

Neutral Citation Number: [2025] EWHC 9 (Ch)

Case No: CR-2018-003933 and CR-2018-009326

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF STACKS LIVING LIMITED (In Liquidation)
AND IN THE MATTER OF STAFFS FURNISHING LIMITED (In Liquidation)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 3 January 2025

Before:

INSOLVENCY AND COMPANIES COURT JUDGE GREENWOOD

Between:

- 1. STACKS LIVING LIMITED**
- 2. STAFFS FURNISHING LIMITED**
- 3. MUSTAFA HASSANALI ABDULALI and
NEIL JAMES DINGLEY (in their capacity as
the Joint Liquidators of the 1st and 2nd
Applicants)**

Applicants

- and -

- 1. BALVINDER SHERGILL**
- 2. MIRANDA ALLISON SMITH**

Respondents

Mr James Fagan (instructed by **Howes Percival Solicitors**) for the **Applicants**
Mr Christopher McGeever (instructed by **Smith & Wells Solicitors**) for the **Respondents**

Hearing dates 8, 9 and 10 October 2024

JUDGMENT

This judgment was handed down remotely at 4pm on 3 January 2025 by circulation to the parties or their representatives by e-mail.

ICC JUDGE GREENWOOD:

Introduction

1. This is the trial of two Insolvency Act applications made by the joint liquidators of two companies, Stacks Living Limited (“**Stacks**”) and Staffs Furnishing Limited (“**Staffs**”, and together, “**the Companies**”) both of which are in compulsory insolvent liquidation as a result of orders made on 4 July 2018 and 19 December 2018 respectively, in each case on an unopposed winding-up petition presented by Stafford Borough Council (“**the Council**”) based on a failure to pay National Non-Domestic Rates Tax (“**NDR**”) in respect of trading premises at Unit 31-35, Guildhall Shopping Centre, Market Square, Stafford ST16 2BB (“**the Premises**”).
2. Stacks was incorporated on 12 December 2016, and Staffs on 8 February 2018; both were wholly owned by the First Respondent, Mr Balvinder Shergill (“**Mr Shergill**”) and he alone controlled and managed their commercial and financial operations; both carried on business as a furniture retailer at the Premises, an uncomplicated venture which comprised the display and sale of goods which continued to be owned by suppliers until such time as sold to a customer; accordingly, the Companies themselves owned no stock of any value; at any moment, their assets comprised, principally, any sums received from their customers. There was no distinction of substance between the business of Stacks and that of Staffs, which the Respondents’ own Points of Defence described “*in real terms ... [as] ... a successor company*”. Mr Fagan, for the Applicants, described it more pejoratively, but equally accurately, as a “*phoenix*”, which assumed and carried on for a short time, before its own failure, the failed business of its immediate predecessor.
3. Except for the period between 17 July 2018 and 19 October 2018, when the Second Respondent, Miss Miranda Smith (“**Miss Smith**”) was the sole appointed director of Staffs, Mr Shergill was the Companies’ sole appointed director; during the period of Miss Smith’s directorship, she had - by the Respondents’ own open admission - no involvement at all in the affairs and business of the company, which continued, both as before and subsequently, to be managed and operated by Mr Shergill, who was therefore, during that period, a *de facto* director; during that period, on 21 September 2018, the Council secured a liability order against Staffs in respect of NDR; it presented a winding-up petition in respect of Staffs on 1 November 2018, after Miss Smith’s resignation.

4. Miss Smith is Mr Shergill's (life) partner; she currently works as a Workforce Co-Ordinator in the Children and Families Department of Staffordshire County Council, for which she has worked for some 21 years; her evidence, which I accept, was that she was somewhat prevailed upon by Mr Shergill to become Staffs' director; nonetheless, despite her misgivings, she was appointed and knew of her appointment, an appointment to which she agreed; inescapably, she was therefore during that period subject to all the usual duties of a company director.

5. The Companies are insolvent.
 - 5.1. In respect of Stacks, the Applicants estimate creditor claims in the total sum of £57,857.17, including £42,885.07 owed to the Council in respect of NDR; in respect of Staffs, the total sum of £19,579.44, including £15,431.59 owed to the Council in respect of NDR.
 - 5.2. During its lifetime, Stacks paid (in total) only £580.28 to the Council in respect of NDR (in fact, as a result of enforcement action by bailiffs, Rossendales, in August 2018); Staffs paid (again, in total) £2,000, by means of eight instalments of £250, between 27 September 2018 and 5 December 2018.
 - 5.3. In addition, in each case, is the possibility of a claim by HMRC. In that regard, neither company registered for (or therefore paid any) VAT, PAYE or NIC; neither used the services of an accountant or book-keeper; their records, such as they were, do not enable the Applicants to calculate, with any degree of precision, what might be due to HMRC, although sums were estimated in respect of unpaid VAT.

6. On 29 March 2020, Mr Shergill gave an undertaking to the Secretary of State for Business, Energy and Industrial Strategy, not to act (amongst other things) as a director of a company for a period of six years commencing on 21 April 2020. Contravention of that undertaking would be a criminal offence under section 13 of the Company Directors Disqualification Act 1986 ("**the CDDA**"). By the schedule of unfit conduct to that undertaking (albeit given solely for the purposes of the CDDA) Mr Shergill did not dispute that he had failed to ensure that Staffs maintained or preserved adequate records and had failed to deliver up sufficient accounting records to explain its financial affairs;

in respect of both Staffs and Stacks, Mr Shergill did not dispute that trade had been carried on “*to the detriment of the Council*” based on the failure to pay NDR; neither did he, for the purposes of the case presently advanced against him by the Applicants, seek to contradict the basis upon which he gave that undertaking.

7. Against that background, the Applicants made the following claims.

7.1. First, fraudulent trading under section 213 of the Insolvency Act 1986 (“**the IA 1986**”), that the business of the Companies was carried on with intent to defraud their creditors - specifically, the Council and/or HMRC - and that in each case Mr Shergill was knowingly party to the business being carried on in that fashion. The fraudulent trading claim was not made against Miss Smith.

7.2. Second, wrongful trading under section 214 of the IA 1986, that from about 31 July 2018, and at all times afterwards, both Respondents either knew or (in the case of Miss Smith) ought to have concluded that there was no reasonable prospect that Staffs would avoid going into insolvent liquidation or entering insolvent administration, and that neither of them took every step with a view to minimising the potential loss to creditors which ought to have been taken. Although submitted that Staffs was effectively insolvent from the outset (its business being a continuation of that which had failed through the medium of Stacks, against which a winding-up order was made on 4 July 2018) 31 July 2018 was chosen as the relevant date for the purposes of the wrongful trading claim because it fell a reasonable time after the Council had raised against Staffs, on 10 July 2018, an NDR bill for the period 1 April 2018 to 31 March 2019 in the sum of £29,897.65, payable by instalments beginning on 3 August 2018, and a reasonable time after Miss Smith’s appointment on 17 July 2018. No wrongful trading claim was made in respect of Stacks.

7.3. Third, against both Respondents (in respect of Miss Smith, limited to the period of her directorship of Staffs) claims were made in respect of allegedly unexplained and/or otherwise improper or unjustified payments made by the Companies:

7.3.1. to Mr Shergill personally by Stacks in the total sum of £8,205;

- 7.3.2. in cash withdrawals from the Stacks' bank account in the total sum of £9,982;
- 7.3.3. to various retailers by Stacks in the total sum of £3,421.97;
- 7.3.4. to Mr Shergill personally by Staffs in the total sum of £17,621 (including £2,735 paid after the presentation of the winding up petition, and therefore void under section 127 of the IA 1986, subject to court order);
- 7.3.5. to Miss Smith personally by Staffs in the total sum of £3,400;
- 7.3.6. in cash withdrawals from Staffs' bank account in the total sum of £3,900 (including £120 after the presentation of the winding up petition) of which £1,720 was paid during the period of Miss Smith's directorship;
- 7.3.7. to various retailers by Staffs in the total sum of £7,474.80 (of which £1,609.61 was paid during the period of Miss Smith's directorship).

8. The Applicants' claims were opposed. In addition, if and to the extent that a claim might otherwise exist, based on negligence, default, breach of duty or breach of trust, the Respondents sought to rely on the provisions of section 1157 of the Companies Act 2006 ("**the CA 2006**") which allows the court to give relief from liability in circumstances where a person has acted honestly and reasonably and ought fairly to be excused. In particular in that respect, having regard to the circumstances of Miss Smith's appointment, and her relationship with Mr Shergill, it was submitted that no relief should be granted against her.

The Witnesses

9. The court's approach to the assessment of witness evidence has been the subject of numerous explanations and comments in the authorities. For present purposes, and with gratitude, I will adopt the following summary, taken from the judgment of ICCJ Barber in Reynolds v Stanbury [2021] EWHC 2506, at [10]-[13]:

“10. In Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm), Leggatt J opined (i) (at [18]) that memory is especially unreliable when it comes to recalling past beliefs, which are revised to make them more consistent with our present beliefs (ii) (at [19]) that the process of civil litigation itself subjects the memories of witnesses to powerful biases because witnesses often have a stake in a particular version of events; and (iii) (at [20]) that the process of preparing for trial can of itself interfere with memory, the effect of the process of preparing being to establish in the mind of the witness the matters recorded in his or her own statement and other material and to cause the witness’s memory of events to be based increasingly on this material rather than on the original experience of the events.

11. These observations caused Leggatt J to conclude in Gestmin (at [22]) that:

‘.... the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses’ recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose - though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of the witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.’

12. The Court of Appeal made related observations in the case of Simetra Global Assets Ltd v Ikon Finance Ltd [2019] 4 WLR 112. At [48] Males LJ said:

‘[48] In this regard I would say something about the importance of contemporary documents as a means of getting at the truth, not only of what was going on, but also as to the motivation and state of mind of those concerned. That applies to documents passing between the parties, but with even greater force to a party’s internal documents including emails and instant messaging.

Those tend to be the documents where a witness's guard is down and their true thoughts are plain to see. Indeed, it has become a commonplace of judgments in commercial cases where there is often extensive disclosure to emphasise the importance of the contemporary documents. Although this cannot be regarded as a rule of law, those documents are generally regarded as far more reliable than the oral evidence of witnesses, still less their demeanour when giving evidence.'

13. I pause briefly to note that the observations of both Leggatt J and Males LJ arose in the context of commercial cases. In *Martin v Kogan* [2020] FSR 3, the Court of Appeal again addressed the issue of witness evidence. At [88] Floyd LJ said this:

'[88] Gestmin is not to be taken as laying down any general principle for the assessment of evidence. It is one of a line of distinguished judicial observations that emphasise the fallibility of human memory and the need to assess witness evidence in its proper place alongside contemporaneous documentary evidence and evidence upon which undoubted or probable reliance can be placed But a proper awareness of the fallibility of memory does not relieve judges of the task of making findings of fact based upon all of the evidence. Heuristics or mental shortcuts are no substitute for this essential judicial function. In particular, where a party's sworn evidence is disbelieved, the court must say why that is; it cannot simply ignore the evidence.'

10. In the present case, the court heard oral evidence from both Mr Shergill and Miss Smith. In addition, although not cross-examined, Mr Abdulali made two witness statements, one in respect of each application.
11. On behalf of the Applicants, it was accepted by Mr Fagan (and I too accept) that Miss Smith was an honest witness, who did her best to assist the court, although, as I will explain, she failed completely to appreciate or act according to her duties as a director of Staffs.
12. By contrast however, Mr Shergill's evidence was neither honest nor helpful – it was characterised by a repeated failure to recall anything at all about significant events potentially unhelpful to his case, and by inconsistencies and self-contradiction, but more

than that, it was fundamentally inconsistent in crucial respects with known facts and documents. I shall explain the numerous deficiencies in his evidence in the explanation of my findings.

Fraudulent Trading

The Law

13. Section 213 of the IA 1986 provides:

(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.

(2) The court, on the application of the liquidator may declare that any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned are to be liable to make such contributions (if any) to the company's assets as the court thinks proper.

14. In the present case, the allegation was that the Companies' business was carried on with "intent to defraud" their creditors (or two of them, at least) but not to defraud the creditors of any other person, and not for any other fraudulent purpose.
15. Subsection (1) of section 213 defines the variety of case in which an order might be made; it requires the applicant to show that the (or "any") business of the company has been carried on in a particular fraudulent fashion. That having been shown, subsection (2) defines those against whom an order might be made (if and to the extent "proper") being those who were "knowingly parties" to the carrying on of business in that fraudulent manner.
16. In the present case, given that Mr Shergill was in fact the person in ultimate and sole control of the Companies' business, and given that it was allegedly his (and only his) intention, through and on behalf of the Companies, to defraud their creditors, it follows that if the requirements of subsection (1) are satisfied, the requirements of subsection (2) will necessarily also be satisfied – if a person causes and is solely responsible for the conduct of business intended to defraud creditors, he cannot sensibly deny that he was knowingly party to that manner of business. This was not therefore a case in which the

court had to examine the meaning of the expression “*knowingly parties*”, or the extent to which different degrees or varieties of knowledge and participation might suffice to justify relief.

17. As to the meaning of “*intent to defraud*”, I was shown a number of authorities from which I derived the following propositions relevant to the present case.
18. First, the expression connotes actual dishonesty, involving, according to current notions of fair trading among commercial men, real moral blame; dishonesty is an essential ingredient: R v Grantham [1984] 1 QB 675 at 682H and Re Augustus Barnett & Sons (1986) 2 BCC 98,904.
19. Second, proof of dishonesty involves a two stage enquiry. First, the tribunal “*must ... ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief as a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest*”, per Lord Hughes JSC, Ivey v Genting Casinos (UK) Ltd t/a Crockfords Club [2017] UKSC 67 at [74].
20. To the extent that the judgment of Mr Charles Morrison (sitting as a Deputy Judge of the High Court) in Joint Liquidators of Tiuta International Ltd v Booth & Anor [2023] EWHC 3195 at [25] suggested (by reference to R v Grantham [1984] 1 QB 675) that the person accused of dishonesty must subjectively appreciate or know that he is stepping outside the bounds of what ordinary decent people would regard as honest, I disagree. That suggestion would be inconsistent with Ivey (and the approach taken in Re Pantiles Investments Ltd [2019] BCC 1003 at [22]-[23] in respect of section 213(2)) and in any event was not that part of the summing up in Grantham that was subject to the appeal (see [1984] 1 QB 675 at 681E-F, which identifies the passage under consideration, and at 682D-E, the conclusion, that it was not in error). To allow a person, for the purposes

of section 213, to define and act according to his own personal standards of honesty, would be unprincipled and undesirable; it would surely undermine the policy of the Act.

