

**EASTERN CARIBBEAN SUPREME COURT
BRITISH VIRGIN ISLANDS**

**IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION**

CLAIM NO. BVIHCM 2010/0138

BETWEEN:

[1] **REDHOUSE HOLDINGS LIMITED**
[2] **BRITISH CARIBBEAN BANK LIMITED**

Applicants

and

[1] **CHRISTOPHER D. JOHNSON**
[2] **JOHN J. GREENWOOD**
(as joint liquidators of Oxford Ventures Limited)

Respondents/Applicants

Appearances:

Mr. Christopher Parker, QC, with him Miss Arabella di Iorio and Mr. Shane Quinn for the Applicants

Ms. Nicole Sandells, QC, with her Mr. Shaun Reardon-John for the Respondents/Applicants

2020: July 1;
December 2.

JUDGMENT

[1] **WALLBANK, J. (Ag.):** This is the judgment of the Court in respect of two applications. The first is an application filed by the Applicants on 1st April 2019 seeking an order terminating the liquidation of Oxford Ventures Limited ('OVL') or removing one of the two Joint Liquidators ('JLs'), Mr. Christopher D. Johnson ('Mr. Johnson'). The JLs are the Respondents to that application. The second is an application filed by the JLs on 26th April 2019 for retrospective sanction in respect of legal proceedings they have undertaken in the Turks and Caicos Islands ('TCI').

- [2] The Court finds that it is not able on the evidence currently before it to decide whether or not to terminate the liquidation and it will provide an opportunity for such evidence to be filed. The Court finds that it is desirable to order the removal of Mr. Johnson as a liquidator of OVL with immediate effect, due, primarily, to a fundamental loss of confidence that Mr. Johnson will discharge his duties as a Court appointed liquidator in this liquidation to the required standards of candour and impartiality. The Court also finds that whilst the JLs of OVL should have retrospective sanction in respect of a Second Recognition Order (as described and defined further below), it is not able on the evidence currently before it to decide whether or not to grant retrospective sanction in respect of other aspects and it will provide an opportunity for such evidence to be filed.

Main dramatis personae

- [3] For convenience I will refer to the Applicants in the first application as ‘the Applicants’ and to the JLs as ‘the Respondents’, even though the Respondents are also Applicants in respect of their own retrospective sanction application.
- [4] OVL is a company that was incorporated in the Territory of the Virgin Islands (‘BVI’). It is now in liquidation. This judgment concerns an application by two parties who claim a sufficient interest in doing so to end the liquidation and/or to remove one of the two Court appointed liquidators, Mr. Johnson.
- [5] Both Applicants are related to OVL. There are at least two other companies involved which were or are also related to OVL. These are Hadsphaltic International Limited (‘Hadsphaltic’), a Cayman company, and Johnston International Limited (‘JIL’). JIL is a TCI company. Both Hadsphaltic and JIL are subsidiaries of OVL. They too are in liquidation.
- [6] OVL is a holding company, with a number of subsidiaries. These subsidiaries operated in construction, land development, the hotel industry and investment holding companies.
- [7] The First Applicant, Redhouse Holdings Limited (‘Redhouse’), is a member of OVL. Redhouse was incorporated in Belize. It too was a holding company. It was owned by a Mr. Allan Forrest, a former Chief Executive Officer of OVL. Mr. Forrest is now deceased. Redhouse claims to be a creditor of OVL, on the basis that it considers that OVL owes Redhouse

US\$724,664 plus interest in respect of certain preference shares. Redhouse puts the amount it claims it is owed by OVL at about US\$1.77 million, as at 31st March 2019.

- [8] The Second Applicant, British Caribbean Bank Limited ('BCB'), is a company licensed to operate as a national and overseas bank in the TCI. It brought this application as a creditor of OVL, but subsequently accepts that it should not be treated as a creditor for the purposes of its application. The Respondents contend that the ultimate holding company of BCB is a company called Waterloo Investment Holdings Limited ('WIHL').
- [9] The Respondents contend that a majority shareholder in WIHL is a gentleman whom Mr. Johnson curiously refers to as 'Mr. Michael Ashcroft ("Lord Ashcroft")'. 'Mr.' and 'Lord' are, of course, honorifics, with 'Lord' being proper to a higher temporal social rank than 'Mr.' I understand this gentleman's current title is not 'Mr.' but 'Lord'. I will therefore refer to him as 'Lord Ashcroft'. In doing so, it must be stressed that a man's title carries no privilege in the eyes of the Court. All are equal before and are subject to the Law.
- [10] I do not think it was out of ignorance that Mr. Johnson decided to refer to Lord Ashcroft as 'Mr.' Mr. Johnson is a senior accountant, with an adept turn of phrase. Rather, it is unmistakably clear from the evidence that Mr. Johnson has a particularly low regard for Lord Ashcroft.
- [11] The Respondents, and in particular, Mr. Johnson, consider that Lord Ashcroft is the moving spirit behind all these companies, whether as the real underlying beneficial owner or their real controller. I say 'in particular, Mr. Johnson', because his joint liquidator, who is currently Mr. Greenwood, has remained largely mute. It is Mr. Johnson who has had primary conduct of the liquidation.
- [12] Mr. Johnson's case is that the real reason behind this application is that Lord Ashcroft wants to rid himself of Mr. Johnson's investigations into his (Lord Ashcroft's) off-shore corporate structures, something which Lord Ashcroft portrays as harassment.
- [13] Lord Ashcroft's son, Mr. Andrew Ashcroft, can also be introduced here. Mr. Johnson informs the Court that Mr. Andrew Ashcroft is a former Managing Director of BCB. Mr. Johnson refers to Mr. Andrew Ashcroft as Mr. Ashcroft Jr., clearly as part of his insistence upon referring to

Lord Ashcroft as 'Mr. Ashcroft'. I will refer to Mr. Andrew Ashcroft as 'Mr. Ashcroft', without the 'Junior'.

- [14] It warrants stating here also that, so Mr. Johnson informs the Court, JIL and BCB had their offices in the same building in the TCI. Mr. Johnson accuses BCB of attempted obstruction to the orderly liquidation of JIL, and now also the liquidation of OVL. Mr. Johnson says that many of OVL's records, audit papers and computer servers were located in the offices of JIL, which were in turn located within the premises of BCB in the TCI.

BACKGROUND

Mr. Johnson and Mr. Greenwood

- [15] We can pick up the story on 22nd November 2010. On that date, OVL was placed into insolvent liquidation by this Court upon the application of Hadsphaltic. Hadsphaltic was acting in that application by its joint liquidators, who were Mr. Johnson and a Mr. Russell Smith. I am told that Mr. Smith resigned in October 2011, leaving Mr. Johnson as Hadsphaltic's sole liquidator. Hadsphaltic claimed that OVL owes it a substantial sum of money. Mr. Johnson's account swings between a figure of around US\$4 million and US\$25 million. The reason(s) for such a wide disparity are not apparent. Nonetheless, this Court must have been satisfied that OVL owed Hadsphaltic a sufficient amount to make a winding-up order.
- [16] This Court appointed Mr. Johnson as one of two joint liquidators over the estate of OVL. The other liquidator was an insolvency professional with Baker Tilly (BVI) Limited ('Baker Tilly'). That gentleman was voluntarily replaced on 2nd August 2018 by the Second Respondent, Mr. John J. Greenwood, the Managing Director of Baker Tilly.
- [17] Mr. Johnson took the lead in relation to the OVL liquidation. He is based in the Cayman Islands. He describes himself as an Insolvency Practitioner and gives his credentials as being a Fellow of the Institute of Chartered Accountants in England and Wales ('ICAEW') and as a Member of the Association of Certified Fraud Examiners. He states that he is the Managing Director of Chris Johnson Associates Limited. I have no reason to doubt this information.

- [18] OVL has no assets, other than potential claims against other parties. It is such claims that the Respondents, under the leadership of Mr. Johnson, appear interested in pursuing.
- [19] As Mr. Greenwood explained in an Affidavit dated 29th April 2019, no assets had been received in the liquidation as at that date. The position had not changed by the time the matter came on for hearing on 1st July 2020.
- [20] Mr. Greenwood explained that:
- “Throughout the course of the liquidation Mr. Johnson has acted as the lead insolvency practitioner and has been instrumental in carrying out detailed investigations which he believes will be ultimately beneficial to OVL.”
- [21] This choice of words is telling. It stops short of saying that Mr. Greenwood also believes that such investigations would ultimately benefit OVL. He appears to be agnostic about this. This impression is reinforced by a further statement from Mr. Greenwood that it is Mr. Johnson who gives reasons why the liquidation should not be terminated, since Mr. Johnson has not completed his investigations. Nonetheless Mr. Greenwood endorses Mr. Johnson’s position. Mr. Greenwood concluded his Affidavit by stating that he, Mr. Greenwood, believes that Mr. Johnson should continue in his role as Joint Liquidator and that the liquidation should not be terminated until Mr. Johnson’s investigations have been fully completed.

Liquidation Fees and Expenses

- [22] Mr. Greenwood explained that on 2nd December 2010 Baker Tilly received an amount of US\$5,000, less bank charges, from Mr. Johnson’s firm as a retainer for Baker Tilly’s first staff member to act as Joint Liquidator. Mr. Greenwood explains further that Baker Tilly has not yet used this sum. Neither Mr. Johnson nor Baker Tilly had yet raised an invoice for their time costs and expenses and, as at the hearing date they had also not done so. Mr. Greenwood stated that the ‘outstanding time costs and disbursements from September 2010 to [29th April 2019] are approximately USD 48,000 and USD 1,500’. According to a report made by the Joint Liquidators to the Court dated 24th May 2019 (‘the May 2019 report’), these are the fees and expenses of Baker Tilly.
- [23] Mr. Greenwood states that it was Mr. Johnson who prepared the May 2019 Report.

- [24] The report additionally mentions that as at 31st March 2019 some US\$416,000 in legal fees and expenses had been incurred in the liquidation.
- [25] In that report, it was also stated that '[n]o bills have been rendered by [Mr. Johnson] as to date there have been no funds'. There, Mr. Johnson's time incurred is stated to have been 2,026 hours. About 1,400 hours incurred by other employees are also reported. It is not clear whether these are Mr. Johnson's firm's employees or those of Baker Tilly. Mr. Johnson has however stated (in his Second Affidavit, dated 23rd May 2019) simply that '[f]ees of the JLs will be given to creditors when monies have been recovered to pay them. Then (*sic*) is little point in burdening the JLs with more work.' The Applicants consider that this is an unsatisfactory response. The Applicants have sought to reconstruct the likely time costs and disbursements incurred by Mr. Johnson, based upon the work product that they have seen and a number of assumptions, and they estimate the figure to be in the region of US\$2 million. Creditors have an interest in the amount of fees and expenses incurred by liquidators, because this would directly affect the amount of any distributions to creditors from any recoveries made in the liquidation: the higher the fees the lower will be the distributions.
- [26] Despite the fact that (a) no asset recoveries have yet been made, (b) the liquidation has been ongoing for almost ten years, and (c) considerable time and legal expenditure has been incurred with no results in terms of asset recoveries, Mr. Johnson has stated in his First Affidavit:
- "I submit that a lot has so far been achieved as a result the (*sic*) investigations in the TCI but many pieces of the jigsaw remain missing, particularly those relating to the disposal of certain assets."
- [27] Mr. Johnson blames the lack of recoveries on the lack of cooperation from 'certain OVL-connected individuals'.
- [28] In his Second Affidavit, Mr. Johnson describes this liquidation as 'ultimately a multijurisdictional, multi-million dollar liquidation'. He says that he anticipates being able to receive monies in respect of his time costs and expenses from litigation recoveries. Thus, Mr. Johnson's evidence is that there is a prospect of recovering assets in the liquidation from which at least some payments could be made. Mr. Johnson does not in terms say that he expects there to be surplus, although the figures he gives for anticipated recoveries run into at least high seven figures and that, if realized, would almost certainly mean a considerable surplus.

Potential claims

- [29] Mr. Johnson says the Joint Liquidators have identified a number of potential claims. In their May 2019 Report, they refer to a mass of alleged wrongdoings by an array of persons and entities, all with Lord Ashcroft as the alleged ultimate controller or principal. The May 2019 Report however mostly does not identify clearly, nor explain, how the alleged wrongdoings translate into claims by the Joint Liquidators, nor against whom, nor does it provide any analysis concerning the merits of such claims, the amounts of money that can realistically be expected by way of recoveries and the likely cost of pursuing such claims. Some of the alleged wrongdoings appear to bear no direct relation to private law claims, such as accusations of money laundering and stamp duty evasion.
- [30] Mr. Greenwood did not identify any claims in his Affidavit dated 29th April 2019. He there exhibits the Joint Liquidators' preliminary report, dated 21st January 2011 ('the Preliminary Report'). This did not articulate any claims.

The 'BISL Claim'

- [31] Mr. Johnson did not identify any claims in his First Affidavit dated 18th April 2019. In his Second Affidavit dated 23rd May 2019, Mr. Johnson identifies what he says is 'at least one valuable and important claim for a minimum sum of US\$8million'. He says this claim is 'regarding the affairs of a company called Belize International Services Limited ('BISL') and the sale of OVL's shareholding in BISL'. He calls this the 'BISL Claim'. He explains that it appears that OVL sold shares which it had acquired in 1999 back to the original seller in January 2006 at an undervalue. The seller/buyer was a related company. Mr. Johnson describes the documentation available to the Joint Liquidators pertaining to the 'BISL Claim' as 'limited'. He asserts that he has 'already attended a Consultation with Leading Counsel in London to discuss the BISL Claim. The [JLs] are currently seeking further legal advice with a view to filing a claim'. That was as at the 23rd May 2019. The position appears not to have developed as at the hearing on 1st July 2020. Mr. Johnson does not provide the Court with the tenor of the Leading Counsel's advice. Nor is the Court told whether any of the advice is in writing, what its scope was, and how such advice was or is being funded.

OVL a 'major creditor' of JIL

- [32] The 'BISL Claim', such as it might be, is the only putative or potential direct claim that Mr. Johnson identifies. He does, though, say that OVL is a 'major creditor' of JIL. Neither Mr. Johnson nor Mr. Greenwood are liquidators of JIL, but Mr. Johnson has explained that they are cooperating with them. Mr. Johnson is or was the Chairman of the Creditors' Committee for JIL. Mr. Johnson says OVL can reasonably expect a potential benefit by way of dividend regarding 'multi-million-dollar claims' the liquidators of JIL have. Mr. Johnson identifies three such claims.

The 'Coral Square Claim'

- [33] The first is a claim by JIL (in Liquidation) against a company called Coral Square Limited ('Coral Square'). Mr. Johnson says in his Second Affidavit that this claim is worth a minimum of US\$4 million. I shall refer to this as 'the Coral Square Claim'.
- [34] In the JILs' May 2019 Report, Mr. Johnson states that this claim is 'arising out of the construction' of a house for a former premier of the TCI. They state that the liquidators of JIL 'are very confident of eventual success in this action'. The JILs explain, briefly, that JIL had transferred a US\$4 million dollar sum by way of a book entry in favour of Coral Square as an ostensible loan, but when the house was eventually sold the loan was not repaid. The JILs say that the liquidators of JIL are of the opinion that this purported loan was a sham transaction to hide the fact that JIL had in effect financed the construction on behalf of the former premier.
- [35] The JILs state in their May 2019 Report that the liquidators of JIL have obtained a favourable legal opinion concerning the 'Coral Square Claim' and that they 'have considered litigation funding'. The May 2019 Report does not say from whom the 'favourable legal opinion' had been obtained, whether it was written or oral, and what the scope of the advice was.
- [36] The JILs contend in their skeleton argument for this hearing that progress in pursuit of the 'Coral Square Claim' has been 'stymied for more than a year' on account of proceedings brought by BCB. The Court is told that BCB filed proceedings in April 2019 in the TCI to nullify restoration of JIL and to seek an end to its liquidation. Furthermore, that BCB has sought a ruling from the TCI courts that the effect of the replacement of Baker Tilly's first insolvency practitioner by Mr.

Greenwood was to suspend or terminate a recognition order made by the TCI court in respect of this liquidation. The court of first instance found in favour of the JILs, but BCB has appealed that ruling and the appeal has been scheduled to be heard in September this year.

[37] Mr. Johnson stated in his Second Affidavit unequivocally that '[t]his claim has not been pursued due to the constraints placed upon the [liquidators] of JIL pending the outcome of an application to remove them'.

[38] Redhouse and BCB contend that these representations are not true. They rely upon an Affidavit of Mr. Conrad Griffiths, QC, a TCI lawyer. Mr. Griffiths, QC, gives evidence that the claim in the JIL's name against Coral Square was commenced on 11th July 2013, now some seven years ago. He states that the pleaded claim 'was (and is) difficult to understand' and a defence was filed stating that the claim was not understood.

[39] I should say here that I have also reviewed the Statement of Claim. It comprises six short paragraphs, on one page, with a very short, four-point prayer. The claim appears to be that a bare trust of a charge had arisen in favour of JIL, alternatively that a debt had arisen in favour of JIL, on the part of Coral Square. The claim is indeed difficult to understand. This is because the pleading does not set out the facts upon which the claimant relies. Certainly in this jurisdiction, that is a basic procedural requirement.

