Neutral Citation Number [2025] EWHC 98 (Ch)

CR 2023 006177

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (CHD)
IN THE MATTER OF UK DREAM HOUSE LTD (DISSOLVED) (FORMERLY IN LIQUIDATION)
AND IN THE MATTER OF THE COMPANY DIRECTORS DISQUALIFICATION ACT 1986

Royal Courts of Justice
7 The Rolls Building
Fetter Lane
London
EC4A 1NL
Date: 22 /1/2025

Before :
ICC JUDGE BARBER

- -

Between :

THE SECRETARY OF STATE FOR BUSINESS AND TRADE

Claimant

- and –

MR MOHAMMAD AHMEDIVAND

Defendant

- -

Ms Giselle McGowan (instructed by **The Insolvency Service)** appeared for the **Claimant**
The Defendant did not attend and was not represented
Hearing date: 18 December 2024

- -

Approved Judgment

This judgment was handed down remotely by email and MS Teams. It will also be sent to The National Archives for publication. The date and time for hand-down is 9.30 a.m. on 22 January 2025.

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ICC JUDGE BARBER

ICC Judge Barber

1. This is the claim of the Secretary of State seeking an order that Mr Mohammad Ahmedivand be disqualified from acting as a director of a company pursuant to section 6 of the Company Directors Disqualification Act 1986 ('CDDA') by virtue of his conduct as a director of UK Dream House Ltd ('the Company'). The claim is supported by the first, second and third affirmations of Mr Marcus Symons.

2. The sole ground of unfitness relied upon, as summarised at paragraph 7 of the first affirmation of Mr Symons, is that the Defendant caused the Company to breach the terms and conditions of the Bounce Back Loan ('BBL') Scheme by overstating the Company's turnover in the application form, leading to the Company receiving a loan of £20,000, which was more than it was entitled to.

3. The Defendant contested the claim and filed one affidavit in answer to it. Very shortly before the trial, however, he wrote to court requesting an adjournment. The Defendant's written request for an adjournment was refused and the trial proceeded in his absence.

4. In this judgment I shall first set out my reasons for refusing an adjournment. I shall next set out my findings and conclusions on the claim itself.

The Adjournment Request

5. The trial of the claim was listed for 18 December 2024 by order of 23 July 2024. This order was served on the Defendant by email to his (then) solicitors, Maxlaw Solicitors, on 24 July 2024. The Defendant has therefore known of the trial date for some considerable time.

6. By email of 7 October 2024, Maxlaw advised the Claimant that they were no longer representing the Defendant. On the same day, the Claimant wrote to the Defendant, confirming that the Claimant would correspond with him directly going forward.

7. On 4 November 2024, the Claimant emailed the Defendant draft trial bundle indexes for his review. The Defendant responded, thanking the Claimant for the email. The Defendant made no mention of not being able to attend the trial at that stage.

8. On 21 November 2024, the Claimant emailed the Defendant confirming that, since the Defendant had sent no comments on the draft indexes, trial bundles would be created as per the draft indexes.

9. On 29 November 2024, the Claimant sent the trial bundles to the Defendant.

10. On 9 December 2024, the Claimant emailed the Defendant confirming that the Claimant's skeleton argument was ready for exchange.

11. On 10 December 2024, the Defendant emailed the Claimant stating that he needed time and asked if the hearing date could be changed because 'I need Soliciter [sic] I change Soliciter [sic] and need 6 weeks I had problems'.

12. On 11 December 2024, the Defendant then emailed the court, stating that he had 'fit problems' and that he needed to change the date of the hearing and find a solicitor for

his case. Attached to his email was a statement of fitness for work for social security and statutory sick pay form dated 10 December 2024, completed by Dr Richard Benn, in which Dr Benn advised that the Defendant was not fit for work due to lower back pain, was awaiting physiotherapy and would remain unfit for 31 days (to 6 January 2025). In a subsequent email on 11 December 2024, the Defendant stated that he 'can't come to court' and needed more than 8 weeks to recover and sort out his case.

13. The Claimant wrote in to court in response, copying in the Defendant, confirming that the adjournment application was opposed. The Claimant also filed and served a supplemental skeleton argument, setting out his reasoned grounds for opposing the adjournment application and summarising relevant caselaw on the issue.

14. On 11 December 2024, the court directed that 'as the Claimant opposes the adjournment and the hearing is imminent, the Defendant's application for an adjournment will have to be considered at the hearing of 18 December itself'. All parties were informed of this direction by email on the same day.

15. Notwithstanding that clear direction, the Defendant did not attend court or arrange representation for the hearing on the 18 December 2024. On the day of the hearing, once it became clear that the Defendant did not intend physically to attend court, at my direction the court office sent a further email to the Defendant, inviting him to join the hearing by MS Teams. The Defendant clearly had access to his email account that day, and was plainly mobile enough to operate his emails, as he responded to the court's email inviting him to join the hearing by MS Teams by stating 'No I can't because I have problems I have fitt problem'. The Defendant was also able to respond timeously to other emails sent to him that morning by the Claimant's solicitors. No explanation was given as to how he was able to operate his email account so effectively and yet unable to address the court by a remote MS Teams link (or even by telephone). After allowing the Defendant a generous amount of time in which to join the hearing remotely, I directed that the trial of the claim should proceed.