21. Third, although the word “*defraud*” requires a person as its object (a person - a creditor - defrauded): that person may be either a creditor by choice (for example, a customer deceived into giving credit) or an involuntary creditor (such as the Council in the present case, or HMRC); as to involuntary creditors, “*there is no question of deceit. The intent to defraud ... lies in continuing to incur the liability for tax or national insurance contributions or VAT when there is no honest belief that those liabilities will be discharged when they become due or shortly thereafter*”, per HHJ Leonard Bromley QC, Re a Company No.00148 of 1988 [1990] BCC 526 at 528A, and see R v Grantham 1 QB 675 at 682D-E, per Lord Lane C.J. Having said that, even in respect of involuntary creditors, there may of course be some deceitful conduct, such as by dishonestly causing the creditor to delay or desist from recovery or other formal action, in order to prolong the period of trade, in order to extract greater gain; circumstances will inevitably vary. Where the only transactions in which the company was engaged would have been carried out at a loss had the creditor been paid, there is reason to conclude that the business was carried on with intent to defraud a creditor: per Roth J, Re Overnight Ltd (No.2) [2010] EWHC 613 (Ch) at [10].
22. In summary, in the present case under section 213, the court must find an intent to defraud a creditor or creditors, involving actual dishonesty and real moral blame according to the objective standards of fair trading among ordinary decent, commercial people.

The Background and Context

23. Mr Shergill’s evidence was that he left school when he was 17, in about 1980, and went to work as a “*general helper*” with his elder brother who was a market trader selling fashion clothing in North Warwickshire. In time, he acquired his own stall, albeit that his business together with that of his two brothers was treated as a “*family enterprise*”; as such, they traded for some fifteen years, almost exclusively in cash – a practice which he claimed to have continued in the operation of the Companies.
24. At some time in the 1980s, Mr Shergill met Miss Smith; they have been living together as husband and wife for over thirty-five years, since about 1987; they have two children, Lauren who was thirty-three when Miss Smith made her witness statement on 30

November 2023, and Jack, who was, at that date, twenty-nine. In about 1997, Mr Shergill's father died, and he and his brothers decided to stop market-trading; instead, they opened a discount store in Wolverhampton, and another in Hanley, Stoke-on-Trent. Those shops were, or became, unprofitable, and in about 2001, they were closed.

25. Mr Shergill's evidence was that his next venture, with his younger brother, was selling furniture from a shop in Evesham, his first experience in that field of business. In November 2011 however, the shop and the business were closed and the brothers decided to go their own separate ways. Mr Shergill negotiated a lease of a property at 1 Market Street, Stafford, and again, began the business of selling furniture. At this point, he decided "*to incorporate a limited company myself, for the first time*"; he used the name "*Houghton*", which was that of a nearby village, and called the shop "*Houghton Furnishing*". In his statement, the first such "*Houghton*" company which Mr Shergill referred to, was Houghton Furnishing Stafford Limited ("**Stafford**") which was incorporated on 13 March 2013. In the Respondents' Points of Defence, they described Stafford as having not traded, and having had "*no significant accounting transactions*", meaning that it filed dormant accounts.
26. The second "*Houghton*" company referred to by Mr Shergill in his written evidence was Houghton Furnishing Net Limited ("**Net**") which was incorporated on 8 September 2015, with a view, according to the Respondents' Points of Defence, to conducting business on the internet, but which in fact traded first from 1 Market Street, and then from 6 Market Street, having been relocated by, or at the request of the landlord. In his statement, Mr Shergill said that Net generated little business and stopped trading in 2016. Stacks was incorporated and began to trade from the Premises later that year, in December 2016.
27. In respect of the period before the incorporation of Stacks, in his statement made on 18 April 2024, Mr Abdulali provided some more detail of Mr Shergill's commercial activities, insofar as they produced publicly accessible, surviving records and/or records remaining in the possession of the Council; in particular, Mr Abdulali gave evidence of Mr Shergill's activities conducted through the medium of companies, and therefore with the privilege of limited liability. That evidence - which fundamentally contradicted and undermined the impression, given by his written statement, that Mr Shergill's first involvement in a company was in about 2011, and that of two "*Houghton*" companies, only one had traded to any extent, and for a short time, was as follows.

28. First, from public records, it appeared that Mr Shergill had been a director of five companies, other than the “*Houghton*” companies, as follows.

28.1. Shergill Fashions Limited was incorporated on 24 June 1992 and went into creditors’ voluntary liquidation on 3 November 1993. Mr Shergill was one of its directors, and also the Company Secretary. The estimated statement of affairs, signed by Mr Shergill, recorded an estimated deficiency as regards creditors of £161,238 (having traded for only about a year and 6 months); its creditors included HMRC, which was said to be owed £7,500 in respect of VAT and PAYE. In his oral evidence, Mr Shergill said that he “*vaguely remembered*” the business, but that (although he had signed the statement of affairs) his brother had been in charge.

28.2. Home and Bargain Limited was incorporated on 21 January 2004, and was known as Superpound Discounts Limited from 21 January 2004 to 22 February 2005. It operated, I infer, one of the discount store businesses. Mr Shergill was appointed as a director on incorporation and resigned on 29 July 2004. The company went into creditors’ voluntary liquidation on 3 March 2009 (several years after Mr Shergill’s resignation) and was dissolved on 19 August 2011. The statement of affairs recorded an estimated deficiency as regards creditors of £140,808; its creditors included HMRC, said to be owed (an estimated) £50,000 in respect of PAYE, NIC and VAT. Again, Mr Shergill said that this was his brother’s company.

28.3. Usefull Products Limited was incorporated on 1 March 2006 and Mr Shergill was a director until 3 March 2009; it too went into creditors’ voluntary liquidation, on 12 January 2011. Again, I infer that it operated one of the discount stores. Its statement of affairs recorded an estimated deficiency as regards creditors of £40,507; its creditors included HMRC, said to be owed (an estimated) £9,530 in respect of PAYE, NIC and VAT. Mr Shergill’s evidence was that he had been engaged in “*sales*” rather than “*management*”.

28.4. Shergills Imports Limited was incorporated on 5 June 2009, three months after Mr Shergill resigned as a director of Usefull Products Limited; it too appears to have operated a discount store business. Mr Shergill was a director between

March 2011 and 22 April 2014 when it was dissolved, having failed to file any accounts in the period (of almost five years) since incorporation, for about three of which, Mr Shergill was a director.

- 28.5. Finally, Home UK Inc Limited was incorporated on 6 June 2012. It was in the business of “*retail electrical household etc goods*”. Mr Shergill was a director for a single day, between 10 and 11 June 2013. In his oral evidence, he said he had “*no clue*” about this company.
29. Plainly, apart from his involvement in relation to the “*Houghton*” companies, Mr Shergill had, by 2012/2013, acquired some experience as a director of several companies, and of the protection from personal liability that they afforded (or might have seemed to afford) their directors and owners, even where insolvent; in addition, he had acquired personal experience of certain liabilities to HMRC which a company might involuntarily come to owe.
30. Mr Abdulali also provided much greater detail in respect of the “*Houghton*” companies, of which it transpired that there were three, not two. In respect of these companies, in addition to public records, Mr Abdulali also exhibited (at least some of) the Council’s internal records.
31. The first of these companies was not Stafford (not incorporated until 2013) but a company called Houghton Furnishing Limited (“**Furnishing**”) which was incorporated on 10 August 2011 and dissolved on 4 August 2015 following compulsory strike-off action. Mr Shergill was its only director; he accepted that he alone was in control of its business in every respect (although keen to assert that somehow his role was “*mainly in sales*”).
32. In the event, Furnishing filed only a single set of accounts made up to 31 August 2012 which showed that the company was (or purported to be) dormant. However, not only would that description contradict Mr Shergill’s own evidence (that he began the “*Houghton Furnishing*” business in about 2011) but it was contradicted (and wholly undermined) by the Council’s records, which included a copy of a lease in favour of Furnishing in respect of 1 Market Street, and which showed that in respect of arrears of NDR, in May 2013, the Council had issued a summons (and again in June 2014, and

finally April 2015) after which, in January 2016, they were told by their bailiffs that the company had been dissolved (in August 2015) and that the Premises had come to be occupied by Stafford. Although Furnishing appeared throughout to have been in significant arrears, it had made some payments of NDR (in effect, under negotiated time to pay arrangements) and so the Council treated it as having paid in full, and transferred liability post-13 March 2013, to Stafford, as its successor.

33. In his oral evidence, Mr Shergill claimed to recall little or nothing about the affairs of Furnishing in respect of NDR.
34. Stafford was incorporated on 13 March 2013 and dissolved on 25 April 2017 (some four months after Stacks had begun to trade from the Premises, and had received, as described below, Council bills in respect of NDR, which it never paid). It was wholly unclear when in fact Stafford assumed conduct of the “*Houghton Furnishing*” business, and when it went into occupation of the shop premises (obscurity which Mr Shergill caused or to which he contributed by his failures to keep the Council informed, and to cause the companies to maintain or file accurate accounts). Nonetheless, the Council’s internal records showed that despite summonses having been issued on 29 June 2016, 1 November 2016 and 10 May 2017, in respect of NDR, Stafford made only one payment (of £100, to enforcement agents) and the Council ultimately wrote-off liabilities amounting to about £14,000. In his oral evidence, Mr Shergill claimed to have no recollection of these circumstances.
35. Net was incorporated on 8 September 2015, shortly after the dissolution of Furnishing, but before the Council had discovered that (as they understood it) Stafford had gone into occupation of 1 Market Street. It was dissolved on 14 February 2017 (again, after Stacks had begun to trade from the Premises). According to the Council’s internal records, the Council was told on 15 January 2016 that Stafford had been dissolved, and that Net had gone into occupation of the Market Street premises. A bill for NDR was issued on 18 January 2016 in the sum of £19,558.36, payable by 3 March 2016. Mr Shergill appears to have telephoned on 27 January 2016 to say that the company would make “*ad hoc payments of as much as he can and if he cannot pay by march he will ring us*”. In the event, payment of £1,500 was made on 3 May 2016, and a summons was issued on 2 June 2016. In addition, the Council was telephoned by a Mr Anthony Vyhuis (“**Mr Vyhuis**”), who told them that the business was struggling and that an “*application for*

hardship” would be made; he was told it was most unlikely to be granted, and that in any event, it would not, whilst pending, affect the company’s liability or obligation to pay. Despite attempting enforcement using bailiffs (who visited the property in about August/September 2016, but were told that all stock belonged to another company, albeit also Mr Shergill’s) the Council was forced to write off a debt of £19,143.32 after Net was dissolved, having paid only £4,901.29 since first being billed; authority to write off the debt was given on 1 September 2016 – about 2 months before Stacks was incorporated and began to trade. Again, in his oral evidence, again, Mr Shergill said he had no or only a vague recollection of these circumstances – “*it’s been that long*”.

36. Drawing that evidence together, the three “*Houghton*” companies operated the same or much the same furniture retail business, under the same name - “*Houghton Furnishing*” - over the course of about 5 years, from premises at 1 Market Street, and later, 6 Market Street. Each was owned, operated and managed by Mr Shergill; each failed to meet its obligations to pay NDR, and in each case the Council was forced to resort to enforcement action, including instructing bailiffs and issuing summonses – as Mr Shergill must have known; each was dissolved, and in respect of Stafford and Net, the Council had no option but to write off substantial debts – again, as Mr Shergill must have known; the use of different companies with similar names conducting the same business from the same property caused confusion, as did the failure to keep proper records.
37. Nonetheless, in respect of “*Houghton Furnishing*”, Mr Shergill appears to have avoided any personal liability, and I infer that he drew from that fact the unfortunate conclusion that by these methods, apparently simple and repeatable, he could trade with impunity, through limited companies, at the expense of the Council (and perhaps others). This was the context in which Stacks came to be incorporated on 12 December 2016, and went into occupation of the Premises on or about 16 December 2016.
38. On 20 February 2017, the Council issued a written bill for NDR payable by Stacks in the sum of £19,196.45 in respect of the period to 31 March 2017 (“**the 16/17 Bill**”) based on the Premises’ annual rateable value (“**RV**”) at that time, of £133,000, reduced by reference to the shorter period of time in occupation, and reduced by virtue of the Standard Non-Domestic Rating Multiplier of 49.7p/£. The whole of the sum charged was due for payment by 8 March 2017, but was not paid, to any extent. The Applicants’ case

was that as at that date, Stacks was insolvent: it had no assets of any significant value, and could not pay its debt to the Council. That submission was essentially irresistible.

39. On 13 March 2017, the Council issued a further bill addressed to Stacks, this time in respect of the period between 1 April 2017 and 31 March 2018 (“**the 17/18 Bill**”) based on a revised RV of £53,500 multiplied by the Standard Non-Domestic Rating Multiplier (in the sum of £25,626.50) plus the sum of £34,162.50 in respect of “*transitional relief*”, the total sum due being £59,789, payable by instalments beginning with £4,987 on 3 April 2017. As a result of the company’s failure to pay by instalments, it lost the right to do so, and again, liability in respect of the whole sum fell due.
40. In his Points of Defence in the Stacks Application, Mr Shergill stated that he was “*aware that when Stacks traded from [the Premises] it would be required to pay business rates. [The Council] advised [Stacks] that due to the regeneration of the Town Centre, there would be a £10,000.00 discount/relief on the business rates payable. However, when [Stacks] received a business rates bill for around £53,500.00 no discount/relief had been applied and such bills substantially higher than expected. [Stacks] engaged [Mr Vyhuis] to advise and assist in respect of the business rates issue, namely the failure to apply relief/discount [Stacks] subsequently relied on Mr Vyhuis to correspond on [Stacks’] behalf and prepare and submit an “appeal” to the Council.*” The Defence continued, “*The liability in question and or the rateable value of the Premises by Valuation Office Agency, therefore, was the subject of an appeal which, at the time, had yet to be resolved and [Mr Shergill] had a reasonable and honest expectation that the same would be significantly reduced.*” He said that from June 2017, he continued the business of Stacks with the “*intention of trading out of difficulty*”.
41. In his witness statement, he said that the amount charged in respect of NDR at the Premises was “*astronomical*”. He said that “*at some point I discovered that the rateable value of the premises was £133,000. The turnover of the company could not sustain a business rates bill of around £1,000 per week ... I was unable to reach an agreement with [the Council] ... I engaged [Mr Vyhuis] to advise and assist the company in respect of the business rates issue, which included a failure by [the Council] to provide [Stacks] with the £10,000 discount/relief that had been promised a new businesses and the 60% discount due to the regeneration of Stafford Town Centre. The business rates issue effectively strangled my business. I could not really see a way out but I held out a degree*

of hope that the business rates issue could be resolved and I will be able to continue to trade from [the Premises]. I was loathe to start making substantial payments towards the business rates, in circumstances where I was convinced that they were too high. One of the main problems for a business, when business rates are unaffordable, as a Local Authority's policy, to issue an amended bill and/or a liability order for the entire year period, when there has been a default in payment. When I received a business rates demand for the entire year, it was frankly ridiculous and was obviously not able to be paid in full."