[40] The last substantive hearing in the 'Coral Square Claim' took place on 3rd June 2014 (over six years ago), at which the liquidators of JIL were given permission to amend their claim. They were ordered to provide security for costs in an amount of US\$35,000. Mr. Griffiths, QC, states that he represented Coral Square at that hearing and that the Judge remarked that JIL faced 'a huge hurdle' in proving that the loan documents did not provide for the arrangements which appeared on the face of the documents. Mr. Griffiths, QC, states that so far as he is aware, the liquidators of JIL paid the security for costs but that they have taken no steps to pursue the claim since June 2014. He gives evidence that the 'Coral Square Claim' has since lain dormant and there has been no attempt to address the deficient pleadings or the preliminary views expressed by the Judge. Mr. Griffiths, QC, states that if the liquidators of JIL were to attempt to revive the claim, they would be required to give one month's notice of their intention to proceed and Coral Square would then issue a summons to strike out the claim on grounds of inordinate and inexcusable delay. Redhouse and BCB submit that it is not the case that

progress with the 'Coral Square Claim' was halted due to the 2019 applications: it had not been progressed for a long time beforehand. They contend that Mr. Johnson's portrayal of the 'Coral Square Claim' as a substantial, meritorious claim with a reasonable prospect of success, held up by the 2019 applications, is fundamentally misleading and wrong. I would observe that the May 2019 Report gives no review of the merits, strengths and weaknesses and prospects of success of the 'Coral Square Claim'.

Proposed 'Horwath Claim'

- [41] The second is a claim which Mr. Johnson says that the liquidators of JIL 'have intimated they will bring against JIL's former auditors (Horwath, Belize) for a minimum of US\$15million. The practice of Horwath in Belize has now been acquired by BDO'. I shall refer to this as the 'Horwath Claim'. It is not entirely clear which 'Horwath' entity we are here concerned with. Nothing much turns on this for present purposes (although it could do if a potential defendant needs to be precisely identified), so I will simply refer to the former auditors as 'Horwath'.
- [42] Mr. Johnson states in the May 2019 Report that Horwath 'were incompetent and negligent' in their audit of JIL and that:
- "The [liquidators of JIL] have concluded, based on the results of their investigations that Horwath repeatedly failed to exercise the professional skepticism, skill, and due care required in reaching their unqualified opinions and as a result, inaccurately expressed "clean" reports on the OVL and JIL financial statements, and those of other group companies, audited by Horwath."
- [43] Mr. Griffiths, QC, points out, however, that there are a number of factors which reduce the prospects of any success or recovery from any 'Horwath Claim', quite possibly to zero.
- [44] Mr. Griffiths, QC, gives evidence that JIL has no assets that it can use to fund the pursuit of claims.
- [45] He observes that the 'Horwath Claim' is over ten (now eleven) years old, as Horwath's last audit of JIL concerned the financial year ended 31st March 2009. Whilst he gives evidence that the TCI has no formal Limitation Act, there are difficulties with a successful prosecution of the 'Horwath Claim': two key witnesses have died (Mr. Forrest and Mr. Keith Arnold, a Receiver who had been appointed over JIL), and Horwath's Counsel stated a number of years ago that

Horwath did not retain its files for more than six years as part of its routine document retention policy. Moreover, the Horwath entity in question no longer exists, says Mr. Griffiths, QC, such that the liquidators of JIL would have no defendant to sue.

- [46] This latter point is taken up by a Belize lawyer who has produced an Affidavit in these proceedings, Mr. Eamon Courtenay, SC, on behalf of the Applicants. Mr. Courtenay, SC, says it is incorrect that Horwath has been acquired by BDO. He says Horwath is no longer in existence and the person who had conducted that practice now practices accountancy through BDO. Precisely what the arrangement in respect of BDO and Horwath is remains unclear upon the evidence before me. There was exhibited an announcement dated 27th April 2018 headed 'BDO announces new firm in Belize'. It switches between describing the entity as a newly founded firm whilst simultaneously describing it as '[f]ormerly part of the Crowe Horwath network'. This ambiguity is comprehensible, as this is a marketing document which sets out to advertise a fresh BDO service provider whilst emphasizing a degree of continuity – it seeks to have the best of both worlds, which, of course, as a matter of strict legal analysis it cannot do. If it is that there was a clean break, the implication is that the liquidators of JIL could not benefit from the errors and omissions insurance cover of BDO, if BDO did not assume the liabilities of Horwath. These points, again, do not feature in the May 2019 Report, which provides no analysis of the merits and prospects of success for this claim.

Potential claim(s) against Mr. Breeze

- [47] The third potential claim is a cause of action that Mr. Johnson stated the liquidators of JIL 'believe they may well have...against Mr. Breeze for various breaches of his fiduciary duties (and potentially other claims)'. This putative cause of action appears to derive from an allegation that JIL apparently (according to Mr. Johnson) traded whilst insolvent for over five years.
- [48] Although Mr. Johnson levels an array of allegations against Mr. Breeze, it is difficult to discern any clear claim against Mr. Breeze.
- [49] Mr. Breeze has caused an English solicitor, a Mr. Mark Spragg, to file an Affidavit on his behalf in these proceedings in July 2019, although he is not a party.

- [50] Mr. Spragg attests that Mr. Breeze was 61 years of age at the time of his Affidavit and that he had been in serious ill health since 2011. Mr. Spragg attests that Mr. Breeze is a man of modest means and has been working in the Far East since departing from the OVL group of companies. He does not have insurance from which a claim of the magnitude of at least US\$15 million, as postulated by the liquidators of JIL, could be paid.
- [51] If what Mr. Spragg says is right, then the prospects of any meaningful recovery from Mr. Breeze are small. Again, no balanced review of the merits and prospects of recovery have been included in the May 2019 Report or Mr. Johnson's evidence.
- [52] In the May 2019 Report, the JLS state that '[l]egal advice is being sought' in respect of a claim against Mr. Breeze. They do not state who from, nor what work they had done to obtain such advice, how far they had got with it and how, if at all, such advice would be funded. By the hearing date, over a year later, no evidence of developments in this regard, and no Counsel's opinion, has been laid before the Court.
- [53] It is necessary for the Court to treat with caution the assurances provided by Mr. Johnson on behalf of the JLS that OVL has reasonable prospects of making any recoveries, let alone for multi-million dollar sums.

Lack of Court Sanction

- [54] The Order of this Court dated 22nd November 2010 laid down the terms upon which the OVL liquidation was and is to be conducted.
- [55] This Order was in materially standard terms for this jurisdiction.
- [56] It was a short order, of four pages in length, of double-spaced type. The back-sheet carries the name of Hadsphaltic's BVI firm of legal practitioners, indicating that it was they, and not the Court, who drew up the order (in line with the usual practice in this Court).

- [57] Clause 3 provided that the JLs were to have all the powers set out in Schedule 2 of the **Insolvency Act, 2003**¹ (the '**Insolvency Act**') to do a number of things in the BVI or elsewhere. These were then listed. Among them was a power to commence, continue, discontinue or defend any action or other legal proceedings in the name and on behalf of OVL in the BVI or elsewhere. This power was specified at Clause 3(iv).
- [58] Clause 4 was a short paragraph of two sentences, using two and a half lines. Neither of these two sentences contained any sub-clauses. Clause 4 provided that certain clearly identified powers listed in Clause 3 were to be exercisable only with the sanction of the Court. These included the power at Clause 3(iv). The other powers specified could be exercised without the Court's sanction. There was nothing unusual about this scheme of the Order for this jurisdiction. It was very basic and the terms were very clear.

The First TCI Recognition Order

- [59] Almost exactly a year later, on 23rd November 2011, the JLs obtained an order from the TCI High Court ('the First TCI Recognition Order') recognizing their appointment. The First TCI Recognition Order was made on an *ex parte* basis. It specified that the JLs were to have the powers set out in section 107 of the TCI Companies Ordinance (cap. 122). Some of these were then listed, over seventeen items. Item number (8) included a power in the JLs 'to examine by interview...any person who in the opinion of the Joint Liquidators is likely to have information relevant to the affairs of [OVL]'.
- [60] Mr. Johnson, in his First Affidavit in these proceedings, states that '[r]ecognition in the TCI was an important step to take in the liquidation given OVL's connection to that jurisdiction'. Mr. Johnson then says that:
- "the Recognition Order enabled the Joint Liquidators to examine any persons who the Joint Liquidators deemed necessary to investigate the affairs of OVL. Following this, I issued several requests to BCB for information pertaining to the ownership structure of OVL, which remained unanswered. In response to my enquiries, on 28th December 2011 BCB filed a summons challenging the Recognition Order on the grounds that the TCI Court did not have the jurisdiction to make such a wide ranging order under the applicable TCI legislation."

¹ No. 5 of 2003.

The Second TCI Recognition Order

- [61] Mr. Johnson recounts that on 1st February 2012 the TCI High Court set aside the First TCI Recognition Order and replaced it with a new order containing significantly reduced powers ('the Second TCI Recognition Order'). He also rightly mentions that the TCI court awarded BCB costs against OVL.
- [62] Mr. Johnson does not mention that BCB had also objected to certain things said by him in an affidavit he filed in those proceedings and that the TCI court ordered that affidavit to be removed from the court file.
- [63] Mr. Johnson also does not mention precisely why the TCI court set aside the First TCI Recognition Order. Mr. Howard, the Affiant on behalf of the Applicants, however does. He explained that TCI company legislation does not contain a power to compel the examination of 'any' witness by the JLs before them. That provision in the First Recognition Order did not reflect the powers conferred by the legislation. Hence the court had no jurisdiction to grant the JLs that power.

The Appeal from the Second TCI Recognition Order

- [64] Mr. Howard further explains that the JLs appealed the ruling of 1st February 2012 to the TCI Court of Appeal. The appeal was dismissed, with costs to BCB. Both costs orders were then taxed in the sum of US\$32,538.97. This sum, together with interest accruing on it at the judgment rate, remains unpaid by OVL. Mr. Johnson has stated that there are no assets with which to pay them. He comments that it had been open to BCB to seek security for costs of defending the appeal but that they had not done so. He implies thereby that BCB cannot be heard to complain about non-payment of the costs award because they had the possibility of applying for a protective remedy but had not availed themselves of it. That, of course, does not lessen OVL's obligation to discharge costs orders against it, which OVL has incurred under the JLs' watch.
- [65] It warrants observing here that as someone upon whom the power had been conferred to act as an Officer of this Court, Mr. Johnson could be expected to acknowledge and accept that another party is entitled to challenge a court order if it reasonably considers that the court has

no jurisdiction to make it. That is all the more so where that party's concerns have been vindicated, not just by a court of first instance but also by a court of appeal. I was thus surprised to read in the May 2019 Report, clearly written by Mr. Johnson, the following passage:

"Rather than assist, Mr. Ashcroft Jr., collaborated with his lawyer to object to my powers which culminated in a modified Court Order in relation to my powers."

- [66] This statement of Mr. Johnson indicates a lack of impartiality and objectivity on his part. It is disturbing on at least two levels. First, it fails to accept that any party affected by a court order is entitled to insist that the law be applied. Secondly, Mr. Johnson has no powers independent of legislation or those the court confers within the correct exercise of its jurisdiction. Failing both, he simply has no power. In relation to jurisdiction, in the sense of power to make an order, the court either has jurisdiction or it does not. In this case the TCI court did not. This is not some procedural technicality. It is fundamental. Mr. Johnson is in no position to criticize BCB or Mr. Ashcroft for failing to 'assist' him pursuant to powers which he did not have.

TCI court application for examination of Lord Ashcroft

- [67] Mr. Johnson recounts that following the Second TCI Recognition Order, he sent several questionnaires and requests for information to what he calls 'various OVL-connected parties', including Lord Ashcroft. Mr. Johnson says that he received no assistance. He says that
- "In response, I was compelled to make an application to the TCI Court to have Lord Ashcroft examined (the liquidators of JIL made a similar application). Both applications were ultimately refused by the TCI Court."
- [68] It appears that the JLs and the liquidators of JIL used the same TCI lawyers. From the TCI High Court's judgment, it is apparent that the JLs presented that application on an *ex parte* basis on 16th November 2017 and 14th December 2017. Judgment was handed down on 11th May 2018. The TCI court ruled that it had no jurisdiction to order the examination of Lord Ashcroft, as he was overseas and not subject to that court's jurisdiction, nor did the TCI court have jurisdiction to order Lord Ashcroft to be examined in a foreign jurisdiction.
- [69] The JLs appear to have made an over-ambitious application that proved to be misconceived. Though unopposed, being *ex parte*, the JLs failed to persuade the TCI High Court to grant the order sought. Mr. Johnson's choice of language, describing himself 'compelled' to have made that application, implies that he had no choice. This is misleading. Nobody can be said to be

'compelled' to make a misconceived application. A more straight-forward account would have been that the JLs thought such an application was a good idea and worth a try, but the court was not persuaded by their arguments.

- [70] It is common ground that the JLs did not seek this Court's sanction prior to entering into these legal proceedings in the TCI, as required by the Liquidation Order. It is evident to me that the reason why Mr. Johnson says that he was 'compelled' to make the application for examination was so that this Court might then be more inclined to give the JLs retrospective sanction. That was an inaccurate self-serving statement.

OVL's involvement in other proceedings in TCI

- [71] OVL, through its JLs, appears to be involved in further litigation in the TCI. Mr. Howard, for the Applicants, says that OVL has become a party to proceedings in the TCI in the winding up of JIL and that they are there opposing an application by BCB to remove the liquidators of JIL and end the JIL liquidation. OVL, through its JLs, appears to have done this some-time after 16th November 2018, when it instructed another law firm to represent them in those proceedings. Mr. Howard observes in his First Affidavit that the JLs did not seek this Court's prior sanction in respect of these proceedings either, as also required by the Liquidation Order.
- [72] Although this is not entirely clear from the May 2019 Report, these most recent proceedings appear to consist of an application by BCB filed on 20th March 2019 whereby BCB alleges that 'the [JLs of OVL] were not qualified under the 2018 TCI Insolvency Law and [BCB] has applied for the revocation of their powers'. Mr. Johnson describes this as further obstruction by Lord Ashcroft. The May 2019 Report also states that documents had been filed in March 2019 by Mr. Griffiths, QC, 'making serious allegations about [Mr. Johnson's] suitability and credibility to act as [a JL] of OVL in TCI'.
- [73] Mr. Johnson, in the May 2019 Report, states that the JLs 'believe it is grossly unreasonable that they have to bear costs to assist the TCI insolvency regime in determining the meaning of their local Insolvency Ordinance and Rules, which clearly have been poorly drafted'. A short answer to this lament is that if the JLs feel strongly that it is 'grossly unfair' that they 'have to' bear costs of defending such a challenge, there are ways in which the JLs can extricate themselves honourably, through the sanction process.

- [74] Mr. Howard's First Affidavit was filed on 1st April 2019. In this, he clearly laid before this Court that the JLs had not sought this Court's sanction, as required by the Liquidation Order, before prosecuting or defending legal proceedings overseas.
- [75] It was some four weeks later, on 26th April 2019, that the JLs applied to this Court for retrospective sanction for their prosecution and defence of legal proceedings in the TCI. In this application, the JLs stated that '[t]his omission only recently came to the attention of the Joint Liquidators as it has been relied on as a ground in proceedings brought against them in the TCIs by BCB challenging the Recognition Order'.
- [76] The realization 'only recently' of the omission – which Mr. Johnson has rightly acknowledged to be 'serious' – is repeated in the JL's Certificate of Urgency filed in support of their application. The Certificate of Urgency does not say when the discovery was made, however. As such, this Certificate does not comply with the requirement stipulated in Clause 2(b)(ii) of the **Notice to Practitioners, No. 2 of 2018 (Commercial Division)**, that a Certificate of Urgency must state '**when**' (the bold emphasis is in the original) the facts establishing the threshold of urgency became known to the applicant. This is important information for the Court to take into account when considering a Certificate of Urgency. It assists the Court in determining whether the purported urgency has come about for reasons beyond the applicant's control or whether it was self-inflicted, or a combination of these. This assists the Court in furthering the Overriding Objective, of dealing with cases justly and in allocating its scarce resources properly, so that other litigants are not unfairly deprived of access to the Court by dint of another litigant's disorganization, procrastination, dilatoriness, incompetence, or worse. This Certificate of Urgency thus could not properly assist the Court.
- [77] The same explanation was repeated by both Mr. Johnson and Mr. Greenwood in their affidavit evidence. Neither of them says who brought this omission to obtain sanction to their attention. Neither of them says whether the omission had been brought to their attention before service of Mr. Howard's First Affidavit in these proceedings or afterwards, although Mr. Johnson suggests that it was as a result of filings in the TCI courts around 20th March 2019 that he found out about it. If that is right, then the application for retrospective sanction was made more than four weeks after the JLs found out about it. There has not been an explanation for this delay in making the application. Whether an application is made promptly, and if not, why not, is a

factor for consideration in the exercise of the Court's discretion whether or not the retrospective sanction should be granted. It does not assist the Court to be told that the discovery was only made 'recently'. 'Recently' is a relative term. It is vague, as the JLs must know. It behooves the JLs to inform the Court as precisely as possible when they realized their omission, how, and in what circumstances.

- [78] There is a more fundamental question. That is how it came about that Mr. Johnson, and Mr. Greenwood also, came to overlook the requirement for sanction. As I have explained above, the Liquidation Order was brief and clear. Whatever might be the position in other jurisdictions, it is expressly provided in section 186(3) of our **Insolvency Act** that:

"The Court may provide that certain powers may only be exercised with the sanction of the Court ... where the liquidator is appointed by the Court, on his appointment or subsequently;"

- [79] One would have thought that it would be ingrained in liquidators to refer constantly to the liquidation order by which they are appointed before taking any step to ensure they are acting within the ambit of their powers. For some reason, the JLs appear to have forgotten about or ignored it even within a year of their appointment. How or why this extraordinary lapse came about has been left entirely unexplained by the JLs.

- [80] Furthermore, it is not just in respect of one, or two, steps in legal proceedings that they omitted to seek sanction for. Their omission was wholesale, and all the various steps they took in those proceedings were undertaken without this Court's sanction.

- [81] Those steps also resulted in the liquidation estate being burdened with a five-figure costs order against OVL in favour of BCB, not to speak of the legal fees it incurred on unsuccessful matters.

