Neutral Citation Number: [2019] EWHC 182 (Ch)

Case No: CR-2011-002695

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

Rolls Building
7 Fetter Lane
London EC4A 1NL

Date: 11/02/2019

Before:

CHIEF INSOLVENCY AND COMPANIES COURT JUDGE BRIGGS

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Between :

(1) RICHARD BREWER	**Applicants**
(2) MARK WILSON	
(As Joint Liquidators of ARY Digital UK Limited)	
- and -	
ZAFAR IQBAL	**Respondent**

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JOSEPH CURL (instructed by **Brecher LLP**) for the **APPLICANTS**
DANIEL LEWIS (instructed by **DWF LLP**) for the **RESPONDENT**

Hearing dates: 21-24 January 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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CHIEF INSOLVENCY AND COMPANIES COURT JUDGE BRIGGS

Chief ICC Judge Briggs:

1. Mr Iqbal is an insolvency practitioner and partner at Cooper Young. He takes appointments in personal and corporate insolvencies. He was appointed administrator of ARY Digital UK Limited (the "Company") on 19 May 2011. Mr Iqbal sold the Company's assets to a company incorporated by the Company's management (I generally shall refer to the management as the "directors") for the purpose of acquiring the assets during the administration. After the assets were sold Mr Iqbal produced a report to creditors and gave his proposals for the administration. The creditors failed to approve his proposals. The Company entered insolvent liquidation and Mr Iqbal was discharged under paragraph 98 of Schedule B1 to the Insolvency Act 1986. Six years from his appointment, to the day, Richard Brewer and Mark Wilson acting as joint liquidators of the Company issued an application seeking permission pursuant to paragraph 75(6) of Schedule B1 to the Insolvency Act 1986 to examine the conduct of Mr Iqbal. Permission was given. In this trial Mr Iqbal defends allegations that in effecting the sale of the Company's assets shortly after he was appointed administrator he acted negligently or in breach of his equitable duty of care, breach of trust, fiduciary duty or statutory duty.

2. The Company was incorporated on 9 April 1999, its holding company being ARY Digital FZ LLC based in Dubai. In 2000 the Company acquired private television channels which are said to have catered for the Southeast Asian community in the UK. The ARY Digital Group describes itself as a broadcaster of customised streaming content. It is a Dubai-based holding company which was founded by a Pakistani businessman, Haji Abdul Razzak Yaqoob in 1970. Mr Iqbal's disclosure included a copy of an online promotion page (printed out by Mr Iqbal in May 2011) which explains that the Group is a family owned concern with main operations being handled by the four brothers. One of its aims is to promote Pakistan culture around the world but the programming also caters for Urdu speakers living in Pakistan and abroad. It does this by acquiring the rights to broadcast through digital channel networks. The broadcasts include general entertainment, food, music and religion. The Group claims to broadcast to more than 100 countries in Asia, the Middle East, Europe and the USA.

3. The directors and shareholders of the Company were Mr Mohammed Salman Iqbal and Mr Yaqoob. Its UK and Europe operation consisted of three channels: an entertainment channel known as ARY One World; Qtv, news and current affairs channel; and an Islamic education channel. From 2008 One World was free to air. To facilitate the broadcasts the Company needed to acquire Electronic Programming Guides ("EPG"). These are described as digitally displayed, non-interactive menus providing programme scheduling information that are shown by a cable or satellite television provider to its viewers on a dedicated channel. EPGs are transmitted by specialised equipment housed within the provider's central facility. By tuning into an EPG channel, a menu is displayed that lists current and upcoming television programmes on all available channels.

4. The EPGs were acquired on a fixed-term basis by agreement between the Company and British Sky Broadcasting Limited ("BSB"). It appears that the first agreement made between the Company and BSB for EPGs was agreed in or around 10 January 2007. That agreement expired or perhaps more accurately was renegotiated, and a new agreement was made on 17 September 2008 (the "Agreement"). There is reference in the Agreement to overdue invoices amounting to £89,383.12. Annex A to the Agreement provides for a payment to be made to BSB in respect of the overdue invoices. This demonstrates BSB's willingness to enter new agreements notwithstanding outstanding debt and a pragmatic approach to debts incurred by the channel operators. The annex sets out an obligation on the Company to pay the sum of £112,589.31 by 30 October 2008. If such payment was not made BSB was entitled to terminate the Agreement "forthwith". That is to be contrasted with clause 8 which permits BSB to suspend the provision of services in certain circumstances not relevant to this matter and to terminate for non-payment of invoices for three months or more. Termination under clause 8 for a material or persistent breach of obligation, such as non-payment for three or more months, requires three months' notice. The notice is to be served in accordance clause 9.6. Termination may also arise if a notice is served as a result of insolvency. Insolvency is a term defined in the Agreement. A notice served pursuant to the insolvency clause is said to have "effect forthwith". Pursuant to the Agreement the Company paid a deposit of £69,618.75 in respect of each of the three channels.

5. An issue that arose in this case is whether it is likely that BSB would have permitted the channels operated by the Company to operate even though there were arrears when it entered administration. The Agreement provides some evidence of BSB's approach. Expert evidence (which I shall deal with below) answers the question more definitively.

The Company enters administration

6. The revenue of the Company in the year ending 30 June 2008 was £3.7 million giving a net profit of £191,684. Nevertheless, current liabilities exceeded £2.5m which largely comprised sums owed to connected companies for services, programme rights and other fees. The accounts for the years ending 2009 and 2010 show that a profit was made in 2009 but a loss is shown for the year ending June 2010. In that year net liabilities increased to £2,730,649. Of this sum £1,897,470 was owed to the holding company, ARY Digital Dubai FZLLC and £750,000 to Salman Iqbal (a director of the Company). The holding company is said to have provided management services and programme rights to the Company. The notes to the 2010 accounts explain that the "ability of the company to continue trading is dependent upon the continued support of its related company. Directors have obtained assurance from the related company that it will be provided. Accordingly, the directors consider it appropriate to prepare these financial statements on a going concern basis." The related company was the holding company.

7. The balance sheet discloses that the stock remained constant at £137,982. Mr Iqbal accepted in evidence that the EPGs were not included in the stock figure. It appears that the EPGs were assigned no value in the accounts. The 2010 accounts do not provide for a contingent or prospective debt owed to Nimbus Sport International Pte Ltd resulting from an agreement between the parties dated 1 March 2006. That agreement concerned broadcast rights for certain cricket matches under the control of the Board of Control for cricket in India. By notice of arbitration dated 26 May 2010 Nimbus Sport International claimed a licence fee pursuant to the agreement. A notice of material breach had been served by Nimbus on the Company, prior to the notice, demanding payment of US$1,688,888.88. By 2011 it was clear that the Company had a number of creditors including HM Revenue and Customs, Getty Images, Dean Sullivan & Co (accountants to the Company), and the London Borough of Ealing. The

Company was also in arrears under the payment terms of the Agreement. It is not in dispute that by April 2011 the Company was balance sheet and cash flow insolvent.

8. Mr Iqbal was introduced to the Company through Dean Sullivan & Co accountants, in mid-to-late April 2011. His evidence is that he held an initial meeting with the directors of the Company at the Company's office. It is worth mentioning that Mr Iqbal, although sharing his last name with one of the directors is not related in any way with the directors or their family. He was informed about the arbitration proceedings, the fact that the Company had made losses in the recent past and was told that the holding company would no longer lend its support. Mr Iqbal recommended that the Company enter administration.

9. Mr Iqbal's evidence is that on or about 19 April 2011 he contacted Ben Lynch, a partner at Edward Symmons, about valuing and selling the Company's assets. He had used Edward Symmons on many occasions during his professional career and was satisfied that the firm would be able to assist with valuing and selling the assets. His evidence is that he asked Mr Lynch whether he had experience in the broadcast industry and was assured that he had. Mr Lynch informed Mr Iqbal that he had 16 years working at the BBC, and, according to Mr Iqbal, said that he would be able to value the Company's assets. In the period prior to the filing of a notice of intention to appoint, Mr Din (of the accountants) informed Mr Iqbal that the EPGs were together likely to be worth £4,000 on the open market but if sold with the other assets of the Company they may be worth "closer to £10,000". Mr Salman Iqbal then offered £35,000 for the EPGs. This figure was mentioned to Mr Lynch and became the benchmark.

10. It is not in dispute that Mr Iqbal was appointed as adviser to the Company in or around 6 May 2011. Mr Iqbal is said to have advised about possible options for the Company if there was an adverse outcome in respect of the arbitration. By 10 May 2011 the directors had formed the view that the Company may lose the arbitration. A meeting ensued wherein Mr Iqbal gave "firm" advice that "administration was likely to achieve a better result for the creditors as a whole than would be likely if the Company was wound up, by realising more value for the Company's assets, as is usually the case in that situation". Having been informed that the holding company would not support the Company, Mr Iqbal advised that it "would not be possible to

rescue the Company as a going concern". In cross-examination Mr Iqbal said that he did understand the distinction between rescuing a company as a going concern and rescuing its business.

11. Subsequently on 13 May 2011 Mr Iqbal sent a letter of engagement to the directors of the Company. In the letter he explained:

"Having taken the board's views into account and reviewed the available information, I am satisfied that the administration is an appropriate insolvency route for the company on the following grounds: that there may be a chance to sell the whole business preserve jobs and hence achieving a better result for creditors as a whole than would be likely if the company were wound up." (sic)

12. As regards services to be provided by Cooper Young these included to:

"advise and assist the Board in relation to any discussions or negotiations with potential purchasers of the company's business and assets."