42. In issue therefore is whether or not Mr Shergill and/or the Companies were "*advised*" by the Council that certain discounts or reliefs were available, and whether, as a result, they came to believe that their liabilities should and would be reduced, and in order to secure that reduction, whether they "*appealed*".
43. In fact, the Council's records showed that on 6 April 2017, it was telephoned by Mr Vyhuis, who asked about any available "*reliefs*" but was told there were none; apparently, he said that he did not agree. On 7 April 2017, in a further conversation, he was told to check the guidance notes on the Council's website in respect of a "*town centre relief scheme*". There was no reference to "*advice*" or specific information, and no record of Mr Vyhuis having been encouraged to think that a reduction was or would be available.
44. Furthermore, a fact which underlined the Council's belief that the whole sum was properly and immediately due, on 6 June 2017, on a summons issued on 10 May 2017, a Liability Order was made against Stacks in the Cannock Magistrates' Court in the sum of £59,789. That Order was made without any opposition from Stacks. On 3 July 2017, Mr Shergill appears to have telephoned the Council and offered to pay £2,000 per month, an offer that was refused, as "*nowhere near enough*".
45. On 3 July 2017, the Council's records showed that Mr Vyhuis was telephoned by a Mrs Sandra Hulme (of the Council). The entry read:

"Long story short I have accepted £2000 from him to be paid to Rossendales by Friday, then another £2000 by 3.8.2017 he is going to release some funds from his property and hopes to be able to pay a substantial lump sum after this date. I have advised him that I will not get involved again if he fails to pay £2000 by

Friday and that I am well aware that he is in partnership with Balvinder Singh Shergill (aka Balvinder Singh) and that he has a track record of dissolving companies in Stafford after racking up loads of debt with nndr. He promised that he would pay and that there wouldn't be an issue. I will keep an eye on this account"

46. Later that day, Mrs Hulme wrote to Mr Vyhuis. She confirmed that she had agreed payments of £2,000 by 7 July 2017 and a further £2,000 by 7 August 2017, and that:

"As discussed I will be expecting a substantial lump sum payment when you have the funds in place and I await your call to discuss this in more detail within the next few weeks. Please be aware that if payment is not made as agreed recovery action will re-commence without further notice."

47. In fact, nothing at all was paid, and so, on 13 July 2017, Mrs Hulme telephoned Rossendales and instructed them to take enforcement action. She made an emphatic entry in the Council's records:

"PLEASE DO NOT GET CASE BACK OR ENTER INTO ANY FURTHER ARRANGEMENTS".

48. That the sums due were not paid because the company could not pay them (at least, could not pay them at the same time as paying others) was consistent with Mr Shergill's evidence that even without payment of NDR, he was "*just about*" earning a living. Furthermore, the company's bank statements from 2017 showed that, for example, between 9 January 2017 and 24 April 2017, when the first two Bills were issued, the maximum sum held to the credit of the account was £2,258.91 (albeit only for part of a day), and that generally, the account held less than £100. Subsequently (whilst acknowledging that these were sums as at a moment in time) on 1 July 2017, the account held £60.69, on 1 August 2017, £2,791.97, and on 1 September 2017, £2,415.58. To put that in context, as I have said, on 6 June 2017, the liability order made at the Magistrates' Court was in the sum of £59,789. Simply, the company had no evidenced means of paying that sum (or any sum of significance) – it had no stock, and it had no money; it was thoroughly insolvent. The suggestion that from that point it could have had "*traded out of difficulty*" was fanciful, and in any event, wholly unevidenced: there was no

business plan or management accounts or any other detailed financial or management records or information; there was no foundation on which to conclude that the business could possibly survive.

49. It appeared from the Council's internal records that the RV in respect of the period which was encompassed by the 16/17 Bill was subsequently reduced from £133,000 to £100,000 (which led to a revised 16/17 Bill dated 8 August 2017, in the sum of £14,526.42) and again, subsequently, to £72,500 (which led to a revised 16/17 Bill dated 10 July 2018, in the sum of £10,464,23, minus the sum of £580.28 previously recovered by Rossendales, the Council's enforcement agents, plus £93 in costs).
50. Neither the reductions in the Premises' RV in respect of the period encompassed within the 16/17 Bill, nor a similar reduction in respect of the 17/18 Bill, were the result of any step or action taken by Mr Shergill or either of the Companies; they were not as a result of any variety of "discount", "scheme", or "appeal"; they appear instead to have been the result of revaluations conducted by the Council's Valuation Office and changes made consequently to its rating lists. By the Local Government Finance Act 1988, the Council was required (amongst other things) to compile such a list on 1 April 2010 and thereafter on 1 April 2017; the changes to the RV in respect of the 16/17 Bill were a result of changes made in respect of the list compiled with effect from 2010, and the changes in respect of the 17/18 Bill were a result of changes made in respect of the list compiled with effect from 1 April 2017. In 2022 (after the Companies had been wound up) the RV in respect of the period from 1 April 2017 was reduced again, this time from £53,500 to under £40,000 (although the precise figure was not clear from the evidence). I therefore reject the suggestion that Mr Shergill drew any encouragement from these amendments (or from the Bills that stated and reflected them) that the Companies were the beneficiaries of any variety of scheme or discount.
51. On 18 August 2017, and again on 22 August 2017, Ms Carol Lee at the Council sent Mr Shergill, in relation to his "*business rates query*", a form to be filled in, to register for a service by which the ratepayer would be able to "*Link to your property*", "*Instruct or amend an agent for the cheque and challenge service*" and "*Request your detailed valuation and a "Check your property facts form"*". On 31 August 2017, the Council acknowledged having received Mr Shergill's "*business rates check*" for the Premises, dated 30 August 2017, which "*will be considered by the Valuation Office Agency. No*

further action is required at this point.” The form itself, apparently completed by Mr Shergill (albeit the copy in evidence was unsigned) contained a request to “*view a detailed valuation*”, but nothing more than that. Importantly, it was neither an appeal or challenge nor an application for any variety of discount or reduction, and did not purport to be.

52. On 22 September 2017, Mrs Hulme recorded that she had “*completed a referral for sending this account to Howes Percival ... for winding up*”, and that “*Mr Shergill is supposed to be making payments of £700 every 28 days to Rossendales ... so any payment we get until company is wound up will be a bonus*”. In the event, a single payment of £700 was made on 31 August 2017 (to Rossendales, of which the Council received the net sum of £580.28) but otherwise, insofar as there was an arrangement or promise to pay those sums, it was not adhered to – nothing more was paid by Stacks to the Council before Stacks was wound up.
53. On 2 February 2018, Mr Shergill applied under section 1003 of the CA 2006 to have Stacks struck off the register. He signed the application form and declared that none of the circumstances described in sections 1004 or 1005 of the Act existed in relation to the company. The form stated that “*it is an offence to knowingly or recklessly provide false or misleading information on this application*”. In fact, because the company had traded within three months before the application was made, the declaration was false, as Mr Shergill either knew or ought to have known. The obvious inference, and the conclusion I draw, is that by this application Mr Shergill hoped and intended - using the same means that he had successfully employed in respect of the “*Houghton*” companies - to achieve the avoidance of any further or continuing liability for NDR in respect of the Premises during the period of Stacks’ occupation.
54. On this occasion however, those means failed, because the Council discovered about the application and objected. Through its solicitors, it wrote to Companies House on 3 April 2018, enclosing a copy of a letter of demand for payment within seven days failing which it had threatened to present a winding-up petition.
55. In the meantime, on 8 February 2018, Staffs was incorporated (with the name, “*B S Stacks Limited*”, until 24 July 2018, when its name was changed to “*Staffs Furnishing Limited*”). In the Preliminary Information Questionnaire Form that Mr Shergill completed on 29

January 2019 (after the winding-up order made against Staffs on 19 December 2018) he stated that Staffs had traded as a “*retail shop*” under the name “*Stacks*”, from 8 February 2018 until 8 November 2018 (about a week after the Council had presented its winding-up petition). Also on 29 January 2019, Mr Shergill signed a PRENAR, a further statement made under section 235 of the IA 1986. In that statement, he said that the company was incorporated as a “*safeguard*” (which suggested knowledge that Stacks was (at the very least) at risk of failure) and because he was considering setting up an online business, but that he nonetheless “*started to trade the company straight away, under the name “Stacks Inspirational Living”*”, adding the words “*Inspirational Living*” to the shop fascia at the Premises as an inexpensive means of distinguishing its business (or attempting to do so) from that of Stacks, in respect of which, at that point, as I have said, he had made an application under section 1003 of the CA 2006. He explained that the company sold “*furniture, beds, sofas, cabinets etc*”, but that he did not “*believe it was a continuation*” of the business of Stacks, which had “*shut down completely for 24 hours*” before Staffs “*took over*”, and because the “*business model*” had changed, having introduced the “*“bed center”*” [sic] ... *and flat pack furniture and obtained new suppliers*”.

56. Contrary to this evidence, Stacks’ bank statements show that it too traded as “*Stacks Inspirational Living*” throughout 2017. Furthermore, its statements in respect of 2018 recorded what appears to have been commercial activity approximately to the end of March 2018. Staffs’ bank statements showed that it opened an account at Barclays on 5 March 2018 (account number 73376451) and that transactional activity on that account began shortly afterwards.
57. I reject the suggestion, insofar as it was pursued, that the business of Staffs was in any real or significant sense different or discrete from that of Stacks: it was not. The Companies traded from the same premises and under the same name; both sold furniture to retail customers; both employed the same simple business model, which involved the display of goods which were owned by a variety of suppliers, and the sales of such goods to members of the public. The introduction of a “*bed center*” and flat pack furniture (even if true, and there was no documentary or third party evidence of these changes) would not have amounted to anything more than a minor evolution of the same, continuing business. Moreover, Stacks did not cease trading immediately upon the incorporation of Staffs, it continued for some time afterwards; it may be that the Companies traded

concurrently, or (as appeared to have been the case in respect of “*Houghton Furnishing*”) without real regard for their separate existence.

58. In respect of his attempt to have Stacks struck off the register, Mr Shergill’s witness statement (in the Stacks Application) was revealing. He said, amongst things, that he had become “*very worried*” about unpaid NDR, and that he recalled “*speaking to a friend at the time about the issues and the mounting bills. He said to me that a way forward could be simply to wind down trading and ask for the company to be removed from Companies House. [He] was not really sure of the process and [his] friend told [him] that it could be done “on a form”*”; he said that he “*honestly believed that [he] was doing the right thing in stopping the company from trading.*”

59. I reject both aspects of that evidence:

59.1. first, given Mr Shergill’s previous involvement in companies which had been dissolved (whilst insolvent) I reject the implicit suggestion that this step was in any sense a novel one, the product of his (unidentified) friend’s informal advice: in my judgment, it was a conscious attempt to replicate steps which Mr Shergill had taken in previous years;

59.2. second, I reject the characterisation of this step as an “*honest*” one, that Mr Shergill was somehow doing his best to minimise losses caused by unprofitable trade. Even if it was right to end the business of Stacks, his attempt to dissolve Stacks was manifestly not a step taken for the benefit of others (in particular creditors, none of whom were consulted or told in advance) because it was a step combined with the incorporation of Staffs, and the intended continuation of the same business through that successor company; it was a step which, had it succeeded, would have avoided the consequences of liquidation, and the introduction into the situation of an independent liquidator.

60. In his witness statement in the Staffs Application, Mr Shergill said, that he “*realised in or around March/early April [2018] that [Stacks] would probably not survive. As I already had another limited company ([Staffs]) I began to trade through that business and I allowed [Stacks] to naturally wind down/let the threatened proceedings from [the Council] take their course.*”

61. That evidence was inconsistent with that of his statement in the Stacks Application, in which he said that he had applied under section 1003 to have Stacks struck off (on 2 February 2018) because he was so concerned about mounting unpaid NDR liabilities, and because of his “*honest*” belief that as a result, it ought to cease trading. If that were true, it cannot also be true that it was not until March/April 2018 that Mr Shergill realised that Stacks would “*probably not survive*”: even on his own evidence, he must have known before then. Furthermore, given that there was no distinction of any substance between the business and circumstances of the two companies, an admission that by about March/April 2018, if not before, he had realised that Stacks would “*probably not survive*” because of unpaid debts, suggested an acknowledgement that the successor business was and would be equally unsustainable.
62. On 11 May 2018 the Council presented a winding-up petition against Stacks, and on 4 July 2018, a winding-up order was made, without opposition (there was no suggestion of a “*dispute*” or pending “*appeal*”, or anything at all of that nature).
63. Shortly afterwards, on 10 July 2018, a Bill was issued, addressed to Staffs, in respect of the period from 1 April 2018 to 31 March 2019 (“**the 18/19 Bill**”) in the sum of £28,897.65, payable by instalments beginning on 3 August 2018 in the sum of £3,613.65. The Council’s internal notes recorded that on the previous day it had been discovered, by virtue of a visit to the Premises, that Staffs had gone into occupation; the 18/19 Bill was issued in consequence.
64. In respect of Staffs, in his Defence, Mr Shergill stated simply that the Applicants were put to strict proof of their fraudulent trading claim. His witness statement was similarly unburdened by detail, although he acknowledged that “*Staffs soon fell into the same difficulty with business rates as its predecessor*”. He said that nonetheless, he was “*at that time, still engaged in what [he] honestly believed was a potentially successful “business rates appeal”*”.
65. On 17 July 2018, Mr Shergill resigned, and Miss Smith was appointed as Staff’s sole *de jure* director; she remained so until her resignation on 19 October 2018, when Mr Shergill was re-appointed. Despite her appointment, it was common ground that Miss Smith took no part in the company’s management or business, and was never intended to; in that sense, her appointment was (in the words of Mr Shergill) “*in name only*”. In his witness

statement in the Staffs Application, Mr Shergill said that he had persuaded Miss Smith to become a director because of advice from a “*business associate*” that because of the liquidation of Stacks, he was “*not allowed*” to be a director of a limited company, but that this advice was later contradicted by an insolvency practitioner from Tamworth, at which point he resumed office. Mr Shergill’s oral evidence about these alleged pieces of advice was vague – there was nothing in writing, and he could not name either person. In any event, whether or not Mr Shergill was “*advised*” in some informal sense, given his admission that Miss Smith’s appointment was nominal only, the appointment was in my judgment plainly intended for some reason to conceal or obscure the truth or true extent of Mr Shergill’s continuing involvement, at a time when the Council had raised a significant bill which the company was unable to pay.

