



**Neutral Citation Number: [2026] EWHC 1636 (Ch)**

**Case No: CR-2023-002929**

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES**  
**INSOLVENCY AND COMPANIES LIST**

**IN THE MATTER OF CROSS TRANSPORT LTD (IN ADMINISTRATION)**  
**AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

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

**Date: 30 June 2026**

**BEFORE ICC JUDGE JONES (Sitting in Retirement)**

**BETWEEN**

**(1) RICHARD HUNT**

**(2) DAVID KEMP**

**(IN THEIR CAPACITY AS JOINT ADMINISTRATORS OF CROSS TRANSPORT  
LTD)**

**Applicants**

**Before :**

**I.C.C. JUDGE JONES**

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**Mr Matthew Moriarty (instructed by Circle Law LLP, Solicitors ) for the APPLICANTS**

**Hearing date: 18 June 2026**

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**Approved Judgment**

This judgment was handed down remotely at 10.30am on 30 June 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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**I.C.C. JUDGE JONES**

**I.C.C. Judge Jones (sitting in retirement):**

**A) Paragraph 64A (“Paragraph 64A”) of Schedule B1 to the Insolvency Act 1986 (“the Act”)**

1. **Paragraph 64A** came into force from 26 June 2020 as inserted and substituted by **Sch. 3, para 31 of the Corporate Insolvency and Governance Act 2020 (“the 2020 Act”)**.

It applies where a company enters administration before the end of 12 weeks beginning with the day after the end of a moratorium (“Moratorium”) under **Part A1 of the Act**.

It provides as follows (my underlining for emphasis):

1. *This paragraph applies where a company enters administration before the end of the period of 12 weeks beginning with the day after the end of any moratorium for the company under Part A1.*
  2. *The administrator must make a distribution to the creditors of the company in respect of*
    - a. *moratorium debts (within the meaning given by section 174A), and*
    - b. *priority pre-moratorium debts (within the meaning given by section 174A).*
  3. *A sum payable under sub-paragraph (2) is to be paid in priority to*
    - a. *any security to which paragraph 70 applies or paragraph 115(1) applies;*
    - b. *any sums payable under paragraph 99.*
  4. *The administrator must realise any property necessary to comply with sub-paragraph (2).*
  5. *The rules may make provision as to the order in which the moratorium and priority pre-moratorium debts rank among themselves for the purposes of this paragraph in a case where the assets of the company are insufficient to meet them in full.*
2. As to the meaning of “moratorium debts” and “priority pre-moratorium debts”: **Paragraph 64A** refers to their definitions within **section 174A of the Act** which defines “moratorium debt” by reference to **section A53 of the Act** and itself defines “priority pre-moratorium debt”. Whilst those definitions are far more nuanced, it is sufficient for this judgment to use the term “the Protected Moratorium Creditors” to mean (albeit as a general summary): the creditors of debts/liabilities (“the Protected Moratorium Debts”) that have been incurred for the during the Moratorium, or before

the Moratorium and for the purposes of the Moratorium whether the company became liable for them before or after the Moratorium began, as more particularly defined by *section 174A of the Act*.

**B) The Problem Identified by the Application**

3. *Paragraph 64A* applies to Cross Transport Ltd (“the Company”):

- i. On 23 March 2023, the High Court approved the placing of the Company into a Moratorium pursuant to *section A3 of the Act*.
- ii. The Company incurred Protected Moratorium Debts totalling £643,437.57.
- iii. It entered administration following a notice of intention to appoint administrators given by Pulse Cashflow Finance Limited, a qualifying floating charge holder, on 5 June 2023 within the 12 week period after the Moratorium had ceased.
- iv. Pulse has been paid in full (the precise justification for this is unclear bearing in mind the provisions of *Schedule B1 to the Act* concerning distributions but that is not an issue for this application).
- v. The remaining assets consist of cash in the region of £110,000 and potential litigation claims (“the Litigation”): Proceedings were issued on 9 February 2024 claiming some £156,000 plus interest and relying upon *sections 212, 238 and 239 of the Act* (“the Existing Litigation”); there are also potential claims being investigated for the repayment of loans exceeding £1 million (“the Loan Litigation”).
- vi. HMRC is not only a Protected Moratorium Creditor but also the sole preferential creditor of the administration for a potential sum in the region of £725,782. No return is expected for the unsecured creditors. The

administrators explain in evidence that in practice the administration is being “run principally for the benefit of HMRC as preferential creditors (subject to the moratorium debts ...)”.

