Neutral Citation Number: [2024] EWHC 3137 (Ch)

Case No: CR-2023-003375

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

IN THE MATTER OF ST. AIMIE'S SPORTS ACADEMY COMMUNITY INTEREST COMPANY
AND IN THE MATTER OF THE COMPANY DIRECTORS DISQUALIFICATION ACT 1986

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

Date: 6 December 2024

Before :

DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE PARFITT

- -

Between :

THE SECRETARY OF STATE FOR BUSINESS AND TRADE

Claimant

- and –

(1) KIERON LLOYD JUNIOR MINTO-ST.AIMIE

Defendant

- -
- -

Giselle McGowan (instructed by the Insolvency Service) for the **Claimant**
The Defendant appeared in person

Hearing date: 22 October 2024

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JUDGMENT

This judgment was handed down remotely at 10am on 6 December 2024 by circulation to the parties or their representatives by email and by release to the National Archives.

Deputy Insolvency and Companies Court Judge Parfitt:

1. By this claim, the Secretary of State for Business and Trade (the "SoS") seeks a disqualification order under section 6 of the Company Directors Disqualification Act 1986 (the "CDDA") against the Defendant ("Mr Minto-St.Aimie"), and a compensation order pursuant to section 15A CDDA. The claim arises from an overstatement of turnover in an application for a bounce-back loan (a "BBL").

2. This is a long judgment. Putting the conclusion at the start will assist any reader, particularly Mr Minto-St.Aimie, who is a litigant in person. For the detailed reasons explained below, I will make an order disqualifying Mr Minto-St. Aimie for a period of eight years. I reject the application for a compensation order.

3. This judgment follows a trial which took place over one day on 22 October 2024. The SoS appeared by Ms McGowan of counsel. Mr Minto-St.Aimie represented himself. I am grateful to both of them for the courtesy, efficiency, and good temper with which the proceedings were conducted. Ms McGowan in particular was careful to present the SoS's case in a fair and balanced way, and rightly drew attention to arguments which Mr Minto-St.Aimie might wish to run in defence of the claim. Mr Minto-St.Aimie politely and effectively put relevant questions during his cross-examination of the witnesses for the SoS.

Background: the Company

4. The claim relates to a community interest company called St.Aimie's Sports Academy Community Interest Company (the "Company"). The Company was incorporated on 21 December 2016, originally as a private limited company. Its sole director and shareholder since incorporation was Mr Minto-St.Aimie. It became a Community Interest Company (or "CIC") in February 2020.

5. The business of the Company involved providing sports coaching and mentoring. The Company operated a football academy, organising group sessions and one-on-one mentoring. The children who participated in the Company's sessions included disabled and under-privileged children, and Mr Minto-St.Aimie said that some of the participants progressed towards developing careers as professional footballers. The Company's work involved educating and assisting children and parents, and appears to have had a significant social benefit. Mr Minto-St.Aimie spoke of the Company having purchased football boots for children who needed them, and its objects as a CIC included a number of social objectives such as bringing down knife crime and gang violence.

6. The Company made its money by charging a monthly subscription fee to parents; this was its only source of income.

7. From incorporation or shortly thereafter, the Company's accountants were a firm called Tax Assist. Tax Assist is a franchise. The individual accountant who worked with the Company was Mr Qureshi, who was called to give evidence on behalf of the SoS and was cross-examined by Mr Minto-St.Aimie. The Company's accounting year ended on 30 December each year. Its accounts would need to be filed nine months later (although there was a dispensation to file accounts a little later during the pandemic). Mr Qureshi's evidence was that it would generally take around a month between clients sending their information to him and their accounts being filed. In the case of the Company, there was no dispute that what Mr Minto-St.Aimie did each year was send a spreadsheet containing all the information from the Company's bank statements for the year to Mr Qureshi, and leave him to do the rest. The Company did

not provide Mr Qureshi with invoices or receipts. The only source of information used to create the Company's accounts was its bank statements.

8. Mr Minto-St.Aimie's evidence, which I accept, is that all of the Company's income would be visible on the bank statements. He said that clients paid either by bank transfer, or via a card machine at the Company's sessions, or in cash. He said that all cash was banked. The Company had no other source of income. The result is the Company's turnover for the year would be readily apparent from it bank statements, simply by adding up the payments into the account over the course of the year.

9. In its accounts for its first period of trading, until 30 December 2017, the Company had no income. The accounts for the following year, ended 30 December 2018, show turnover of £22,580. The 2018 accounts were prepared on or about 25 September 2019, which is the date shown against the signature lines in the document for both Tax Assist and Mr Minto-St.Aimie (albeit the version before the court was not signed by either of them).

10. The Company's accounts for the period ended 30 December 2019 were prepared on or about 17 December 2020, with that date again appearing against the signature lines in the unsigned document before the court. This was after the normal nine-month time limit from the accounting reference date, but reflects an extension permitted during the pandemic. The 2019 accounts show turnover for the year of £41,830.

11. In May 2020 the Company applied for a BBL with Barclays. I will address the controversial aspects of this application in more detail below. In this paragraph I record what is not in dispute. The application was submitted online by Mr Minto-St.Aimie. The application claimed that the Company's turnover in the year ended 31 December 2019 was £100,000. Companies could apply for BBLs of up to 25% of a

company's turnover in the year to 31 December 2019 or £50,000 (whichever was the less). The Company applied for and obtained a BBL of £25,000, being 25% of its claimed turnover.

12. The 2019 accounts were the last accounts the Company prepared. It went into creditors' voluntary liquidation on 12 January 2022. Alastair Findlay of Findlay James was appointed as liquidator of the Company (the "Liquidator"). Mr Minto-St.Aimie contributed £2,790 towards the Liquidator's costs. He also purchased the only asset realised by the Liquidator, a van belonging to the Company, for £750. The Liquidator's summary of receipts and payments shows that no funds were available for distribution to the Company's creditors. The overall deficiency in the Company's insolvency was £38,801.16. The Liquidator's final report records that he investigated payments made to Mr Minto-St.Aimie prior to liquidation, but given the absence of funds, the risk of non-recovery and Mr Minto-St.Aimie's financial circumstances, the Liquidator decided to take no further action. The Company was dissolved on 7 January 2023.

Allegation of unfitness

13. The sole ground of the claim, as described in paragraph 7 of the affidavit of Ms Connor filed on behalf of the SoS, is that Mr Minto-St.Aimie is alleged to be unfit to be concerned in the management of a limited company because he provided false information and caused the Company to breach the conditions of the BBL scheme by making an application for £25,000 when he knew or ought to have known that the Company was only eligible for £10,457, thereby receiving £14,543 more than it was entitled to.

14. The affidavit provides further particulars:

(a) The BBL criteria allowed a business to borrow between £2,000 and 25% of its turnover (up to a maximum of £50,000).

(b) The Company's accounts for the year ended 30 December 2019 showed turnover of £41,830. It was only eligible to apply for a BBL of 25% of this amount, i.e. £10,457.

(c) Mr Minto-St.Aimie applied for a BBL and stated that the Company's turnover was £100,000. On 26 May 2020 the Company received a BBL of £25,000.

(d) The Company entered liquidation on 12 January 2022. Its bankers are creditors in the sum of £37,247, of which £25,000 is the BBL.

15. The SoS seeks an order under section 6 CDDA disqualifying Mr Minto-St.Aimie for a period of ten years, and seeks a compensation order under section 15A CDDA requiring Mr Minto-St.Aimie to pay Barclays (or, if Barclays has been compensated by the government's guarantee of BBLs, the British Business Bank) the excess BBL above what the Company would have been entitled to borrow had it used its true turnover figure for 2019 in the BBL application, i.e. £14,543.

16. Mr Minto-St.Aimie's defence is to deny responsibility for the BBL application form. He claims he filled it in while on the phone to Mr Qureshi, who told him what to put in each box. He claims that the overstatement of turnover was not deliberate, and that he was acting on the advice of the Company's accountant. He claimed not to understand the BBL application form, or to appreciate that it required him to state the Company's turnover. He says that insofar as the court finds that he ought to have known what was on the form, he has now learnt his lesson.

BBLs

17. It is useful, perhaps, to record some of the features of the BBL scheme, which are matters of public record or general knowledge and are reflected in the BBL application form referred to below.

18. The BBL scheme was introduced by the government in May 2020 in response to the Covid-19 pandemic. The pandemic had caused the government to announce national lockdown measures on 23 March 2020, with legal restrictions on the ability of the public to leave their homes including the enforced closure of schools and businesses.

19. At the same time or shortly after the first lockdown began, the government introduced schemes to provide loans to businesses which were affected by the pandemic. The first was the Coronavirus Business Interruption Loan Scheme (CBILS), followed by the Coronavirus Large Business Interruption Loan Scheme (CLBILS). These loans were provided by financial institutions, but the government provided a guarantee in relation to 80% of the principal amounts borrowed in order to facilitate credit decisions and support the economy.

20. On 4 May 2020 the BBL scheme was introduced, having been announced only a few days earlier on 27 April 2020. It was designed as a simple, quick and easy solution which would provide small businesses with micro loans. As with CBILS and CLBILS, BBLs were provided by financial institutions and the government provided a guarantee against losses the financial institutions might face. Unlike CBILS and CLBILS, the government fully guaranteed 100% of the borrowing under the BBL scheme, including principal and interest. This simplified and accelerated the application process by removing credit risk for the primary lender, enabling funding to reach small businesses quickly.

21. The terms of a BBL were generous and involved further government support. The interest rate was fixed, and capped at 2.5%. The first twelve months of interest on a BBL was paid by a government grant. Loans were repayable over periods of up to six years, with no repayments during the first twelve months. The loans were unsecured.

