ltd & Another* (above) obligations but also because Mr Keeble was not given a fair opportunity to address specific actions or omissions in his evidence in answer.”

28. In many cases, this presents no difficulty. The director may for example be the sole director of the company and indeed, the only individual agent by which the company acted. There may be no question of delegation or doubt that the director had direct

responsibility for a particular area of a company's operations. In others it may be more complicated. ICC Judge Jones continued:

182. ... It is necessary to analyse the causes of the problems, decide if management competence was a potentially relevant factor and then identify the responsibility, if any, of Mr Keeble...

183. That analysis must also be carried out within the context of the requirements of *Re Finelist Ltd & Another* (above). In other words within the reasonable constraints (not strait jacket) of the Three Grounds for unfitness and the essential facts relied upon within the evidence to support them. Those essential facts must be identifiable as such within the evidence.

184. In this case those constraints are moulded in part by the fact that the evidence does not specifically address why it is alleged Mr Keeble was responsible for any of the Three Grounds in the performance of his role as a director of CFO other than the fact of his office. There is a distinct contrast, for example, between this case and the manner in which the case was presented in *Barings Plc (No 5)* (above). This claim's evidence does not identify specific actions or omissions by him as causes for any of those problems or as failures by him to fulfil his responsibilities as a director by allowing them to occur and/or continue. It does not consider whether those problems fell within the sphere of his specific duties and responsibilities or address the Three Grounds in the context of knowledge, skill and experience whether subjectively or objectively.

185. That does not mean it is necessary to do so for the claim to succeed. It may be the evidence as a whole can satisfy the court on the balance of probability that the problems identified within the Three Grounds (or any of them) must be attributable to Mr Keeble's high degree of incompetence. However, it does mean the decision must be based upon this non-specific form of allegation and must consider whether the existence of the Three Grounds (or any of them) in itself establishes on the balance of probability his responsibility and his high degree of incompetence."

29. I accept the proposition that I must approach the allegations at the high level that they are put. The Secretary of State must satisfy me on the balance of probabilities that the submission of inaccurate claims, or claims not in conformity with the funding arrangements, were here attributable to incompetence or lack of probity in management of the company and that responsibility lay with Mr Roderick. As in *Keeble*, the claim does not rely on specific actions or omissions but seeks to satisfy me that the inaccurate claims must be attributable to Mr Roderick's lack of probity or competence.
30. The generalised nature of the allegation also has a consequence for the evidence required of a defendant. Given the broad way in which the allegation was put in *Keeble*:

“36... it is hardly surprising that Mr Keeble’s evidence in answer largely responded to this ‘macro-approach’ in a similar fashion. It was not for him to identify his actions or omissions which might be relied upon as evidence against him. I do not suggest that he took a conscious decision to avoid doing so but observe that this was the inevitable result of the evidence in support unless he wanted to extend his answers into matters not alleged or not identified as essential facts. Furthermore the evidence in support by adopting the approach of referring to detailed and wide ranging OFT and FCA regulations, industry and CFO investigations often makes it difficult for the Court, and presumably Mr Keeble, to decide what facts and matters is being relied upon as evidence in support of the Three Grounds.”

31. Mr Saunders says that this is the case here. I again accept that. If the Secretary of State does not identify specific acts or omissions by the director himself that are said to constitute the misconduct, merely that the identified problems must be attributable to him, then a director cannot be expected to respond with a granular account and justification. The allegations must be met at the level that they are put.
32. I should make one final point in relation to the way the allegation is put. A certain level of criticism was levelled at Mr Roderick for the company’s failure to correct its inaccurate filings after the termination of the contract between the ESFA and the company. That plainly falls outside the scope of the allegation set out in Mr Bruce’s evidence.

The witnesses

33. Having set out the difficulties with the way in which the case is put I shall now turn to the evidence, setting out my impressions of the witnesses.

Ms Katie Marshall

34. Ms Marshall was the principal witness on behalf of the Secretary of State. She gave her evidence professionally and I am satisfied that she was seeking to assist the court. She was of course at a disadvantage in that, as is the case with any investigator with the Insolvency Service, she had little first hand evidence that she could give. The evidence in support of a disqualification claim is usually simply a record of the investigator’s interviews with the company officers and others and exhibits the documents available to them. Much of Ms Marshall’s evidence was at one further remove, in that she adopted the affirmation of Mr Bruce.
35. Mr Saunders was critical of a number of the ways in which Mr Bruce had presented the Secretary of State’s case, in particular with regard to the role of Ms Barton in the management of the company, and what he characterised as the selective quotation of documents. Ms Marshall was somewhat defensive as to this and was reluctant to accept that the documents put to her were consistent with Ms Barton having been a *de facto* director of the company. She was right to note that she could not, on the basis of the documentation, affirmatively state that Ms Barton was indeed a *de facto* director, but she does not seem to have considered the totality of the evidence as to Ms Barton’s role. Ms Barton’s role in the company does not appear to have been fully considered by the

Secretary of State. The manner in which she was described in the company's internal organisational diagram, her contribution to the start up costs of the company and her leading role in the liaising with the ESFA during the currency of the audit strongly point to her having a senior management responsibility for the provision of training. While I accept Ms Marshall's evidence, it does appear to me inadequately to consider Ms Barton's role. The consequence of this is that any potential failures of supervision of Ms Barton and her team on the part of Mr Roderick or his fellow directors have simply not been explored. In oral evidence Ms Marshall could not offer any account of what Mr Roderick had failed to do, or what more he should have done, beyond the suggestion that he should have "liaised further".

Mr Nicholas Beacock

36. The focus of Mr Beacock's oral evidence was on the nature of the errors identified in the audit process and the financial effect of them. He was asked for example whether the effect of an error such as the recording of an earlier start date was merely to accelerate payment by a few months, rather than to lead to a payment to which the company was simply not entitled. He was a careful witness, who gave his evidence on the questions asked of him in a considered and thoughtful manner, making appropriate concessions when appropriate. He was evidently very familiar with the workings of what is a highly technical funding system. In my judgment he was an honest witness doing his best to assist the court. I accept his evidence.

Mr Thomas Roderick

37. Mr Roderick has a long history in recruitment. He gave his evidence fluently and it was evident that he was familiar with the sector generally. He accepts that he is not a details man and, indeed, his case is predicated on Ms Barton having been brought into the business to provide the skillset that he could not. His evidence was that he suffers from attention deficit hyperactivity disorder that his own medical conditions meant that he would not have put himself in the position where he was responsible for maintaining records and that he could not have carried out that role. There is no medical evidence showing a diagnosis of ADHD but Mr Roderick's own evidence on this was not challenged.
38. He was criticised for not having highlighted his case on Ms Barton's role at the outset of the Insolvency Service's enquiries but I consider that this criticism is unfair. It is quite clear that Ms Barton's role in the management of the company was raised at an early stage, when questions were being asked of the *de jure* directors as a group through their jointly instructed solicitors, albeit not with the clarity with which it was later presented. Mr Roderick's case is consistent with contemporaneous documentation, as I shall explain, and I consider that his account of Ms Barton's role in the company is essentially truthful insofar as his position is that she had a significant management role and how management responsibilities were divided up. It is true to say that his recollection of Ms Barton having been appointed as a director of Insight is wrong, but I do not consider that Mr Roderick's account is intended to be misleading. Rather, I accept that it reflects his understanding of how the management of the company was to operate.

Background to the claim

The Company's incorporation and subsequent acquisition

39. Insight was incorporated on 1st April 2003 and for the majority of its trading life appears to have been owned and controlled by a Mrs Beverley Loderick. The company was a training provider under the terms of an agreement entered into between the company and the ESFA, dated 13th March 2018, described as the ESFA Apprentice Agreement for Training Providers, (“the Funding Agreement”) under which the company was to receive funding from the ESFA towards the cost of training and assessment of apprentices employed by employers using the scheme. The agreement included an obligation to comply with the Apprenticeship Funding and Performance Management Rules for Training Providers promulgated by the ESFA (“the Funding Rules”). Those documents were further supplemented by the Apprenticeship Technical Funding Guide (“the Funding Guide”).
40. Mr Roderick's affidavit explains that from 2016 he worked as a consultant for AMS Nationwide Limited. Ms Barton was also a consultant for that company. Following the failure of a creditor of AMS, Talent Training (UK) LLP, Mr Roderick was introduced to Mr Cronin of the Jarrell Group. Mr Sobol's company, Qualtech Resourcing Limited, had a connection to one of Jarrell Group's clients, Teconnex. Mr Roderick met with Mr Cronin in late 2017 and Mr Cronin told him that he and Mr Sobol had significant experience in working with training providers. He “knew how to make them work with volume recruitment businesses”. Mr Cronin initially proposed that Mr Roderick work directly with Jarrell Group to set up a training and learning department. Mr Roderick told him that his “skills were limited” and that he would need to bring in an expert on “delivery and compliance”. Mr Cronin suggested a joint venture between Jarrell Group and Mr Roderick. Mr Roderick proposed that Ms Barton join the venture as compliance and operations expert with a 25% interest in the equity of the venture.
41. It was agreed that a company with the benefit of an existing contract with the ESFA would be purchased and Insight was identified. A holding company called Insight Development (Holdings) Limited was incorporated on 27th April 2018 to hold the shares, which company subsequently changed its name to Tenstar Personnel Limited (“Tenstar”). The original shareholders were Mr Cronin, Mr Sobol and Mr Roderick in equal shares, though on 17th April 2020 Mr Cronin and Mr Sobol transferred their shares so that Mr Roderick held 400 shares and Ms Barton held 200.
42. On the same day as it was incorporated, Tenstar acquired the shares in Insight. Mr Cronin, Mr Sobol, Mr Roderick were appointed as directors of that company. Ms Barton was not. She was however recorded as having been appointed as a director of Tenstar and an AP01 form was filed at Companies House on 11th February 2019. A notice recording the termination of her directorship with effect from 26th June 2020 was filed on 20th August 2020. The AP01 form recording the appointment of Ms Barton was removed by the registrar of companies on 6th August 2021 under section 1095(4A) of the Companies Act 2006, then in force. That section allowed the registrar of companies to remove material about directors who had not consented to act as such. Mr Roderick says that he was not aware of the application at the time and I have not seen the application itself.