13. A warning was given that from the point of administration Cooper and Young "can only give advice to the Company". The letter explained:

"our role is not to advise the individual directors on their personal position and if any director should require personal advice on the implications of the company's administration, they should seek independent advice."

14. A further explanation was provided:

"Once appointed administrator, our insolvency practitioner will owe his prime duty to the creditors as a whole and must act as officer of the court. Maximising realisations for creditors. He may investigate transactions and disposals and take recovery action against individual directors or submit adverse reports to the Secretary of State when reporting under the Company's Directors' Disqualification Act…." (sic)

15. Having assisted the directors to draft minutes of a board meeting resolving to appoint Cooper Young and to appoint administrators, Mr Iqbal filed a notice of intention to appoint on behalf of the Company on 19 May 2011. In cross-examination Mr Curl, acting for the joint liquidators, asked Mr Iqbal why there were draft minutes as well as

signed minutes. Mr Iqbal explained that he had drafted the minutes for the board to approve. He routinely drafted such minutes on behalf of companies and their directors in anticipation of an appointment being made. I accept the evidence of Mr Iqbal on this point. He was lining up his appointment as administrator. There is nothing surprising in the notion that solicitors and insolvency practitioners may prepare documents in advance of the day that an intention to appoint is filed. What is surprising is the admission by Mr Iqbal that he kept no attendance notes of any kind in respect of any meeting:

> "Q you should have kept a note of all dealings
>
> A yes, I didn't.
>
> Q. why not exhibit your diary
>
> A I didn't know how to use the Outlook diary and I didn't regularly keep a written diary."

16. Once appointed Mr Iqbal continued to trade the Company. His evidence was that he was aware that BSB was pressing for payment but knew that the Company had paid a deposit for broadcasting services, and that BSB retained the deposit sum of £69,618.75. On this basis he did not consider that the Company would increase its debt during an administration, and that an extended period of trading "would help me to realise a better price for its assets, in particular the EPGs". The Company's creditors did, as a matter of fact, increase during the period of trading as Intelsat (a creditor) continued to provide services.

17. Contrary to his reasons for continuing to trade, his evidence is that he estimated the Company was losing in the region of £18,902 per week even after giving credit for subscriptions; the outstanding sums due to BSB exceeded the level of the deposit that it held; and the directors of the Company had informed him that BSB would "switch off the signal within a week, as the Company had not been paying its fees". His view at the time was that if there was a "switch off" (also described as a "black-out" or "going dark") the main asset of the Company, the EPGs, would be rendered worthless. He considered that there was very little other value in the Company. He

thought the Company had no goodwill due to its insolvency, and that the leasehold premises it operated from was "almost written off and it had almost nothing else".

18. These concerns led him express his concern that during the administration there was "a very real risk of the Company being wound up at any moment by a creditor". He had failed to appreciate the effect of the moratorium imposed by Schedule B1 to the Insolvency Act 1986. His concern about the risk of winding up and the channels "going dark" partially explains why he wanted the assets sold quickly. In his witness statement he says: "I was very conscious that any sale needed to happen urgently in order to prevent the loss of the EPG's and maximise the value of the Company's assets".

Administration

19. Once the Company was in administration Mr Iqbal instructed Edward Symmons to sell the Company's assets. He wrote on 20 May 2011 to Mr Lynch:

"Yesterday, I was appointed Administrator of [the Company]…… Would you kindly advertise on your website the sale of the following tangible and intangible assets without disclosing the name or location of this company.

Office furniture and equipment as per the list already provided to you (I have agreed £7000 with the current management)

EGP x 2 (I have agreed £40,000 with the current management)

Goodwill (I have agreed £10,000 with the current management)

If there is no interest shown by any third party, I would like to conclude the sale through Edward Symmons on or before Friday, 27 May 2011."

20. It is agreed by the parties that the reference to 2 EPGs is a mistake. It should have been three. The mistake was rectified quickly. Nothing turns on the point. This e-mail was a subject of cross-examination and I shall return to it later in this judgment. But I shall mention now that Mr Iqbal explains that the email was merely informing the agent that an offer had been received direct from the directors, that he had not solicited any offer from them and that it is not unusual for an insolvency practitioner

to sell a company's assets to companies associated with the former management of the insolvent company. Mr Iqbal explains in his witness statement that the term "agreed" was meant to convey the willingness of the directors to buy the company's assets and that he was willing in principle to sell the assets to the directors at the price they offered, if he did not receive a better offer. In any event on the same day Edward Symmons wrote a letter of engagement to Cooper Young stating: "we understand that you require us to offer for sale plant and machinery and other assets located at the company premises."

21. The period 24 May to 31 May 2011 focusses on the sale of the EPGs and is the period in which it is said that Mr Iqbal failed creditors. Although Mr Iqbal did not keep attendance notes there is some e-mail traffic with Edward Symmons. It is common ground that an advertisement was posted on the Edward Symmons website on 20 May 2011 under the heading "Machinery Sales". The description of the assets given in the advertisement was "By order of the Administrator…satellite broadcasting company serving UK and Europe. Three channels catering to a wide audience with entertainment, news and religious broadcasting". It is to be noted that the advertisement did not state in terms that the EPGs were for sale or identify what numbers were attached to the EPGs.

22. A hand-written note of Edward Symmons dated 24 May 2011 provides contemporaneous evidence of a conversation with Mr Iqbal in which evinces an agreed position between the agent and Mr Iqbal that the advertisement for the Company's assets should be kept live on the Edward Symmons website until 31 May 2011. It also provides evidence of advice given to Mr Iqbal that the EPG contracts would require a deed of novation to be drawn up in readiness for a sale.

23. Regardless of the apparent agreed position to keep the advertisement live until 31 May 2011 it was not. By an e-mail dated 25 May 2011 and timed at 09:42, Andrew Pointon of Edward Symmons stated that there had been no response to the advertisement. At 09:54 Mr Iqbal responded "I have told the current interested party that we will try to sell it on Tuesday, 31 May 2011. Because the purchase money had to be transferred from overseas, they are very keen that the invoice should be raised on Friday, 27 May so that they will have the money for completion on Tuesday. What do you think?" Mr Pointon responded at 11:21: "to give a fair chance to people to see

the advertisement I would like to stick with the 31st if we can. Why can the interested parties not transfer the money through to your solicitor to hold until the sale takes place?" The last e-mail in the chain is a response from Mr Iqbal timed at 11:30: "As agreed with Ben, I would request you to raise the invoice for the sale and receive the funds."

24. In his evidence Mr Iqbal explained that he was concerned that the only interested purchaser in the Company's assets might be lost. No grounds were given for the concern. There is no note of a telephone conversation, but Mr Iqbal says that he rang Mr Lynch to discuss the situation with him. This may explain the first few words of the e-mail timed at 11:30 stating that there had been an agreement with Ben. His evidence is that Mr Lynch advised against the advertisement remaining on the website until 31 May 2011, on the basis that the bank holiday was looming and one further working day was unlikely to make any difference. I deal with the evidence on this "agreement" later in the judgment.

25. In the following days an offer was made by a third party for the Company's computers and televisions. The offer is said to have been too low to have been acceptable.

26. Given Mr Iqbal's instructions an invoice to ARY Network Limited (the associated company) was raised on 27 May 2011 for all the Company's assets in the sum of £57,000 plus VAT. The EPGs were attributed a value of £40,000 plus VAT. The sum was duly paid. ARY Network Limited also paid the Company's outstanding liability to BSB of £29,981.25 (being the difference between the deposit held by Sky of £69,618.75 and the Company's debt to BSB of £99,600).

27. After the sale Mr Iqbal made a report and put proposals to creditors pursuant to paragraph 49 of Schedule B1 to the Insolvency Act 1986. He recommended that the Company should enter into a creditors voluntary liquidation and that he should be appointed liquidator. The report explained his actions as administrator in the following terms:

"I decided that the objective of the administration was best achieved by the company ceasing to trade. As a result the company ceased trading on 20 May 2011 and its employees were dismissed on that date. However, in order to preserve the goodwill

and make a better realisation from the sale of electronic programme guides which are the rights to broadcast I continued with broadcasting. This was done no extra cost. Since BSB was already holding a small deposit which may not be refunded to the administrator due to an early termination of the broadcasting agreement. As a result of the continued broadcasting my agents were able to sell the assets for £57,000 as against their estimate of £6000 if the company were to be wound up and assets sold through auction."

28. Mr Iqbal explained to the creditors in his report that he had instructed Edward Symmons for the purpose of valuing and selling the Company's assets. He said:

"Their valuation report estimated a maximum recovery of £17,000 insitu and £5000 exsitu. The assets were then advertised for sale on the website of Edward Symmons."

29. The proposals triggered a response from Nimbus Sport International who wrote through their solicitors on 27 June 2011 saying that it did not agree to the Proposals; they did not want Mr Iqbal to be the liquidator. In the meantime, Mr Iqbal received a letter from Edward Symmons dated 21 June 2011. The introduction to the letter reads "You have asked for comment on the value realised on the sale of assets [to] ARY Digital UK Limited. We understand the accepted offer was £57,000….. We refer you to our desk top valuation report and commentary therein dated 20 May 2011…….EPGs - we specifically refer you to paragraphs 2.5–2.7 in our report… in the short time available we have been unable to substantiate [values] with comparable market evidence. Notwithstanding, it is highly unlikely that comparable evidence exists. Within a restricted timetable of one week, we have advertised the availability of all assets on our website and no offers were forthcoming on the EPGs".

