Neutral Citation Number [2026] EWHC 1776 (Ch)

Case No: CR-2024-004177

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY & COMPANY LIST (ChD)

IN THE MATTER OF SANDYCOMBE DEVELOPMENT LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

Rolls Buildings
Fetter Lane
London EC4A 1NL

Wednesday, 24 June 2026

BEFORE:
MR JUSTICE CAWSON

BETWEEN:

1. SOPHIA HO HANG CHONG
2. RUSHABH HARSHIL KOTHARI
3. CHAN SHIU YUN
4. WONG KWAI SUN
5. LENA FOO
6. ROLAND HINTERKOERNER
7. WAI CHI FANNY
8. LAI SANG PHILIP CHOI

Petitioners

-and-

1. GUARDIAN CAPITAL PARTNERS LIMITED
2. SANDEEP SINGH MANGAT
3. WG HOLDINGS LIMITED [Dissolved]
4. QUESLETT DEVELOPMENTS [WEST MIDS] LIMITED
5. SANDYCOMBE DEVELOPMENT LIMITED
6. SANDYCOMBE RESIDENTIAL LIMITED [Dissolved]
7. SUKHDEEP DHILLON

Respondents

Mr Stephen Cogley KC (instructed by **TLT LLP**) appeared on behalf of the Petitioners
Ms Olivia Chaffin-Laird (instructed by **FBC Manby Bowdler (Midlands) Limited**) appeared on behalf of the First, Second, Fourth and Seventh Respondents

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APPROVED JUDGMENT

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(Official Shorthand Writers to the Court)

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MR JUSTICE CAWSON:

Introduction

1. I have before me an application dated 4 June 2026 ("**the Application**") brought by the first, second, fourth and seventh Respondents ("**the Respondents**") to an unfair prejudice petition ("**the Petition**") whereby the Respondents seek to strike out the Petition pursuant to CPR 3.4(2)(a) and/or (b), and seek, in the alternative, reverse summary judgment.

2. The Petition relates to the affairs of Sandycombe Development Limited ("**the Company**").

3. The basis for the Application is that it is alleged by the Respondents that, by the Petition, the Petitioners are seeking relief which is reflective of loss that the Petitioners allege has been caused to the Company by the Respondents' actions said to amount to the unfairly prejudicial conduct that founds the basis of the petition, and that this offends against the rule against reflective loss and the proper claimant rule. Further, the Respondents complain that the court is being asked to consider an impermissible mixture of personal claims, corporate claims and contingent derivative claims.

4. The Petitioners resist the application and maintain that the Petition is properly founded and does not offend against the rule against reflective loss or the proper claimant rule.

5. Ms Olivia Chaffin-Laird appears on behalf of the Respondents and Mr Stephen Cogley KC appears on behalf of the Petitioners. I heard submissions yesterday, and reserved judgment to this afternoon.

Background

6. The Company was incorporated on 9 February 2018. The individual behind its incorporation was the second Respondent, Sandeep Singh Mangat ("**Mr Mangat**").

7. The Company was incorporated as a special purpose vehicle to conduct a single development, namely that of land on Sandycombe Road, Richmond, Surrey, TW9 2EP ("**the Development**").

8. The Petitioners are all investors in the Company, and the holders of A preference shares therein. In addition to the first Respondent, Guardian Capital Partners Limited ("**Guardian**"), there is also at least one other A preference shareholder, a Timothy Blair, and there are also holders of B preference shares.

9. Guardian holds A Shares in addition to its A preference shares. It is not in dispute that as holder of A shares, Guardian has voting control over the Company. Guardian is controlled by Mr Mangat, who was the sole director of the company until 14 October 2022 when the seventh Respondent, Sukhdeep Dhillon ("**Mr Dhillon**") was appointed as a second director.

10. The third Respondent, WG Holdings Limited ("**WGH**") is now dissolved. WGH and the fourth Respondent, Queslett Developments (West Midlands) Limited ("**Queslett**"), are companies to which, on the Petitioners' case, funds that ought to have been applied for the Company's benefit, were diverted in order to fund a development or developments in Birmingham.

11. The Company is the fifth Respondent. The sixth Respondent is a dissolved subsidiary of the Company, Sandycombe Residential Limited ("**SRL**").

12. The relationship between the various shareholders in the Company was regulated by the terms of a joint venture shareholders agreement dated 2 May 2018 ("**the JVSA**"), to which all the shareholders, including Guardian and the Petitioners, and also the Company, were parties.

13. Pursuant to the JVSA, the Petitioners invested approximately £3.22 million in the Company in order to fund the Development. The Company subsequently failed in 2024, with the appointment of LPA receivers. The Petitioners' case is that, in consequence, their shares are now worthless.

14. The essence of the Petitioners' case is that those responsible for the management of the company, namely Mr Mangat and Mr Dhillon, caused company funds and borrowing facilities to be deployed for purposes unrelated to the Development, in particular in connection with the separate development project or projects in Birmingham involving WGH and/or Queslett, and that they thereafter concealed material information concerning the Company's affairs from investors. The Petitioners contend that such conduct constituted, amongst other things, breach on the part of Mr Mangat and Mr Dhillon of their fiduciary duties as the directors of the Company, breach of the JVSA and ultimately conduct unfairly prejudicial to the Petitioners' interests as shareholders in the Company.

15. The Respondents deny the allegations against them in their entirety. Their case is that the transactions complained of were legitimate commercial arrangements properly entered into in the course of managing the Company's property development business, and that the relevant decisions were taken in good faith in what were believed to be in the interests of the company. The Respondents say that the losses claimed to have been suffered by the Petitioners are the consequence of the commercial failure of what was always a speculative development project rather than the result of any actionable wrongdoing on the part of the Respondents.

The Amended Petition

16. It is common ground that I should proceed on the basis that the factual claims in the Amended Petition dated 10 February 2026 are made out. The question is whether those facts as pleaded support a properly maintainable petition.

17. It is necessary to look in more detail at the way that the Petitioners' case is pleaded in the Amended Petition.

18. The Petition is based upon what are described therein as *"Guardian's breaches"* and *"Claims against Mr Mangat, Mr Dhillon, WGH and Queslett"*.

19. With regard to Guardian's breaches, they consist of allegations of breach of contract and allegations of breach of fiduciary duty.