The Funding Agreement, Funding Rules and Funding Guide

43. On acquisition by Tenstar, Insight retained the benefit of the existing contract with the ESFA. The provisions of the Funding Agreement and the associated documents are extensive but I need only state the following in order to explain the events that followed.

“5. Conditions of Funding

5.1 In order to receive payments from the ESFA, the Training Provider agrees to

...

(b) record and maintain up-to-date information about the Apprenticeship Training it offers in the Course Directory Provider Portal; and

(c) comply at all times with the requirement detailed in the Funding Rules

10. Withholding, Suspension and repayment of Funding

10.1 Without prejudice to the ESFA’s other rights and remedies, the ESFA may at its discretion withhold or suspend payment of funds to the Training Provider if:

...

(c) the Training Provider provides the ESFA with any materially or inaccurate information.

10.2 The ESFA reserves the right to recover from the Training Provider any Funding paid to the Training Provider from an Employer’s Digital Account where the payment of Funding or any arrangement between the Employer and the Training Provider does not comply with the Funding Rules. The ESFA will act reasonably and proportionately in exercising its discretion to recover any sum from the Training Provider under this clause.

10.3 If the ESFA becomes aware of a significant number of errors in any data or information provided by the Training Provider, the ESFA shall give the Training Provider the option to either correct the errors or resubmit the data or information, or accept a reduction in the amount of Funding payable.

11 Funding Limits

11.1 The ESFA reserves the right to impose a limit on the number of Apprentices receiving Training from the Training Provider at any given time if any of the following circumstances apply:

(c) the ESFA believes, based on the Training Provider's accounts or any other financial or performance information it has at its disposal, that the acceptance of new Apprentices by the Training Provider would give rise to an unacceptable level of operational risk.

11.2 if the ESFA decides to impose a limit on the number of Apprentices receiving Training from the Training Provider, it shall notify the Training Provider in writing, giving its reasons for imposing such a limit. After receiving such notification, the Training Provider shall be prohibited from accepting any new Apprentices until such time as the ESFA informs the Training Provider in writing that the limit no longer applies."

44. The Funding Rules provided:

"P218. You must

218.1 have evidence that learning took place and that the apprentice was not certificated for prior knowledge

218.2 retain evidence that the apprentice has completed their apprenticeship

218.4 report and accurately complete all ILR fields for an apprentice"

45. The Rules stated in the Glossary that the "Start of Learning" is:

"the date on which learning begins. We do not consider enrolment, induction, diagnostic assessment or prior assessment to be part of learning."

46. The Funding Guide provided:

"11. You give us information about apprentices and their learning using the Individualised Learner Record (ILR) and the Earnings Adjustment Statement (EAS). We use this information to work out the funding you have earned for delivering this learning.

...

30. We will base your earnings on monthly instalments so that funding follows the apprentice for as long as they stay on the apprenticeship.

...

33. We spread these instalments equally over the number of planned months for the apprenticeship programme aim, based on whether the apprentice is in learning on each census date (the last

calendar date of each month). The planned number of months is calculated from the ‘learning start date’ and the ‘learning planned end date’ in the ILR.

...

36. We calculate funding for English and maths qualifications up to level 2 separately from the apprenticeship programme aim. We will split the rate into equal monthly instalments using census dates, and there is no completion amount.

...

109. We will match apprentice data from your ILR submissions with the data held in the apprenticeship service, depending on the contract type the apprentice is being funded through...The employer must first approve payments to the provider from their employer account. The details for each individual apprentice on the employer’s account must match the ILR data for each individual apprentice for payments to be made.”

Insight’s first submission of learning records and the ESFA review

47. Insight made its first submission of individual learner records, or “ILRs”, on 6th June 2018, a little over a month after Mr Roderick was appointed as a director. A second submission was made on 5th July 2018. Between July 2018 and February 2019 the ESFA paid a total of £1,452,941.31 over eight monthly payments. The submissions triggered an audit by the ESFA because all of the ILR submissions, which related to 304 individuals, recorded the same start date of 28th March 2018.
48. An “assurance review” was carried out by the ESFA on the 27th and 28th February 2019 at the Teconnex site (“the Assurance Review”). Mr Beacock, Ms Linda Walsh and Mr John Weaton attended the site and examined 39 of the apprentice files, all of whom had been shown as starting on 28th March 2018. The findings of the ESFA were that there was no evidence to support those start dates and the available evidence in fact suggested start dates between July and November 2018.

The Stop Notice

49. Following the Assurance Review, the ESFA notified Mr Roderick on 8th March 2019 that the acceptance of new apprentices would give rise to an “unacceptable level of operational risk” (“the Stop Notice”). It said:

“With immediate effect from Friday 8 March 2019, you are not permitted to recruit any new apprentices for 28 days ending 5 April 2019 unless the ESFA agrees in writing that you may do so. Further payments will be suspended in accordance with clause 10.1 pending a full audit which you have been notified will take place week commencing 18 March 2019.”

It went on to say:

“Additionally, we have no record that you have formally notified the ESFA on the change of ownership of the company in accordance with clause 22 of the Apprenticeship Agreement”

50. The company responded on 12th March 2019 to provide the details of the change of ownership, among other things. The letter gave details of the resignations of the previous directors and set out the current senior personnel. It also attached an organisational chart.
51. At the top of this chart was a bubble headed “Board of directors”, showing Mr Sobol as chair and Mr Cronin, Mr Roderick and Ms Barton as directors. Underneath this is a separate bubble showing Ms Gemma Beech as “director of performance”. I shall discuss this document further later, but it is important to note that, excluding the four people who are said to comprise the board of directors, some 29 people are arranged in various bubbles arranged in five tiers. By way of example, Alannah Burke is in a bubble on her own, headed “Head of North”, reporting to Ms Beech. Five names are shown as reporting to Ms Burke in a bubble just below, headed “Delivery North”. Other roles are described as “Head of Midlands & South”, “Delivery Managers”, “Internal Quality” and “Lead IQA and verifier”, this last sitting above the “Internal Quality” team.

The meeting with Ms Walsh on 18th March 2019

52. There was a meeting between Ms Walsh of the ESFA and Mr Roderick, Ms Barton and Ms Beech of Insight on 18th March 2019 to discuss the audit process. An audio recording of that meeting was made and both the audio recordings and a transcript of the recordings were provided to me. Mr Roderick said his impression of the outcome of this meeting was that many of the errors identified were commonplace and capable of rectification. It is true to note that Ms Walsh expressed the view that many of the issues concerned internal control and paperwork, rather than funding errors. She said that there was “not much in these files that I haven’t seen last week”. The main issue that was not “to be expected” was apprentices being assigned to an incorrect level of “functional skills training”, although she later described “functional skills that remain on the wrong level” as “common”. It is fair to say that nothing in the conversation set out in the transcript suggested that termination of the Funding Agreement was inevitable, although equally Ms Walsh was careful to say that she could not predict the ultimate outcome.
53. The Company was in due course required to conduct its own internal review of all learner files. From my reading of the transcript it does not appear that the absence of such a review thus far was regarded as a failing on the part of the company. Mr Roderick is heard to explain that the company had in fact been in the course of conducting its own review. This was 80% complete by February 2019 but they had not reached Teconnex by the time the ESFA identified the alleged errors. Mr Roderick confirmed in his oral evidence that there were other employers to which the company provided training by this point and the outstanding employers who had not been reviewed by the time of the Assurance Review were Teconnex and People Line, who were based at the same site. He said that Teconnex were the lowest priority because the learners based there were very close to completing their assessments. It is not suggested by the Secretary of State that the company did not have other employers to which it provided training or that no internal audit was underway by the point of this meeting. Nor was it

suggested that Teconnex had been deliberately left until the end of the process in order to avoid confronting errors that were known to be there.