- [82] The requirement for liquidators to seek sanction before engaging in legal proceedings or other legal acts has several important purposes. One purpose is for the Court to supervise its officers, who often are not lawyers, in their conduct of legal matters or acts that may have far-reaching legal consequences for numerous parties. Another is to underline the restraint which this Court and its officers must show with respect to formal and legal steps officers of this Court might take in a jurisdiction where they have no inherent jurisdiction to act.

- [83] In seeking sanction the office holder will have to demonstrate to the Court that in the totality of the circumstances the Court should permit him to undertake a particular course of action. In doing so, the office holder will have to rehearse, fully, frankly and fairly, the merits of the proposed steps and lay before the Court the weaknesses as well as the strengths and potential benefits for the liquidation of doing so. The office holder will have to address the Court on the anticipated costs of the proposed steps, how they are proposed to be funded, and the risk of adverse costs orders, how any such adverse costs orders might be met, or not as the case may be, and any adverse reputational problems that might arise therefrom. These are important considerations, as they can directly affect creditors and ultimately, in a liquidation with a surplus, a dividend to the company's members. They also affect the reputation of the Court and the BVI insolvency regime as a responsibly regulated and implemented scheme. Sanction, whether prospective or retrospective, is not a formality.
- [84] Nor can insolvency practitioners count upon the Court exercising liberality when it comes to protecting the jurisdiction's insolvency and Court processes. Where there has been a breach of the Court's appointment order, the insolvency practitioner(s) concerned have the burden of persuading the Court that it should retrospectively approve steps taken in such breach. That the breach occurred as the result of an oversight is a factor, and often a predominant factor, for the retrospective grant of sanction, but it is one factor amongst others when the Court considers all the circumstances.
- [85] Had prior sanction been sought here, and properly, it is quite possible that this Court would have refused sanction for the JLs to apply for a TCI recognition order that overreached their powers in that jurisdiction, and, if that point had managed to slip through initially, to have refused sanction to pursue an appeal. Much would depend upon the legal advice the JLs had received prior to their making of the application that led to the First Recognition Order.
- [86] No such analysis as I have described above has been laid before the Court, even in part, in respect of the steps they took in the TCI legal proceedings in 2011 and 2012. Nor is the Court told how the excessive powers came to be included in the First Recognition Order. Did the JLs take advice on it? If so, what was the tenor of such advice? If it was adverse, how is it that it came to be included anyway? If it was positive, how thorough was it? Is there an issue here of Counsel having advised negligently, such that OVL may have a claim for negligence against its Counsel? If so, does or did Counsel have errors and omissions insurance? Do the JLs have

errors and omissions insurance so that eventual creditors of the OVL liquidation estate may not have to bear the costs of the adverse orders made? These and similar questions call for answers, which have not been addressed by the JLs in their application for retrospective sanction.

- [87] As matters stand, the JLs have not laid before this Court in a coherent and cogent way the issues, merits and costs of the JLs' defence of BCB's application filed in March 2019 either. On the state of the evidence, the Court is not in a position to give its sanction on that particular matter.

Alleged Intimidation

- [88] The Applicants complain that Mr. Johnson has displayed conduct unbecoming an officer of the Court for a number of reasons. These include what they describe as intimidatory conduct.

Alleged intimidation of Mr. Breeze and Mr. Spragg

- [89] An example of such alleged conduct arises in connection with Mr. Johnson's communications with Mr. Shaun Breeze and his English solicitor Mr. Spragg. Mr. Breeze was, so I glean from an Affidavit of a Mr. Andrew Newlands (one of the Joint Official Liquidators of JIL) filed in the TCI on or about 24th August 2018, a former Chief Financial Officer of OVL and JIL, and a Director of JIL until May 2010. Mr. Breeze, so I likewise apprehend, is or was a member of the ICAEW.
- [90] Following Mr. Johnson's appointment as a JL of OVL, he sought to engage Mr. Breeze with a series of questions. Mr. Spragg says the questionnaires were lengthy. Mr. Breeze voluntarily furnished two affidavits in response to them, answering, so Mr. Spragg says, all Mr. Johnson's questions. At this point Mr. Breeze was no longer working for the OVL group but in the Far East (Malaysia) and other places. He was no longer subject to the jurisdiction of this Court or of the TCI court, so far as I can make out. He thus appears to have been under no legal compulsion to respond to Mr. Johnson's questions.
- [91] Mr. Johnson however dismissed Mr. Breeze's affidavits as 'short on information and pretty much useless'. That was on 29th July 2012 in an email to Mr. Spragg. Mr. Johnson concluded

that email with a parting shot laden with patent cynicism, in terms of '[h]opefully at any meeting [Mr. Breeze] will not be suffering from amnesia'. In their correspondence that then ensued between 13th August 2012 and 13th April 2013, such as I have seen, Mr. Johnson threatened Mr. Breeze no less than five times (so far as I have been able to count) that he would report Mr. Breeze to the ICAEW for failure to cooperate and also for having been a director or shadow director of several companies 'that were trading whilst insolvent'. Mr. Johnson presented the allegation of causing or permitting companies to have traded whilst insolvent as established fact. At the very least Mr. Johnson should have acknowledged that no finding of a court of law in respect of such a serious allegation had yet been made. Mr. Johnson's purpose, from that correspondence, appears to have been to press further responses and information from Mr. Breeze through intimidation.

- [92] Mr. Johnson similarly threatened to report Mr. Spragg to the Law Society, on 13th April 2013, on the alleged basis that 'it is abundantly clear that your client and yourself have no intention of assisting an officer of the court. The conduct of your client and your firm has been appalling and you can expect the consequences thereof'. Again, Mr. Johnson does not explain the bases for these allegations. Indeed, from the correspondence laid before this Court (which I accept may not be complete, although I have no reason to suppose that), Mr. Spragg's responses were invariably prompt, courteous, proactive and cooperative.
- [93] Mr. Spragg, for his part, accused Mr. Johnson of a 'highly disrespectful and quite extraordinary tone' in his email communications. I can see Mr. Spragg's point.
- [94] I understand from the evidence that Mr. Johnson did not in fact report either of Mr. Breeze or Mr. Spragg to their respective professional regulatory bodies.
- [95] Mr. Johnson has sought to answer criticisms that the use of such threats on his part was inappropriate on the basis that an 'assertive' approach is sometimes warranted in complicated liquidations 'where all concerned have taken every step to frustrate the JLs'. Regardless of the propriety of such an approach, it, however, appears to be an overstatement that Mr. Breeze and Mr. Spragg were being obstructive.
- [96] In short, Mr. Johnson sought to use intimidatory tactics against both Mr. Breeze and Mr. Spragg, even if he was only bluffing. It appears to me that since Mr. Johnson has been unable

to collate sufficient documentary material and evidence to institute proceedings, he has sought to quiz persons such as Mr. Breeze aggressively in the hope that their answers, or lack of them, can be used to supply the deficiencies in the available evidence.

- [97] Communications from an officer of the Court should always be respectful, using professional language, and they must present matters fairly. From what I have seen, Mr. Johnson's communications with Mr. Breeze and Mr. Spragg fell short of this.

Server sabotage allegations

- [98] Mr. Johnson has repeatedly stated that the computer servers upon which OVL's records had been kept were sabotaged. The Applicants complain that such statements were misleading and calculated to cast aspersions on BCB and OVL connected persons.

- [99] Mr. Johnson stated in the May 2019 Report:

"The computer servers...upon which the majority of the group records were maintained, were sabotaged, and a substantial amount of records are missing or more likely destroyed. Arising out of this the [JLs] sought to obtain information from the directors, officers, auditors and third parties who had documents and information to the affairs of OVL."

- [100] The allegation that the servers 'were sabotaged' is repeated several times in the May 2019 Report and Mr. Johnson has brought it up frequently in other places. The clear impression given is that those on the side of Lord Ashcroft, who have or appear to have an interest in obstructing investigations into the group affairs, have deliberately damaged the servers to prevent recovery of documents. I am under no misapprehension that Mr. Johnson knows this full well, and indeed this is precisely the impression he wishes to convey.

- [101] That the servers 'had been sabotaged' was also the subject of an express confirmation by one of the liquidators of JIL, Mr. Andrew Newlands, in an affidavit he swore in TCI proceedings. Mr. Newlands stated that the two computer servers 'could not be successfully accessed' and that '[c]omputer experts were retained but access was not forthcoming, and the experts concluded that the servers had been sabotaged'.

[102] Mr. Johnson does not give details of the nature of the alleged 'sabotage'. Nor does he exhibit any report from an information technology specialist. He simply repeats the allegation without qualification, and he, clearly deliberately, does so often.

[103] The underlying documentation, such as it is, and it may be incomplete, does not support the existence of any sabotage. Before the Court is an email from TCI lawyers, Messrs. Dempsey & Company, to Mr. Breeze dated 24th November 2010. In this, Mr. Dempsey wrote in the following terms:

"Dear Shaun,

I hope that this email finds you well. I write seeking your assistance in two matters:

1. Do you know what the password(s) is to access the main server? While we have retained a computer guru to access the server he has been unable to get in – any light that you could shed on this would be welcome. Further, I gather that some of the office computers are similarly password protected: do you know the passwords for them or if passwords were kept separately in a safe place?
2. ..."

[104] The documentation shows that Mr. Breeze attended to this request the same day. The following day, Mr. Breeze's assistant sent an email to Mr. Dempsey containing a password and offering further assistance.

[105] On 2nd February 2011 Mr. Newlands sent an email to Mr. Dempsey reporting that

"[w]e have made a breakthrough on accessing some of the financial accounting records in the Sage program on the server. We have accessed JIL and some of the Leeward companies. However, none of the usernames worked for [OVL]. I will email [Mr. Breeze and his assistant] to update them and ask for further assistance. The fact that their own user names did not work is strange."

[106] Seven days later, on 11th February 2011, Mr. Newlands sent a further email to Mr. Breeze and his assistant. He informed them:

"We have inspected the OVL accounting files on Sage, they only go up to 2002 whereas all the other companies go up to 2010. Where would the accounting records after 2002 be located?"

[107] Mr. Breeze replied three days later, on 14th February 2011 offering the following observations:
"I am surprised that you have anything on Sage. The records themselves were kept in hard copy in files that were held in my office. These records were periodically summarized onto Excel files – look on the server under "Oxford Ventures" or "Group".

[108] Sabotage or deliberate obstruction features nowhere in these contemporaneous exchanges. The access difficulties appear to have been password related. Mr. Breeze assisted promptly

and provided a password, which appears to have worked at least to allow some access. Access to OVL computer records also appears to have been achieved despite the password problems. Moreover, Mr. Breeze's explanation was that the OVL records were kept in hard copy files, not on the server system.

- [109] This suggests that Mr. Johnson has been distorting and exaggerating server access difficulties, and that it is not in fact the case that such difficulties caused the JLs not to have access to OVL's records. Whilst I am not in a position to go so far as to find that this is what Mr. Johnson was doing (although, from the material available to me, which may be incomplete, it looks like it is), it is unsatisfactory that Mr. Johnson should not explain fully and frankly why he maintains that the servers were 'sabotaged', without qualification. That is particularly unsatisfactory, given the prejudicial implication conveyed by that allegation, of nefarious and deliberately obstructive acts on the part of those that Mr. Johnson portrays as controlling the OVL group, and the fact that Mr. Johnson repeats the allegation over and over again. This has all the appearance of Mr. Johnson exploiting the allegation with a view (1) to extracting maximum prejudicial effect against OVL related persons and/or (2) using this as an over-arching excuse for not succeeding in mounting claims more successfully.

The 'Panorama' television programme

- [110] Server sabotage is not the only pejorative inference that Mr. Johnson has been content to convey. Mr. Howard gave the following evidence in his First Affidavit:

"33. On 26th September 2011, Mr. Johnson arrived unannounced and without any appointment at the offices of BCB (in TCI) and asked to see BCB's then Managing Director, Mr. Andrew Ashcroft, Lord Ashcroft's son. Upon being told that Mr. Ashcroft was not available, Mr. Johnson immediately made a telephone call and a (conveniently nearby) BBC Panorama film crew arrived at the offices of BCB shortly afterwards The BBC has no presence in TCI and so its film crew had travelled to TCI for this purpose.

34. With BCB's offices in the background, Mr. Johnson proceeded to give an interview to the BBC's reporter, (a Mr. Declan Lawn), in which Mr. Johnson complained in tendentious terms that BCB had repeatedly failed to supply him with copies of documents relating to OVL, including bank statements, loan agreements and guarantees. This was an unfair explanation as the matter was being considered by BCB and its lawyers. At that stage Mr. Johnson had obtained no order of recognition in TCI.

35. The footage obtained on this date was then incorporated into the BBC's Panorama television programme broadcast in the UK on 30th January 2012. ... Mr. Johnson provides a copy of the Panorama programme on his website to this day under the heading 'Secrets of the Tory Billionaire'."

[111] That indeed appears to have been the title of the 'Panorama' television programme. A transcript thereof (or perhaps part thereof, as the transcript itself does not make it clear whether it is complete) is in evidence. The thrust of this programme is that Lord Ashcroft was an 'influential figure in the Conservative Party [who] misled the media and stock market whilst keeping Parliament in the dark. If Lord Ashcroft was secretly controlling a Company which he didn't declare that would be very serious indeed.'² Having postulated the question (and thus planted the suggested answer), the programme presenter concludes by posing what is clearly intended to be a rhetorical question:

"The question now is should a man who has deliberately mislead the public about some of his business interests really have been allowed so close to the centre of Parliament."

[112] The programme's opening scenes stress Lord Ashcroft's connections to the United Kingdom's Conservative political party, also known as the 'Tory Party'. The Conservative or Tory Party is mentioned seven times in the first fourteen scenes. A purpose of the programme appears to have been to portray that political party in a negative light, by stressing its association with Lord Ashcroft. Lord Ashcroft himself is portrayed as a shady character who frequents sunny places, a mendacious, devious tax-exile, the manipulative puppet-master behind an off-shore network of entities who unconscionably leaves the honest working man to suffer the financial consequences of his construction empire collapse while he himself remains unscathed. Although the programme presents itself as investigative journalism, it appears in reality to be no more than a sensationalist, salacious, one-sided, character assassination attempt against Lord Ashcroft, calculated to make ordinary British taxpayers' blood boil. The nub of the accusations is that Lord Ashcroft in reality retains control of a group of companies in which he has previously sold his own personal interest, using offshore structures.

[113] Where Mr. Johnson comes into this is as follows. In scene 62 the presenter introduces Mr. Johnson:

"[Presenter:] Back at Lord Ashcroft's bank there is another unhappy customer. Chris Johnson is an accountant who has come to the island to wind up

² Scene 8.

Johnston's parent company. It's called Oxford Ventures and it's gone bust. For the past year he's been trying to get information about Oxford Ventures bank account but the bank won't help.

[Mr. Johnson:] I've sent numerous emails faxes letters by courier to this bank here and its sister bank in Belize and I don't even have the courtesy of a response.

[Presenter:] What do you think of the bank's behaviour, its response.

[Mr. Johnson:] Well it's a disgrace. It's outrageous that they won't give me bank statements and they won't give me loan agreements and guarantees. I am running Oxford and they're my bankers. It's incredible that a bank will not give its own client these documents.

[Presenter:] The bank's solicitors told us that due to TCI laws on banking confidentiality the bank could not respond to an overseas liquidator until the TCI Courts recognized the authority of that liquidator. Chris Johnson was recognized by the TCI Courts two months ago but the bank has now started a legal challenge to his authority. ..."³

[114] The bank in question is BCB. The place of the interview was the TCI. The reference to 'two months ago' would appear to be to the First TCI Recognition Order dated 23rd November 2011. It appears to be common ground, or at least not disputed, that this interview took place on 26th September 2011, prior (contrary to the impression given by the programme) to any form of recognition for the liquidation in the TCI. Whilst the presenter recounts the need for recognition, it is presented as another cynical obstacle presented by BCB in bad faith.

[115] The portrayal and tone of the programme cannot, of course, be laid at Mr. Johnson's door. But it appears that he was all too ready to feed the BBC's narrative. His comments about BCB's conduct being a 'disgrace', and his complaints that BCB would not give him documents are out of order. First, an officer of the Court who is a liquidator should not offer public comment about the affairs of the liquidation other than in direct furtherance of the liquidation. Secondly, an Officer of the Court who is a liquidator should be careful not to comment adversely about the conduct of others in a manner that can be construed as intemperate, which the use of the word 'disgrace' does. Thirdly, in circumstances where Mr. Johnson knew the JLs had no recognition in the TCI, and where he knew BCB had no obligation to recognize him as a liquidator of OVL, and where he knew that BCB thus had no obligation to provide information and documents with him pending such recognition, it was wrong of him to complain, let alone in a manner where his

³ Scenes 62 to 66.

remarks might gain extremely wide publicity, that BCB were withholding such materials. The impression that Mr. Johnson was conveying, and, I am sure, wanted to convey, was that BCB was deliberately and unjustifiably being obstructive. Mr. Johnson has not said that his remarks were incompletely recorded or that somehow only a slanted or partial rendition had been given by the programme, or otherwise disowned his reported remarks. Instead, Mr. Johnson has praised the Panorama team in his evidence and continues to show the programme through his firm's website. This latter fact indicates that Mr. Johnson in no way back-tracks from his remarks, stands by them, and hopes to benefit further from the programme.

[116] The scenes quoted were not Mr. Johnson's only contribution to the programme. Between scenes 70 and 81 Mr. Johnson offers comments to the presenter on facsimile documents apparently showing control by Lord Ashcroft of OVL and connected companies. In particular:

[Presenter:] We actually see copies of the faxes with Lord Ashcroft's writing on them.

[Mr. Johnson:] Absolutely. There are quite a number of faxes where Allan Forrest has gone to Lord Ashcroft and said look we need some answers on this. I suspect many of them were probably discussed over the phone and therefore only a few of them have got handwritten comments by Lord Ashcroft.

[Presenter:] It would appear this is a boss telling his employee what to do.

[Mr. Johnson:] Absolutely. It can't be any other way. He looks upon Lord Ashcroft as being his boss.

