Approved Judgment

Neutral Citation Number [2025] EWHC 3054 (Ch)

CR-2020 003008

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF TRAVELEX BANK NOTES LIMITED (NOW TB REALISATIONS LIMITED) IN LIQUIDATION
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

The Rolls Building
7 Rolls Building
Fetter Lane, London
EC4A 1NL
Date: 21 November 2025

Before:

INSOLVENCY AND COMPANIES COURT JUDGE BARBER

- -

Between:

RAWBANK S.A. **Applicant**

- And –

(1)MARK JAMES TOBIAS BANFIELD, DAVID JAMES KELLY AND EDWARD JOHN MACMANARA AS JOINT LIQUIDATORS OF TRAVELEX BANK NOTES LIMITED (NOW TB REALISATIONS LIMITED) IN LIQUIDATION
(2) TRAVELEX BANK NOTES LIMITED (NOW TB REALISATIONS LIMITED) IN LIQUIDATION

Respondents

- -

Mr James Pickering KC (instructed by **Kingsley Napley LLP**) appeared for the **Applicant**
Mr Adam Deacock (instructed by **DLA Piper UK LLP**) appeared for **the Respondents**

Hearing dates: 25 July and 21 October 2025

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Approved Judgment

This judgment was handed down remotely at 9.30am on 21 November 2025 by circulation to the parties by e-mail and will be released to the National Archives for publication.

ICC Judge Barber

1. This is the application of Rawbank SA, which is an unsecured creditor of Travelex Bank Notes Limited (now TB Realisations Limited) ('the Company') in a sum of over £48 million. The first respondents (hereafter, 'the Respondents') are the joint liquidators of the Company. All three are from PricewaterhouseCoopers LLP ('PwC').

2. By its application, the Applicant seeks an order appointing two further insolvency practitioners, Mr Nicholas Nicholson and Mr Robert Starkins, both from Grant Thornton ('GT'), as additional (rather than replacement) liquidators of the Company pursuant to section 108 IA 1986. The purpose of the proposed appointment is the investigation of potential claims. The application is opposed. As parts of the hearing were conducted in private in order to consider advice given on potential claims which will hereafter be the subject of further investigation, the published version of this judgment has been anonymised in certain respects.

Background

3. The Applicant is the largest bank in the Democratic Republic of Congo ('DRC').

4. The Company is a company incorporated in England and Wales. At all material times, it was part of the Travelex group of companies ('the Travelex Group') which conducted business as a wholesale supplier of bank notes to financial institutions, including the Applicant. The Company's immediate parent was a company known as Travelex Limited ('TL'). The head company of the Travelex Group was Travelex Holdings Ltd ('Travelex Holdings') which was itself a subsidiary of Finablr PLC ('Finablr').

5. The Company's operations were a substantial part of the Travelex Group's business, generating revenues of £38.9 million in the financial year 2018 (Best (1)). In 2019, the Company's wholesale operation contributed 20.3% of the Group's revenue (Best (3)).

6. The Applicant and the Company have done business together since 2004. On 4 October 2013, the Applicant and the Company entered into a contract which set out the terms on which the Company would sell US dollar banknotes to the Applicant from that point onwards ('the 2013 contract'). Over the following years, numerous high-value transactions took place pursuant to the 2013 contract; typically US$40 million to $50 million of banknotes were ordered and delivered each week.

7. Ordinarily the process was as follows. The Applicant would place an order with the Company for banknotes and, following the Company's acceptance of the order, the Applicant would pay the purchase price by electronic transfer to the Company's US dollar account with the Bank of New York Mellon ('BoNY'). Following receipt of the purchase price, the Company would arrange the physical transfer of the banknotes from its vault in the UK to a UK airport, from which they would be flown to Nairobi in Kenya for onward transmission to the Applicant's branches in Kinshasa or Lubumbashi in the DRC.

Finablr's financial difficulties

8. By late 2019, Finablr was having significant financial difficulties and engaged a team from PwC (not including any of the Respondents) to act as its financial advisers.

9. On 31 December 2019, Finablr was also the victim of a serious cyber-attack, which resulted in its operations being suspended. Whilst customer-facing systems were restored on 17 January 2020, certain critical internal systems were shut down for between six and eight weeks.

10. In March 2020, Finablr's shares on the London stock exchange were suspended as a consequence of financial and accounting irregularities, including undisclosed debts of $1bn according to press reports. Finablr was unable to repay sums lent to it by the Travelex Group under an intra group lending agreement and cut off all financial support for the companies within the Group (including the Company). The accounting irregularities discovered at Finablr would later lead to the auditors for the Travelex Group, Ernst & Young LLP, requesting (as a condition of continuing with their audit) an independent forensic assessment of any relationships between the Group and Finablr. The review requested, which was carried out by a team from PwC in April 2020, was designed to assess whether there was any evidence of off-balance sheet financing arrangements, including the use of undated cheques across the Group, as security for financing arrangements for the benefit of third parties.

11. In addition, by March 2020, the pandemic was starting to have a significant impact around the world.

The 16 March 2020 bank notes order

12. Unaware of the extent of the Travelex Group's difficulties, on Monday 16 March 2020, the Applicant placed an order with the Company pursuant to the 2013 contract for US $40 million in bank notes. Of that sum, a total of $20m was to go to Kinshasa and $20m was to go to Lubumbashi. The initial delivery date agreed was 23 March 2020. No money was paid at the time of the order; payment was due on 19 March 2020.

Project Mullen: 18 March 2020

13. On Wednesday, 18 March 2020, Travelex Holdings Limited and its subsidiaries (including the Company) engaged PwC. The terms of engagement are set out in a letter dated 18 March 2020, headed 'Project Mullen'. The letter of engagement provided inter alia as follows (with emphasis added):

> 'Background and purpose
>
> Travelex Holdings Limited (along with its subsidiaries) is a foreign exchange group whose main businesses are international payments, bureaux de change, and issuing prepaid credit cards for use by travellers as well as global remittances. It is the world's largest foreign exchange bureau.

We understand that the groups debt includes, among others, a £90m super senior RCF and a €360m senior secured notes. *Due to recent challenges faced by the business, the group has asked us to act as financial advisers to assist the group in managing the current liquidity position, cash flow forecasting, wider stakeholder management and contingency planning.....*

Proposed scope of work

The proposed scope of work is set out in schedule 2. If at any stage during the course of the assignment any element of the scope no longer remains relevant or appropriate by agreement with you we will cease providing that service.

Timetable and duration

We propose to start work on 18 March 2020. The exact nature of the deliverables will be agreed with each of the relevant client contacts individually to reflect their specific requirements.

Staffing

David Kelly and Mike Jervix will be the Partners in charge of providing the services to the group, assisted by Hamish Mackenzie and such other staff as we believe are required. …

Client contact

You have designated Tony D'Souza, James Birch and Rory Suckling to be our primary contacts, when delivering the services as people with the knowledge, experience and ability to make decisions in relation to the services and our recommendations….

Terms of business

..

Agreed amendments to the terms of business

… 2.6 – this clause will be replaced with the following : "You may rely only on (i) our final written deliverables and (ii) oral advice provided by David Kelly, Michael Jervis, Hamish Mackenzie and Toby Banfield but not otherwise. If you wish to rely on oral advice provided by others, please let us know so that we may prepare a written deliverable on which you can rely."

….

Additional provisions

> Our advice is not the only factor you should take into account when deciding whether or not to proceed with a course of action and it is your decision alone as to whether or not to proceed. As an adviser we are not responsible for the management of the business or operations or the implementation of our advice, and you, your employees and other contractors must use professional business judgement regarding the subject of the engagement.
>
> If you become insolvent, and we are appointed to manage your insolvency, those insolvency services are not covered by the agreement. You are responsible for managing your business affairs up to the date of our appointment. We will not provide advice to your directors on their personal position and we strongly recommend they seek their own independent advice...'

14. It will be noted that the engagement letter confirms the involvement of both David Kelly and Toby Banfield in the advisory work to be undertaken at this stage. These were two of the three office-holders who would later be appointed as administrators and then liquidators of the Company. The engagement letter is signed by David Kelly on behalf of PwC.

15. Schedule 2 to the engagement letter sets out the scope of work. It provides that the services will include (with emphasis added):

> '1. *Liquidity management*
>
> . We will
>
> . *work with you to develop a short-term cash flow forecast setting out the expected liquidity position over the next 13 weeks and highlighting the key assumptions and risks*.
>
> . *work with you to identify the key cash outgoings, and support you to engage with key stakeholders*.
>
> . support you in identifying and accessing any government loans or support that may be available.
>
> . *help you review existing cash controls and assess whether they remain appropriate in light of the changing market conditions* and provide recommendations for improvement.
>
> 2. Financial advisory and stakeholder management
>
> . We will, in conjunction with your legal and other advisers:
>
> . *assist you in negotiating with the Company's creditors and other interested parties in the capital structure*. We will assist you in preparing any proposals or presentations for discussion with these parties.

> . *advise and assist you in evaluating any alternative solutions that are put forward by the senior lenders*.
>
> . advise and assist you in relation to the provision and "cleansing" of material non-public information to its bondholders.
>
> . *illustrate the impact of a capital structure restructuring on the group's business* based on the groups operational financial model. This will include an evaluation of the sustainable debt capacity for the ongoing core business.
>
> 3. Contingency planning
>
> We will:
>
> . *help to prepare a summary contingency plan in the event the current liquidity position cannot be resolved*. This contingency plan will consider the options available to the directors of the named entities, the potential strategies to be pursued to maximise recoveries from creditors and consider the risks and mitigants in respect of those options. *We will also develop a high-level communication plan and strategy for the key internal and external stakeholders.*
>
> . using the most recent balance sheets, prepare an illustrative estimated outcome statement taking into account material realisations from entities within the group in the event of an insolvency of the group.
>
> . *attend board meetings (as required) to provide commercial advice, based on the findings from our services and our role as your financial adviser*'.

The March 2020 payments

16. On Thursday, 19 March 2020, unaware of the appointment of PwC the previous day, the Applicant paid, by way of electronic transfers to the Company's usual BoNY dollar account, a total of US $40,048,000 in respect of the 16 March 2020 bank notes order referred to at [12] above.

17. Later that same morning, on 19 March 2020, the Company emailed the Applicant, stating that, in addition to the original order for US $40 million, it would:

> '… also have capacity to add a further $10 million for each shipment .. Would you like to add a further order of $10 million for each location? We would need to receive a further payment for the extra $20 million from you as soon as possible this morning. Could you also please confirm the denominations for the addition. Please note that the Federal Reserve depot has

> limited stock of USD so we will need to receive your confirmation as soon as possible.'

18. On the same day, 19 March 2020, the Applicant replied by email confirming that it would purchase an additional $20 million of bank notes. It then immediately paid the total purchase price of $20,024,000 (in two tranches) by way of electronic transfer to the Company's BoNY dollar account. The Company ordered the USD bank note stock from the Bank of America Merrill Lynch (BAML).

19. On the same day, 19 March 2020, a senior bank note dealer at the Company sent an email to the Applicant, stating that, because of a risk of airports closing on 23 March 2020, the bank notes would instead be delivered two days earlier, on Saturday, 21 March 2020. The Company later informed the Applicant that delivery on Saturday, 21 March 2020 was no longer an option but that delivery on the original date of Monday, 23 March 2020 was still possible. Still later that same day, however, the Company told the Applicant that all flights had been cancelled, such that delivery on 23 March 2020 was no longer possible.

The sweeps

20. As to the monies (over $60 million) which the Applicant had transferred to the Company on 19 March 2020, it appears that at the close of business on 19 March 2020, all outstanding funds in the Company's BoNY dollar account, which totalled USD $111.6m, were 'swept' into a BoNY account held by the Company's immediate parent, TL. The Company would later describe this as part of 'routine' Travelex Group cash pooling arrangements, in the ordinary course of business. Such 'sweeps' were not automatic, however; they were manually undertaken each day. The Applicant maintains that, by 19 March 2020, business was far from 'ordinary': see [8]-[11] and [13]-[15] above. The Respondents maintain that the sweep was routine, relying on a remark in Birss J's judgment dated 11 May 2020 ([2020] EWHC 1210 (Ch)) at [9] in a later freezing order application brought by the Applicant against the Company, in which the judge described the 'sweep' from the Company's BoNY dollar account to the TL BoNY account on 19 March 2020 as 'normal practice'. Birss J was however dealing simply with a freezing order application, applying the threshold requirements for such relief based upon the written evidence then before him. At the time, Birss J was under the misapprehension that the Group's instruction of PwC had taken place *after* 19 March 2020 (see judgment at para [57]) - and that the Group's liquidity crisis had occurred *after* 19 March 2020 (see para [66]). It is also apparent from Birss J's judgment that he considered the Company's evidence in the freezing order application regarding its assets and financial position to have been deficient and lacking in transparency (see for example [79] and [89]). Taking all such matters into account, in my judgment little can be drawn from the judge's comment regarding the sweep which took place on 19 March 2020.