22. The micro loans under the BBL scheme were for up to £50,000, capped at 25% of turnover. When it was introduced, the scheme did not require lenders to verify information on an application form, or to perform credit checks on borrowers. Borrowers effectively self-certified the information they provided to lenders, who were protected from losses by the government guarantee. The focus was on delivering (relatively) small sums of money quickly.

23. Significant amounts were lent under the scheme by the accumulation of many small loans. Between May 2020 and the closure of the BBL scheme to new applicants in March 2021, £47 billion was lent pursuant to BBLs.

The BBL application form

24. Both Mr Minto-St-Aimie and Mr Qureshi gave evidence and were cross-examined about the completion of the BBL application form.

25. It was not in dispute that Mr Minto-St.Aimie completed the form. It was an online form with various boxes for completion. It is not a long form in the printed-out version which appears in the evidence for this trial.

26. At the top of the form was a box setting out the "Key Features" of a BBL in a series of bullet points, the first of which was that a BBL was a loan of between £2,000 and £50,000 (up to a maximum of 25% of annual turnover). Mr Minto-St-Aimie said he did not read the information in this box.

27. The next section of the form required the applicant's details to be filled in. Mr Minto-St.Aimie filled in the details for the Company.

28. At the bottom of the first page of the form was a section headed "Loan Details". This section provided as follows:

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

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

There was then a box. Mr Minto-St.Aimie inserted the figure "£100,000.00". The form continued:

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

In another box, Mr Minto-St.Aimie inserted the figure "£25,000.00". The form continued:

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

In the box below this question next to the answer "Yes", Mr Minto-St.Aimie marked an "X".

29. The next section of the form asked questions about the Company's business. Mr Minto-St.Aimie ticked boxes to indicate that its business had been adversely impacted by Covid-19, and that it was not already insolvent or in financial difficulty.

30. After an illustration of the repayment terms for the loan, the form continued with a number of declarations. These include declarations, so far as relevant to the present case, that:

"9. *I/We undertake to use the credit granted on the basis of this agreement only to provide economic benefit to my/our business, for example, providing working capital, or investing in my/our business. I/We also confirm that the Bounce Back Loan will be used wholly for business purposes and not personal purposes."*

"17. I/We recognise that by providing information that is inaccurate or incomplete in any material particular, I/we may be regarded as attempting to gain, or gaining, a financial advantage dishonestly and as such will be liable to criminal prosecution for fraud under the Fraud Act 2006 (or equivalent law in Scotland) (for which the penalties include imprisonment or a fine or both), as well as to the forfeiture of all loan proceeds together with interest and court costs."

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

31. Below those declarations, Mr Minto-St.Aimie signed the form electronically by inserting his name. As an online form, he did not need to apply an ink signature. The date on which he signed the form was 21 May 2020.

The use of the BBL

32. The Company's BBL was approved and on 26 May 2020 the Company received £25,000 into its Barclays current account.

33. The Company's bank statements were included in the trial bundle. The Company operated a savings account and a current account with Barclays. The SoS does not allege that Mr Minto-St.Aimie is unfit because of misconduct arising from what he spent the BBL on; the sole allegation of misconduct is the overstatement in the BBL application form. The SoS nevertheless submits that what Mr Minto-St.Aimie spent the money on is relevant, as one of a number of factors, in fixing the period of disqualification if the court is satisfied that the alleged misconduct makes Mr Minto-St.Aimie unfit to be concerned in the management of companies.

34. I reject this submission. It conflicts with the clear statement of principle in the well-known case of *In re Sevenoaks Stationers Ltd* [1991] Ch 164 ("*Sevenoaks*"). This decision is routinely cited in this court as support for the familiar three brackets of disqualification, and it is a case so well-known as the origin of that approach that the rest of the judgment may sometimes be overlooked. The case was an appeal against the period of disqualification. One issue which arose was the extent to which the official receiver (as the claimant seeking disqualification) could alter the grounds said to demonstrate unfitness as the case developed. That is an important point, but not in issue in the present case where the SoS relies solely on the overstatement of turnover in the application for the BBL. The Court of Appeal in *Sevenoaks* reflected that it may be permissible for the claimant to rely on grounds of unfitness outside the confines of the affidavit filed in support of the claim, but (at 177D):

"...the paramount requirement on this aspect is that the director facing disqualification must know the charges he has to meet: see In re Lo-Line Electric Motors Ltd [1988] Ch 477, 486."

35. The Court of Appeal in *Sevenoaks* then considered and emphatically rejected the very submission made by the SoS in this case, that even if the claimant's case on misconduct is restricted to the matters set out in the affidavit, the court can extend the period of disqualification to reflect any additional shortcomings identified in the course of the evidence. Dillon LJ stated (at 177E-G):

"Mr. Charles submits for the official receiver that even if in making out his case for disqualification the official receiver can only rely on the allegations made in his report and/or affidavit, yet when the court comes to fix the length of the period of disqualification the court can take into account any other shortcomings in the director's conduct as a director of the companies in question. In other words, the director can be sentenced not only on the charges on which he has been convicted, but also on charges which were never made against him, if they happen to be made out in the evidence given. I emphatically disagree. It is inconsistent with the whole conception of giving notice of the charges the director has to meet, and could in many cases stultify the rule 3(3) which I have quoted, if in fixing the period of disqualification other matters could be alleged of which no notice had been given. Matters of mitigation can of course be taken into account in favour of the director in fixing the period of disqualification; but otherwise the period should be fixed by reference only to the matters properly alleged against him which have been found to be established and to make him unfit to be concerned in the management of a company."

36. This approach to setting the period of disqualification by reference to the misconduct alleged and proved reflects the paramount requirement that a director know what charges he has to meet. The language of charges and sentencing, taken from criminal proceedings, reflects the seriousness and penal nature of disqualification, and the need for scrupulous procedural fairness before so heavy a sanction is imposed.

37. As is apparent from the passage in *Sevenoaks*, a different approach can be taken by the court when considering whether there are any mitigating factors. It is well established that it is open to a director to rely by way of mitigation on relevant matters which go beyond the specific allegations against him. Examples from previous cases include reliance on professional advice, or the director's personal characteristics such as age or ill-health. What factors are relevant, and whether they have a mitigating effect, depends on all the circumstances. A possible mitigating factor is a lack of personal benefit on the part of the director. I accept that the SoS is entitled pre-emptively to eliminate this mitigating factor, and in doing so can rely on evidence which goes beyond the four corners of the unfit conduct set out in the affidavit. To this extent, the SoS can rely on any personal benefit obtained by Mr Minto-St.Aimie from the alleged unfit conduct even though this is not one of the grounds of unfitness. Demonstrable personal benefit means that the mitigating factor of no or limited personal benefit ceases to apply (or has less weight).

38. In order that it can be dealt with in relation to mitigation later in this judgment, I therefore record my findings of fact in relation to personal benefit from the BBL. Despite this allegation not forming part of the SoS's case on unfitness, it was fully dealt with in the evidence and I am satisfied that, provided it is relevant only to

mitigation, Mr Minto-St.Aimie was afforded a fair opportunity to explain the position in the course of his cross-examination and submissions.

39. The Company's bank statements show that immediately prior to receiving the BBL, the Company had £1.19 its savings account, and an overdrawn balance of £94.18 on its current account. The £25,000 BBL was credited to the current account on 26 May 2020. On the same day, seven separate payments were made to Mr Minto-St.Aimie. The total paid to him on this day was £12,702.49. He received a further £1,700 on 8 June 2020.

40. Mr Minto-St.Aimie stated that he was entitled to a wage of around £800 per month from the Company, and the Company operated PAYE to account for the tax on his wages. Looking through the Company's bank statements, it seems that Mr Minto-St.Aimie had not been paid a regular wage for some time prior to 26 May 2020. The last wage payment identified in the bank statements occurred on 21 November 2019 in the sum of £1,041.66. The same amount had been paid monthly since April 2019, which approximates to and supports Mr Minto-St.Aimie's evidence of his historic entitlement to wages. After the November 2019 payment, Mr Minto-St.Aimie went unpaid until the Company received a Coronavirus Job Retention Scheme ("JRS") grant on 29 April 2020. That was the first of twelve JRS grants which were passed straight to Mr Minto-St.Aimie at approximately monthly intervals, ending in March 2021. These payments were in the region of the £800 monthly wage referred to by Mr Minto-St.Aimie. I am satisfied that Mr Minto-St.Aimie was entitled to such a wage, demonstrated by the past course of dealing, and that at the time the Company received the BBL Mr Minto-St.Aimie had been paid for only one of the preceding six months. It is unsurprising that the BBL was used to make up some of the arrears.

41. However, Mr Minto-St.Aimie admitted in cross-examination that he received more than his historic wage entitlement from the BBL, and effectively received a loan from the Company. He described it as taking money from the Company "temporarily" which he wanted to pay back, and considered it was not an uncommon practice for company directors. The boundary between his wage entitlement and the amount of the loan did not seem to be clear in his mind, but he did recognise that some of the money he received was Company money which he intended to repay in the future. Despite this intention, he did not in fact make any repayments to the Company, and no debt due from him was recorded in the Company's statement of affairs when it went into liquidation.

42. I find, as a fact, that Mr Minto-St.Aimie took substantial personal benefits from the BBL. The benefits he took went beyond his entitlement to arrears of wages, and he knew at the time that he was taking more than he was entitled to receive as wages for his historic work. The extent of the surplus was unclear to Mr Minto-St.Aimie and it is unnecessary to make any firm findings as to its amount, but it seems to have been at least half of the money he received on the day the BBL landed in the Company's current account (so, at least £6,350). In absolute terms, the sums involved are not large. But this is not a case where the director can say, in mitigation, that he received no personal benefit from the alleged unfit conduct.

Responsibility for the BBL application

43. As referred to above, Mr Minto-St.Aimie's defence is to deny responsibility for the BBL application. He claimed that although he filled in the form, he did so while on the phone to Mr Qureshi, who told him what information to put where. Mr Minto-St.Aimie and Mr Qureshi each gave evidence about this central factual issue.