Events after the meeting

54. On 5th April 2019 Dr Lorna Pursglove, the area head for the ESFA, wrote to Mr Roderick and said:

“Dear Tom

I am writing to you to set out the next steps in our investigation process as discussed in our earlier conversation.

We have agreed to lift the stop on starts and on payments subject to your agreement to repay funds associated with the errors identified at the recent investigative assurance visits to the Teconnex premises and to the your offices.

As discussed I am unable to tell you at this stage what the figures will be as this will be subject to further work undertaken by the audit team. Linda Walsh as you are aware is on leave this week but is due to be in touch with you next week to complete the 14 day check.

For the errors identified in 2017/18 adjustments would be quantified down to learner level. As the ILR has closed an invoice would be raised and sent to you. Funds may be recovered from the adjustment of future payments.

For the 2018/19 errors data adjustments can be made to correct errors in year.

We may require you to complete a 100% audit check.

As discussed we will write to you formally next week to set out the next steps once we have been able to liaise fully with the audit team.

You will remain under investigation at this time.

Best wishes

Lorna”

Mr Roderick said that he forwarded this email to the board straight away.

55. By this stage the final amount payable had not been established, although Mr Roderick said that the company was aware of the amount long before the invoice was raised. It had the opportunity to consider the current academic year and the concern was that the previous year had closed and there could not be an offset under the terms of the Funding Agreement.

56. On 1st May 2019 Dr Pursglove wrote again:

“Dear Tom

Sorry I missed your call yesterday. I was in the meeting to discuss your case at the time.

The upshot of discussions is that we are unable to release payments until the funding errors from 2017/2018 are repaid in full. The 2018/2019 reconciliation is less of an issue as that will be corrected through the ILR in year.

As it currently stands we do not know what the exact figure for 2017/2018 is. You will be aware that we expected to have this figure now but further errors identified at the audit visit last week have resulted in Insight being given further time to correct errors before the auditor re-visits on the 22nd May.

One option we discussed was agreeing with you what you believed to be the error rate for 17/18. We could then offset that against funding owed to you, thus releasing the hold on payments and then correcting any further errors after the audit re-check.

As of the April payment point Insight have c.£106k owing from ESFA.

We discussed last week that you believed there was around £120k owing. Once offset against April and May the balance would be due to you in the May payment point which would be sooner than could be actioned following the next audit visit. I have however received an update this morning to say the 17/18 error is around £270k currently but that this cannot be finalised until the audit recheck is undertaken.

So we can proceed to agree with you an initial error rate for 17/18 against which we could action the release of payments or we can continue to wait until the re-visit takes place?

I would welcome your view on how to proceed at this time.”

Again, this shows that the agreement could not be finalised until the precise figure was known. Mr Roderick accepted that this email was couched in terms of approximation.

57. Dr Pursglove wrote again on 3rd May 2019:

“You have written to us [by email] to ask if it would be possible to resume payments in part prior to the conclusion of the investigative assurance process. I feel it would be helpful to set out the current position.

We wrote to you on 5 April 2019 to say that the stop on starts and payments would resume further to your agreement to repay

the errors identified from the 2017/ 2018 academic year and to rectify, via the ILR, errors identified in the 2018/2019 academic year. At that point we expected to be in a position to finalise the error rate following the full audit which took place 18-21 March and once the auditor had revisited on 23-24 April to check that the issues identified in the full audit visit had been addressed, as you had assured us they would be.

However we are in the highly unusual position where a further audit visit has been deemed necessary as the auditors check on the correction of errors highlighted unresolved issues. We cannot yet place reliance on the work undertaken by Insight Development & Consultancy Ltd to correct these funding errors. We are extremely concerned that to date three audit visits have taken place including the visit at the Teconnex premises and issues identified have not yet been resolved. Furthermore we do not yet have confidence in the figures you have provided on the scale of the errors.

The current position is that to date expected errors which will need to be recovered from 2017/2018 exceeds funding owed to Insight Development & Consultancy for delivery in the current year. Given this we will await the conclusion of the next audit visit before we release the stop on funding in order to accurately reconcile payments. We are also extending the suspension on starts until the conclusion of this investigative assurance process. You have been notified that a final audit check will take place on 22-24 May and I urge you to ensure that evidence is accurate by this visit.

We will write to you within 7 days of this final visit with the outcome and next steps.”

58. On 5th June 2019 the company was updated with the results following the final audit check foreshadowed in the above email. Dr Pursglove wrote:

“Dear Mr Roderick and Mr Sobol

I have had an update from the audit team as to the progress with the audit work following the visit 23-24th May and wanted to update you on the timescales to conclude this work.

I am informed that there are around 1000 errors to calculate the error value for - of these approx. 850 are relatively straight forward but still involve checking 2 different reports for the actual values.

For the other 150 or so agreed at the audit we cannot calculate the error until the ILR data has been amended by yourselves.

This work is extremely complicated as it crosses funding years and given the level of the errors. I am assured that the audit team are working on this but It could take several weeks to conclude all the cross-checking.

In the meantime Insight remains under investigation and the stop on new starts remains in place.”

59. Dr Pursglove wrote again on 6th June 2019:

“Dear Tom

Apologies, I was unavailable yesterday to respond but have discussed your case with my director. Unfortunately we are not able to expedite the work being undertaken by the audit team and must adhere to the timescales they have set out to complete this work. It has proved to be far more complex than it was initially envisaged due to the scale of the errors found.

I am aware that at the last audit visit errors totalling £343,649 were agreed with you for the functional skills level 1, functional skills level 2 and early leavers of which £143,062.43 relates to the 2017/18 academic year.

You will also be aware that errors for the main aims are yet to be fully calculated for both years but currently stand in excess of £250k for 18/19 only. I understand that the full and correct calculation of the 18/19 and then the 17/18 position cannot take place until you make the adjustments required to the ILR in-year and that this will automatically reduce any payments owed to you for delivery in year.

Errors and thus reconciliation relating to 17/18 will need to be invoiced for as previously discussed, as we can only use the ILR to adjust payments in the current year. In order to expedite the resolution of this process we will invoice you for the 17/18 errors that have been agreed (£143,062.43) on the understanding that a further invoice will be made once the remaining 17/18 errors are calculated.

In my communication to you of the 5 April (enc.) and by phone I said that we would lift the stop on starts subject to your agreement to repay the funds owed once these have been calculated. However given the continued progression of the investigation process we are still not in a position to agree how much remains to be reconciled. I clarified our latest position to you in the letter dated 3 May (enc).

We cannot release the stop on starts until we have confidence that the errors identified have been fully addressed and that the

appropriate processes are understood and in place to ensure future compliance.

I will write formally once the invoice has been raised.”

60. It was put to Mr Roderick that by June there had not been agreement as to the sum repayable, although Mr Roderick said that there was an indicative figure. He said that Ms Barton had not finalised the returns but they could see the functional skills draw down and could do a simple calculation of the draw down for that academic year. Whether or not that is right, the sums were not paid.

Resignation of Mr Cronin and Mr Sobol

61. Mr Cronin and Mr Sobol resigned as directors of Insight on 16th July 2019.

The results of the audit

62. Following the completion of the audit, Ms Walsh of the ESFA supplied Ms Barton with her audit report on 22nd July 2019. This showed an error rate of 32.16%, significantly above the accepted margin of error, putting “£854,468 of levy funding at risk”. It is striking to note that this report appears to have been supplied to Ms Barton only. It is not copied to Mr Roderick. Ms Barton made some comments in a specified section of the document, as requested by Ms Walsh, signed it on behalf of the company and returned it on 1st August 2019.

The termination of the Funding Agreement and the cessation of trade

63. On 2nd August 2019 the ESFA terminated the Funding Agreement and the company appears to have ceased trading on or around 9th August 2019. It was placed into CVL on 18th October 2019.
64. On 14th November 2019, the ESFA raised an invoice for £296,853 in relation to the 2017/18 academic year. On 31st July 2020 the ESFA raised a further invoice to recover £151,080.77 of the £660,093 that had not been recovered from other sums due to Insight for the 2018/19 academic year.

Management responsibilities in the company

65. Mr Roderick’s defence hinges on his contention that Ms Barton was a *de facto* director with responsibility for the operational side of the business, that is to say the administration and delivery of the training to apprentices and the submission of the claims thereafter. Mr Saunders submits, I think rightly, that it does not strictly matter whether Ms Barton was a *de facto* director or not. This is a case in which Mr Roderick says the operational side of the business was reasonably delegated to Ms Barton as a senior and experienced member of the management team. The Secretary of State’s case in large measure turns on the description of Mr Roderick’s role give by Simon Burn Solicitors, then acting for Mr Roderick, Mr Cronin and Mr Sobol, and submits that Mr Roderick’s case on Ms Barton’s role, as he now presents it, is simply self-serving.
66. The starting point is 2nd June 2020, when the Insolvency Service wrote to Mr Roderick to ask for certain details about the company. The letter included questions about the directors’ roles and responsibilities. Simon Burn Solicitors replied on 18th August 2020

on behalf of Mr Cronin, Mr Sobol and Mr Roderick. Their answers as to the roles of the directors were as follows:

“What were the day-to-day roles and responsibilities within the Company of the following individuals?”