Adjournments: Relevant Legal Principles

16. Under CPR rule 3.1(2)(b), the court has a discretion to adjourn a hearing. This discretion must be exercised in accordance with the overriding objective in CPR rule 1.1 of dealing with a case justly and at proportionate cost. This includes, so far as is practicable: (a) ensuring that parties are on an equal footing and can participate in proceedings, and that parties and witnesses can give their best evidence, (b) saving expense, (c) dealing with the case in ways which are proportionate to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of each party, (d) ensuring that it is dealt with expeditiously and fairly, (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases, (f) promoting or using alternative dispute resolution, and (g) enforcing compliance with rules, practice directions and orders.

17. In Levy v Ellis-Carr [2012] EWHC 63 (Ch), Mr Justice Norris gave the following guidance on applications for adjournments:

'[32] …The decision whether to grant or to refuse an adjournment is a case management decision. It is to be exercised having regard to the "overriding objective"

in CPR 1….each case must turn on its own facts (and in particular upon how late the application is made).

[33] Registrars, Masters and district judges are daily faced with cases coming on for hearing in which one party either writes to the court asking for an adjournment and then (without waiting for a reply) does not attend the hearing, or writes to the court simply to state that they will not be attending. Not infrequently "medical" grounds are advanced, often connected with the stress of litigation. Parties who think that they thereby compel the Court not to proceed with the hearing or that their non-attendance somehow strengthens the application for an adjournment are deeply mistaken. The decision whether or not to adjourn remains one for the judge. The decision must of course be a principled one. The Judge will want to have in mind CPR 1 and (to the degree appropriate) any relevant judicial guidance (such as that of Coulson J in Fitzroy or Neuberger in Fox v Graham ("Times" 3 Aug 2001 and Lexis). But the party who fails to attend either in person or through a representative to assist the judge in making that principled decision cannot complain too loudly if, in the exercise of the discretion, some factor might have been given greater weight.

…

[36]…[referring to the medical evidence required to demonstrate that the party is unable to attend a hearing and participate in the trial] … Such evidence should identify the medical attendant and give details of his familiarity with the party's medical condition (detailing all recent consultations), should identify with particularity what the patient's medical condition is and the features of that condition which (in the medical attendant's opinion) prevent participation in the trial process, should provide a reasoned prognosis and should give the court some confidence that what is being expressed is an independent opinion after a proper examination. It is being tendered as expert evidence. The court can then consider what weight to attach to that opinion, and what arrangements might be made (short of an adjournment) to accommodate a party's difficulties. No judge is bound to accept expert evidence: even a proper medical report falls to be considered simply as part of the material as a whole (including the previous conduct of the case).'

18. With such guidance in mind, I turn to consider the grounds put forward in support of an adjournment**.**

19. In his correspondence with the Claimant and the court, the Defendant relied upon two grounds: first**,** a desire to obtain legal representation and second, unfitness to attend trial.

20. In relation to the first ground (a desire to obtain legal representation), in my judgment the Defendant has had more than sufficient time in which to engage legal representatives should he wish to do so. The claim was served on the Defendant on 16 November 2023, over a year ago. From March 2024 to October 2024, the Defendant had the benefit of legal representation. Maxlaw solicitors were acting for the Defendant when his affidavit in opposition was prepared and in the run up to a directions hearing listed on 9 July 2024, which was vacated by a consent order in which directions to trial were agreed. Maxlaw were still acting for the Defendant when the claim was listed for trial. Whilst Maxlaw then ceased to act for the Defendant in early October 2024, the Defendant did not raise any immediate concerns that this would cause him difficulties with the forthcoming trial. No such concerns were raised until 10 December 2024.

When Maxlaw ceased to act in early October 2024, the Defendant still had over two months prior to trial in which to instruct alternative solicitors for the trial had he wished to do so. This should have been ample time in which to instruct alternative legal representation for trial; his written evidence was already in and the case was not complicated. In my judgment the Defendant's failure to make appropriate use of that time, having known of the trial date since July 2024, does not of itself justify an adjournment. Whilst individuals may prefer to be legally represented, the court process is designed to enable parties to represent themselves if necessary and allowances can be made where appropriate to ensure that litigants in person are able to do so.

21. Turning next to the second ground (unfitness to attend trial), in my judgment the Defendant has failed to adduce medical evidence substantiating his claim to be unfit to attend trial. The statement of fitness to work form is not of itself sufficient evidence of unfitness to attend trial. It fails: (i) to give details of Dr Benn's familiarity with the Defendant's medical condition, (ii) to identify with sufficient particularity what the patient's medical condition is and the features of that condition which prevent participation in the trial process (simply referring to lower back pain) or (iii) to give a reasoned prognosis or any information that would enable the court to be satisfied that what is being expressed is an independent opinion after a proper examination.

22. In addition, Dr Benn does not indicate (in the statement of fitness to work form itself or in any accompanying correspondence) whether or not he was made aware of the purpose to which the fitness to work form would be put. He does not confirm whether, in assessing and reporting on the Defendant's condition, he was considering fitness to attend a trial (rather than to work). An individual may be unable to work due to pain but may still be able to attend a trial, for example where an individual's occupation involves physical labour. The threshold requirements are not identical in every case.