44. Before I turn to that evidence, I should explain the basis on which I approach this factual issue. Mr Minto-St.Aimie is a litigant in person and there is a lot at stake for him. Since much turns on my findings of fact, I consider that a clear explanation of the process will assist. I adopt an approach taken by HHJ Matthews (sitting as a High Court Judge) in many judgments he has handed down, most recently *Wigglesworth v Beetson* [2024] EWHC 2886 (Ch). HHJ Matthews has adopted a policy of beginning judgments by summarising the principles by which judges reach decisions. The *Wigglesworth* case was not cited to me – indeed, it was decided after the present trial took place. However, it conveniently summarises the principles which have been well-established in earlier cases, in a way which I think is easy to understand. At paragraph 7, HHJ Matthews said this:

*"**How judges decide cases***

7. For the benefit of the lay parties concerned in this case I will say something about how English judges decide civil cases like this one. I borrow the following words largely from other judgments of mine in which I have made similar comments. First of all, judges do not possess supernatural powers that enable them to divine when someone is mistaken, or not telling the truth. Instead, they take note of the witnesses giving live evidence before them, look carefully at all the material presented (witness statements and all the other documents), listen to the arguments made to them, and then make up their minds. But there are a number of important procedural rules which govern their decision-making, some of which I shall briefly mention here, because non-lawyer readers of this judgment may not be aware of them.

Burden of proof

8. The first is the question of the burden of proof. Where there is an issue in dispute between the parties in a civil case (like this one), one party or the other will bear the burden of proving it. In general, the person who asserts something bears the burden of proving it: Sadovska v Secretary of State for the Home Department [2017] 1 WLR 2926, SC, [28]… The importance of the burden of proof is that, if the person who bears that burden satisfies the court, after considering the material that has been placed before the court, that something happened, then, for the purposes of deciding the case, it did happen. But if that person does not so satisfy the court, then for those purposes it did not happen. The decision is binary. Either something happened, or it did not, and there is no room for maybe: Re B (Children) [2009] 1 AC 11, [2]. That may mean that, in some cases, the result depends on who has the burden of proof.

Standard of proof

9. Secondly, the standard of proof in a civil case is very different from that in a criminal case. In a civil case like this, it is merely the balance of probabilities: see eg Hornal v Neuberger Products Ltd [1957] 1 QB 247, 256, 261, 265. This means that, if the judge considers that something in issue in the case is more likely to have happened than not, then for the purposes of the decision it did happen. If on the other hand the judge does not consider that that thing is more likely than not to have happened, then for the purposes of the decision it did not happen. It is not necessary for the court to go further than this. There is certainly no need for any scientific certainty, such as (say) medical or scientific experts might be used to. However, the more serious the allegation, the more cogent must be the evidence needed to persuade the court that a thing is more likely than not

to have happened: see Re H (Minors) [1996] AC 563, 586D-H; Home Secretary v Rehman [2003] 1 AC 153, [55]; Re B (Children) [2009] 1 AC 11, [14]-[15].

The role of judges

10. Thirdly, in our system, judges are not investigators. They do not go looking for evidence. Instead, they decide cases on the basis of the material and arguments put before them by the parties. They are referees, not detectives. So, it is the responsibility of each party to find and put before the court the evidence and other material which each wishes to adduce, and formulate their legal arguments, in order to convince the judge to find in that party's favour. There are a few limited exceptions to this, but I need not deal with those here.

The fallibility of memory

11. Fourthly, more is understood today than previously about the fallibility of memory. In commercial cases, at least, where there are many documents available, and witnesses give evidence as to what happened based on their memories, which may be faulty, civil judges nowadays often prefer to rely on the documents in the case, as being more objective: see Gestmin SGPS SPA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm), [22], restated recently in Kinled Investments Ltd v Zopa Group Ltd [2022] EWHC 1194 (Comm), [131]-[134]. As the judge said in that case,

> *"a trial judge should test a witness's assertions against the contemporaneous documents and probabilities and, when weighing all the evidence, should give real weight to those documents and probabilities".*

In the present case, there are a number of useful documents available. This is important in particular where, as here, the relevant facts occurred over forty years ago, one of the parties to the agreement has died, and the memories of the other witnesses available have inevitably been dimmed by the passage of time.

12. In deciding the facts of this case, I have therefore had regard to the more objective contents of the documents in the case. In addition to this, and as usual, in the present case I have heard witnesses (who made witness statements in advance) give oral evidence while they were subject to questioning. This process enables the court to reach a decision on questions such as who is telling the truth, who is trying to tell the truth but is mistaken, and (in an appropriate case) who is deliberately not telling the truth. I will therefore give appropriate weight to both the documentary evidence and the witness evidence, both oral and written, bearing in mind both the fallibility of memory and the relative objectivity of the documentary evidence available. I say "relative", because some aspects of certain documents relied on by the claimant have been challenged by the defendant, and I shall have to resolve those matters in due course.

Reasons for judgment

13. Fifthly, a court must give reasons for its decisions. That is the point of this judgment. But judges are not obliged to deal in their judgments with every single point that is argued, or every piece of evidence tendered: English v Emery, Reimbold & Strick Ltd (Practice Note) [2002] 1 WLR 2409, CA, [17]-[19]. Judges deal with the points which matter most. Moreover, it must be borne in mind that specific findings of fact by a judge are inherently an incomplete statement of the impression which was made upon that judge by the primary evidence. The judge's expressed

findings are always surrounded by a penumbra of imprecision which may still play an important part in the judge's overall evaluation: Biogen Inc v Medeva Plc [1997] RPC 1, 45. Put shortly, judgments do not explain all aspects of a judge's reasoning, and are always capable of being better expressed: Piglowska v Piglowski [1999] 1 WLR 1360, 1372. But they should at least express the main points, and enable the parties to see how and why the judge reached the decision given."

45. Proceedings under the CDDA are civil proceedings in which the burden of proof is the balance of probabilities. The SoS bears the burden of proving both the occurrence of conduct which is said to demonstrate unfitness, and that such conduct does demonstrate unfitness.

46. In the present case, there is also a burden on Mr Minto-St.Aimie. He bears the burden of proving how he came to fill in the BBL application. He bears this burden because he is the one asserting that the form was filled in on the instructions of Mr Qureshi and he had no responsibility for what was set out.

47. Turning to that central issue, the evidence was as follows:

    (a) Mr Minto-St.Aimie states in his affidavit that he used to discuss financial matters with his accountants on the telephone. He states that during the course of one of these telephone conversations, he was told that he would be eligible for a BBL. He states that not only did the accountants draw the BBL to his attention, but they also talked him through the application. He states that he explained to the accountants that he was unsure how to fill out the application, and "based on the good relationship I had with them, they stayed on the phone and talked me through the process and what to input in the application based on the knowledge they had on my finances." He stated that "the Accountants

told me what to enter in the BBL application, including the figure for turnover."

(b) Mr Qureshi's affidavit evidence is to the opposite effect. Mr Quereshi states that Mr Minto-St.Aimie did not consult his firm prior to submitting the BBL application. He stated that "at no stage whatsoever did I advise Mr Minto-St.Aimie to apply for BBL or help him with his application for the BBL. We are not authorised to advise on loans." In response to Mr Minto-St.Aimie's claim that he used to telephone the accountants, Mr Qureshi stated that "we do not review or discuss company accounts over the telephone… all correspondence with Mr Minto-St.Aimie on or around 20 May 2020 would be via email".

(c) Other than the BBL application form itself, the court has seen no contemporaneous written documents or other records which assist with establishing what occurred. There are no emails between Mr Qureshi and Mr Minto-St.Aimie which would substantiate Mr Qureshi's claim, or records of calls, or file notes.

(d) The only document referred to by Mr Qureshi in his affidavit is the somewhat later director questionnaire which Mr Minto-St.Aimie completed on 11 October 2022. In this questionnaire, Mr Minto-St.Aimie responded to a question asking whether there was any professional advice sought prior to applying for the BBL. Mr Minto-St.Aimie stated "*Accountant said I could apply up to £50000 was all but I didn't think I needed 50000*". Mr Minto-St.Aimie did not claim, in this questionnaire, to have been instructed what to

fill in by the accountant during a phone call which occurred while Mr Minto-St.Aimie was filling in the form.

(e) Mr Minto-St.Aimie cross-examined Mr Qureshi. Mr Minto-St.Aimie put to Mr Qureshi that, contrary to the impression painted in Mr Qureshi's affidavit, Tax Assist provided advice which went beyond the preparation of annual accounts. Mr Qureshi accepted that introductions had been made to other professionals who could assist with turning the Company into a CIC. He also accepted that he had recommended contacting insolvency practitioners of his acquaintance when the Company's insolvent position became apparent, although he did not accept that this amounted to an "introduction" in any formal sense. He also accepted that he continued to be involved in providing services to a new company with which Mr Minto-St.Aimie has subsequently been involved. He accepted, too, that he would occasionally speak to Mr Minto-St.Aimie on the phone, although Mr Qureshi stressed that this related to accountancy matters.

(f) As to BBLs, Mr Qureshi stated that Tax Assist would have sent out email news notifications to its clients about important developments, such as the BBL scheme. It also ran webinars for its clients, which may well have covered this topic. He stated that he was aware that a lot of his clients had sought BBLs. He stated that he was aware of the rules, and had anyone sought advice from him, he would have told them to follow the rules. He stated that he did not recall having discussed BBLs with Mr Minto-St.Aimie.