21. To return to the chronology: in order to minimise bank charges, on 19 March 2020, funds held in the TL BoNY account were then transferred to a Cayman Island USD deposit account overnight, which is a service offered to BoNY customers. On 19 March 2020, a total of USD $96.9 million was transferred to the Cayman Island account.

22. The following day, on 20 March 2020, a total of USD $96.9m was returned from the Cayman Island account to the TL BoNY Account. Of that sum, however, only USD $62.6m was transferred back from the TL BoNY Account to the Company BoNY Account. That is to say: the sum transferred back to the Company by TL on 20 March 2020 was approximately USD $50m *short* of the sum of $111.6m 'swept' from the Company's BoNY Account to the TL BoNY Account the previous day.

23. On 20 March 2020, two payments were made by the Company to BAML and the USD bank notes were released to the Company's vault. Some of the US$ bank notes which the Applicant had ordered were then used by the Company to fulfil the orders of another customer, with the balance being sold back to BAML. BAML then refunded the balance into the Company BoNY account. Those monies were again 'swept' into the TL BoNY account.

24. I pause here to note that, ultimately, TL went into liquidation owing the Company £97.5m; a debt in respect of which the Company received dividends totalling approximately £190,000.

25. To return to the chronology: on 3 April 2020, having still not received the bank notes ordered, the Applicant requested a refund of the US $60 million which it had paid. As summarised in the later judgment of Zacaroli J (as he then was) on the Applicant's summary judgment application, reported at [2020] EWHC 1619, at [33]:

> 'on 6 April, Mr Nathan Best, a director of [the Company], spoke to Mr Rawji [the Applicant's CEO] and told him that the banknotes would not be delivered and that no refund would be made at that time because the Travelex group was in financial difficulties and was under a restructuring. Mr Best said the group had to have regard to its duties to act in the best interests of all of its creditors and to the risk that payment of one creditor could be construed as a preference. He indicated that the group needed a cash injection in order to be able to pay all of its creditors, and that on the current timescale the restructuring is intended to be completed by the end of May 2020.'

26. Nathan Best gave his own account of the conversation in his witness statement dated 24 April 2020 filed on behalf of the Company in answer to the Applicant's freezing order application. At paragraph [19] of Best (1) dated 24 April 2020, he stated (with emphasis added):

> 'By 6 April 2020 [the Company] had been advised that its liquidity position was such that it needed to have careful regard to its duties to act in the best interests of its creditors as a whole and to any risk of a payment being construed as a preference under the Insolvency Act 1986 and/or being inconsistent with the directors' duties to have regard to the interests of all creditors. *The view that we took was, therefore, that unless there was clear evidence and advice that any payment to a creditor was in the best interests of [the Company's] creditors*

> *and consistent with the directors' duties to have regard to those interests, no such payment could be made'*

27. At paragraphs [32] of Best (1), Mr Best accepts that he had a telephone conversation with Mr Rawji of the Applicant on 6 April 2020. At paragraph [38], he went on to state (with emphasis added):

> 'Throughout the conversation, my intention was to give Mr Rawji as much information as I could about the issues that Travelex Group was facing and what it was doing to try to resolve them. I stated that [the Company] was not in a position to pay *any* of its creditors at that stage. I stated that the Travelex Group had to have regard to its duties to act in the best interests of its creditors, to the risk of a payment being construed as a preference and the directors' duties to have regard to the interests of all creditors in making any such payments.'

28. On a date thereafter, however, which for the purposes of this partly anonymised judgment cannot be disclosed, the Company made a payment to another creditor, ('Creditor A'), in a significant sum. Shortly thereafter, the Company made a further payment to Creditor A in a significant sum. The Applicant maintains that at no time has there been any meaningful explanation why the Company was prepared to pay Creditor A these two substantial payments ('the Creditor A payments'), having told the Applicant that the Company was not in a position to pay *any* of its creditors due to a restructuring.

29. The evidence filed by the Company in the freezing order proceedings did not adequately explain the difference of approach adopted to the Applicant and Creditor A respectively.

30. In Best (3) dated 18 May 2020 at para 31(a), Mr Best simply made reference to the Creditor A payments (without, in his statement, disclosing the name of the creditor in question) and went on to state:

> 'The decision to make this payment was taken having regard to the interests of [the Company's] creditors as a whole and the directors' duties, and the advice that had been obtained in that regard (as set out in Best (1) in respect of which no privilege is waived).'

31. I pause here to note that Best(1) does not contain any specific reference to advice being received in respect of the Creditor A payments; the only references to advice in Best (1) are in purely generic terms, such as Best (1) at [17], [19], and [61]. In submissions Mr Deacock suggested that perhaps Creditor A was a 'critical' creditor. I was taken to no evidence to suggest that Creditor A enjoyed 'critical' status however. No obvious reason is shown in the evidence to explain the differential treatment of Creditor A and the Applicant. On the evidence before the court, the Creditor A payments appear to clear both the initial 'creditor' and the 'preference in fact' threshold requirements of s239(4)(a) and (b) of the Insolvency Act 1986.

32. At Best (3) paras 29 and 31(b), Mr Best also confirmed that between 31 March 2020 and 30 April 2020, a further £15.9m was transferred from the Company to TL. This was said to be another 'routine' sweep. It was recorded on the Company's balance sheet as a further inter-company loan, bringing the Company's debtors according to its balance sheet as to 30 April 2020 up to a total of approximately £99.3m, the bulk of which was owed by TL to the Company (and never repaid).

The 2020 Proceedings

33. Following the Company's failure to deliver the ordered bank notes and refusal to pay a refund, on 14 April 2020, the Applicant issued an application for a freezing order alleging, among other things, fraud. After various adjournments of that application, on 4 May 2020, the Applicant issued a claim by way of claim form for breach of contract and/or misrepresentation, with the allegation of fraud no longer being pursued.

34. On 7 May 2020, the freezing order application was heard by Birss J. The judge declined to make a freezing order but instead made a limited disclosure order requiring the Company to give seven days' advance notice of any disposal of assets that would reduce its assets by more than £5 million.

35. Following an application by the Applicant for summary judgment, on 15 June 2020, the Company agreed to judgment being entered against it for the sum of US$60,072,000.

The Company's entry into administration: 21 July 2020

36. The Company did not satisfy the judgment debt and, on 21 July 2020, it was placed into administration by an out of court directors' appointment, with the Respondents (Toby Banfield, David Kelly and John Macmanara of PwC) being appointed as its joint administrators. Notice of intention was filed on 8 July 2020, followed by notice of appointment on 21 July 2020.

37. By the time of the Company's entry into administration on 21 July 2020, the overdraft facility provided by Barclays Bank plc to support liquidity in the Travelex Group was 'unutilised': Banfield (2)[35].

38. In a telephone call held on 23 July 2020 between the Respondents, Mr Aamir Khan (the Applicant's solicitor in the 2020 Proceedings), and Mr Alex Cunliffe (the Applicant's barrister in the 2020 Proceedings), the Respondents confirmed that they were personally involved in providing financial and insolvency advice to the Company before being appointed joint administrators. According to Mr Khan's witness statement dated 7 March 2025 filed in support of this application, during the call on 23 July 2020, Alex Cunliffe of Counsel 'pressed the Respondents on the conflict of interest point and their appointment as joint administrators'. Mr Khan's evidence was that '[t]hey were clearly uncomfortable on the call' and said that they would follow up in writing. Mr Khan exhibited to his witness statement copies of correspondence exchanged thereafter. By letter dated 24 July 2020 from the Applicant's then solicitors, Singhania & Co, to the Respondents, Singhania was

highly critical of the Respondents' conduct in the run-up to their appointment as administrators and continued:

> 'All of the above demonstrates not only is there an appearance of conflict, but, indeed, there is (and will continue to be) an actual conflict between [your] interests and your duties to all of [the Company's] creditors. It is quite clear that any proper investigation of [the Company's] financial position must involve investigation of the advice it and the wider Group received in the months before administration. You will be unable to undertake such investigations yourselves and, by continuing to act with that knowledge, you are in contumelious breach of your statutory duties.'

39. By letter dated 29 July 2020, the Respondents replied, stating (inter alia) that they 'were not actively engaged in advising [the Company] or its board at or around the time of the two orders for banknotes placed by [the Applicant] on 16 and 19 March 2020' and denying that their prior relationship with the Company had in any way impaired their independence or objectivity as administrators of the Company.

40. The appointment of administrators appears to have been done at some speed. Notwithstanding PwC's involvement since March 2020, and the appointment of administrators on 21 July 2020, the directors of the Company did not prepare a statement of affairs for the Company until 11 September 2020. This was over a month after the sale of the Group's assets on 6 August 2020 (see below), a month after the Administrators' proposals dated 13 August 2020 (Appendix D to the Administrators' proposals comprising simply the estimated financial position of the Company) and the best part of two months after appointment of the Administrators.

Secured creditor position

41. At the time of the appointment of administrators on 21 July 2020, the Company had secured liabilities under:

(1) a £90m group revolving credit facility ('RCF'), of which £50m was outstanding, in respect of various banks; and

(2) some €360 million 8% senior secured loan notes due 2022 ('SSN') listed on the Irish stock exchange. The creditors under the SSNs are referred to as 'Noteholders'.

42. The Noteholders have the benefit of security by way of a debenture dated 5 May 2017, which contains a fixed and floating charge over the assets of the Company, save for specific excluded assets.

Travelex Acquisitionco Limited ('TACO')

43. On the date of the Company's entry into administration (21 July 2020), TACO was incorporated. TACO is an entity controlled by some of the Noteholders. The first directors of TACO, appointed on the date of incorporation, were Paul Windsor and Neil Townson, two chartered accountants.

Sale of the Group's assets: 6 August 2020

44. Shortly after the Company's entry into administration, on 6 August 2020,

(1) The Group's wholesale and outsourcing business (as well as certain international and retail businesses within the Group) was sold to TACO;

(2) Mr Windsor and Mr Townson resigned as directors of TACO and were replaced by Roderick Suckling (a then current director of TL), Donald Muir and James Birch (a former director of TL and the Company and a then current director of various other companies within the Travelex Group);

(3) The fund assets were sold (by the Administrators) to Travelex Currency Services Limited ('TCS) and

(4) TCS was acquired by TACO.

45. For the purposes of the restructuring, TACO purchased the shares in TCS from TL. Until 6 August 2020, TL was registered at Companies House as a person with significant control of TCS, holding 75% or more of the shares in TCS. TL was placed into administration on an out of court directors' appointment, along with several other members of the Group, on 6 August 2020, with the Respondents appointed as administrators. Thereafter, with effect from 6 August 2020, TACO was registered at Companies House as a person with significant control of TCS.

46. As at 6 August 2020, the Company and TCS had three common directors: Philip Barter, Nathan Best and Clare Hall.

47. The total consideration paid by TACO for the assets of the Travelex Group was £68.8m. As later explained in the Administrators' proposals for the Company, however, 'as the transaction was a lender-led restructuring, the only cash received was the estimated amount required to fund the dividends to creditors and discharge the costs of the administration'.

48. Appendix B to the Administrators' proposals for the Company stated that all pre-administration costs had been paid by TL. Page 14 of the Administrators' proposals confirmed that, as part of the restructuring, a funding agreement for the administration of the Company and five other companies in the Travelex Group had been agreed with the secured creditors, with the remuneration of the administrators for all six companies capped at a total of £2.5m.

49. The consideration of £68.8m was applied to repay the RCF Lenders in full and an outstanding bridging facility in accordance with relevant secured creditor entitlements. Of the consideration, approximately £12.86m was (in accounting terms) received by the Company, of which approximately £12.3m was subject to security and applied in favour of the RCF Lenders.