23. Moreover, whilst the court's preference in cases involving oral testimony is to hear such testimony in person at a physically attended trial, arrangements can readily be put in place in appropriate cases for evidence to be given remotely. Indeed, the Defendant had that option available to him in the present case, the Claimant having confirmed that he would have no objection to the Defendant giving his evidence in cross-examination remotely. The Defendant was invited to join the hearing by MS Teams, but refused to engage with the court by MS Teams at all. No adequate explanation was proffered for that refusal, given that the Defendant was demonstrably able to operate his email account effectively on the day of the hearing and had clearly been able in the run up to the hearing to consult (remotely or in person) a doctor with a view to getting a fitness to work certificate. I would add that the Defendant had already been sent to his home address his own set of the trial bundles (two sparsely populated lever arch files) in hard copy and the Claimant's skeleton arguments, so had all the paperwork he required for trial at his fingertips.

24. A further relevant factor in my judgment is the lateness of the application. It was made only one week before the trial and after confirmation that the Claimant was ready to exchange skeleton arguments. By that stage, the Claimant had incurred significant costs preparing for a trial, much of which would be wasted if the trial did not go ahead.

25. The waste of court resources in the event of an adjournment is an additional factor to consider.

26. A further factor is that the Defendant's affidavit, prepared with the benefit of assistance from his then solicitors, Maxlaw, remained in evidence. The Claimant confirmed that he would not object to the Defendant's written evidence being read by the court, notwithstanding the Defendant's absence, but would instead invite the court to treat his failure to attend for cross-examination as going to weight. This tempered the impact of proceeding in the Defendant's absence.

27. Overall, no adequate grounds for an adjournment were evidenced before me. To adjourn the trial in the absence of such evidence and at such a late stage, taking all the foregoing factors into account, would not, in my judgment, accord with the overriding objective.

28. I turn next to address the claim itself.

Evidence

29. In determining the claim I have read and considered the three affirmations of Mr Marcus Symons, Deputy Head in the Investigations Directorate of the Insolvency Service, filed on behalf of the Claimant. Mr Symons attended the trial and was sworn in. Save for correcting one minor error in his first affirmation (a reference at paragraph 7.2 to 'draft' accounts), Mr Symons confirmed the contents of his three affirmations to be true to the best of his knowledge information and belief. Mr Symons made himself available for cross examination but as the Defendant did not attend the hearing or seek to cross examine him, Mr Symons was thereafter released as a witness.

30. I also read and considered the affidavit sworn by the Defendant on 24 May 2024 in opposition to the claim. Whilst the Defendant did not attend the trial, on enquiry from the bench, the Claimant confirmed that he had no objection to the Defendant's affidavit being read by the court, submitting that the Defendant's failure to attend for cross examination should go to the weight to be attached to his written evidence, rather than being treated as a ground for excluding it in its entirety. I accept that submission. The Defendant's affidavit is admitted as evidence before this court, but the weight which may properly be attached to it is affected by his failure to attend trial for cross examination.

Background

31. The Company was incorporated on 3 May 2018 and provided bathroom renovation services.

32. The Defendant and Ms Bahareh Ahadi were appointed directors on incorporation. Ms Ahadi resigned on 29 January 2020, leaving the Defendant as the sole director from that date.

33. In two questionnaires completed for the Insolvency Service, the Defendant indicated

    (1) that the Defendant was a director and responsible "*about ever[y]thing*";

    (2) that the Company's accountants were responsible for reviewing the financial position of the Company and authorising payments to creditors;

(3) that the Defendant was responsible for negotiating and authorising contracts (with the Company's solicitors preparing terms and conditions) and hiring and firing staff;

(4) that the Defendant had meetings with the Company's accountant to make sure that he knew about the financial performance of the Company;

(5) that management accounts were produced monthly and that regular board meetings were held.

34. The Company entered creditors' voluntary liquidation on 23 September 2021, with Elias Paourou and Brian Burke appointed as joint liquidators ('the Liquidators'). The report to creditors, signed by the Defendant on 20 September 2021, recorded a deficiency as regards creditors of £39,738. The Liquidators' final account, prior to dissolution, records realisations of £1,000, creditors of £39,637.57 and payments towards liquidation costs and expenses of £1,000, leaving a deficiency as regards creditors of £39,637.57. It further confirmed that there had been insufficient asset realisations to allow for a return to unsecured creditors. The Company was dissolved on 25 July 2022.

The Bounce Back Loan Scheme

35. The BBL Scheme is now a familiar concept, having been the subject of several judgments within this jurisdiction. A helpful overview of the BBL scheme and its background may be found in the judgment of Deputy ICC Judge Parfitt in the recent case of Re St Aimie's Sports Academy Community Interest Group [2024] EWHC 3137 (Ch) at [17]-[23].

36. In summary, the BBL Scheme was introduced in May 2020 to help businesses affected by the Covid-19 pandemic. Under the BBL Scheme, a company could apply for a government-guaranteed bank loan of whichever was the lower of £50,000 or 25 per cent of the company's annual turnover for the 2019 calendar year. If, but only if, the business wishing to apply had been established after 1 January 2019, estimated turnover could be used instead.

The Company's BBL application

37. On 15 May 2020, the Company applied for a BBL of £20,000 from Barclays Bank. The application form was completed online by the Defendant, who confirmed within the application form:

(1) that the information provided in the application was complete and accurate;

(2) that the Company's turnover for the 2019 calendar year was £80,000; and

(3) that the £20,000 loan amount was equal to or less than 25 percent of the Company's annual turnover for 2019.