...

[Presenter] So who do you think ultimately controls Johnston International and Oxford Ventures?

[Mr. Johnson:] Well from what we've seen from correspondence we have concluded that Lord Ashcroft is the driving force behind Oxford and all the subsidiary companies.

[Presenter:] Do you have any doubt about that?

[Mr. Johnson:] I have no doubt.

[Presenter:] He's behind it.

[Mr. Johnson:] He is behind it. We have sufficient evidence which will come to light in due course in the Courts."

[117] Mr. Johnson's responses here indicate that he was freely discussing the affairs of the liquidation in the public domain, and indeed putting into the public domain information from the liquidation. It does not matter that such information, in the shape of the facsimile documents, had somehow already been provided to the programme team, an act that Mr. Johnson denies he himself did, and thus that it might already have been in the public domain. What we have here is Mr. Johnson deliberately fostering the narrative that Lord Ashcroft remained in control, using alleged passages from facsimiles to bolster that view. The Court must ask itself why Mr. Johnson was doing so. Why was Mr. Johnson so gushing with his information and interpretation of documents, and in such a public setting? This runs directly contrary to the discretion and self-restraint an officer of the Court should exercise in the performance of his duties.

[118] Mr. Johnson does not give a detailed explanation for his participation this programme. He proffers the following:

“The fact that I obtained transportation with the BBC is of no consequence.”

[119] This is a mysterious utterance, since nobody, so far as I can tell, has raised any problem that Mr. Johnson might indeed have taken a lift with the BBC crew at some point. The suggestion made, however, is that his contribution to the programme consisted of some off-the-cuff remarks during a lift which somehow became incorporated into a television programme. Mr. Johnson does go on to say that he ‘was asked to appear in the BBC Panorama programme filmed in the TCI’. He does not say when, nor how he was approached, upon what terms, nor for what purpose.

[120] I do not accept for one moment that Mr. Johnson just happened to be taking a lift with a television film crew, who just happened to be making a programme on Lord Ashcroft in the TCI at the same time as Mr. Johnson was there, and that he just happened, in that context, to blurt out criticisms of BCB and to interpret facsimile documents for them on the spur of the moment. If that were the case, it would have been a truly incontinent display of indiscretion.

[121] Mr. Johnson explains further that it ‘was not surprising that I was asked to appear in the BBC Panorama programme’ in light of the fact that he had a considerable history of giving interviews and conference speeches for the international media, that he assists movie script writers and producers in Hollywood and that he has ‘played a major character in one novel’. He says also

that he was asked to appear in a subsequent Panorama programme involving some football financial scandal. There is an element of self-congratulation and self-aggrandizement here, suggesting a degree of narcissism.

Newspaper contributions

[122] The Panorama programme is not the only instance of Mr. Johnson ventilating in the public square affairs pertaining to the liquidation. The Applicants have put in evidence a number of contributions to the newspaper, 'The TCI Journal', from 2011 to 2014, which the Applicants say were authored by Mr. Johnson. Three, letters to the editor, were in Mr. Johnson's own name. Only two of these are of immediate interest. Both carry the banner description of Mr. Johnson as a liquidator of Hadsphaltic, a part of the OVL group. They are dated in July 2011. Both comment on BCB's audited accounts in a negative fashion. For instance, Mr. Johnson describes, or rather attacks, them as 'completely and absolutely meaningless and represent the very worst of financial accountability and transparency'.⁴ He also mentions the accounting treatment of certain accounting events. He adopts a general purpose of asking government to promote greater transparency through new laws, but quite why he should have to go into so much detail and specificity concerning the affairs of BCB and connected entities, in a public forum, is not supported by such a general purpose. His giving of detail is not so much informative but performative, in the sense of being a polemic against BCB and related entities and persons. Its effect is to 'name and shame' BCB and connected persons and entities, and to disparage their integrity. This shows an undue lack of discretion and proper restraint in discussing matters pertaining to a liquidation in public.

[123] Other letters or articles, written in a very similar style to the way Mr. Johnson writes, also appear in The TCI Journal, although they do not carry his name. Two are signed off as 'Overseas Watchdog'. Another, as 'TCI Resident'. Another as 'Friend of the TCI & Belize'. They adopt the same negative approach, and idiomatic style, used by Mr. Johnson to attack BCB and related entities. They also display intimate knowledge of the financial and corporate affairs of the OVL group, such as Mr. Johnson undoubtedly has. Two point the finger directly at Lord Ashcroft. The Applicants ascribe these pieces to Mr. Johnson.

⁴ Letter of 29th July 2011.

- [124] The Applicants have also accused Mr. Johnson of having provided confidential documents to a United Kingdom satirical magazine, called 'Private Eye', and other international media outlets.
- [125] Mr. Johnson does not deny he authored the pieces mentioned above. Nor does he deny providing the media with confidential information. He merely argues:
- “The media houses to which Mr. Howard refers to are insignificant when compared to the international press. I do not consider any of the articles or quotations could possibly damage the reputation of [Lord Ashcroft], who is of course very well known to the international press. ... Despite repeated requests, I have refused to give the international media information, which might compromise the conduct of the Liquidation. Obviously, I cannot control investigations by independent media, who might identify other sources.”
- [126] At first glance this creates the impression of a denial, but on closer reading it is not. It is an example of Mr. Johnson not admitting to an act and offering reasons why such an act was, in his own view, not something the Court ought anyway to be concerned about.
- [127] Mr. Johnson's explanation here is self-serving. Mr. Johnson's judgment as to what might damage BCB's or Lord Ashcroft's reputation is no gauge whether, objectively seen, that is so. The pieces in question, viewed objectively, can be construed as calculated to harm BCB's and Lord Ashcroft's reputation. By 'calculated', I mean, at least, in the sense of 'tending to', although I have respectfully reached the view that Mr. Johnson intended this to be their effect. This entails a conclusion that, although Mr. Johnson might protest otherwise, he was being disingenuous when he said that he did not consider that these pieces could possibly damage Lord Ashcroft's reputation.
- [128] Furthermore, it does not matter that Lord Ashcroft's reputation might also be known through the international press. Mr. Johnson's comment can be taken in at least two ways. The most obvious, from the context, is that Mr. Johnson is saying that Lord Ashcroft's reputation has already been tarnished in the international press, such that his own local Caribbean remarks are of such small moment that they can be ignored. If that is what Mr. Johnson means, he is wrong. Mr. Johnson's smaller local efforts, in a place where BCB, connected persons and entities, and possibly Lord Ashcroft, are trying to do business, might reach far more influential, important readers than the consumers of the international media. If Mr. Johnson means that Lord Ashcroft's reputation has been solidly established in the international press, such that his

own smaller contributions can cause no more than a *de minimis* amount of harm, he is wrong for the same reason.

- [129] Another difficulty concerns the qualification Mr. Johnson appends to his denial. He has denied giving information ‘which might compromise the conduct of the Liquidation’. That too is a self-serving statement. The opinion of one person as to what sort of information ‘might compromise the conduct of the Liquidation’ can reasonably vary from one person to another. That however was not the complaint. It was that he had provided confidential information. What Mr. Johnson was doing here was to avoid answering that question by rephrasing it and then answering the rephrased question.

Alleged intemperate behavior

Offensive correspondence

- [130] The Applicants complain of other inappropriate behaviour by Mr. Johnson.
- [131] One such incidence concerns a response by Mr. Johnson to an email sent to him on 20th December 2011 by Mr. Conrad Griffiths QC. This was in the following terms.

“Dear Sir,
Please see attached a copy of my letter to you of today’s date.
Yours faithfully,
Conrad Griffiths QC
Misick & Stanbrook”

A letter from that firm was then enclosed. Its opening sentence began:

“We are instructed by British Caribbean Bank Limited (‘BCB’)...”

- [132] Despite this professional and courteous introduction, Mr. Johnson’s reply, within the hour, read as follows:

“Dear Sir

I have no idea who you are and certainly no evidence that your firm represents the bank or Mr. Hashcroft. Thus it would be in breach of my responsibilities to respond to your email or letter.

Kindly send me a copy of your letter of engagement.

Yours sincerely

Chris Johnson

Sent from my iPad”

[133] This prompted a formal letter in response the following day from Mr. Griffiths, QC. He complained that this was an unbecoming reply from a liquidator as an officer of the Court.

[134] Mr. Johnson, in his evidence, offers no comment on this.

[135] In my respectful judgment, two aspects stand out from Mr. Johnson’s response. First, it falls short of due professional etiquette to write to a lawyer, let alone one of Her Majesty’s Counsel, in terms of ‘I have no idea who you are...’.

[136] Secondly, it is disrespectful and causes offence to misspell the name of another, in particular in formal communications. It is highly disrespectful and offensive to add, or permit the addition of, a pejorative inference through such misspelling. ‘Hash’ is, according to the Cambridge Dictionary, an informal form of the word ‘hashish’. ‘Hashish’ is described in that dictionary as ‘a drug, illegal in many countries, made from the cannabis plant and usually smoked’.⁵ ‘Hashcroft’ tends to suggest that Mr. Ashcroft takes that narcotic substance, although less contemptuous and offensive, but still disrespectful, connotations (such that he makes a ‘hash’ or mess of things) are also possible.

[137] I ask myself about the probability that this was a mere typographical error, even where a message is sent using a virtual keyboard such as on an interactive personal application device (an ‘iPad’). I can take judicial notice of the fact that keyboard layouts generally used to write in English, being the QWERTY and AZERTY layouts, have the ‘H’ key in the middle of the middle row of letters, whereas the ‘A’ is five keys to the left, on the extreme left on a QWERTY keyboard, and six letters and one row up, also on the extreme left with AZERTY. A key-slip then is unlikely, if, as seems very likely, Mr. Johnson used either of these keyboard layouts. It was, in my judgment more probable than not that Mr. Johnson deliberately referred to Mr.

⁵ <https://dictionary.cambridge.org/dictionary/english/hashish>.

Ashcroft as Mr. Hashcroft. If not, then he should have taken due care to spot such an unfortunate error. This is something an officer of the Court needs to be particularly attentive to, as any communication may find itself read in Court.

In which Mr. Johnson over-steps himself

[138] This brings us to another unfortunate incident, where an email which Mr. Johnson clearly intended to be private, has found itself before the Court.

[139] In their evidence, the Applicants' Affiant Mr. Howard states that on "Friday 6th September, 2013 in his capacity as a JL, Mr. Johnson aggressively and drunkenly accosted Lord Ashcroft's son, Mr. Andrew Ashcroft, a then director of BCB, in a public bar in the TCI. Mr. Johnson informed Mr. Andrew Ashcroft that he intended "to bring down" Lord Ashcroft."

[140] Mr. Johnson's answer to this was as follows:

"...Mr. Howard was not in attendance at VIX's restaurant and thus his evidence is second hand. I strongly deny being aggressive in what is one of my favourite restaurants in TCI. Moreover, I knew the owner and several of the staff at that time who would not have permitted inappropriate behaviour. I received no complaints from either the owner or the staff.

...I can confirm that arrived [*sic*] at VIX's approximately 10.30 – 11.15 when at that time there was a party taking place that involved the TCI rugby club. Mr. Ashcroft Jr. was seen sitting closest to the road. I approached him with my business card outstretched, but he ignored me at which time his male companion threatened to take me out. At this point I left the restaurant."

[141] The impression given by Mr. Johnson is that there is nothing to see here. He denies strongly that he had been aggressive. He suggests that he became the victim of an unprovoked threat of physical violence or even death from Mr. Ashcroft's companion. The reference to the rugby club is required to do a lot of work here: we are not told of its relevance, and we are not told if Mr. Ashcroft, his companion or Mr. Johnson were part of that club's function. Yet we do not need much imagination to assume that Mr. Ashcroft and/or his companion were part of it and that his companion had suffered from an archetypical rugby club overspill of testosterone and alcohol, as the reason for his apparently unprovoked outburst.

[142] But let us consider the contemporaneous correspondence. It then becomes clear that Mr. Johnson's explanation to this Court is far from the complete picture.

[143] The following Monday, 9th September 2013, Mr. Ashcroft's lawyers wrote to lawyers that Mr. Johnson had been using in relation to the liquidations. They wrote:

"We are instructed that Mr. Johnson entered The Vix Bar and approached Mr. Ashcroft who was with a group of people. From his approach and his words it was evident that Mr. Johnson had been consuming alcohol and his demeanour was aggressive. Mr. Johnson attempted to give Mr. Ashcroft a business card and asked Mr. Ashcroft if there was anything Mr. Ashcroft wanted to say to Mr. Johnson. Mr. Ashcroft declined the card or to engage with Mr. Johnson due to Mr. Johnson's condition and demeanour, at which point Mr. Johnson, in the presence of witnesses threatened: *"I am going to destroy your father and your family."* A number of people in Mr. Ashcroft's group intervened to require Mr. Johnson to move away as Mr. Johnson was intoxicated and aggressive and gave the impression to those witnesses that he was intent on provoking a physical altercation."

[144] The legal addressee responded nine days later. The letter stated materially:

"Although naturally sorry to hear that your client's evening was impaired by the offer of an unwelcome business card, our retainer is limited to the representation of Mr. Johnson qua Joint Liquidator of [OVL]. Should your instructions be to go to law in order to protect your client from future unsolicited stationary products you will have to deal with Mr. Johnson directly."

[145] This response was facetious and made light of a very serious allegation against an officer of this Court. It did not cast further light on what happened that evening. It might be unfair to lay at Mr. Johnson's door that lawyer's remarks so I will not do so.

[146] Mr. Johnson's denial of aggression and his version of events nonetheless stands to be tested against an account of the event he himself wrote on the morning after, Saturday 7th September 2013. It was an email Mr. Johnson sent, using his professional email address, to an acquaintance of his. Some of the language is vulgar, and Mr. Johnson, as an officer of the Court should not have used it (because it brings the Court and the office of court appointed liquidator into disrepute), but that is not the main interest of the email. There is no need for the Court to broadcast the language used and I can spare Mr. Johnson the embarrassment.

[147] The email materially provided as follows:

"Subject: Ash ****⁶

⁶ 'The solid waste that is released from the bowels of a person or animal' or 'An unpleasant person who behaves badly'. Both usages 'offensive'. https://dictionary.cambridge.org/dictionary/english/****.

Approached him last night and told him I was taking his dad out. He walked away and his mate all of five nine took me on, I told him to **⁷ and prepared to duck. ****⁸ I am too old for this stuff, but I would have liked you to be on the side lines. I am not as fast as I was when it comes to a fight and I have been in a few in my life.

The more it goes on the more I am determined but I try not to be obsessed. I am a bit *****⁹ as I write this but I look upon you as a friend and confident [*sic*], even though I hardly know you.

...

VIX was a riot tonight, sorry you missed it.

Carpe Diem

Chris”

[148] Putting these two contemporaneous accounts together, it appears that Mr. Johnson provoked a confrontation by making threats in respect of at least Mr. Ashcroft’s father Lord Ashcroft. Hot words were then traded between Mr. Johnson and Mr. Ashcroft’s companion (but not by Mr. Ashcroft) and others in the restaurant separated the protagonists and de-escalated the situation. Against his own contemporaneous account, Mr. Johnson’s later explanation to the Court rings hollow. It is incoherent, because it omits the key element that he had started the confrontation, and with a threat against Mr. Ashcroft’s father. Lack of candour with the Court is one of two aspects that constitute the Court’s main interest in this email.

[149] I have taken into account that Mr. Johnson’s email described himself as ‘a bit [drunk]’ as he wrote that message. This does not, in my view, render the account given there unreliable. To the contrary. It has the ring of truth. The account has a direct freshness to it, devoid of artifice (other than a perhaps somewhat swaggering account of the drama of the evening and Mr. Johnson’s own historical prowess as a scrapper). I am more inclined to believe that version of events than the blanched account he proffered the Court several years after the event, in which he portrayed himself as a blameless victim.

[150] The second aspect of main interest is that this email provides an insight into Mr. Johnson’s thinking concerning Lord Ashcroft. Mr. Johnson appears to have formed the intention of bringing about Lord Ashcroft’s downfall and of pursuing this goal in an ever more determined fashion, to the point that Mr. Johnson himself recognized that this was becoming an obsession. A liquidator as an officer of the Court should maintain a personal disinterest and a professional,

⁷ ‘To leave or go away, used especially as a rude way of telling someone to go away.’ Usage ‘offensive’. https://dictionary.cambridge.org/dictionary/english/****-***.

⁸ Same as 6 above.

⁹ ‘Drunk.’ Usage ‘offensive’. https://dictionary.cambridge.org/dictionary/english/*****.

dispassionate approach to the performance of his duties. Mr. Johnson appears here to have embarked upon a personal campaign to bring about Lord Ashcroft's downfall.

The Lord Ashcroft Questionnaire

[151] Mr. Johnson produced a questionnaire for Lord Ashcroft to answer. The Applicants have complained that this questionnaire was oppressive, disproportionate and unduly burdensome on Lord Ashcroft.

[152] The Applicants' evidence is that in about March 2016 Mr. Johnson, *via* solicitors, sent Lord Ashcroft's BVI legal practitioners a questionnaire. Their evidence is that the questionnaire amounted to some 750 questions over 62 pages and related to events that dated back over 10 years and in some cases as far back as 1998, some 18 years earlier. They observe that it was 'accompanied by hundreds of exhibits'. The questionnaire records that it was accompanied by two lever arch files of documents. The questionnaire also requested:

"Please complete this Questionnaire and return it to the Liquidators within 21 days, swearing the same upon Oath....

Please provide full copies of all relevant documents to support your answers including copies of/full access to any documents held upon any electronic storage media."

[153] The Applicants contend that it was 'aggressive, tendentious and oppressive'. They also observe that Lord Ashcroft is not subject to the jurisdiction of this Court and that he cannot be compelled to respond, and he has not done so. The questionnaire was followed up by the JLs' same solicitor, in a letter dated 13th December 2016, threatening Lord Ashcroft with an application in the TCI for him to be examined there under oath, on the basis that he was a 'belonger' there, with such examination to take place in the United Kingdom.