50. No distribution has been made to the Noteholders in their capacity as secured creditors as there were no recoveries captured by their security. They have unsecured claims which total £345m (some 81% of a total of approximately £425m of unsecured claims).

51. The administration of the Company was extended twice at the request of TACO, to allow time for completion of post-sale matters. TACO agreed to contribute to the costs of the additional work by an extension of the funding agreement referred to at [48] above.

52. On 1 August 2023, the Company was moved from administration to creditors voluntary liquidation pursuant to paragraph 83 of Schedule B1, at which time the Respondents were appointed as joint liquidators.

53. A first and final Prescribed Part dividend of 0.7503 pence in the pound was declared on 22 August 2024, with payments issued to creditors who submitted valid claims. The Applicant was accepted as an unsecured creditor of the Company in the sum of £48,156,431.63.

54. Dividends under the Prescribed Part have been paid in full, up to the maximum of £600,000.

55. In the 2024 Liquidators' Progress Report, the Respondents estimated that a dividend from uncharged asset realisations of c.0.11 pence in the pound will be paid to the Company's unsecured creditors, but the amount of any actual dividend will depend on liquidation costs and finalising unsecured creditor claims.

56. The Respondents maintain that the liquidation is now ready to close.

Conflict

57. From the outset, the Applicant has made clear its concerns that events in the run-up to the Company's entry into administration may have given rise to officeholder and/or company claims and has wished to see such claims properly investigated. The Applicant has also made clear its concerns that the Respondents may be conflicted in investigating such claims themselves.

58. The position adopted by the Respondents throughout has been that they do not consider themselves conflicted. They say that they investigated matters themselves as administrators in 2020/2021 (Banfield (1)[18]-[20]) and, having done so, then on 8 February 2021 (over 6 months into their appointment as administrators) instructed solicitors, Brown Rudnick LLP, to provide 'independent legal advice' to support the Respondents 'in further assessing what, if any, potential claims or actions may be available to the Company or the [Respondents] that could produce recoveries for the benefit of the insolvent estate': Banfield (1)[21]-[27]. Brown Rudnick were described as 'independent' on the basis that they 'were not involved in the post-administration sale of the business and assets of the Company': Banfield (1), para [21]; it was not suggested that Brown Rudnick had not worked with any of the Respondents in the past.

59. By July 2021, Brown Rudnick are said to have concluded there was no reasonable prospect of any successful company or officeholder claims being brought that would deliver a recovery for the benefit of either the Company's secured or unsecured creditors: Banfield (1) [24]-[25].

60. For many years, the Respondents refused to disclose the substance of the legal advice which they had received from Brown Rudnick. Prior to issue of these proceedings, the Respondents had only disclosed, by letter dated 12 July 2021, the very broadest summary of the advice said to have been received from their solicitors, which provided as follows:

> 'I advise that Brown Rudnick LLP ('Brown Rudnick') have now concluded their independent review into whether there are any claims (including against the former directors of [the Company] or third parties) that could be pursued for the benefit of the creditors of [the Company] and that have a reasonable prospect of success. As previously mentioned, you will of course appreciate that Brown Rudnick's work product, and communications between Brown Rudnick and the Joint Administrators, are privileged and cannot therefore be shared with your client. However, without waiving any privilege, having taken advice I can confirm that the Joint Administrators consider there is no reasonable prospect of a cause of action being successfully pursued by the Joint Administrators of [the Company] against the directors/former directors for the benefit of [the Company's] creditors (and in particular its unsecured creditors).
>
> One of the statutory duties placed on the Joint Administrators is to complete a report for the Insolvency Service on the conduct of Directors and the financial affairs of the company. The report is completed based on information that has come to light during the investigation of the Company's affairs and any information that has been presented to the Administrators by third parties (such as creditors). In addition to a review of the information presented to the administrators, we and Brown Rudnick have undertaken, over several months, an extensive investigation, including that of court documents, banking records, Company's records, and interviewing directors, in addition to the documents helpfully provided by your client.
>
> There are limited courses of action available to companies in administration, which can broadly be described as either statutory causes of action under the Insolvency Act 1986 (such as preferences and wrongful trading, whereby any recoveries would be for the benefit of unsecured creditors) or, alternatively, actions against directors for breach of their fiduciary duties (which would be caught by the floating charge and therefore paid to secured creditors). In general terms, when pursuing a claim against directors for breach of duty, there must have been a loss caused to the company. Losses incurred by creditors themselves are not generally recoverable by such actions.

> As a result of that detailed review we do not believe there are reasonable prospects of a successful claim being made against the directors of [the Company] or any other party, in relation to the monies received by it from your client and particularly not one which would deliver any recovery for the benefit of the unsecured creditors (of which your client is one).
>
> Based on Brown Rudnick's advice and review, we believe that we have exhausted all the angles and options that would be reasonably expected of an officeholder in our position. We do not think it is appropriate to expend further of the monies of the estate in respect of this investigation. As such we consider we have discharged our statutory responsibilities in respect of this matter and will report as such in our next update to creditors.'

61. In November and December 2021, the Applicant wrote to the Respondents seeking further information on its likely recovery in the administration.

62. In April 2022, the Applicant wrote further, seeking electronic access to the Respondents' progress reports.

63. By March 2023, the Applicant had turned to Grant Thornton for assistance. In March 2023, having reviewed the Respondents' progress reports, Grant Thornton wrote to the Respondents, raising concerns as to the scope and adequacy of the investigations undertaken in relation to potential claims. Extensive correspondence between GT and PwC ensued.

64. Shortly thereafter, in 2023, the Respondents instructed PwC's Contentious Insolvency & Asset Recovery Team ('CIAR Team'), who had no prior involvement in the administration of the Company, to undertake a case review of the outcome of the Respondent's investigations. This case review commenced while the Company was in administration and concluded when the Company was in liquidation.

65. On conclusion of their review, the CIAR Team concurred with the conclusions reached by the Respondents that there were no viable claims which were likely to deliver any benefit for the creditors as a whole. In addition to endorsing the previous analysis, the CIAR Team were of the view that there were no additional available claims in a liquidation (as opposed to in administration) that would generate any materially different conclusions.

66. Notwithstanding extensive correspondence between GT and PwC in the run up to issue of these proceedings, it was only after issue of these proceedings, by Mr Banfield's second witness statement dated 25 June 2025, that the Respondents disclosed, on confidential terms, a slightly fuller, seven-page summary of the advice received from Brown Rudnick in 2021. Even then, however, the Respondents did not state who had prepared the summary, did not produce a copy of the Respondents' instructions to Brown Rudnick, did not disclose adequate particulars of the material considered by Brown Rudnick for the purposes of preparing their advice, and did not produce the advice itself, redacted or otherwise.

67. The summary of Brown Rudnick's advice produced in June 2025 has not proved sufficient to allay the Applicant's concerns.

Procedural history

68. The Application was issued on 3 October 2024, supported by the first witness statement of Mustafa Rawji, the Applicant's CEO.

69. On 29 November 2024, the court gave directions.

70. On 24 January 2025, the Respondents served their responsive evidence, in the form of the first witness statement of Mr Banfield.

71. On 7 March 2025, the Applicant served its evidence in reply, in the form of the second witness statement of Mr Rawji and a witness statement of Mr Aamir Khan, the solicitor who acted for the Applicant in the 2020 Proceedings.

72. Following an approach by the Respondents, the parties agreed a consent order for a further round of evidence.

73. On 25 June 2025, the Respondents served the second statement of Mr Banfield. At the same time, it served a confidential annexure providing the seven-page summary of the legal advice which they had received from Brown Rudnick in relation to potential claims.

74. On 11 July 2025, the Applicant served its further evidence in reply, in the form of the third witness statement of Mr Rawji.

75. The Application was listed for final hearing on 25 July 2025 with a time estimate of one day. That time estimate proved insufficient and accordingly the matter was adjourned part-heard. As the matter was going part-heard, the court took the opportunity to direct the Respondents to make available to the Company's creditors the application notice, all evidence (excluding the confidential annexure), a sealed copy of the order and notice of the re-listed hearing. The court also gave permission for any creditor wishing to file evidence to do so no later than 14 days before the re-listed hearing and for any creditor who had filed such evidence to make representations at the re-listed hearing.

76. Following that hearing, the Respondents wrote to all known creditors in accordance with the court's directions.

77. This prompted two witness statement from creditors, comprising:.

(1) the witness statement of Mark Mansell dated 6 October 2025. Mr Mansell is a solicitor of Akin Gump LLP, which acts for the Majority Noteholders, being 51.8% of the SSNs of which the Company is a guarantor. The Majority Noteholders are, as holders of more than 50% of the SSNs, able to direct the SSN Trustee, holding in total sum 81% of the total creditor claims, to vote in respect of the entire value of the SSNs. Mr Mansell confirmed that the Majority Noteholders would vote against the appointment of additional liquidators if a decision procedure was convened; and

(2) the witness statement of Mr James Birch dated 6 October 2025, filed on behalf of four creditors referred to as 'the New Travelex Creditors', who comprise:

(1) Travelex Central Services Ltd, a creditor admitted for proof in the sum of £1.7m;

(2) Travelex Retail Nigeria Limited, a creditor admitted for proof in the sum of £445,457;

(3) Travelex Nigeria Representative Office Limited, a creditor admitted for proof in the sum of £2.8m; and

(4) TACO (as assignee of the debts of several creditors, all of whom are African banks), admitted to proof in the total sum of £25.6m.

78. According to these two witness statements, both the New Travelex Creditors and the Majority Noteholders are of the view, having had the opportunity to consider the evidence, that:

(1) the appointment of additional liquidators would not be in the best interests of the creditors as a whole;

(2) the appointment of additional liquidators would result in delays to distributions to creditors;

(3) they are satisfied that the liquidators are independent;

(4) they are satisfied that the liquidators have (variously) 'fully' or 'thoroughly' considered the potential claims which are the subject of the application; and

(5) they request the court to dismiss the application.

79. The New Travelex Creditors also confirmed that they did not consider the appointment of conflict liquidators would be cost neutral in reality because they consider the Applicant to be 'litigious'. They expressed concern that the Applicant's dealings would 'ramp up' costs and that, as the Applicant's undertaking was only to pay the Respondents' reasonable costs, any costs which the Applicant did not consider to be reasonable would end up being borne by the insolvent estate and ultimately by creditors. They also considered the application to be brought too late in the day given the passage of time since the Applicant was first informed, in headline terms, of the Respondents' conclusions about claims in 2021.

80. The Applicant was concerned to hear, over the course of the adjournment of this application, that TACO had taken assignments of the debts of several African banks totalling £25.6m. The Applicant's solicitors had planned to explore the views of other creditors (including those banks) over the course of the adjournment and to that end had written to DLA by letter dated 19 August 2025 requesting a list of creditors whose claims had been admitted in the liquidation.

81. Having considered the list provided by DLA under cover of a letter dated 21 August 2025, the Applicant's solicitors wrote again by letter dated 27 August 2025, asking why 12 African banking institutions with claims totalling approximately £25.7m, as

recorded in the statement of affairs dated 11 September 2020 filed in the Company's administration, did not appear in the Proven Creditors' list.

82. By letter dated 28 August 2025, DLA initially responded that the creditors in question did not appear in the Proven Creditors list 'because after [their] clients' Notice of Statement of Affairs in Administration dated 6 June [sic] 2020, [their] clients received notice that [the bank creditors in question] are not creditors of the Company'. It was only after further pressing by the Applicant's solicitors, by letter dated 29 August 2025, for a fuller explanation, that DLA responded by letter dated 1 September 2025 to confirm that the 12 creditors in question had 'assigned their claim to [TACO], which was included in the Proven Creditors' List'.

83. By his witness statement dated 6 October 2025, Mr Rawji outlined the foregoing exchange and expressed concerns that the assignment of £25.7m in creditors' claims to TACO (which he maintained was a material development for the general body of creditors) had not been properly disclosed in the Administrators' or the Liquidators' statutory reports. He said that this was a further example of a lack of transparency on the part of the Respondents.

