Neutral Citation Number: [2024] EWHC 337 (Ch)

Case No: CR-2018-002580

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF COURTSIDE RECYCLING LIMITED (CRN.08888876)
(IN LIQUIDATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 21 February 2024

Before :

ICC JUDGE PRENTIS

- -

Between :

DOMINIK THIEL-CZERWINKE and JAMIE TAYLOR (Joint Liquidators of Courtside Recycling Limited)	**Applicants**
- and -	
NICHOLAS JAMES CRABB	**Respondent**

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Chloe Shuffrey (instructed by **Wedlake Bell LLP**) for the **Applicants**
John Vickery (instructed by **Ackroyd Legal (London) LLP**) for the **Respondent**

Hearing dates: 8-10 and 13 November 2023

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JUDGMENT

ICC JUDGE PRENTIS :

Introduction

1. Nicholas Crabb's involvement in the scrap metal industry came indirectly from his main occupation, working primarily as a flute repairer and restorer and more generally within the jewellery business: around Central London he saw on demolition sites quantities of scrap non-ferrous metal which could be agglomerated, re-processed, and sold: essentially a scaling-up of the processes in his own field.

2. The first company he used to exploit this opportunity was Recyferro Limited ("Recyferro"), of which he was sole director and shareholder. Recyferro was incorporated on 3 May 2007 and entered CVL on 3 January 2014, the liquidators being Jamie Taylor and Lloyd Biscoe. It was dissolved on 20 May 2015.

3. His second vehicle, of which he was again sole director and shareholder, was Courtside Recycling Limited ("Courtside" or the "Company"), incorporated on 12 February 2014 and wound up compulsorily on 23 May 2018 on a petition presented by HMRC on 26 March 2018. The same liquidators were appointed on 26 June 2018, Mr Biscoe being replaced by Dominik Thiel-Czerwinke on 28 July 2022 (the "Liquidators").

4. This is the trial of the Liquidators' application against Mr Crabb issued on 20 May 2022. Their points of claim summarise their three heads of claim.

> "The First Claim: that in deliberately and persistently
>
> (i) under-declaring the VAT for which the Company was liable to HMRC;
>
> (ii) extracting large cash sums from the Company for no apparent benefit to the Company; and
>
> (iii) destroying the Company's books and records,
>
> the Respondent was knowingly party to the carrying on of the business of the Company with intent to defraud creditors (in particular, HMRC) and/ or for a fraudulent purpose within the meaning of s.213 of the Insolvency Act

1986 ("IA86") and is consequently liable to contribute to the assets of the Company such sums as the Court thinks proper".

"The Second Claim: for misfeasance pursuant to s.212 IA86 in respect of the facts and matters set out at (i) to (iii) above".

"The Third Claim: that the Respondent caused the Company to make payments totalling £28,426.61 to himself and third parties post presentation of the winding-up petition, which payments are void pursuant to s.127 IA86, and that he is consequently liable (i) to repay the sums paid to himself and (ii) in misfeasance to contribute the total sum of £28,426.61 to the Company by way of compensation".

5. The under-declarations of VAT total £754,995 before the addition of interest, which by HMRC's assessment of 14 June 2019 brought the total to £800,443.

6. The challenged cash withdrawals total £2,547,370.

Law

Fraudulent trading

7. By s.213:

"(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.

(2) The court, on the application of the liquidator may declare that any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned are to be liable to make such contributions (if any) to the company's assets as the court thinks proper".

8. Both Ms Shuffrey and Mr Vickery refer to the decision of Patten J in *Re BCCI SA; Morris v Bank of India* [2003] EWHC 1868 (Ch) and his pithy description of the section's requirements at [11]:

> "There are therefore three elements to be established: (1) that the business of the company in liquidation has been carried on with intent to defraud the creditors of the company or for any other fraudulent purpose; (2) that the defendant sought to be made liable… participated in the carrying on of the business of the company in that manner; and (3) that it did so knowingly: ie with knowledge that the transactions it was participating in were intended to defraud the creditors of the company or were in some other way fraudulent.