(g) As to whether he would have been able to advise Mr Minto-St.Aimie to fill in the BBL form in the course of a telephone call, Mr Qureshi stressed that all he knew about the Company's financial position would have come from the bank

statements he received when the Company's accounts were being prepared. He said that that only took place once a year, and in May 2020 he did not have access to records relating to the company's turnover in the year ended December 2019. The records for that year were only provided later, as part of the normal process of preparing those accounts. Mr Qureshi stated that he did not know and would not have known what figures to include in the turnover box on the BBL application form.

(h) Mr Minto-St.Aimie was also asked about this central issue in the course of his cross-examination by counsel for the SoS. As to the general relationship with Tax Assist, he stated that there were face to face meetings for the annual accounts, when Mr Qureshi would also explain how dividends or PAYE worked; he said he used to drop in to the Tax Assist offices if he was passing, although I do not think he meant to suggest that he did this routinely. He explained that at the end-of-year accounting meetings, he would go through the accounts with Mr Qureshi face-to-face, but only for the first couple of years. He said that it was not explained to him that he had to approve the accounts; his impression was that he was simply contacted and informed that the accounts were ready. The only question in his mind, he said, was whether any tax was due. He said that Tax Assist would file the accounts at Companies House, having been given the code to do this.

(i) In relation to the filling in of the BBL form, Mr Minto-St.Aimie said that he did not read the form. He said he was on the phone to Mr Qureshi, and read out the questions for Mr Qureshi to tell him what to enter. Although he said he now understands that the loan amount was limited to 25% of turnover, Mr

Minto-St.Aimie said he did not know this at the time. Although he said he read out the questions to Mr Qureshi, he does not recall having read the words "What is your turnover?" in the form. Mr Minto-St.Aimie denied that he knew the Company had not received the claimed £100,000 during 2019. He said that Mr Qureshi had explained to him that he could have up to £50,000, but he thought £25,000 was sufficient. He claimed that he had not taken on board the significance of the confirmation at the end of the form, saying that he trusted Mr Qureshi. He claimed that Mr Qureshi told him what to put, and that he put £100,000 in the turnover box because Mr Qureshi told him to do it. The SoS's contrary case was put to Mr Minto-St.Aimie, who insisted that he spoke to Mr Qureshi, talked through the application on the phone, and entered £100,000 in the turnover box on Mr Qureshi's instructions.

48. Having heard from Mr Qureshi and Mr Minto-St.Aimie, I make the following findings of fact:

(a) I am satisfied that Tax Assist and Mr Qureshi were more involved in the Company's affairs than merely preparing the Company's annual accounts; Mr Qureshi accepted this. I find that there were telephone conversations between Mr Minto-St.Aimie and Mr Qureshi, although there is no basis for thinking these conversations would be anything other than sporadic. Perhaps assistance might have been provided from time to time to arrange for the PAYE scheme under which Minto-St.Aimie's wages were paid. Perhaps also Mr Minto-St.Aimie occasionally attended Tax Assist's offices in person, besides the annual face-to-face meeting at which the accounts were approved. These calls and meetings were consistent with a normal professional relationship between

a company and its accountants. From the introductions which took place to other professionals, it appears that Mr Qureshi was treated as a point of contact for Mr Minto-St.Aimie in relation to occasional business questions as well as routine accounting matters, and perhaps phone calls occurred in the course of this role.

(b) However, I am not satisfied on the balance of probabilities that the BBL form was completed during the course of a telephone call between Mr Minto-St.Aimie and Mr Qureshi, with Mr Qureshi telling Mr Minto-St.Aimie what to write in the boxes. Mr Minto-St.Aimie urged me not to accept an implication in the SoS's case that accountants do not lie. I do not need to make such a finding for Mr Minto-St.Aimie to fail to establish on the balance of probabilities that the BBL form was completed in the way he suggests. It is for Mr Minto-St.Aimie to prove that Mr Qureshi had forgotten their phone call, or was lying about it, and that it took place as Mr Minto-St.Aimie claimed; and I am not satisfied that he has done that, for the following reasons.

(c) First, as the Company's accountant, Mr Qureshi would have known the Company's turnover in 2018 as he prepared the Company's accounts for that year. That figure was not used in the BBL application form, which needed the 2019 turnover figure. Mr Qureshi would not have known the 2019 turnover in May 2020 as Mr Minto-St.Aimie had not provided that year's information to him at that stage, and Mr Minto-St.Aimie does not claim that he provided such information to Mr Qureshi before the BBL form was filled in. On Mr Minto-St.Aimie's case, he read out the questions on the BBL form during the course of the phone call with Mr Qureshi, so Mr Qureshi can have been in no doubt as

to what information was required in relation to turnover. As an accountant, Mr Qureshi would have understood what information was required. It follows that the only way Mr Qureshi could have told Mr Minto-St.Aimie to fill in £100,000 for the turnover figure for 2019 would be by a deliberate overstatement. It is inherently unlikely that Mr Qureshi would have sanctioned inflated figures being included, as doing so would have risked his professional standing and his ability to continue in practice. There was no plausible explanation for why Mr Qureshi should sacrifice his professional good name on Mr Minto-St.Aimie's behalf in this way.

(d) Second, I am not persuaded that the relationship between the Company and Tax Assist (or between Mr Minto-St.Aimie and Mr Qureshi) was of an unusual sort so that it would be anything other than highly unlikely for an accountant to have assisted in the way Mr Minto-St.Aimie claimed.

(e) Third, and relatedly, there is no documentary evidence to support either a general course of dealing in which the suggested phone call would be regarded as likely, nor is there any documentary evidence which supports the call having taken place. The earliest document which might have revealed what Mr Minto-St.Aimie now says happened was the 2022 questionnaire, in which he failed to mention the phone call at all. The phone call explanation was provided for the first time in Mr Minto-St.Aimie's affidavit in November 2023, three and a half years after the alleged call took place. That delay in providing the explanation, and the failure to mention this detail in the 2022 questionnaire, is significant in weighing the assertions about this call which Mr Minto-St.Aimie now makes. If the call took place as Mr Minto-St.Aimie

describes it, it was clearly an important matter to refer to in answer to the question about whether professional advice was taken in relation to the BBL application, and I find that it is more likely than not that Mr Minto-St.Aimie would have referred to it in the 2022 questionnaire.

(f) Fourth, I am not persuaded that Mr Qureshi was not telling the truth when he gave evidence. I accept that he does not recall having discussed the BBL application with Mr Minto-St.Aimie. I do not think it likely that he would have forgotten a phone call of the sort described by Mr Minto-St.Aimie, which would have involved him casting aside his professional principles and making up a turnover figure to enable the Company to take out an inflated loan. That would have been memorable and, indeed, remarkable.

(g) Fifth, and assuming that a call of some sort took place but Mr Qureshi chose to maintain his professional integrity, I do not think it likely that Mr Qureshi would have been able to provide any meaningful assistance in answering the question about the 2019 turnover figure because he did not have the underlying data from the Company's bank statements. I therefore find that there was no assistance provided by Mr Qureshi at all.

49. Mr Minto-St.Aimie did not have an alternative explanation for how the BBL form came to be filled in if the court did not accept his version of events. It is not in dispute that Mr Minto-St.Aimie himself filled in the form. It follows from the rejection of his story about the phone call that I find that Mr Minto-St.Aimie filled in the form entirely by himself, and did not have the assistance of Mr Qureshi. I find that Mr Minto-St.Aimie was responsible for filling in the form.

50. I also reject Mr Minto-St.Aimie's claim that he did not understand what the figures he was including in the BBL form meant. The BBL form is short, and expressed in clear language. Anyone reading the form would have appreciated that there was a correlation between the amount of the loan and the amount to be included in the turnover box, and in my judgment Mr Minto-St.Aimie appreciated this correlation because the loan amount he sought was exactly 25% of the stated turnover. Counsel for the SoS submitted in closing that the turnover figure was mathematically derived from the loan amount the Company sought. There was some evidential support for this, in that Mr Minto-St.Aimie stated that he only applied for a £25,000 loan (rather than the maximum of £50,000) as he "thought £25,000 was sufficient". It does seem to me that Mr Minto-St.Aimie was focused on the amount of the loan the Company needed or wanted, and not on the amount of the loan for which the Company would be eligible based on its turnover. There is no evidence that the overstated £100,000 turnover figure was anything other than the mathematically derived number needed to allow an application for a £25,000 loan. I accept the SoS's characterisation of the process followed by the Company as having started with the amount of the loan, with the turnover figure being worked out to fit.

51. I have rejected Mr Minto-St.Aimie's case that he had no appreciation at all of what the numbers in the BBL form meant because he was simply inputting figures relayed to him down the phone by Mr Qureshi. Mr Minto-St.Aimie did not have any alternative explanation for how he could have failed to appreciate the meaning of the information he was required to fill in. He did not claim that he did not think the turnover figure was important, or that he did not understand the concept of turnover, although he did claim that he did not read the questions on the form. Given that he also claimed to have read the questions out to Mr Qureshi, I take Mr Minto-St.Aimie

to have meant that he did not comprehend the questions. However, because I have found that Mr Minto-St.Aimie filled in the form, because the form is clear, because the turnover figure seems to have been derived from the loan amount Mr Minto-St.Aimie wanted, and because "turnover" as a concept is simple to understand, I find that Mr Minto-St.Aimie did appreciate and understand the question he was being asked about the Company's turnover, and he did appreciate and understand the significance of this question in determining the amount of the BBL the Company would be able to receive.