38. The Company's application was successful. The Company received a £20,000 BBL into its Barclays account with account number 33338231 ('the Barclays Account') on 18 May 2020. Prior to receipt of the BBL, the Barclays Account had a nil balance. The same day that the BBL was received, the Company made a £20,000 payment to "*Mohammad*" with the reference "*Undream House*".

39. The Summary of Receipts and Payments in the Liquidators' final account prior to dissolution records sums owed to "*Banks/Institutions*" of £20,000. Considered in context of the evidence overall, this strongly supports the conclusion that no or minimal payments were made towards the BBL and that the full BBL remains outstanding.

40. The Company's professionally prepared accounts for the year to 31 May 2020 ('the 2020 Accounts'), which were approved by the Defendant as sole director on 18 January 2021, are not consistent with the turnover declared in the Company's BBL application. The 2020 Accounts record a turnover of nil in the period from incorporation to 31 May 2019 and £19,352 for the year ended 31 May 2020.

41. The Claimant obtained copies of bank statements for the Barclays Account for the period running from the date of account opening (4 July 2019) to 5 January 2022. There is no evidence before me that the Company operated any other account at any material time and on the evidence as a whole I consider it legitimate to conclude that it did not. The first transaction on the Barclays Account took place on 2 October 2019, being a receipt of £0.02. An analysis of transactions in the Barclays Account for the period 2 October 2019 to 18 May 2020 (the date of receipt of BBL funds) indicates total receipts of £67,855.16. However, this includes: (i) covid-19 related loans/grants including the BBL, (ii) transfers from the Company's directors, (iii) unpaid direct debits and (iv) a £15 refund. Excluding these sums, receipts for the 2 October 2019 to 18 May 2020 period totalled £17,220.04. Total receipts in the period 4 July 2019 (date of opening of the account) to 31 December 2019, excluding transfers from the Company's directors and refunds, were £14,566.04.

42. On the evidence as a whole, including but not limited to the Barclays Account bank statements and the Company's professionally prepared accounts for the year ended 31 May 2020 approved by the Defendant as sole director, it is in my judgment clear that the turnover of £80,000 declared in the BBL Application form was materially overstated. At best, the Company's actual turnover for the calendar year 2019 was between £14,566 and £19,352. I so find.

The Defendant's Explanation

43. A questionnaire sent to the Defendant by the Insolvency Service included the question: "*The liquidator has received copies of draft accounts, for [the Company], to 31 May 2020 which record a turnover of £19,352. Please therefore explain how [the Company] applied for a bounce back loan of £20,000, which would have required a turnover of £80,000 during 2019?*". The Defendant completed this questionnaire twice, providing the following answers to the above question:

"*I had for costing for the £80,000 Turnover*"; and

"*I had for costing for the £80,00 Turnover and bank check bank system and paid me (if my turnover wasn't £80,000 why bank pay £20,000 and we had 40% (cash) Turnover*".

44. I pause briefly to note that the bank statements analysed already included cash deposits. Cash turnover would also have been taken into account in the turnover figures set out in the professionally prepared accounts for the year ended 31 May 2020, which the Defendant as sole director had himself approved.

45. In his affidavit in opposition to the Claim, the Defendant states, in summary, that: (i) the Company's accountant stated that the Company could apply for a BBL of £20,000 or £50,000 and that the Defendant applied for the sum of £20,000 on the basis of that statement, (ii) the Defendant had a 'costing' for the £80,000 turnover declared, (iii) the Defendant had honestly forecast that the Company turnover would be £80,000 and the Company bank statements for the period of 2019 to May 2020 showed over £67,000 was received, (iv) the figure in the bank statements combined with the 'costing' or forecast of £80,000 along with the confirmation from the accountant is why the BBL application was made for £20,000.

Relevant Legal Principles

46. Section 6 of CDDA provides that the Court shall make a disqualification order against a person on an application where it is satisfied that:

(1) that person is or has been a director of a company which has at any time become insolvent (including entering liquidation at a time when its assets were insufficient for the payment of its debts, liabilities and expenses of the winding-up); and

(2) his conduct as a director of that company makes him unfit to be concerned in the management of a company.

47. No issues arise with the first of these two requirements. The Defendant was a de jure director of the Company, which entered liquidation at a time when its assets were insufficient for the payment of its debts, liabilities and the expenses of the winding up.

48. On the second requirement of unfitness, I was referred to In re Sevenoaks Stationers (Retail) Ltd [1991] Ch. 164, in which Dillon LJ (at page 176) observed:

> 'The test laid down in section 6 … is whether the person's conduct as a director of the company or companies in question "makes him unfit to be concerned in the management of a company." These are ordinary words of the English language and they should be simple to apply in most cases. It is important to hold to those words in each case.'

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

1.1. Do the matters relied upon amount to misconduct?

1.2. If they do, do they justify a finding of unfitness?

1.3. If they do, what period of disqualification, being not less than 2 years should result?

50. In Re Grayan Building Services Ltd [1995] Ch 241 at 253E, Hoffman LJ held:

> 'The court is concerned solely with the conduct specified by the Secretary of State or official receiver under rule 3(3) of the Insolvent Companies (Disqualification of Unfit Directors) Proceedings Rules 1987. It must decide whether that conduct,

> viewed cumulatively and taking into account any extenuating circumstances, has fallen below the standards of probity and competence appropriate for persons fit to be directors of companies.'