9. The onus is on the liquidators.

10. As recorded by Laddie J in *Bernasconi v Nicholas Bennett & Co* [2000] BPIR 8 at 13, "s.213 requires dishonesty".

11. Counsel are agreed that that engages the test in *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67.

> "62 Dishonesty is by no means confined to the criminal law. Civil actions may also frequently raise the question whether an action was honest or dishonest. The liability of an accessory to a breach of trust is, for example, not strict, as the liability of the trustee is, but (absent an exoneration clause) is fault-based. Negligence is not sufficient. Nothing less than dishonest assistance will suffice. Successive cases at the highest level have decided that the test of dishonesty is objective. After some hesitation in *Twinsectra Ltd v Yardley* [2002] 2 AC 164, the law is settled on the objective test set out by Lord Nicholls of Birkenhead in *Royal Brunei Airlines Sdn Bhd v Tan* [1995] 2 AC 378: see *Barlow Clowes International Ltd v Eurotrust International Ltd* [2006] 1 WLR 1476, *Abou-Rahmah v Abacha* [2007] Bus LR 220 and *Starglade Properties Ltd v Nash* [2011] Lloyd's Rep FC 102. The test now clearly established was explained thus in the *Barlow Clowes* case [2006] 1 WLR 1476, para 10 by Lord Hoffmann, who had been a party also to the *Twinsectra* case:

> 'Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards. The Court of Appeal held this to be a correct state of the law and their Lordships agree.'

63 Although the House of Lords and Privy Council were careful in these cases to confine their decisions to civil cases, there can be no logical or principled basis for the meaning of dishonesty (as distinct from the standards of proof by which it must be established) to differ according to whether it arises in a civil action or a criminal prosecution. Dishonesty is a simple, if occasionally imprecise, English word. It would be an affront to the law if its meaning differed according to the kind of proceedings in which it arose. It is easy enough to envisage cases where precisely the same behaviour, by the same person, falls to be examined in both kinds of proceeding. In *Starglade Properties Ltd v Nash* [2011] Lloyd's Rep FC 102 Leveson LJ drew attention to the difference of test as between civil cases and criminal cases, and rightly held that it demanded consideration when the opportunity arose. Such an opportunity is unlikely to occur in a criminal case whilst *R v Ghosh* [1982] QB 1053 remains binding on trial judges throughout the country. Although in *R v Cornelius* [2012] Lloyd's Rep FC 435 the opportunity might have arisen before the Court of Appeal, Criminal Division, it did not do so because there had been in that case no false representation of which the honesty needed to be examined; moreover, there is some doubt about the freedom of that court to depart from *R v Ghosh* [1982] QB 1053 in the absence of a decision from this court…

74 These several considerations provide convincing grounds for holding that the second leg of the test propounded in *R v Ghosh*… does not correctly represent the law and that directions based upon it ought no longer to be given. The test of dishonesty is as set out by Lord Nicholls in *Royal Brunei Airlines Sdn Bhd v Tan*… and by Lord Hoffmann in *Barlow Clowes*

> *International Ltd v Eurotrust International Ltd…*, para 10: see para 62 above. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest".

12. Mr Vickery cites from Bryan J in *JSC BM Bank v Kekhman* [2018] EWHC 791 (Comm), who having stated that the standard of proof remains the ordinary civil balance of probabilities, continued at [51]:

> "In applying the civil burden of proof on balance of probabilities inherent probabilities can be weighed alongside or against specific evidence from a particular case. But care must be taken in working out what in a particular case is inherently probable or improbable. It is generally correct that, absent other information, the more serious the wrongdoing, the less likely it is that it was carried out, because most people are not serious wrongdoers. The standard of proof remains the same, but more cogent evidence is required to prove fraud than to prove negligence or innocence because the evidence has to outweigh the countervailing inherent improbability".