84. The adjourned hearing of the application took place on 21 October 2025.

85. In submissions at the adjourned hearing on 21 October 2025, Mr Deacock said on instruction that the assignments in question had taken place between August 2020 (a month in which at least three of such debts were assigned to TACO) and 2021; and that the assignments had been mentioned briefly (albeit by a very high level generic descriptor, in the form of confirmation that included in the admitted claims were 'assigned claims', with no particulars given) in the Liquidators' progress report for 2023-2024. No explanation was proffered why the assignments which had taken place in August 2020 had not been reflected in the Directors' Statement of Affairs, prepared in September 2020, or why the assignments as they occurred had not been recorded in the corresponding statutory reports filed by the Administrators and Liquidators thereafter until the very brief generic reference included (without particulars) in the Liquidators' progress report for 2023/4, referred to above.

Jurisdiction

86. Section 108 IA 1986 provides:

> '(1) If from any cause whatever there is no liquidator acting, the court may appoint a liquidator.
>
> (2) The court may, on cause shown, remove a liquidator and appoint another'.

87. The scope of the court's jurisdiction to appoint additional liquidators has recently been addressed in the judgment of ICC Judge Agnello KC in Novalpino Capital LLP [2025] EWHC 54 (Ch). By her judgment, which contained an extensive review of the caselaw in this area, following full submissions by experienced counsel acting for opposing parties, the learned judge concluded (inter alia) that the court does have jurisdiction in certain circumstances to appoint an *additional* liquidator under s108(1).

88. Mr Deacock sought to challenge the court's jurisdiction under s108(1) to appoint an additional liquidator. Whilst rightly accepting that the courts have extended the phrase 'no liquidator acting' as employed in s 108(1) to include cases where a liquidator is not performing his functions or is unable to act through conflict, he maintained that the case of Novalpina itself should be approached with some caution, arguing inter alia that in Novalpina, as in Clements v Udal [2001] BCC 658, 'the issue' was simply whether to appoint an additional liquidator on an *interlocutory* basis, *pending determination of an application to remove a liquidator*.

89. Reading the judgment of ICC Judge Agnello as a whole, however, it is clear that the ratio of Novalpina goes beyond a narrow ruling on that issue. In this regard I remind myself that the ratio decidendi of a case is any ruling on a point of law expressly or impliedly *treated by the judge* as a necessary step in reaching his or her conclusion, having regard to the line of reasoning adopted by the judge: Cross & Harris, Precedent in English Law, 4th ed, Ch 2 p72: an approach to identifying the ratio of a case approved by Buxton LJ in R (Kadhim) v Brent London Borough Council Housing Benefit Review Board [2001] QB 955 and applied in Regina (Youngsam) v Parole Board [2020] QB 387 at [21] and [39].

90. Reading the Novalpina judgment as a whole, and having regard in particular to paras [32], [34], [42] – [44], and [47]-[48] thereof, it is in my judgment clear that the judge did consider herself to be deciding (inter alia) that the court has jurisdiction under s108(1) to appoint an *additional* liquidator in certain circumstances, including those in which the appointment of a *conflict* liquidator is required. Even putting to one side any granular debate on the scope of the ratio in Novalpina itself, however, having considered the caselaw *cited* in Novalpina, I am satisfied that the court does have jurisdiction under s108(1) to appoint an additional liquidator in certain circumstances, including those in which the appointment of a conflict liquidator is required.

91. I turn next to consider whether the court's jurisdiction under s108(1) is engaged in this case, and if so whether or not the court should in the exercise of its discretion appoint additional liquidators.

The Applicant's submissions

92. Mr Pickering KC argued that the Respondents were in a position of actual or potential conflict in investigating events over the period running from the date of their engagement letter of 18 March 2020 to their appointment as administrators on 21 July 2020 ('the Pre-Administration Period'). The team from PwC engaged by the Company to advise it over the Pre-Administration Period included two of the three office-holders subsequently appointed as its administrators and thereafter liquidators. According to the terms of the engagement letter dated 18 March 2020, he argued, the PwC team was in place as of 18 March 2020, giving the 'green' or 'red' light to given financial and cashflow decisions, at the time when the Applicant was paying for its original order of bank notes and placing the supplemental order, and at the time of the various 'sweeps' that took place over the Pre-Administration Period. The same PwC team, he argued, was also in place and giving the green or red light to given financial and cashflow decisions (i) on 6 April 2020, when the Company refused to refund the Applicant its US $60 million on the ground that it was going through a restructuring and (ii) when the Company paid out significant sums to another creditor, Creditor A.

93. Mr Pickering submitted that, whilst there was no basis for suggesting any impropriety on the Respondents' part, it was readily apparent that, when considering what investigations to make and what claims may or may not be viable, the Respondents may have found themselves in a position of actual or potential conflict which may, even subconsciously, have affected their approach to such investigations. Mr Pickering maintained that a fair-minded and informed observer would conclude that the Respondents, as the decision-makers, were, or at the very least had the potential to be, biased.

94. In such circumstances, Mr Pickering argued, the court's jurisdiction under s108(1) was engaged.

95. Mr Pickering went on to argue that,

(1) if appointed, there was a real, as opposed to fanciful, prospect that the additional liquidators would be able to bring claims to the benefit of some or all of the creditors; and that

(2) even if no such claims were identified, there was no tangible detriment to the creditors, whether in terms of money, delay or otherwise.

96. In relation to (1) (prospect of recovery), Mr Pickering observed that the Respondents had only very recently agreed to share a brief seven-page summary of the legal advice received from Brown Rudnick, on a privileged and confidential basis. Whilst this was a welcome improvement on their previous position, the actual advice itself, the instructions and the underlying papers had still not been shared. That being the case, he argued, it had not been possible properly to 'stress-test' the advice given, or the questions asked.

97. Mr Pickering went on to argue that, rather than allaying concerns that all potential claims had been properly considered, the summary of the legal advice produced had only reinforced those concerns and the need for further investigation. In this regard Mr Pickering relied in particular on the Company's significant payments to Creditor A.

98. Mr Pickering submitted that there was a strong prima facie case of preference in relation to the Creditor A payments. He argued that there was plain 'de facto' preference in context, clearing the requirements of s239(4)(b); and that Brown Rudnick's analysis, as summarised, was extremely weak. The sole reference to the Creditor A payments in the Brown Rudnick advice summary was at paragraph 16**.** This was considered in private at the hearing.

99. Mr Pickering noted that there was no satisfactory explanation in the advice summary as to why or on what basis the solicitors had arrived at their conclusions on the Creditor A payments.

100. Mr Pickering had similar reservations about other conclusions in the summary of legal advice which were also addressed at the hearing. In broad summary, he maintained that the advice seemed limited, without any meaningful explanation for the

conclusions reached; and that none of it could be properly tested anyway, due to the fact that neither the underlying papers nor the instructions given had been disclosed.

101. Mr Pickering observed that even if the only claim made was in relation to the Creditor A payments, a successful preference claim against Creditor A would of itself increase the return to the Applicant from a few hundred thousand pounds to a sum exceeding £2m - and that other unsecured creditors would see an equivalent significant increase in their respective returns as well. If further claims were identified and successfully pursued, he continued, the return to creditors could be greater.

102. In summary, Mr Pickering argued that even on the limited evidence before it, the court could safely conclude that there was there was a real possibility of such claims, in particular the Creditor A preference claim, being successfully pursued and giving rise to a significant benefit to creditors. On that basis alone, he argued, the court could be satisfied that the appointment of additional liquidators would not be a fruitless or pointless exercise.

103. In relation to (2) (no tangible detriment), Mr Pickering confirmed that if the additional officeholders were appointed, the Applicant would undertake to cover (i) all costs of the additional officeholders and their proposed further investigations; and (ii) all reasonable costs of the Respondents (and any other associated costs) incurred in keeping the liquidation open. Mr Pickering argued that this meant that even if no further claims were identified, the process should be entirely cost-neutral to the other creditors.

104. The Respondents had expressed concerns that the Applicant had only offered to cover their 'reasonable' costs. Mr Pickering argued that this was an unattractive objection and should not dissuade the court from making an order if otherwise persuaded to do so. He confirmed that the Applicant was prepared to undertake to pay the reasonable costs of the Respondents (and any other associated costs) in such sum as may be agreed between the Applicant and Respondents or, in the absence of agreement, fixed by the court. He also confirmed that the Applicant would be prepared to pay a sum into court to cover such costs if so required.

105. The Respondents had also contended that there was a 'lack of alignment' between the interests of the Applicant and those of other creditors. Mr Pickering rejected that contention, confirming that it was no part of the Applicant's case that any additional liquidators appointed would be tasked with investigating or pursuing proprietary claims on behalf of the Applicant. The purpose of the appointment, he argued, was to investigate claims that would benefit the creditors (or at the very least the unsecured creditors) as a whole.

106. Mr Pickering went on to address a further criticism levelled by Mr Birch against the Applicant, to the effect that that the Applicant was 'litigious'. This criticism, he argued, was pejorative and unfair. It had been entirely reasonable, he argued, for the Applicant to have brought the 2020 Proceedings, given the events which had occurred. The initial allegation of fraud had been readily dropped and the Applicant had then successfully achieved summary judgment in the sum of $60 million.

107. The Respondents had also expressed concerns over delay, referring in particular to the timing of payment of the proposed final dividend. Mr Pickering argued that in light of

the Applicant's proposed undertakings regarding ongoing costs, that there was nothing to stop the Respondents from declaring a further *interim* dividend in the same or substantially the same sum as they intended to declare by way of final dividend. This would mean that distribution of the monies earmarked for final dividend would not be delayed.

108. Mr Pickering maintained that any delay thus far was not such as to negate the utility of further investigations, as no potential claims (such as the Creditor A preference claim) were yet statute-barred.

109. Mr Pickering also reminded the court that the jurisdiction to appoint additional office-holders under section 108(1) was a flexible jurisdiction and could be tailored to the needs of each case; any such appointment could be time-limited if appropriate and confined to a specific purpose. It was therefore open to the court, he argued, to ensure that closure of the liquidation was not held up indefinitely, by putting appropriate measures in place.

110. In relation to the new evidence filed by Mr Birch and Mr Mansell after the matter went part-heard, regarding the views of the New Travelex Creditors and the Majority Noteholders, Mr Pickering maintained that the new evidence did not add much. The Respondents had already made clear that the Majority Noteholders would vote against the appointment of conflict liquidators if it was put to a vote. The statements since filed, he contended, for the most part comprised a series of assertions, which had not been backed up by adequate grounds or particulars.

111. Whilst Mr Birch had said in his statement that it was commonplace for a company to take advice from an IP and then to appoint that IP as officeholder should a formal insolvency process be required, for example, the difference in this case, Mr Pickering argued, which Mr Birch did not acknowledge or adequately address, was that a number of the transactions in the Pre-Administration Period requiring investigation are transactions which took place on PwC's watch and on which positive advice either was or may have been given by PwC itself.

112. For similar reasons, Mr Pickering argued, Mr Birch's objections to officeholders from GT being appointed, on the grounds of conflict, were misplaced. The mere fact that a different department of GT had prepared a valuation report dated 6 August 2020 regarding the Group reconstruction which took place after the Company entered into administration did not of itself give rise to a conflict. No one was suggesting the valuation advice was wrong. The difference in PwC's case, he argued, was that the very transactions that need investigation took place during the Pre-Administration period, when PwC were advising the Group and the same and/or overlapping individuals from PwC were involved.

113. Mr Pickering went on to argue that, whilst the views of majority creditors will ordinarily be given great weight, those views are not necessarily conclusive.

114. In this regard reference was made to the authorities summarised in Hanover v Hawkwing [2023] EWHC 407 (Ch) at [72]-[73] on the approach to be adopted by the court in determining the weight to be attached to the views of creditors. The authorities summarised in Hanover included Re P & J Macrae Ltd [1961] 1 WLR 229, in which Willmer LJ had said at 235:

> 'I am certainly not prepared to accept the view that the bare fact of the opposing creditors being in a majority is of itself sufficient, still less conclusive. So to hold would be to leave the court with virtually no judicial function to perform, and to take away from it the discretion which the words of the Act plainly confer'.

115. Reference was also made to the case of Re Demaglass Holdings Ltd [2001] 2 BCLC 633, as authority for the proposition that, where the majority of creditors oppose a winding up petition or administration application, the Court will be astute to enquire into the views of the majority and to consider whether they are commercially well-founded. As put by Neuberger J (as he then was) at 639:

> 'it is not enough if the majority of creditors oppose the making of a winding up order in the normal case. The court must also be satisfied that they have good reason for refusing to wind up the company'.

116. A similar point was made in Re P & J Macrae Ltd [1961] 1 WLR 229 per Willmer LJ at 235:

> 'It seems to me that, before a majority of creditors can claim to override the wishes of the minority, they must at least show some good reason for their attitude'.