- Mr Carl Thomas Roderick

Mr Roderick was the managing director of the Company. He was responsible for the overall strategy and direction of the Company as well as overseeing the business on a day to day basis.

- Mr Richard Ernest Sobol

Mr Sobol was effectively a non-executive director who had a ‘hands-off’ role. He would introduce, through his existing network of contacts, potential customers to the Company and provide financial support.

- Mr James William Cronin

We repeat the comments in relation to Mr Sobol.”

67. It provided further details about their roles as follows:

Please state who were directly responsible within the Company for the following.

Include dates if these responsibilities changed at any time.

- *Reviewing the financial position of the Company* - Mr Roderick throughout.
- *Authorising payments to creditors* - Mr Roderick throughout.
- *Negotiating and authorising new contracts* - all three of our clients were involved in the sales process, Messrs Cronin and Sobol had many contacts from their existing relationships but Mr Roderick had overall responsibility.
- *Hiring and firing staff* - Mr Roderick.
- *Accounting for and paying HMRC the liabilities* - Mr Roderick.

Has anyone else participated in the corporate management of the Company? If so please provide their full name, contact details and what they did.

Christine Barton was involved in the management of the operational side of the business and advised on operational matters including audit advice and so forth.”

68. Mr Roderick did not accept that Mr Cronin and Mr Sobol were “hands off” directors. Nor did he accept that he was in fact responsible for recruitment and dismissal throughout his involvement with the company. He said that he was responsible for this from May to June 2019. Up until that point the responsibility lay with Ms Barton. She, for example, was responsible for recruiting Ms Beech. Simon Burn’s letter does not refer to that function, and indeed says that Mr Roderick himself was responsible for hiring and firing, but Mr Roderick said that it was part of operations, which was the “heart and soul” of the business.
69. Mr Cockburn cross-examined Mr Roderick on why this letter did not set out the case that Mr Roderick now advances as to the extent of Ms Barton’s role, merely referring to Ms Barton’s involvement in the management of the operational side of the business and advising on operational matters. Mr Roderick said that the Insolvency Service had simply asked if anyone else participated in the management of the company aside from Mr Cronin, Mr Sobol and him. Indeed, the letter does ask for information about those three individuals expressly, with a follow up question as to whether anyone else was involved in the management. Ms Barton was identified in the answer. Mr Roderick said that Ms Beech was not included in this category because, although she was described as “performance director” she did not attend board meetings. He said that he had not realised that this letter would have been the appropriate place to mention that he regarded Ms Barton as a director.
70. The letter also asked about the maintenance of records underpinning the funding claims. Simon Burn Solicitors provided answers as follows:

“During the time that you were an appointed director, the Company submitted funding claims to the ESFA and accordingly received funding from the ESFA...In connection with this;

(a) Who was responsible for maintaining the underlying records used as the basis for funding claims?

The Company had a team of employees who were responsible for maintaining records. The team was led by Gemma Becker [sic] and Mr Roderick had overall oversight however the day to day tasks were delegated.

(b) Were you aware that the funding claims were being made without the required evidence to support the claims?

Our clients were not aware of this and as far as they are aware all funding claims were made with the appropriate evidence. You will appreciate that with any business which is of the scale of the Company there will be a margin of error because information is collated by different employees with different levels of experience. It is for that reason both internal and external audits were compiled.

(c) Have you been made aware of the concerns of the ESFA?

Mr Roderick has been in dialogue with the ESFA. In fact concerns that were expressed however were concerns that the ESFA were in breach of their obligations to the Company not that the Company was in breach of its obligations to the ESFA.”

It is accepted that the reference to “Gemma Becker” was intended to be a reference to Ms Beech.

71. Mr Roderick said that “at the top level” he saw the revenue and income. Ms Beech led the audit work as it would not have been appropriate for Ms Barton “to mark her own homework”. He took a keener interest in the funding records when the deficiencies were identified. He accepted that there was no mention of Ms Barton in this answer. He said that this letter was incorrect in saying that the team reported to him and in fact they reported to the board. It was Ms Barton’s role to inform the board on compliance.
72. Mr Roderick continued to instruct Simon Burn although Mr Cronin and Mr Sobol sought alternative representation. Simon Burn were still acting in April 2022 when they asked for sight of the Secretary of State’s draft evidence. When Neil Davies and Partners were instructed, Mr Roderick said that he had realised there were some areas where there had been a conflict of interest and he felt compromised. He said that he did not realise that the purpose of the response to the Insolvency Service’s letter was to set out Ms Barton’s role and that Simon Burns had not asked for clarification as to her role. It is I think fair to say that the focus of the correspondence at this stage was on the *de jure* directors and where their division of responsibilities lay.
73. Mr Roderick was also challenged on the contents of his first statement. In that statement he did not seek to challenge Mr Bruce’s quotation of the response to the Insolvency Service’s letter in which Mr Roderick is described as the managing director, responsible for the day-to-day oversight of the business. It does however, in terms, state that Ms Barton was the fourth director of the company, that she was to “lead our operations” and was responsible for compliance and the “on boarding of all learners in partnership with Gemma Beech”.
74. In his later, fuller, affidavit, he said that responsibility for records lay with Ms Barton and Beech. He said that his own medical difficulties, including ADHD, meant that he would not have put himself in that position and could not have carried out the role. He said that he never, in fact, used the company login to access the claims system, with this being used by Ms Barton, Ms Beech and others in the company data management team. He said that Ms Barton reported to the board and not to him.
75. It is true to say that at the early stage of these proceedings, Ms Barton’s role is not emphasised in the way that it now is. It does sometimes happen that early responses to questions raised by the Secretary of State may not always be as focused as they might be on the issues that ultimately are of significance between the parties. For this reason they may very well be compelling as spontaneous accounts. It may also be the case, however, that a director may only appreciate matters of importance as the case develops. The court is always alive to a party creating a case to seek to exculpate himself or herself. What is striking about Mr Roderick’s case as to the role of Ms Barton, however, is that her role in management is mentioned from the outset, although perhaps not as clearly as it might be, and it plainly has not been invented to meet the allegations. Her role is clear from the contemporaneous documents.

76. It is indeed quite clear to me that Ms Barton had a senior management role in the company, with responsibility for the operational side of the business. From the evidence available to me it appears likely that she was a *de facto* director, but I stress that I have not heard from her and have no evidence from her. The only account that I have is from Mr Roderick. I do have a number of contemporaneous documents that support Mr Roderick's account and show:
- i) Ms Barton's attendance at and role in board meetings;
 - ii) the manner in which she was held out to third parties;
 - iii) the manner in which she appears to have described her own role;
 - iv) the lead role that she took dealing with the ESFA audit;
 - v) her role in the acquisition and funding of the company and the manner of her remuneration.

Board meetings

77. Turning first to the board minutes, the first available are those of a meeting of the board of directors that took place on 1st August 2018, chaired by Mr Cronin. Mr Cronin, Mr Sobol, Mr Roderick and Ms Barton are described as being present, with a Mr Warren Delo, who is described in brackets after his name as a "guest".
78. An operational overview was given and the persons presenting this are described as "CB/TR". "Commercial/Finance Overview" was to be given by "JC/TR". Mr Roderick told me that the initials of the person taking the lead appeared first. This appears to me to be plausible. Ms Barton of course precedes Mr Roderick in the alphabet but, under the heading "Action Items" for the next meeting "TR/CB" are shown as being tasked with creating a business structure presentation for the staff. That ordering of initials also appears on items in later board minutes. It may be of course that the ordering of the initials had no significance at all but at the very least these minutes show that Ms Barton was in attendance at this meeting and was listed with the *de jure* directors, apparently on an equal footing. Unlike Mr Delo, she is not described as a "guest".
79. The next in time is a set of minutes of a meeting on 10th October 2018. The Agenda shows that an early leavers report was to be given by "TR/CB", while the operational overview was to be given by "CB/TR". The minutes of the meeting record the attendees as follows:
- "Tom Roderick (MD), Christine Barton (OD), Richard Sobol (D), James Cronin (D)"
- It is quite clear that the letters "OD" are intended to stand for "Operations Director". Ms Marshall said that she could not say whether this was so, but it seems to me that this is the overwhelming likelihood. Ms Barton was described in her own email signature as "Director of Operations".
80. Item 5 of those minutes is an "Operations Update" and the person presenting is shown to be "CD", which must be a typographical error for "CB". However that may be, subparagraph (b) says:

“CB confirmed that BUD (system) will be fully operational by the end of the calendar year with implementation already underway on a cohort by cohort basis.”

The BUD system was a learning management system that was to be implemented to replace the existing system. It is, as I understand it, in part an information management system designed to improve record keeping. Mr Roderick said that Ms Barton took the lead on its selection and these minutes certainly suggest that it was her primary responsibility.