20. The allegations of breach of contract are allegations that Guardian has acted in breach of the JVSA as follows:

    a. Firstly, in breach of clause 2 thereof regarding a failure to appoint an investment director. The allegation is that the fifth Petitioner, Ms Lena Foo, ought to have been appointed as a director pursuant to clause 2.

    b. Secondly, it is alleged that Guardian failed to conduct the business of the Company in the best interests thereof in breach of clause 3.2. This relates to essentially three matters:

        i. Firstly, loans obtained from Lendhub and another lender. The essential allegation is that the loans were either unnecessary or were taken out on terms that were not commercial.

        ii. Secondly, that funds were used for the benefit of developments carried out by WGH and/or Queslett rather than for the benefit of the company.

        iii. Thirdly, that Guardian caused monies to be misapplied to the benefit of various parties, including Mr Mangat, Mr Dhillon and third parties.

    c. Thirdly, it is alleged that Guardian acted in breach of clause 5.1 of the JVSA which requires that certain *"reserved matters"* be decided upon by all the shareholders including the A preferential shareholders. It is alleged that one particular reserved matter, namely the incorporation of SRL, was dealt with otherwise than in accordance with clause 5.1.

    d. Fourthly, it is alleged that Guardian acted in breach of clause 6.2 and clause 8.6 of the JVSA. I do not, for present purposes, need to say any more about this.

    e. Fifthly, it is alleged that in breach of clause 22.6 of the JVSA, Guardian acted in breach of an obligation to act in good faith towards the Petitioners. The matters said to go to this allegation are the misappropriation of monies and assets belonging to the Company, Guardian placing itself in a position of conflict with the Company, and Guardian keeping the Petitioners in the dark in relation to various matters concerning the affairs of the Company.

21. With regard to the allegation of breach of fiduciary duty against Guardian, it is alleged that the fiduciary duty on the part of Guardian arose in the context of a joint venture between the various parties. The breaches of this fiduciary duty that are alleged substantially reflect the matters that are alleged to have amounted to a breach of the obligation of good faith under clause 22 of the JVSA.

22. It is to be noted that to the extent that these alleged breaches give rise, in themselves, to causes of action they would be personal claims by the Petitioners against Guardian capable of being pursued by ordinary action rather than by way of petition under section 994 of the Companies Act 2006. Further, they are not, as formulated, claims that could be pursued by the Company as such.

23. With regard to the relief that is sought by the Petition consequential upon the Guardian breaches, this is dealt with at paragraph 77 et seq of the Petition. It is alleged that in consequence thereof, the Petitioners' shares in the company for which they subscribed £3.22 million, are worthless - see paragraph 78 of the Petition.

24. Paragraph 79 then goes on to say that:

> "The primary remedy sought by the Petitioners is for orders requiring the Respondents or any one or more of them to purchase their shares at a fair value without a discount and on the basis or on the assumption that the company has its assets restored to it and/or is compensated for the breaches of duty and other matters pleaded herein."

25. Paragraph 79 then says that:

> "Alternatively, the unfairly prejudicial conduct of the Respondents, excluding the Company and SRL, entitles the Petitioners to damages/compensation. In that event, the Petitioners claim the above losses as damages and/or equitable compensation in the same sum or any other sum as determined by the court."

26. Paragraph 80 then identifies a further claim for loss of profit/return on investments as damages and/or equitable compensation to be assessed in accordance with what are said to be the Petitioners' rights under clause 8 of the JVSA or as otherwise determined by the court.

27. With regard to what the Petition describes as the claims against Mr Mangat, Mr Dhillon, WGH and Queslett, it is to be noted that none of them is a shareholder in the Company. However, there is authority that in an appropriate case, those who are found to have been responsible for unfairly prejudicial conduct in relation to the affairs of a company may, even though they are not shareholders, be joined as respondents to a petition for the relief under sections 994-96 of the Companies Act 2006 - see for example, *Apex Global Management Ltd by Fi Call Limited* [2013] EWHC 1652 (Ch) at [125], per Vos J (as he then was).

28. With regard to these claims against others than Guardian, there are, firstly, allegations of breach of fiduciary duty owed to the Company. These allegations rely, essentially, upon the same factual matters as are relied upon in respect of the claims against Guardian, which acted at the direction of Mr Mangat and Mr Dhillon. Were these claims to be pursued outside the Petition, then they would be the Company's claims for breach of fiduciary duty which only the Company could bring unless a shareholder could bring them derivatively.

29. In relation to these alleged breaches of fiduciary duty, it is to be noted that in paragraph 88 of the Petition, it is pleaded that:

> "The company has suffered loss and damage by reason of the foregoing, and the Petitioners have likewise reflectively suffered loss in their capacity as shareholders as well as parties to the JVS agreement."

30. The other breaches on the part of Mr Mangat, Mr Dhillon, WGH and Queslett that are alleged, are: firstly, an allegation of unlawful means conspiracy on the part of Mr Mangat, WGH and Queslett; and secondly a claim that they induced Guardian to breach the JVSA. Outside of the Petition, these would be personal claims that the Petitioners could pursue against Mr Mangatt, Mr Dhillon, WGH and/or Queslett.

31. Paragraph 98 et seq of the Petition sets out the relief that is claimed in respect of these alleged breaches on the part of Mr Mangat, Mr Dhillon, WGH and Queslett. In paragraphs 98 and 99 of the Petition, it is pleaded that the Petitioners have essentially suffered the same loss under this head as they suffered in consequence of the breaches alleged as against Guardian. Specific reference is made back to paragraph 78 of the Petition in respect of the loss of the value of the shares in the Company being the loss suffered by the Petitioners. These paragraphs of the Petition go on to make a claim for loss of profits that is formulated in a similar way to the claim made for loss of profits in respect of the Guardian breaches, and paragraph 101 goes on to say that:

> "The Petitioners further seek on behalf of the Company an account of profits against each of Mr Mangat, WGH and Queslett in respect of each of their interests in the Birmingham development, including without limitation in respect of …"

32. Paragraph 101 then went on further to set out various matters in respect of which an account of profits was sought.

33. Paragraph 104 of the Petition goes on to set out the allegations of unfair prejudice, pleading that:

> "It is asserted that by reason of the facts and matters set out above, Mr Mangat, Mr Dhillon and Guardian have and are conducting the affairs of the company in a manner which is unfairly prejudicial to the interests of the company's members including the Petitioners. Furthermore, each of WGH and Queslett have been involved in, assisted or otherwise knowingly benefitted from the facts and matters which have constituted the unfair prejudice, including and in particular in respect of the misappropriation of monies used for the purposes of the Birmingham development."