117. Mr Pickering also relied upon the case of Edgeworth Capital (Luxembourg) SARL v Maud [2020] EWHC 974 (Ch), in which Snowden J (as he then was) at [78] had observed:

> 'the court will also look at the reasons advanced by the creditors on each side of the debate in order to assess whether those reasons are commercially rational and will have regard to other evidence to assess whether the weight and rationality of a particular creditor's approach is diminished by any extraneous factors such as personal antipathy or affection on the part of the creditor for the debtor (or those connected with it in the case of a company)'.

118. I pause here to note that Snowden J also stated in Maud at [79]:

> 'I do not think, however, that there is support in the authorities for Mr Rose's proposition that it is for the court to formulate some view of a hypothetical rational creditor who is a member of the class, or (which may amount to the same thing) to impose its own view of the commercial merits or the best interests of the class.'

119. Mr Pickering submitted that the views of connected creditors (such as shareholders and directors), or those connected with former management, should ordinarily be afforded less weight. In this regard (drawing on the authorities summarised in

Hanover at [72]-[73]) he relied upon Re Palmer Marine Surveys Ltd (1985) 1 BCC 99,557, in which Hoffmann J said at 99,562:

> 'creditors who are also shareholders or connected with the former management may have less weight given to their views than those who have no interest except in their capacity as creditors';

together with similar observations in Re Lowestoft Traffic Services Co Ltd (1986) 2 BCC 98,945 at 98,948 per Hoffmann J:

> 'it is, I think, proper to discount the opposition of those opposing creditors who are closely associated with the management of the company'.

120. Reference was also made to Re Lummus Agricultural Services Ltd [1999] BCC 953 at 958 per Park J:

> 'if the opposing creditors are not independent outsiders but are associated with the company itself and with its directors (who oppose the petition), their views should be discounted, or at least in the judge's discretion may be discounted.'

121. Mr Pickering submitted that, conversely, the views of independent creditors should be afforded greater weight, relying for this purpose on Re Demaglass Holdings Ltd [2001] 2 BCLC 633 at 639 per Neuberger J:

> 'the court will have greater regard to the views of independent creditors as opposed to creditors connected with the company'

122. Applying such guidance to the facts of the present case, Mr Pickering submitted that the New Travelex Creditors (whose debts total some £30.6m, ie 7% of unsecured claims) could not be treated as independent creditors. They were closely associated with former management. They had chosen to express their views through the witness statement of Mr Birch, a former director of the Company who was named in PwC's engagement letter dated 18 March 2020 as a point of contact for the Travelex Group in the Pre-Administration Period and who is or has been a director of a number of other companies within that Group.

123. Mr Pickering also observed that, of the total debt of £30.6m owed to the New Travelex Creditors, the bulk (£25.6m) was owed to TACO by assignment; TACO having elected to take assignments of £25.6m of debts owed by the Company to a number of African banks: assignments which the Respondents had not reported transparently in their statutory reports and about which the Respondents' solicitors had initially been, as Mr Pickering put it, 'very cagey', when enquiries were made in correspondence over the course of the adjournment.

124. Mr Pickering further submitted that the Majority Noteholders (who were said to have expressed their views through the witness statement of Mark Mansell) could not be treated as independent creditors either. They had worked closely with PwC and with the management of the Group in formulating and then putting into effect the

restructuring process. They had benefited from the administration and liquidation in that they (through TACO) now owned and controlled the Company's business. He argued that there must be a real concern that a significant proportion of these creditors have a vested interest in there being no further investigation into the events of 2020.

125. Mr Pickering also contended that it was not 'commercially rational' for the majority creditors (qua creditors) opposing (as he put it) 'a free opportunity to get more money'. A successful preference claim against Creditor A would bring in a sum exceeding £2m for the Applicant but a far larger sum for the majority creditors, and it would not cost them a penny. In such circumstances, he argued that their stance on this application must be influenced by interests other than their interests as creditors.

126. For all these reasons, he invited the court to give little or no weight to the views of the Majority Noteholders and the New Travelex Creditors.

127. For similar reasons, he urged the court to resist Mr Deacock's fall-back invitation of letting the majority creditors choose the identity of any conflict liquidator appointed. If that route was adopted, he argued, 'we would never hear anything more'. He maintained that, other than 1% or so of the remaining smaller creditors who had not played an active part, the Applicant was the only independent creditor.

128. Mr Pickering also relied upon guidance given by Norris J in Green v SCL Group [2019] EWHC 954 (Ch) at para 36, quoted later in this judgment.

129. Overall, Mr Pickering contended that the Applicant's concerns were real and worthy of proper investigation; all the more so, given the summary of legal advice latterly provided, which raised more questions than it answered, and the position of PwC itself, which was tasked under the terms of the engagement letter of 18 March 2020 with advising the Company at the time of many of the transactions which should be under scrutiny.

130. He maintained that the Respondents had not identified any real or tangible prejudice or detriment to the Company or its other creditors and that any potential prejudice was capable of neutralisation by way of an appropriate undertaking from the Applicant. In contrast, Mr Pickering argued, the potential benefits to the creditors were significant.

131. For all those reasons, the court was invited to appoint the additional officeholders or make such other order as it thought fit.

The Respondents' submissions

132. Mr Deacock argued that there were no reasons to suppose that the liquidators were in fact conflicted so as to be prevented from considering whether they and the Company had valuable claims worth pursuing. He said that this was not a case where the Respondents could not act or where they themselves perceived a conflict.

133. Mr Deacock argued that the courts have taken a moderate and pragmatic approach to conflicts in insolvency cases, where the same insolvency practitioners are appointed over group companies, recognising that this can be advantageous to creditors and that any conflicts can be managed in a number of ways. In this regard he referred me to Re

TPS Investments (UK) Limited [2018] EWHC 360 (Ch) at paras [34]-[37], in which HHJ Stephen Davies sitting as a judge of the High Court said:

> '34. Mr Morgan's submission is that the authorities demonstrate that the strictness of this principle is moderated in appropriate cases where there is a potential or even an actual conflict where an insolvency professional is appointed as liquidator or administrator of a number of different related companies. His position was set out in paragraph 38 of his skeleton argument as follows:
>
> "The law was helpfully reviewed by Warren J in SISU at [91] – [120] and considered by the Privy Council in Parmalat Capital Finance Ltd v Food Holdings Ltd [2008] BCC 371 and Newey J in Re York Gas Ltd [2011] BCC 447. The considerations/principles may be summarised as follows:
>
> a. In the context of large group insolvencies, the appointment of a common officeholder is *prima facie* likely to be in the interests of the general body of creditors for it will be more efficient and less costly: SISU at [103];
>
> b. This approach is not limited to large group insolvencies and it is not unusual for office-holders to be appointed to related companies, even though the dealings between them may throw up a conflict of interest, as it also avoids expense: SISU at [105]; Parmalat at [13];
>
> c. The courts have approached the issues of such conflicts in a commonsense and pragmatic way (i) noting that licensed insolvency practitioners are professional men who are well used to dealing with conflicts, (ii) in general it is in the interests for there to be a single officeholder and for any conflicts to be managed if and when necessary, (iii) a variety of approaches may be taken to managing conflicts and (iv) these may include taking independent legal advice, the appointment of an additional partner from the same (or a different) firm: SISU at [103]; York Gas at [11]-[17];
>
> d. They may also include applying to the court for directions: Parmalat at [13]-[16];
>
> e. If the correct approach is to allow individuals to act where there is a potential conflict, but to ensure that the conflict is managed if and when it becomes an actual conflict, an existing actual conflict of interest should not preclude an appointment rather than providing for it to be managed – assuming that it can be: SISU at [108] & [115];
>
> f. If an actual conflict arises then the management must be put in place immediately, if it can be, or if it cannot be, then the

> office-holder will have to relinquish one (or all) of his conflicting appointments: SISU at [112]; ….
>
> ****
>
> 37 In my judgment Mr Morgan is correct when he submits that the authorities do not show that the existence of an actual conflict must inevitably lead to the relevant office-holder having to relinquish his appointment. It must all depend on the particular circumstances including: (a) the nature and extent of the conflict (clearly different considerations will apply when the investigation is still at an early stage to those where litigation is already in prospect); (b) the point at which the question is being considered (clearly different considerations will apply when the officeholder has not been appointed to those where he has been in position for some time); (c) whether and if so how the conflict can properly be managed at that time and - insofar as can be known - at a future stage; (d) the consequences for and against removal both in terms of time and cost and more generally.'

134. He maintained that this was a case where the liquidators not only could act, but had acted, contending that, in substance, the court was being asked to overrule their decision without any proper grounds when, ordinarily, the court would require proof of bad faith or Wednesbury unreasonableness before interfering with an officeholder's decision. The work had been done, he argued, a long time ago – and the Applicant was effectively trying to reopen the process.

135. Mr Deacock denied that there had been any conflict or borderline conflict but argued that even if there had been borderline conflict, proportionate steps had been taken, in the form of advice from Brown Rudnick and an independent review by PwC's CIAR Team. This, he argued, was a reasonable and proportionate way of dealing with what might be perceived as approaching conflict.

136. Mr Deacock went on to argue that the appointment of additional liquidators:

(1) was not in the best interest of the Company's creditors as a whole;

(2) would increase costs and delay the intended distribution to the Company's unsecured creditors and thereafter, the closure of the liquidation;

(3) was opposed by the New Travelex Creditors and the Majority Noteholders.

137. Addressing (1) (the interests of the creditors as a whole), Mr Deacock argued that the interests of the Applicant did not align with the interests of the creditors as a whole. This was on the footing that, during the course of the 2020 Proceedings, the Applicant had reserved its position as to any fraud or proprietary claim it might have. Mr Deacock argued that the pursuit of a proprietary claim would be for the Applicant's own purposes and contrary to the interests of the creditors as a whole. Any information that came out of the appointment of additional liquidators, he argued, could be used by the Applicant to make claims which are actually not in the interests

of the creditors as a whole but directly contrary to them. One example was the possibility of the Applicant establishing a proprietary claim to the bank notes. Whilst the Applicant's claim in the liquidation would be reduced in such circumstances, the recipient would have an equal claim in the same amount, so it would be a 'zero game' from the Company's perspective and would benefit no one but the Applicant.

138. Mr Deacock went on to argue that any 'company' (as opposed to 'office-holder') claims successfully pursued would benefit no one but the secured creditors. When the court observed that any successful 'company' claim recoveries would serve to reduce the size of the Noteholders' unsecured claim (thereby indirectly benefiting unsecured creditors as a whole), Mr Deacock argued that having regard to the size of the Noteholder claim, it would only make a 'minimal' or 'negligible' difference. He accepted however, that 'office-holder' claims fell into a different category; and that a successful preference claim in respect of the Creditor A payments would benefit the creditors as a whole, even allowing for the fact that Creditor A would then be able to prove in the liquidation.

139. Turning next to (2) (costs and delay), Mr Deacock reminded the court that the Company had gone into administration as long ago as 2020, some five years ago, and had been in liquidation since 2023. The liquidation was close to conclusion. Appointing additional officeholders and opening up further investigations now, he argued, would inevitably delay closure.

140. Mr Deacock also made reference to the Applicant's earlier unsuccessful attempts to have different or alternative liquidators appointed. Those attempts had failed in the face of inadequate support or opposition from the majority creditors.

141. The first occasion was at the time of the proposals in the administration. On 19 August 2020, the Applicants' then lawyers had sent a formal notice to the administrators under paragraph 83(7)(a) of Schedule B1 and rule 3.60(6)(b), stating the Applicant's intention to nominate an alternative person to act as liquidator of the Company, and requesting a formal meeting of creditors be convened so that the Applicant could table the appropriate resolutions. On 24 August 2020, the Applicant had then proposed that a meeting be requisitioned to vote on a motion that the Company go straight into liquidation with three office-holders from FRP Advisory Trading Limited appointed as alternative liquidators so that they could look at the position of the Company with 'fresh eyes'. A meeting was convened, but the Applicant decided to withdraw its resolution, as it recognised that the joint administrators' proposals would be passed as they were, since the administrators had sufficient creditor support.