51. Disqualification may be warranted where a director's conduct has fallen below the ordinary standards of commercial morality. Limited liability is a valuable tool in the promotion of trade and business but it must not be misused; an individual who takes advantage of limited liability must conduct their company responsibly, with proper regard to the ordinary standards of commercial morality: Re Swift 736 Ltd [1993] BCC 312 at 315E-F.

52. In Re DEEA Construct Ltd [2023] EWHC 2084 (Ch), Chief ICC Judge Briggs held that a director had fallen below the standards of probity and competence appropriate for persons fit to be directors of companies where the director had given an inflated turnover when applying for a BBL and the loan obtained under the scheme had not been used for the purpose for which it had been made (at [19]-[21]). Chief ICCJ Briggs observed that the false representation had been made at a time when the government placed trust and confidence in directors of companies for the purpose of honestly representing their financial status in order that they may obtain financial support to allow companies to be maintained and survive government-imposed restrictions.

53. In Re Tundrill Ltd [2023] EWHC 3241 (Ch), ICCJ Burton concluded (at [62]-[67]) that a director who had caused a company fraudulently to apply for a BBL on the basis of an estimated turnover that he knew or ought to have known the company had no realistic prospect of achieving and had caused the company to use the funds for his personal benefit had fallen below the standards of probity and competence of persons fit to be directors of companies.

54. In the more recent case of Re St Aimie's Sports Academy [2024] EWHC 3137 (Ch), DICCJ Parfitt concluded that a director's knowing overstatement of the company's turnover on the BBL application form was misconduct, the director having breached the trust placed on him by the government at a time of national emergency (at [67]). The learned deputy further concluded that the particular misstatement of turnover in the case before him crossed the line and demonstrated unfitness to be concerned in the management of companies, in circumstances where it had been done knowingly and the company had received more than it was entitled to as a result, notwithstanding that it was only one instance of misconduct in the context of a now closed scheme so that there was no risk of the misconduct recurring (at [68]-[69]). DICCJ Parfitt held that the misconduct seemed indicative of an attitude to the responsibilities of being a director which was not consistent with commercial morality and was deserving of serious sanction.

55. DICCJ Parfitt also referred to CICCJ Briggs's comments in Re DEEA Construct Ltd, noting (at [62]-[63]) that the reference to trust and confidence was a corollary of the self-certification application process for BBLs, where the whole process was streamlined with fewer checks and with information not being subjected to the usual level of scrutiny, rendering truthful answers the only effective safety mechanism, with government money being staked on those answers.

56. DICCJ Parfitt (at [65]) went on generally to observe that knowingly providing false information as to turnover in a BBL application was likely to be misconduct (potentially serious misconduct depending on the circumstances of the case) and that unfitness was likely to be shown if a director's misconduct involved falsely obtaining a government-backed loan, personally shielded by limited liability, at a time of national emergency, exploiting a lack of scrutiny which was decided to assist those most in need of help.

Discussion and conclusions

57. On the evidence before me, I am satisfied that, as sole director of the Company, the Defendant completed and submitted the BBL application on the Company's behalf.

58. The BBL application form was short and expressed in clear language. At the top of the form was a box setting out 'Key Features' of a BBL in a series of bullet points. The first bullet point was that a BBL was a loan of between £2,000 and £50,000 (up to a maximum of 25% of annual turnover).

59. In the lower half of the first page of the BBL application form was a section headed 'loan details'. This section provided:

'You can apply for a loan which is up to 25% of your turnover in calendar year 2019, from a minimum of £2,000, up to a maximum of £50,000. If your business was established after 1 January 2019, you should apply the 25% limit to your estimated annual turnover from the date you started your business.

What is your annual turnover, or if your business was established after 1 January 2019, what is your estimated annual turnover? For businesses which are part of a broader group, please state your group's turnover'.

There was then a box. The Defendant inserted the figure '£80000.00'.

The form continued:

'How much you have borrowed under the Bounce Back Loan Scheme:'

In the box immediately below, the Defendant inserted the figure '£20000.00'. The form continued:

'Please confirm that this is equal to or less than 25% of annual turnover for 2019 or your estimated annual turnover. Please note: if you are part of a larger group, this should apply at group level.'

In the box below this question, next to the answer 'yes', the Defendant marked an 'X'.

60. Set out in the concluding pages of the form are a series of declarations, which include (at 18):

'I/We confirm that the information provided in this application is complete and accurate'.

61. Below those declarations, the Defendant signed the form electronically by inserting his name. The date on which he signed the form was 15 May 2020.

62. As will be readily apparent from the foregoing quoted extracts, it is clear from the face of the BBL application form that where a business had been established by 1 January 2019, the maximum amount that it could borrow under the BBL Scheme was 25 percent of its turnover for the 2019 calendar year (or £50,000 if lower). Since the Company had been incorporated and commenced trading before 1 January 2019, it was therefore entitled to a BBL of a maximum of 25 per cent of its turnover in the 2019 calendar year or £50,000 if lower.

63. The Defendant had been a director of the Company since its incorporation in 2018 and so there is no doubt that he knew how long the Company had been in existence. He also confirmed that the Company had started trading on 30 May 2018 in his responses to questions set out in the Insolvency Service questionnaire, which he completed twice.

64. On the evidence as a whole, I am satisfied that when completing the BBL application form, the Defendant did understand the question that he was being asked about the Company's turnover, and did understand the significance of this question in determining the amount of the BBL. Anyone reading the form would appreciate that there was a correlation between the amount of the loan and the amount to be included in the turnover box. In my judgment, the Defendant plainly understood the correlation, as the loan amount which he sought on the Company's behalf was exactly 25% of its stated turnover.