30. Paragraphs 2.5–2.7 do not provide a valuation. They read "you have asked us to make comment on intangible assets which you have indicated encompass the three EPG channels and the goodwill. As we have not had sight of the company's accounts, nor have an appreciation of the company's trading performance, we were only able to comment in very general terms. Experience dictates that intangible assets may have a value whilst the company is in a trading position, in the event that the company ceases to operate, any value is likely to diminish. As a result under normal circumstances it is desirable to attempt to obtain a sale prior to the appointment of a liquidator.

Notwithstanding, you have asked us to test the market within a limited time period and to this end we have advertised the availability of the business on our website. During the timeframe, which extended to one week, we have had one expression of interest relating to the computers only, with an indicative value of £400." In cross-examination Mr Iqbal accepted that he did not receive the desk-top valuation prior to selling the EPGs nor any valuation. That admission was properly given as the contemporaneous documents do not support the conclusion that a desk top valuation had been produced on that date.

31. The meeting of creditors called by Mr Iqbal following the sale of the Company's assets was held at the offices of Cooper Young on 20 July 2011. After the creditors formally rejected the Proposals, and the Company was wound up with Trevor Binyon and Colin Wilson of RSM Tenon appointed joint liquidators. On 17 July 2013, the Liquidators were replaced by Andrew Hosking and Simon Bonney of Baker Tilly. On 7 May 2014 Mr Brewer replaced Mr Bonney and on 3 October 2014 Mr Hosking was replaced by Mr Wilson.

Framing the claim and defence

32. Points of claim, defence and a reply have been filed and served. In summary the points of claim set out that (i) on 27 May 2011 Mr Iqbal caused the Company to sell three valuable Sky satellite television channels to ARY Network Limited ("ANL"), (ii) ANL was associated with the Company (iii) and that the Company subsequently entered insolvent liquidation. All these matters are common ground, although the value is in dispute.

33. It is pleaded at paragraph 7 of the points of claim that Mr Iqbal was engaged by the Company to arrange the sale to ANL. Having pleaded (a) the instructions to Edward Symmons to value and advertise the Company's assets (b) the timing of and instruction to raise an invoice in favour of ANL for the purchase of the EPGs (c) the timing of the asset valuation (d) the exit of administration into liquidation and (e) asserting that the EPGs were in fact worth considerably more than the sale price, the joint liquidators set out their position that Mr Iqbal had been negligent or acted in breach of his equitable duty of care or otherwise acted in breach of duty to obtain the best price. Particular reliance has been made on two factors. First the status of the

purchaser: the purchaser was the "current management" or an "associated entity of the Company". Secondly that having instructed Edward Symmons to advertise and sell the EPGs, Mr Iqbal preferred information provided by the directors of the Company who had an interest in the purchase. The preferential reliance on the directors is said to have taken the form of (i) failing to obtain a proper valuation prior to selling the EPGs but (ii) accepted a value provided by the directors or their accountant on their behalf and (iii) acquiesced in a very short marketing time-frame to suit the directors.

34. Mr Iqbal's points of defence contend that he achieved a proper value bearing in mind the sale was forced due to the financial circumstances of the Company. He relies on advice he said that he received from Edward Symmons and contends that even if he failed to obtain the best price the loss to the Company was simply the loss of a chance of obtaining an improved offer from another willing purchaser. Mr Iqbal denies that he was engaged for the purpose of selling the assets to ANL. Mr Iqbal says that the reason for asking Edward Symmons to raise an invoice was that ANL was the only party to have made an offer for the EPGs. The management of ANL had informed him that they wished to proceed with an immediate purchase. Mr Iqbal feared that the sale may be lost if he did not agree immediately. This was important in the context of his fear that BSB would "switch-off" the channels within a week for non-payment of fees. In this event the EPGs would have no value, and that the Company was losing money every week and had no cash reserves.

35. In reply the joint liquidators ask the court to infer from the contemporaneous documents that Mr Iqbal was acting in some capacity for ANL in connection with the sale of the EPGs and had agreed a sale with the directors prior to administration. If the inference is made good he was acting in breach of fiduciary duty. If he was not so acting, he failed in his decision-making process or failed to "exercise independent judgment" when discharging his duties. In closing Mr Curl for the joint liquidators submitted that the evidence supported a conclusion that Mr Iqbal deferred to the directors when he should have been objective and exercised his own judgment.

Legal framework

36. *Bristol & West Building Society v Mothew* [1998] Ch 1 provides an example of where a party is found to owe duties at common law and in equity and as such duties owed

may overlap. As Aaron Taylor observed, the law recognises simultaneous overlapping duties from a single set of facts which are concurrent but not coextensive: (2019) 82(1) MLR 17-45. In this matter the joint liquidators claim that the facts give rise to a duty of care at common law which is matched by a duty in equity, together with a duty to carry out the functions provided by statute (statutory duty), and trustee and fiduciary duties. The breach of trust allegation was not advanced in opening or closing.

The administrator as fiduciary

37. The parties are correctly in agreement that where a person stands in a fiduciary position to another, not every duty owed to the other is of a fiduciary nature. As Matthew Conaglen observed in his book *Fiduciary Loyalty* (Hart 2010), duties of care and skill are not peculiar to fiduciaries, given that non -fiduciary actors are required to act carefully when performing their duties. The House of Lords found that agents who had managed an insurance business could be sued in the tort of negligence but not for a breach of fiduciary duty to take care in the management of the business: *Henderson v Merrett* [1995] 2 AC 145, 205. In *Bristol & West Building Society v Mothew* [1998] Ch 1 the Court of Appeal, reversing the first instance Judge, found that a solicitor who had failed to provide a client with the correct information, had been in breach of duty. The solicitor had acted for two clients in the same transaction but had not breached his duty as a result of dishonesty and had not intentionally breached his duty. However, there were no grounds to support the contention that he was in breach of trust or fiduciary duty. In what has become the accepted exposition of the law concerning fiduciaries Lord Justice Millett explained at page 18:

"This leaves those duties which are special to fiduciaries and which attract those remedies which are peculiar to the equitable jurisdiction and are primarily restitutionary or restorative rather than compensatory. A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict;

he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. These are the defining characteristics of the fiduciary. As Dr. Finn pointed out in his classic work Fiduciary Obligations (1977), p. 2, he is not subject to fiduciary obligations because he is a fiduciary; it is because he is subject to them that he is a fiduciary".

38. In *Henderson v Merritt* Lord Browne-Wilkinson observed that the term fiduciary duty should be used with caution (at paragraph 206):

"The phrase "fiduciary duties" is a dangerous one, giving rise to a mistaken assumption that all fiduciaries owe the same duties in all circumstances. That is not the case. Although, so far as I am aware, every fiduciary is under a duty not to make a profit from his position (unless such profit is authorised), the fiduciary duties owed, for example, by an express trustee are not the same as those owed by an agent. Moreover, and more relevantly, the extent and nature of the fiduciary duties owed in any particular case fall to be determined by reference to any underlying contractual relationship between the parties. Thus, in the case of an agent employed under a contract, the scope of his fiduciary duties is determined by the terms of the underlying contract. Although an agent is, in the absence of contractual provision, in breach of his fiduciary duties if he acts for another who is in competition with his principal, if the contract under which he is acting authorises him so to do, the normal fiduciary duties are modified accordingly."

39. Lord Browne-Wilkinson was explaining that the duties of a fiduciary may alter dependent upon the role of the fiduciary, but the special fiduciary obligations do not alter because he is a fiduciary: the core of the fiduciary duty remains one of single-minded loyalty. Lord Browne-Wilkinson recognised that concurrent obligations may temper a fiduciary duty. He did not have the benefit of Lord Justice Millett's analysis, because *Henderson v Merrett* was determined before *Bristol and West v Mothew*, but Millett LJ did have the benefit of Lord Browne-Wilkinson's opinion. In my judgment there is no clash of doctrine as English law permits simultaneous overlapping duties from a single set of facts. If a contract permits an agent with fiduciary duties to make a profit, there is informed consent. The Court of Appeal very recently tackled the question of whether an introducing broker was a fiduciary and, if so, the extent of the

fiduciary duties: *Re Medsted Associates Ltd* [2019] EWCA Civ 83. I should briefly explain that *Medsted Associates* was handed down after this decision was circulated to the parties in draft on 30 January 2019. I have drawn the parties' attention to *Medsted* and asked for comment. Lord Justice Longman gave the decision of the Court. He said (at paragraph 45) that the statement of principle set out in *Bristol & West v Mothew* by Millett LJ:

"does not absolve the court from deciding the scope of the fiduciary's obligations. If, in fact, the agent has, in the light of the facts of the case, no obligation to disclose the actual amount of commission he is paid when his principal knows he is being paid by the third party to the transaction, it does not advance the matter to say that, because he is a fiduciary, he must disclose the actual amount he is being paid. It is the scope of the agent's obligation that is important, not the fact that he may correctly be called a fiduciary".

40. This is consistent with the analysis of Lord Justice Millett and the opinion of Lord Browne-Wilkinson. That does not mean (i) an agent or beneficiary cannot relax the special duties by consent, whether in part or whole; and (ii) other duties that arise from a simultaneous private law duty may not be imposed on the person acting as a fiduciary. If those private law duties fall to be determined by reference to an underlying contractual relationship, such duties will be contractual in nature, but may temper the special duties to which a fiduciary is subject.