142. The second attempt was as the Company was about to move from administration to liquidation. On 5 May 2023, some two years after the Respondents had informed the Applicant of their conclusion that there were no viable claims, GT informed the Respondents that the Applicant wanted partners from GT appointed as liquidators. On 24 May 2023, GT indicated that the Applicant was likely to request a decision procedure with a view to revising the administrators proposals and seeking to appoint a partner from GT as joint administrator and joint liquidator in the liquidation to follow; and to that end requested that the Respondents defer exiting administration. In response, the Respondents confirmed that they intended to go into liquidation shortly

and questioned the Applicant's ability to pass any resolution or in any event amend the proposals. Ultimately, after some chasers, by email dated 28 June 2023 GT indicated that it had advised the Applicant to instigate a decision procedure once the Company was in liquidation.

143. The third attempt was in January 2024, some six months after the Company went into liquidation. By letter dated 31 January 2024, the Applicant wrote to PwC with a view to securing the appointment of two IPs from GT as additional liquidators in order to investigate potential claims with 'fresh eyes' at no additional cost to the liquidation estate. By its letter, the Applicant described itself as 'a creditor holding more than 10% in value of the unsecured debts of [the Company]', and requested that the Respondents instigate a decision procedure in accordance with 'its rights under Section 246ZE' IA 1986. That section, however, only permits a party to request a physical meeting where a decision procedure has been invoked. Accordingly, the Respondents queried the request. The Applicant then asked the Respondents to initiate a decision process in any event, even though it had no right to requisition one. The Respondents declined to do so for reasons set out in a letter dated 19 April 2024, in summary stating that in their view there would be no benefit in doing so, that it would lead to delay and expense and that it was not supported by the Note Holders.

144. Mr Deacock also noted that the Applicant had not sought by its application an order requisitioning a meeting of creditors to vote on the appointment of proposed additional liquidators and invited the court to conclude that this must be because the Applicant knew it would lose any such vote.

145. Mr Deacock argued that if the Applicant had wanted to apply to court for the appointment of officeholders other than those chosen by creditors, it should have done so years ago.

146. He also argued that whilst the Applicant had said it would underwrite the costs associated with the proposed additional appointees and further investigation, keeping the liquidation open would inevitably lead to further expense and delay. Whilst the Applicant had indicated in general terms that it would meet such expense, he argued, it had been somewhat equivocal as to the amount that it was prepared to pay.

147. Turning next to address (3) (the wishes of creditors), Mr Deacock referred the court to section 195 IA 1986, which provides:

> '195 – Court's powers to ascertain wishes of creditors or contributories
>
> [Power of court] The court may –
>
> (a) as to all matters relating to the winding up of a Company, have regard to the wishes of the creditors or contributories (as proved to it by any sufficient evidence), and
>
> (b) if it thinks fit, for the purposes of ascertaining those wishes, direct qualifying decision procedures to be instigated or the deemed consent procedure to be used in accordance with any

> directions given by the court, and appoint a person to report the result to the court.
>
> [Creditors] In the case of creditors, regard shall be had to the value of each creditor's debt.'

148. Mr Deacock submitted that this section reflected a general principle that the court will usually act in accordance with the views of creditors: McPherson's Law of Company Liquidation at para 8-003. He contended that the court should not lightly disregard the views of the majority creditor, relying for this purpose on the notes to s195 in Sealy and Milman and Re William Thorpe & Son Ltd (1989) 5 BCC 156, in which (at 158D-F) Hoffman J had observed:

> 'I do not think that the court can ordinarily undertake a close investigation into all the circumstances in which individual creditors have decided to oppose or support the petition and I certainly would not disregard the view of a creditor for such flimsy reasons as those which appear in Mr McCoggan's affidavit. Accordingly, the creditors on both sides can in my view be regarded as bona fide outside creditors and I look merely to their numbers and the value of their debts.
>
> I have been referred to a number of cases of which I think I need only refer to two. The first is Re Falcon R. J. Developments Ltd (1987) 3 BCC 146 in which there was also a dispute between creditors as to whether or not a compulsory order should be made in respect of a company already in voluntary liquidation. Vinelott J said at p.150: "The court should not lightly overrule the views of those with the largest stake in the assets of the company as to whether the assets should be administered in the course of a compulsory or in the course of a voluntary winding up".'

149. In the context of a contest over the identity of a liquidator, Mr Deacock also referred me to the guidance given by Norris J in Green v SCL Group [2019] EWHC 954 (Ch) at para 36:

> 'When there is a contest over the identity of the liquidator to be appointed I think the guidance as to the exercise of the discussion is well settled:
>
> (a) the fundamental question is what will be conducive to both the proper operation of the process of liquidation and do justice as between all those interested in the liquidation;
>
> (b) although the majority vote of the creditors will in the normal course prevail, creditors holding the majority vote do not have an absolute right as to the choice of liquidator;

> (c) the liquidator should not be a person (or be a choice of a person) who has a duty or purpose which conflicts with the duties of the liquidator;
>
> (d) the liquidator should not be the nominee of the person against whom the company has hostile or conflicting claims or whose conduct in relation to the affairs of the company is under investigation;
>
> (e) the liquidator needs to act (and be seen to act) in the best interest of the creditors as a whole and properly to investigate all claims;
>
> (f) it is no objection that a liquidator is the choice of a person who is concerned to pursue the claims of the company through the liquidator.'

150. Mr Deacock next referred me to the witness statements of Mr Birch and Mr Mansell on behalf of the New Travelex Creditors and the Majority Noteholders.

151. Mr Deacock argued that, ultimately, decisions about the identity of liquidators or about the conduct of the liquidation are for the benefit of unsecured creditors and the views of those creditors should be given great weight, given that the decision to appoint liquidators (under ss100 or 104 IA) or remove liquidators (under s171(2)(b) IA) would ordinarily be by them.

152. Mr Deacock also addressed me on the authorities summarised in Hanover v Hawkwing [2023] EWHC 407 (Ch) at [72]-[73] on the approach to be adopted by the court in determining the weight to be attached to the views of creditors.

153. Mr Deacock argued that the Applicant had not identified any sound reasons why the views of the Majority Noteholders or the New Travelex Creditors should be disregarded. He maintained that the additional evidence filed by Mr Birch and Mr Mansell confirmed that the application represented the interference of 'one isolated creditor with a grievance', who did not enjoy the support of any other creditors. He maintained that the Applicant was 'chasing shadows' and insisted that there was 'nothing to see' and 'no bizarre conspiracy'. He argued that the Applicant's concerns were not shared by the other creditors and that to accede to the application would involve overriding the wishes of the general body of creditors rather than pursuing their interests.

Discussion and conclusions

154. Dealing first with jurisdiction, I am satisfied that this court does have jurisdiction under s108(1) to appoint additional conflict liquidators in this case. Given the scope of PwC's duties under the terms of its first engagement letter dated 18 March 2020 with the Company and others (see [13]-[15] above), the start date provided in that letter for the work to be undertaken (18 March 2020) and the events which have occurred, the Respondents in their capacity as administrators were in my judgment plainly in a position of actual or at the very least perceived conflict when investigating claims potentially open to the Company regarding transactions effected and decisions

made on PwC's watch in the Pre-Administration Period of 18 March 2020 to 21 July 2020.

155. The attempts in Mr Banfield's written evidence to distance the Respondents from any decisions taken or advice given regarding the Company in the Pre-Administration Period are as notable for what is not said as for what is.

156. The suggestion (at Banfield (1) [61] and Banfield (2) [18]) that the Company's directors were not 'personally' advised by PwC prior to the Company's entry into administration, and that such personal advice was given by Bryan Cave Leighton Paisner instead, for example, must be seen in the context of the terms of PwC's engagement letter, which limits their advice *to the companies* within the Travelex Group (including the Company), rather than individual directors.

157. Mr Banfield's evidence (at Banfield (1) [60]) that '[i]t was not until 23 April 2020 that I was first asked to support the Company, and it was on 28 April 2020 that I first attended a call with the directors of the Company' and his further statement (in Banfield (2)[33.1]) that '[a]s set out in paragraph 60 of Banfield 1, initial advice was provided to THL and my direct involvement with the Company did not occur until later' does not address the extent to which other members of the PwC team tasked with providing the services set out in the engagement letter of 18 March 2020 were involved in advising the Company on given transactions and decisions on payments prior to Mr Banfield's own involvement. Similarly, Mr Banfield's statement at Banfield (2) [33.3] (with emphasis added) that '[i]t was not until 23 April 2020 that PwC was specifically asked to support the Company *on an ongoing basis'* does not state the source or sources of his knowledge in this regard, or identify what 'ongoing basis' means in this context. Nor does it address the extent of Mr Banfield's own involvement with the Company and decisions made in respect of the same in that part of the Pre-Administration Period running from 23 April 2020 to 21 July 2020.

158. Mr Banfield also states (at Banfield (2)[33]) that '[t]he PwC team engaged to advise the Travelex group did not have personal knowledge of the Transfers, the Sweep [of $111m from the Company to TL on 19 March 2020] or the subsequent attempts of the Company to fulfil the Applicant's order at the relevant time'. Mr Pickering maintained that it was 'unthinkable' that the PwC team would not have known about a sweep of $111m at the time. Even putting Mr Pickering's observation to one side, however, it is notable that, save in relation to what he himself is said to have known at the time, Mr Banfield does not state the source or sources of information he has relied upon in stating that no one else in the PwC team knew about the Sweep at or shortly after the time of its occurrence. Nor does he state when he first learned of the Sweep and what steps he recommended on discovering that it had taken place. From his evidence overall it appears that he continued to treat the Sweep and subsequent sweeps as 'routine' throughout the Pre-Administration period, notwithstanding the fact that the Travelex group was plainly in crisis from March 2020 onwards and that, from the Company's perspective, the 'sweep' process was by that stage largely a one-way street.

159. Mr Banfield's later statement (at Banfield (2) [33.2]) that 'the Travelex group established a cash payments committee which met weekly to consider what payments should be made' does not state when that cash payments committee was set up. His

evidence in the same paragraph that 'PwC only attended or participated in certain of these meetings if a particular issue had arisen on which PwC's advice was sought' is very light on detail, but of itself acknowledges that PwC played a role in cashflow decisions.

160. Nowhere in Mr Banfield's written evidence does he state unequivocally that none of the Respondents or other members of the PwC team tasked with providing the services set out in the engagement letter of 18 March 2020 were involved in or tasked with advising on any transactions involving the Company or decisions on payments to be made by the Company in the Pre-Administration Period. Nor could he, given the scope of the engagement letter dated 18 March 2020 and the events which have occurred.

161. I would add that the focus in Mr Banfield's evidence on what advice was or was not given *directly* to the Company at given times is in any event a little nelsonian. Given the sweeps and the other pooling of resources within the Group, advice given by PwC to other members of the Travelex Group during the Pre-Administration Period plainly had the potential to impact on the Company and its ultimate fate.

162. In my judgment the Respondents were in a position of actual or at the very least potential conflict when considering what investigations to carry out in respect of the Company in relation to the Pre-Administration Period and in determining which claims may or may not be viable. A fair-minded and informed observer would conclude that the Respondents, as the decision-makers, were, or at the very least had the potential to be, biased.

163. I accept that there are occasions when such actual or potential conflicts can properly be 'managed' in ways which do not require an office holder to step down from office: Re TPS Investments (UK) Limited [2018] EWHC 360 (Ch) at paras [34]-[37]. In cases of actual conflict, however, the caselaw makes clear that such 'management' must be put in place *immediately*: SISU at [112]. In the present case, having been put on express notice of the conflict by July 2020 at the latest (see [38] above), the Respondents investigated themselves for the first six months of the administration, only bringing in Brown Rudnick for what is described as an 'independent' review in February 2021 (see [58] above). It is not stated in the evidence that Edward Macnamara (as the only one of the three Respondents not involved in the Pre-Administration Period, until June 2020 at least) took the lead in investigating potential claims arising in relation to that period, and in the absence of any such confirmation I consider it legitimate to conclude that he did not. As put in submissions, the Respondents were effectively 'marking their own homework', without any independent oversight, from July 2020 to February 2021.

164. I accept that the Respondents belatedly instructed Brown Rudnick in February 2021 to carry out what is described in the evidence as an independent review. When the meaning of 'independence' was explored in submissions, however, it became clear that the review was termed 'independent' only by reason of the fact that Brown Rudnick had not been involved in advising PwC in the Pre-Administration Period or in the post-administration sale of the Company's business and assets. It was not confirmed in evidence or on instruction that Brown Rudnick had not acted for the

Respondents in the past. In the absence of such confirmation I consider it legitimate to conclude that it had.