- vii. It is apparent, therefore, that the Litigation needs to be successfully pursued if the Protected Moratorium Creditors are to be paid in full or receive a significant return. The Existing Litigation will not achieve this on its own. Similarly, if HMRC is to receive a distribution as the preferential creditor.
  
4. Pursuit of the Litigation depends upon litigation funding. The current, and for the Loan Litigation, potential funder is Pythagoras Capital Limited. It has indicated that funding for the Existing Litigation will be withdrawn and the Loans Litigation will not be funded if it cannot be guaranteed to recover its funding under its funding agreements to the extent that the Litigation is successful because of the priority given by **Paragraph 64A** to the Protected Moratorium Creditors.
  
5. Their concern arises from the requirement of **Paragraph 64A** that the Protected Moratorium Creditors “must” be paid first. If that is to occur, and if the Litigation does not produce successful returns above the total of the Protected Moratorium Debt, there will be nothing left for the Funders or, indeed, for the payment of any other expenses or contractual liabilities of the administration including the Administrators’ remuneration. The evidence is that if the Funders will not lend, the Litigation will not be pursued.
  
6. Mr Moriarty, counsel for the Administrators, the Applicants, draws attention to the recognition of this potential problem in Kerr & Hunter “on Receivers and Administrators”, 22nd Ed., paragraph 26. It’s footnote 27 opines:

*“This may give rise to difficulty where it is not clear that there will be sufficient free assets to pay both the moratorium and pre-moratorium creditors and the cost of realising those assets. In particular, where the only assets from which a distribution may be made will require significant expenditure, for instance on litigation), there is a clear tension between the mandatory language of Sch.B1 para.64A(4) and the general rule that an office-holder is not expected to fund expenses such as litigation personally”.*

7. The Administrators have issued their application for directions pursuant to **Paragraph 63 of Schedule B1** to ask the Court to direct that the costs and expenses (including, for the avoidance of doubt, legal costs and expenses) incurred in pursuing the Litigation can be paid from the fruits of the Litigation prior to payment of any other creditors (including, for the avoidance of doubt, the Protected Moratorium Debts).
8. It is to be noted that the Administrators have made various proposals to the Protected Moratorium Creditors and asked for agreement to the following: that expenses of the administration totalling £14,362.71, which have already been paid by the Administrators, have priority over the Protected Moratorium Debts; They should be authorised to: draw £50,000.00 on account of their time costs incurred to date totalling £130,839.50 (leaving a shortfall of circa £80,000.00); and to retain the sum of £26,640.89 in order to discharge any further outstanding time costs and expenses, particularly, legal costs and expenses associated with pursuing the claims identified; the remaining balance of £40,000.00 shall be paid in partial discharge of the Protected Moratorium Debts which is likely to amount to 6p in the £; and they will ring fence proceeds realised from its investigations and a further proposal will be sought

upon the conclusion of the Administrators' efforts at realising the claims identified from their investigations.

9. Whilst the proposal did not specifically address the Litigation's funding, the absence of response except for and to the extent of rejection by HMRC has added to the Administrators' belief that the Court's directions are required. The Protected Moratorium Creditors and HMRC as preferential creditor have taken no part in this application. I am satisfied, however, that they have been given notice and been served with documents giving them the opportunity to participate.