34. Paragraph 105 sets out various specific matters taken from earlier allegations that are relied upon.

35. The relief claimed by the Petition is set out in the Prayer at the end thereof. The Prayer seeks the following relief:

> "1. That the Respondents or any of them do purchase the Petitioners' shares in the Company at a fair value to be determined by this court or an independent valuer without discount and after the Respondents have returned to the Company the sums, property and assets of the Company that have been taken, diverted or appropriated as above pleaded or have paid damages/compensation to the Company or accounted to the Company for all profits made by them in breach of duty or which they have received or valued on the basis that it is deemed that the value of such claims is treated as an asset of the company, ignoring whether or not it has or will be received or recovered by the company.
>
> 2. Alternatively that the Respondents do pay damages and/or equitable compensation in the sum of at least £3,220,000 or such other sums as the court may determine.
>
> 3. An account of profits in favour of the Company as aforesaid.
>
> 4. All accounts, inquiries, directions and other relief as necessary."

36. Then, jumping below various claims for interest and so forth, to paragraph 10:

> "10. To the extent necessary, permission to bring a derivative claim on behalf of the Company. In the event that any heads of relief not recoverable by the Petitioners in their own right, or the court determines that the same should be properly recovered by the Company."

Procedural history

37. With regard to the procedural history of the Petition, matters began with the obtaining by the Petitioners, on 18 July 2024, of a worldwide freezing order on a without notice basis.

38. Directions were given in relation to the Petition at a costs and case management conference on 7 March 2025. By that stage, the Respondents had served a defence. There is an issue as to whether this Defence was drafted by them personally or by solicitors that have previously acted for them, Mishcon de Reya. Further, at that stage, it was envisaged that the matter would be listed in a trial window between January 2026 and April 2026.

39. The trial did not proceed earlier this year as anticipated. In the event, the Petition was amended by the addition of certain further allegations, the Amended Petition being dated 10 February 2026. There is an issue between the parties as to why the trial was delayed. The Petitioners' position is that they had made various attempts to obtain disclosure of relevant documents from the Respondents and they had been delayed in serving an Amended Petition by the need to obtain that disclosure. They pin the blame on the Respondents. The Respondents contend that the delay was on the part of the Petitioners in making a late application to amend.

40. By a consent order dated 10 February 2026, ICC Judge Greenwood gave revised directions that provided for the service of the Amended Petition but also provided, by paragraph 6(b) of his order, that by 4 pm on 27 March 2026, the relevant Respondents: *"shall file and serve their amended Points of Defence"*. The time for them to do so was subsequently extended to 22 May 2026 by order of ICC Judge Mullen dated 30 March 2026.

41. Amended Points of Defence were served. However, rather than simply amending the Points of Defence consequential upon the amendments to the Petition, a replacement Points of Defence was served. Objection has been taken thereto by the Petitioners, who say that the direction in relation to the service of an amended Points of Defence was merely to permit amendment consequential upon the amendments to the Particulars of Claim. This has caused the Respondents to issue an application dated 4 June 2026 seeking, so far as required, respective permission to amend the Points of Defence in accordance with the draft served.

42. It is now envisaged that the trial will take place in February 2027, and this is how matters currently stand procedurally.

The rule against reflective loss

43. Before considering the Respondents' case for strike out, it is necessary to explain the rule against reflective loss because the Respondents' case is very much dependent on it.

44. The leading authority in relation to reflective loss is the decision of the Supreme Court in *Marex Financial Limited v Sevilleja* [2020] UKSC 31, [2021] AC 39 ("***Marex***") where the majority, Lord Reed PSC, with whom Lady Black JSC, Lord Lloyd-Jones JSC and Lord Hodge JSC agreed, approved the application of the rule so far as a claim for reflective loss by a shareholder is concerned whilst disapproving the extension of the rule to other categories of claimant, such as the claimant in that particular case, a creditor of the company.

45. As identified by Lord Reed PSC at [24], the issue as to the recovery of reflective loss by a shareholder first arose in *Prudential Assurance Co Ltd v Newman Industries Ltd (No.2)* [1982] Ch 204 ("***Prudential Assurance***"). At [39] in *Malex*, Lord Reed PSC summarised what *Prudential Assurance* had decided as follows:

> "… a diminution in the value of a shareholding or in distributions to shareholders, which is merely the result of a loss suffered by the company in consequence of a wrong done to it by the defendant, is not in the eyes of the law damage which is separate and distinct from the damage suffered by the company, and is therefore not recoverable. Where there is no recoverable loss, it follows that the shareholder cannot bring a claim, whether or not the company's cause of action is pursued. The decision had no application to losses suffered by a shareholder which were distinct from the company's loss or to situations where the company had no cause of action."

46. At [27] Lord Reed PSC referred to the Court of Appeal in *Prudential Assurance* as having explained its reasoning as follows at page 223:

> "The shareholder does not suffer any personal loss. His only 'loss' is through the company, in the diminution in the value of the net assets of the company ... The plaintiff's shares are merely a right of participation in the company on the terms of the articles of association. The shares themselves, his right of participation, are not directly affected by the wrongdoing. The plaintiff still holds all the shares as his own absolutely unencumbered property."

47. At [28] Lord Reed PSC explained that this means that:

> "… where a company suffers actionable loss, and that loss results in a fall in the value of its shares (or in its distributions), the fall in share value (or in distributions) is not a loss which the law recognises as being separate and distinct from the loss sustained by the company. It is for that reason that it does not give rise to an independent claim to damages on the part of the shareholders."

48. Further, at [79] Lord Reed PSC said this:

> "Summarising the discussion to this point, it is necessary to distinguish between (1) cases where claims are brought by a shareholder in respect of loss which he has suffered in that capacity, in the form of a diminution in share value or in distributions, which is the consequence of loss sustained by the company, in respect of which the company has a cause of action against the same wrongdoer, and (2) cases where claims are brought, whether by a shareholder or by anyone else, in respect of loss which does not fall within that description, but where the company has a right of action in respect of substantially the same loss."

49. Lord Reed PSC then explained, at [83], that the critical point in respect of the first category of case was that the shareholder had not suffered a loss which was regarded by the law as being separate and distinct from the company's loss, and therefore they had no claim to recover it. He then observed that:

> "… As a shareholder (and unlike a creditor or an employee), he does, however, have a variety of other rights which may be relevant in a context of this kind, including the right to bring a derivative claim to enforce the company's rights if the relevant conditions are met, and the right to seek relief in respect of unfairly prejudicial conduct of the company's affairs."