41. Recently Mr Justice Snowden provided an in-depth analysis of an administrator's duties in *Davey v Money* [2018] Bus. LR 1903. The claim before the Judge arose when a company defaulted on a loan agreement and the lender, as the holder of a qualifying floating charge, appointed joint administrators. The administrators proceeded to sell an office block with potential development gain. The company's sole director and shareholder alleged that the administrators had acted in breach of duty by failing to consult the director as to how they might achieve the object of rescuing the company as a going concern, in accordance with the objective in paragraph 3(1)(a) of Schedule B1 to the Insolvency Act 1986. The factual allegation relating to the breach was that they sold the office block, the company's main asset, at a significant undervalue, in reliance on unsuitable agents whom the lender had effectively selected. Mr Justice Snowden dismissed the claim. It is clear from the law report that the Judge

was faced with submissions aimed at stretching fiduciary duties, but the "issue did not occupy much time at trial". On the facts of the case Mr Justice Snowden found that "in relation to the most significant alleged breaches of duty … the question of whether any such breaches were breaches of fiduciary duty are largely academic". He did not accept, however, all the submissions from counsel regarding the ambit of fiduciary duties. He reasoned that breaches of "custodial stewardship" or "management stewardship" were not breaches of fiduciary duties, and explained that *AIB Group (UK) plc v Mark Redler & Co* [2015] AC 1503 was "a case on express trustees….and was concerned with the question of the appropriate remedies for breach of trust".

42. In the course of his deliberations he said that he would "accept that as a generally accurate formulation" that some of the pleaded matters amounted to fiduciary duties: (i) the duty to exercise powers in good faith; and (ii) the duty to exercise powers for a proper purpose and/or not irrationally. In relation to the second matter (proper purpose) he expressed the view that if an administrator acted capriciously, he would be acting for an improper purpose and thus be in breach of his fiduciary duties. It followed from his reasoning that, of the allegations "levelled at the Administrators, it is only those that alleged that the Administrators surrendered their discretion to Dunbar (the lender who had appointed the Administrators), or acted with a view to serving the interests of Dunbar rather than the company in administration (known as AHDL), or acted out of personal antipathy to Ms Davey rather than to advance the interests of AHDL, that qualified as allegations of breach of fiduciary duty".

43. The authors of Lightman and Moss the Law of Administrators and Receivers state, in short, that the obligation to act for a proper purpose is a duty imposed on directors who have trust-like duties. At paragraph 12-037 the authors say that there are controls "on the exercise of powers vested in fiduciaries" and:

"While these controls have been developed primarily in cases concerning the powers of express trustees and company directors, they apply mutatis mutandis to insolvency office-holders. Accordingly, an administrator must: (i) act within his powers; (ii) exercise his powers in good faith; and (ii) exercise his powers for a proper purpose. The "proper purpose" control on the exercise of office-holder powers derives from the "fraud on a power" doctrine in trusts law and its variant in corporate law, the duty of a company director to exercise powers for the purpose for which they are conferred,

now codified in the Companies Act 2006 s.171(b). Its effect is to prohibit the administrator from exercising his powers for a purpose, or with an intention, beyond their scope. It follows that the administrator must not act perversely or irrationally or for irrelevant or extraneous reasons as, properly understood, in doing so he would be abusing his powers by acting beyond their scope".

44. In my judgment this is an accurate statement of the law. Even though the proper purpose doctrine is not itself a fiduciary duty, because it is not special to fiduciaries, that does not mean that the doctrine of proper purpose has no role to play for those who exercise fiduciary powers. In recent times Lord Sumption has explained the role that a control mechanism has on the powers exercised by a fiduciary in *Eclairs Group Ltd v JKX Oil & Gas plc* [2015] UKSC 71. The case concerned the exercise of powers by directors of an English Company that developed oil and gas in Russia and Ukraine. The board of directors exercised restriction rights in the articles of association to prevent two shareholders from voting at the AGM. The shareholders claimed that the directors had been in breach of the statutory obligation "to only exercise powers for the purposes for which they were conferred". The Supreme Court (reinstating the decision of Mr Justice Mann) held that the proper purpose rule is concerned with abuse of power. Lord Sumption said (paragraph 15):

"The proper purpose rule has its origin in the equitable doctrine which is known, rather inappropriately, as the doctrine of "fraud on a power". For a number of purposes, the early Court of Chancery attached the consequences of fraud to acts which were honest and unexceptionable at common law but unconscionable according to equitable principles. In particular, it set aside dispositions under powers conferred by trust deeds if, although within the language conferring the power, they were outside the purpose for which it was conferred."

45. Lord Sumption (with whom the other members of the Supreme Court agreed on this issue) said that the proper purpose doctrine is "not concerned with excess of power by doing an act which is beyond the scope of the instrument creating it as a matter of construction or implication. It is concerned with an abuse of power, by doing acts which are within its scope but done for an improper reason. It follows that the test is necessarily subjective. "Where the question is one of abuse of powers," said Viscount

Finlay in Hindle v John Cotton Ltd (1919) 56 Sc LR 625, 630, "the state of mind of those who acted, and the motive on which they acted, are all important"".

46. Relevant to this matter and important to the discussion of fiduciary duties is the rule in *Re Hastings-Bass (Deceased)* [1975] Ch 75. This rule was widely considered to concern the scope of a trustee's powers. The Supreme Court considered the rule in *Pitt v Holt* [2013] 2AC 108 and found that it addresses process, namely the duty to take account of relevant and not irrelevant matters when exercising a power. Lord Walker agreed with Lloyd LJ in the Court of Appeal who said:

"The trustees' duty to take *relevant matters into account is a fiduciary duty*, so an act done as a result of a breach of that duty is voidable. Fiscal considerations will often be among the relevant matters which ought to be taken into account. However, if the trustees seek advice (in general or in specific terms) from apparently competent advisers as to the implications of the course they are considering taking, and follow the advice so obtained, then, in the absence of any other basis for a challenge, I would hold that the trustees are not in breach of their fiduciary duty for failure to have regard to relevant matters if the failure occurs because it turns out that the advice given to them was materially wrong." (my emphasis)

47. Snell's Equity (10-033) explains that this is a reformulation of the rule in *Hastings-Bass* and "it concerns the process by which trustees made a decision and then acted on that decision….the rule squarely [rests] on breach of duty to have regard to material factors when exercising a power, the rule can only apply where such a duty exits. Consequently, the rule would not apply to a holder of a non-fiduciary power which has no duty". Professor Nolan writes

"the nature (and consequent seriousness) of the necessary breach may further limit the scope of the rule. Some breaches of trust may not amount to a breach of "fiduciary duty", the touchstone of liability in *Futter*. Sometimes "fiduciary duty" is restricted in its meaning to the rules governing conflicts of duty and interest. Clearly, what is meant in *Futter* is wider than that the conflict rules already provide for a transaction that was made in conflict of duty and interest to be prima facie voidable, so the rule in *Futter* would be redundant if limited to breaches of fiduciary duty in that narrow sense. Context also makes it plain that a wider meaning of "fiduciary duty" is

intended. But how wide? It is questionable that a mere breach of a duty of care and skill amounts to a breach of fiduciary duty in the *Futter* sense.": *Fiduciaries and their flawed decisions* (2013) LQR 129, 469-473.

48. The concept of a "wider meaning" of fiduciary duty is not easy to reconcile with the core duty of loyalty expressed by Lord Justice Millett. However, the present law is that a fiduciary has a fiduciary duty to take account of relevant matters when exercising a power as fiduciary. This is not, it seems to me, part of the function of a fraud on creditors or proper purpose test but borne from the rule *in Hastings-Bass*. This formulation of a fiduciary duty is not dissimilar to the Wednesbury test of reasonableness which applies to administrative acts by public servants and was found (without mention of fiduciary) to apply (without using administrative law terminology) to a liquidator who sold an asset of a company without taking into account the possibility that a third party might well have made a better offer for it: see *Re Edennote Ltd* [1996] BCC 718. It also applied in respect of a trustee in bankruptcy who assigned a cause of action of a bankrupt against a defendant, to the defendant, without taking legal advice and whose own evaluation of the claim was found to be inadequate: *Faryab v Smith* [2001] BPIR 246.

49. Before leaving the subject, I should mention that a surrender of discretion was not described as a breach of fiduciary duty in earlier authoirty. In *American Express International Banking Corp v Hurley* [1985] 3 All ER 564 the Judge explained that "the substance of the case is whether or not the receiver was negligent in selling as he did". Having reviewed various authorities Mr Justice Mann summarised (page 571):

> "(i) The mortgagee when selling mortgaged property is under a duty to a guarantor of the mortgagor's debt to take reasonable care in all the circumstances of the case to obtain the true market value of that property. (ii) A receiver is under a like duty. (iii) The mortgagee is not responsible for what a receiver does whilst he is the mortgagor's agent *unless the mortgagee directs* or interferes with *the receiver's activities*. (iv) The mortgagee is responsible for what a receiver does whilst he is the mortgagee's agent and acting as such." (emphasis added)

50. And found (page 574):

"Although advised by Edward Symmons Ltd that he should look to the trade the receiver did not do so but was content that the trade should look to him. In my judgment the failure to take reasonable care is manifest in these forms: (i) a failure to take specialist advice from a person in the popular music industry; (ii) a failure to advertise in publications concerning the popular music industry. The receiver is liable in negligence to the guarantor…"

51. Although earlier authority has described a surrender of discretion in this way, I think it inescapable to reach the view that such a surrender will be of relevance to a claim for breach of the rule in *Hastings-Bass*.