#### **C) Submissions**

10. Most helpfully and constructively Mr Moriarty submitted (in summary):
  - i) The Protected Moratorium Creditors and HMRC as a preferential creditor had nothing to lose and all to gain if the relief sought was granted. If the Litigation was successful, there should be more net realisations to distribute. If unsuccessful, it would be the funders who would bear the costs.
  - ii) It was wrong in principle for an administrator to have to carry out the duties of their office without remuneration and bearing the expenses except to the extent that they chose voluntarily to accept that risk.
  - iii) The payments should be permitted because they fulfil the requirements of *Paragraph 13 of Schedule 1 to the Act*, being necessary and incidental to the administrators' functions. *Paragraph 64A* does not prevent or impinge upon the carrying out of those functions except to the extent that the administrators have a further duty to consider, namely the payment of the Protected Moratorium Creditors at such stage and in such amount that should prove to be appropriate.

- iv) Alternatively, there is an equitable principle that an office holder can permit recoveries from litigation to be paid first to defray the costs of that litigation and this should be applied (see *Katz v McNally* [1997] BCC 784, [1997] 2 B.C.L.C. 579).
- v) In the further alternative the Court should exercise its inherent jurisdiction to permit office holders to depart from the legislative requirements which arise, as here, when it is convenient, economical and sensible management of the company's affairs for the purposes of the relevant insolvency regime (see *Re Advent Computer Training Ltd* [2010] EWHC 1042 (Ch), [2011] BCC 52).

#### **D) Initial Points**

- 11. I should next make the following points ("Initial Points") concerning the application to which I will return when setting out my decision:
  - i) The application is not a quasi-Beddoe application – I am not asked to consider the specifics of the intended litigation or to address the administrators' decision to pursue the Litigation if funding can be obtained.
  - ii) I am asked to decide the application more on the basis of principle than practice in the sense that the application could effectively concern any litigation for any quantum, with any amount of costs/expenses, with any form of merit and irrespective of the potential for recovery. For example, I do not know whether there are funders who may offer preferable terms, whether there are other options, or whether HMRC might wish to consider funding the litigation etcetera.

#### **E) Discussion – The Statutory Schemes and Other Specific Provisions**

12. Following standard approaches to statutory construction, it is necessary to consider the meaning of *Paragraph 64A* within the context of the statutory Moratorium and Administration Schemes and with specific reference to other relevant, connected statutory provisions particularly with reference to their treatment of creditors.
13. Moratoriums are entered under *Part 1A of the Act* by financially distressed companies to obtain a short “breathing space” of protection from creditors to enable development/implementation of a restructuring plan for rescue as a going concern (as also introduced by *the 2020 Act*) or to enable the injection of new funds. Whilst the directors are still in control, they must co-operate with “the Monitor” who oversees viability. Creditors will be subject to statutory stays so that, without the Court’s permission, they cannot (in summary): start/continue legal proceedings; exercise rights of re-entry; enforce security (with limited exceptions); or exercise rights of repossession under hire purchase or retention of title agreements. In addition, winding-up petitions may not be presented and an administration or CVA can only be initiated with Court permission. Furthermore, suppliers cannot terminate contracts solely because of the moratorium.
14. During the Moratorium the company must pay the following debts as they fall due and the monitor must terminate the moratorium if they are not paid: the monitor’s remuneration or expenses; goods or services supplied during the moratorium; rent in respect of a period during the moratorium; wages or salary arising under a contract of employment relating to the timescale of the moratorium; redundancy payments falling due before or during the moratorium; or debts or other liabilities arising under a contract

or other instrument involving financial services as further detailed (“the Specified Moratorium Debts”). The moratorium will last for 20 business days subject to extensions of a further 20 business days if the directors so decide, of up to 12 months with creditor consent and any length the Court orders.

15. Therefore, as a broad-brush analysis, a Moratorium is intended to achieve but will not necessarily achieve a solution to the problems causing financial distress and to do so whilst the Specified Moratorium Debts are paid. However, the Protected Moratorium Debts do not receive any statutory protection such as security over the assets of the company if they are unpaid. The consequence will be termination of the Moratorium.
16. Should that occur, and if an administration follows, the statutory provisions applicable to the administration will determine the rights and priorities of creditors including the Protected Moratorium Creditors. On the face of it, therefore, payment of the Protected Moratorium Debts is intended to take place in the context of and according to the statutory requirements of the administration and without interference with its process except to the extent that the statutory provisions that apply to administrations provide otherwise.
17. An administrator is appointed to achieve one of the statutory purposes of an administration. They take over control of the company from the directors. For the purposes of implementation and operation the administrator will appreciate that ***section 175 of the Act*** will apply. Namely (in summary), subject to the Protected Moratorium Debts, the statutory waterfall for payment is: expenses of the administration; below them the ordinary preferential debts; then the secondary preferential debts; and finally,

the ordinary unsecured creditors (although their payment depends on compliance with *Paragraph 65 of Schedule B1 to the Act* (“*Paragraph 65*”).