The Respondents' case

50. The Respondents submit that, perhaps unlike other section 994 petitions, the rule against reflective loss is engaged in the present case because of the way that the Petitioners have put their case as to the loss that they have suffered in consequence of the unfairly prejudicial conduct that they allege. Reliance is placed by the Respondents upon, for example, paragraph 88 of the Petition where, as I have already referred to, it was pleaded that the company has suffered loss and damage and that *"the Petitioners have likewise reflectively suffered loss in their capacity as shareholders as well as parties to the JVS agreement."* Further, in relation to the formulation of the relief itself, reliance is placed by the Respondents on the way that the claim for relief is formulated, so far as buy-out is concerned in paragraph 1 of the Prayer, in terms which reflect the loss to the Company by requiring, as part of the relevant valuation exercise, the restoration of the sums,

property and assets that the Respondents are alleged to have taken from the Company and which the Company is entitled to recover.

51. On behalf of the Respondents, Ms Chaffin-Laird submits that a petitioner, in respect of a petition under section 994, needs to be able to show loss separate from the company's own loss which it is said that the Petition does not do. She submits that this is borne out by the fact that the Company is, as she put it, repeatedly identified in the Petition as being *"the victim"*. She submits that the present case is about *"the ownership of the relief"* as she put it, and to whom the *"causes of action"* that underpin the Petition, as she expressed them, really belong. She submitted that this was a question that I need to determine now and that I should find that ownership thereof rests entirely with the Company, making it impermissible for the Petitioners to pursue the present petition.

52. As I understand her submissions, Ms Chaffin-Laird's case is that the matters complained of, as pleaded in the Petition, can only properly be pursued by way of a derivative claim under Part 11 of the Companies Act 2006, with the requirement to first obtain the permission of the court to bring a derivative claim. She relies upon the existence of the statutory code provided for by Part 11 of the Companies Act 2006. She also relies upon the fact that the way the entitlement to relief is expressed in section 996 of the Companies Act 2006, specifically anticipates, as a form of head of relief, the granting by the court of permission to pursue a derivative claim. She submits that, in the light thereof, if the facts pleaded in a petition are suggestive of a derivative claim, then a derivative claim should be brought, and that it is not appropriate to pursue any other heads of relief, apart presumably from seeking permission to bring a derivative claim, by way of a petition under section 994.

53. As I further understand these submissions, it is said that any personal claim that may exist in the present case that might otherwise be capable of being pursued by way of a separate claim by the Petitioners is barred by application of the rule against reflective loss that I have identified. It is therefore the Respondents' submission that, given the way the Petition is drafted, the only appropriate course of action is to strike the Petition out as a whole.

54. Ms Chaffin-Laird further submits that any other course would risk causing prejudice to other shareholders who are not party to the petition who would be prejudiced, it is said, if the matter were to proceed to trial without them being before the court and either relief granted or not granted at the trial of the action.

Determination

55. Despite Ms Chaffin-Laird's doughty submissions, I am not persuaded that the Petition should be struck out, either in whole or in part, essentially for the reasons advanced by the Petitioners. In short, I do not consider that the rule against reflective loss is engaged in the way suggested by the Respondents.

56. I can see that, potentially, any personal claims that might be pursued by way of ordinary action in relation to matters pleaded in the Petition might, as Mr Cogley recognised may be the case, be caught by the rule against reflective loss. However, I consider that the

critical point is that the remedy being pursued by the Petition is solely the specific statutory remedy under section 994 of the Companies Act 2006.

57. The nature of the remedy under section 996 was helpfully explained in *Re The Hut Group Ltd* [2021] EWCA Civ 904; [2021] BCC 970, and in the judgment in that case of David Richards LJ (as he then was) with whom Sir Geoffrey Vos MR, and Coulson LJ concurred. At [8], David Richards LJ referred to two of the leading cases in relation to unfair prejudice petitions, namely *Re Saul D Harrison & Sons plc* [1994] BCC 475 and *O'Neill v Phillips* [1999] UKHL 24; [1999] 1 WLR 1092. In the first of these cases, the lead judgment was given by Hoffmann LJ (as he then was), in the second, the lead speech was that of Lord Hoffmann (as he had become). In the latter case, Lord Hoffmann referred to the fact that in the former case he had said this:

> "…a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted ... there will be cases in which equitable considerations make it unfair for those conducting the affairs of the company to rely upon their strict legal powers. Thus unfairness may consist in a breach of the rules or in using the rules in a manner which equity would regard as contrary to good faith."

58. David Richards LJ then went on in *Re The Hut Group Ltd* (supra) at [9] to further describe the function of a petition under section 994 as follows:

> "As was made clear in those cases, the terms on which a member agreed that the affairs of a company should be conducted will usually be found in the articles of association, any shareholders' agreements, the fiduciary (now statutory) duties of directors and the principles of law which limit the power of a majority of members to bind the minority by resolutions in general meeting. There may be cases, such as those discussed by Lord Wilberforce in *Re Westbourne Galleries Ltd* [1973] AC 360 at p.379, where the particular circumstances of the case, normally involving the personal relations between the members of a small company, may subject the exercise of legal powers to equitable restrictions going beyond the articles, agreements and rules of law. However, such cases are not the norm. As Lord Wilberforce said, the company structure 'is defined by the Companies Act and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small.'"

59. Jumping to [11] of David Richards LJ's judgment in *Re The Hut Group Ltd (supra),* he said this in relation to the relief available if there is a finding of unfair prejudice:

> "The range of relief available to the court where unfair prejudice is established is very broadly stated in section 996, as confirmed by the authorities which, as Vos J (as he then was) said in *Apex Global Management ltd v FI Call Ltd* [2013] EWHC 1652 (Ch), [2014] BCC 286, 'all speak with one voice. They show that ss.994-996 provide a wide and flexible remedy…'. Section 996(1) provides that the court 'may make such order as it thinks fit for giving relief in respect of the matters complained of' and, expressly without prejudice to the generality of that power, section 996(2) specifies in five paragraphs orders that the court may make, including regulating the conduct of the company's affairs in the future, requiring the company to alter its articles, requiring the company to do particular acts or to refrain from doing such acts, and providing for the purchase of any member's shares by other members or by the company. Whether any order should be made, and if so what order, is left to the discretion of the court."

60. It is, as I see it, having regard to these considerations, that Lord Reed JSP in *Marex* at [93] specifically recognised that in a situation where a shareholder might not be able to show that they had suffered loss distinct from the company, so ordinarily, barring a claim by way of ordinary action of the shareholder as claimant, a shareholder has *"a variety of rights which may be relevant in this sort of situation"*, i.e., a situation involving reflective loss, those rights including the bringing of a derivative claim and, more pertinently, *"the right to seek relief in respect of unfairly prejudicial conduct of the company's affairs"*.