[154] The types of questions included, for example:

(1) "1.17 What was your business and social relationship with the Chief Minister and Premiers of the [TCI], Derek Taylor, Michael Misick and Galmo Williams?" This was a broad, open ended question which comprises at least six topics (Lord Ashcroft's business relationship with each of these three gentleman and his social relationship with each of them).

- (2) “1.22 Why do you think the Receivers of JIL have refused to assist the Liquidators by not responding to the Liquidators’ correspondence?” This is one of a number of questions where Lord Ashcroft is being asked to give a view on matters concerning others, based upon an unstated presumption that Lord Ashcroft knows the answer.
- (3) “1.26 What in your opinion were the capabilities of Allan Forrest and Shaun Breeze?” This was a broad unspecific question.
- (4) “1.30 Some time during in and/or subsequent to the appointment of the Receivers, two computer servers were sabotaged and a considerable amount of valuable records were destroyed or stolen. Why do you think those records were destroyed?” This was a tendentious question, which presented the alleged sabotage as a fact, when, as I have explained earlier, the evidence does not support that definite conclusion.

[155] The questionnaire is in essence a lengthy scripted cross-examination of Lord Ashcroft.

[156] Whilst in practice the JLs did not press for the 21-day deadline to be adhered to, it was wholly unrealistic on any reasonable view. This betrays a lack of objectivity and rationality on the part of Mr. Johnson.

[157] Mr. Johnson’s evidence is that since Lord Ashcroft did not answer this questionnaire, and others to whom he had sent other questionnaires had not provided any assistance, he was ‘compelled’ to make an application to the TCI court to have Lord Ashcroft examined. However, the TCI court was not persuaded to grant the relief sought.

[158] The net result was that Mr. Johnson’s work in preparing the questionnaire, which must have demanded a great many hours of chargeable time, yielded nothing. Mr. Johnson’s chargeable time would reduce the amount of any eventual distribution in the liquidation, unless written down or off.

[159] In light of the fact that Lord Ashcroft was not located within the jurisdiction of a court where the liquidation order had recognition, thus that he was not directly compellable to answer questions, it could be said that it would have been far more proportionate for the JLs to have

prepared a very much shorter questionnaire, with specific and precise questions, on a limited set of topics, or perhaps even on only one topic, and to have invited Lord Ashcroft to have answered that. Depending upon his response, if any, the JLs could then have taken a view whether further questions should sensibly then be prepared and put. However, that would involve a prudential decision, with which the Court would not normally interfere unless the steps taken were patently unreasonable. Disproportionality of work can be corrected by disallowing part of the JLs fees for preparing the document.

[160] That would leave the other criticisms, of being oppressive and unduly burdensome for Lord Ashcroft. Mr. Johnson submits that this Court should not concern itself here with protecting Lord Ashcroft. I agree, as Lord Ashcroft is not before the Court and if he has a problem with the questionnaire he has his own remedies.

[161] Thus no interference by the Court is warranted in respect of the questionnaire. But that does not mean I should ignore it. I cannot fail to remark that no reasonable liquidator would have imposed a 21 day deadline for responses, to be supported with documents, in respect of such a huge and sweeping questionnaire.

[162] The Applicants contend that there appears to have been another motive behind this questionnaire. In their evidence, their affiant Mr. Howard stated:

“It appears to me that Mr. Johnson has been seeking to use the threat of the questionnaire and examination as a mechanism to persuade Lord Ashcroft into settling Mr. Johnson’s demand for \$12 million.”

[163] The ‘demand’ in question concerns two letters sent by English solicitors on 25th July 2016 to Lord Ashcroft’s BVI lawyers. Those letters were sent on behalf of the JLs of OVL, the liquidators of JIL and the liquidators of Hadsphaltic. Thus, they included Mr. Johnson in two capacities: one as a JL of OVL and one as a liquidator of Hadsphaltic. It is reasonable to consider that Mr. Johnson was substantially the cause of these two letters.

[164] The longer of the two letters was an open letter. It began substantively by referring to the questionnaire to Lord Ashcroft. It then says that the liquidators seek Lord Ashcroft’s ‘co-operation to attend an interview in order to obtain appropriate explanation about the issues arising’. The letter expressly referred to Lord Ashcroft’s ‘public profile’ in the TCI and the United Kingdom, and on that basis the letter continues that the liquidators ‘assume [Lord

Ashcroft] will be happy to clarify the issues arising so that there are no misunderstandings'. The letter asserts that the liquidators 'have identified a series of potential claims' and proceeded to suggest an attempt at alternative dispute resolution 'to avoid any unnecessary time spent in managing litigation'. Eleven 'potential claims' are then identified. These included the 'Coral Square Claim', for which it was said that the value was a minimum of US\$9 million plus interest, and the 'BISL Claim', for which the value was postulated at 'some US\$6 million'.

[165] The Applicants submit that the reference to Lord Ashcroft's 'public profile' is a thinly veiled threat, as was the reference to him attending an interview.

[166] The second letter was expressed to be 'without prejudice save as to cost'. It began by referring to the open letter, and continued:

"My clients are very conscious of the fact that substantial and irrecoverable costs will often be spent dealing with issues arising from examination and – subject to your client's explanation – potential for matters to continue forward.

Accordingly, with a strong eye upon commercial reality, I have been instructed to put forward the following offer:

- Your client will pay the sum of US\$12million to my clients upon execution of a Settlement Agreement;
- The above to be in full and final settlement of any claims whatsoever. ..."

[167] Lord Ashcroft did not respond to these letters.

[168] The Applicants say that these letters amount to a demand for money from Lord Ashcroft, in respect of claims which are statute-barred as a matter of BVI law. They say it is improper for a liquidator to do this.

[169] Mr. Johnson denies that he has demanded any monies from Lord Ashcroft. Mr. Johnson also gives evidence that there is no statute of limitation under TCI law.

[170] Whilst it is superficially correct that Mr. Johnson, or solicitors acting on his and/or the various liquidators' behalf, have not demanded nor asked Lord Ashcroft to pay any money, it is difficult to construe the effect of those letters as anything other than a demand. They seek to stack matters in such a way that Lord Ashcroft is being pushed to volunteer a multi-million dollar

payment in order to avoid the trouble of answering a huge cross-examination, potential harm to his public reputation, and the expense of litigation. This strategy becomes apparent when these letters are construed together with the questionnaire. In light of the singular lack of progress in pursuit of any of the putative potential claims, it seems that this strategy might have been the forlorn hope of making any recovery, at least in the OVL liquidation.

[171] As the Applicants have pointed out, the JLs had not sought and obtained this Court's sanction prior to trying this approach. By clause 3(iii)(a) of the Liquidation Order the JLs have power to compromise claims of OVL against any person. By clause 4, that power may only be exercised with the sanction of the Court. It could reasonably be said here that the JLs attempt to elicit a substantial payment from Lord Ashcroft had not yet reached the point where a compromise was contemplated, such that no sanction would yet have been required. I would agree that is right.

[172] Whilst Lord Ashcroft might have arguments against this strategy adopted by Mr. Johnson, it is difficult to see how the Applicants themselves could object to it (unless, as Mr. Johnson urges, they are mere proxies for Lord Ashcroft). There is conduct which would clearly cross the line of propriety, such as were a liquidator to extort payment from someone under threat of violence. The Applicants could then be heard to complain about something so obviously repugnant. But in my view here Mr. Johnson's strategy adopted does not fall clearly on the wrong side of that particular line.

[173] The Applicants go further and contend that Mr. Johnson's long running efforts to wear down Lord Ashcroft's reputation in the media publication is part and parcel of an extra-legal campaign of harassment to press Lord Ashcroft into making a payment to rid himself of the nuisance. The Applicants submit that such conduct was improper on the part of an officer of the Court. I agree with the Applicants on this point.

Allegations of improper conduct

[174] The Applicants contend that Mr. Johnson breached each one of the following propositions:

(1) Whilst it is the duty of a liquidator to realise the assets of a company, harassing a person into making a payment does not constitute legitimate realization of an asset. A genuine claim can be settled, but where the liquidator cannot bring a claim (e.g. because it is

time-barred) he cannot demand payment as the price of ceasing to make a nuisance of himself.

- (2) A liquidator must keep the information he obtains through the use of his powers confidential and can only use that information properly for the benefit of the liquidation. He should not share that information with the media and publicise his allegations of improper conduct in the media, as that can constitute a contempt of court and can prejudice a fair trial on any fraud claim.
- (3) It is an abuse of his office for a court appointed liquidator to seek to threaten anyone (e.g. with being reported to a professional institute) who does not cave into his demands even though their conduct is perfectly legitimate; his position as liquidator gives such threats (and such publicity) added weight;
- (4) A liquidator should not use his investigatory powers oppressively or seek to gain an unfair litigation advantage;
- (5) A liquidator should behave with decorum in his dealing with adversaries and not bring the Court into disrepute by unseemly conduct;
- (6) A liquidator must remember he is accountable for his actions to the Court and obviously must obey orders of the Court;
- (7) A liquidator must be candid with the Court;
- (8) A liquidator must be candid with his creditors;
- (9) A liquidator must remain objective.

[175] The Applicants argue that the Court should withdraw its support for Mr. Johnson, as, they submit, he has misused his position and abused the Court's trust for almost ten years.

[176] The Applicants additionally point out that Mr. Johnson has funded this liquidation, such that he is now in a position of conflict. I understand this reference to be to a small amount of money Mr. Johnson's accountancy firm has advanced as a retainer for Baker Tilly, and also to the very large amount of time Mr. Johnson has incurred in the liquidation without raising a bill, in effect

acting as the liquidation's banker by extending credit to the liquidation estate. The Applicants put such funding, on an estimated basis, at around US\$2 million.

- [177] The Applicants contend that it would be just and equitable to terminate the liquidation and that Mr. Johnson ought to be removed, on the basis that his conduct falls below the required standard, that he has a conflict of interests, and that he has conducted the liquidation in a manner which does not accord with the best interests of the creditors and shareholders of OVL.

Mr. Johnson's position

- [178] The first point that Mr. Johnson seeks to make is to challenge the Applicants' motive for bringing this application. He asks why protection of Lord Ashcroft should be a consideration for the other creditors and shareholders of OVL, whose interests should involve making recoveries for the Estate, if possible, not the protection of persons who claim to be uninvolved.
- [179] Mr. Johnson opposes the application to remove him. He does so most vehemently. This, in itself, suggests that he has some kind of personal interest or desire to retain his office. The experience of the Court is that ordinarily a Court appointed liquidator retains a degree of neutrality about whether he should continue in office. That is absent here.
- [180] Mr. Johnson gives evidence (which is self-serving) that 'I have had requisite care and control of matters as one of the JLs of OVL for several years. I believe that my experience, knowledge and contacts will be imperative in pursuit of the BISL claim'. Also, 'I am the only liquidator of OVL who has been in place since the appointment order was made and I have gathered institutional knowledge in this matter which will likely benefit the liquidation'. He then argues that 'it would be disproportionately disadvantageous to bring in a new liquidator at this stage of OVL's winding up'. Mr. Johnson then argues that it has been advantageous to the liquidation that he is also a liquidator of Hadsphaltic and that he has been working 'efficiently and effectively' with the liquidators of JIL. Mr. Johnson gives evidence that 'genuine, objective and independent creditors of OVL with claims in the sum of US\$4million have instructed me to not only oppose the termination, but to oppose my removal. They are no doubt aware that the latter would be potentially harmful to any chances of a successful recovery'. Lastly, Mr. Johnson urges that Mr. Greenwood 'supports the investigation of OVL's affairs and the steps I have taken in this matter'.

- [181] Concerning continuation of the liquidation, Mr. Johnson urges that OVL should be allowed to pursue the various claims that are its assets, and that it should be kept alive to enable OVL to benefit from eventual distributions in the JIL liquidation.

Standing objections

- [182] Mr. Johnson raises a threshold objection to Redhouse and BCB's application, in that he argues that neither of them have standing to bring it. The Applicants consider this a supremely ironic argument for Mr. Johnson to raise, given his complaints that BCB, Lord Ashcroft and others declined to cooperate when Mr. Johnson himself had not clothed the JLs with proper authority to act in relation to them. Nonetheless, Mr. Johnson is entitled to raise standing issues.
- [183] The basis for Mr. Johnson's objection is that the statutory provisions pursuant to which the Applicants bring their application require them to be either creditors or members of OVL. Mr. Johnson argues that neither Redhouse nor BCB fall in these categories.
- [184] The statutory provisions in question are section 187 of the **Insolvency Act** in respect of the application to remove Mr. Johnson as liquidator and section 233 in respect of termination of the liquidation.
- [185] Section 9 of the **Insolvency Act** defines a creditor as
- “A person is a creditor of another person (the debtor) if he or she has a claim against the debtor...that is, or would be, an admissible claim in
- (a) The liquidation of the debtor, in the case of ... a company...”
- [186] Mr. Johnson says that the JLs do not accept that either Redhouse or BCB meet that definition. Mr. Johnson goes so far as even to query the Applicants' affiant's, i.e. Mr. Howard's, authority to give evidence in respect of Redhouse.

Redhouse

- [187] The Applicants say that Redhouse is a creditor because it holds 724,665 preference shares in OVL (as well as 5 million ordinary shares in OVL), and in that capacity it is owed US\$1,769,194

by OVL. The Applicants rely upon a document that is an apparent share register of OVL to support this.

[188] Mr. Johnson recognizes that the document indicates Redhouse's preference and ordinary share holding, but he does not accept that as evidence. Concerning the preference shares, Mr. Johnson refers to a resolution of OVL's Directors dated 11th January 2010 that he had found in OVL's books and records, which stated that it was 'proposed' that Redhouse's preference shares be redeemed for consideration of US\$1. Mr. Johnson contends that Mr. Howard's evidence that Redhouse was still a preference shareholder was 'possibly incorrect'. He concludes from this possibility that 'in reality Redhouse has no claim' and thus no general standing regarding the affairs of OVL although it is a shareholder in OVL as recorded in the Register of shareholders. Quite how Mr. Johnson's reasoning can have slid from 'possibly incorrect' to 'in reality Redhouse has no claim' is unfortunately not clear to me.

[189] Mr. Johnson's learned Counsel, Ms. Nicole Sandells, QC, likewise raised numerous arguments at the hearing in an effort to show that Redhouse cannot be reliably be treated as any kind of shareholder in OVL. She contends there are conflicting documents and serious concerns about authenticity.

[190] The Applicants say this line of argumentation is flawed.

[191] First, Mr. Johnson has accepted, they say, in his second affidavit before this Court that Redhouse is a member of OVL. At paragraph 31 Mr. Johnson stated '... it [Redhouse] is a shareholder in OVL as recorded in the Register of Shareholders'. At paragraph 25 Mr. Johnson took issue with evidence from Mr. Howard that Redhouse was a creditor of OVL but he did not take issue with evidence from Mr. Howard that Redhouse was a member, despite expressly recounting that that was Mr. Howard's evidence.

[192] Secondly, the Applicants point out that the JLS' Preliminary Report itself recorded that Redhouse was shown as a member, including as a preference share holder.

[193] Thirdly, the Applicants observe that the resolution referred to by Mr. Johnson upon its face merely proposed the said redemption and no such redemption has subsequently been shown in OVL's share register.

BCB

- [194] In relation to BCB, Mr. Johnson has argued that since it is not a member of OVL, it could only apply on the basis that it is a creditor of OVL. Mr. Johnson argues that the debt owed by OVL to BCB in respect of court ordered costs of some US\$46,000 arose after the commencement of the liquidation, and therefore it does not qualify as a debt that can be taken into account.
- [195] The Applicants accept that this is legally correct. This means that BCB is neither a member of OVL nor a creditor.
- [196] The Applicants argue however that this is ultimately of no moment, because the Court can remove a liquidator of its own motion pursuant to section 187 of the **Insolvency Act** (a power not found in the United Kingdom or Cayman equivalent legislation).
- [197] The Applicants argue that even if one were to proceed upon the assumption that BCB's application was liable to be struck out for want of *locus standi*, (1) no application was made to do so and (2) the evidence on BCB's application is now before the Court. If that evidence discloses misconduct by the liquidator, the Court cannot simply ignore it. It has jurisdiction to remove Mr. Johnson.
- [198] Moreover, the JLs have made their own application for retrospective sanction. BCB received notice thereof and is entitled to be heard on it, pursuant to the **Insolvency Rules 2005**, rule 20(6). That provision provides:
- “(6) Unless the Act or the Rules provide otherwise, any person served with or given notice of an application is entitled to appear or be represented at the hearing of the application”.
- [199] The Applicants contend that as BCB was notified of such an application it is entitled to lay before the Court evidence pertaining to all the circumstances, with such evidence potentially warranting the Court removing a liquidator of its own motion.
- [200] Furthermore and separately, say the Applicants, the Court has an inherent jurisdiction to remove a liquidator which can be invoked by persons prejudiced by the liquidator's unconscionable conduct. The Applicants say BCB is such a party, as its reputation as a

commercial entity and financial institution is obviously damaged by Mr. Johnson's claiming in the media that its underlying beneficial owner has been engaging in dishonest and indeed criminal activity. All of this affects a financial institution and the share price of BCB's ultimate parent company.

[201] Mr. Johnson however relies upon **Deloitte and Touche Ag v Johnson**¹⁰ as authority for a proposition that it is only creditors, being persons entitled to participate in the ultimate distribution of the company's assets, who could have any legitimate interest of their own in having liquidators removed from office.

[202] The Applicants say that is not so. They argue that this application falls outside the reasoning referred to in that case because in this jurisdiction the Court can remove a liquidator of its own motion. **Deloitte** was moreover not a case of misconduct. The Applicants argue it cannot sensibly be said that a member (such as Redhouse) should not be allowed to bring an application for removal of a liquidator on grounds of misconduct.