66. On 29 August 2018, a summons was issued against Staffs in respect of its failure to pay (any part of) the 18/19 Bill, and on 21 September 2018, again without opposition, a Liability Order was made by Cannock Magistrates’ Court in the sum of £28,990.65.

67. In the meantime, on 19 September 2018, two days before the hearing of the Summons, the Council’s records show that Mr Vyhuis telephoned Mrs Hulme, and said that Staffs:

“wanted ... to set up a spar for £1000 per month. Advised him that I would not be willing to do this due to the past record for previous companies that occupied this premises (sic) [Staffs] is just another one of these. We will only set up a spar from Sept to March and won’t accept anything less. He’s going to call me back”. The reference to a “*spar*” was to a payment arrangement.

68. Staffs subsequently paid the Council eight weekly instalments of £250 (on 27 September, 4 October, 11 October, 18 October, 25 October, 1 November, 8 November, and 5 December 2018). Nonetheless, by Howes Percival’s letter of 16 October 2018, the Council threatened winding-up proceedings in the absence of full payment within 7 days. The Council’s records showed that two days later, on 18 October 2018, Mrs Hulme was telephoned by Mr Vyhuis and told that the company “*has no money to clear the balance in full ... within the next 7 days...*”.

69. Mr Vyhuis’ recorded admission, that Staffs had “*no money*” to pay its debts to the Council, was reflected in its bank statements. By reference to those statements, between

5 March 2018 and 13 December 2018, Staffs' business apparently generated a turnover of £130,276.10. In addition, the statements recorded receipts of £25,082.33 from Mr Shergill, £9,455 by way of "deposits", and £7,527 by way of "other" payments. Nonetheless, as I have said, in that time, and not beginning until 27 September 2018, it paid only £2,000 to the Council, by way of eight instalments of £250. Its bank statements also showed that in respect of each month, aggregate receipts and aggregate payments were in very similar sums, and that the credit or debit balance on the account was only occasionally more than £1,500. There was no basis upon which to think that the company could ever have afforded to meet its liabilities in respect of NDR, and even Mr Shergill accepted that it was reliant on "discounts" and on negotiating a payment plan with the Council (which it was under no obligation to agree, and which, given the history, it was markedly reluctant to agree).

70. On 24 October 2018, Mr Vyhuis wrote to the Council, and said, amongst other things, that "*We are in the process of Check and Challenge the business rates valuation which will have a substantial impact on the Business Rates*" and that "*In addition we are enquiring into start up incentive for business in the guildhall shopping centre (I have tried contacted (sic) Ms Mary Timmis - she was not available). In the first instance we are asking the council for help. We are proposing to pay £1000 per month while we process the above*". As before, in respect of Stacks, in August 2017 (over a year earlier) there was no documentary evidence of a challenge or appeal having actually been prepared, initiated, or pursued.
71. On 1 November 2018, payment in full not having been made, a winding-up petition was presented against Staffs.
72. On 6 November 2018, the Council's records showed that Mr Vyhuis spoke to a "*Mrs N Sims*", "*regarding payment of this account. He says that we haven't followed our normal procedure and we should be accepting an agreement from them. Firstly, I advised Anthony that I haven't got any written authority from the Director of [Staffs] to discuss that account with him: furthermore I am not prepared to negotiate payment of the account with him as the case is now being dealt with by Howes Percival. Anthony didn't believe that this was our normal recovery procedure – I adv that this action is in accordance with the relevant legislation and given the history of non-payment from the Companies trading from this address then we had no alternative but to instigate this*

action. Anthony went on to ask if this was a personal opinion?????? I advised that I wasn't prepared to discuss the matter any further with him"

73. On the same day, 6 November 2018, yet another company was incorporated, this with the name Montgomery Stafford Limited ("**Montgomery**"). Its only appointed director was Jack, the Respondents' son, and in his oral evidence, Mr Shergill said that this was his son's company, and that his son was "*in charge*", although he (Mr Shergill) worked for his son in the shop, operated from the same Premises that had been occupied previously by the Companies. He said that he had told Jack, and indeed "*advised*" him, not to pursue the business, but that against Mr Shergill's will, Jack had, for reasons unexplained, insisted on doing so. By a Bill dated 22 March 2019, addressed to Montgomery, the Council charged £11,559.06 in respect of NDR, payable by 5 April 2019, in respect of the period between 6 November 2018 and 31 March 2019. A further Bill in respect of the period from 1 April 2019 to 31 March 2020 was issued on 22 March 2019, in the sum of £26,964. Subsequently, eventually, on 5 August 2020, a winding-up order was also made against Montgomery on the petition of the Council, presented on 18 June 2020 and based on unpaid NDR in respect of the Premises in the sum of £21,714.59.
74. Montgomery's company's records at Companies House recorded Jack's address as being 5 Henry Street, Blackpool, UK. Also in evidence was an extract from Jack's LinkedIn page which stated that from January 2019 onwards (until at least 2024) he had worked as a Trading Manager for Sainsbury's, in Blackpool; Blackpool and Stafford are separated by about 80 miles. Jack was not called by the Respondents as a witness; there were no documents (other than the company's records at Companies House) that connected him with Montgomery or with the actual management of its business. In the circumstances, the suggestion that Jack had any real or practical involvement in the business or management of Montgomery was absurd: he lived and worked full-time elsewhere; there was no reason whatever to think that in defiance of his father's advice, he would have insisted, at that distance, and in those circumstances, to incorporate and cause a company to adopt and continue the serially unsuccessful, failed business previously operated by Stacks and Staffs from the Premises, beginning at a time when Staffs was insolvent and subject to pending winding-up proceedings. In my view, this episode was a yet further example of Mr Shergill's established pattern of misconduct,

observable in respect of the “*Houghton Furnishing*” business (if not before) and continued in respect of the business of “*Stacks*” from the Premises.

75. On 13 November 2018, Mr Vyhuis wrote to Howes Percival, and again admitted, amongst other things, that Staffs had “*no assets*”, and that it had “*on several occasions tried to make payment arrangements with you (sic) clients the council but was unable to do so*”; he continued, that there “*is a business rates discount incentive in place for businesses in the guild hall shopping centre I am advised that Ms Timmis is in charge. I have tried contacting here (sic) on several occasion (sic) and have been awaiting call since we first spoke*”.
76. On 16 November 2018, there was a telephone conversation between Mr Vyhuis and Ms Neena Jakhu of Howes Percival (“**NXJ**”). According to her attendance note:

“NXJ asking in what capacity Anthony was calling and he confirmed on behalf of the Company/the director of the Company and that he was authorised to do so in his capacity as the person responsible for the accounts of the Company.

Anthony indicating that the Council had presented the Winding Up Petition prematurely. In his experience, Bailiffs were usually sent out before! NXJ indicating that clearly was not the case as they had written to the Company prior to presenting the Petition giving them notice.

Anthony indicating that in his experience it wasn't usually that quick! NXJ indicating that he was missing the point that there was a debt due to the Council which remained outstanding.

Anthony indicating that there was an outstanding appeal to the Valuation Office Agency (“VOA”) which he had been trying to submit since February but the website was not working. NXJ asking whether there was any other way that they could make an appeal to the VOA to which Anthony responded that there was not. NXJ indicating that the business rates had already been reduced in May 2018 and the Council are not aware of any other appeal outstanding.

Anthony further indicating that the property was about to be split and therefore different business rates would apply.

NXJ reiterating that the sum owing to the Council remained outstanding and unless that was paid prior to the hearing a Winding Up Order would be sought.

Anthony indicating that there were no assets in the Company and therefore he does not know why the Council is pursuing the matter.”

77. The note of that conversation plainly suggested that there was no pending appeal; that no appeal had been initiated. The explanation given for that acknowledgement - that Mr Vyhuis had been attempting to lodge an appeal since February 2018 (for about six months), but unsuccessfully, because the Council’s website was not working - was inherently (highly) implausible, and was not supported by any document or other evidence. Again, the note supported the conclusion that Staffs was insolvent, and that those who ran it were well aware of that fact, which apparently they hoped to use to dissuade the Council from spending any money on enforcement.
78. On 19 December 2018, a winding-up order was made against Staffs, again without opposition, without reference to any pending “*appeal*”, or wrongly withheld “*discount*” or “*reduction*”, and of course without any offer to pay the “*true*” or undisputed amount. In respect of Staffs, subject to the present or other recovery proceedings, the Council was compelled to write-off a debt of £15,014.29.
79. Three days later, on 22 December 2018, Mr Vyhuis emailed the Council, this time on behalf of Montgomery, to inform them that Montgomery, the second “*Stacks*” phoenix, had now gone into occupation of the Premises. In addition, he enclosed a small business rate relief form, and said that “*we wish to apply to business rate relief scheme*”.
80. Mrs Hulme emailed in response on 7 January 2019, and said “*I note that you have also provided a completed small business rate relief form but I must advise you that your company will not qualify for this relief because the rateable value of the premises is considerably over the £15,000 threshold.*” A further email was sent on the following day from Mrs Mary Timmis, an Economic Development Officer at the Council, following her conversation with Mr Vyhuis on the previous day. She explained that the company was not eligible under the “*Stafford Town Centre Relief Scheme*” because it had already started trading at the Premises, and was not proposing to occupy a currently empty ground floor unit. Those restrictive criteria would very likely have applied in respect of

any such claims that might have been made previously, by either Stacks or Staffs. In any event, the relief was not granted automatically; there was a need to apply, and there was nothing to suggest that any application had ever been made.

81. Finally in respect the Respondents' various connections with the Premises, one further company, called MTS Furnishing Limited (“MTS”) was incorporated on 12 November 2019; its registered office was at Mr Shergill's home address; it was dissolved on 22 March 2022, on an application for voluntary strike-off made by its sole director and shareholder – this time, Miss Smith. Again, its business was recorded at Companies House as being “*Retail of furniture, lighting and similar ...*”. It filed accounts for a dormant company made up to 30 November 2020 – I cannot say whether or not those accounts were accurate. I do however note in this context that Mr Shergill's undertaking under the CDDA was given on 29 March 2020, during the currency of MTS; had he acted (as he acted in respect of Staffs, and on the evidence before the court in the present proceedings, in respect of Montgomery) as a *de factor* or shadow director of MTS, he would have incurred criminal liability under section 13 of the CDDA.

Discussion

82. My conclusion, for the following reasons, is that Mr Shergill operated the business of Stacks, and the subsequent business of Staffs, with “*intent to defraud*” the Council and/or HMRC (acting in each case with actual dishonesty and real moral blame) such that he is liable to make a contribution to the Companies' assets.
83. From the background, I draw the following conclusions.
 - 83.1. Mr Shergill has had, since at least 1992, experience acting as a director and shareholder of a company. Before the incorporation of Stacks, he had been a director of at least eight other limited liability companies, three of which went into insolvent creditors' voluntary liquidation, and at least two of which were dissolved, without prior liquidation, but whilst insolvent (or at least, without having paid their debts); he had experience of “*involuntary*” creditors, such as the Council, and HMRC. More generally, he has been involved in commerce of one sort or another for over forty years.

- 83.2. The business of “*Houghton Furnishing*” was operated over the course of about five years through three different companies. Each was owned, operated and managed by Mr Shergill – it was his first sole venture, without the involvement of his brothers or father; each failed to meet its obligations to pay NDR to the Council, and in each case the Council was forced to resort to enforcement action, including instructing bailiffs and issuing summonses; each was dissolved, and in respect of Stafford and Net, the Council was compelled to write off substantial debts – as Mr Shergill knew. As I have said, I infer that Mr Shergill concluded that it was possible by this method to trade with impunity at the expense of the Council (and possibly others), to avoid any personal liability, and to escape payment of unaffordable, historic debt.
- 83.3. Mr Shergill intended to use (and in fact used) the same method in respect of the “*Stacks*” business, which was operated from the Premises (without any real distinction between the business of each company) first by Stacks, then Staffs, and then Montgomery, the latter both “*phoenix*” companies, albeit that in respect of Montgomery, there was an attempt to conceal the truth of Mr Shergill’s control by means of Jack’s nominal appointment as a director, and possibly, to some extent, a similar attempt by means of Miss Smith’s brief appointment as a director of Staffs.
- 83.4. The attempt to have Stacks struck off the register in February 2018 was (albeit ultimately thwarted) a deliberate step in a conscious attempt to evade payment of outstanding debt, to avoid liquidation and the scrutiny of a liquidator, and to continue the same business through Staffs, shorn of historic debt; it was part of Mr Shergill’s overall scheme.
- 83.5. Neither Stacks nor Staffs could, at any point, have met their NDR liabilities. Stacks was insolvent from at least 8 March 2017, when the sum charged under the 16/17 Bill fell due for payment. Staffs was hopelessly insolvent from the outset: it simply continued the business of Stacks, which had failed, and which was wound-up by an order made on 4 July 2018, without opposition. Neither company had assets of any value; neither appeared at any time to have held cash in a sum remotely sufficient to meet liabilities in respect of NDR; neither could have afforded to trade and at same time pay debts due to the Council as NDR.

Furthermore, the documents contained implicit and explicit admissions that NDR liabilities were unaffordable, for example, on 3 July 2017, Mr Shergill telephoned and offered to pay £2,000/month, but was told that was “*nowhere near enough*”, and on 18 October 2018, Mr Vyhuis told Mrs Hulme that Staffs had “*no money to clear the balance*”. During its lifetime, Stacks paid only £580.28 to the Council in respect of NDR (and even then, only through Rossendales); Staffs paid only £2,000. In both cases, the Council is owed sums which will be unpaid in the liquidation subject to this or any other recovery action.

83.6. Furthermore, given Mr Shergill’s previous conduct in respect of the “*Houghton*” companies, I do not infer from the simple fact of Stacks having gone into occupation of the Premises in December 2016, that Mr Shergill must at that time have had some genuine reason to think that NDR would be charged at an affordable rate; he had traded at the Council’s expense previously and in my judgment planned to do so again.