61. Further, it cannot, I consider, seriously be disputed that a breach by a director of their fiduciary duties, such as the wrongful diversion of funds or other assets belonging to the company, might, potentially at least, form the proper basis of a section 994 petition. In these circumstances, if this is the only allegation that is being pursued in support of the allegation of unfairly prejudicial conduct, the allegation of unfairly prejudicial conduct will be based solely upon loss suffered by the company which is likely to be reflected in some way in a diminution in the value of the shares held in the company by the petitioner. I do not consider that it can be right that a petitioner would be barred from a remedy by reason of the application of the rule against reflective loss simply because the breaches of fiduciary duty have caused the value of the petitioning shareholder's shares to have been reduced to nil rather than simply reduced in value.

62. Apart from what was said by Lord Reed JSP in *Marex* at [83], there is other authority with regard to the interplay between a section 994 petition and the rule against reflective loss.

63. *Atlasview Ltd v Brightview Ltd* [2004] EWHC 1056 (Ch), [2004] 2 BCLC 191, also involved an application to strike out an unfair prejudice petition. The background facts are set out in the judgment of Mr Jonathan Crow, sitting as a Deputy Judge of the High Court, at [17]. He there noted the following regarding the complaint of unfair prejudice:

> "In the course of oral argument, it emerged that there are two substantial elements to the complaint: first, that the taking of the

> £5.24 million loan represented a breach of the terms of the Investment Agreement, and secondly that, after May 2002, no proper efforts were made to refinance the loan on less precarious terms."

64. At [18], the Deputy Judge set out how the petition in that case was pleaded. There are similarities with the present case in that the allegations included ones relating to the taking of a loan and of a failure to obtain finance on commercial terms.

65. Before getting to the issue in that case concerning reflective loss, at [40], the Deputy Judge addressed a point that had been taken that allegations of breach of an investment agreement could not amount to unfairly prejudicial conduct in respect of which a remedy lay under section 459 of the Companies Act 1985 (equivalent section in the Companies Act 1985 to section 994 of the Companies Act 2006), because the breaches complained of did not involve any conduct of the company's affairs.

66. At [41] the deputy judge said this:

> "In my judgment, these allegations are hopeless. As a matter of legal analysis, it may well be true to say that the source of the principal complaint may be traced to, and characterised as, a breach of contract under the Investment Agreement. It may also be true to say that the facts alleged in the Petition are capable of also amounting to pleadings of deceit or breach of fiduciary duty. However, the unfair prejudice which is pleaded in the Petition plainly involved acts and omissions of the company: Brightview took the £5.24 million loan, and then failed to refinance it. Those are self-evidently acts and omissions of the company which, if they are proved and if they are found to have been unfairly prejudicial, are capable of grounding a complaint under s.459."

67. This is of relevance to the present case because the same point may, I consider, be made in respect of the alleged breaches of the JVSA and the other alleged breaches on the part of Guardian, as well as the breaches alleged as against Mr Mangat, Mr Dhillon, WGH and Queslett. I did not understand it to be argued by the Respondents that the alleged breaches did not involve or concern the conduct of the affairs of the Company. But that would plainly be a bad argument.

68. I would also note in passing what was said by the Deputy Judge at [56]. Here he dealt with the point that the directors of the company, who were not themselves shareholders, ought not to be joined as respondents to the petition. This was rejected, with the Deputy Judge saying at [56]:

> "However, there is in my judgment ample material on which the trial judge may come to the conclusion that the matters pleaded in the petition, if proved, constitute unfairly prejudicial conduct

> for which the A Directors were sufficiently responsible to justify substantive relief being granted against them."

He referred to *Re a Company (No.005287 of 1985)* [1986] BCLC 68 at 71; [1986] 1 WLR 281 at 284, per Hoffmann J, as being:

> "… an illustration of a case where the court was prepared to countenance relief being granted against respondents who were not shareholders …"

69. The Deputy Judge then went on at [58], to deal with the reflective loss argument that was advanced in that case, in respect of which he said this:

> "The Applicants said that the claim for damages is based solely on the alleged breaches of fiduciary duty by the A Directors; that the directors are not alleged to have acted in breach of any duty owed directly to the shareholders; that any duty which they breached was therefore owed only to Brightview; that Brightview was therefore the only proper claimant; and that any diminution in the value of the Barton Parties' shares as a result of any breach of duty was purely reflective of the loss (if any) suffered by the company. This became known as the 'reflective loss argument'."

70. The Deputy Judge then, at [59], referred to the authorities up to the date of that case in relation to the rule against reflective loss, including, most importantly, *Prudential Assurance*. I am satisfied that *Marex* does not, in any material respect, alter the analysis of the rule against reflective loss.

71. Having referred to the reflective loss authorities, the Deputy Judge said:

> "They do not purport to lay down any principle governing the exercise of the court's power under s.459."

72. He then went on in [60] to say as follows:

> "By contrast, the law reports are full of cases in which Petitioners have complained successfully under s.459 about unfairly prejudicial conduct which has involved a majority shareholder stripping out the company's assets. Indeed, the Director Applicants cited one such case themselves, albeit for a different proposition, namely *Re Little Olympian Each-Ways* [1994] 2 BCLC 420; *Re a Company (No.005287 of 1985)* [1986] BCLC 68; [1986] 1 WLR 281 is another example. In *Re a Company (No. 005287 of 1985)* [1986] BCLC 68 at 71; [1986] 1 WLR 281, at 284D-H, Hoffmann J (as he then was) held in terms that a petition could

properly be brought so as to recover for shareholders a loss that had been sustained by the company. In *Saul D. Harrison & Son plc* [1995] 1 BCLC 14 at 18c-d, the same judge (then in the Court of Appeal) made the point even more clearly, by saying that one of the purposes of s.459 was to outflank the rule in *Foss v. Harbottle* (1843) 2 Hare 461; 67 ER 189. If the reflective loss argument was well founded, it is difficult to see how these cases could have been decided as they were."