18. *Paragraph 64A* is part of several amendments introduced by *the 2020 Act* which have for the first time expressly provided for a distribution by administrators to pre-administration, unsecured creditors. Whilst the Court has permitted payments to such creditors in certain exceptional circumstances, the general rule was that such a distribution would be outside the administrator’s powers because it was not necessary or incidental to the administrator’s functions as required by the power to make payments conferred by *Paragraph 13 of Schedule 1 to the Act* (see *Re The Designer Room Ltd* [2004] EWHC 720 (Ch), Rimer J.).
19. *The 2020 Act* changed this by inserting *Paragraph 64A* and by also providing within *Paragraph 65* that (subject to the application of *sections 175* concerning the payment of preferential creditors as defined by *section 386(1) and Schedule 6 to the Act* – and *section 176AZA of the Act* for financial institutions) a distribution can be made to any creditor if the company has sufficient assets to enable payment in full under *Paragraph 64A* and the distribution is made under *section 176A(2)(a) of the Act (the prescribed part provision)* or with the permission of the Court.
20. As a result of *Paragraph 65*, there is no longer a need to place the company into liquidation upon discharge of the administration to achieve a distribution. Administrations can operate as quasi-liquidations with administrators determining proofs of debt applying *the Insolvency Rules 1986, rules 14.26-14.44*. Administrations can move from administration to dissolution

under *Paragraph 84. The 2020 Act* also provides, within *Paragraph 66 of Schedule B1 to the Act* (“*Paragraph 66*”), a power for an administrator to make any payment even though it does not fall within *Paragraph 65* or *Paragraph 13 of Schedule 1 to the Act* provided “the debts and other liabilities payable under *Paragraph 64A* have been met”.

21. Nevertheless, it remains the position, subject to construction of the express wording of *Paragraph 64A*, that there is no express statutory obligation to pay the expenses of the administration, the contractual liabilities attributable to its operation or the debts existing when the administrators were appointed. It is for this reason that *Paragraph 99 of Schedule B1* continues to be necessary. It provides protection (in summary) when a person ceases to be the administrator (whether because of resignation, death or otherwise or because of removal from office or because the appointment ceases to have effect) by the creation of statutory charges to secure the following liabilities in the following order of priority:
  - i) first, debts or liabilities arising from contracts entered into during the administration by the vacating administrator or their predecessor;
  - ii) second, the vacating administrator’s and any predecessor’s remuneration and the administration expenses;
  - iii) third, debts secured by a floating charge to the extent of that security (as set out in *Paragraph 70 of Schedule B1 to the Act*).
  
22. It is important to note, however, that the absence prior to the amendments of the 2020 Act of any obligation to make payment to those creditors did not mean that remuneration, expenses and contractual debts and liabilities arising during the

administration could not be paid. The Court has accepted that the power to pay exists out of necessity for the administration to operate. Expenses and contractual liabilities will often have to be paid to enable the administration to progress to achievement of its purpose. The administrator often has to pay and should also be able to take their appropriate remuneration if required (applying by analogy *Re Paramount Airways Ltd (No.3)*, *Powdrill v Watson* [1994] BCC 172 and *Re Salmat International Ltd, Spring Valley Properties v Harris* [2001] BCC 796 as applied to the preceding provision, *section 19(4) of the Insolvency Act 1986* and *Re MK Airlines Ltd, Katz v Bradney* [2012] EWHC 1018 (Ch), [2014] BCC 87). **Paragraph 99**. This is plainly relevant to the problem in hand and to the construction of **Paragraph 64A**.