Duty of care.

52. Mr Lewis, acting on behalf of the administrator submits that if one stands back the claim is for a breach of care and skill and not for a breach of fiduciary duty. Where there is a complaint that an administrator has failed to act in accordance with this duty in selling the assets of a company, the claim is one of professional negligence: In *Re Charnley Davies (No.2)* [1990] BCLC 760 the court heard a claim under the equivalent of paragraph 74 of Schedule B1 to the 1986 Act, claiming that a sale of the business of an insurance broking company in administration had been conducted with undue haste and had realised less than the true value of the business. Millett J (as he was) said at pages 775e-776a:

"An administrator must be a professional insolvency practitioner. A complaint that he has failed to take reasonable care in the sale of the company's assets is, therefore, a complaint of professional negligence and in my judgment the established principles applicable to cases of professional negligence are equally applicable in such a case. It follows that the administrator is to be judged, not by the standards of the most meticulous and conscientious member of his profession, but by those of an ordinary, skilled practitioner. In order to succeed the claimant must establish that the administrator has made an error which a reasonably skilled and careful insolvency practitioner would not have made."

53. Mr Iqbal accepts that he owed a duty of care but argues that he exercised reasonable care and skill in disposing of the assets in the circumstances in which he found

himself. He placed reliance on a well-known firm who assisted in selling the EPGs. Mr Lewis contends that if the court were to find that Mr Iqbal did in fact rely on professional advice "he is not liable if that advice appears to be competent and the steps he took in reliance were not outside his powers". Mr Curl does not disagree with the proposition but argues that breaches of loyalty by a fiduciary cannot be disguised as a breach of care and skill. Returning to *Davey v Money*, Mr Justice Snowden explained the common law duties (paragraphs 385 to 393) which I gratefully adopt. He also explained that:

"The starting point for any analysis is that the office and role of an administrator is a creation of statute, and paragraph 69 of Schedule B1 to the 1986 Act expressly provides that in exercising his functions under the Schedule, the administrator of a company acts as agent. ……

54. The parties do not disagree that the duty owed by the administrator was to take reasonable steps to obtain a proper price for the Company's assets. In *Re Charnley Davies Ltd (No 2)* [1990] BCLC 760 Millett J explained:

"….that an administrator owes a duty to a company over which he is appointed to take reasonable steps to obtain a proper price for its assets. That is an obligation which the law imposes on anyone with a power, whether contractual or statutory."

55. In *Bristol & West v Mothew* the Court of Appeal found that "the common law and equity each developed the duty of care, but they did so independently of one another and the standard of care required is not always the same". Contrasting a duty to act with care and skill and the equitable duty of care Lord Justice Millett said (at page 15):

"Equitable compensation for breach of the duty of skill and care resembles common law damages in that it is awarded by way of compensation to the plaintiff for his loss. There is no reason in principle why the common law rules of causation, remoteness of damage and measure of damages should not be applied by analogy in such a case. It should not be confused with equitable compensation for breach of fiduciary duty, which may be awarded in lieu of rescission or specific restitution."

56. The parties agree that Mr Iqbal, in the office of administrator, owed a co-existent common law and equitable duty of care. They also agree that there is no requirement to separately consider this cause of action owing to the overlap as explained by Lord Justice Salmon in *Cuckmere Brick Co Ltd v Mutual Finance Ltd* [1971] Ch 949, 966 E-F.

Reliance on professional advice

57. I have mentioned the rule in *Pitt v Holt* and referred to the need to take independent legal advice in certain circumstances: *Faryab v Smith*. In *Pitt v Holt*, Lord Walker JSC explained:

> "Trustees may also be in breach of duty in failing to give proper consideration to the exercise of their discretionary powers, and a failure to take professional advice may amount to, or contribute to, a flawed decision-making process. But it would be contrary to principle and authority to impose a form of strict liability on trustees who conscientiously obtain and follow, in making a decision which is within the scope of their powers, apparently competent professional advice which turns out to be wrong."

58. Accordingly, a trustee who relies upon apparently competent advice should not be liable if that advice turns out to be wrong, unless the decision which he takes is outside the scope of his powers or contrary to the law. I see no good reason why these same principles should not apply to an administrator.

Evidence of fact

59. I heard first from Mr Brewer for the joint liquidators. Mr Brewer was genuinely seeking to assist the Court. It was not always apparent that he understood the full technical nature of the claim he was making against Mr Iqbal, but it is fair to say that he had an overall command of the factual allegations. In the course of Mr Brewer's cross-examination Mr Brewer said that Mr Iqbal agreed with the directors before his appointment as administrator that there would be a sale of the EPGs to their associated company, and that in doing so he acted in the interests of the directors and against the interests of the Company and its creditors:

"Mr Lewis: Mr Brewer, what you are saying is that Mr Iqbal agreed with the directors before his appointment as administrator that there should be a sale of the EPGs to their associated company, correct?

A. Yes, it looks that way.

Q. And what you are saying is that in doing that, he didn't only disregard the interests of the company, you say that, don't you? He didn't act in the interests of the company, that is correct, that is what you say?

A. That would follow from that, yes.

Q. And he didn't act in the interests of the company's creditors, that is what you say?

A. Again, that would follow from that.

Q. But he acted in the interests, he preferred the interests of the directors of the company. That is what you say, isn't it?

A. Yes.

Q. And I take it you accept, if you are an administrator you should know that your duties are to act in the interests of the company and its creditors, shouldn't you?

A. Yes.

Q. So what is it that you say motivated Mr Iqbal to act in the interests of the directors of the company over those of the company?

A. I don't know.

Q. You have no evidence to show a motive, have you, to act in that way?

A. I don't think we comment on motive.

60. Mr Brewer was in my judgment right not to comment on motive however it is possible to discern the Joint Liquidators' approach to the claim. Once they had concluded that Mr Iqbal had agreed with the directors before his appointment as Administrator that there should be a sale of the EPGs to their associated company

everything else followed. The Joint Liquidators did not need to explain why Mr Iqbal had entered such an agreement, but merely establish that he had done so. Mr Brewer was taken to a letter of engagement dated 13 May 2011 sent by Mr Iqbal to the directors of the Company. The letter was sent prior to administration and referred to the directors contacting him on 6 May 2011: "you have confirmed that the board of directors wishes to place ARY Digital UK Ltd into administration and to instruct an independent insolvency practitioner to assist the board in managing and winding up the affairs of the company".

61. In fact, Mr Iqbal had some contact with the Company as early as 18 April 2011. Andrew Pointon of Edward Symmons wrote an internal e-mail referring to a call from Mr Iqbal that day. The e-mail makes reference to Mr Iqbal saying that the assets are "worth about 5k and an EPG (I think he said worth about 35k)". Cross-examination on the letter of engagement followed:

"Mr Lewis Q. There is nothing wrong with that, is there? There is no suggestion there that there was a pre-arranged sale between the directors and Mr Iqbal?

A. No, there is no suggestion in there."

62. Having been taken through the letter of engagement Mr Brewer accepted that its content was "inconsistent with Mr Iqbal tying his hands to a sale to the directors".

63. Mr Brewer accepted that (i) the Company was trading at a loss; (ii) by entering administration the Company was in breach of the Agreement; (iii) breach of the Agreement exposed the Company to the risk that BSB would terminate the EPGs; (iv) the Nimbus arbitration was real and pressing; and (v) the documentary evidence relied upon for mounting the pre-arranged sale claim was the email of 20 May 2011.

64. Mr Iqbal was next to give evidence. He prepared two witness statements, the first of which was detailed. He was cross-examined as to the relevant events which began nearly 8 years before trial. Due to his failure to record meetings in writing or make notes he had to rely on sparse e-mail exchanges with Edward Symmons and a few letters to the directors of the Company. His first witness statement covered the administration of the Company, instructions he gave to Edward Symmons to value and sell the EPGs, his report to creditors and liquidation. His second witness

statement merely corrected some inaccuracies in the first statement. Critical to his evidence was his dealings with the EPGs and the directors of the Company.

65. I have little doubt that Mr Iqbal was an honest witness who at times struggled to recall the detail of events that happened many years ago and from appearance looked as if he was at times confused about why questions were framed in the way they were. For example, he accepted that it would be negligent not to obtain a valuation of the EPGs prior to an agreement to sell and accepted with candour, during cross-examination, that he had not obtained a valuation prior to completing the sale. He was asked why he had not asked the directors of the Company about why £5,000 petty cash had been withdrawn on 5 May 2011, after he had given advice to the Company about insolvency. He looked puzzled and then appeared to understand. He accepted that he had not thought to ask about the petty cash.

66. He was asked about his familiarity with SIP 16 and SIP 13. He knew of SIP 16 but thought that it did not apply and accepted, again with candour, that he did not consider SIP 13. By accepting these matters, he was accepting that he had not acted in accordance with best practice and, agreed in cross-examination that he had been "careless". Mr Iqbal was asked about his failure to keep written records "Would you agree that your failure to keep written records is a recurring feature of this case? He answered: "Could be" but accepted that he kept no diary and that he was "careless" in that regard.