73. He then went on to say in [61]:

> "Treating the matter as one of statutory interpretation, rather than authority, there is no justification for reading into s.459 a restriction to the effect that a Petitioner can only complain if the unfairly prejudicial conduct does not involve a breach by any directors of their duties to the company. Equally, as a matter of interpretation, there is no justification for imposing an absolute bar on the types of relief that the court might award at trial in relation to unfairly prejudicial conduct which happens also to involve a breach by directors of their duties to the company. Indeed, any such interpretation of s.459 would appear to run counter to its express wording, which refers to unfair prejudice 'to the interests of its members generally' …"

74. Those words, *"to the interests of its members generally"* were added by way of amendment to section 459. Slightly further down in [61], the Deputy Judge said this:

> "Now that the section has been amended, a Petitioner is entitled to complain not only about conduct which has a discriminatory effect on his own interests, but also about conduct which has a uniformly adverse effect on the interests of all members of the company. The classic example of such conduct is where a company's assets are stripped out for the benefit of some transferee. Any such stripping out will inevitably involve conduct (or possibly omissions) of the company, acting (or possibly not acting) through its directors. Their conduct (or inaction) in facilitating such a transfer would in all probability amount to a breach of their duties to the company. To suggest that, in such a case, s.459 is powerless would in my judgment be to deprive the amendment of much of its value.

75. He then continued:

> 62. It would also fly in the face of common sense to suggest that the court, in exercising its discretion under s.459, would necessarily decline any relief in such a case, and would require the minority shareholders instead to bring a derivative action,

> seeking payment to be made to the company in respect of the entire loss it had suffered: by that route, the defendant transferees would be having to make a payment to the transferor company, the bulk of which they would then recover in their capacity as majority shareholders. That hardly seems like a desirable route for compensating those who have in fact suffered the loss.
>
> 63. For these reasons, the 'reflective loss argument' does not provide a bar to any of the relief sought in the Petition. The fact that the impugned conduct might give rise to a cause of action at the suit of the company does not mean that it is incapable also of giving rise to unfair prejudice: nor does it necessarily preclude the court from awarding financial compensation to the Petitioners in satisfaction of their claim."

76. This case thus provides authority for the proposition that the fact that shareholders might have suffered loss which is reflective of loss suffered by the company does not mean that the shareholders are barred by the rule against reflective loss from relying upon the matters giving rise to that loss in a petition under section 994 of the Companies Act 2006 alleging that the affairs of the company have been conducted in a manner unfairly prejudicial to them. This is because section 994 provides for a separate statutory remedy in respect of which there is a wide discretion under section 996 regarding the relief that might be granted.

77. The position is, I consider, further supported by a more recent decision of the Court of Appeal in *Re Coinomi Ltd, Ntzegkoutanis v Kimionis* [2023] EWCA Civ 1480; [2024] 1 BCLC 354. The lead judgment of the Court of Appeal in that case was given by Newey LJ, with whom Snowden LJ (as he then was) and Whipple LJ concurred, save that Snowden LJ disagreed on matter that is not relevant for present purposes.

78. The relevant facts of that case appear from of Newey LJ's judgment at [5], where Newey LJ said this:

> "Mr Ntzegkoutanis alleges in paragraph 26 of the petition that Mr Kimionis breached duties that he owed to the Company as a director in procuring or permitting the transfer of the Company's business and assets to Coinomi Cyprus and Coinomi BVI. In paragraph 30, Mr Ntzegkoutanis asserts that as a result of the misappropriations which he contends took place:
>
>> '30.1 Coinomi Cyprus and Coinomi BVI are liable to the Company as knowing recipients in respect of such of its assets as they received and hold all such assets and their proceeds on constructive trust for the Company.
>>
>> 30.2 Further or alternatively, Coinomi Cyprus and Coinomi BVI dishonestly assisted Kimionis' breaches of

fiduciary duty to the Company referred to in paragraph 26 above and are liable to the Company on that basis.'"

79. The relief sought by the petitioner was then set out by Newey LJ at [6]:

> "The Petitioner therefore prays as follows:
>
> 32.1 for an order that Kimionis do sell his shares in the Company to the Petitioner, at a valuation reflecting the losses caused to the Company by his conduct;
>
> 32.2 for an order that the First, Third and Fourth Respondents [i.e. Mr Kimionis, Coinomi Cyprus and Coinomi BVI], as applicable, do account and/or pay damages to, and/or compensate the Company in respect of their gains and the Company's losses resulting from the conduct complained of in this Petition;
>
> 32.3 for declarations of constructive trust in favour of the Company in respect of such property in the hands of the First, Third and Fourth Respondents as properly belongs to the Company;
>
> 32.4 in the alternative and to the extent necessary, the Petitioner seeks authorisation to pursue such litigation on behalf of the Company as may be necessary to vindicate its interests and obtain compensation and/or other remedies pursuant to the conduct complained of in this Petition …"

80. The decision under appeal was that of HHJ Klein, sitting as a Judge of the High Court, to strike out paragraphs 32.2 and 32.3 of the prayer to the petition. Judge Klein's decision was explained at by Newey LJ at [16] and [17]. In essence, Judge Klein had relied upon a decision of the Hong Kong Court of Final Appeal in *Re Chime Corp Ltd, Nina Kung v Tan Man Kou* (2004) HKCFA 73 ("***Chime***"). As Judge Klein explained at [49] of his judgment, he saw *Chime* as authority for the following principle (and this quote is included in Newey LJ's judgment at [17]):

> "It is a rare and exceptional case which the court will permit to proceed by way of an unfair prejudice petition when it would otherwise be brought by way of a derivative claim, because to permit the case to proceed by way of an unfair prejudice petition subverts the regime (now the statutory regime) which imposes limitations on making derivative claims. In deciding whether the case before it is exceptional, the court will focus on the relief claimed and ought only to permit the case for that relief to proceed by way of an unfair prejudice petition if, at the earliest stage of the proceedings, the court is satisfied at least that that relief can be conveniently adjudicated on as part of the unfair

> prejudice petition proceedings. If the court is not so satisfied, to the extent of the relief in issue, the case will be an abuse of process and ought not to be permitted to proceed."

81. The *Chime* case had, at the time that HHJ Klein applied it, and prior to the decision of the Court of Appeal in *Re Coinomi Ltd*, caused some doubt as to the appropriate approach of the court in dealing with the inter-relationship between a petition under section 994 and the availability of a derivative claim under Part 11 of the Companies Act 2006. *Chime* had, as it was in *Re Coinomi Ltd* at first instance, been relied upon as a basis for striking out from unfair prejudice petitions allegations in them relating to matters that could be pursued by way of derivative claim.

82. It is to be noted, however, from Newey LJ's judgment at [21], that at first instance HHJ Klein had been invited to decide the case on a further basis, namely that there was, in essence, an absolute bar upon pursuing by way of an unfair prejudice petition any matter that might be raised by way of claim by way of derivative proceedings. HHJ Klein did not accept this, merely that, in reliance on *Chime*, the circumstances had to be exceptional to do so.