65. I am further satisfied that, given (i) the Defendant's knowledge of the date on which the Company was incorporated and the date on which it started trading and (ii) the clarity of the language used in the application form, the Defendant must have known when completing the BBL application form that the Company was only entitled to a BBL of a maximum of 25 per cent of its turnover for the 2019 calendar year. I so find.

66. As previously found, the turnover figure for the Company for the 2019 calendar year of £80,000 given by the Defendant in the BBL application form was a material overstatement of the Company's actual turnover for the 2019 calendar year, which was at best between £14,566 and £19,352.

67. Turnover is a simple concept and one which, on the evidence as a whole, I am satisfied that the Defendant understood. On the evidence before me, I am also satisfied on the balance of probabilities that, as sole director of an extremely small company with day to day management of its affairs, the Defendant must have known when completing the BBL application form that the Company's actual turnover for the 2019 calendar year was nowhere near £80,000 and was instead closer to the region of £14,000 - £19,000. Whilst the Company's (professionally prepared) accounts for the year ended 31 May 2020 (showing turnover of nil in the accounting year to 31 May 2019 and turnover of £19,352 in the accounting year ending 31 May 2020) were not approved by the Defendant as sole director until January 2021 and so would not have been available to him at the time of completing the BBL application in May 2020, it would have been a relatively easy task for the Defendant to check the turnover figure by adding up the modest trading income shown in the Company's bank statements. The Defendant also confirmed in his Insolvency Service Questionnaires that monthly management accounts were prepared, which as sole director he must have considered.

68. Moreover, in my judgment, the disparity between the claimed turnover and actual turnover (claimed turnover being at least four times actual turnover) is so significant in

this case that it is simply impossible to explain away as a genuine but mistaken estimate. The Defendant must have known that he was materially overstating the Company's actual turnover for the calendar year 2019 when completing the BBL application form. On the evidence as a whole, I am satisfied that the Defendant *did* know that he was materially overstating the Company's actual turnover for the calendar year 2019 when completing the BBL application form. I so find.

69. In reaching these conclusions I confirm that I reject the Defendant's written evidence (at paragraph 4 of his affidavit) that he 'unknowingly and innocently overstated the turnover' of the Company in the BBL application form: see generally [67]-[68] above. Whilst the Defendant asserted at paragraph 9 of his affidavit that he had a 'costing' for the £80,000 turnover, no such 'costing' (presumably a reference to a calculation or breakdown of turnover) has ever been produced (or even reproduced) by him in evidence, nor any contemporaneous correspondence or other documentation referring to such a 'costing'. Given the Company's actual turnover figures for the calendar year 2019 and the matters addressed in [67]–[68] above, I consider it legitimate to conclude that no such 'costing' was ever produced, still less considered or relied upon by the Defendant when completing the BBL application form. In reaching this conclusion I also take into account the impact of the Defendant's failure to attend court for cross examination on the weight to be attached to his written evidence.

70. The Defendant also asserted at paragraph 9 of his affidavit (with emphasis added) that he had '*forecasted*' the turnover would be £80,000. I reject his evidence on this issue. For reasons explored at [63] and [65] above, the Defendant must have known at the time of completing the BBL application form that the Company was not entitled to rely on forecasted figures and was required to base its application on its actual turnover for the calendar year 2019.

71. Moreover, even if, contrary to my primary conclusions at [65], [68] and [70] above, the Defendant *did* consider the Company entitled to proceed on forecasted turnover, he has failed to adduce any evidence to support, still less substantiate, a 'forecast' of £80,000. On a balance of probabilities I am satisfied that the Defendant must have known when completing the BBL application form that any 'forecast' in such a sum would be a material overstatement. The Company's accounts and bank statements do not support such a forecast and no other explanation was put forward as to why the Company's turnover could conceivably be expected to quadruple overnight at a time of national economic crisis. The Defendant's attempt at paragraph 9 of his affidavit to rely on a total sum of £67,000 odd passing through the Company's bank account over the period July 2019 to May 2020 was in my judgment an entirely opportunistic rearguard attempt to seize on a figure mentioned in the Claimant's evidence, when in fact, that total sum of £67,000 odd included covid-19 related loans/grants (including the BBL), transfers from the Company's directors, unpaid direct debits and a £15 refund: see generally [41] above.

72. The Defendant also claimed in his affidavit that an (unnamed) accountant had told him that the Company could apply for a BBL of '£20,000 or £50,000' and that, in applying for a BBL of £20,000, the Defendant had relied on what the accountant had said. On the evidence as a whole, I reject the Defendant's evidence that an accountant told him that the Company could apply for a BBL of '£20,000 or £50,000' (and a fortiori his related evidence on reliance), for the following reasons.

73. First, the Defendant did not mention the advice allegedly received from an accountant when completing questionnaires for the Insolvency Service (twice) in which he was asked to explain how the Company had come to apply for a BBL of £20,000 when its turnover was only £19,000 odd. On the evidence as a whole, I am satisfied that, had the Defendant received such advice from an accountant, he would have mentioned it in his responses in the Insolvency Service questionnaires. It would have been at the forefront of his mind when asked to explain the amount of BBL applied for. Instead, the alleged advice from an accountant was introduced much later, at the time that the Defendant swore his affidavit in answer to the proceedings.