67. He honestly accepted that he had no specialist knowledge about EPGs and that he gained his knowledge about the Company from its directors. His position was that Intelsat (which ran the broadcasts) was to discontinue its service on 24 May 2011; BSB would switch off the signal within a week as the Company had not paid the fees and the channels would go dark; the Company was making substantial losses on a weekly basis; the recent accounts did not provide a value for the EPGs; and the Company was making "substantial losses in the course of its business". In relation to the first two matters his source of information was the directors of the Company. In relation to the last two matters he obtained the information from the Company's accounts. Having written to Mr Lynch of Edward Symmons on 20 May 2011 stating that "I have agreed £40,000 with the current management" for the EPGs and asking

Mr Lynch to advertise on the Edward Symmons website he wrote "I would like to conclude the sale through Edward Symmons on or before Friday 27th May 2011".

68. Cross examination on these matters took the following course:

"Q. How did you reach the view that the EPGs would be switched off?

A. This is what I was advised by the directors, that they are heavily indebted to Sky, and as soon as obviously the company will enter into liquidation, it could take days, perhaps days or weeks before we find a buyer.

Q. So you were advised of that by the directors?

A. Yes.

Q. So you accept you were taking advice from the directors?

A. So far as the working of Sky was concerned, yes.

Q. Anyone else?

A. No."

69. Turning to the question of advertisement and the reason why Mr Iqbal instructed the agent not to disclose the Company or its location:

Q. …That was presumably because you didn't want to damage the ARY brand, was it?

A. I didn't want the UK operations to be affected, yes.

Q. UK operations of ARY?

A. ARY, yes.

Q. In terms of not disclosing the name or the location of the company, how do you think the creditors would benefit from that decision?

A. I have no answer to this question."

70. Mr Iqbal was asked about the directors' involvement in the advertisement of the Company's assets. He accepted that he had asked Edward Symmons to consult with an employee of the Company, namely Fayaz Ghafoor:

"Q. ...You were happy to defer to Fayaz?

A. Yes, who obviously was aware exactly what services ARY or which audience they were targeting.

Q. Yes, ARY were best placed to know how the assets should be advertised?

A. Sorry, can you repeat the question.

Q. Yes. Fayaz from ARY was best placed to know?

A. That is what I understood, what my opinion was at that time."

71. The e-mail dated 20 May 2011 did not explain why the EPGs should be sold by 27 May but in his witness statement Mr Iqbal explains that he chose that date to prevent the loss of the EPGs and to maximise the value of the Company's assets.

72. In an e-mail dated 25 May 2011 Mr Iqbal informed Mr Pointon of Edward Symmons that he had told the directors that he would seek to complete the sale of the Company's assets by Tuesday 31 May. The reason given was the transfer of funds from overseas by the purchaser. He told Mr Pointon that the directors were keen to have an invoice by Friday 27 May and asked Mr Pointon "what do you think?". Mr Pointon responded within an hour and a half saying that a fair chance should be given for the advertisement to be seen by potential purchasers, but in a response sent minutes later Mr Iqbal asked for an invoice to be raised. He said that between his first e-mail and the response from Mr Pointon he had "agreed with Ben" that he would "request you to raise the invoice". In cross-examination he accepted that he had known by 25 May that he was going to sell the assets to ANL. An attendance note made by Andrew Pointon records that the agreement had been reached no later than 24 May 2011.

73. Mr Iqbal's evidence as to why he selected Edward Symmons as agent to sell the EPGs is that he was assured by Ben Lynch (with whom he had previous dealings) that "he

would be able to value the Company's assets". He was fortified by the assurance because "Mr Lynch assured me that he had considerable experience in the broadcast industry, including 16 years with the BBC". Mr Iqbal accepted in cross-examination that he did not ask whether his experience at the BBC would equip him with knowledge of EPGs and did not ask how dated his experience was. In cross-examination Mr Iqbal said: "I simply relied on them being one of the large national firms, and I assumed if they were not competent or qualified to value the EPGs they would have told me". Mr Lynch was not called to give evidence. Edward Symmons advised "it was difficult to value the EPGs because there was no value in the company's accounts and these guides were given out for free by Sky". The agent, with either express approval or by acquiescence chose to advertise the EPGs on their website under the heading "plant and machinery".

74. In Mr Iqbal's evidence in chief (witness statement) he explained that he sought an informal desktop valuation after he had sold the assets. He was asked why he would do this. His response was that he was to report to the creditors and wanted to be able to answer any concerns they may have had about the value he had achieved. This evidence was troubling and exposed his dealings with the EPGs:

Q. So this isn't a formal valuation and it is not document you could place any weight on, is it?

A. Yes, but I did.

Q. For what purpose?

A. For my report to creditors, progress report to creditors.

Q. The assets had already been sold by this stage, hadn't they?

A. Yes.

Q. You say in your witness statement that one of the reasons behind getting that document was because if the assets had been undersold, you might try and challenge the transaction. How would you do that?

A. Because the initial value or figure of £35,000 was floated to me by the accountant, then followed on to directors, and they offered £40,000. And Edward Symmons did say to me that sometimes the assets are worth what someone is prepared to pay for those assets. So had they told me I have sold it on the lower side, I would have commenced an action to recover those assets.

Q. On what basis?

A. That they have misled me.

Q. You subsequently asked for a further comment on the value received for the EPGs, didn't you?

A. Yes, on the value realised, yes.

Q. Yes. How did you give that instruction?

A. Must have been by phone.

Q. Did you take a note of that?

A. No.

75. The reference to being concerned that the directors may have misled him leads me to conclude that Mr Iqbal relied on the directors as to the value of the EPGs. He did not rely on his own judgment as he was unfamiliar with EPGs. He did not rely on his agent as they had not provided a valuation.

76. Mr Iqbal reported to creditors through a report and sent out proposals for the administration on 20 June 2011. He reported that the "objective of the administration was best achieved by the company ceasing to trade" but "in order to preserve the goodwill and make a better realisation from the sale of the [EPGs]….I continued with broadcasting. This was done at no extra cost, since B Sky B was already holding a small deposit which may not have been refunded to the administrator due to an early termination of the broadcasting agreement. As a result of the continued broadcasting my agents were able to sell the assets for £57,000 as against their estimate of £6,000 if the company were wound up…" And a little later in the document he represented to creditors that "Edward Symmons have estimated that [the EPGs] may realise £10,000

in situ or £4,000 ex situ". When tested in cross-examination about his representations in the proposals, he was unsure of their meaning and thought that *in situ* merely meant a sale to a connected party. The careful cross-examination of Mr Curl exposed Mr Iqbal's misrepresentations to creditors:

Q. In fact you had no estimate of £6,000 at all, did you?

A. Without looking at papers I cannot say "yes" or "no".

Q. Is it really your position that you might have had a valuation of £6,000?

A. No, as I said, without looking at my relevant documents I will not be able to say "yes" or "no".

Q. So you think it is a possibility you had a valuation of £6,000?

A. There could be a possibility, yes.

JUDGE BRIGGS: Can you explain to me, Mr Iqbal, why you would put that in the proposals to creditors? Just to be clear, we are looking at paragraph 5 at page 450, behind tab 122.

A. Sir, I cannot comment.

Mr Curl: Moving down to paragraph 6(c) under the subheading "EPGs", do you see that?

A. Yes.

Q. "The company have three EPGs. The broadcasting services are rendered by BSkyB. Edward Symmons have estimated these assets may realise £10,000 in situ or £4,000 ex situ." That was a false statement, wasn't it?

A. This was misrepresentation. In fact the directors, as I said in my witness statement, they are the ones who floated these numbers.

Q. Do you say it was the directors?

A. The directors/their accountant.

77. The creditors were, in my view, entitled to rely on Mr Iqbal as administrator to provide a honest and a factually accurate account of the administration, and Mr Iqbal should, as every administrator should, be aware that creditors will rely on an account provided in a report to creditors. He reported: "I instructed Edward Symmons LLP, independent valuers and auctioneers, to provide a valuation of the assets. *Their valuation report* estimated a maximum recovery of £17,000 in situ and £5,000 exsitu. The assets were then advertised for sale on the website of Edward Symmons…". (my emphasis). Mr Iqbal accepts that he did not receive a valuation until 21 June 2011.

78. His own report to creditors was self-evidently internally inconsistent demonstrating a lack of care, but the answers provided in cross-examination are deeply troubling because (i) he apparently used figures provided by the purchasers of the EPGs for the purpose of telling creditors the estimated value of the EPGs prior to sale; (ii) this was done to enhance his own standing as it provided a benchmark by which the actual sales achieved could be measured; (iii) he did not in fact receive a comparative valuation of £6,000 from his agents; (iii) he had not received a valuation of £17,000 or £5,000 from Edward Symmons prior to sale; (iv) nor had he received an estimated valuation of £10,000 in *insitu* or £6,000 *exsitu*. It is apparent that the statements made in the report, regarding the sale of the Company's assets while the Company was in administration, bore no resemblance to the truth.

Breach of care and skill

79. The court has the benefit of an expert report provided by Mr Laughton who is a partner at M&H Corporate Finance, a chartered accountant, licenced insolvency practitioner and a member of the Academy of Experts. He has been practising since 1982. He reported on "whether Mr Iqbal's conduct when selling the EPGs was that of the reasonable administrator in the circumstances" in which he found himself. In cross-examination Mr Laughton made clear that he was not seeking to usurp the function of the court by stating what a reasonably competent administrator would have done, but merely offering an opinion based on his substantial experience, the statements of insolvency practice and code of ethics applicable to office-holders.