83.7. It was submitted that Mr Shergill believed - as an optimistic man - that the Companies could trade out of their temporary difficulties, if only given the chance to do so. There was however no evidential basis upon which to conclude that they ever had any genuine prospect of doing so – and no evidence of advice or financial or management information upon which Mr Shergill might have relied in order to reach that conclusion; the only evidence of that “*belief*” was Mr Shergill’s unsupported word, which given his previous conduct in respect of the “*Houghton*” companies, and given the obvious implausibility of that belief, I do not accept.

84. Nor do I accept Mr Shergill’s case that whether or not reasonably, he believed - genuinely, honestly and with characteristic optimism - that sums due to the Council in respect of NDR would or were to be reduced to an amount (whether automatically, by virtue of a “*scheme*” or “*discount*”, or by virtue of an “*appeal*”) which the Companies would then be able to pay, even if by means of some variety of time to pay agreement with the Council which might in those circumstances be negotiated. It was said that his belief in that respect arose from two sources: first, from an alleged conversation with “*Valerie*”, following Stacks’ receipt of the 16/17 Bill on about 20 February 2017, and

second, from information on the Council’s website, and in its own literature. The essence of his defence was that because of what he had been told by the Council, he had believed that the *true* amount of the Companies’ NDR debts, once properly determined, would be in a sum which could and would then have been paid, and that to continue to trade in those circumstances, pending that determination, was not dishonest.

85. That defence raised various issues of fact:

85.1. was Mr Shergill told, informed or advised by the Council about some variety of NDR discount, reduction or scheme for which the Companies were eligible;

85.2. if so, what information or advice was he given, and did he come, as a result, to believe that the liabilities would be reduced;

85.3. (whether because of that belief or for some other reason) did the Companies make or pursue any appeals in respect of their NDR liabilities?

86. I reject the case that Mr Shergill or the Companies were given “*advice*” or information, whether in conversation with “*Valerie*” or by anyone else, that caused or encouraged them to think that the NDR liabilities would be reduced or had been overstated:

86.1. first, before his cross-examination, Mr Shergill had never previously mentioned any such conversation with “*Valerie*”; furthermore, there was inconsistency in Mr Shergill’s oral evidence about that alleged conversation: implicit in one account was that it was before going into occupation (and relied upon in doing so), but in another part of his oral evidence he said that it took place after receipt of the 16/17 Bill on about 20 February 2017, at a point when he was “*fuming*”, and in a state of “*shock*”, having not been given the reliefs that he anticipated (which then raises the question of the basis of his alleged anticipation, if not the alleged conversation with Valerie);

86.2. second, the fact of such “*advice*”, and of “*Valerie’s*” responsibility for having given it, was wholly unsupported by the documents, and indeed, contradicted by them. There was no relevant mention of a person called “*Valerie*”, or of a conversation with such a person, and the Council’s records contain no suggestion that they advised Mr Shergill (by any means) that any relief was

available. Although it may be that such a person exists and that she is or was employed by the Council (one of the Council's internal records showed that a "*Mrs V Plant*" was involved in 2013 in connection with the affairs of Furnishing) there was nothing to suggest that either Mrs Plant or any other person called "*Valerie*" was involved in 2017 in connection with Stacks, and I reject Mr Shergill's evidence in that regard.

86.3. More broadly, the suggestion that Mr Shergill or Mr Vyhuis were advised or told by the Council that some variety of reduction was available was also flatly contradicted by the documentary record. Not only was no reference to any such advice, but, for example, on 6 April 2017, Mr Vyhuis was told that no reliefs were available, and on 10 May 2017, the Council issued a summons for the full unpaid sum, which was pursued and heard (and which succeeded) on 6 June 2017. Far from advising or encouraging Mr Shergill to believe in the existence of any reliefs, by 3 July 2017, the Council's records showed Mrs Hulme noting Mr Shergill's "*track record*" and telling Mr Vyhuis that she would "*not get involved again*", in a negotiation or discussion. The Council's justified exasperation, that once more Mr Shergill was apparently occupying premises at their expense, was perfectly plain, and there was nothing to suggest that it would not have been understood. By 13 July 2017, Mrs Hulme felt constrained to write: "*PLEASE DO NOT GET CASE BACK OR ENTER INTO ANY FURTHER ARRANGEMENTS*". Realistically, Mr Shergill cannot have been left in any doubt about what was being sought.

86.4. Mr Shergill also said that he had understood that a reduction for regeneration was available, from the Council's "*website*". He said that he thought the reduction was "*automatic*", and that there was no need to ask for it. Again however, the court was not provided with any documentary evidence to support that suggestion, which was, for that reason, and because it was so vague, and because in any event it too was a newcomer, evidence of no probative value; far more likely was simply that Mr Shergill said it, during his cross-examination, in an effort, ultimately unsuccessful, to add some weight to his case that he had held a real and genuine belief in the fact of available rate reductions.

- 86.5. It follows that I reject Mr Shergill’s evidence that he would not have “gone in” at £53,500 – the first Bill, dated 20 February 2017, reflected an RV of £133,000, and the second Bill, dated 13 March 2017, reflected an RV of £53,500. Mr Shergill had no basis upon which to think, before Stacks went into occupation, that it would be otherwise.
87. Moreover, as to the alleged content of that advice or information – the extent and effect of the alleged discounts or schemes - Mr Shergill’s case was vague, internally inconsistent, and unsupported by the documents, all of which further underlined the conclusion that no such advice or information was provided.
88. In his Points of Defence in the Stacks Application, Mr Shergill stated that:

*[The Council] advised [Stacks] that due to the regeneration of the Town Centre, there would be a **£10,000.00 discount/relief on the business rates payable.** However, when [Stacks] received a business rates bill for around £53,500.00 no discount/relief had been applied and such bills substantially higher than expected. [Stacks] engaged [Mr Vyhuis] to advise and assist in respect of the business rates issue, namely the failure to apply relief/discount [Stacks] subsequently relied on Mr Vyhuis to correspond on [Stacks’] behalf and prepare and submit an “appeal” to the Council.”* The Defence continued, “*The liability in question and or the rateable value of the Premises by Valuation Office Agency, therefore, was the subject of an appeal which, at the time, had yet to be resolved and [Mr Shergill] had a reasonable and honest expectation that the same would be significantly reduced.*” (Emphasis added.)

89. In his witness statement, he said that:

*“The turnover of the company could not sustain a business rates bill of around £1,000 per week ... I was unable to reach an agreement with [the Council] ... I engaged [Mr Vyhuis] to advise and assist the company in respect of the business rates issue, which included a failure by [the Council] to provide [Stacks] with **the £10,000 discount/relief that had been promised a new businesses and the 60% discount due to the regeneration of Stafford Town Centre.**”* (Emphasis added.)

90. In his Points of Defence in the Staffs Application, without regard for the distinctions between the circumstances of the two companies, Mr Shergill simply re-stated, verbatim, the paragraph from his Defence in the Stacks Application, set out above. Thus, for example, the Defence again states that the “*Council advised the Company that due to the regeneration of the Town Centre, there will be a £10,000.00 discount/relief on the business rates payable*”. I have rejected that case in respect of Stacks, but given that the “*advice*” was said to have been given by “*Valerie*” in respect of Stacks, in about February – March 2017, it was obviously untrue in respect of Staffs, even on Mr Shergill’s own case. In the event, he accepted in cross-examination, that this allegation was “*incorrect*” – it was, in my judgment, a yet further example of Mr Shergill’s casual approach to the truth.
91. In addition to the Points of Defence and written witness evidence, on 5 September 2018, before these proceedings began, Mr Shergill completed and signed a Preliminary Investigation Questionnaire in respect of Stacks. On the same day, he completed and signed a PREADD, containing his responses to further questions. In that document, he described the debt to the Council as “*long disputed*”, and said that when Stacks went into occupation, he was “*under the impression*” that the RV was £53,000, of which the company would pay 48 pence/£, being about £26,000, and also that there was a further 50% discount for new businesses, which although not advertised was potentially available on application. He said that when he realised that it was going to be so expensive, he appealed, in July 2017, to the Valuation Office, but that this first appeal was rejected after about 3 months; he said that subsequently there was a second appeal, which was conducted on the company’s behalf by Mr Vyhuis, but that this too was rejected, in about October 2010.
92. These three written accounts or statements were not consistent with one another; internally, they were muddled: first, as to the alleged amount of the “*regeneration*” discount (£10,000 or 60% or 50%); second, whether there were, allegedly, two reliefs (town centre regeneration and new business) or one (either town centre regeneration or new business); third, if two, in what sums/percentages they were available; fourth, in what amount Mr Shergill ultimately expected to be billed; and finally, how many appeals were pursued.

93. Furthermore, they were inconsistent with, and unsupported by the documentary record: from at least the receipt of the 16/17 Bill dated 20 February 2017, Mr Shergill would have known that the Premises' RV was £133,000, not £53,500. The latter sum was produced by the application to the RV of the Multiplier – it was nothing to do with “*regeneration*” or new business; it was a standard calculation; the Bill made no reference to “*discounts*” of any sort. Insofar as the liability was subsequently reduced, those reductions were not (and were not stated to be) as a result of any “*discounts*” or “*schemes*” (or indeed “*appeals*”) - they were as a result of rateable values being reviewed, as happens from time to time.
94. There was nothing in the amended Bills or in the contemporaneous communications to suggest that Mr Shergill drew from the amendments the belief now suggested by his counsel; the submission was, in my judgment, an *ex post facto* attempt to support the existence of a belief which was not in fact held. Indeed, if Mr Shergill had believed that any of the reduced Bills had been the result of the application by the Council of some variety of discount or relief, he would not have continued to seek those reliefs subsequently, or would have complained that they had not been sufficiently granted, which he did not. Furthermore, there was no contact with the Council until 6 April 2017, which no doubt there would have been had Mr Shergill genuinely believed the Bill to be wrong.
95. I do not accept that the instruction or even payment of Mr Vyhuis, supported the suggestion that Mr Shergill genuinely believed that Stacks or Staffs could or would secure some sort of reduction; if anything, his instruction and his communications with the Council were for the purposes, at best, of conducting some sort of negotiation, but more likely to prolong the ability of the Companies to trade at the Council's expense. I accept that there was reference to the “*town centre relief scheme*” in the Council's internal notes for April 2017, and that in respect of Montgomery in 2018/2019 there was correspondence concerning the possibility of a claim to that relief. However, Mr Shergill produced no documentary evidence setting out the details of availability of that relief, and in any event neither Stacks nor Staffs made an application for it; when Montgomery later sought to raise it in correspondence, it transpired to be unavailable, for reasons which would appear to have made it equally unavailable to either of the Companies. There was no basis upon which Mr Shergill could reasonably have concluded that either

of the Companies was eligible for that relief, and although he might unreasonably have reached that conclusion, in my view he did not. On the contrary, he was deliberately operating the Companies at the Council's expense, as he had operated the "*Houghton*" companies.

96. Finally, in my judgment, there were no "*appeals*" or challenges.

96.1. First, there was no documentary evidence of an appeal (or more than one appeal) having been either initiated or pursued; there were no appeal documents and no references to an appeal. It was suggested by Mr McGeever that the completion of registration for the "*check and challenge*" service, and a request for the Council's detailed valuation of the Premises was, in the mind of Mr Shergill, an "*appeal*". I do not accept that: the request made was manifestly not an appeal or anything like one - it was precisely what it said it was, a request to view a detailed valuation – it was not in itself a challenge; neither were any documents preparatory to an appeal disclosed – there was no written advice, no survey, and no formal or even informal valuation or survey. Whilst possible in principle for a person to believe something which is untrue and for which there are no grounds, it is not likely, and in the context of this case in which Mr Shergill was a businessman of some experience, who had dealt with the Council in respect of NDR over some years, it is so unlikely as to be unbelievable that he thought that despite its terms, the "*check and challenge*" document comprised an appeal.

96.2. Second, on the contrary, the documentary evidence reflected an acknowledgement that no appeals had ever been initiated – for example, the note of the conversation between Ms Jakhu and Mr Vyhuis on 16 November 2018.

96.3. Third, the known facts are wholly inconsistent with any appeal having been made, or with there being any genuine belief in the Council having over-stated the debts due. For example, there was no opposition of any sort to the winding-up petitions or the Summonses for Liability Orders, and there was no attempt or expressed willingness to pay any alternative lesser sum said to be undisputed.

96.4. Fourth, Mr Shergill was internally inconsistent as to whether there was one appeal, or two, as highlighted above at [92].

- 96.5. Fifth, whilst Mr Shergill said that he was advised by Mr Vyhuis, and retained him to initiate and pursue an appeal, there was no documentary correspondence in evidence between them and no written contract, although Mr Shergill said that he agreed to pay Mr Vyhuis 25% of the amount of any reduction which he might secure (a promise which, if made, was likely to have been unaffordable in itself). Mr Abdulali exhibited an attendance note of a conversation between a member of his staff and Mr Vyhuis on 12 September 2018, which recorded that Mr Vyhuis was “*trying to put together his “file” for me to review*” but “*confirmed that he did not keep a paper file but dealt with [the Council] via emails and telephone conversations. He was somewhat vague as to how many emails he has, but confirmed he has “a few, at least 15 or 20”*”. The note records that Mr Vyhuis accepted having been told that NDR must be paid even if under appeal; in his oral evidence, Mr Shergill also accepted having known that fact. Finally, the note records that Mr Vyhuis “*still maintains the reason for the insolvency is that the council were inflexible, and would not accept a reduced payment plan*” – it was not that the Companies were over-charged. In any event, the Council under were no obligation to negotiate or accept less than the full amount due; their conduct was beyond criticism in this case; in any event, if the Companies were reliant on reaching an agreement in order to satisfy their debts, they were insolvent by their own admission.
97. Finally, Mr Shergill relied upon his belief that the Council had a “*vendetta*” against him. In his oral evidence, his suggestion was that a Council employee called Mr Robert Wolfe had colluded with Mr Abdulali, and/or in some fashion (difficult to discern) sought maliciously to pursue the Companies or cause them problems.
98. This was an absurd allegation, and in any event, irrelevant.
- 98.1. First, whether or not Mr Shergill really believed that the Council had a “*vendetta*” against him, has no bearing whatever on whether the Companies could or ever intended to pay the Council.
- 98.2. Second, although Mr Wolfe certainly existed and seems to have had some involvement in matters during 2017 and 2018, there was nothing in the documents or the evidence to suggest the existence of a vendetta, which in my

judgment, plainly, did not exist. In my view, the Council was motivated by no more than a wish to fulfil its own duties and functions; it acted lawfully and fairly.