[203] Moreover, argue the Applicants, if there are no assets within the liquidation estate, not even creditors could apply to remove a liquidator. That, they argue, cannot be right.

Termination of the liquidation

[204] Concerning termination of the liquidation, Mr. Johnson observes that the Court's power to terminate the liquidation is enshrined in section 233 of the Act (emphasis added):

"233. Order terminating liquidation.

(1) The Court may, at any time after the appointment of the liquidator of a company, make an order terminating the liquidation if it is satisfied that it is **just and equitable to do so**.

(2) An application under this section may be made by the liquidator, a creditor, a director or a member of the company or the Official Receiver..."

[205] Mr. Johnson reminds the Court that this entails a discretionary exercise, relying upon our Court of Appeal's decision in **Pacific China Holdings Limited v Grand Pacific Holdings Limited**.¹¹ He highlights that in doing so, the Court must consider the rights and interests of persons who

¹⁰ [1999] 1WLR 1605 at 1611H (Millet LJ).

¹¹ BVI HCVAP 2010/039 (unreported, delivered 14th May 2012).

may be affected by its decision. Such persons may include, but are not limited to, the company's creditors, its liquidator and its contributories. There may also be a public interest which must be considered. All the circumstances of a particular case need to be considered.

[206] Mr. Johnson further relies upon this Court's decision in **Friedland v Xena Investments Limited & Others**¹² where the Court commented:

"In my judgment, section 233 is similarly designed to be applied where there are no good reasons for a liquidation to continue, either because all creditors and members are content that the liquidation should be ended so that the company can resume business or because there are otherwise **no good reasons for continuing with the liquidation.**" (Emphasis added by Mr. Johnson.)

[207] Mr. Johnson submits the Court must ask why two alleged creditors would want the liquidation closed, ending all hopes of a recovery – and why that would be just and equitable.

[208] He also submits that there are good reasons for the liquidation to continue at this stage, not least that the JLs have been frustrated thus far in their attempts to get answers from people who may have relevant knowledge but are resisting strongly any attempts to engage them in the process.

[209] He urges that creditors of Hadsphaltic, who are in effect creditors of OVL and continue to support the JLs, would effectively be deprived of any prospect of recovery, if the liquidation is terminated.

[210] The Applicants submit that the irrefutable evidence is that there is no legitimate purpose in continuation of the liquidation. But for the fact that Mr. Johnson believes (mistakenly) that his conduct may lead to his being 'bought off', there is no possibility of anything being achieved by continuation of this liquidation.

[211] The Applicants urge that given there are no assets to be recovered, this is not simply a liquidation with some improper conduct, it is a wholly improper liquidation. They say the fact that there are no assets to be realized is self-evident from the fact that after ten years, if the claims that are said to be the only assets of OVL had been viable, they would have been sold

¹² BVIHCM2010/083 (unreported, delivered 6th June 2011) at paragraph [19] (Bannister J.).

or brought before the Court, but they have not. There is no evidence that Mr. Jonson has even obtained a formal legal opinion as to the merits or otherwise of the alleged claims.

Removal of Mr. Johnson as liquidator

[212] Mr. Johnson argues the following.

[213] Should the Court determine that it is not appropriate to terminate the liquidation, the next issue for it to consider is whether Mr. Johnson should be removed from office. This is a serious step to be taken against any professional. It is trite law that liquidators are officers of the Court and that the Court therefore has the power to remove a liquidator from office. The statutory provision is found in section 187 of the **Insolvency Act**:

“187. Removal of liquidator.

(1) The Court may, on application by a person specified in subsection (2) or on its own motion, remove the liquidator of a company from office if

(a) the liquidator

(i) is not eligible to act as an insolvency practitioner in relation to the company,
(ii) breaches any duty or obligation imposed on him by or owed by him under this Act, the Rules or the Regulations made under section 486 or, in his capacity as liquidator, under any other enactment or law in the Virgin Islands, or
(iii) fails to comply with any direction or order of the Court made in relation to the liquidation of the company; or

(b) the Court is satisfied that

(i) the liquidator’s conduct of the liquidation is below the standard that may be expected of a reasonably competent liquidator,
(ii) the liquidator has an interest that conflicts with his role as liquidator, or
(iii) that for some other reason he should be removed as liquidator.”

[214] The burden of proof is again on Redhouse and BCB to satisfy the Court that one of the above grounds has been met. Mr. Johnson submitted that for the reasons set out below, none of the evidence put before the Court satisfies the burden or justifies the removal of Mr Johnson as liquidator.

[215] The Eastern Caribbean Court of Appeal considered the test for removing a liquidator in the matter of **Brilla Capital Investment Master Fund SPC Limited & Others v John Greenwood & Others**.¹³ The Court set out the basic test that it will consider when deciding whether to remove a liquidator from office in paragraph 1 of the headnote:

¹³ AXAHCVP2013/0007 (unreported, delivered 24th November 2014).

“When deciding whether to exercise its discretion to remove a liquidator, the court must be satisfied that the **retention of the liquidator will be against the liquidation or conversely, that the removal of the liquidator is in the interest of the liquidation.**” (Mr. Johnson’s emphasis.)

[216] When considering the test, the Court of Appeal broke it down into three limbs:

- (1) Whether the applicant has standing to apply for the removal of the liquidator;
- (2) Whether due cause has been shown for the removal of the liquidator. Due cause does not necessarily mean that there is misconduct on the part of the liquidator or unfitness for purpose, but rather, the court should take all the circumstances into consideration and decide whether, on the whole, the liquidator should be removed; and
- (3) Even if (1) and (2) proven, whether the Court should exercise its discretion.¹⁴

Stage 1 - Whether the applicant has standing to apply for the removal of the liquidator.

[217] Mr. Johnson submits that neither of the Applicants has the requisite standing, as discussed above. That should be the end of the matter.

Stage 2 - Whether due cause has been shown for the removal of the liquidator.

[218] BCB and Redhouse’s central argument, based on the evidence filed, appears to be that the JLs’ requests for information have somehow been offensive to third parties, or potential targets of the liquidation, when there is no requirement for them to assist the JLs as officers of the Court. That is hardly an attractive argument, nor does it in any way indicate that it is not in the interests of OVL, the creditors, the liquidation estate or the liquidation for Mr Johnson to remain in office. The complaints centre on requests for information not from the Applicants but from Lord Ashcroft, described as harassment. This description is used in defence of a person who flatly refuses to provide any co-operation in a liquidation which is seeking to recover millions of dollars in losses for genuine creditors who have suffered real losses, and whom Lord Ashcroft’s information could assist. This is in the context of the liquidation of a company with a highly complex background, involved in a web of companies in which there is no doubt Lord Ashcroft was involved, where the company documentation is woefully incomplete, the computer records virtually useless, and the officers deceased or unhelpful, unwilling and/or evasive when the JLs

¹⁴ AXAHCVP2013/0007 (unreported, delivered 24th November 2014) at paragraph 1 of the headnote (Webster JA (Ag.)).

seek to establish even basic information. Mr. Breeze's complaints about his treatment at the hands of Mr. Johnson, while also clearly being someone who should have answers he cannot or will not provide, is just one example of the difficulties the JLs have faced. Mr. Howard portrays Lord Ashcroft as an upstanding individual with an extensive business background and a high public profile with a track record in charitable good works. Such an individual should have no qualms about assisting the JLs and answering such questions as he can. Even if he had no information, it is hard to see why he has resisted putting the JLs' minds at rest. To describe attempts to obtain even basic co-operation, however those attempts have been pursued over the years, as harassment amounting to misconduct seems highly partisan and unfair, when the issue could have been resolved with simple and early co-operation. Mr. Johnson has at all times been seeking to achieve the best outcome for the Estate. It is noteworthy that the application to shut him down comes not from the creditors but from the persons who seem most concerned not to answer questions about the transactions the JLs would like to investigate.

- [219] There is little reliance on any alleged grounds for removal involving the Applicants. However, if BCB and Redhouse, as alleged creditors, do claim to be aggrieved by Mr. Johnson's request for information as set out in his affidavit evidence and the JLs' Reports, their complaints are not automatically grounds for removal. In **Brilla**, the Eastern Caribbean Court of Appeal (by Webster JA, with whom the other members of the Court agreed) cited with apparent approval at paragraph [61] the English Court's test in **Re Edenote Ltd.**:¹⁵

"In dealing with the issue of loss of confidence Nourse LJ said in *Re Edenote Ltd.* case:

"... Sir John Vinelott said that the principle in [*Re Keyapak Homecare Ltd*] was founded on and usefully illustrated the general principle that a liquidator must act in the interests of the general body of creditors and should not continue in office if in the circumstances the creditors no longer had confidence in his ability to realise the assets of the company to their best advantage and to pursue claims with due diligence. Again I respectfully agree. But there is an important qualification... **The creditors' loss of confidence must be reasonable.** Moreover, **the court does not lightly remove its own officer and will, amongst other considerations, pay a due regard to the impact of a removal on his professional standing and reputation.**" (Mr. Johnson's emphasis.)

¹⁵ AXAHC VAP2013/0007 (unreported, delivered 24th November 2014) at paragraph [61] (Webster JA (Ag.)) citing *Re Edenote Ltd.* [1996] BCC 718.

[220] The Applicants have produced no evidence that the general body of creditors have lost confidence in Mr Johnson, or that he is not acting in their interests. The only persons really alleged to have lost confidence are Lord Ashcroft and Mr. Breeze – both people with reasons to want Mr. Johnson shut down that have nothing to do with the interests of the body of creditors. However, even if the Applicants could establish that they represented the body of creditors, and that they had lost confidence, it is submitted the Court must consider the totality of events that have unfolded in this matter since the JLs were appointed to office when assessing reasonableness. Since coming into office, the evidence suggests that the JLs have been blocked at every turn by BCB and, seemingly, Lord Ashcroft (who has refused to answer any questions that would assist the JLs in making a recovery sooner), as well as those involved in the day to day running of OVL and Lord Ashcroft's other ventures. Redhouse has come somewhat late to this party, in reliance on questionable documents which only highlight the problems the JLs have faced in that crucial records have allegedly been destroyed and BCB has refused to provide the JLs with banking records, while producing in 2019 documents supporting Redhouse's alleged claim that the JLs have never seen before and which no-one has seen fit to provide before they became useful to the Applicants.

[221] While the Applicants have thrown a lot of dirt at Mr. Johnson and made much of his reactions to the frustrations he has faced in seeking to progress this liquidation, it cannot be ignored that the evidence also highlights the need for the liquidation to continue with a committed and dedicated liquidator in place, failing which the creditors will not receive any justice at all. Mr Johnson submits that the evidence of BCB and Redhouse raises more questions than answers and should not be allowed to form the basis of removal of a liquidator who (says Mr. Johnson with reference to himself) has been practicing for over 45 years as an officeholder and who has held office in over 200 court appointed liquidations and 2000 voluntary liquidations.

[222] Lord Ashcroft has filed a complaint against Mr. Johnson to his professional institute, the ICAEW. The complaint is repetitive in nature and spans some 29 pages with hundreds of pages exhibited. While some of the allegations are based on English insolvency law, which is different to BVI Insolvency Law (such as the duty to provide reports to the Court), the most striking part of the complaint is the language used to describe Mr. Johnson. In the complaint, Mr Johnson is described as "*unprofessional*", "*discourteous*", divulging "*confidential and/or private information*", "*gratuitously offensive in nature*", "*misuse the protection of the court*",

“personal campaign or vendetta against Lord Ashcroft”, “aim of seeking to force Lord Ashcroft into paying a large amount of money to settle spurious, vexatious, unparticularized and unsubstantiated allegations”, “Mr Johnson is seeking to use intimidation, threats”, “coerce a payment”. This language is highly prejudicial and indicates a personal *animus* against Mr. Johnson which perhaps explains this application. It does not, however, evidence grounds for removal of Mr. Johnson. Allegation is not evidence.

[223] It is submitted this complaint by Lord Ashcroft is another effort, in a third jurisdiction (after the BVI and TCIs), where persons being investigated or requested to provide information have sought to prevent Mr. Johnson, in his role as liquidator, from investigating how OVL came to be insolvent and whether there are any avenues to recover losses incurred by all genuine creditors. The JLs also submit that they have been blocked from investigation attempts in Belize.

[224] Mr Johnson notes the criticism that has been made against him by BCB and Redhouse that no claims have been issued against any third parties during the 10 years that he has been in office. That cannot be denied. However, the Court of Appeal noted in **Brilla** at paragraph [53] that:

“The authorities establish that a liquidator is required to proceed with the liquidation of the company in an **expeditious and efficient manner**. It is not enough to adopt a complacent attitude and wait for things to happen. He must do all that is reasonably possible to make things happen. In short, he must carry out his duties with vigour.”¹⁶ (Mr. Johnson’s emphasis.)

[225] The difficulty facing the Applicants is that while they complain that there has been little progress, the nub of their complaint is in fact that Mr. Johnson has been pursuing the liquidation with a vigour they and Lord Ashcroft find disturbing. The reasons there have been no claims issued is obvious – the JLs are still, after all this time, being stymied in their attempts to obtain information. That does not mean that there is no information, and no claims to be brought. There is always the question why, if there is nothing in this, are the Applicants, Lord Ashcroft and Mr. Breeze so keen to shut Mr. Johnson down rather than simply engaging with him openly and candidly. It is submitted that in fact Redhouse, BCB and Lord Ashcroft’s complaints appear to be centered around the fact that Mr Johnson has sought to move forward

¹⁶ AXAHCVP2013/0007 (unreported, delivered 24th November 2014) at paragraph [53] (Webster JA (Ag.)).

his investigations into the affairs of OVL in an expeditious and efficient manner, while all three have taken steps to stop that happening *via* court proceedings intended to delay matters and deplete resources. The problem has been the hurdles that alleged creditors and third parties have placed before the JLs, not a lack of vigour on the part of the JLs, hurdles and difficulties which the JLs contend have, and continue to, put off interest from litigation funders who would like to see the officeholder challenges concluded before they will consider investing in the potential claims.

- [226] While it is acknowledged by Mr. Johnson's Counsel that Mr. Johnson has made mistakes, not least those leading to the need for the JLs application for retrospective sanction, Mr. Johnson submits that the Applicants have not established the grounds for removal under Stage 2 that they rely on in their application. They have alleged but not established that Mr. Johnson's conduct falls below the required standard, that he has a conflict of interests, and that he has conducted the liquidation in a manner that does not accord with the best interests of the creditors and shareholders of OVL. Mr. Johnson submitted that the evidence does not establish conduct below the expected standard on the grounds alleged when considered in context, nor is a conflict established. Enthusiasm to pursue the liquidation to a result is not a conflict. The obvious conflict on the evidence is the conflict between the Applicants' alleged status as creditors who should want to see the JLs pursue recoveries and their apparent desire to protect Lord Ashcroft. That is the reason for this application and it is not a reason for removal of Mr. Johnson.

Stage 3 – Court's discretion

- [227] Mr. Johnson submitted that even if Redhouse and BCB are successful at stages 1 and 2 of the removal test, removal is not automatic and is down to the discretion of the Court – as stated in **Brilla** at paragraph [63]:

“A finding of due cause does not mean that the court will automatically remove a liquidator. The court must then carry out what **Neuberger J described as a “difficult balancing exercise” in *AMP Music Box Enterprises Ltd v Hoffman and Anor*:**

“In an application such as this, the court may have to carry out a difficult balancing exercise. On the one hand the court expects any liquidator, whether in a compulsory winding up or a voluntary winding up, to be efficient and vigorous and unbiased in his conduct of the liquidation, and it **should have no hesitation in removing a liquidator if satisfied that he has failed to live up to those**

standards at least unless it can be reasonably confident that he will live up to those requirements in the future.”

In carrying out the balancing exercise the court will have regard to the appropriate considerations in determining whether the applicant has established due cause for the removal of the Liquidator, as well as the fact that it **does not lightly remove its own officer and will consider the impact of the removal on his professional standing...**¹⁷ (Mr. Johnson’s emphasis.)

- [228] Mr. Johnson contends this is a case where any errors or grounds for removal come from an enthusiasm to proceed with vigour, rather than a failure to live up to the required standards. Indeed, the complaint against Mr Johnson appears to be that he has pursued this liquidation more vigorously and efficiently than expected, and the allegation of bias is that he is biased against the very people and entities whom he considers need to answer questions and engage in the process in order to move forwards. The excerpt from **Brilla** indicates that removal is usually a remedy engaged to deal with a liquidator failing to take steps or biased against pursuing claims. This is, if anything, the opposite of such a case. **Brilla** also shows that removal may not be appropriate even if standards have not been met if the Court can be reasonably confident that the liquidator will live up to the required standards in future. Mr Johnson submits that he will not repeat his mistakes and that the Court can have confidence in him.
- [229] Further, Mr. Johnson submits that should the Court determine that the liquidation should continue but decide to remove Mr Johnson from office, the resultant consequences for Mr. Johnson, and for the liquidation, would be significant. From Mr. Johnson’s perspective, any decision by this Court to remove him will be used against him in his personal capacity in the complaint in England, the consequences of which should not be considered lightly.
- [230] Mr. Johnson also submits that a decision to remove Mr Johnson is likely to be all but a decision to end the liquidations of OVL and Hadsphaltic. Mr Johnson has been the lead liquidator in these liquidations and his institutional knowledge is not easily passed over in circumstances where the estate does not have funds to pay fees on a monthly basis. The liquidation will likely falter without Mr. Johnson’s enthusiasm at the helm.

¹⁷ AXAHCVP2013/0007 (unreported, delivered 24th November 2014) at paragraph [63] (Webster JA (Ag.)).

[231] Mr. Johnson contends it is also relevant that genuine creditors of OVL and Hadsphaltic wish Mr Johnson to remain in office so any decision to remove him may be viewed as the Court favouring one creditor's position over another.