80. Mr Iqbal's failure to appreciate the applicability of SIP 16 and failure to have any regard to SIP 13 are strong indicators of a failure to act with due care and skill in

respect of his dealings as administrator of the Company. He admitted a failure to "think" about the loss of £5,000 from petty cash and admitted that he did not seek an explanation from the directors. These failures are failures of a duty owed to the Company's creditors, to realise property of the Company for the benefit of creditors in accordance with his statutory duty.

81. Mr Iqbal was entitled to rely on the directors to appraise him of the Company's finances, its assets and liabilities. He was entitled to rely on them to provide an account of the reasons for the Company's insolvent position. His reliance on them crossed the permissible line. He placed too much reliance on the directors to provide (i) a value for the EPGs; (ii) approval for the marketing (through advertising) of the EPGs on the Edward Symmons website; and (iii) the timing or dictate the timing of the sale of the EPGs.

82. Failure to properly ascertain the value of the EPGs by failing to obtain a proper valuation prior to sale constitutes, in my judgment, a failure to exercise reasonable care and skill. I accept the unchallenged evidence of Mr Laughton. It is his opinion that Mr Iqbal should have complied with his code of ethics and obtained "knowledge and understanding of the entity…." and acquire "an appropriate understanding" of the complexities of the business. There are no contemporaneous documents that may support a finding that Mr Iqbal did obtain knowledge and an understanding of the Company and its assets. I accept Mr Laughton's opinion that Mr Iqbal, if he were acting as a competent office-holder, should have established, during his investigations, that an EPG was a specific category of intangible asset with a "restrictive but competitive market". He should also have established and acted on knowledge that "there were specialist EPG acquisition and sales agents operating in that market".

83. Failure to understand the nature of the intangible asset, and the true value of the EPGs, led to a failure to properly market the EPGs. These constituted a failure to act with reasonable care and skill. As to negotiating with a special purchaser, Mr Iqbal accepted that he knew prior to his appointment, that the ARY Group was a valuable multi-national group of companies operating globally with a global reputation. He knew that the Group wanted to broadcast the channels in the UK and knew that the directors had incorporated a company to purchase the Company's assets. There is no

evidence he sought to negotiate any price with the directors. He merely accepted their first offer.

84. As to the advertisement, it was inadequate for the following reasons. The advertisement failed to refer to the EPGs, failed to refer to the channel numbers that were for sale, failed to refer to the likely audience numbers available on each of those channels or other special features, and failed to refer to the use of the EPGs by the ARY Group.

85. Mr Iqbal instructed Edward Symmons to raise an invoice for the purchase by the directors (on behalf of ANL) just days after he was appointed, and the EPGs advertised. This was contrary to advice received from Edward Symmons and there is no evidence that Mr Lynch advised differently from Mr Pointon, merely that Mr Iqbal had used the word “agreed” in an e-mail sent to Mr Pointon.

86. Although Mr Iqbal claims that Mr Lynch agreed that he should sell the EPGs before the bank holiday weekend, there is no attendance note to support a conversation or agreement that took that form. The agreement may have been no more than Mr Lynch accepting the demands of the ANL directors. As a professional person Mr Iqbal should have kept a full attendance note of such an important conversation. He cannot now complain that he is unable to support his own assertion with evidence. I find that on the balance of probabilities Mr Lynch did not advise Mr Iqbal to sell the EPGs by the bank holiday.

87. I find that Mr Iqbal failed to act with due care and skill by taking account of the interests of ANL (concerned to protect their identity and standing) and failing to take account of, or give due regard to, exposing the assets to a specialist but open market for a reasonable period potentially prejudicing the interests of creditors.

88. A competent office-holder having had time to advise the Company prior to administration should have made reasonable investigations as to the market for EPGs. Mr Iqbal had not so much as undertaken an internet search to ascertain if there was a specialist market, and if there was, the identity of the leading sellers of EPGs. A competent administrator would have taken independent advice as to the marketing and selling from more than one agent, as the asset class was unusual and unfamiliar;

would have made inquiries as to how much time the assets should be marketed for in order to obtain the best price; would not have relied on an agent's claim that they could deal with such a specialised asset without inquiring as to their past performance of selling such assets and knowing, as he did, that the agent felt unable to value the asset. A late disclosure document confirms that Edward Symmons had at that time, never sold such an asset. Mr Iqbal failed to make adequate enquiries.

89. In short, I have taken account of Mr Laughton's report and in a similar way to the negligence of the receiver in *American Express International Banking Corp v Hurley*, negligence is manifest in Mr Iqbal's failure to (i) take specialist advice from a person in the EPG industry; (ii) advertise in publications or websites likely to attract purchasers of EPGs and not plant and machinery; and (iii) expose the assets to a proper market for a reasonable period of time. He further failed to recognise that the directors could not provide independent advice to him on timing, advertisement, price or any matter concerning the Company and its assets, yet he heeded their advice.

Breach of fiduciary duty

90. By accepting that he gave deliberate thought to excluding the name of the Company and its location when advertising its assets for sale and reasoning that he "didn't want the UK operations to be affected," Mr Iqbal was admitting, in my judgment, that he failed to act with "single-minded" loyalty to the Company. Another stark example of breach concerned the exposure of the EPGs to the market. He chose not to expose the EPGs to the market (even if it was to a non-specialist market) for a reasonable time. His explanation was that the EPGs would be "switched off". However, he had received no advice from Edward Symmons about the possibility that the EPGs would be switched off by BSB. He was asked in cross-examination "How did you reach the view that the EPGs would be switched off? His response was that "I was advised by the directors, that they are heavily indebted to Sky, and soon the company will enter into liquidation, it could take days, perhaps days or weeks before we find a buyer." This is evidence of serving two masters and failing to act with loyalty to the principal. Mr Curl asked, "so you were advised of that by the directors?" Mr Iqbal responded "yes". Mr Curl wanted to be sure he had the answer to his question and asked, "So you accept you were taking advice from the directors?" Mr Iqbal said, "so far as the working of Sky was concerned, yes".

91. I further find that he failed to take account of matters that he should have when deciding on the timing of the sale of the EPGs, namely the best interest of creditors and took account of matters that he should not have, namely (i) the perceived risk that BSB might take the EPGs off-air without any inquiry from BSB whether that was in fact the case; (ii) a concern that even though the Company was in administration it may be wound up; and (iii) the directors' need to transfer money from abroad before the bank holiday weekend.

92. In respect of the first matter expert evidence given to this court concurs that BSB had and continues to have a 60 day non-black-out policy. If he had made inquiry, Mr Iqbal would have known that there was sufficient time to market the EPGs. Further, by understanding the reasons behind the termination of the 2007 agreement (mentioned in paragraph 4 of this judgment), the arrears owed by the Company at that time, and how the Agreement provided for payment of the arrears, Mr Iqbal may have learned more of BSB's approach to arrears, which in turn is likely to have affected his decision-making process.

93. As he made no such inquiries and no inquiries about the black-out policy with BSB he failed in his duty to properly understand the Company's position, which in turn led to failures in his decision-making process, taking account of matters that he should not have taken account of when selling the EPGs. Further Mr Iqbal admits he took account of the interests of the ARY brand and its UK operations which were not relevant to his duties as Administrator of the Company.

94. These matters lead me to conclude that Mr Iqbal breached the wider fiduciary duty concerning decision making.

95. It was submitted that due to the wording of the e-mail dated 20 May 2011 ("I have agreed with the management…"), coupled with the timing of the e-mail to Edward Symmons the day after appointment, and the eventual sale to ANL, it should be inferred that Mr Iqbal had made a secret agreement with the management prior to his appointment, so that the sale to ANL was a foregone conclusion. It is said that it was within his powers to sell the assets, but he sold them for an improper reason. It is also claimed that the instruction to Edward Symmons was mere window dressing and the court should infer that he was in breach of his fiduciary duties.

96. In my judgment the factual matrix does not support the adverse inferences sought. First the e-mail to Edward Symmons of 20 May refers to the possibility of "third party" interest. If there was a pre-arranged sale there was no need to mention such a possibility. Secondly, Edward Symmons was capable of dealing with the Company's tangible assets, which it did. Thirdly, there is no suggestion that Mr Iqbal benefited personally from such an arrangement (other than his fees). Fourthly it is accepted that he acted within his powers provided by statute but there is no evidence to support an inference that there was some kind of under the table agreement with the directors. When the circumstances are viewed against the background of his failed decision-making process there is little room to include an inference that he had an agreement to make a secret sale to the directors.

97. Due to the failures of his decision-making process I have set out above I find that Mr Iqbal did not, as a matter of fact, rely on suitably qualified or competent professional advice, nor did he materially rely on any professional advice in connection with the selling of the EPGs.

Concurrent causes of action and loss

98. I have already mentioned that the law recognises simultaneous overlapping duties from a single set of facts which may be concurrent but not coextensive. In this matter I have found that Mr Iqbal failed in his duty of care and was in breach of his fiduciary duties. The Joint Liquidators seek equitable compensation for breach of fiduciary duty. I shall, therefore, consider in brief the principles applicable to assessing equitable compensation for breach of fiduciary duty, and make an assessment.