74. Second, the Defendant has failed to name the accountant in question in his affidavit, state when, where or how the alleged communication took place, or what information on turnover the accountant was given prior to allegedly advising that the Company could apply for a BBL of '£20,000 or £50,000'. He has also failed to produce, whether as an exhibit to his professionally prepared affidavit or otherwise, any corroborative documentary evidence of any of the foregoing.

75. Third, it is inherently unlikely that an accountant would inform a company with a turnover at the level of the Company's that it could apply for a BBL of £20,0000 or £50,000, as this would clearly be contrary to the terms and conditions of the BBL scheme. The Defendant offered no explanation of why an accountant would risk their professional standing and ability to continue to practise by advising a company to abuse the BBL scheme in this way.

76. Fourth, the Defendant has failed to explain any conceivable basis upon which an accountant would advise that such starkly differing loan amounts (of £20,000 and £50,000) were available to the Company, in the context of a scheme where available loan amounts were based on turnover for a given year.

77. Fifth, it is notable that nowhere in his affidavit does the Defendant mention any attempts to make contact with the accountant in question following service of the section 16 letter and/or the claim, even though the Defendant was represented by solicitors from March to October 2024.

78. Sixth, I take into account the impact of the Defendant's failure to attend court for cross examination on the weight to be attached to his written evidence.

79. In my judgment it was the Defendant, as the Company's sole director and the person completing the BBL application form, who was responsible for ensuring that the information provided was accurate and that the Company only borrowed a sum to which it was entitled. For reasons already explored, on the evidence before me I am satisfied that the Defendant knowingly provided false information on the BBL application form when he overstated the Company's turnover. I am also satisfied that the Defendant thereby caused the Company to breach the terms of the BBL scheme by making an application which exceeded the sum to which the Company was entitled. The consequence was that the Company obtained in the region of £15,000-£16,000 more by way of BBL than it was entitled to. I so find.

Unfitness

80. In light of my findings summarised at [79] of this judgment, the Claimant's factual case has been made out on the evidence. Following the three-stage process summarised by Blackburne J in Re Structural Concrete Ltd [2001] BCC 578 at 586E-G, I turn next to consider whether the conduct found proven amounts to misconduct.

81. In my judgment, the Defendant's conduct as found proven does amount to misconduct. In my judgment, in knowingly overstating the Company's turnover in the BBL application, at a time when the government placed trust and confidence in directors of companies accurately to self-certify as part of a streamlined process designed to enable speedy payments to be made to companies in distress at a time of national crisis, the Defendant abused the privileges of limited liability and failed to conduct the Company 'with due regard to the ordinary standards of commercial reality': Re Swift 736 Ltd [1993] BCC 312 at 315.

82. Turning next to unfitness, in my judgment the Defendant's conduct as found proven does render him unfit to be concerned in the management of companies. I have found that the Defendant knowingly overstated the Company's turnover, representing its turnover as at least four times the true amount. In so doing he breached the trust reposed in him as a director by the government at a time of national crisis. He also increased the government's exposure to his limited liability company by considerably more than should have occurred had he accurately completed the BBL application form in accordance with his responsibilities as sole director of the Company.

83. I take into account that only one instance of misconduct is relied upon by the Claimant during the course of the Defendant's time as a director of the Company. I also take into account the fact that as the BBL scheme has now closed, there is no risk of this particular type of misconduct recurring. Nonetheless, in my judgment the misconduct found proven demonstrates, to adopt with gratitude a phrase employed by DICCJ Parfitt in Re St Aimie's at [69], 'an attitude to the responsibilities of being a director which is not consistent with commercial morality'. In my judgment the Defendant's conduct fell below the standards of probity required of a director and warrants a finding of unfitness.

84. For the purposes of the second stage of the Structural Concrete test, therefore, I am satisfied that the Defendant's conduct justifies a finding of unfitness.

Period of disqualification

85. In light of the finding of unfitness, I am obliged by statute to make a disqualification order against the Defendant. Where the Court makes a disqualification order pursuant to s.6 CDDA, the minimum period of disqualification is 2 years and the maximum period is 15 years.

86. In Re Sevenoaks Stationers (Retail) Ltd, Dillon LJ (with whom Butler-Sloss and Slaughton LJJ agreed) gave the following guidance:

> 'I would for my part endorse the division of the potential 15-year disqualification period into three brackets … (i) the top bracket of disqualification for periods over 10 years should be reserved

> for particularly serious cases. These may include cases where a director who has already had one period of disqualification imposed on him falls to be disqualified yet again. (ii) The minimum bracket of two to five years' disqualification should be applied where, though disqualification is mandatory, the case is, relatively, not very serious. (iii) The middle bracket of disqualification for from six to 10 years should apply for serious cases which do not merit the top bracket'

87. In the present case, the Claimant seeks an order of 9 years, at the top end of the middle bracket.

88. During the course of submissions, I was helpfully reminded of the periods of disqualification ordered in a number of recent cases involving abuse of the BBL Scheme.

89. In Re DEEA Construct Ltd [2023] EWHC 2084 (Ch), a director of a company with negligible turnover applied for the maximum BBL of £50,000, based on a falsely inflated turnover of £200,000. The unfit conduct included a finding that the director had taken the money for himself (I pause to note that it is not alleged in the present case that the Defendant took the BBL for himself). The court in Re DEEA considered the case to be very serious and made a disqualification order of 13 years.