81. Ms Marshall felt unable to agree that this shows that the implementation of the BUD system was Ms Barton’s responsibility, though she accepted that it showed that Ms Barton had provided an update to the board. That section of the minutes also included a reference to “enrolment paperwork to mirror on site recruitment paperwork” with Mr Cronin to liaise with the employment HR team to create a dual enrolment team. Ms Barton was to circulate a new organisational diagram for the December board meeting. This section of the minutes also includes an item concerning an Ofsted monitoring audit. Ms Barton was to provide the board with a fact sheet in preparation. Item 7 of the same minutes is headed “HR, Quality and Compliance Update”. The persons responsible for this update were shown as Ms Barton and Mr Roderick, with Ms Barton’s initials again being placed first.
82. I was not taken to any other minutes of board meetings and there do not appear to be any further such minutes in the bundle. There are however copies of the agendas for such meetings, which in general seem to follow the same pattern as those of the meetings that I have just described, with the “Operational Overview” being given by “CB/TR” and “HSE, Compliance and Safeguarding being given by “CB”.
83. In these limited documents there is no sense of Ms Barton being subordinate to the *de jure* directors. There appears to be a division of responsibility, with Mr Roderick having overall responsibility for financial matters and Ms Barton taking the lead on operational matters, including the implementation of the new record keeping system.

Manner in which Ms Barton was held out

84. Ms Barton was also held out as the “director of operations” in her email signature. There is no magic in the use of the term “director” in such a way but her attendance at board meetings apparently on an equal footing gives support to the proposition that the term “director” is used to denote her role in the management of the company as a whole. She is similarly shown as a member of the board of directors in the organisational diagram provided to the ESFA on 12th March 2019 in response to the Stop Notice. It is not clear whether this is the organisational diagram shown referred to in the minutes of the meeting of 10th October 2018, which was to be prepared by Ms Barton herself, but it would appear to be likely, given the timing.
85. The letter accompanying the diagram described the management structure as follows:

“The Board has been strengthened by the appointment of Richard Sobol as Chairman of the Board, James Cronin, as Commercial Director and Thomas Roderick as Business Development Director. Christine Barton has been appointed as

Interim Operation Director and Gemma Beech as Director of Performance.”

Mr Roderick explained that Ms Barton was described as “interim” director of operations because the role of director of operations was to be subsumed into the director of performance role. Ms Barton would have been the chief commercial officer. However that might be, this is a contemporaneous document plainly showing Ms Barton as a member of the board of directors, and, by contrast, Ms Beech’s role being outside the board, notwithstanding her title.

The manner in which Ms Barton described her own role

86. Ms Marshall was unable to say if a print out of Ms Barton’s LinkedIn profile provided to me on the first day of trial was the same as the version previously sent to her by Ms Moore, the solicitor then acting for Mr Cronin and Mr Sobol. That LinkedIn profile describes her as “Operations Director” at “Levytate Skills Limited” between February 2018 and September 2019. It gives her responsibilities as follows:

“Direct responsibility for delivering Apprenticeships programmes with levy paying organisations.

Driving continuous improvement across all business functions and contributing to top level business strategy.

Responsible for delivery throughout England.

Establishing, monitoring, measuring and reporting on operational issues and team and individual KPI’s

Ensuring quality and compliance systems are monitored, maintained and reviewed through continuous improvement.

Providing overall direction to enable the organisation to meet their contract and business objectives.

Responsible for setting, monitoring and achieving contract outputs.

Ensuring clients remain compliant whilst engaging with the Apprenticeship programme”

It also showed a track record of working in organisations concerned in the training of apprentices. Ms Marshall rightly observed that such profiles are marketing tools and this was Ms Barton’s interpretation of her role. She could not confirm the accuracy of them.

87. A search of the register of companies does not show any company with that name. There is a company that, between 16th February 2018 and 7th July 2020, was called Levytate Limited, of which Ms Barton was a director from incorporation on 16th February 2018 and 1st April 2020. It filed dormant accounts up to 28th February 2019. The micro-entity accounts for the year ending 28th February 2020 were filed under the company’s then name of Finer Products and Workwear Limited and showed creditors

of under £48,000 and five employees. There is nothing to suggest that it was involved in delivering training to apprentices under the levy scheme. While statements on networking websites such as LinkedIn must of course be treated with caution, the way in which Ms Barton herself held her role out is consistent with the way in which she was held out by the company during its trading life from 2018. It seems to me that the reference to “Levytate Skills Limited” is likely to be a reference to Insight, trading as “Levytate Skills”.

The lead role in the ESFA Audit

88. The audit was led by Ms Walsh of the ESFA, and while there are a number of emails in evidence to both Mr Roderick and Ms Barton, in an email of 29th May 2020 to the Insolvency Service Ms Walsh confirmed that:

“Christine Barton was my main contact. I did have contact with Tom Roderick. He was on site when I was there and attended most of the meetings when discussing the error values etc”.

She met with them both to discuss the errors found. She said that the errors identified during the audit were sent to Ms Barton and Mr Roderick was copied into some, but not all of the emails. Ms Marshall said that she would not expect Mr Roderick to be copied into everything if he had an oversight role.

89. On 22nd July 2019, Ms Walsh emailed Ms Barton and said:

“Morning Christine

Please find attached the audit feedback – can you please add your comments and then sign and return to me – can you please send back a word versions so I can cut and paste your reply into the audit document

Can you also add your comments to question 16 on the second tab of the Controls Questionnaire”

Mr Roderick was not copied in to this email and there is no evidence that he was sent it separately by Ms Walsh. Ms Barton did in fact sign and return it. I find it difficult to see how the company, and indeed the ESFA, would be content for Ms Barton to sign off this document unless she was accepted to have primary responsibility for it. There is nothing to suggest that she felt the need to seek approval from the board.

90. Ms Walsh said that there were a “considerable amount of emails between Christine and myself discussing the errors and how to deal with them.” She offered to provide them but it appears that the Insolvency Service did not request them on the basis, Ms Marshall said, that they appeared to be correspondence discussing individual errors and unnecessary to the investigation. What is undoubtedly clear is that what Mr Bruce’s affirmation describes as his understanding that, prior to April 2019 “all contact between the ESFA and Insight was via Mr Roderick” is incorrect. It was not. On the evidence that I have, the primary contact was Ms Barton, who acted with what appears to have been a high degree of autonomy.

The acquisition and funding of the company, and the manner of remuneration

91. Simon Burn Solicitors, then acting for Mr Cronin, Mr Sobol and Mr Roderick, provided a “Summary of Benefits” received from the company to the Insolvency Service showing the payments made. It appears that Ms Barton was paid in the same manner as the *de jure* directors by way of a payment of “commission”, the level of which was determined by reference to the financial position of the company each month. In a subsequent letter to the Insolvency Service, dated 10th December 2020, Simon Burn solicitors stated that each of their clients and Ms Barton had contributed £12,500 to the acquisition costs of the company, and that this would thus need to be deducted from the benefits that they were said to have received. Ms Marshall accepted that Ms Barton appeared to have provided some of the funds. There is no explanation for this contribution other than that given by Mr Roderick, which was that it was always intended that Ms Barton would be an equal shareholder in the enterprise.
92. Ms Barton, via her company, Bartonwalsh Holdings Limited appears to have contributed a significant amount to keeping the company afloat following the Stop Notice. The statement of affairs prepared in connection with Insight’s insolvency shows that Bartonwalsh Holdings Limited was owed £114,000 by the company at the point of its insolvency, while Mr Roderick’s company, Debann Limited, is shown as being owed £440,000. Assuming that the sums owed to Barton Walsh Limited were paid by way of loan, and no other explanation has been given, one might ask why she was prepared to make such sums available to an enterprise in which she was no more than an employee.
93. Ms Barton thus appears to have contributed to the company in the same manner as the *de jure* directors and to have been remunerated in the same way. She put her own capital at risk. It would not be surprising therefore if she had a voice in the management of the company. Indeed Mr Roderick appears to believe that she had at least been recorded as a director and shareholder of Tenstar. As I have said however, she was not registered as a director of Insight. Nor was she a shareholder in Tenstar until some of Mr Cronin’s and Mr Sobol’s shares were transferred to her, long after Insight had ceased trading.
94. Mr Roderick said that he could not recall as to why this was. He did remember saying to Mr Cronin that it should be made sure that Ms Barton was represented fairly in meetings. Mr Cronin and Mr Sobol said to leave it with them. Ms Barton said that she was happy as long as she got her 25%. Asked why Ms Barton accepted this position, whereby neither her management role in Insight nor her shareholding in Tenstar had been accurately recorded, Mr Roderick said that she was happy with the status quo. She knew her value to the business. She was the only person with detailed knowledge of the training delivery. He said that she was an investor and, while she was “left off the paperwork”, she was the same as the rest of them.
95. Given the absence of any evidence from Ms Barton, or any of the other *de jure* directors, it is impossible to come to any conclusion as to why, if Mr Roderick’s account is right, the company records did not reflect her role. It may be that Ms Barton wished to place a degree of distance between the company and herself. Mr Roderick certainly suggested that that was the position now. He said that this was because the ESFA was investigating one of her own companies. I have no evidence at all to confirm that.
96. Finally, I should mention a somewhat troubling email exchange in the bundle between Ms Stephenson of the Insolvency Service and Ms Moore, the solicitor then acting for

Mr Cronin and Mr Sobol. Ms Stephenson asked on 15th December 2021 if Ms Barton would be open to providing any information to the Insolvency Service. Ms Moore replied:

“I did reach out to Christine and advise that you wanted permission to release her details. She refused and advised that she did not want to be involved in the investigation. Christine shared much information with me during the meeting about Tom Roderick’s activities following our client’s departure. Following the meeting, she requested my clients provide a letter to confirm that she was not a director, manager or material person in the business in support of an ongoing appeal. I advised my clients against providing this letter as they did not agree with this statement and felt it was misleading. Since that time, Christine has not engaged further with us.”