83. On this point, Newey LJ observed as follows at [21]:

> "One difficulty which the Judge saw with that contention [i.e. the absolute bar contention] was that it might be said that 'a Petitioner making a claim which could be pleaded as a derivative claim, makes it, in a case such as this, not relying on the company's cause of action but on their statutory right, given by s.994, to bring a petition for unfairly prejudicial conduct' …"

84. In other words, even in that case at first instance, HHJ Klein had recognised the separate and distinct statutory right to bring proceedings under section 994, as distinct from other causes of action that the petitioner might have against those responsible for the unfairly prejudicial conduct, such as for breach of a shareholders' agreement.

85. In the event, the Court of Appeal reversed the decision of HHJ Klein and held that the relevant paragraphs of the prayer ought not to have been struck out, and the Court of Appeal set out in very clear terms the circumstances in which it might be appropriate to pursue within an unfair prejudice petition an allegation that might otherwise be pursued by way of derivative claim.

86. Before getting into the detail of thereof, I would just refer to Newey LJ's judgment at [32], where he was concerned with the question of relief, in respect of which he said this:

> "More specifically, there was authority for the proposition that redress benefiting the company could potentially be granted on an unfair prejudice petition. Thus, in *Lowe v Fahey* [1996] 1 BCLC 262 at 268, Charles Aldous QC, sitting as a Deputy High Court Judge, declining to strike out such a petition,

observed at 268 that 'where … the unfairly prejudicial conduct involves the diversion of company funds, a Petitioner is entitled as a matter of jurisdiction to seek an order under s 461 [i.e. a predecessor of section 996 of the 2006 Act] for payment to the company itself not only against members, former members or directors allegedly involved in the unlawful diversion, but also against third parties who have knowingly received or improperly assisted in the wrongful diversion'. In *Clark v Cutland* [2003] EWCA Civ 810, [2003] 3 All ER 733, [2004] 1 WLR 783, His Honour Judge Norris QC (as he then was) had at first instance given judgment against a director in favour of the company in respect of money taken from it without authority in the sum of £1,150,753 in unfair prejudice proceedings: see paragraphs 2 and 3 of Arden LJ's judgment. Far from casting doubt on the legitimacy of that, the Court of Appeal went further, holding that the company was entitled to trace payments into the hands of the trustees of a pension fund to which some of the money had been paid. Moreover, Arden LJ expressed the 'provisional view' that, 'although the relief sought is claimed under section 461, it is sought for the benefit of the company and … it is, therefore, open to Mr Clark [i.e. the Petitioner] to seek an order against the company for payment to him of any costs incurred by him on this appeal' …"

87. The conclusion reached by the Court of Appeal in *Re Coinomi Ltd* was summarised in the judgment of Newey LJ at [55] as follows:

> "55. My own view is that the relevant legal principles can be summarised as follows as a matter of the law of England and Wales:
>
> i) The Court has power to grant relief in favour of the company on an unfair prejudice petition. The Hong Kong Court of Final Appeal said as much in *Chime*, and in *Baltic Partners* the Privy Council confirmed that 'an order for payment of damages to the company whose affairs have allegedly been conducted in an unfairly prejudicial manner can be sought and made in an unfair prejudice application'. *Fi Call, Hut Group* and *Taylor Goodchild* are to similar effect;
>
> ii) At least generally, the Court should not in unfair prejudice proceedings make an order for relief in favour of the company unless the order corresponds with an order to which the company would have been entitled had the relevant allegation been successfully prosecuted in an action by the company (or in a derivative action in the name of the company) (to adapt slightly a point which Lord Scott made in *Chime*);

iii) It can potentially be an abuse of process for a Petitioner to claim relief in favour of the company by way of unfair prejudice petition. I cannot envisage any circumstances in which a petition claiming only such relief would be proper. The right course in such a case would surely be for the Petitioner to issue a claim form and seek permission to proceed with it pursuant to Part 11 of the 2006 Act. A petition could also be struck out as an abuse of process if, although it included a claim for relief which was available only in unfair prejudice proceedings (such as an order for the purchase of shares), it could be discerned that the Petitioner was not genuinely interested in obtaining such relief and was, instead, trying to bypass the filter for which Part 11 of the 2006 Act provides;

iv) Where, on the other hand, an unfair prejudice petition seeks both relief in favour of the company and relief that would not be available in a pure derivative claim, and the Petitioner appears to be genuinely interested in obtaining the latter, I do not think that it would ordinarily be appropriate to strike out either the petition or any part of the relief sought. It is not difficult to conceive of a situation in which it would make sense for a Petitioner to include in an unfair prejudice petition a claim for, say, an order for a Respondent to buy or sell shares and an order for a payment to be made to the company on the basis of a breach of duty by a Respondent. In such a case, it would 'not seem … to be very convenient' 'from a practical point of view' (to echo Hoffmann J in *Re a Company (No. 005287 of 1985*) to insist that the claim for relief in favour of the company be the subject of a separate claim form. Even supposing that, on the particular facts, it would make more sense for the order in favour of the company to be pursued in a distinct derivative claim, it seems to me that it would rarely be right to deem the petition or any relief sought in it to be abusive if all the heads of relief were being pursued otherwise than to evade the requirements of Part 11 of the 2006 Act. As Judge Eyre QC remarked in *Hut Group*, 'the same acts can be both mismanagement which is unfairly prejudicial to a minority shareholder and misconduct in breach of a director's duties and causing harm to the company'. If a Petitioner considers, for example, that such facts could warrant a share purchase order or, failing that, at least the grant of relief in favour of the company, I should not have thought that it would be improper to claim both in an unfair prejudice petition. As Vos J said in *Apex v Fi Call*, sections 994-996 of the 2006 Act 'provide a wide and flexible remedy' and '[a]rtificial limitations should not be introduced to reduce the effective nature of the remedy introduced by ss.994-996';

v) Where in unfair prejudice proceedings a Petitioner asks for relief in favour of the company as well as relief that could only be granted on an unfair prejudice basis, case management issues should be addressed. The best course may be for all the issues to be dealt with at the same time, in a single hearing. Sometimes, however, it could be desirable for matters relating to a claim for relief in favour of the company to be deferred either entirely or in part. It might, for example, be advantageous to determine at the main hearing whether a Respondent was *liable* to the company for a breach of duty but to defer any issue as to *quantum*. I do not myself share the view that a Court should not 'allow a prayer in the petition for payment by the Respondent director of compensation or of restitution to the company to stand unless it is clear at the pleading stage that a determination of the amount, if any, of the director's liability at law to the company can conveniently be dealt with in the hearing of the petition' (to quote Lord Scott in *Chime*, at paragraph 62). To my mind, the mere fact that it might not be 'clear at the pleading stage that a determination of the amount, if any, of the director's liability at law to the company can conveniently be dealt with in the hearing of the petition' would not render a claim for compensation to be paid to the company in respect of such a liability abusive, but would rather call for case management;

vi) I do not, with respect, consider that what the Judge called 'the *Chime* approach' represents the law in this jurisdiction. In particular, I do not think that it is only a 'rare and exceptional case' that the Court 'will permit to proceed by way of an unfair prejudice petition when it would otherwise be brought by way of a derivative claim', nor that the Court 'ought only to permit the case for that relief to proceed by way of an unfair prejudice petition if, at the earliest stage of the proceedings, the court is satisfied at least that that relief can be conveniently adjudicated on as part of the unfair prejudice petition proceedings'."