- 98.3. Third, I do not accept that Mr Shergill had any belief in a vendetta at a relevant time; there was no rational (or indeed, any) basis upon which to think that there was a vendetta, and there was no evidence of any such allegation having been made (or recorded) at the time, which presumably it would have been, had it been believed. In those circumstances, the only evidence of Mr Shergill's belief was his own word, which I do not accept.
99. In summary, Mr Shergill must have known, and my judgment in fact knew, that neither of the Companies could afford to meet its NDR obligations as they fell due, and yet continued to trade at the expense of the Council: he had no real or honest belief that those debts would be discharged and no real expectation of a reduction or discount based on an appeal or otherwise. Indeed, in my judgment, he knew and intended that the Companies' NDR obligations would not be discharged; his whole intention was to replicate the method employed previously in respect of the "*Houghton*" companies, incurring but not paying liabilities, and then dissolving or abandoning the company in question before continuing the same business through another newly incorporated "*phoenix*" company for as long as possible, paying those voluntary trade creditors required for the continuation of the business itself, but not involuntary creditors (except to a very limited extent, in order to prolong the scheme). That course of conduct was dishonest by the standards of ordinary, decent people, and it is highly likely that Mr Shergill himself actually knew that to be so.
100. Finally, although as I shall explain, the scope of the appropriate remedy under section 213 is not affected by the position of HMRC, it was also the Liquidators' case that the Companies had carried on business with intent to defraud HMRC, essentially, by their failure to register to pay VAT, PAYE or NIC, and their failure to maintain the financial records to allow the Liquidators to understand the extent to which HMRC were creditors who ought to have paid.
101. Mr Shergill's case was that HMRC were simply not within his contemplation as a creditor or potential creditor given the scale of the business (which if it were true would

tend to further undermine his case that the business would grow and succeed to the extent necessary to pay the significant sums of NDR chargeable in respect of the Premises). His case was that the failure to register for VAT was mere oversight, without any intention to defraud, and that his salary was beneath the PAYE threshold (which was common ground). In addition, it was his case that any debt due to HMRC was nothing more than an estimate (as indeed, was implicit in the terms of the CDDA undertaking).

102. However, in respect of Staffs, upon incorporation, Mr Shergill received certain documents from HMRC, which included a CT61 form (in respect of income tax on company payments, interest paid, alternative finance payments, manufactured payments from abroad and tax on relevant distributions), and a Government Gateway corporation tax activation code dated 11 May 2018 (which recorded that Mr Shergill had “*enrolled to use the Corporation Tax service*”). Certainly at that point, he would been aware that Staffs had tax obligations with which it needed to comply.
103. In pre-action correspondence, Smith & Wells, on behalf of the Respondents, wrote on 13 July 2020, and said: “*Our client was not personally fully acquainted with relevant VAT legislation. With this in mind, the Company engaged an independent accountant, The Tax Owl Accountants and Tax Advisers Ltd of 51 Chapel Ash, Wolverhampton Our client expected that the Company would be advised by the accountant to register for VAT if the need ever arose and that they would deal with the paperwork on his behalf.*” In fact, when asked in correspondence by the Liquidators, the Tax Owl Accountants said, on 13 August 2020: “*Thank you for your email. Sorry no were (sic) have not been appointed to act for these companies [Stacks and Staffs] - its (sic) the first time I have ever heard of them. We dealt with the previous company of the directors but this was around three years ago. Many thanks Sarah Hadley*”. It appeared therefore that no advice had been taken, and that the suggestion that Mr Shergill was reasonably (or even unreasonably) relying on the Companies’ advisors, was not true.
104. In my judgment, Mr Shergill was conscious (if for no other reason than by virtue of his previous experiences) that liabilities to HMRC either did or might arise, but chose deliberately to foreclose (and obscure) that possibility by failing to take advice and by choosing not to register for VAT, NIC or PAYE; the absence of records makes it now difficult if not impossible to know the extent to which, if at all, net liabilities might have been incurred but gone unpaid. In my judgment, Mr Shergill deliberately engineered that

outcome because he had no intention of exposing the Companies to the risk of liabilities which he had no intention of causing them to pay (and possibly no means of paying); that approach would be consistent with the essence of the scheme which he attempted to operate through the Companies, which was to trade at the expense of involuntary creditors.

Fraudulent Trading: Remedy

The Principles

105. In Re Overnight Ltd (No.2) [2010] EWHC 613, Roth J determined an application under section 213 of the IA 1986 against three respondents, and held that it was established against two of them. In respect of the “contributions” that each should be ordered to make under section 213(2), the judge concluded, at [28] to [33], that as a matter of principle (as in respect of claims under section 214), “*the contribution need not be the same for each*” person, and that its amount should in each case be compensatory rather than punitive and that there must be “*a nexus between the loss caused to the creditor or creditors and the contribution ordered*”, such that “*insofar as there is such a nexus the total contribution should cover the full loss*”, by which he meant a contribution in a sum sufficient to ensure payment in full to creditors. In that case, the judge ordered one of the respondents, who controlled the bank account and was drawing from it large sums in cash, and who had not been honest with the HMRC investigators, to contribute to the company’s assets the full loss caused to HMRC as a creditor; he ordered that the other respondent, who appeared to have made nothing from the business, or very little, should contribute 50% of that loss. He added, “*The figures that had been placed before the court include the company’s costs of the liquidation which vary according to the amount finally recovered. I shall accordingly hear counsel as to the appropriate quantification of the amounts that should be the subject of a declaration and whether any further directions are appropriate under s. 215(2)*”.
106. In Re E-Tel (UK) Limited [2023] EWHC 1214, also an application under (amongst other provisions) section 213, ICCJ Jones held that the claim was established (based on an alleged MTIC fraud) against the single respondent, the sole director and controlling mind of the company, and concluded, in respect of the appropriate “contribution”, at [30]-32]:

“30. I now come to the quantum of loss. The VAT tax liability being proved for by HMRC arose because the transactions occurred – transactions which were being conducted as an MTIC fraud. The fraud meant that the company could not deduct input tax and, as a result, could not pay the output tax that was due and owing. Indeed, the company’s business was carried on in circumstances where it would never be able to pay the output tax because of the fraud. This is attributable to the defaults of the respondent as the director. All of the matters which I have referred to lead to the conclusion that the respondent, being liable to contribute pursuant to section 213 and/or to pay damages for breach of fiduciary duty, should be subject to a judgment in the sum of £1,474,819.29, less £47,500, which is the sum I mentioned that had been paid, that amount being a contribution to the assets of the company.

31 It is a sum broken down as the officer’s assessment which I mentioned at £959,592.29, less the £47,500. It includes the missed declaration penalty assessment of £248,980. Plainly this is a direct consequence of the VAT debt, therefore of the fraud, and therefore of the matters leading to the liability under section 213 and/or the liability for breach of duty. It also includes the automatic assessment of £266,247. That too is a debt resulting from the respondent’s actions concerning the fraud, the only difference being that the company did not submit returns and therefore an assessment had to be made for the VAT due. By reason of statute, that assessment is a binding debt.

32 Added to that total sum of £1,474,819.29, less £47,500, should of course be interest, and I accept that it should be paid from the date of the officer’s assessment. In addition, the costs and expenses of the liquidation result from the fact that the company had to be liquidated compulsorily by an order of the court, by reason of the non-payment of the debt owed to HMRC. The costs and expenses of the liquidation therefore equally flow from the breaches of section 213 and the director’s duties, and therefore should be included in the compensation. If it was not, the creditors would lose out because the compensation to be paid would in part have to go to the costs and expenses. That should not be the position.”

107. Essentially then, the principle is that the appropriate contribution ought to be compensatory, determined by reference to the degree of the particular respondent's own responsibility (as a knowing party to the fraud) for the losses, costs and expenses, which certainly in principle, include the costs and expenses of the liquidation.
108. In the present case, the application of those principles is in my view straightforward: Mr Shergill was solely responsible for the fraudulent conduct of the business of the Companies. The Companies were bound to fail, and were bound to end in a state of insolvency, in which creditors would inevitably suffer losses, and in which costs and expenses would inevitably be incurred (or in any event, would in principle, if incurred, flow directly from the fraud) – indeed, that outcome was integral to the whole scheme, which was designed to allow for trade over a period, followed by the evasion of certain outstanding liabilities on dissolution or liquidation. It is therefore appropriate to order Mr Shergill, under section 213, to contribute to the liquidations of both Stacks and Staffs, a sum sufficient to meet, in each case, the “*totality of the loss*” incurred, including the costs and expenses of the liquidations (for the reasons explained by ICCJ Jones in Re E-Tel (UK) Limited).
109. As to the calculation of that sum, there are, I acknowledge, two potential issues. First, most significantly, as I understood it, the sum/s due to HMRC have not been settled. In order to determine finally the amount to be contributed by Mr Shergill, the sum due to creditors will have to be fixed. Second, the costs and expenses of the liquidations, including the Liquidators' remuneration, are subject to the possibility of challenge and control by the court under Part 18 of the Insolvency Rules 2016 and otherwise – there may be (and there was some indication of an) issue as to the amount properly payable. Accordingly, whilst I will declare that Mr Shergill is liable to contribute to the assets of Stacks and Staffs in each case a sum sufficient to meet the “*totality of the loss*” incurred, including the costs and expenses of the liquidations, I will hear further submissions (if the parties cannot agree) as to the exact amount of each contribution, or as to a mechanism for its calculation. Finally, I should add that to the extent of any overlap with the remedies in respect of the other claims against Mr Shergill, there is of course to be no double recovery.

The Wrongful Trading Claim in respect of Staffs

The Law

110. Section 214 of the Insolvency Act 1986 provides, in relevant part:

“(1) Subject to subsection (3) below, if in the course of the winding up of a company it appears that subsection (2) of this section applies in relation to a person who is or has been a director of the company, the court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the company’s assets as the court thinks proper.

(2) This subsection applies in relation to a person if—

(a) the company has gone into insolvent liquidation,

(b) at some time before the commencement of the winding up of the company, that person knew or ought to have concluded that there was no reasonable prospect that the company would avoid going into insolvent liquidation or entering insolvent administration, and

(c) that person was a director of the company at that time;

but the court shall not make a declaration under this section in any case where the time mentioned in paragraph (b) above was before 28th April 1986.

(3) The court shall not make a declaration under this section with respect to any person if it is satisfied that after the condition specified in subsection (2)(b) was first satisfied in relation to him that person took every step with a view to minimising the potential loss to the company’s creditors as (on the assumption that he had knowledge of the matter mentioned in subsection (2)(b)) he ought to have taken.

(4) For the purposes of subsections (2) and (3), the facts which a director of a company ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to take are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both—

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

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

(5) The reference in subsection (4) to the functions carried out in relation to a company by a director of the company includes any functions which he does not carry out but which have been entrusted to him.

(6) For the purposes of this section a company goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up.

(6A) ...

(7) In this section “director” includes a shadow director.

(8) This section is without prejudice to section 213.”

111. In particular therefore, the applicant under section 214 must show that the respondent was a director (including shadow director) of a company in insolvent liquidation, and that at some time before the winding-up, the respondent either “*knew or ought to have concluded*” that there was “*no reasonable prospect*” of avoiding either insolvent liquidation or administration, and yet from that point, that person did not take “*every step*” that he ought to have taken with a view to minimising the potential loss to creditors; that he took every step is a defence which it is for the respondent to prove.
112. As was pointed out by Mr John Weeks QC sitting as a deputy judge in Re DKG Contractors Ltd [1990] BCC 903 at 912B, sub-section (4)(b) cannot be relied upon to exculpate the inexperienced, unknowledgeable or unskilful director: “*Patently. Mr and Mrs Gibbons' own knowledge, skill and experience were hopelessly inadequate for the task they undertook. That is not sufficient to protect them.*”
113. Nor can a director, in satisfaction of their duties, abdicate responsibility for a company’s affairs, and fail to involve themselves to any extent – there is irreducible degree of responsibility. As was said by Ms Hazel Williamson QC, sitting as a deputy judge in Re Brian D Pierson (Contractors) Ltd [1999] BCC 26, at 55F, in respect of a claim under section 214: “*Whilst Mrs Pierson's practical function in the company's affairs may have been very little, she was nonetheless a director of the company. She drew a salary and received various other fees and benefits as a director. The office of director has certain minimum responsibilities and functions, which are not simply discharged by leaving all management functions and consideration of the company's affairs to another director without question, even in the case of a family company such as this. One cannot be a 'sleeping' director; the function of 'directing' on its own requires some consideration of the company's affairs to be exercised*”.

114. As under section 213, the court, if satisfied that a person is liable under section 214, is able to order that person to “*make such contribution (if any) to the company’s assets as the court thinks proper*”.

115. In Re Ralls Builders Ltd [2016] EWHC 243 (Ch) at [241]-[242], Snowden J (as he then was) said:

“241. From these cases I therefore conclude that the correct approach to determining whether the directors should be required to make a contribution under s.214(1) is, as the directors contended, to ascertain whether the company **suffered loss which was caused by the continuation of trading by the company after 31 August 2010 until the company went into administration on 13 October 2010, and that as a starting point this should be approached by asking whether there was an increase or reduction in the net deficiency of the company as regards unsecured creditors between the two dates.**

242. I think that the authorities to which I have referred also make good the submission on behalf of the directors that there has to be some causal connection between the amount of any contribution and the continuation of trading. **Losses that would have been incurred in any event as a consequence of a company going into a formal insolvency process should not be laid at the door of directors under s.214.** That factor is of particular importance in this case as a result of the evidence (including the contemporaneous comments of Mr Tickell) of the particular difficulties in dealing with customers in the insolvency of any construction company.” (Emphasis added).

116. Also cited to me was Brooks v Armstrong [2015] EWHC 2289, in which Registrar Jones said at [287]:

“The principles which are to be applied are:

(a) The discretion under s.214 is unfettered (subject to acting judicially and to achieving the purpose of the power) and the purpose is compensatory not penal (see Re Produce Marketing Consortium Ltd ...).

(b) Compensation is designed to recoup the loss to the company caused by wrongful trading. The resulting award will benefit the creditors as a whole. There is no jurisdiction to direct payment to a specific class of creditors or

creditor. Those whose debts are incurred after the date of wrongful trading have no stronger claim. All creditors at the date of liquidation will suffer from the company's loss to the extent that the assets of the company have been depleted and/or creditors increased by the decisions and actions of the directors (see Re Purpoint Ltd [1991] B.C.C. 121 at 128 per Vinelott J).