[232] In the circumstances, Mr. Johnson submitted that the Court should, if it gets to Stage 3, given the very special and unusual circumstances of this case, exercise the Stage 3 discretion to keep Mr. Johnson in office.

DISCUSSION

Removal of Liquidator

The three stage test

[233] I will deal first with the issue of Mr. Johnson's removal, because, as I will explain, it is my considered view that the liquidation of OVL should continue at present, pending a further review.

[234] It is well settled that the Court must apply a three stage test when considering whether to remove a liquidator for cause. This was set out in **Brilla**, with reference to **Johnson et al v Deloitte and Touche A.G.**:¹⁸

"A review of the cases establishes that the process of resolving an application for the removal of a liquidator raises three stages: (a) Does the applicant have the locus standi to apply? (b) Has due cause been shown and (c) If such cause has been shown, should the court exercise its discretion and remove the liquidator? The issues whether or not due cause has been shown and whether the discretion should be exercised are far more frequently canvassed than the issue of standing. That issue is often uncontroversial, the application being usually made by a creditor or contributory."

[235] At paragraph [22] of **Brilla**, the Court of Appeal observed that this is the test that the courts of the Eastern Caribbean Supreme Court have applied. At paragraph [20], the Court of Appeal recognized that the companies legislation of the various circuits of the Eastern Caribbean Supreme Court are not uniform. In that case, in Anguilla, there was no express statutory power

¹⁸ **Brilla Capital Investment Master Fund SPC Limited & Ors v John Greenwood & Ors** AXAHCVP2013/0007 (unreported, delivered 24th November 2014) at paragraph [22] (Webster JA (Ag.)).

in the court to remove a liquidator for cause. The Court of Appeal held that the court nonetheless had an inherent jurisdiction to do so.

[236] In **Deloitte and Touche A.G. v Johnson & Anor.**¹⁹ the Privy Council considered the Cayman Islands Companies Law (1995 revision), which provided, at section 106(1), that an official liquidator could be removed by the court 'on due cause shown'. The Privy Council noted that 'there is no express restriction on the category of persons who may make the application'. It then considered which categories of person had *locus standi* to make such an application. It ruled that persons with 'a legitimate interest in the relief sought' would be such a person.²⁰ The Privy Council observed that in the case of an insolvent company, the only persons who could have a legitimate interest of their own in having the liquidators removed from office as liquidators were the persons entitled to participate in the ultimate distribution of the company's assets, being the creditors.²¹ This consideration was considered to be important for two reasons: (1) the court's statutory jurisdiction can only be engaged by a person falling within the category of persons qualified by statute to make such an application and (2) judicial restraint (as opposed by the binary consideration of jurisdiction – the court either having jurisdiction or it does not) requires that the court will only act on the application of an applicant with a sufficient interest to make the application.²²

[237] It can readily be seen from the statutory schemes of **Brilla** and **Deloitte and Touche A.G. v Johnson & Anor.** that questions of standing there required answering. In the case of **Brilla**, that was because the Court's jurisdiction was not statutory but inherent. In **Deloitte and Touche A.G. v Johnson & Anor.** it was because the statute in question was silent. In the present case we are dealing with a different statutory scheme.

Stage 1 - Standing and the Court's jurisdiction under section 187 of the Insolvency Act

[238] Section 187(1) of the **Insolvency Act** differs from the position in those two cases. It provides that the Court can remove a liquidator of its own motion, and it delineates the categories of

¹⁹ 1 WLR 1605 at 1609 B – F (Millet LJ).

²⁰ 1 WLR 1605 at 1611 E (Millet LJ).

²¹ 1 WLR 1605 at 1611 H (Millet LJ).

²² 1 WLR 1605 at 1611 B - C (Millet LJ).

persons who can otherwise apply to do so. These are set out in section 187(2) as including a creditor or member of the company in liquidation.

- [239] It is not legitimate, in my respectful judgment, to project onto this specific statutory scheme the analysis adopted in **Deloitte and Touche A.G. v Johnson & Anor**. There, the Privy Council was faced with a statute that was silent on how powers it conferred might be engaged and by whom. The Privy Council thus had to resort to first principles. In the present case, the **Insolvency Act** has made express provision for these matters. The Court need look no further.

Findings on Stage 1

- [240] I am satisfied that one of the Applicants, Redhouse, is at the very least, on a balance of probabilities, a member of OVL, and thus has standing to apply for Mr. Johnson's removal. I grant that there might be questions over whether Redhouse in fact is a member, but certainly the JLs have assumed that Redhouse is a member from very early in the liquidation and there appears to be no record of its entire shareholding being given up or lost.
- [241] I am also sufficiently satisfied on a balance of probabilities that Redhouse is a preference shareholder in OVL, as the JLs indeed themselves initially reported. Whilst I agree that it would be odd if a resolution proposing to redeem preference shares were to be made but not put in effect, at the same time there is no evidence the redemption, or proposed redemption, was recorded as having taken place in OVL's share register. However, I do not understand why or how it is that Redhouse's apparent preference shareholding in this case renders it a creditor of OVL.
- [242] BCB is not a member of OVL, and I understand that the parties are agreed that as BCB became a creditor of OVL after the start of the liquidation it does not qualify as a creditor who can apply for the removal of a liquidator.
- [243] These considerations are rendered academic however, as the Court has power to remove a liquidator of its own motion. I accept the Applicants' argument that at the very least they became entitled to be heard by the Court upon being notified of the JLs' application for retrospective sanction, and that they should therefore be heard to place circumstances before

the Court pertaining to that application, and that the Court then has the power to move itself to remove a liquidator if it considers appropriate.

[244] The fact that the Court can remove a liquidator of its own motion overcomes the need for a qualified applicant to move the Court and for such an applicant to satisfy the Court that it has a legitimate interest in the relief sought. The Court can consider whether the liquidator ought to be removed without reference to such considerations.

[245] It is thus irrelevant that neither Redhouse nor BCB might have a legitimate interest in the removal of Mr. Johnson. I make no finding that they do not. Indeed, BCB might have a perfectly legitimate interest in Mr. Johnson's removal, given Mr. Johnson's public disparagement of BCB's accounts and his public, televised, condemnations of BCB's alleged conduct. It might also be legitimate for BCB to be concerned about its commercial reputation over any recovery it might make in the liquidation. BCB is, as a party who is owed money by OVL, perhaps unlikely to recover any money from the insolvent company in liquidation. It is of course unusual that purported creditors of a company in liquidation would want the most active liquidator removed and indeed the liquidation terminated; a state of affairs that is very apparently attributable to their concern to halt Mr. Johnson's attentions to Lord Ashcroft. But since the Court can consider of its own motion whether a liquidator ought to be removed from office as liquidator, such questions of interest and standing do not prevent the Court from looking at whether, in its own view, there is due cause for removing its officer from that role.

Stage 2 - Has due cause been shown?

[246] In **Brilla**, the Court of Appeal described 'due cause' as an 'unwieldy concept'.²³ 'Due cause' does not mean that there has to be any misconduct by the liquidator.²⁴ Nor is unfitness required.²⁵ The Court may remove a liquidator where, upon the whole of the circumstances, the Court finds it 'desirable' to remove the liquidator.²⁶ The Court of Appeal identified a guiding principle that 'the court must be satisfied that the retention of the liquidator would be against the

²³ AXAHC VAP2013/0007 (unreported, delivered 24th November 2014) at paragraph [23] (Webster JA (Ag.)).

²⁴ AXAHC VAP2013/0007 (unreported, delivered 24th November 2014) at paragraph [26] (Webster JA (Ag.)).

²⁵ AXAHC VAP2013/0007 (unreported, delivered 24th November 2014) at paragraph [26] (Webster JA (Ag.)).

²⁶ AXAHC VAP2013/0007 (unreported, delivered 24th November 2014) at paragraph [26] (Webster JA (Ag.)).

interest of the liquidation, or conversely, that the removal of the liquidator is in the interest of the liquidation'.²⁷

[247] Section 187 of the **Insolvency Act** does not entirely add form to these rather general principles. It provides that

- (1) The Court may..., remove the liquidator of a company from office if
 - (a) the liquidator
 - (i) is not eligible to act as an insolvency practitioner in relation to the company,
 - (ii) breaches any duty or obligation imposed on him by or owed by him under this Act, the Rules or the Regulations made under section 486 or, in his capacity as liquidator, under any other enactment or law in the Virgin Islands, or
 - (iii) fails to comply with any direction or order of the Court made in relation to the liquidation of the company; or
 - (b) the Court is satisfied that
 - (i) the liquidator's conduct of the liquidation is below the standard that may be expected of a reasonably competent liquidator,
 - (ii) the liquidator has an interest that conflicts with his role as liquidator, or
 - (iii) that for some other reason he should be removed as liquidator."

[248] Whilst the grounds set out at section 187(1)(a)(i) to (iii) are specific, those in section 187(1)(b)(i) to (iii) are general. These latter are also 'unwieldy' because they (and in particular subsections 187(1)(b)(i) and (iii)) are prone to a subjective interpretation and not anchored in misconduct. Yet it must be clear that these provisions are to be applied judiciously, in accordance with objective and rational standards.

[249] The first of the principles concerns 'the interests of the liquidation'. What this means is not entirely clear. Whilst it should be uncontroversial that the interests of a liquidation are served if assets are realized in an effective, efficient manner, in accordance with legal principles and professional and judicial ethics and etiquette, precisely what falls outside such bounds can be debatable. It should be obvious that if a liquidator were to resort to a blatantly illegal act to realize money for the liquidation estate, then the interests of a Court ordered liquidation would not be served thereby. An extreme example would be an attempt to extort a payment by threats of physical violence. But there could be debate over whether conduct that is neither illegal nor unlawful, but which would nonetheless generally be considered by right thinking men to be sharp practice, should be accepted as being in the interests of a liquidation.

²⁷ AXAHCVP2013/0007 (unreported, delivered 24th November 2014) at paragraph [21] (Webster JA (Ag.)).

- [250] **Brilla** is clear that the answer is ‘not necessarily’, as there need not be personal misconduct to warrant removal. Regard needs to be had to the effect of conduct. I think it is safe to say that neither brute force nor sharp practice promote the interests of a liquidation conducted under the auspices of the Court.
- [251] The reference to ‘some other reason’ in section 187(1)(b)(iii) emphasizes that it is not just the financial interests of the liquidation that count. In the present case, Mr. Johnson seeks to justify his actions by focusing the Court’s attention upon the potential financial benefit they might bring to the liquidation. That is however too narrow a perspective. For instance (and without limitation), if the means used by the liquidator bring the Court into disrepute, or are unbecoming of an officer of the Court, or if the Court can no longer have confidence in the liquidator, then the section allows the Court to remove the liquidator, even though the liquidator may not have done anything unlawful or illegal, or if his conduct might benefit the liquidation financially.
- [252] The section does not provide guidance as to what constitutes ‘the standard’ a ‘reasonably competent liquidator’ is expected to meet in section 187(1)(b)(i). *Dicta* from the Court of Appeal’s judgment in **Brilla** can assist in this regard. For instance, at its most basic, ‘[t]he Liquidator is an officer of the court and should not place himself in a position where he **could** be breaking the law’ (my emphasis added).²⁸ It should be noticed that it is the possibility of breaking the law that is to be avoided, not just the breach itself of the law. A ‘liquidator is required to proceed with the liquidation...in an expeditious and efficient manner. ... He must do all that is reasonably possible to make things happen. In short, he must carry out his duties with vigour’.²⁹ Moreover he must be ‘unbiased in the conduct of the liquidation’.³⁰
- [253] In **Brilla**, the liquidator was being criticized for a lack of vigour in pursuing claims and he appeared unconcerned that in one particular aspect of the matter the liquidation estate found itself continuously in breach of a certain law. The Court of Appeal considered that the liquidator could (and on balance should) be removed, in essence on account of his lack of vigour and that

²⁸ AXAHCVP2013/0007 (unreported, delivered 24th November 2014) at paragraph [40] (Webster JA (Ag.)).

²⁹ AXAHCVP2013/0007 (unreported, delivered 24th November 2014) at paragraph [56] (Webster JA (Ag.)).

³⁰ AXAHCVP2013/0007 (unreported, delivered 24th November 2014) at paragraph [63] (Webster JA (Ag.)) quoting AMP Music Box Enterprises Ltd v Hoffman and Anor. [2003] 1BCLC 319 (Neuberger J).

the creditors had lost confidence in him, and a general feeling that retaining him as liquidator was not in the interests of the liquidation.³¹

[254] It would be a mistake, I think, to treat the description in **Brilla** of how a liquidator should conduct himself as exhaustive of the 'standard'. The judicial *dicta* in **Brilla** should also not be interpreted as if they were as statutory provisions. That description is apt broadly to cover a situation where a liquidator's performance is lackluster but does not fully cover the opposite scenario. Mr. Johnson argues that what appears to inspire the Applicants' complaints is that he has been too vigorous and too enthusiastic for their liking in his pursuit of recoveries: his attentions towards Lord Ashcroft are clearly working and they therefore want to shut him down. Mr. Johnson considers that he has indeed been doing 'all that is reasonably possible to make things happen' and thus that there is nothing amiss to see in his conduct. This raises the question of when overly 'vigorous' conduct falls short of the requisite 'standard'.

[255] In speaking of a 'standard' for a 'reasonably competent liquidator' the statute clearly has in mind that if a liquidator has showed himself incompetent then that would be grounds for removal. But in the context of a Court appointed liquidator, who thereby assumes an office as an officer of the Court, 'reasonable competence' extends beyond mere technical functionality. It imports a standard of ethical behaviour commensurate with such an office. The conduct of a liquidator who is an appointed officer of the Court must be *fitting*. He has a high office, as the office holder is invested with sovereign powers over others, by way of delegation from the Court. The office holder should therefore behave towards others with the probity and decorum of a judicial officer, without succumbing to self-interest, with impartiality, and towards the Court with candour and deference. A Court appointed liquidator is not just a businessman, an accountant, a litigation manager or a debt-collector. These principles must guide his actions and his conduct, in public as well as in private, on duty as well as off, otherwise the all-important respect for the Rule of Law is lost. These qualities in a Court officer do not reduce to the mere utilitarian residue of aiming for financial benefit to a liquidation estate, nor to the uncouth, immoral and unethical Machiavellian notion that the end justifies the means.

[256] These principles are no more than a reflection of the Code of Judicial Conduct that is published on the Eastern Caribbean Supreme Court website. This Code spells out 'rules of reason'³² that

³¹ AXAHCVP2013/0007 (unreported, delivered 24th November 2014) at paragraph [65] (Webster JA (Ag.)).

the minds of 'right thinking members of the community'³³ would contemplate as applying to judicial officers. The Code explains their rationale in some detail. Canon 1 of the Code provides that a 'Judge should uphold the integrity and independence of the Judiciary'. Canon 2 provides that a 'Judge should avoid impropriety and the appearance of impropriety in all activities'. Canon 3 provides that a 'Judge should perform the duties of the office impartially and diligently'. Canon 4 provides that a 'Judge should regulate extra-judicial activities to minimize the risk of conflict with judicial duties and obligations'. Lastly, Canon 5 provides that a 'Judge should refrain from political activity'.

[257] Whilst a Court appointed liquidator is not a judge in the same sense or to the same degree as a judge who presides over and decides cases in Court, he has to uphold the same Rule of Law and the integrity of the same judicial system and process, so these principles broadly apply to him as well. They are of course ideals, but they do not require extraordinary perfection. By the same token, not every lapse warrants removal from office. That relief depends upon the gravity of the failure and the circumstances of the case as a whole.

[258] Thus it should be clear that the doing by a Court appointed liquidator of 'all that is reasonably possible' entails doing it within the constraints of these principles, as well as within the bounds of legality and lawfulness. 'Vigour' which leads to the liquidator straying outside these limits can be grounds for his removal.

Findings on Stage 2

[259] In my respectful judgment there are a number of areas in which Mr. Johnson's conduct has fallen short of the standards to be expected of a Court appointed liquidator. I have already touched upon some of these when commenting upon individual events. Not all of these necessarily warrant a liquidator's removal, but the following examples are the most likely.

³² Canon 1, Commentary 2.

³³ Canon 4, General Rule.

Lack of candour with the Court

- [260] The first is that Mr. Johnson has not been full and frank, or candid, with the Court. This goes to the confidence, or lack of it, the Court can have in Mr. Johnson as a liquidator of the OVL liquidation going forward.
- [261] In presenting to the Court those matters that he describes as potential claims, with their prospects of recovering multi-million dollar sums, Mr. Johnson did not lay before the Court the procedural, evidential and substantive difficulties with those claims, nor any analysis of their merits. This renders it particularly difficult for the Court to form a view on whether there is, in reality, any point in the continuation of this liquidation.
- [262] The evidence concerning such potential claims which the Applicants have laid before the Court raises serious concerns that Mr. Johnson has been withholding important information from the Court, leaving the Court with an incorrect impression which favours the conclusions Mr. Johnson wishes the Court to reach. If the Court were to take Mr. Johnson's word for it, there are a number of claims in which substantial financial results can be expected quite soon. Yet there appear to be grounds for seriously doubting this.
- [263] Another instance of Mr. Johnson's lack of candour concerns his repeated allegation that servers had been sabotaged. What appears to have started as a suggested explanation for difficulties in accessing servers, seems to have been seized upon by Mr. Johnson and presented as fact, time and time again, until it might become established in its own right. The contemporaneous correspondence however suggests there was no sabotage at all, merely a temporary password difficulty which was resolved early on. This appears to have been an instance of distortion and exaggeration on the part of Mr. Johnson.
- [264] Similarly, Mr. Johnson was clearly not forthright with the Court in relation to his encounter with Mr. Ashcroft at a restaurant on 6th September 2013. His account of that incident in his evidence for this hearing was sparse and it did not make sense. Mr. Johnson sought to exonerate himself thereby. Instead, his own contemporaneous version of events broadly matched that of Mr. Ashcroft, as recounted by Mr. Ashcroft's lawyer. Mr. Johnson's own contemporaneous version of events portrayed himself as having led the offensive rather than being the victim of an unprovoked attack. In that account Mr. Johnson also freely spoke of his

intention to bring down Lord Ashcroft, and that his campaign against Lord Ashcroft was becoming an obsession, something which Mr. Johnson acknowledged he should curtail. Mr. Johnson's more recent account, several years after the event, was an attempt to whitewash his own conduct for the eyes of the Court and it said nothing about his intentions with regard to Lord Ashcroft. It is incumbent upon a liquidator as officer of the Court to be forthright with the Court, even if to do so might be embarrassing. Mr. Johnson has, unfortunately, fallen short in this respect.