This, again, suggests a desire on the part of Ms Barton to disassociate herself from the company and distance herself from any suggestion that she had any significant management role.

97. I stress again that I have not heard from Ms Barton and I have no evidence from her. I do not know what she would say about either Mr Roderick’s evidence, the documents on which he relies or this email, which says in terms that Mr Cronin and Mr Sobol declined to provide her with a letter to confirm that she had no real involvement in the management of the company because, in essence, that was untrue.

Conclusion as to Ms Barton’s role

98. On the evidence before me, in the absence of any evidence from Ms Barton, it is apparent that she did have board level management responsibility. The fact that she appeared to take the lead in the audit process, which was wholly focused on the accuracy of the company’s record keeping, does suggest that it was Ms Barton who had principal responsibility for this. Indeed, the evidence that I have is that she was an experienced individual in the sector who might properly be entrusted to administer the provision of the company’s training services pursuant to the terms of the Funding Agreement. The evidence also shows that she did indeed take the lead on this aspect of the business, reporting to the board on the company’s own internal audit process and also taking the lead on engagement with the ESFA. I am satisfied that primary responsibility for the operational element of the business, including the delivery of training, maintenance of records and submission of claims was delegated to Ms Barton and the operations team.

The errors

99. Against that background, I will turn to errors identified by the ESFA. Mr Beacock’s evidence helpfully summarises the findings of Ms Walsh’s audit as follows:

- “• Actual Start date cannot be supported by learning activity evidence
- Actual End date cannot be supported by any evidence

- Learning Activity evidence was not on file
- Learners were undertaking the incorrect level of Functional Skills Maths and English aims
- Off-the-Job Hours are not being correctly calculated or recorded
- ILR data was not always consistent with the learners' file
- The Commitment Statement did not capture all of the necessary requirements within the Funding Rules”

100. The ESFA accepts that many of the issues are common, but the scale of them was not. In its comments on an analysis of the records commissioned by the company it said:

“The ESFA accepts that the errors referred to above appear in its published information relating to common errors. However, the volume of these issues found in the audit of Insight’s records indicate that little care was taken in the application of the ESFA’s funding rules which are designed to ensure that funds are effectively spent on Apprenticeship provision. The total “errors” found in the audit amounted to £956,946 and as such, the ESFA’s view is that Insight made funding claims through their ILR submissions without determining that the claims were compliant with the published rules and/or that the data provided in its ILR submissions was accurate. The Witness Statement provided by the ESFA, sets out our main concern which led to a full audit of Insight’s delivery as being that the investigation had found that Insight had made inaccurate ILR submissions in June and July 2018 regarding learners working at the Teconnex factory in Keighley. Specifically, data submitted by Insight in June and July 2018 detailed 186 learners working at this factory beginning their learning on the same date (28 March 2018). These submissions led to payments totalling c£433k. A sample of 39 of the 186 (21.0%) learners were reviewed by the ESFA. No evidence of learning was found to corroborate this reported start date for any of our sample. The files demonstrated that each of these learners should have been reported by Insight as starting variously between July 2018 and November 2018. Insight’s falsification of start dates led to a significant overclaim (and payment) of funds. In the ESFA’s view this demonstrates a level of impropriety. Whilst we understand that human error can result in odd issues, the issue presented in Insight’s data represented something more systemic. This misrepresentation to ESFA led to Insight claiming for and being paid funds that it was not due (and may not have ever been due, depending on the circumstances of each learner).”

It is notable that the ESFA’s characterisation of the nature of the errors is expressed much more trenchantly than it is put in this claim. No allegation of “falsification” or

“impropriety” in the submission of claims is made by the Secretary of State. As I have said, Mr Cockburn made it clear that the Secretary of State did not allege dishonesty or intentional inaccuracy in his case against Mr Roderick.

101. Much of the cross-examination focused on the nature of and reasons for the errors identified by the ESFA. A comprehensive examination of the audit results was not feasible in the trial of this claim and does not really assist me. It is accepted that there were in fact errors, though not all errors were accepted by Mr Roderick during the course of cross-examination. Nonetheless, I accept the ESFA’s findings as to the making of claims that were not in conformity with the Funding Agreement and the Funding Rules.
102. The three broad areas covered were:
- i) Teconnex and the absence of evidence of learning on the claimed start date;
 - ii) the allocation of apprentices to the wrong level of course; and
 - iii) taking on new starters at a company called M J Quinn Integrated Services Limited (“M J Quinn”) while the Stop Notice was in force.

Teconnex and the absence of evidence of learning

103. As I have explained, the complaint here is that apprentices had a start date of 28th March 2018 recorded for which there was no supporting evidence when investigated by the ESFA. Mr Roderick’s position is that this error stems from Insight having taken over provision of training to these apprentices from an earlier provider.
104. Training had previously been provided to Teconnex by Talent Training (UK) LLP, which went into administration in September 2017. Mr Roderick explained that as the majority of learners had completed at least some training:

“all of the apprentices were agreed to be transferred over from Talent Training to the company trading as Levytate. That was done with the knowledge and consent of the ESFA. Indeed, the ESFA supplied all the learner data to us to enable that transfer to happen”

There is support for the proposition that responsibility would be assumed for these learners in the minutes of a board meeting of the Jarrel Group in January 2018. The minutes say:

“Current Activity/Delivery:

The Business unit has formed a strategic partnership with Byheart Learning Limited, who are a Merseyside based training provider that hold a Register of Apprenticeship Training Providers (RoATP) approval. This allows the Training unit to access the Levy for both Teconnex and Peopleline employees who work at the Keighley site. Work is underway to build up the delivery capacity and to fully onboard the 248 ‘new’ learners and

the approximately 200 learners who are currently on a break in learning after the demise of Talent Training.

To date there are 137 learners processed on the claim, with a further 111 to be processed in February 2018. This will complete the ‘new’ cohort. The legacy group are currently in discussion with the ESFA to use funding outside of Teconnex’s Levy to fund them. Simon Harrison, ESFA, is currently seeking a partner to channel the funding through. We will establish an associate arrangement and deliver a unified experience to all learners.”

105. Two points arise from this. First, it is at least consistent with there being activity of some sort envisaged to take place in February 2018, although it provides no evidence of learning in that month or in March. Secondly, the responsibility for training was not taken over from Talent Training directly by Insight, which had not yet been acquired. There was an intermediate stage, when the training was to be provided by Byheart Learning Limited.
106. Mr Beacock’s affirmation explains the account given to him by Ms Barton and Ms Beech as to what happened then. “Learning activity” had started in March 2018 but had not been submitted on Byheart’s ILR returns to the ESFA. Insight had been in negotiations to buy Byheart although this did not proceed. When the buyout of Byheart fell through, Insight assumed responsibility for the Teconnex apprentices and Byheart’s assessors at the Teconnex site were also taken on by Insight. Subsequently the Byheart assessors were dismissed by Insight and apparently took all of the apprentice work evidence from March 2018 onwards with them.
107. For the sake of completeness, Mr Beacock’s contemporaneous notes show this to be an accurate summary of the account given to him when he attended the site. These are dated 28th February 2019 and set out three questions as follows:

“Why March – new management only took over in April?

What’s the understanding around when funding start can be claimed.

Why does paperwork such as underpinning knowledge assessment show as belonging to Byheart? How was this accessed.”

The answers are given as follows:

“Answer – this was because the learner folders would have already been set up when the learners were signing up with Byheart

CB Byheart started, insight were going to buy Byheart who had done the sign ups.

There was learning that took place in March but this was taken away by the old Assessors”

108. Ms Barton later provided Mr Beacock with a fuller account of the claims process, including a detailed chronology. The chronology was sent by Ms Barton to Mr Beacock under cover of an email dated 1st March 2019 which said that she had “wanted to go away and conduct a full review of correspondence/timeline in relation to the question ‘why learners only appeared on the ILR in July 2018 when the start date on the ILR is showing as March 2018’.” She said that the chronology was “supported by emails sent between all parties”. Those emails do not seem to have been requested by the Insolvency Service and are not in evidence.
109. The chronology sets out the interactions with various individuals and groups and explains why the claims for these learners were made late. Ms Barton deals with this as follows:

“20th December 2017 Michael Love, Operations Director Teconnex, writes to Simon Harrison, Manager, Provider Management, instructing Simon they are working to identify which learners were impacted by the recent Provider failure.