165. Even if one were to put that point to one side, however, a difficulty with reliance on the Brown Rudnick review as appropriate or adequate 'management' of any actual or perceived conflict is that, according to Mr Banfield's written evidence, filed on behalf of all three Respondents, at no material time have the Respondents accepted that the nature of their involvement pre-administration gave rise to any actual or perceived conflict. That stance is likely to have informed the nature and scope of the Respondents' instructions to Brown Rudnick. Certainly the evidence does not suggest that Brown Rudnick was asked to or did consider the impact of PwC's involvement under the terms of the engagement letter of 18 March 2020 on any claims open to the Company or its administrators in relation to steps taken and decisions made in relation to the Company over the Pre-Administration Period.

166. A further difficulty is that the instructions given to Brown Rudnick have not been produced in evidence, the documentation reviewed by Brown Rudnick has not been adequately particularised, and the actual advice given by Brown Rudnick has not been produced. Only a very broad summary of the advice given has been produced. As rightly observed by Mr Pickering, this has meant that it has not been possible properly to 'stress-test' the advice given, or the questions asked.

167. The conclusion reached by Brown Rudnick on potential s213 claims, for example, was expressed in the advice summary in evidence in one sentence. Whilst no allegations of fraud are made in the application before me (and I raise this simply by way of example), it does serve to demonstrate that without sight of (or at least adequate particulars of) the documentation actually reviewed by Brown Rudnick, the conclusion reached on potential s213 claims is of limited utility. Whilst the operation of s214 was suspended for a period during the pandemic, s213 (and the corresponding provision applicable in administration, s246ZA) was not.

168. The evidence on which (according to the advice summary) Brown Rudnick had based its conclusions on the Creditor A payments was also unclear. As noted during the course of submissions, Mr Best had stated at paragraph [19] of Best (1) (which, according to Banfield (1), Brown Rudnick were provided with) that, by 6 April 2020, the view taken was that no payment could be made to a creditor '*unless there was clear evidence and advice*' that such payment to a creditor was in the best interests of the Company's creditors. I was taken to nothing in the evidence to suggest that any such '*clear evidence'* or '*advice*' had been relied upon or given in relation to the Creditor A payments.

169. I also remind myself that the statutory purpose set out at s239(5) need only be *a* purpose; it need not be the *sole* purpose, or even the *primary* purpose, for a preference claim to succeed.

170. In my judgment, Mr Pickering is correct in submitting that on the evidence before the court, there is a strong prima facie case of preference in relation to the Creditor A payments. There was plain 'de facto' preference in context, clearing the requirements of s 239(4)(b); and Brown Rudnick's analysis in relation to these payments is, as summarised, extremely weak.

171. Overall, I accept Mr Pickering's submission that, rather than allaying concerns that all potential claims have been properly considered, the summary of the legal advice given by Brown Rudnick only serves to reinforce the need for further investigation.

172. The Respondents also rely upon the review subsequently undertaken by PwC's CIAR team in 2023, which agreed with Brown Rudnick's conclusions. Again, however, the instructions given to the CIAR team were not produced in evidence, the documentation which they reviewed has not been adequately particularised and the advice which they ultimately gave was not produced.

173. The Respondents' reluctance to disclose, even on a confidential basis, fuller details of Brown Rudnick's instructions, the documentation reviewed by Brown Rudnick and the advice received from that firm, for the purposes of this application, is a further material factor in my judgment. As noted previously, it was only some months after issue and service of this application that even a seven-page summary of the advice received was produced in evidence. As the application went part-heard from July to October, the Respondents had over two months to reflect on Mr Pickering's detailed submissions at the first hearing on the inadequacies of the advice summary produced and the very specific submissions made regarding the Creditor A payments. The Respondents could have sought permission and/or agreement over the course of the adjournment to produce in evidence of full copy of the advice received from Brown Rudnick on the same confidential terms as those applied to the advice summary, or even a redacted copy of the advice identifying the full reasons and basis for the conclusions reached by Brown Rudnick on the Creditor A payments, yet declined to do so.

174. In light of the foregoing, on the evidence before me I am not satisfied that the actual (or at the very least perceived) conflicts arising in this case have been appropriately managed.

175. In such circumstances it is in my judgment open to the court to appoint additional conflict liquidators for the purpose of investigating potential claims. The court's s108 jurisdiction is engaged.

176. I reject Mr Deacock's submissions that, in light of the work already done by the Respondents, the advice already received by them from Brown Rudnick and the CIAR team, and the conclusions which the Respondents have already reached, the court should apply the higher threshold requirements of Wednesbury unreasonableness or bad faith applicable to a challenge under s168(5) before intervening: Re Edennote Ltd [1996] BCC 718. In this regard I note that a similar argument was made by the late Gabriel Moss QC in the case of Re Comet Group Ltd [2018] EWHC 1378 at [150e]. Addressing this argument, Sir Nicholas Warren said at [153]:

> 'it is not a hard and fast rule that the decision must be taken in bad faith or be one which no reasonable liquidator could have taken. For instance, if there was a clear and immediate conflict of interest between the liquidator and the company, that may well be a case where the court should interfere. Or if it is shown that a decision has been made without a proper investigation of

> the facts, that too might be an occasion for interference by the court'.

177. In the case of Re Comet, on the strength of legal advice which they had obtained, the liquidators had decided not to bring proceedings against the directors of the company or to challenge the validity of a given debenture. Unusually, the ICAEW had obtained their own legal advice on these issues and raised concerns with the liquidators that the advice which they had obtained was wrong. The liquidators then sought directions from the court under s112, joining the ICAEW as a respondent. During the course of the hearing it is clear that Warren J considered the competing advices and heard detailed submissions on the same. He concluded that the concerns raised by ICAEW were justified and that the advice obtained by the liquidators did not provide them with 'knock out answers' to those concerns [173]-[174]. He went on to conclude that an additional liquidator (a conflict liquidator) should be appointed to investigate the potential claims [176] and directed the liquidators to apply for the appointment of a conflict liquidator [186].

178. Whilst in this case the Respondents have failed to disclose the legal advice which they received, in my judgment there are nonetheless parallels between Re Comet and present facts. Here, as in Re Comet, the Applicant has raised legitimate concerns (including but not limited to the conclusions reached regarding the Creditor A payments) and from the summary of Brown Rudnick's advice in evidence, Brown Rudnick's advice does not provide the Respondents with 'knock out answers' to those concerns.

179. I would add that, for the reasons explored in Novalpina [2025] EWHC 54 (Ch) at [42]-[44], the fact that in Re Comet the issues initially arose in the context of a s112 application brought by the liquidators makes no material difference.

180. For all these reasons, I am satisfied that the court's jurisdiction under s108(1) to appoint a conflict liquidator is engaged.

181. The next question is whether the court should exercise its discretion to appoint conflict liquidators, having regard to all the circumstances of this case.

182. In my judgment, subject to appropriate undertakings regarding funding arrangements and protection against adverse costs orders being put in place, conflict liquidators should be appointed.

183. On the evidence before me, I am satisfied that if additional liquidators are appointed, there is a real prospect that they will be able to investigate and pursue claims for the benefit of the creditors as a whole or, at the very least, the unsecured creditors as a whole. Even leaving aside any other possible claims, on the evidence before me there is a strong prima facie case of preference in relation to the Creditor A payments. A successful preference claim against Creditor A, a well-resourced potential defendant, in respect of those payments will of itself increase the return to the Applicant from a few hundred thousand pounds to a sum exceeding £2m and other unsecured creditors will also see a corresponding significant increase in their respective returns.

184. In my judgment, the appointment of additional liquidators is in the best interests of the creditors as a whole. In this regard I reject Mr Deacock's argument that the

interests of the Applicant do not align with the interests of other creditors. It is no part of the Applicant's case that any additional liquidators appointed should be tasked with investigating or pursuing proprietary claims on behalf of the Applicant. The purpose of the appointment will be to investigate claims that will benefit the creditors (or at the very least the unsecured creditors) as a whole. The order appointing the office-holders will make that clear and, as licensed insolvency practitioners, the office-holders appointed can properly be expected to observe their duties to the Company and its creditors as a whole.

185. I also reject Mr Birch's assertions in his witness statement that the Applicant is unduly 'litigious' and that if additional office-holders are appointed the Applicant will cause them to 'ramp up costs'. I was taken to no substantiating evidence in support of such assertions. In my judgment it was entirely reasonable and proportionate for the Applicant to have brought the 2020 Proceedings, given the events which had occurred. As rightly observed by Mr Pickering, the initial allegation of fraud was rapidly dropped at an early stage and within a few short months the Applicant had successfully achieved summary judgment in the sum of $60 million. The CPR 71 application then issued by the Applicant on 7 July 2020 against Mr Best was an entirely rational and proportionate next step to take after judgment had been entered. The fact that it was ultimately not pursued was as a result of the supervening administration. I would add that the Applicant's repeated attempts to achieve a consensual appointment of conflict liquidators without the need for a fully contested application of themselves illustrate its reasonable and proportionate approach to litigation. I also remind myself of the guidance given by Norris J in Green v SCL Group [2019] EWHC 954 (Ch) at para 36(f):

> 'it is no objection that a liquidator is the choice of a person who is concerned to pursue the claims of the company through the liquidator'

186. With appropriate measures in place, the appointment should be cost-neutral to the creditors. The Applicant, a well-resourced bank, has already confirmed that it is willing to undertake to cover (i) all costs of the additional officeholders and their proposed further investigations; and (ii) all reasonable costs of the Respondents (and any other associated costs) incurred in keeping the liquidation open, such latter costs to be either agreed by the Applicant and Respondents or fixed by the court. To ensure that the Respondents have appropriate costs cover for this purpose, I shall direct the Applicant to pay a sum into court or provide such alternative security for such sum as the parties may agree. I will hear submissions on the appropriate sum on the handing down of this judgment. Subject to submissions, I consider the sum of £150,000 to be an appropriate starting point.

187. The objection raised by the Respondents that the Applicant is only offering to cover their 'reasonable' fees and costs is an unattractive argument, but in any event is in my judgment met by including in the order an appropriate mechanism for determination of such fees and costs by the court in the event that the parties are not able to agree.

188. I will also require the Applicant to offer an undertaking to indemnify (or arrange appropriate insurance cover for) the Company against any adverse costs orders made against it should proceedings be pursued.

189. The objections raised by the Respondents that the Applicant has delayed issuing this application (or as Mr Birch put it in his witness statement, that the Applicant is 'out of time' in bringing this application) must be seen in context. Both Mr Deacock and Mr Birch emphasised that the Company had gone into administration as long ago as 2020, pointing to the 5 years which have since elapsed. It was at the request of TACO, however, that the administration was kept open until 2023, to allow time for post-sale matters to be completed following the reconstruction. Responsibility for those three years in administration cannot be laid at the Applicant's door. Mr Deacock also complained that the Company had been in liquidation since 2023. Whilst it is right to acknowledge that the Applicant did not issue this application until 2024, it is clear from the evidence as a whole that the Applicant has repeatedly sought the Respondents' cooperation in arranging the consensual appointment of conflict liquidators but has met with flat opposition. When it was clear that there was no other option, the Applicant issued this application. The time that has elapsed since issue of the application has simply been a consequence of the time required to exchange evidence and listing considerations. The Applicant has prosecuted its proceedings with due expedition since 2024.

190. Any delay on the part of the Applicant in issuing this application is in any event only one factor of many for this court to consider in determining whether to grant relief. As rightly observed by Mr Pickering, the delay is not such as to negate the utility of further investigations, as no potential claims identified (such as the Creditor A preference claim) are yet statute-barred.

191. I would add that the Applicant is not solely responsible for the time that it has taken to secure the appointment of conflict liquidators. Having been alerted to the actual or perceived conflict by (at the very latest) July 2020 (see [38] above), it was at all times open to the Respondents to seek directions from the court under s112 *themselves*, as the liquidators did in Re Comet. Instead they have wrongly denied the existence of any actual or perceived conflict throughout, leaving it to a creditor to bring an application instead.