88. In the present case, as Mr Cogley clarified, the Petitioners primarily seek a buy-out order, albeit in the terms formulated in paragraph 1 of the Prayer to the Petition. I consider that, in this context, what was said by Newey LJ at [55(iv)] in *Re Coinomi Ltd* provides good authority to the effect that there is nothing inherently wrong in the court granting relief that includes a buy-out order (either a sale by the petitioner, or a purchase by the petitioner of the respondent's shares) *"on the basis of a breach of duty by a Respondent"*, as it was put by Newey LJ at [55(iv)], and to also order the payment of compensation to the company or, a fortiori, the petitioner, in order to ensure the petitioner is compensated for the unfairly prejudicial conduct – even though the petitioner's *loss* may be reflective of the company's loss. That is at least where the Petitioner appears to be genuinely interested in obtaining relief that would not be available in a pure derivative claim, such as a buy-out order.

89. This is, in essence, what the Petitioners are seeking by the relief claimed in the Prayer, and it is to be noted that paragraph 1 of the Prayer in the Petition is somewhat similar

terms to the relief claimed in paragraph 32.1 of the petition in *Re Coinomi Ltd* that I have referred to, which was not even a part of the prayer that was struck out at first instance in that case.

90. Consequently, I see nothing intrinsically objectionable to the way that the claim for relief is formulated, certainly in relation to paragraph 1 of the Prayer to the Petition.

91. With regard to paragraph 1 of the Petition, I would also observe that there are a number of cases in which the court has directed the valuation of shares on a buy-out on the basis of making adjustments to the valuation to reflect unfairly prejudicial conduct. Joffe KC and others, Minority Shareholder Remedies (7th Edn) puts the matter as follows at paragraph 6.123:

> "In order to achieve a fair result, the court may but need not necessarily order adjustments to be made to the valuation of a Petitioner's shares. The courts have adopted a flexible attitude and the valuation can be adjusted to reflect the effect on the company of all or any wrongs which the wrongdoer respondents have committed against it. So, for example, it can order to be added back into (or in the case of a purchase of a respondent's shares by a petitioner deducted from) the valuation sums removed from the company by way of costs improperly spent on proceedings, excessive director's remuneration or other payments, excessive management charges or sums reflecting losses to the company occasioned by the unfairly prejudicial conduct."

92. So far as paragraph 2 of the Prayer to the Petition is concerned, again I do not see anything inherently objectionable to it such as to warrant strike out. The Petitioners are thereby seeking that the Respondents pay them damages and/or equitable compensation in the sum of at least £3,220,000. But there is good authority for the court being able to make such an order.

93. Going back to *Re Hut Group* (supra), David Richards LJ, at [66], said this:

> "As regards paragraph (5) of the prayer for relief, the Respondents submit that, as the directors did not owe Zedra any fiduciary or statutory duties, there is no basis for an award of compensation to be paid by the directors to Zedra [the Petitioner]. This is not a sustainable argument. Zedra's complaint is of conduct by the directors which was unfairly prejudicial to its interests as a member. The relevant conduct took the form of alleged breaches by the directors of their statutory duties. This formulation of unfair prejudice is entirely in line with the approach adopted by this court in *Re Saul D Harrison & Sons plc* and by the House of Lords in *O'Neill v Phillips*. It is not dependent on showing a fiduciary or statutory

> duty owed by directors to shareholders personally. Once unfair prejudice is established, the court has the wide powers to grant relief conferred by section 994, as discussed above, and they plainly include the power to order wrongdoing directors to pay compensation to the Petitioner."

94. With regard to paragraph 3 of the Prayer, this is the order for an account of profits in favour of the Company. It is, as I see it, very similar to the relief that was being sought in *Re Coinomi Ltd* in paragraph 32.2 of the prayer in that case, which was struck out at first instance but restored by the decision of the Court of Appeal. I see no good objection to this head of relief as formulated.

95. Finally, in relation to paragraph 10 of the Prayer, this seeks, to the extent necessary, permission to bring a derivative claim on behalf of the Company. Ms Chaffin-Laird criticises its inclusion suggesting the Petitioners can be seen thereby to be putting off the question in relation to the pursuit of a derivative claim. However, it is common to include such a head of relief as an alternative as it is specifically identified as a form of relief in section 996(2). A similar claim was included without objection in paragraph 34.4 of the petition in *Re Coinomi Ltd*. In practice there is no reported case where the court has made such an order, no doubt because it has been possible to fashion appropriate remedies without the need for separate derivative proceedings.

96. Dealing finally with the point made by Ms Chaffin-Laird in relation to prejudice to other shareholders if the Petition is allowed to proceed. I do not consider that there is any significant risk of the Petition causing prejudice to other shareholders. To the extent that relief is pursued on behalf of the Company, such as for the restoration of assets to the company or for an account of profits for the benefit of the company, that can, it seems to me, only be for the benefit of other shareholders of the Company. They would stand to benefit from any such relief being granted but would not be prevented from pursuing their own remedies, if available to them.

97. So far as a buy-out order is concerned, at an adjusted value to reflect unfairly prejudicial conduct or otherwise, and the question of compensation that is being pursued as against the Respondents, these are personal remedies being sought as between the Petitioners and the Respondents, and cannot, it seems to me, affect the position of the Company or any other shareholders in any way and would not prevent other shareholders, for example, from seeking similar relief by way of their own unfair prejudice petitions.

98. In short, by way of conclusion, I do not consider that there is any proper basis for striking out the present petition and I do not do so.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

Lower Ground, 46 Chancery Lane, London WC1A 1JE
Email: civil@epiqglobal.co.uk

This transcript has been approved by the Judge