January 2018 Teconnex confirm intent to re-engage learners ASAP owing to Board pressure to follow through on people plan. Growing pressure is also coming from the shop floor as Agency staff are having work place learning. This is communicated to all affected staff, via line management.

1st February 2018 Michael Love, corresponds with Smita Pal, Manager, Provider Management to instruct her that Teconnex are intending to recommence learning for the abandoned learners during February 2018.

...

2nd March 2018 Teconnex Legacy staff communicated to and re-enrolment dates booked in at the end of March 2018.

W/C 26th March 2018 Enrolment process commences on instruction from Employer

5th April 2018 Learner information entered onto the ILR Tool. Activity assigned to a single Data Assistant. Data already missed the return cut off.

Period 8 return deadline (5th April 2018) not achieved owing to delay in enrolment information arriving at Data Admin in time.

April 2018 Full audit of previous Training Provider paperwork undertaken, nearly all Learners have no evidence of learning. Information compiled and sent to Chris Toon, Gateshead and forwarded onto ESFA. David Leath, MIS Manager, Gateshead College is the main point of contact for Teconnex Legacy learners to ESFA.

4th May 2018 Period 9 Data submission unable to be completed owing awaiting actual funding value approval. Gateshead College, having reviewed the files with the Employer recognise the amount of delivery required way exceeds the amount the ESFA had expected. The ESFA estimated 70-80% progress, actual progress in files was 0-10%, escalated to Michael Love.

15th May 2018 Michael Love telephones ESFA Provider Management for an update.

21st May 2018 Hexadex approve Group Apprenticeship Levy can be used to support Teconnex to support the abandoned Teconnex Legacy learners as a priority.

29th May 2018 Michael Love, Operations Director, informs Smita Pal, Provider Management that Teconnex will fund the delivery through their Digital Apprenticeship Account.

31st May 2018 Smita Pal, ESFA Provider Management acknowledges receipt and requires further information.

4th June 2018 Smita Pal, responds to Michael Love with points to be queried. Michael Love is on annual leave so has limited email access (conveyed in his response to Smita 04062018). Gateshead College are copied into Michael Love's response as are the Hexadex Group.

5th June 2018 Period 10 data submission. Unable to submit as awaiting ESFA approval and responses to Teconnex.

16th June 2018 Approval granted by ESFA

22nd June 2018 Learners all checked on ILR by Teconnex HR Department and approved.

4th July 2018 Upload successful.”

Mr Roderick said that he agreed with account given by Ms Barton and the chronology.

110. The account given by Ms Barton and Ms Beech is not really challenged by the Secretary of State. Of particular note is the reference to the ILRs having been cross-checked by Teconnex's HR department. Mr Beacock explained that the employer's own records would also include the start date and that the start dates on the employer records and the ILR matched in this case, although he did not know what checks the employer had carried out.
111. What is tolerably clear is that the company appears to have engaged with a number of individuals concerned in the provision of training at Teconnex, including Teconnex's own HR department, and it does not appear that there was, in 2018, a concern raised by

any of them as to lack of evidence of learning. The significant exception to this is in relation to the “full audit of previous Training Provider paperwork” conducted in April 2018, in which it is said that “nearly all Learners have no evidence of learning”.

112. Mr Bruce’s affirmation seizes on this as an admission that records showing that learning had taken place were not available prior to submission of the claims. Mr Roderick’s evidence was that these were records delivered to the company by the ESFA, in other words those of the previous provider, Talent Training (UK) LLP. That seems to me to be right. It is clear that Ms Barton’s chronology does not distinguish between Byheart and Insight and that the reference to the “previous training provider” is a reference to the provider mentioned in her entry for 20th December 2017, Talent Training (UK) LLP. It does not seem to me to amount to an admission that, in April 2018, it had been identified that there was no evidence of any learning provided by Byheart or Insight.
113. What is notable is that Mr Roderick does not loom large in the interactions between the company and the ESFA at this point. The principal figures, relied upon for the detail of what had happened and as representatives of the company, were Ms Barton and Ms Beech. What has not been engaged with however, is their claim, also advanced by Mr Roderick in these proceedings, that the records were taken by Byheart’s assessors when their services were no longer required. In other words, records of learning had existed, but subsequently disappeared.
114. Mr Roderick’s evidence was that, in 2018, the responsibility for recruitment of staff was Ms Barton’s. He recalled her saying that she was replacing the Teconnex staff. He did not see the learner files but, from his explanation of what records would have been kept it would be relatively simple for the records for a large number of learners to be taken away by an aggrieved individual. Mr Roderick explained that the record could be a single piece of paper with a signature against each name from the learner and the employer. There could be thirty learners on that single sheet. He accepted that this loss of this information was not reported to the Office of the Information Commissioner, though the ESFA was informed in the course of the audit.
115. Mr Roderick said that he did not know when the evidence of learning was taken. The paper records were in a portacabin at Teconnex’s site in Pontefract. The records were kept in training files and the learners had their own records in their lockers. Ms Burke, who was responsible for overseeing Teconnex, did not flag up any issues at the time of the uploads to IDAMs, the portal through which the company uploaded its claims. Similarly, the learners were checked by Teconnex’s human resources department and approved.
116. Mr Roderick said that there was evidence of learning at the point of claim. The employer was happy with the delivery. While the assessors had left in May and June he had no evidence as to what was taken from the site and when. He could only go on what Ms Beech and Ms Barton had said. He had not been aware of the dismissal directly and could only give an approximate time.
117. Ms Marshall, in her oral evidence, accepted that Mr Roderick did not know of the alleged absence of supporting evidence at the point that the claims were made but considered that he should have known. She failed to say what steps he should have taken to become aware. She did not say what the Secretary of State contends that he knew, or ought to have known, that would have alerted him to the risk of an unsupported

claim being made. Still less is it explained what he should have done, in furtherance of his duty to act with reasonable care, skill and diligence, to identify the issue. I have no reason to doubt Mr Roderick's account that there was evidence of learning from March 2018 at the point that the claims were made, which subsequently went missing, but, even if that were not so, I am not persuaded that Mr Roderick should have known that the claims were being made without supporting evidence or that he had any reason to have identified the issue prior to the Assurance Review.

Enrolment of apprentices on the wrong level of course

118. Many of the errors identified related to “functional skills” courses. Those learners should have been working towards a level two qualification in English and Maths, which is equivalent to A level. They were in fact placed on a level one qualification, at GCSE level. Mr Roderick said that Insight had carried out a “thorough initial assessment”. As part of enrolment there was a diagnostic test of functional skill levels, using a test provided by the ESFA, and many of these learners were assessed at entry level three and below, equivalent to primary school level. Mr Roderick was of the view that placing them on the level two course would be “lining them up to fail”. He took the “spirit of the guidelines” to mean that a person placed on the level one course was “working towards” level two. The ESFA's view was that they should have been started on level two. That meant that everyone on level one was counted as being an error.
119. He was taken to a specific instance in Mr Beacock's working papers, which stated:

“ILP has start and planned end dates of 07/03/18 and 08/03/19 .
This does not match the ILR dates. Should be undertaking FS at
L2 as scored at L1. ILP is not fully signed and dated in all
relevant places.”

Mr Roderick agreed that this learner was not eligible for a level one course but said that this was not a regular occurrence. He said there was a level of tolerance. Learners could be assessed several times during the process and found to be suitable to progress to level two. Level two was funded at the same level as level one. It was put to him that he was nonetheless providing teaching that was not necessary. Mr Roderick however said that the pathway was individualised to the learner.

120. Mr Roderick was defensive about these findings, although he accepted there were errors. He maintained that the ESFA's interpretation of the rules in this regard was wrong. No submissions were made to me as to who might be right in this regard but for present purposes I assume that the ESFA findings are correct. I do not however have any evidence to show that Mr Roderick was made aware of the decisions to allocate students to a less advanced course than the ESFA considered acceptable. Again, I remind myself that it is not alleged that he made these assessments himself, or that he made the submissions himself, nor are any specific criticisms made of the way in which the allocation of apprentices to a particular level of course was supervised.

MJ Quinn

121. Errors in relation M J Quinn were not highlighted in the audit report but the treatment of the apprentices at M J Quinn is a major plank of Mr Roderick's contention that the company is in fact a creditor of the ESFA. That is not a matter that I need to resolve.

The claims made in respect of MJ Quinn did however generate error reports leading to the level of debt claimed by the ESFA.