(c) In order to establish a maximum liability (i.e. subject then to the exercise of discretion), the loss will normally be represented by the amount the assets have depleted and/or the creditors have increased. The increase in the net deficiency from the hypothetical insolvent liquidation on the date of wrongful trading to the date of the usual compulsory order or resolution to wind up will normally reflect the loss to the company as a result of the liquidation having been delayed (see Re Continental Assurance Co of London Plc [2001] BPIR 733 at [296]–[297]).

(d) Whilst current authority does not recognise it to be necessary to establish a causal link between wrongful trading and any particular loss, it not being an express requirement of s.214, there must be more than a “but for” nexus. The court's discretionary jurisdiction enables allowance to be given when the loss is not caused by the actions of the director responsible for wrongful trading. Compensation should be linked to the liabilities that result from the wrongful trading attributed to the director(s) (see Re Continental Assurance Co of London Plc (above) at [377]–[380] and Morphitis v Bernasconi [2003] EWCA Civ 289; [2003] Ch. 552; [2003] B.C.C. 540, [53]).

(e) In Re Continental Assurance Co of London Plc (above) Park J identified the following examples as potentially two ends of the spectrum of causation. At one end, the obvious case of continuing a loss-making business resulting in compensation to recover the trading losses the directors ought to have known would result from that continued trading. At the other end the exclusion of losses attributable to worsening weather conditions which could not be attributed to decisions taken by the directors.”

117. Essentially therefore, the contribution is compensatory, designed to meet the losses caused by the wrongful continuation of trade. The court does however have a discretion

which enables it to allow for circumstances in which losses were not truly caused by the wrong, although they would have been avoided had the company ceased to trade.

The Liquidators' Case

118. The Liquidators' case was that the Respondents (both of them) either knew or ought to have concluded that there was no reasonable prospect that Staffs would avoid insolvent liquidation (or administration) from about 31 July 2018, which was:

118.1. a reasonable period after 10 July 2018 when the Council issued the 18/19 Bill in the sum of £28,897.65, in respect of the period from 1 April 2018 to 31 March 2019;

118.2. shortly before the first instalment fell due on 3 August 2018, in the sum of £3,613.65, which the company could not and did not pay; and,

118.3. a reasonable period after 17 July 2018 (when Miss Smith was appointed as sole *de jure* director), sufficient to allow for a reasonably diligent person with the general knowledge, skill and experience that may reasonably be expected of a director, to inform themselves about the company's affairs and prospects.

119. The case against Miss Smith was confined to the period during which she was appointed director, until her resignation on 19 October 2018. The case against Mr Shergill was in respect of the whole period from 31 July 2018 to liquidation, during which he was either the sole *de jure* director, or (during Miss Smith's directorship, as was common ground) a shadow director.

Discussion

120. In my judgment, the Liquidators' claim under section 214 was established against both Respondents, for the following reasons.

121. Staffs was incorporated on 8 February 2018, and, as I have found, continued, from the same Premises, essentially the same business, under the same name, as had been carried on previously by Stacks. Mr Shergill's own evidence was that he had "*realised in or around March/early April [2018] that [Stacks] would probably not survive*" - it was (so he said) his reason for having attempted to have Stacks struck off the register by means

of the application made on 2 February 2018. Furthermore, on 4 July 2018, on a petition presented on 11 May 2018, a winding-up order had been made against Stacks, which was indubitably insolvent. There was, at the time, no basis upon which to think (and there is no evidence upon which to find) that the business of Staffs was any more likely to be successful, or that the company was any more likely to be able to meet its liabilities in respect of NDR, than was Stacks, or that its financial problems were in any sense temporary; there was no evidence to suggest that any advice had been sought or received to that effect.

122. Staffs had no means of paying the first instalment due under the 18/19 Bill, and did not pay it; as a result of its failure to pay the first instalment, the whole sum fell due. In my view, Staffs was bound to fail from the outset (and Mr Shergill knew that it was bound to fail - it was an aspect of his whole approach) but on any view, by 31 July 2018, at a point less than a week before the first instalment fell due, with no means of making that payment, the company was insolvent.
123. As again I have found, there was no reason at that point, or at any point afterwards, to think that Staffs would succeed in securing some sort of discount or reduction in the sum due, or indeed, that any such discount or reduction was even available; there was no “*appeal*”; insofar as attempts had been made to secure agreements with the Council or a reduction in respect of Stacks’ liabilities, they had failed, and Stacks had been wound up.
124. The first payment which Staffs made in respect of NDR - £250 - was not made until 27 September 2018, over a month after a Liability Order had been made against it on 29 August 2018 in the sum of £28,990.65. On 18 October 2018, Mr Vyhuis told Mrs Hulme that the company “*had no money to clear the balance in full*”; on 13 November 2018, he told Howes Percival that the company had “*no assets*”. On 1 November 2018, a winding-up petition was presented, and on 19 December 2018, a winding-up order was made. The Council wrote off a debt of £15,014.29.
125. During its lifetime, Staffs only paid the Council, in aggregate, £2,000 in respect of NDR. As I have said, it rarely had more than £1,500 standing to the credit of its bank account, and even Mr Shergill accepted that it was reliant on “*discounts*” and the willingness of the Council to negotiate (voluntarily, without obligation, but most unlikely in circumstances in which it had already suffered losses in respect of Stacks and before that,

in respect of Mr Shergill's "*Houghton*" companies). Staffs was insolvent throughout, and was from the beginning doomed to fail.

126. Accordingly, Mr Shergill knew from 31 July 2018 (in fact, before then) that insolvent liquidation or administration was practically inevitable – certainly, that there was no reasonable prospect of avoiding that outcome.
127. As to Miss Smith, the issue was whether as at 31 July 2018, she "*ought*" to have concluded that there was no prospect that Staffs would avoid insolvent liquidation or administration. It was accepted by Mr Fagan that Miss Smith did not actually know that fact, and indeed, that she knew nothing or practically nothing about the company's affairs or prospects; moreover, that she took no part in the conduct of its business and took no steps to inform herself about its business; she was, as I have said, fully employed in her own remunerative occupation elsewhere.
128. A director is under an irreducible duty to inform him or herself at least to some extent about the company's business and affairs; Miss Smith was the company's only appointed director, as she must have known, given the circumstances of her appointment. Unavoidably, had she taken even the most rudimentary steps to discover about Staffs' business - steps which she ought to have taken, in accordance with duties to which she unavoidably became subject - she would or ought to have discovered about its liability in respect of NDR, and about its inability to pay it; she would or ought to have discovered about its continuation of the same failed business that had been conducted previously by Stacks; she would or ought to have concluded, as already Mr Shergill well knew, that insolvent liquidation or administration was unavoidable.
129. Finally, Mr Shergill (though not Miss Smith, who took no steps at all) sought to rely on section 214(3) – the defence that he had taken "*every step*" with a view to minimising the potential loss to the company's creditors. Specifically, he relied upon: (i) 23 separate payments, in sums between £10 and £6,000, in the total sum of £20,687, made by him to Staffs, between 24 April 2018 and 10 December 2018 (although only £16,435 after 31 July); and (ii) payments made from his own personal account, between 8 May 2018 and 25 October 2018, in the total sum of £5,645.18 (of which £4,654.33 was after 31 July) to "*suppliers*" – including Bespoke Sofa.

130. Given my findings in respect of the claim under section 213, the defence under section 214(3) was plainly unsustainable: it cannot be said that a person was party to carrying on business with intent to defraud creditors, whilst at the same time taking “*every step*” with a view to minimising the potential loss to creditors. But in any event, manifestly, even if the payments relied upon by Mr Shergill were all for the purposes of Staffs’ business (and it was not possible to reach that conclusion, because it was not possible to ascertain the purpose of the payments to “*suppliers*” because there were no relevant documents) those payments did not comprise the taking of “*every step with a view to minimising the potential loss to the company’s creditors*” (emphasis added); none of them were made (directly at any rate) to the Council, the company’s principal creditor, and if anything, the payment of suppliers and trade creditors served only to extend the period of trading, and thus to *increase* the Council’s losses (based on the company’s continuing occupation of the Premises); if anything, the payments appear to have made in order to facilitate the subsequent continuation of the same business by another phoenix company, using the same suppliers - as in due course happened, when Montgomery, “*Jack’s company*”, was incorporated on 6 November 2018; far from being steps to “*minimise loss*”, they were steps to increase the loss suffered by the Council, or at least, to that effect.

Section 214: Remedy

131. As stated, the contribution is compensatory, designed to meet the losses caused by the wrongful continuation of trade.
132. In respect of Mr Shergill the remedy is of no practical significance, given the relief to be granted against him under section 213. Had the claim under section 214 stood alone, I would have ordered him to contribute a sum equal to the amount by which the company’s net deficiency as regards unsecured creditors increased between 31 July 2018 and 19 December 2018, the date on which its liquidation began. Since, on this basis, the company ought to have been wound up on 31 July 2018, thus incurring the costs of liquidation in any event, no claim was made in respect of those costs.
133. As against Miss Smith, the appropriate contribution is the amount by which the company’s net deficiency increased as between 31 July 2018 and the date of her resignation, 19 October 2018. In respect of Miss Smith, I considered whether to reduce

the amount of her contribution because of the circumstances in which she was appointed, or by virtue of her role at the company. I decided against doing so because:

- 133.1. Miss Smith was, as she knew, the company's only appointed director; whilst she may not have desired the position, she accepted it;
 - 133.2. had she taken even the most elementary steps to inform herself about the uncomplicated affairs of the business, had she fulfilled the most basic of her duties, Miss Smith would have discovered that the company was thoroughly insolvent: it had no stock and very little money; it faced an imminent liability to pay £3,613.65, which if not paid - as it was not - would trigger an immediate liability to pay £28,897.65; its business was that of the insolvent Stacks;
 - 133.3. it was not said that any of this was actively concealed from Miss Smith; neither was her failure to discover the truth a result of her specific role at the company – it was the result of having failed fundamentally to inform herself to any extent about the business;
 - 133.4. in the present case, to reduce the sum due would be unprincipled – it would be a reduction based on Miss Smith's failure to know about the company's affairs, in circumstances in which that failure was part of the very wrong on which her liability was based.
134. Again, as in respect of the case under section 213, whilst I will declare that the Respondents are liable to make contributions to the assets of Staffs on the basis explained, I will hear further submissions (if the parties cannot agree) as to the exact amount of each contribution, or as to a mechanism for its calculation.

The Misfeasance Claim in respect of the Payments

The Law

135. The relevant principles were not in dispute.
136. Company directors owe duties to their companies, including:
 - 136.1. a duty to act within their powers under section 171 of the CA 2006;

- 136.2. a duty (under section 172) to act in the way in which they consider, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, except where they are required to consider or act in the interests of creditors;
- 136.3. a duty (under section 173) to exercise independent judgment;
- 136.4. a duty (under section 174) to act with reasonable care, skill and diligence; and,
- 136.5. a duty (under section 175) to avoid conflicts of interest and conflicts of duty.
137. Although not strictly speaking a trustee, a company director is treated as a trustee of the company's assets coming into his hands or which are under his control. He is under a fiduciary duty to the company to apply its assets only for the proper purposes of the company, and to account for their use.
138. Thus, in Burke v Morrison [2012] BCC 315 (Ch), at [28], Lesley Anderson QC, sitting as a deputy High Court judge, said:

“28. I am satisfied that whether it is to be viewed strictly as a shifting of the evidential burden or simply an example of the well-settled principle that a fiduciary is obliged to account for his dealings with the trust estate that Mr Aslett is correct to say that once the liquidator proves the relevant payment has been made the evidential burden is on the respondents to explain the transactions in question. Depending on the other evidence, it may be that the absence of a satisfactory explanation drives the court to conclude that there was no proper justification for the payment. However, it seems to me to be a step too far for Mr Aslett to say that, absent such an explanation, in all cases the default position is liability for the respondent directors. In some cases, despite the absence of any adequate explanation, it may be clear from the other evidence that the payment was one which was made in good faith and for proper company purposes.”

139. To similar effect, in GHLM Trading Ltd v Maroo [2012] 2 BCLC 369 at [148–149], Newey J (as he then was) said:

“[148] This passage confirms that a ‘trustee must show what he has done with that [ie trust] property’. It is less obvious that it provides authority for the proposition that the ‘principle applies to company directors as it does to trustees’, but support for that view is, to my mind, to be found elsewhere. For example, in Sinclair Investments (UK) Ltd v Versailles Trade Finance Ltd [2011] 2 BCLC 501 at [34], Lord Neuberger MR (with whom Richards and Hughes LJJ agreed) said: ‘Although company directors are not strictly speaking trustees, they are in a closely analogous position because of the fiduciary duties which they owe to the company: Bairstow v Queens Moat Houses plc [2001] EWCA Civ 712 at [49]–[52], [2001] 2 BCLC 531 at [49]–[52]. In particular they are treated as trustees as respects the assets of the company which come into their hands or under their control: per Nourse LJ in Re Duckwari plc (No 2), Duckwari plc v Offerventure Ltd (No 2) [1998] 2 BCLC 315 at 321, [1999] Ch 253 at 262. Similarly, a person entrusted with another person’s money for a specific purpose has fiduciary duties to the other person in respect of the use to which those moneys are put.’ The close analogy between directors and trustees suggests, to my mind, that, much as a trustee ‘must show what he has done with [trust] property’, it is incumbent on a director to explain what has become of company property in his hands.

[149] In the circumstances, I agree with Mr Miles that, once it is shown that a company director has received company money, it is for him to show that the payment was proper. In a similar way, it seems to me that, where debit entries have correctly been made to a director’s loan account, it must be incumbent on the director to justify credit entries on the account. That conclusion makes the more sense when it is remembered that the director: (a) will have been (one of those) responsible for the management of the company’s business, and (b) will have had a responsibility for ensuring that proper accounting records were kept (see eg ss 386–389 of the Companies Act 2006).”

140. If the court is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and that the party adducing oral evidence is responsible for its non-production, then the documentation may be conspicuous by its absence and the court may be able to draw inferences from its absence. In Re Mumtaz

Properties Ltd [2011] EWCA Civ 610, at [14] and [16]-17], Arden LJ (as she then was) said:

“14. In my judgment, contemporaneous written documentation is of the very greatest importance in assessing credibility. Moreover, it can be significant not only where it is present and the oral evidence can then be checked against it. It can also be significant if written documentation is absent. For instance, if the judge is satisfied that certain contemporaneous documentation is likely to have existed were the oral evidence correct, and that the party adducing oral evidence is responsible for its non-production, then the documentation may be conspicuous by its absence and the judge may be able to draw inferences from its absence.