52. The question of unfitness is considered below. It will be important in addressing that question to determine whether Mr Minto-St.Aimie knowingly entered the wrong information, or did so recklessly, carelessly, naively or innocently. The SoS's case is that Mr Minto-St.Aimie knew or ought to have known that the Company was not eligible for a £25,000 BBL because its true turnover was only £41,830 rather than £100,000. The SoS bears the burden of proof in relation to this allegation. For the reasons set out above, I am satisfied on the balance of probabilities that Mr Minto-St.Aimie appreciated and understood the question on the BBL form concerning turnover and the significance of that question. I am also satisfied that Mr Minto-St.Aimie knew that the figure he gave for the Company's turnover was wrong. It would have been easy for him to check the figure by adding up the income shown in the Company's bank statements. The disparity between the claimed turnover and the actual turnover is so significant that it is not consistent with a genuine but mistaken estimate; nor can it even be classified as reckless. At the time of the BBL application, Mr Minto-St.Aimie would have been well aware of the Company's limited financial resources, with its lack of recent income contributing to his wages not having been

paid for several months. He must have known that the Company had not turned over £100,000 or anything like it in 2019.

53. I am therefore satisfied that Mr Minto-St.Aimie knowingly provided false information on the BBL form when he overstated the Company's turnover. I am also satisfied that Mr Minto-St.Aimie thereby caused the Company to breach the terms of the BBL scheme by making an application which exceeded the Company's entitlement.

54. As to the overstatement, there was no dispute that the correct turnover figure would have been that which later appeared in the 2019 accounts, namely £41,830. If the BBL amount had been calculated by reference to this turnover figure, a loan of £10,457 could have been sought. The £25,000 BBL was £14,543 more than the Company was entitled to. Accordingly, I find that the ground that Mr Minto-St.Aimie caused the Company to receive £14,543 more than its entitlement is made out.

55. The SoS had an alternative case, in the event that I accepted that the BBL form was completed in the way suggested by Mr Minto-St.Aimie, that Mr Minto-St.Aimie remained responsible for what was entered into the form and could not absolve himself from responsibility by relying on professional advisers. Because I have rejected Mr Minto-St.Aimie's factual case about the phone call and the advice from Mr Qureshi, I do not need to consider this alternative argument. Whether a director can rely on the advice of a professional will depend on all the circumstances. It is not a question which can be safely answered on the hypothetical basis of different circumstances, although sometimes it is necessary for judges to venture in that direction in case an appeal is brought. The present case is not like that: there is great uncertainty about what exactly would be found to have occurred if Mr Minto-St.Aimie's factual case had not been rejected. I accordingly decline to make any

determination as to the extent of Mr Minto-St.Aimie's responsibility for the figures in the BBL from, on the hypothetical basis that Mr Qureshi was involved.

Unfitness

56. Section 6 CDDA provides that the court shall make a disqualification order against a person where it is satisfied that the person is or has been the director of a company which has become insolvent and the person's conduct as a director of the company "makes him unfit to be concerned in the management of a company".

57. The statutory test of being "unfit to be concerned in the management of a company" uses "*ordinary words of the English language and they should be simple to apply in most cases. It is important to hold to those words in each case*", as it was put in *Sevenoaks* at 176B per Dillon LJ. He continued, having referred to cases in which first-instance judges had provided suggestions for what conduct would lead to a finding of unfitness:

"*Such statements may be helpful in identifying particular circumstances in which a person would clearly be unfit. But there seems to have been a tendency, which I deplore, on the part of the Bar, and possibly also on the part of the official receiver's department, to treat the statements as judicial paraphrases of the words of the statute, which fall to be construed as a matter of law in lieu of the words of the statute. The result is to obscure that the true question to be tried is a question of fact – what used to be pejoratively described in the Chancery Division as "a jury question"."*

58. In *Re Structural Concrete Ltd* [2001] BCC 586E-G, Blackburne J held that determining the issue of unfitness involved the following three stages, relying on the

way the test was described by Hoffmann LJ in *Re Grayan Building Services Ltd* [1995] Ch 241:

"*There was no dispute about this. Assuming, as is the case here, that the qualifying conditions laid down by s. 6(1)(a) are satisfied (i.e. that the person against whom a disqualification order is sought is or has been a director of a company which has at any time become insolvent) the requirement, laid down by s. 6(1)(b) , 'that his conduct as a director of that company ... makes him unfit to be concerned in the management of a company' involves a decision by the court whether the conduct upon which the Secretary of State or official receiver relies (in this case the conduct referred to in para. 53 of Mr Hornshaw's report), taking into account any extenuating circumstances, has fallen below the standards of probity and competence appropriate for persons fit to be directors of companies. See Re Grayan [1995] BCC 554 at p. 574B; [1995] Ch 241 at p. 253F. That decision involves a three-stage process: (1) do the matters relied upon amount to misconduct; (2) if they do, do they justify a finding of unfitness; and (3) if they do, what period of disqualification, being not less that two years, should result?"*

59. I will apply this three-stage process to the present case. As set out above, the SoS's factual case has been established. I have found that Mr Minto-St.Aimie knowingly provided false information on the BBL form when he overstated the Company's turnover. I have found that Mr Minto-St.Aimie thereby caused the Company to breach the terms of the BBL scheme by making an application which exceeded the Company's entitlement.

60. The first part of the test is whether this amounts to misconduct. In my judgment, it does. There have been a number of recent CDDA cases in which overstated turnover

on a BBL application form has been held to be misconduct. These cases need to be approached with care, because the extent of the impropriety alleged and proved varies with each case.

61. At one end of the scale lie cases like *Re DEEA Construct Ltd* [2023] EWHC 2084 (Ch), in which a director of a company with negligible real turnover applied for the maximum BBL (£50,000) based on falsely inflated turnover of £200,000. The unfit conduct included a finding that the director had taken the money for himself. The director in that case clearly committed misconduct, which Chief ICC Judge Briggs considered very serious, resulting in a thirteen-year disqualification order. At paragraph 20, the Judge noted that the false representation made by the director occurred "*at a time when the government placed trust and confidence in directors of companies for the purpose of honestly representing their financial status in order that they may obtain financial support to allow companies to be maintained and survive government-imposed restrictions to social and business movement of people*." These comments about the BBL scheme are of general relevance in explaining why overstatements of turnover in BBL applications are likely to amount to misconduct.

62. The reference to trust and confidence being placed in company directors is a corollary of the self-certification application process for BBLs. As described above, BBLs were unusual in that although the lending was provided by financial institutions such as banks, the government guarantee meant that no credit checks or other verification processes were required in order to protect the primary lenders. The whole process was streamlined, with speedy payments being provided to borrowers. The faster the process, the fewer the checks, and the greater the risk that loans would ultimately not be repaid, whether through the effects of the pandemic, ordinary commercial

misfortune, overstatement of turnover, or outright fraud. This risk was entirely assumed by the government.

63. It is important to note that BBLs did not involve businesses being offered "free money" with no strings attached and no questions asked. The strings included that the loans were repayable according to their terms, albeit that those terms were generous and limited liability would restrict recovery against company borrowers if there was an eventual default. Questions *were* also asked, in the BBL application form; but it appears that the answers to those questions were not subjected to the usual level of scrutiny that would apply if there had been no government guarantee in place. The whole point of the scheme was that the answers to such questions were not rigorously scrutinised, to prevent delays in getting funds to companies in need. Looked at as a whole, the effect of limited liability and the government guarantee was to place great weight on a company director giving truthful answers to the eligibility questions asked in a BBL application. Truthful answers were the only effective safety mechanism, and government money was being staked on those answers. I entirely agree, therefore, with Chief ICC Judge Briggs' description of the trust and confidence which was placed by the government on company directors in relation to the BBL scheme.

64. A less serious BBL case, which still led to an eleven-year disqualification order, was *Re Tundrill Ltd* [2023] EWHC 3241 (Ch). Here, there was a fraudulent overstatement of turnover and a BBL which was transferred to the director personally on receipt, but the BBL obtained was only £15,000. ICC Judge Burton repeated and reinforced the comments of Chief ICC Judge Briggs in the *DEEA* case, at paragraph 66:

"*...As noted by Chief ICC Judge Briggs in Deea Construction Ltd, the false representations which Mr James made or authorised to be made on the Company's behalf in order to obtain the BBL, most of which he almost immediately diverted to his own account, were made at a time when the Government placed trust in directors honestly to present their financial information in order that the Government could help companies to survive, notwithstanding the restrictions which it imposed on society and the businesses operating with[in] it."*

65. I am in agreement with the assessment in that paragraph. It seems to me that knowingly providing false information as to turnover in a BBL application is likely to be misconduct, and potentially serious misconduct depending on the facts of a particular case. This assessment applies even though the maximum loan was only £50,000. Many disqualification cases involve much greater losses to creditors than that. But in proceedings under the CDDA, the court is required to determine whether there is misconduct which demonstrates unfitness. Unfitness is very likely to be shown if a director's misconduct involves falsely obtaining a government-backed loan, personally shielded by limited liability, at a time of national emergency, exploiting a lack of scrutiny which was designed to assist those most in need of help. This sort of misconduct is likely to be held to be at the most serious end of the scale. At its worst extreme, it carries the hallmarks which make looting one of the most serious property offences in defiance of the norms of civilised society.

66. These are special features of CDDA cases involving BBLs, but they reflect longstanding principles of the disqualification regime. In *Re Swift 736 Ltd* [1993] BCC 312, the Vice-Chancellor made the following observations (at 315), which are easily applied to cases involving BBLs:

"*... Limited liability is a valuable tool in the promotion of trade and business, but it must not be misused. Those who make use of limited liability must do so with a proper sense of responsibility. The director disqualification procedure is an important sanction introduced by Parliament to raise standards in this regard. Those who take advantage of limited liability must conduct their companies with due regard to the ordinary standards of commercial morality. They must also be punctilious in observing the safeguards laid down by Parliament for the benefit of others who have dealings with their companies."*

67. I turn to the particular facts of this case. In my judgment, Mr Minto-St.Aimie's knowing overstatement of the Company's turnover on the BBL application form was misconduct. He breached the trust placed on him by the government at a time of national emergency. He did not show the required level of "responsibility" towards his obligations to tell the truth on the BBL application form. The misconduct is sufficiently serious that the court should consider whether it justifies a finding of unfitness.