122. Insight entered into an agreement for education and training services with MJ Quinn on 2nd May 2018. In April and May 2019 the Company submitted claims for 108 learners and 110 learners respectively, all of whom were pursuing the Unified Communications Technician Apprenticeship. In June 2019 14 of those learners were reported as undertaking that course. In other words, it appeared that 96 of the learners who were undertaking the course in May 2019 were no longer doing so. 89 learners were shown as undertaking a different course, the Infrastructure Technician Apprenticeship course. 110 learners were however reported as undertaking the Unified Communications Technician Apprenticeship in July 2019. The submission of these new claims caused £227,012 to be credited to the company.
123. This of course was after the company had been notified that it was to stop taking on new learners. These matters generated rule violation reports and in September and October 2019, after the cessation of trading, which recorded in the region of 1,000 errors, principally the registration of “new” learners in breach of the Stop Notice.
124. Mr Beacock’s account is as follows:

“23 The reason that funding payments for these Apprentices were blocked was because Insight had breached instructions given by the ESFA in relation to enrolling new Apprenticeship starts whilst the ESFA’s investigation and audit in 2019 was ongoing. These instructions were given to Insight in writing on 8th March 2019 and were re-iterated in further letters sent by the ESFA on 15th March and 3rd May 2019...

24. My examination of the ILR data submissions made by Insight showed that because 180 learners had been added to the ILR submissions after Insight had been instructed not to recruit any new starts, the system did not ultimately calculate any payments in respect of these learners.”

125. It is right to note that the ESFA has accepted that the majority of these learners were not in fact new learners taken on in breach of the Stop Notice. In a letter to the Insolvency Service dated 16th November 2021 it was accepted that the majority:

“had previously been reported as starts in ILR submissions prior March 2019 (the date Insight was instructed about the block on new starts). However, it is our view that these were deemed invalid by the ESFA system based on them being omitted from Insight’s ILR return for June and then being reported again in the return for July.

From our analysis of the ILR returns submitted after Insight were instructed not to start new Apprentices, we can see that a total of 10 MJ Quinn Apprentices on the Unified Communications Technician Apprenticeship were added after this instruction was given.”

126. Mr Beacock in his oral evidence accepted that all but 10 of these learners were engaged in learning activity before March 2019, albeit on a different training standard. Activity had not been reported for them in June. They were treated as new learners when learning activity was reported the following month. It thus appears to be the case that 10 learners may well have been new and started in breach of the Stop Notices. The majority of the errors generated however appear to be derived from the fact that the company did not claim for existing learners in June.
127. Mr Beacock said he would have expected the company to report the issue. He said:

“Therefore, if an error had occurred, I would expect Insight to have contacted the ESFA to explain and rectify the situation. Consequently, because new starts were added to their ILR submissions, Rules Violation reports (explained above) made available to Insight in September and October 2019 show that in total, 180 learners submitted by Insight were invalid as they had been added to the ILR after Insight had been instructed not to start any new learners. The 180 invalid learners included other learners not relating to the employer, MJ Quinn.”

It was put to Mr Beacock that as Insight was not receiving payments during this period, they would have no reason to take issue with non-payment. Mr Beacock thought that, as the audit was still live, anyone with an interest who had access to the system could have found that there was a rule violation report.

128. No allegations are specifically made in the statement of matters determining unfitness in relation to MJ Quinn. More generally, again, I remind myself that it is not alleged that Mr Roderick made or personally authorised either the limited number of new learners or the making of the claims. There is an argument to be had as to whether, in these circumstances, the company is liable to the ESFA or not on the basis that the learners claimed were “invalid”, to adopt Mr Beacock’s language. What is clear is that this was not a wholesale flouting of the Stop Notice. It may have disintitiled the company to claim the funding that it did but the purpose of these proceedings is to consider whether the Secretary of State has made out a case, not merely of breach of contract, but of misconduct on the part of Mr Roderick sufficient to warrant a disqualification order.

Discussion

129. There is no doubt that Mr Roderick was the managing director of the company with general financial oversight of the company. I do not accept that it follows from that role that he was significantly involved in the provision of training and making of claims. He would, as was put to him, have needed to know what level of funding was likely to come in but, unless he had reason to doubt that the claims that were being made were inaccurate, I do not accept the submission that it follows from his financial role that he would have been, or should have been, involved in assessing the accuracy of the information underpinning the claims in circumstances where, I find, the principal responsibility for that part of the business lay with Ms Barton, an experienced professional. Mr Roderick had brought her into the business precisely because she had the skillset that he lacked in relation to the operation of the apprentice training scheme. She was a senior manager within the business, if not a *de facto* director herself. I accept

Mr Roderick's evidence that his principal focus was on engaging with clients, understanding their requirements and then, in tandem with Ms Barton, exploring whether these could be met. Once those clients were taken on, they fell primarily within the responsibility of Ms Barton and her team.

130. No criticism is made of her selection to fill this role and no specific criticisms are made of the level of oversight exercised over her. On the face of it, the company had a structured team of employees who reported to departmental heads, who reported to Ms Beech, who reported to Ms Barton and the board. There were procedures in place to identify errors. Mr Roderick described the mechanisms by which errors would be identified. First, there were the employers themselves, who he said would not have sanctioned funding if training was not being delivered. Secondly, there was an internal audit process that had been established in November or December of 2018. An assessor's work would be checked by a verifier who could not be the assessor's line manager. The information would then go, in the case of Teconnex, to Ms Burke who was the site manager. Thirdly, there were Ms Barton's own compliance updates in which it would be expected that any errors would be identified.
131. It is not challenged that the company also began its own internal review process before there was any sign of ESFA concern, and had, at a relatively early stage after acquisition by Tenstar, started the process of identifying a more sophisticated learner management system. On the face of it there was a system in place that might be expected to highlight errors, and the company was seeking to enhance the standard of its record keeping systems.
132. The period between the acquisition of the company and the suspension of new starters was less than a year. The company's trading life was brought to an end when the Funding Agreement was terminated a few months later. What then, should Mr Roderick have done differently in the time concerned? What should have alerted him of errors in the filings being made? He did not make them himself. It is not alleged that he knew of the errors when made. What enquiries should he have made that he did not? The nearest Ms Marshall came to this was to say in evidence that he should have "liaised further" and "monitored and scrutinised". As suggested during closing argument, the Secretary of State's case at trial was perilously close to a submission that Mr Roderick should simply have done "better". This comes nowhere near satisfying me of "culpable failure" on the part of Mr Roderick.
133. I do not consider that there is anything in the point that Mr Roderick failed to take proper steps to rectify the errors after they were identified. It is clear that there was a process of review underway when the contract was terminated and the company's continued trade became impossible. More fundamentally, however, this is not set out in the Secretary of State's case. If this was to be relied upon as misconduct then it should have been stated to be relied upon in the statement required under rule 3(3) of the 1987 Rules.
134. There are of course many disqualification cases where both the management failures and the role of the director in causing or allowing those failures, or failing to take proper steps to rectify them, is obvious either because specific examples of this are in evidence or are a matter of clear inference. This is not such a case. It is fair to say that as the case developed, Mr Roderick's case as to the role of Ms Barton became clearer. The court is always alive to a party creating a case to seek to exculpate himself or herself. What

is striking about what Mr Roderick's case as to the role of Ms Barton is that it plainly has not been invented to meet the allegations. Her significant role in the running of the operations side of the business is clear from the contemporaneous documents and her role in the management of the company was identified at an early stage, even though it was not until Mr Roderick's affidavit that it was fleshed out more fully. I do not consider that the Secretary of State kept pace with that development.

135. This is not a case where one can simply infer from the mere fact of the existence of a significant number of errors that there has been a management failure and, in particular, a failure of oversight by the defendant. Neither he nor the other directors could personally undertake the entire business of the company. Responsibility was of necessity divided between them and tasks delegated. In the case of the operation and delivery of the apprenticeship scheme responsibility for this lay with the team headed by Ms Barton, on the evidence before me. I should say that it does not follow from that conclusion that she herself is in breach of duty. Her role in the management of the operational side of the business, however, did require the Secretary of State to consider more carefully how responsibilities were divided and whether there were deficiencies in the supervision of Ms Barton and the operations team. That has not been done to any real extent.

Conclusion

136. The Secretary of State has failed to demonstrate, on the balance of probabilities, either misconduct on the part of Mr Roderick or, in any event, that he is unfit to be concerned in the management of a company. I am satisfied that responsibility for administering the delivery of the training under the Funding Agreement was delegated to a team for which Ms Barton, an experienced delivery manager in the sector, had primary responsibility. The Secretary of State does not point to any failure in her selection as operations director, criticise the delegation to her or give any particulars of a case on failure of supervision of her work. There is no allegation that the management team were insufficiently prepared, in any culpable way, to take on the administration of the Funding Agreement when they acquired control of Insight. There were undoubtedly errors in the administration of the delivery of training, giving rise to a liability to reimburse the ESFA, but I cannot, on the evidence that I have, infer from those errors misconduct on Mr Roderick's part generally. Nor does the evidence satisfy me of any specific instances of management failings on his part, within the scope of the allegations made, that would justify findings of misconduct.
137. It follows that the claim must be dismissed. I will invite counsel to agree an order disposing of all remaining matters in advance of the handing down of the judgment. If matters cannot be resolved by agreement I will list a short consequential hearing.