16. The approach of the judge in this case was to seek to test the evidence by reference to both the contemporary documentary evidence and its absence. In my judgment, this was an approach that he was entitled to take. The evidence of the liquidator established a prima facie case and, given that the books and papers had been in the custody and control of the respondents to the proceedings, it was open to the judge to infer that the liquidator's case would have been borne out by those books and papers.

17. Put another way, it was not open to the respondents to the proceedings in the circumstances of this case to escape liability by asserting that, if the books and papers or other evidence had been available, they would have shown that they were not liable in the amount claimed by the liquidator. Moreover, persons who have conducted the affairs of limited companies with a high degree of informality, as in this case, cannot seek to avoid liability or to be judged by some lower standard than that which applies to other directors, simply because the necessary documentation is not available.”

The Claim in respect of Stacks

141. Stacks had a business bank account at CardOneMoney (account number 4583934). The following groups of transactions were recorded in the statements in respect of that account, and in respect of card transactions associated with that account.

142. First, payments were made directly to Mr Shergill, between 18 May 2017 and 9 March 2018, in the aggregate sum of £8,205, of which £950 was referenced as “*b shergill: wages*” and £7,255 as “*Invoice*”. In his Defence, Mr Shergill purported to admit (although it was not alleged) that he had received £8,205 by way of wages in that period, and that the “*Invoices*” were “*legitimate business expenditure*”, albeit not capable of further elucidation because he was “*no longer in possession of the books and records of the Company*”. The statement that Mr Shergill had received the sum of £8,205 as wages (also made in his witness statement) was contradicted by a letter written by his solicitors, Smith & Wells, dated 13 July 2020, in which it was said (pre-action) that the whole sum was “*in fact payments to suppliers and not in respect of wages*” - payments had been recorded as “*wages*” in error; in fact, said Smith & Wells, Mr Shergill had received £600 per month, by different means (through payments to the credit of the card associated with the account). In cross-examination, Mr Shergill was asked which version was correct. He said that he “*was not even sure myself now*”. He said he received very little for his own purposes, enough to put “*food on the table*”.
143. There was no evidence of any board or shareholder resolution in respect of salary, no employment or service contract, and, as I have found above, Stacks was insolvent at all times after 8 March 2017. In my judgment, these payments were made to Mr Shergill personally or for his benefit. The evidential burden was on him to prove that they were made for a proper purpose, but he failed to do so: there was no sufficient or credible evidence to establish the purpose of these payments, which inevitably therefore remain unexplained and unjustified by reference to the company’s proper purposes and interests.
144. Second, between 1 February 2017 and 23 March 2018, £9,982 was withdrawn in cash from Stacks’ account. The Liquidators were unable, in the absence of petty cash or other records, to discern whether or not those payments were made in the best interests or for the purposes of the company’s business. In his Defence, Mr Shergill stated that various suppliers were paid in cash and that receipts, invoices and records had been collated and delivered up to the official receiver which showed such payments having been made to suppliers including Rose Furniture, Softheads Bed Company, Annaghmore Agencies Ltd, Masons Furniture, Rainbow Upholstery, Bespoke Upholstery Ltd, Heartlands, and Seconique. Mr Shergill’s case was that it was reasonable to assume that cash was paid to

suppliers and not reasonable to assume that there was no need for petty cash payments of any sort.

145. Although Mr Shergill relied upon various invoices, they did not support his case concerning the use of cash to pay suppliers.

145.1. The Rainbow Upholstery invoice dated 26 January 2018 made no reference to cash payments.

145.2. The Bespoke Upholstery invoice dated 14 April 2017 stated, “*Cheque payment upon delivery Ref: J Ruck*”; in addition, Stacks’ account balance with Bespoke Upholstery, which showed alleged payments, did not reconcile with cash payments from Stack’s bank account: in particular, the cash withdrawals from Stacks’ account in 2017 did not correspond with the alleged dates of payment of the invoices relied upon by Mr Shergill - only £150 had been withdrawn in cash by 11 July 2017 against alleged payments of £2,450 made to Bespoke, to the same date. In his cross-examination, Mr Shergill accepted that sometimes payment was by cash, sometimes directly – but that he was unable to support or provide any particulars of that statement by reference to documents.

145.3. Furthermore, the company’s bank statements showed payments made to Annaghmore and Seconique, not in cash, but by direct transfer (despite Annaghmore’s invoices having stated “*COD no Settlement Discount*”). Again, Mr Shergill said that payments were made by both methods, but again he was unable to support or provide any particulars of that statement by reference to documents.

145.4. Finally, invoices from other suppliers such as The Furniture Company (GB) Ltd and Sofas of Wolverhampton Ltd expressly stated that payment was to be by bank transfer or online.

146. Again therefore, as to the cash withdrawals, Mr Shergill was not able to provide any credible or proper account or evidence to show that they were made and the cash was used for the purposes of the business, and in the interests of members and creditors. Essentially, as a result of Mr Shergill’s failure to keep proper records, it was not possible

to discern the use to which the cash was put; it was not possible to conclude that it was used for a proper purpose.

147. Third, payments were made from the account between 6 February 2017 and 24 April 2018, in the total sum of £3,421.97, to various retailers including Aldi, Tesco's, the Co-Op, Poundland, Bargain Booze and others. In addition, £244.49 was paid to Sky TV between 20 December 2017 and 7 March 2018. In the Applicants' Points of Claim, these payments were said to be "*subject to query*". In his Defence, Mr Shergill stated ("*from memory*") that these payments were for company purposes, including, for example, general subsistence, the costs of advertising (with "*Zoho*" a website developer, and "*Nasza Biedronka*" a social media platform – although Mr Shergill accepted in cross-examination that this was an error, and that the reference was to a Polish shop), tools for flatpack furniture assembly, stationary, protective equipment and footwear, print materials and travel expenses. The payments to Sky were said to have been for the company's Internet and Wi-Fi services, although the account appeared to have been in his own name; no contract and no invoices were disclosed or relied upon.
148. In his witness statement, Mr Shergill accepted (without specifying to what extent) that some of the supermarket payments were for his family's private purposes but that he "*would say*" that such money should be treated as "*wages*".
149. Mr McGeever suggested that the court should treat 70% of the cash withdrawals and 70% of the retail payments as legitimate. However, there was no documentary, and no other secure evidential basis upon which to conclude that these payments were to any extent for the company's benefit. Mr Shergill's case in this regard - as in respect of the other payments - depended upon his oral evidence, which I have found to be wholly unreliable, in the context of a case in which I have concluded that the company's business was carried on fraudulently.
150. In the circumstances, Mr Shergill must compensate Stacks in a sum equal to the aggregate of the unexplained, unjustified payments. Again of course, in the circumstances, this order is likely to be of no practical importance.

The Claim in respect of Staffs

151. Staffs had a business bank account with Barclays, account number 7336451. As in respect of Stacks, the following groups of transactions were recorded in the statements in respect of that account.
152. First, between 19 March 2018 and 11 December 2018 payments in the aggregate sum of £17,621 were made to Mr Shergill, with reference “*wages*”. Of that sum, £2,735 was paid after the presentation of the winding-up petition against Staffs on 1 November 2018; without court order those payments are void as dispositions of the company’s property, under section 127 of the Insolvency Act 1986; it was accepted that they ought to be repaid.
153. Otherwise, in his Points of Defence, and in his evidence, Mr Shergill said that these payments were legitimately made but wrongly recorded as “*wages*” whereas in fact, they were “*likely*” to have been payments to suppliers, apparently made *via* Mr Shergill. Although Mr Shergill’s personal bank accounts do evidence some payments made to potential creditors of Staffs, there was no evidence that those person were in fact legitimate creditors of Staffs. Nor was there any sensible explanation why – if they were creditors - they could not have been paid directly from Staffs’ own account, as certainly happened on some occasions.
154. I reject Mr Shergill’s evidence in this respect: there was no secure evidential basis upon which to conclude that that payments marked as “*wages*” were in fact made to him, in order to pay creditors; in itself, there was no good reason for payment to suppliers in that indirect fashion, and in any event, no basis upon which to conclude that the payments were made to creditors of Staffs which were owed particular sums.
155. It follows that as above, in respect of the same variety of payment made by Stacks, in my judgment, these payments were made to Mr Shergill personally or for his benefit, but he has failed to show that they made for a proper purpose: these payments inevitably therefore remain unexplained and unjustified by reference to the company’s proper purposes and interests.
156. Second, between 26 March and 21 December 2018, the aggregate sum of £3,900 was withdrawn in cash from the account. Of that sum, £120 was withdrawn after the presentation of the winding-up petition on 1 November 2018 – again, it was accepted

that this withdrawal was void under section 127 of the IA 1986, and that the sum ought to be repaid.

157. Otherwise, in the Points of Defence, it was stated that it was not reasonable to assume that withdrawn cash was not used for the benefit of the company and stated that withdrawals were in fact necessary for petty cash purposes, the payment of certain suppliers in cash on delivery and for general subsistence. In cross-examination, Mr Shergill said that about 70% of these withdrawn sums were for company purposes – he was not however able to provide any documentary evidence to that effect, or any real reason or basis upon which to found that conclusion. In truth, there was no basis upon which to reach any sound conclusion regarding the purpose of those withdrawals – again, as in respect of Stacks, they were essentially unexplained.
158. Third, referred to as “*subject to query*” in the Points of Claim, were payments in the total sum of £7,474.80 made between 13 March and 11 December 2018 to various retailers, in similar fashion to those made by Stacks, including to various of the same retailers. Of those payments, £1,440.22 was paid after the presentation of the winding-up petition on 1 November 2018, and was admitted to be repayable. As in respect of Stacks, in the Defence it was stated by Mr Shergill (again, “*from memory*”) that these payments were for legitimate company purposes, including, for example, general subsistence, tools for flatpack furniture assembly, stationery and travel expenses. However, no supporting documents were produced, including for example receipts; there was no means by which to verify that the payments were made for the purposes of the company. Mr Shergill accepted that certain payments would have been made for personal purposes, for example to buy food and groceries. Again, as a result of Mr Shergill’s failure to keep proper records, it was not possible to discern the purposes of these payments, or to conclude that they were made for a proper purpose.
159. Fourth, between 17 July 2018 and 19 October 2018 payments were made to Miss Smith from the account in the total sum of £3,400. In the Points of Defence (contrary to what had been said by her solicitors in pre-action correspondence) it was denied that Miss Smith caused any of these payments to be made (whether to herself or any other person), and her bank statements were attached to show that none of these sums were received into her account, but no evidence of their actual recipient was provided. Again, as a result

of the failure to keep proper records, it was not possible to discern the purposes of these payments, or to conclude that they were made for a proper purpose.

160. In respect of the claim against Miss Smith in respect of misfeasance:

160.1. she was a director, and owed duties accordingly, including to exercise independent judgment, to exercise reasonable care, skill and diligence, and to act in the best interests of the company and its creditors;

160.2. the payments made during her directorship (£3,400 in payments to Mr Shergill, £1,720 in cash withdrawals, and £1,609.61 in retail payments) have not been explained or properly justified as having been in the interests of the company, which was at all material times insolvent;

160.3. Miss Smith abdicated her duties entirely: she was thus in breach of duty by failing to inform herself about the company's business and affairs, failing to safeguard its property, failing to ensure proper records were maintained, and failing to prevent the use of its assets for purposes other than those of the company and its creditors;

160.4. she is therefore liable to compensate the company in the aggregate amount dissipated during her directorship.

The Defence under Section 1157 of the CA 2006

161. Section 1157 of the CA 2006 states:

“(1) If in proceedings for negligence, default, breach of duty or breach of trust against—

(a) an officer of a company, or

(b) a person employed by a company as auditor (whether he is or is not an officer of the company),

it appears to the court hearing the case that the officer or person is or may be liable but that he acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused, the court may relieve him, either wholly or in part, from his liability on such terms as it thinks fit.”

162. Thus, relief from liability depends on proof that the director acted both honestly and reasonably.
163. In the present case, in respect of the claim concerning payments by Staffs, Miss Smith sought to rely on section 1157, on grounds that despite her unwillingness, she had been prevailed upon to become a director of Staffs by her partner, and given in that regard only the “*illusion of choice*”; that she had been a director for a comparatively short time; and that during that time, she had neither been nor had she been expected to be, responsible for the conduct of the business, in which she was wholly uninvolved.
164. As a matter of principle, that submission fails, despite in this regard, Miss Smith’s honesty. In Lexi Holdings Plc (In Administration) v Luqman [2007] EWHC 2652, it was held by Briggs J (as he then was) that complete inactivity by a director was by definition unreasonable, and precluded reliance on section 727 of the Companies Act 1985 (which was in the same terms as section 1157 of the CA 2006). At [219], Briggs J said:

“... it is in my judgment now firmly established as a matter of law that no company director may simply leave the management of the company's affairs to his or her colleagues, or to other delegates, without committing a breach of duty. The reason for this is because, although the law permits and to an extent encourages delegation by directors of their functions, every act of delegation gives rise to a concomitant obligation to supervise the delegate... every director had to take such care as an ordinary man might be expected to take in relation to his own affairs.”

165. Even without that authority, I would have reached the same conclusion. Neither (for the sake of completeness) was the defence under section 1157 available to the Respondents in respect of the case against them under section 214 of the IA 1986 (see Re Produce Marketing Consortium Ltd [1989] 1 WLR 745, at 750E-752A) or, for obvious reasons, given the need to show dishonesty, in respect of the case against Mr Shergill under section 213 of the IA 86.

Summary

166. In brief summary, for the reasons explained in this judgment:

- 166.1. the fraudulent trading claim against Mr Shergill under section 213 of the IA 1986 succeeds; I shall order him to contribute to the assets of each of Stacks and Staffs a sum sufficient to meet the “*totality of the loss*” in each case, comprising creditors’ claims and the costs and expenses of each liquidation;
 - 166.2. the wrongful trading claim against both Respondents under section 214 of the IA 1986 also succeeds; I shall order Mr Shergill to contribute to the assets of Staffs a sum equal to the increase in the net deficiency of the company as regards unsecured creditors between 31 July 2018 and 19 December 2018, and Miss Smith to contribute a sum equal to the increase in the net deficiency of the company as regards unsecured creditors between 31 July 2018 and 19 October 2018;
 - 166.3. the misfeasance claims also succeed; I shall order Mr Shergill to compensate the Companies in the aggregate amount of the challenged payments, and Miss Smith to compensate Staffs in the aggregate amount of the challenged payments made during the period of her appointment as a director; the application for relief under section 1157 of the CA 2006 is refused.
167. I will, if necessary, hear further submissions as to the form of relief.

Dated 3 January 2025