68. As to unfitness, it seems to me that this particular misstatement of turnover crosses the line and demonstrates that Mr Minto-St.Aimie is unfit to be concerned in the management of companies. I have found that Mr Minto-St.Aimie knew that the information he was putting into the BBL application form was wrong. As a result of his wrong statement, the Company received a BBL for more than it was entitled to under the scheme. Mr Minto-St.Aimee stated in his affidavit that he tried to relaunch the Company's business after the pandemic. There is no allegation in these proceedings about why the Company ultimately failed and I make no findings about that. Regardless of what happened later, Mr Minto-St.Aimie's actions increased the

government's financial exposure to his limited liability company by more than should have occurred had Mr Minto-St.Aimee filled in the BBL application form in accordance with his responsibilities and the truth. The overstatement, and the consequent increase in exposure, was more than de minimis. In relative terms, it was more than double the true position. In absolute terms, the sums involved were not particularly large, but this conduct demonstrates that Mr Minto-St.Aimie is not fit to be concerned in the management of companies.

69. I take into account that there is only one instance of misconduct in the whole of Mr Minto-St.Aimie's time running the Company. I also take into account that this misconduct involved taking advantage of the liberal approach to applications for BBLs, a scheme which has now closed, so that there is no risk that this specific misconduct will recur. However, it seems to me that this misconduct is indicative of an attitude to the responsibilities of being a director which is not consistent with commercial morality and which is deserving of the serious sanction of disqualification.

70. I am therefore satisfied in relation to the second stage of the test in *Structural Concrete*; Mr Minto-St.Aimie's conduct justifies a finding of unfitness.

Period of disqualification

71. Having reached that conclusion, I am obliged to disqualify Mr Minto-St.Aimie for a period of at least two years, and up to fifteen years.

72. Dillon LJ in *Sevenoaks* at 174E-G set out three brackets of seriousness into which cases are generally categorised:

(a) The top bracket, of over ten years, for particularly serious cases, which may include cases where a director who has already had one period of disqualification falls to be disqualified yet again;

(b) The middle bracket, of between six and ten years, for serious cases that do not merit the top bracket; and

(c) The minimum bracket of two to five years' disqualification should be applied where, though disqualification is mandatory, the case is, relatively, not very serious.

73. In the present case, the SoS seeks an order at the top of the middle bracket, for a period of ten years, on the basis that this is a serious case not meriting the top bracket. The SoS relies on the following five factors as justifying that conclusion:

(a) By providing false information, the SoS alleges that Mr Minto-St.Aimie was dishonest or lacking in commercial probity.

(b) The context in which the false information was provided, as part of a scheme for saving businesses in the midst of the pandemic, was one where trust was placed on company directors. Mr Minto-St.Aimie betrayed this trust.

(c) Mr Minto-St.Aimie benefitted personally from the payments.

(d) Mr Minto-St.Aimie appears to lack contrition for what he did.

(e) An aggravating factor is that Mr Minto-St.Aimie has contested these proceedings, blaming the Company's accountants and putting forward an implausible and untrue account of events.

74. For the reasons set out above, it seems to me that factors (c) and (d) are not relevant to the period of disqualification, but may be relevant in defeating any claimed mitigation. The period of disqualification should be assessed by reference to the alleged grounds of misconduct which have been established and give rise to a finding of unfitness. Those grounds are that Mr Minto-St.Aimie provided false information about the Company's turnover when applying for a BBL and thereby caused the Company to breach the terms of the BBL scheme and receive £14,543 more than it was entitled to.

75. For the same reason, I do not accept the language in which the submission recorded in sub-paragraph (a) above is put. The court should not hesitate from calling a spade a spade, but the case against Mr Minto-St.Aimie was that he knew or ought to have known that he provided false information in the BBL application form. It was no more than that. The word "dishonesty" was not used to describe Mr Minto-St.Aimie's conduct until the SoS's closing submissions. While it is not always necessary to use the word "dishonesty", in my judgment such an allegation connotes something more serious than the allegation Mr Minto-St.Aimie faced and the middle-bracket period for which the SoS was contending. To rely on a finding of dishonesty, the SoS would have had to prove the state of Mr Minto-St.Aimie's knowledge or belief as to the facts, and that Mr Minto-St.Aimie's conduct was dishonest by the ordinary standards of decent people (as it was put in *Ivey v Genting Casinos (UK) Limited* [2018] AC 391). I am satisfied that I am able to reach a conclusion as to the first of these limbs, and I have done so, as explained above. But it does not seem to me to be appropriate in the present case to go on to consider the second, objective, element and for that reason I do not find that Mr Minto-St.Aimie was dishonest. The reason for this is that the case did not proceed against him on the basis that he was dishonest. Had the SoS

wished to make that allegation, it should have been spelled out much earlier in the proceedings, and more clearly. It is not generally sufficient, in my judgment, for an allegation of fraud to be raised only in oral closing submissions, unheralded in either the affidavits in support or the skeleton argument filed on behalf of the SoS. It is axiomatic that any allegation of fraud or dishonesty must be made clearly, unequivocally and with sufficient particularity that the defendant knows what case he is required to meet, although the word "fraud" or "dishonesty" need not necessarily be used if the facts which make the conduct complained of fraudulent are pleaded and no innocent explanation is consistent with those facts: *Three Rivers DC v Bank of England (No. 3)* [2003] 2 AC 1 at 249H-250B per Lord Hope of Craighead. That principle applies a fortiori in proceedings where the defendant is facing a sanction such as disqualification, for the reasons explained in *Sevenoaks* to which I have earlier referred: as a matter of basic fairness, the director must know the charges he has to meet. The absence of formal pleadings in CDDA cases does not deprive the point of its force. If anything, it means more obvious signposting needs to occur to allow a case in dishonesty to be run fairly.

76. It is permissible, in an appropriate case, for the court to have regard to the way in which a defendant has conducted the proceedings (sub-paragraph (e) in the SoS's submissions above). There are cases in which a director's dishonesty in the witness box has been treated as further misconduct which the court has taken into account (as occurred *in Secretary of State for Trade and Industry v Reynard* [2002] B.C.C. 813). However, it seems to me that Mr Minto-St.Aimie's conduct in this case is not a sufficient aggravating factor to justify increasing the period of disqualification. In my judgment, this point should be weighed in the same way as an absence of contrition, as something which counts against potential mitigation.

77. Mr Minto-St.Aimie's challenge to the period of disqualification largely repeated his defence to the allegation of misconduct, which I have rejected. He raised the following additional points:

(a) He only placed the Company into creditors' voluntary liquidation on the advice of his accountant. Had he realised that these proceedings might result, he would have tried to rescue the Company.

(b) He has paid £3,540 into the Company's liquidation already, contributing £2,790 to the liquidator's costs and purchasing a van from the Company for £750. He borrowed money from his sister to fund these payments.

(c) He is new to business, and was naïve. He was an inexperienced first-time director.

(d) He has no history of prior misconduct.

(e) Disqualification would have a serious detrimental effect on him.

(f) He was not trying to be deceitful; had he been "wholly dishonest" (as he put it) he would have claimed the maximum £50,000 and made up a sufficient turnover figure to justify it (as occurred in the *DEEA* case).

78. Weighing all these factors together, it seems to me that this remains a serious case. The nature of the misconduct, the fact that it represented a breach of the trust placed by the government in company directors at the time of the pandemic, and the significant overstatement which I have found Mr Minto-St.Aimie knew about all point towards a middle bracket disqualification period. Had it been alleged and proved that

Mr Minto-St.Aimie benefitted personally, the top bracket might have been the appropriate starting point (as occurred in *DEEA* and *Tundrill)*.

79. I consider that there are points in mitigation. The most significant is that Mr Minto-St.Aimie is only alleged to have committed a single offence in the entire course of his time as a director. The quantum of the detriment is also relatively small, compared both to other cases where creditors have suffered detriment and compared to the maximum loss that might have been caused by a wholly improper BBL application. While Mr Minto-St.Aimie cannot say that he has not personally gained by his misconduct (as I have found above), the surplus he received above his normal wages represented only about half of the "excessive" element of the BBL, and he has contributed to the costs of bringing the Company's affairs to an end, which further diminishes his net personal benefit. I do not consider that it is a point in mitigation that Mr Minto-St.Aimie might have tried to save the Company had he known he might face these proceedings. Nor do I make any allowance for the detrimental effect disqualification might have on Mr Minto-St.Aimie. The court has a discretion, in an appropriate case, to relieve the harshness of a disqualification order by granting leave to a disqualified director to act as a director under sections 1(1)(a) and 17 CDDA. It is customary for the period of disqualification not to begin until 21 days after judgment is handed down, to allow time for such an application to be made if thought appropriate.

80. In my judgment, and having weighed these factors carefully, the appropriate period of disqualification is eight years.

Compensation under s. 15A CDDA

81. Pursuant to s. 15A CDDA, the court may make a compensation order against a person on the application of the SoS if it is satisfied that the following conditions are met, as set out in sub-section (3):

(a) The person is subject to a disqualification order or disqualification undertaking under this Act, and

(b) Conduct for which the person is subject to the order or undertaking has caused loss to one or more creditors of an insolvent company or a company which has been dissolved without becoming insolvent, of which the person has at any time been a director.

82. There is no dispute in the present case that these conditions are met. Barclays, or the British Business Bank (if the government guarantee has been called upon) are creditors of the Company pursuant to the BBL, which remains fully outstanding. There will be no distribution to creditors in the Company's liquidation. The overstatement of the Company's turnover caused Barclays to lend – and to lose - £14,543 more than it would have done had the correct turnover figure been used. This loss was caused by the conduct for which Mr Minto-St.Aimie is being disqualified as a director.