192. A further factor raised by the Respondents and by Mr Birch and Mr Mansell in their witness statements is the fact that the appointment of additional liquidators will delay final distribution and closure of the liquidation. I do take that into account and accept that Mr Pickering's suggestion of a further interim dividend in the meantime may be impracticable in practice. As rightly submitted by Mr Pickering, however, the jurisdiction to appoint additional office-holders under section 108(1) is a flexible jurisdiction and can be tailored to the needs of each case. The court can therefore put measures in place to minimise such delay, by making a time-limited appointment subject to further order, and requiring an updating report to court from the conflict liquidators partway such appointment, in order to ensure that progress is being made. Subject to further submission, I propose an initial appointment of 18 months and an updating report to court from the conflict liquidators at the end of April 2026. The additional liquidators will in any event have to act fast, given that certain limitation periods will expire in March/April 2026. If, following their initial investigations, they conclude that there are no viable claims, the appointment can be terminated earlier. The order can provide for this. One way may be via a s112 application brought by the additional liquidators and listed for hearing at or around the time of filing their updating report, but there may be other alternatives.

193. Any prejudice caused by such relatively minor delay, viewed in context, falls to be weighed against the benefits of a successful recovery. As previously noted, a successful preference claim against Creditor A will of itself involve significant recoveries and will materially increase the returns to all unsecured creditors.

194. I accept that the Majority Noteholders and the New Travelex Creditors oppose the appointment of additional liquidators. I have considered with some care the reasons put forward by in the witness statements of Mr Birch and Mr Mansell in support of their contention that additional liquidators should not be appointed and the reasons put forward by the Applicant in support of its contention that additional liquidators should be appointed. Having done so I am of the firm view that conflict liquidators should be appointed.

195. One fundamental difficulty with the position adopted by the New Travelex Creditors and the Majority Noteholders, as expressed in the witness statements of Mr Birch and Mr Mansell, is that it is in each case premised on the Respondents not being in actual or potential conflict in investigating potential causes of action open to the Company in relation to events over the Pre-Administration Period. For the reasons already explored, this is a false premise.

196. Mr Birch and Mr Mansell also maintain that the Respondents have already thoroughly investigated potential claims and have taken advice from Brown Rudnick and PwC's CIAR team. These points are addressed at [163] – [174] of this judgment.

197. Mr Birch and Mr Mansell also express concern about additional costs and delay. These issues are addressed at [186]-[193] of this judgment.

198. Mr Mansell also made the point in his witness statement that if the matter was put to vote, the Majority Noteholders would vote against.

199. I accept that, as a general rule, the views of majority creditors will ordinarily be given great weight. Those views are not, however, conclusive. The majority creditors do not have an 'absolute right' as to the choice of liquidator: Green v SCL Group [2019] EWHC 954 (Ch) at [36(b)].

200. In this regard I take into account the authorities summarised in Hanover v Hawkwing [2023] EWHC 407 (Ch) at [72]-[73], referred to at [114] – [121] of this judgment, on the approach to be adopted by the court in determining the weight to be attached to the views of creditors. Whilst the focus in Hanover was on whether to make an administration order or a winding up order, the guidance given in those authorities on the approach to adopt to creditors' views does in my judgment extend beyond that narrow remit.

201. Applying such guidance to the facts of the present case, in my judgment the New Travelex Creditors (whose debts total some £30.6m, ie 7% of unsecured claims) cannot be treated as independent creditors. They are closely associated with former management. They chose to express their views through the witness statement of Mr Birch, a former director of the Company who was named in PwC's engagement letter dated 18 March 2020 as a point of contact for the Travelex Group in the Pre-Administration Period and who is or has been a director of a number of other companies within that Group. In my judgment this affects the weight properly to be

afforded to the views of the New Travelex Creditors. I would add that, in any event, the debts owed to the New Travelex Creditors only represent 7% of unsecured claims, whilst the debt owed to the Applicant represents 11-12%.

202. In my judgment the Majority Noteholders (who are said to have expressed their views through the witness statement of Mark Mansell) cannot be treated as independent creditors either. They worked closely with PwC and with the management of the Group in formulating and then putting into effect the restructuring process. They have funded the administration and the liquidation of the Company and several other companies within the Travelex Group. Through TACO, they caused the administration of the Company to be extended twice. They have benefited from the administration and liquidation in that they (through TACO) now own and control the Company's business. In my judgment Mr Pickering is correct to observe that a significant proportion of these creditors may have a vested interest in there being no further investigations into the events of 2020.

203. As ultimate beneficial owners of TACO, the Majority Noteholders must also be taken to have caused, or at the very least permitted, the appointment of Roderick Suckling (a then current director of TL) and James Birch (a former director of the Company who was named in PwC's engagement letter dated 18 March 2020 as a point of contact for the Travelex Group in the Pre-Administration Period and who is or has been a director of a number of other companies within that Group) as directors of TACO on 6 August 2020, very shortly after TACO's incorporation on 21 July 2020.

204. On the evidence before me, whilst the Majority Noteholders are not 'connected creditors' as defined in s249 and s435 of the Act, they are in my judgment 'associated with the former management' of the Group including the Company and cannot on any footing be treated as 'independent outsiders', to adopt the term employed by Park J in Re Lummus Agricultural Services Ltd [1999] BCC 953 at 958. In my judgment this affects the weight to be afforded to the views of the Majority Noteholders.

205. In my judgment, of the creditors who have engaged with these proceedings, the only truly independent creditor is the Applicant. As confirmed in Re Palmer Marine Surveys Ltd (1985) 1 BCC 99,557 per Hoffmann at 99,562:

> 'creditors who are also shareholders or connected with the former management may have less weight given to their views than those who have no interest except in their capacity as creditors'

206. I accept that the Applicant is a lone voice in this matter, with no support from any other creditors. The isolated position in which the Applicant finds itself, however, must in my judgment be considered against the backdrop of the assignments taken by TACO of £25.6m of debts owed by the Company to other unsecured creditors in 2020/21. The remaining unsecured creditors have smaller debts and together represent approximately 1%, I am told.

207. Overall, I am satisfied that the Applicant's concerns are well-founded and worthy of proper investigation by conflict liquidators. Any potential prejudice by way of cost and delay can be addressed by the measures outlined in this judgment and is outweighed by the potential benefits to the creditors, which are significant.

208. I turn finally to the question of who should be appointed.

209. Mr Deacock argued that the Applicants' proposed appointees from GT were not suitable, as they would not be perceived to be independent by the other creditors. This was on the basis that they had been involved in advising the Applicant since 2023. In this regard reference was made to GT's first letter to PwC dated 16 March 2023, which opened as follows:

> 'Grant Thornton UK LLP has been engaged by [the Applicant] to advise them on the recovery options open to them as an unsecured creditor of the Company.'

210. Mr Deacock also reminded me of the views of the New Travelex Creditors, as expressed by Mr Birch in his statement, that GT were conflicted by virtue of the valuation report dated 6 August 2020 regarding the restructuring of the Travelex Group written by (others at) GT for GLAS SAS as security agent for the SSN noteholders. Whilst the report was for the security agent, a letter of reliance was issued to TL as well.

211. Mr Deacock went on to argue that, even if the court were minded to consider the appointment of additional liquidators, it was not necessary to appoint the Applicant's nominees. The court could instead consider whether the creditors should vote on the appointment of a different liquidator, he said, or invite the parties to name three other candidates for the court to select from.

212. Mr Pickering rejected the contention that the Applicant's proposed nominees were in any way conflicted simply by virtue of their instruction by the Applicant since 2023.

213. Mr Pickering also argued that Mr Birch's objections to officeholders from GT being appointed, on the grounds of conflict, were misplaced. The mere fact that a different department of GT had prepared a valuation report dated 6 August 2020 regarding the Group reconstruction, he argued, did not of itself give rise to a conflict. No one was suggesting the valuation advice was wrong. The difference in PwC's case, he maintained, was that the very transactions that need investigation took place during the Pre-Administration period, when PwC were advising the Group and the same and/or overlapping individuals from PwC were involved.

214. Mr Pickering invited the court to reject Mr Deacock's fall-back position of letting the majority creditors choose the identity of any conflict liquidator appointed, arguing that if that route was adopted, 'we would never hear anything more'. He contended that, other than 1% or so of smaller creditors, who had not played an active part, the Applicant was the only independent creditor. He invited the court to appoint the Applicant's nominees.

215. Having considered the evidence before me and the submissions made on this issue with some care, I have concluded that Nicholas Nicholson and Robert Starkins of GT should be appointed as conflict liquidators for the purpose of investigating potential claims.

216. I reject Mr Deacock's submission that Mr Nicholson and Mr Starkins are not suitable for appointment on the ground that they would not be perceived to be independent by

other creditors as they had advised the Applicant since 2023. This appears to be a counsel-led submission. Neither Mr Banfield (on behalf of the Respondents) nor Mr Mansell (on behalf of the Majority Noteholders) raise it in their evidence. Mr Birch does not raise it in his evidence either. Mr Birch raises a discrete point of conflict, relating to a valuation report dated 6 August 2020 prepared by a different department of GT, which is addressed at [221] below.

217. Dealing first with Mr Deacock's point on conflict: whilst it is correct to state that GT has been instructed by the Applicant since March 2023 'to advise on the recovery options open to them as an unsecured creditor of [the Company]', in my judgment that of itself does not give rise to a conflict, whether actual or perceived. I would add that, even if it did, in my judgment any such conflict would be more than adequately managed by the proposed delineation of Mr Nicholson and Mr Starkin's role, coupled with the continuation in office of the Respondents as fellow office-holders: Re TPS Investments (UK) Limited [2018] EWHC 360 (Ch) at paras [34]-[37].

218. GT's opening letter to PwC dated 16 March 2023 was focussed on getting a better understanding of the investigations carried out by PwC into potential claims the Company may have and the reasons for their conclusion that there were no viable claims to pursue. GT's focus in correspondence thereafter moved very swiftly to exploring the appointment of conflict liquidators. As early as 5 May 2023, GT emailed the Respondents to confirm that the Applicant wanted partners from GT to be appointed as additional officeholders to carry out further investigations. From the correspondence in evidence, the focus appears to have been on achieving that aim ever since.

219. Even if GT have at any stage explored any other recovery options with the Applicant, in the current context their role as conflict liquidators will be delineated by the terms of their appointment. As conflict liquidators they will be tasked with investigating potential claims the Company may have. They will also not be the sole appointees. The Respondents will continue in office.

220. For all these reasons, I reject Mr Deacock's submission that Mr Nicholson and Mr Starkin are not suitable appointees.

221. Turning next to Mr Birch's objection to the Applicant's nominees: in my judgment the mere fact that a different department of GT prepared a valuation report dated 6 August 2020 regarding the Group reconstruction does not give rise to a conflict. The valuation advice post-dates the Company's entry into administration and is not in issue. The focus of the investigations which the conflict liquidators will be tasked with relate to potential claims arising during the Pre-Administration Period.

222. I reject Mr Deacock's fall-back position of letting the majority creditors choose the identity of any conflict liquidator appointed. For reasons previously explored, in my judgment the only truly independent creditor actively engaged in these proceedings is the Applicant. The majority creditors have had ample opportunity to appoint conflict liquidators already. They do not perceive the need for any such appointment. Plainly the task cannot be left to them.

223. For similar reasons, I reject Mr Deacock's suggestion that the parties are left to come up with three alternative candidates for the court to choose from. The Applicant has

been seeking the consensual appointment of conflict liquidators for several years now. The Respondents have consistently opposed any such appointment. Limitation periods for certain potential claims will expire very shortly. It is essential that the conflict liquidators are appointed without any further delay.

224. As confirmed by Norris J in Green v SCL Group at para 36(a), the fundamental question is what will be conducive to both the proper operation of the process of liquidation and do justice as between all those interested in the liquidation.

225. In my judgment the appointment of Mr Nicholson and Mr Starkins of GT as conflict liquidators will achieve those purposes. They are ready willing and able to act and have the benefit of assured funding from the Applicant. As highly experienced office-holders, they will bring the expertise of GTUK's insolvency and assets recovery department to assist with independent investigations into potential claims. Their familiarity with this insolvency through their correspondence with PwC since 2023 will also enable them to move fast.

Conclusion

226. For all these reasons, subject to appropriate undertakings regarding funding arrangements and adverse costs protection being put in place, I shall appoint Mr Nicholson and Mr Starkins of GT as conflict liquidators.

227. I shall hear submissions on any consequentials on the handing down of this judgment. Parties should endeavour to agree a draft order.

ICC Judge Barber