**F) Construction of Paragraph 64A**

23. Taking into consideration the matters discussed above, I reach the following construction:

- i) The starting point for construction is the clear, obligatory wording of **Paragraph 64A**. The “must” obligation to pay the Protected Moratorium Debts confers upon the Protected Moratorium Creditors a “super priority” over the other creditors in an administration (as described by the editors of the 2026 edition of “Insolvency Legislation, Annotation and Commentary”, Doyle, Keay and Curl).
- ii) However, super-priority does not equate to absolute entitlement to pre-payment. The concept that super-priority will prevent any payment of administration costs, contractual liabilities or remuneration by administrators in fulfilment of the purpose of the administration, their functions and duties before the Protected

Moratorium Debts are paid is absent from the express wording of *Paragraph 64A*.

- iii) The position would be different if, for example, *paragraph 64A* expressly required the assets of the company existing when the administration starts to be ring-fenced for payment to the Protected Moratorium Creditors. It does not.
- iv) In addition, it would be “absurd” to imply such a construction. Absurd because it would paralyse the administration until the Protected Moratorium Debts are paid in full or at least to the extent of the realisation of the company’s existing assets. It would open the scenario for the failure of the administration. For example, (as here) preventing the recovery of monies owed whether through negotiation or litigation or by taking steps that will increase the value of the assets through the management of the company under the administrators’ rescue proposals; all of which would normally be expected to require the payment of the expenses and resulting contractual liabilities of the administration.
- v) Indeed, it is difficult to envisage how the existing assets would be realised if their current value were less than the total Protected Moratorium Debt unless there can be prior payment of the expenses of realisation including remuneration for the administrators. No one is going to work for free.
- vi) As a result, it is to be implied that the obligation to make payment of the Protected Moratorium Creditors is to be made in the context of fulfilling the purposes of the administration by the administrators’ performance of their duties and functions in accordance with the purpose of the administration.
- vii) That is consistent with a statutory scheme for Moratoriums that does not itself provide security for the Protected Moratorium Debts but only provides for termination for nonpayment leaving their recovery to occur in the process of the

ongoing administration should one follow within the 12-week prescribed timeframe.

- viii) Performance by the administrators of their duties and functions will normally include payment of expenses, accruing contractual liabilities and remuneration insofar as the administrators decide that such payment is a proper exercise of their functions and powers to achieve the purpose of the administration but, because of *Paragraph 64A*, in reaching such decisions they will also need to take into consideration the obligation to fulfil the “must” duty to pay the Protected Moratorium Debts as a super priority liability.
- ix) Therefore, *Paragraph 64A* preserves the administrator’s ability to manage the company pragmatically while respecting the elevated status of Protected Moratorium Debts.
- x) The administrator must adopt the same approach when applying the express duty within *paragraph 64A* to realise any property necessary to fulfil the payment duty. That also requires a decision whether and when to realise the property.
- xi) Normally payment of administration expenses, accruing contractual liabilities and remuneration will be for the ultimate benefit of the administration and, in consequence, will be anticipated to achieve a larger return for creditors. That being so, it will normally benefit the Protected Moratorium Creditors because of their super priority. However, there may be circumstances when the administrators decide otherwise.
- xii) For example, if the administrators decide that the risk of not achieving a positive return is too high from the perspective of the interests of the Protected Moratorium Creditors to justify expenditure which will require prior repayment.

The administrators may decide it best for the purpose of fulfilling the *Paragraph 64A* duty to avoid such expenditure if it will require payment before the Protected Moratorium Creditors can be paid. They may consider it right to preserve and realise the current value of the assets for the purpose of fulfilling the obligation to pay the Protected Moratorium Debts in super priority. Whether that is so, will depend upon the facts and circumstances and be a decision for the administrator while exercising their functions and powers.