83. Since the conditions are met, the court has a discretion to exercise both as to whether to make a compensation order, and if so on what terms. Some guidance in how that discretion is to be exercised is provided by s. 15B CDDA, which provides (so far as relevant):

(1) A compensation order is an order requiring the person against whom it is made to pay an amount specified in the order–

(a) to the Secretary of State for the benefit of–

(i) a creditor or creditors specified in the order;

(ii) a class or classes of creditor so specified;

(b) as a contribution to the assets of a company so specified.

(2) …

(3) When specifying an amount the court (in the case of an order)… must in particular have regard to–

(a) the amount of the loss caused;

(b) the nature of the conduct mentioned in section 15A(3)(b);

(c) whether the person has made any other financial contribution in recompense for the conduct (whether under a statutory provision or otherwise).

84. The regime for compensation orders was introduced by the Small Business, Enterprise and Employment Act 2015. It has been fully in force since 1 October 2016, when a set of procedural rules were introduced by the Compensation Orders (Disqualified Directors) Proceedings (England and Wales) Rules 2016 (SI 2016/890). Despite having been on the statute book for eight years, it appears to have been considered in only two reported cases. Counsel for the SoS referred me to both of them.

85. The first is the decision of ICC Judge Prentis in *Re Noble Vintners Ltd* [2020] BCC 198. This was the first case in which the s. 15A CDDA power had been used. On its facts, it was an extreme case: the defendant was disqualified for the maximum 15-year period for misappropriating more than £500,000 at a time when the company had very

little prospect of meeting its liabilities to creditors. The court ordered him to pay back his misappropriations, dividing the payments between various classes of creditors whose losses arose as a result. In a detailed and careful judgment which followed an uncontested hearing at which only the SoS was represented, ICC Judge Prentis explained the rationale for the compensation order regime and discussed factors relevant to the exercise of the court's discretion.

86. The second case is a decision of ICC Judge Barber in *Re Pure Zanzibar Ltd* [2023] EWHC 2284 (Ch). This case concerned a travel operator which organised safari holidays in Africa. Its customers' payments ought to have been subject to ATOL protection, and the company claimed in its marketing that it was ATOL-protected, but the company was not registered with ATOL and the customers' payments were not protected. They suffered losses. A seven-year disqualification period was imposed following a contested trial. After a separate hearing, a compensation order was ordered which was quantified to enable repayment of the full losses of the company's customers in the relevant period when there was no ATOL protection.

87. I draw from these judgments the following principles, so far as they are relevant to the present case, with certain of my own observations.

88. The intention behind the compensation regime is to protect victims of wrongdoing who are not adequately compensated through the insolvency process, and to help remove the perception that wrongdoers are not held to account, improving confidence in the insolvency regime (*Pure Zanzibar* at paragraphs 25 and 26). In *Noble Vintners*, ICC Judge Prentis described the intention in this way:

> *"So the intention was to enhance in the public interest the protective aspect of the disqualification regime by giving monetary remedies to creditors*

financially affected by the misconduct, thereby giving the regime as a whole more 'bite', actual and perceived; and also to fill gaps in the exploitation of IA86 remedies…"

89. The regime for compensation orders is a new, freestanding regime, in which liability depends not on loss to the relevant company but on loss to individual creditors, and should be interpreted as such (paragraphs 24 and 25 of *Noble Vintners*). The significance of this for the present case is that a company may not suffer loss from the taking out of a loan, even if the application for the loan involves a breach of duty, for example by overstating factors relevant to eligibility. Until the loan is spent, taking out the loan has an essentially neutral effect on the company's balance sheet (ignoring fees and interest): the cash arriving in the bank account matches the liability to repay the loan in due course. If the loan is spent wisely, it could be beneficial to the company, and the creditor may be repaid in full, even if the creditor might also have had a right to accelerate repayment on the discovery of the facts giving rise to the breach of duty. In this example, no loss arises either for the company or the creditor. But if an excessive loan is obtained at the time when the company may well not be able to pay it back, and if the company does not spend the money wisely so as to improve its balance sheet, then the creditor who lends the money may be exposed to greater loss than would otherwise have occurred. If the loss is caused by misconduct for which the company's director has been disqualified, then the loss may be compensated by an order under section 15A CDDA.

90. There is a single regime designed in the public interest to cover the entirety of the conduct for which a director might be disqualified. That points, so far as legitimate, to the most flexible possible interpretation (paragraph 26 of *Noble Vintners*).

91. The misconduct must have caused loss to one or more creditors of the company. Loss is undefined, but must be measurable in monetary terms in order to be compensated by a compensation order in a specified amount (paragraphs 31 and 34 of *Noble Vintners*).

92. As to the meaning of causation in this context, ICC Judge Prentis said this at paragraphs 37-40:

> *37. The loss must also have been caused by the misconduct. The Act does not address directly what it means by causation. However, the unqualified words "caused loss" indicate that the conduct need not be, for example, the predominant cause of loss: if that was required, it could have been specified. By contrast, mere "but for" causality would fail to preserve a sufficiently meaningful relationship between the misconduct and the loss in many misconduct situations (think, for example, of the regular allegation of failure to keep proper accounting records), although it might be a useful device for excluding certain aspects of loss.*
>
> *38. In locating the middle road I have found assistance in a dictum of Lord Browne-Wilkinson's in Target Holdings Ltd v Redferns [1996] A.C. 421 at 439. Albeit in a different context he said that:*
>
> *"Equitable compensation for breach of trust is designed to achieve exactly what the word compensation suggests: to make good a loss in fact suffered by the beneficiaries and which, using hindsight and common sense, can be seen to have been caused by the breach".*

39. Lord Browne-Wilkinson was there assisted by the minority judgment of McLachlin J in Canson Enterprises Ltd v Boughton & Co (1991) 85 D.L.R. (4th) 129 , discussed again in the Supreme Court in AIB Group (UK) Plc v Mark Redler & Co Solicitors [2014] UKSC 58; [2015] A.C. 1503; [2015] P.N.L.R. 10 . One other element of McLachlin J's judgment was that "Foreseeability is not a concern in assessing compensation".

40. An amalgam of Lord Browne-Wilkinson's description of what "the word compensation suggests" and McLachlin J's removal of the concept of foreseeability seems appropriate to the statutory scheme of compensation here. So, using hindsight and common sense but without considering foreseeability the court must be satisfied that the misconduct has caused loss within the meaning of the Act to a creditor of a relevant insolvent company. It follows that the loss caused will be assessed as at the date of the final hearing of the compensation order claim, on the basis of the fullest-available evidence. Using hindsight is standard practice in assessing loss in IA 86 claims: as Lord Scott of Foscote said in the transaction at an undervalue case of Phillips (Liquidator of AJ Beckhor & Co) v Brewin Dolphin Bell Lawrie Ltd (formerly Brewin Dolphin & Co Ltd) [2001] UKHL 2; [2001] 1 W.L.R. 143; [2001] B.C.C. 864 at [26], "reality should ... be given precedence over speculation". Should the application of that test cause unfairness because, say, although the loss was caused by the misconduct, it was but one of a number of causes, then that can be dealt with under the court's discretion either at the s.15A stage, or at the s.15B stage.

93. In *Pure Zanzibar* at paragraph 35, ICC Judge Barber cited this passage from *Noble Vintners* and questioned whether foreseeability of loss might not play a role in compensation order applications where, for example, the misconduct was based on negligence or incompetence to a marked degree. However, she ultimately concluded on the facts of the case before her that a close examination of the different forms of causation did not make any difference. The point remains open for determination in a case in which it arises. I consider that the appropriate starting point on causation in the present case is to use hindsight and common sense to assess what loss has been caused to particular creditors by the misconduct, giving precedence to reality over speculation, but being prepared to use discretion to temper any unfairness that may occur if there were also other causes for the losses.

94. Importantly, and to repeat a point I have already made in relation to how the court approaches the period of disqualification, the court's discretion should be exercised so as to reflect the misconduct alleged and established. This is apparent from the wording of section 15A(3)(b) CDDA, which refers to the gateway condition of loss having been caused by conduct for which the director has been disqualified, and the exercise of the discretion requiring the court to have regard to "the amount of the loss caused" in section 15B(3)(a) CDDA and the "nature of the conduct" in section 15B(3)(b) CDDA. The reference to the "loss caused" can only be the loss caused by the misconduct. In the present case, this means that although Mr Minto-St.Aimie has (in fact) personally benefitted from the misconduct, this personal benefit is not itself misconduct for which Mr Minto-St.Aimie has been disqualified. If the SoS had wanted to bolster the application for a compensation order by reference to Mr Minto-St.Aimie's personal benefit, that personal benefit should have been alleged as part of the misconduct.

95. The need to have regard to the nature of the conduct which caused the loss means that the court can take into account a disparity between the size of the loss and the level of culpability in the misconduct. Relatively minor yet culpable negligence which caused vast losses might not lead to a vast compensation order (*Noble Vintners* at paragraph 44).

96. It is necessary for the court to consider whether any compensation has already been paid via another route, as provided for in s. 15B(3)(c) CDDA. The words of the statute clearly provide that there should be no double recovery (*Noble Vintners* paragraph 46). It seems to me that it may also be relevant to the exercise of the court's discretion whether the same conduct might have given rise to claims on the part of the company which the liquidator might have pursued on its behalf with the aim of providing a distribution to the company's creditors, and why those claims might or might not have been pursued. Thus, a director who personally benefits from his misconduct and thereby leaves the company or its liquidator with no funds to pursue claims against him, is more likely to be a suitable target for a compensation order under s. 15A CDDA. Applications for compensation orders are brought by the SoS, so the impecuniosity of the company is irrelevant. The availability of compensation orders provides another route, in the public interest, for wrongdoers to be held to account. It would be different if a liquidator who could have brought proceedings has chosen not to do so, or if the director has reached a compromise with the company in relation to the consequences of his misconduct. Although s. 15B(3)(c) refers to "any other financial contribution in recompense for the conduct", it seems to me that any commercial settlement of claims is likely to be relevant, whether or not money has changed hands.