99. The Supreme Court in *AIB Group (UK) Plc v Mark Redler & Co Solicitors* explained that where there is a breach of the right to have a trust administered in accordance with the terms of the trust instrument, the purpose of any remedy is to require the trustee to restore the trust fund to the position it would have been in if the trustee had performed his obligations. If the trust has come to an end, the trustee can be ordered to compensate the beneficiary directly, such compensation to be assessed on the same basis, but absent fraud there is no penal element to any monetary award. Equitable compensation is generally assessed at a different time from compensation in tort or contract. Equitable compensation is assessed at the point of judgment with the benefit

of hindsight. As explained in *Target Holdings v Redferns*, the court does not "stop the clock" and assess the amount of the loss to the trust at some intermediate stage. It follows that foreseeability has no part to play. And the creditors acting through the Joint Liquidators, are not required to mitigate loss. I accept the submission of Mr Curl that the Supreme Court in *AIB Group (UK) Plc v Mark Redler & Co Solicitors* adopted the statement of Millett NPJ *in Libertarian Investments Ltd v Hall* [2014] 1 HKC 368 that "the amount of the award is measured by the objective value of the property lost, determined at the date when the account is taken and with the benefit of hindsight".

100. Mr Hall has provided expert evidence on behalf of the Joint Liquidators and Mr Ian Brewer has provided expert evidence on behalf of Mr Iqbal. Mr Hall is the managing partner of Expert Media Partners, he has worked as a television executive and management consultant in broadcasting since 1991, and has been employed as managing director or chief executive of several television channels and been retained as an adviser to assist in the launch of new channels, or to assist insolvency practitioners in the disposal of assets in the television business. He has overseen the sale and purchase of close to 200 EPGs since 2003. Mr Ian Brewer is a partner in Valuation Consulting LLP which is said to be dedicated to the appraisal of any financial asset that does not have a ready market. He is a member of the Royal Institute of Chartered Surveyors. The experts agree that the EPGs have a greater value than £40,000.

101. In their joint report Mr Hall explained that much of Mr Brewer's report contains details of methodologies that are not relevant because they are general methodologies used for valuing corporate assets. Mr Brewer holds the view that the EPGs were and are corporate assets and should be treated like any other asset. On the other hand, Mr Hall says there are well-known specialists in the sale of EPGs and the administrator simply failed to consult such specialists. Mr Brewer relies on a report of Canis Television & Media Ltd dated March 2015, but Mr Hall gives reasons why the report is flawed.

102. Mr Brewer explains that there is little publicly available research as to what EPGs have been sold and at what price. He says that the Canis Report is useful although as it was commissioned by the Joint Liquidators, it may not be independent. He

considers several methods of valuation: the costs, market and income approach. The Canis report upon which Mr Brewer relies, explains that:

"part of the calculation is based on the commercial success or "uplift" which the existing channel has achieved in its position on the EPG but of more interest to a potential purchaser is the value in revenue in terms from their own uplift that they believe they could achieve from broadcasting in that slot. This is the primary consideration in putting a value on any individual EPG slot….."

103. The report explains that value can be determined in different ways such as monetising audiences as measured by BARB which is a recognised TV audience measurement system. The report also explains that some channels are "too small or too niche for the BARB panel to register". The smaller channels may be valued by reference to existing or potential advertising revenue. A similar valuation technique may be used in respect of international genre channels. In respect of the specific channels owned by the Company the Canis report considered that although channel 806 was not BARB listed it was a "semi-premium" slot. The value was considered to be between £180,000 to £250,000 but a fire-sale would reduce this to between £40,000 and £60,000. Slot 802 was also "semi-premium" and valued similarly. Channel 791 was categorised as "premium" and valued at between £180,000 and £280,000 with a fire sale value ranging between £80,000 and £120,000. These values may now be historic.

104. Mr Hall explains that the sky EPG market has been in operation for about 15 years. He has been active in the market for most, if not all, of that time. He values slot 806 at between £500,000 and £600,000; slot 802 between £600,000 and £750,000 and slot 791 at between £800,000 and £1,000,000. He explains that these are realisable achievable prices. In support of his valuation he has produced an international table that gives each international EPG an "average guideline value". He explains that if an operator wishes to launch a high definition channel they can apply directly to sky for a listing and join a HD launch queue. In the international genre there are only 6 HD channels versus 75 SD channels, so the market in the SD channels on the first few pages of the genre attract a premium price. He says that the difference between 2011 and today is that "the number range [of the EPG] is now much bigger, therefore there is more competition for top slots, as channels towards the bottom of the genre are fighting to be seen and heard…….. Premium slots are those that attract increased

value due to their better (usually higher) position in a genre. Most transactions involve an EPG broker marketing an existing slot to potential interested parties…"

105. Mr Hall was asked a number of questions by the administrator in writing to challenge his report, and in answer Mr Hall explained:

"I am aware that the positions [the comparable EPGs] were sold in a two-week fire sale and all sold at the same time in 2017 for £800,000. That sale was conducted by a small independent broker, The EPG shop, run by Nick Doff. This was, in my view, considerably less than could have been achieved with a professional sale process managed over a period of time…… Mr Brewer notes that discounts of 50 to 80% are not untypical in such fire sale scenarios. If I apply that formula in reverse, I note that the amount actually achieved in 2017 should have been (absent the fire sale) between £1.6 and £2.4 million which in fact reflects the range of my valuations."

106. On the issue of fire-sale, I do not find the terminology helpful to resolve the quantum of equitable compensation. I accept Mr Hall's evidence that there is a specialised active market for EPGs. Taking the evidence of Mr Hall and Mr Brewer together it is apparent that, like all asset classes, the EPGs are more likely to fetch a better price in a market that favours sellers rather than a market that favours buyers. Mr Hall has said that the market has been active since 2015 suggesting that there has been a high number of transactions. Transaction volume is an indicator of a market favouring the seller. It is not possible to quantify how high, although a clue may be in the evidence that Mr Hall, who appears to be a leading agent in EPGs, has dealt with 200 sales in 15 years. Mr Hall accepted (referring to the unusual circumstances surrounding the Setanta sales) that if a number of channels came to the market in one go, the market may swing from a seller market to a buyer market, particularly if they were within one genre. Setanta was unusual in that it owned 9 channels which all went to the market at the same time, whereas the Company had only three. The principle remains, and three may have been sufficient to make a difference to the market in one genre.

107. Mr Lewis tackled Mr Hall in cross-examination about the input values he had placed into his valuation model. Mr Hall explained that he could not disclose those because they had market sensitivity. Mr Brewer makes a similar complaint in the joint report: "Mr Brewer has no idea how these figures were arrived at because he is unaware of

what inputs are used in the model and how the end result is calculated." In his report Mr Hall said that it takes between 4 and 6 weeks to complete a sale. In his answers to written questions Mr Hall conceded:

"once the market becomes aware that a channel is in trouble through industry intelligence or gossip, or if the slot has been removed from the EPG, potential purchasers and broker will attempt to contact the channel. Often, this is because the channel is in financial difficulty, or the company may be in administration. Potential purchasers will use this to their advantage by waiting until the last minute to submit low offers that are considerably lower than the slots true value or occurrence market average price."

108. Mr Hall says that a fire sale is often tied to significant debts with creditors, and bills with sky and/or their satellite uplink and the capacity provider must generally be paid.

109. I agree with Mr Lewis that it is desirable to understand comparatives even in a fast-moving market. As Mr Hall has not disclosed his comparative evidence they cannot be tested in the conventional manner, however that does not completely hamper the valuation exercise. Mr Hall has provided six examples of EPG sales where the selling company had become insolvent and the sales were of media interest. In his main report he has provided a table of value ranges for similar genre EPGs. Although not altogether satisfactory the court will do the best it can in the circumstances.

110. I take account of the fact that Mr Brewer acknowledged in cross-examination that he had never been involved in the sale of an EPG, and that his report did not provide a current value for the EPGs: relying as he did on the Canis report of 2015. I accept the evidence that the market has changed since the Canis Report. Mr Brewer accepted that Mr Hall is a highly qualified expert in the field, and no one has cast doubt on his active participation in the EPG market over the years. In these circumstances I give more weight to the values provided by Mr Hall for the EPGs. Mr Hall's current valuation is between £1,900,000 and £2,350,000 for all three EPGs.

111. In closing counsel agreed that the mean figure of £2,125,000 would be suitable if the court were to accept these figures. In my judgment some of the factors canvassed in the expert reports are present and lead me to conclude that the figures given by Mr

Hall should be modified by a percentage discount. Those factors are (i) the Company was in financial trouble; (ii) it was in administration; (iii) the time before "switch-off" was not long; (iv) switch-off would have meant that no value would be attributed to the EPGs; (v) three EPGs were to be sold at the same time; (vi) the three EPGs were all of the same genre; (vii) Mr Hall thought that a 6 week period was sufficient to sell the EPGs; and (viii) the Company had outstanding bills owed to BSB.

112. Some of this information would have been available to the public. It follows that, as Mr Hall opined, potential purchasers will have used the publicly available information to their advantage and may have waited until the last minute to submit low offers. Accepting the evidence of Mr Hall but tempering his conclusions with the factors set out above, I am of the view that it is more likely than not that there would be a buyers' market for the EPGs. The evidence supports a discount of between 50% and 80% in such a market. In my judgment it is reasonable to take the mid-point (the same as the accepted position regarding the range of values produced by Mr Hall) of 65% as discount. This calculation leads me to conclude that the sum of £743,750 represents equitable compensation for the breaches of fiduciary duty.

113. Order accordingly.