- xiii) Insofar as the Protected Moratorium Creditors are not paid and the cessation of appointment provisions of *Paragraph 99* apply and/or there is any security to which *Paragraph 70* applies (or for Scotland, paragraph 115(1)), the payment that “must” be made to the Protected Moratorium Creditors under *Paragraph 64A* will have priority over the statutory charges.
- i. Those conclusions have particular support from the following facts and matters:
  - ii. There is no wording within *Paragraph 64A* setting any date, time or circumstance when the payment “must” be made. Payment is a duty for the administrator and a right for the Protected Moratorium Creditors but it is to be implied by necessity that the duty must only be performed to the extent that payment can be made and only when the administrator considers it right to make payment taking into consideration the purpose of the administration, their functions, powers and duties including the duty imposed by *Paragraph 64A*.
  - iii. That construction is entirely consistent with the approach taken to the construction of *Paragraph 99* as detailed above in sub-section (E). Whilst the following explanation of Blackburne J. in *Re Salmat* (above) applies specifically to what is now *Paragraph 99*, previously *section 19(4) of the Act*,

it can equally be applied to *Paragraph 64A* substantiating the conclusion that the same approach to construction should apply:

“Many an administration would be quite impossible if expenses could only be discharged out of the company's property at the time that the administrator ceases to act. In my view, its purpose is to make clear that when the administrator leaves office he will be entitled to deduct his (undrawn) remuneration and pay any expenses properly incurred by him (but not hitherto provided for) out of any property of the company in his custody or under his control in priority to the floating charge holder's rights. It is necessary so to provide because a person may cease to be all administrator before his remuneration has been drawn and any expenses properly incurred by him have been paid.”

- iv. Similarly, the words of Dillon LJ in *Re Paramount Airways Ltd (No 3)* (above), which refer specifically to sums payable in respect of debts or liabilities under contracts entered during the administration) as quoted by Blackburne J. in *Re Salmat* (above):

“Although strictly sums payable are, under s. 19(5), only payable when the administrator vacates office, it is well understood that administrators will, in the ordinary way, pay expenses of the administration including the salaries and other payments to employees as they arise during the continuance of the administration. There is no need to wait until the end, and it would be impossible as a practical matter to do that. What is picked up at the end are those matters which fall within the phrase, but have not been paid.”

- v. That consistency sustains the point that Parliament would have expressly excluded payment of administration expenses, contractual liabilities and remuneration before payment of the Protected Moratorium Creditors had that been the statutory intention of *Paragraph 64A*.
  
- vi. In addition, the contrary construction preventing such payments before payment of the Protected Moratorium Creditors would be inconsistent with the general rule that an office-holder is not expected to fund expenses (including litigation) personally (*Seear v Lawson (No.1)* (1880) 15 Ch. D. 426 at 433 and *Patley Wood Farm LLP v Kicks* [2022] EWHC 2973 (Ch); [2023] B.P.I.R. 507 at [40] (subsequently reversed, but the Judge's summary of the law was not criticised)). The administrators should be able to receive their remuneration for the work being carried out in accordance with their functions, duties and powers.

## **G) Decision**

- vii. Applying that construction, it is clear the administrators have power to enter a funding agreement(s) for the Litigation which will require payment to the funders ahead of the Protected Moratorium Creditors should that accord with the purpose of the administration, their functions and their duties. As presented in general terms within their application, the fact that the result can at worst not adversely affect the duty to pay the Protected Moratorium Creditors and at best will increase the realisations available for distribution to them means their decision accords with that construction.

- viii. However, I cannot go further than that because of the Initial Points. Whether it is a decision they should make on the facts and in the circumstances applying the proper approach to the construction of *Paragraph 64A* remains a decision for them in accordance with their functions, powers and duties.
- ix. I do not consider it necessary or appropriate to address the alternative arguments when they stem from assumptions that the construction of *Paragraph 64A* is different. However, I note that the outcome of a contrary construction would be potentially detrimental to the Protected Moratorium Creditors as presented to me. That being so, the alternative option presented by the Court's inherent jurisdiction would appear attractive (noting the words of Lloyd LJ in *Donaldson v O'Sullivan*, [2009] 1 WLR 924 as applied to bankruptcy at [41] in addition to *Re Advent Computer Training Ltd* (above)). Unsurprisingly, however, Parliament has not left the need for that option to be applied.

Order Accordingly