97. It is also relevant to consider when and how the director was notified of the application for a compensation order. An application can be brought separately from the underlying disqualification proceedings. Those may be compromised by undertakings, with an agreed schedule of unfit conduct. It might well be unfair to spring a compensation order application on a director who thought that the agreed schedule of unfit conduct was only going to result in a period of disqualification. This concern was noted at paragraph 53 of *Noble Vintners*. It does not apply here, as the disqualification proceedings have run hand-in-hand with the compensation application, with both being notified to Mr Minto-St.Aimie in the letter sent under section 16 CDDA on 21 November 2022.

98. ICC Judge Prentis noted that the effect of compensation orders might be to cause fewer disqualification cases to settle (*Noble Vintners* at paragraph 54). He held that that was irrelevant to the application of the regime. I agree. It is eight years since the compensation order regime was introduced. In that time, this is only the third reported decision, which points towards the power being invoked sparingly by the SoS. As ICC Judge Prentis noted at paragraph 47 of *Noble Vintners*, there is a cascade of discretions before a compensation order is made: the SoS initiates compensation order applications as a matter of discretion; the Insolvency Service has internal guidance directed at the factors which ought to be considered in recommending an application. The court has a discretion whether to make a compensation order, and if so in what amount, and on what terms.

99. If the court makes a compensation order, it can specify the way in which it is to be paid or distributed in accordance with s. 15B(1) CDDA. The money can be paid either as a contribution to the assets of the company, or to the SoS for the benefit of a

creditor or creditors specified in the order, or a class of creditors specified in the order. The exercise of directing benefits to particular creditors may be somewhat complicated, involving the identification of the victims of the misconduct, and may involve certain creditors of a company being effectively preferred above others. It involves no breach of the pari passu principle, because the compensation order regime is a freestanding regime which sits outside the normal insolvency scheme. Whether the receipt of a compensation order payment by a creditor requires the creditor to amend its proof is a question that should wait for another case. In the present case, there is only one creditor and (save for the compensation order regime) no prospect of any recovery. The Company's liquidation has come to an end and it has been dissolved. Any compensation order here would have to be made payable to the SoS for the benefit of Barclays or the British Business Bank.

100. In *Pure Zanzibar* at paragraphs 82 and 83, ICC Judge Barber considered that the impecuniosity of a defendant could be taken into account as a matter of discretion. She stressed that impecuniosity was only one factor of many to consider, and that mere impecuniosity (without more) will very rarely weigh heavily in the balance. She emphasised that the discretion must be exercised judicially with due regard to the policy objectives underlying section 15A. I agree with those observations. The court ought to consider whether the effect of a compensation order made against an impecunious defendant will have an oppressive effect which exceeds the policy aims of the regime. The court will also be slow to make an order which will be entirely in vain. That said, a liability under a compensation order is a provable bankruptcy debt (by section 15B(5) CDDA), which shows that Parliament contemplated that orders could be made which directors would be unable to pay.

101. Another observation about the regime is to consider what is meant by increasing the "bite" of the disqualification regime, and how that affects the exercise of the court's discretion. Since it is precondition for a compensation order that a person has been disqualified, it seems to me that the decision on disqualification, including the period of disqualification, has to be taken first. Whether there has been misconduct demonstrating unfitness, and what the sanction should be for this unfitness, stand to be determined in exactly the same way and with regard to the same principles which applied before the compensation order regime was introduced. It would not be appropriate, in my judgment, to offer a discount on the period of disqualification as a quid pro quo anticipating the further sanction of an actual or potential compensation order which the court might go on to make. The SoS should not be deterred from seeking a compensation order by the risk that a court will for that reason diminish the period of disqualification.

102. When considering whether it is just to make a compensation order, the court will always be imposing such an order on top of a sanction which has already been applied. The purpose of adding a power to make a compensation order on top of the existing disqualification regime is (as identified in *Pure Zanzibar* and *Noble Vintners*) to give the overall regime more "bite", by protecting victims of wrongdoing, and removing any perception that wrongdoers are not held to account. If the existing sanction of disqualification, in the circumstances of a particular case, means that a wrongdoer will be seen to be held to account, then one of the purposes of the compensation order regime will already have been fulfilled without the need for an additional compensation order. It seems to me that the effect of disqualification, and the period, should be taken into account in the exercise of the court's discretion under section 15A CDDA. If Parliament had intended that a compensation order should be

an automatic sanction on the making of a disqualification order, it would not have made the order discretionary. This can be contrasted with the mandatory requirement to disqualify a director for a period of at least two years once a finding of unfitness has been made.

103. An extension of this point is that a person who has just been disqualified following a contested hearing is likely to be ordered to pay the costs of the SoS. As a matter of strict legal logic, that liability is not part of the sanction for the misconduct. But it forms part of the overall detriment suffered by a director who has just been disqualified, and may be relevant when the court moves on to consider whether to impose a compensation order on top, particularly if there are concerns as to impecuniosity.

104. The final observation I will make is that the effect of a compensation order is to transfer liability for losses suffered by a creditor in dealings with a company to an individual director. It will involve the court sidestepping the ordinary principles of limited liability and corporate personality: the creditor obtains financial redress even though it was dealing with a limited liability company and, on the insolvency of the company, the creditor will have suffered the consequences of that limitation of liability. Subject to the discretion of the court and the mechanics of any payment obligation imposed, the creditor can obtain payment from a director rather than the company with which it was dealing. It is important to note that even if a director happens to be a shareholder in the company, a compensation order does not involve the removal of limited liability from him qua shareholder. It arises solely from that person's misconduct committed in the management of the company, as a director.

There is a parallel for a director's potential liability for fraudulent or wrongful trading under sections 213 and 214 of the Insolvency At 1986.

Decision on s. 15A CDDA in this case

105. I turn, then, to the application of these principles to the present case and the exercise of discretion under section 15A CDDA.

106. In favour of making a compensation order, there is a clear link between the misconduct involved in the excessive statement of turnover and the eventual loss suffered by Barclays (or the British Business Bank). Without the excessive statement, £14,543 less would have been lent and lost. So far as causation is concerned, it seems to me that the link is sufficiently direct that this loss can be attributed wholly to the misconduct in this case, even though the loss only crystallised on the insolvency of the Company. This does not seem to me to be a case where the reasons for the Company's insolvency provide some intervening cause which would make it unjust to make a compensation order.

107. As set out above, I do not take into account as justification for the compensation order that Mr Minto-St.Aimie benefitted personally at Barclays' expense. This might seem somewhat artificial, given that I have concluded that insofar as it is relevant to mitigation, Mr Minto-St.Aimie cannot say he did not personally benefit (because he did). Reaching that conclusion did not involve unfairness to Mr Minto-St.Aimie. It would involve unfairness, though, to treat Mr Minto-St.Aimie's personal benefit as additional misconduct and to take it into account in deciding whether to make a compensation order. If that allegation had been put in the SoS's affidavit, Mr Minto-St.Aimie would have had to defend it and might have raised arguments which he did not think to raise when the point was merely relevant to mitigation. He might have

said, for example, that although he was the payee shown in the Company's bank statements, he spent the money in a way which benefitted the Company. There was no evidence about this because it was not part of the SoS's case. Taking an allegation which was not part of the SoS's case into account in determining whether to make a compensation order would in my judgment be as unfair as doing so in making the decision on unfitness and calculating the primary period for disqualification.

108. This may well be an important point in future cases, particularly those involving BBLs. It seems to me that a director whose misconduct involves not only taking out an excessive loan but also taking the money for himself is a much more likely target for a compensation order than one who simply takes out an excessive loan. One purpose of a compensation order is to prevent a sense that directors are "getting away with it". If there is a sense that directors are "getting away with" creditors' money, then the SoS will need to establish that as part of the misconduct in the CDDA proceedings. The same point could be made about allegations of dishonesty.

109. I take into account that the liquidator of the Company considered whether any claims might lie against Mr Minto-St.Aimie, but decided not to pursue them because Mr Minto-St.Aimie was "struggling along on benefits" and it would not be economical to pursue him (as it was put in an email to the Insolvency Service dated 11 April 2022). The liquidator's final report, as I have summarised above, is to the same effect, adding that the lack of funds in the case is also a factor. It seems to me that the lack of funds generally militates against making a compensation order, because it would be likely to have a disproportionately oppressive effect on Mr Minto-St.Aimie even though (in relative terms) the sums involved are not very great.

110. In this regard, I also take into account that Mr Minto-St.Aimie has made a personal financial contribution to the costs of the liquidation, and has purchased an asset from the Company (in cash). Overall, he has contributed £3,540, which is not an insignificant proportion of the compensation order sought against him.

111. I also take into account the nature of the misconduct, and the sanction which will already be imposed. I have found that this was serious, and overall required a period of disqualification of eight years. That finding and the sanction imposed mark the court's disapproval of Mr Minto-St.Aimie's misconduct. The likelihood that Mr Minto-St.Aimie will be ordered to pay the costs of these proceedings will add to the overall detriment he will suffer, and there will be limited scope for it to be said that Mr Minto-St.Aimie is being let off.

112. Having considered all of these points, it seems to me that this is not an appropriate case in which to make a compensation order.

Disposal

113. On the handing down of this judgment, I will make an order disqualifying Mr Minto-St.Aimie for a period of eight years under section 6 CDDA. That period will start 21 days from the date of the order.

114. I will dismiss the application for a compensation order under section 15A CDDA.

115. I invite the parties to agree the terms of the order including costs and any other consequential matters. If these cannot be agreed, then a short consequentials hearing will need to be listed. Directions for that hearing will be included in the order made on the handing down of judgment.