90. The case of In Re Tundrill Ltd [2023] EWHC 3241 (Ch) concerned a fraudulent overstatement of turnover and a BBL which was transferred to the director personally on receipt. The BBL obtained was a lesser sum than in Re DEEA, being £15,000. In that case a disqualification order of 11 years was made.

91. In Re St Aimie's [2024] EWHC 3137 (Ch), the director was found knowingly, but not dishonestly (see Re St Aimie's at [75]), to have misrepresented the company's turnover as £100,000, obtaining a BBL on that basis of £25,000, when in fact the company's turnover was £41,830 (less than half the stated turnover), causing the company to receive £14,543 more than its entitlement. The claimant had not alleged personal benefit as part of her case, but the fact that the director *had* benefited personally meant that the director could not employ absence of benefit in mitigation (see [79]). The court took into account as mitigating factors (inter alia) that the director was new to business, had no prior history of misconduct, and had paid £3,540 into the liquidation already notwithstanding that he was of very limited means. The court also took into account the relatively small quantum of detriment when compared both to other cases where creditors have suffered detriment and when compared to the maximum loss that might have been caused by an improper BBL application. Ultimately the court made a disqualification order of 8 years.

92. I am grateful to Counsel for her researches on the foregoing BBL cases. Whilst such cases are helpful illustrations, however, I remind myself that in each case of disqualification, the appropriate period of disqualification must be determined by careful consideration of all relevant factors in the case itself.

93. In the present case, the period of disqualification must be assessed by reference to the grounds of misconduct which have been found proven and to give rise to a finding of unfitness. Those grounds are that the Defendant knowingly overstated the Company's

turnover when applying for a BBL and thereby caused the Company to breach the terms of the BBL scheme and receive in the region of £15,000-£16,000 more than it was entitled to. The court must also consider any mitigating factors arising from the evidence.

94. It was not alleged by the Claimant (or found by this court) that the Defendant had acted dishonestly. For reasons explored in Re St Aimie's at [75] (which I respectfully accept), there is a distinction to be drawn in the current context between an allegation of knowing misrepresentation of turnover and an allegation of dishonest misrepresentation of turnover. In the present case, only the former has been alleged or found. In determining the period of disqualification, I shall therefore proceed on that basis.

95. Whilst the misconduct found proven does not involve a finding of dishonesty, however, this remains a serious case. The nature of the misconduct, involving as it did a significant, knowing overstatement (by a multiple of four) of the Company's turnover in breach of the trust placed in company directors by the government at a time of national crisis, plainly requires a middle bracket disqualification.

96. I take into account the relatively modest nature of the BBL sought. This was not a case in the same category as Re DEEA, in which the director of a company with negligible turnover had misrepresented the turnover of the Company as £200,000 with a view to obtaining a BBL in the maximum sum of £50,000 and had taken the money for himself. In contrast to Re DEEA, the Company did have some legitimate turnover and the BBL sought was only £20,000 (albeit based on a turnover four times its actual turnover). In additional contrast to Re DEEA, in the present case there is no allegation or finding of personal benefit to function as an aggravating factor, albeit on the evidence (see [38] above), it is not open to the Defendant to rely (and indeed in his affidavit the Defendant did not attempt to rely) upon absence of personal benefit as a mitigating factor either, for the same reasons as those explored in Re St Aimie's.

97. I take into account that only one allegation of misconduct has been alleged or found.

98. Whilst I have rejected the Defendant's written evidence in certain respects, in my judgment the inaccuracies found in the Defendant's written evidence and the false basis upon which he contested these proceedings do not fall into the category of aggravating factors warranting an increased period of disqualification, as occurred in Secretary of Trade and Industry v Reynard [2002] BCC 813.

99. I have considered with some care the contents of the Defendant's affidavit with a view to assessing whether there are any other facts and matters contained in it which he might have wished to rely on as mitigation if he had attended trial.

100. The Defendant does not raise in his affidavit a number of the mitigating factors considered relevant in Re St Aimie's, such as being new to business, or having paid sums towards the costs of liquidation, notwithstanding being of limited means and having to borrow from family members to do so.

101. For the most part the affidavit is premised on a lack of knowledge that turnover was misrepresented, 'costings' and/or 'forecasts' said to justify the inflated turnover figure which have never been evidenced or produced, and reliance on the advice of an

accountant. For reasons already given in this judgment, I have found against the Defendant on all these points.

102. The Defendant also expresses some contrition at paragraph 11 of his affidavit, stating that he was 'truly sorry', albeit on the false basis that he had relied on the advice of an accountant.

103. The Defendant also states in his affidavit that 'to be disqualified would cause the utmost hardship'. In determining the period of disqualification appropriate in this case, I do not make any allowance for the detrimental effect which disqualification might have on the Defendant. As rightly observed by DICCJ Parfitt in Re St Aimie's, the court has a discretion in appropriate cases to relieve the harsh consequences of a disqualification order by granting leave to a disqualified director to act as a director under section 17 of the CDDA. It is also customary for the period of disqualification not to begin until 21 days after judgment is handed down, to allow time for such an application to be made if thought appropriate.

104. Overall, in my judgment, having considered the findings of misconduct and having weighed the foregoing factors and all relevant circumstances of this case with some care, the appropriate period of disqualification is nine years. I shall so order.

105. I will hear submissions on costs and any consequential relief sought on the handing down of this judgment.

ICC Judge Barber