[265] A further example of lack of candour with the Court, on the part of both the JLs, was their failure to be full and frank about when they realized that they needed to obtain retrospective sanction for their legal steps in the TCI, saying that they had realized this only 'recently'.

[266] These are four examples of instances where Mr. Johnson has been less than forthright with the Court. They disclose a pattern.

Partiality

[267] The lack of candour I have referred to in the previous section discloses a degree of partiality. It is a feature of Mr. Johnson's evidence before this Court that it is intended to deflect criticism from himself. Its clear purpose is to advocate for his retention of the office of liquidator. In a word, his evidence is heavily self-serving.

[268] It was a most revealing admission on the part of Mr. Johnson when he recounted accosting Mr. Ashcroft at a restaurant on 6th September 2013 that he told him that he was 'taking out' his father Lord Ashcroft, explaining how his determination was increasing but that he was trying not to be obsessed.

[269] In my respectful judgment Mr. Johnson's actions disclose that he has developed personal ill-will or hostility towards Lord Ashcroft. This has manifested itself in particular in:

- (1) the September 2013 incident at the restaurant; and
- (2) the fact and tenor of Mr. Johnson's comments in the newspaper media and the Panorama programme; and
- (3) Mr. Johnson's preparation, without regard to the economic wisdom of doing so, of an extremely long questionnaire for Lord Ashcroft, for which he had no assurance that any

of it would be answered, and for which Mr. Johnson requested answers, supported by documentation, within an impossibly short deadline.

[270] It is evident to me that Mr. Johnson has lost his partiality, his objectivity and, at least to a certain extent, his right use of reason, subordinating these to his passions.

Intimidation

[271] Mr. Johnson is accused by the Applicants of improper conduct, on the basis that he has sought to intimidate Mr. Breeze and Mr. Spragg into complying with his demand for information by saying that he would report them to their respective professional regulatory bodies if they did not comply. Mr. Johnson did not then in fact report them. He clearly had no real intention of doing so. He sees nothing wrong with this, and he says that he was only being 'assertive', something that he says is sometimes necessary when a liquidator is faced with obstructive characters.

[272] There are however a number of things seriously wrong with this.

[273] First, to assert something (that he would report them) which is not true is to lie; it is dishonest.

[274] Secondly, such threats are a grave matter. Mr. Johnson clearly knows this and that is why he invoked such a threat (indeed, Mr. Johnson pleads with the Court not to remove him so as not to make the complaint made against him to the ICAEW by Lord Ashcroft even more difficult for him, on the basis that the consequences of such a complaint should not be taken lightly). The addressee of such threats would have reason to fear the trouble at least such a complaint could cause, however unfounded or misplaced. The addressee cannot have confidence that those within the regulatory bodies would see such a complaint as groundless and that it would be dismissed without more. Such complaints are literally a matter of professional life and death. They can have catastrophic financial and personal consequences for the hapless subject and his family. That may be so even if they do not proceed. The mere fact of a complaint may need to be declared to an insurer or potential insurer, and that can also be held against a professional in respect of a career move, a promotion or other professional accolade or form of advancement.

[275] Thirdly, we should not lose sight of the purpose of professional regulatory rules and sanctions. Ultimately, it is to protect consumers of the professional services and for upholding the integrity of a particular profession. Whilst there may be circumstances where one professional could and should properly refer another to a regulatory body, to use the threat of a complaint merely for the ulterior motive of forcing answers to be given to requests for information is in principle an abuse of the complaints process.

[276] Such a practice is therefore not proper for a liquidator as an officer of the Court to undertake.

Influencing public opinion

[277] In the same way that one would not expect a judge to comment in the media on any live Court matter (nor, usually, any Court matter except in exceptional circumstances), a liquidator should take care not to air his opinions on matters pertaining to a live liquidation in the media, unless he has good reason for doing so. This is so, even if a liquidator does not disclose any confidential material or information. In this case I cannot tell if confidential information has been disclosed by Mr. Johnson or not. Mr. Johnson has offered no good reason for making written contributions in newspapers about BCB and Lord Ashcroft and related persons and entities, nor for his participation in the BBC 'Panorama' television programme.

[278] Airing opinions and remarks in public, especially in media which aim to reach as wide an audience as possible, can be immensely prejudicial to persons and entities, not just to their reputations but also to their right to a fair trial in a court of law. This in principle goes against the discretion due from a judicial officer. On any view, it is not healthy for a liquidator to spill his opinions so liberally in public as Mr. Johnson has done, in relation to matters that touch and concern a current liquidation of which he is the liquidator.

[279] In this case Mr. Johnson has not explained properly why he has publicized his opinions in the ways that he has. In my respectful view the most probable reasons are a combination of:

- (1) a desire to harass Lord Ashcroft in the hope of being 'bought off' (as the Applicants submit);
- (2) a desire to harass Lord Ashcroft in furtherance of a personal *animus* against him;
- (3) narcissism;

- (4) his sense of social justice is outraged by Lord Ashcroft's socio-political advancement and prosperous progress in light of what he perceives to be Lord Ashcroft's practices.

[280] In respect of the first probable reason, even though negative comments in the press about a person or entity might not be unlawful or illegal, when combined with an intention to prompt the target to 'buy off' the commentator, this is a type of blackmail. It is a sharp practice. As such, it is not becoming to an officer of the Court to indulge in this.

[281] In respect of the other three reasons, an officer of the Court who succumbs to these fails to be dispassionate. He allows his personal feelings to rule him, creating a fundamental conflict between fulfillment of his duty as an officer of the Court and his own aims and personal sentiments.

Lack of discretion

[282] Mr. Johnson has shown himself most ready to proffer public comment and details concerning the affairs which pertain to OVL and the liquidation. Thus, the Court cannot be reasonably certain that Mr. Johnson has protected the liquidation processes with the discretion, self-restraint and confidentiality that befits a liquidator as an officer of the Court.

[283] The matters I have outlined above are the main aspects which, in my respectful judgment, might warrant Mr. Johnson's removal. There are other areas in which Mr. Johnson's conduct has not been ideal, such as his manner and tone of addressing people in which he does not mince words but which other professionals can reasonably find disrespectful (not least his breathtakingly inappropriate reference to Mr. Andrew Ashcroft as 'Mr. Hashcroft'), but the extent to which they warrant his removal is debatable. Mr. Johnson should, in my view, have the benefit of the doubt in respect of those aspects. Mr. Johnson, and other office holders, should know that rudeness is unbecoming of the office and is never acceptable. In the next section I will discuss whether the main concerns do warrant his removal.

Should the court exercise its discretion and remove the liquidator?

- [284] The 'court does not lightly remove its own officer and will, amongst other considerations, pay a due regard to the impact of a removal on his professional standing and reputation'.³⁴
- [285] To determine whether it would be desirable to remove Mr. Johnson, I have to consider all the circumstances. I would have to be satisfied that retention of Mr. Johnson would be against the interest of the liquidation, or conversely, that his removal is in the interest of the liquidation.
- [286] I need to carry out a balancing exercise between the expectations that a liquidator is to be efficient, vigorous and unbiased and the impact of removal on the liquidator's professional standing. I also need to consider whether the Court can be reasonably confident Mr. Johnson will live up to the requirements of his office as liquidator in the future.
- [287] In this case Mr. Johnson argues that the interests of the liquidation would best be served if he were to continue as liquidator. This is due to the fact that he has built up an extensive degree of institutional knowledge since the inception of this liquidation, through his being the lead liquidator with day to day conduct of the affairs of the liquidation, and he is also the liquidator of Hadsphaltic. The creditors of that company support his remaining in office, as does Mr. Greenwood. Mr. Johnson contends he has achieved a lot in this liquidation, in very difficult circumstances in which others connected with OVL and Lord Ashcroft have been actively obstructing the liquidation. His removal would essentially bring the liquidation to an end. Whereas he has been prepared to work on the basis that his fees and expenses can be paid from eventual recoveries, there are no assets with which to pay a replacement liquidator who would typically want to be paid on a monthly basis. Moreover, Lord Ashcroft has lodged a complaint against Mr. Johnson to the ICAEW and his removal now would be likely to make his position more even more difficult in respect of that complaint.
- [288] With respect to the latter, the business of this Court is to do justice in relation to the matters before it. If it is desirable to remove Mr. Johnson from office then the Court should not flinch from doing so, even if it might make his position in relation to the ICAEW more problematic.

³⁴ AXAHC VAP2013/0007 (unreported, delivered 24th November 2014) at paragraph [61] (Webster JA (Ag.)) quoting *Re Edenote Ltd.* [1996] BCC 718 at page 725 (Nourse LJ).

[289] In my respectful judgment it is in the interests of the liquidation to remove Mr. Johnson.

[290] I am of this view for the following reasons:

- (1) Since Mr. Johnson has not been forthright with the Court in numerous respects, the Court no longer has confidence that he will faithfully discharge his duties as an officer of the Court. This concerns, in particular, the merits and prospects of recovery in respect of the various putative claims Mr. Johnson identifies. It also concerns other matters, which I have identified, including his accounts of the unfortunate restaurant incident in September 2013. Mr. Johnson's two accounts thereof could not have been more different. This seriously undermines the Court's confidence in Mr. Johnson's reporting of events and the way he has portrayed matters pertaining to the liquidation in general. These instances, taken together, indicate that Mr. Johnson's lack of full and frank disclosure is systemic. It is not in the interests of a liquidation for a liquidator to be permitted by the Court to incur chargeable time on unproductive workstreams, as this would directly affect the amount of any distribution at the end of the liquidation. Mr. Johnson has shown no discernment whatsoever in this regard. He paints apparently very difficult claims as strong, regardless of any proper analysis of their merits, in an effort, it seems, to continue to have as wide as possible a platform on which to continue to work as he pleases.
- (2) Whilst Mr. Johnson has been less than forthright with the Court, he has demonstrated a history of lack of discretion, commenting publicly and airing details concerning the affairs pertaining to OVL and the liquidation in the public area. The Court is thus moved to protect its processes by ending Mr. Johnson's appointment as liquidator in this liquidation.
- (3) Mr. Johnson has allowed his feelings and passions to have the upper hand over his reason. Mr. Johnson has now, for many years, taken a partial view in relation to this liquidation. It is readily apparent that Mr. Johnson's presentation of evidential matters upon this application was heavily aimed at persuading the Court not to remove him. Much of Mr. Johnson's evidence was self-serving. It is readily apparent that he is

prepared to go to considerable lengths to retain the platform of this liquidation so that he can continue his campaign against Lord Ashcroft.

- (4) Mr. Johnson has shown himself tone-deaf as to conduct that an officer of the Court should avoid. The intimidation and attempts to influence public opinion described above are examples of this. It is thus not the case that the Court can have much, nor indeed any, optimism that Mr. Johnson will change his ways. Whilst Mr. Johnson, through his Queen's Counsel, admitted to making 'mistakes' in relation to the liquidation, such errors appear to concern only the JLs failure to obtain this Court's sanction before seeking sanction for court proceedings in the TCI and his use of profane language during the restaurant incident in September 2013. Mr. Johnson appears completely unapologetic about everything else. That does not afford the Court with any reassurance that Mr. Johnson will suddenly become forthright, dispassionate, objective and eschew all sharp practice. The Court regrets to say that it is not reasonably confident that Mr. Johnson will live up to the required standards in future in this liquidation.

[291] Mr. Johnson's institutional knowledge does not outweigh such loss of confidence. An encyclopedic institutional knowledge is useless to the Court if, as has regrettably been the case, it is selectively represented to the Court to further the liquidator's personal purposes. Neither does the fact that Mr. Johnson is prepared to work on some kind of contingency basis outweigh such loss of confidence. Nor do the wishes of Hadsphaltic's creditors.

[292] I bear in mind that Mr. Johnson warns that his removal could well mean the end of the liquidation. That may be so, but there is another liquidator in place who must have considerable institutional knowledge, having been *in situ* since 2nd August 2018, and who can continue with the work as required, should he be prepared to do so. Moreover, that liquidator, unlike Mr. Johnson, comes within the direct supervisory and regulatory jurisdiction of this Court and there is no issue that he has shown any cause for his removal. That also answers Mr. Johnson's argument that it would be 'disproportionately disadvantageous' to bring in a new liquidator now – there is no need to do so because Mr. Greenwood should be perfectly capable of progressing the liquidation.

[293] I have considered the effect of removal upon Mr. Johnson's reputation and exacerbated difficulties he might suffer as a result from the ICAEW. It would be regrettable if Mr. Johnson

suffers any negative effect but there is a catalogue of matters here which leads me to conclude that this Court can no longer place confidence in Mr. Johnson in respect of this liquidation. I have no reason to doubt that Mr. Johnson is a competent liquidator in other matters, but in this particular case he has allowed his own personal sentiments to rule his reason. It is appropriate that in this liquidation he should step aside with immediate effect.

Termination of the liquidation

- [294] In light of the lack of a full and frank presentation of the prospects of success of the potential claims the OVL liquidation estate might gain from, the Court is not in a position to decide whether or not it would be just and equitable to order the liquidation to be terminated. I accept that it is bizarre for parties who might stand to gain some financial benefit from a liquidation to want to shut the liquidation down, as their only hope of making any recovery would be ended thereby. I accept that in this regard the Applicants are really motivated by a desire to stop Mr. Johnson harrying them and Lord Ashcroft, and they thus want to deny Mr. Johnson a platform from which he can continue doing so.
- [295] The appropriate course, in my view, is for the Court to give Mr. Greenwood an opportunity to provide the Court with the information which Mr. Johnson did not share with the Court, namely a dispassionate and objective full and frank analysis of the merits of the putative claims, their prospects of success in terms of making recoveries, any Counsel's opinions received, and how it is proposed that prosecution of such claims would be funded.
- [296] Furthermore, in light of the many years this liquidation has been on foot with not a single financial recovery to show for it, the Court will direct Mr. Greenwood to provide the Court with a concrete proposal for the steps he plans to take to progress the liquidation and/or to bring it to a close.
- [297] Without such a full and frank analysis and concrete proposal, the Court will be minded to terminate the liquidation, as it is not in the interests of the stakeholders of the company, nor of the public interest, for a liquidation to be kept in abeyance indefinitely on the off-chance that some recovery might fall to the benefit of the company.

[298] I shall hear Counsel in respect of timelines for Mr. Greenwood to do so, and the precise terms for the direction to Mr. Greenwood.

Retrospective sanction

[299] There can be no question that this Court would have granted the JLs sanction to apply for recognition in the TCI, in the terms of the Second Recognition Order.

[300] It is less clear whether the Court would or should have granted sanction to apply for an order in the terms of the First Recognition Order. With hindsight, it seems patent that the powers then conferred were too wide and exceeded the jurisdiction of the Court. There is however a danger of applying the wisdom of hindsight to such situations. If it had been reasonably arguable that such powers could be granted, then the Court might well have granted sanction, and retrospective sanction could track that. The same approach can be applied to the other proceedings that the JLs have embarked upon, or joined in with, and in particular those where the JLs have not been successful. As I have explained above, the Court requires more than a terse explanation that the failure to seek sanction beforehand was inadvertent and that such failure had only 'recently' come to the JLs attention. I have explained the factors the Court would need to be addressed on, as part of the JLs duty of full and frank disclosure not just as applicants on an *ex parte* basis but also as officers of the Court, in order for the Court to give proper consideration to an application for retrospective sanction. Mr. Greenwood will be afforded a further opportunity to lay such material before the Court and I shall hear the parties' Counsel on an appropriate timetable and directions. Such evidence should include precise details as to when and how the JLs realized that they needed this Court's sanction, since delay is a factor to be weighed in the exercise of the Court's discretion.

Disposition

[301] Mr. Johnson shall be removed from office as a Joint Liquidator of OVL with immediate effect. Mr. Johnson shall transfer such files and records as he has in his possession to Mr. Greenwood. I shall hear Counsel for Mr. Johnson as to a timetable for such transfer.

[302] The application for termination of the liquidation shall be adjourned for further evidence to be filed by Mr. Greenwood, as the continuing sole liquidator of OVL, should he so desire, setting

out a full and frank analysis of the merits and prospects of recovery in respect of potential claims, together with a proposal for the steps he plans to take to progress the liquidation and/or to bring it to an orderly close.

[303] The JLs' application for retrospective sanction stands adjourned for further evidence to be filed by Mr. Greenwood, as the continuing sole liquidator of OVL, should he so desire, setting out a full and frank analysis of the merits of the legal steps taken by the JLs, as understood by the JLs prior to those steps being taken, exhibiting any legal advice received. Without prejudice to the foregoing, the JLs shall have retrospective sanction in respect of the obtaining of a recognition order in the TCI in the terms of the Second Recognition Order.

[304] There shall be directions for the filing of such further evidence, and liberty to request the listing of a further hearing, but with a deadline which failure to meet will entail that the liquidation shall be terminated (in relation to the issues pertaining to the application to terminate the liquidation) or further retrospective sanction shall be refused (in relation to the issues pertaining to the application for retrospective sanction).

[305] The Court shall also hear the parties further in relation to costs.

[306] I take this opportunity to thank learned Counsel for their assistance during this matter.

Gerhard Wallbank
High Court Judge

By the Court

Registrar