13. In the same case at [56] Bryan J quoted from Moore-Bick LJ in *Jafari-Fini v Skillglass Ltd* [2007] EWCA Civ 261 at [40]:

> "The authorities were exhaustively reviewed recently by this court in *R (N) v Mental Health Review Tribunal* [2006] 2 WLR 850. They showed that there could be no 'straitjacket of classification' and that '… the civil standard of proof is flexible in its application and enables proper account

> to be taken of the seriousness of the allegations to be proved and the consequences of proving them.' (per Richards LJ, at para 59). Thus in civil proceedings, the 'presumption of innocence' is not so much a legal rule, as a common sense guide to the assessment of evidence. It is relevant not only where the cause of action requires proof of dishonesty, but wherever the court is faced with a choice between two rival explanations of any particular incident, one innocent and one not. Unless one is dealing with known fraudsters, the court should start from a strong presumption that the innocent explanation is more likely to be correct".

14. It is no bar to the operation of s.213 that only one creditor of the company was intended to be defrauded: *Morphitis v Bernasconi* [2003] EWCA Civ 289 at [46].

15. That case also gave guidance on the contributions which may be ordered under s.213(2). At [53] Chadwick LJ said that

> "There must, as it seems to me, be some nexus between (i) the loss which has been caused to the company's creditors generally by the carrying on of the business in the manner which gives rise to the exercise of the power and (ii) the contribution which those knowingly party to the carrying on of the business in that manner should be ordered to make to the assets in which the company's creditors will share in the liquidation. An obvious case for contribution would be where the carrying on of the business with fraudulent intent had led to the misapplication or misappropriation of the company's assets. In such a case the appropriate order might be that those knowingly party to such misapplication or misappropriation contribute an amount equal to the value of assets misapplied or misappropriated. Another obvious case would be where the carrying on of the business with fraudulent intent had led to claims against the company by those defrauded. In such a case the appropriate order might be that those knowingly party to the conduct which had given rise to those claims in the liquidation contribute an amount equal to the amount by which the existence of those claims would otherwise diminish the assets available for distribution to creditors generally; that is to say an amount equal to the amount which has

to be applied out of the assets available for distribution to satisfy those claims".

16. On our facts, among his consistently thoughtful submissions Mr Vickery says that Courtside has in any event suffered no loss because HMRC has proved for the claim it always had, even if, because of the fraud, it was not contemporaneously aware of it. However, the effect of any deliberate misdeclarations of VAT on Courtside's returns would be that HMRC was unaware of rights which it was therefore not in a position to vindicate at the time. So, as would be intended, the fraud would cause an increasing debt, which has in the event not been satisfied. There seems then in principle no bar to compensation being ordered in the sum of HMRC's claim, as contemplated by the second example given by Chadwick LJ. Other costs, too, may be directly linked to the fraud: the costs of the investigation, for example; and perhaps, depending on the facts, all the costs of the liquidation. There is no need to consider those further here given the much larger sum by which any fraud benefitted Mr Crabb, through his keeping swathes of Courtside's business secret and £2.5m out of its books: Chadwick LJ's first example. Were that sum returned then the entirety of HMRC's debt as sole creditor of Courtside would be met, and so too all liquidation costs; indeed, everybody agrees that there would be a surplus repayable as sole shareholder to Mr Crabb, and there would be no point in making him liable for monies which will simply rotate. Likewise, there has been no investigation of what HMRC would have done had it been earlier aware of the true position: it is enough to say that if there is a finding that Mr Crabb is liable for an amount of withdrawn cash which is in the event sufficient to produce a surplus in the liquidation, an additional order in respect of HMRC is akin to double recovery, the HMRC debt having arisen because of the application of Courtside's cash other than for its business.

Misfeasance

17. This is brought under s.212, alleging fraudulent breach of duties in particular of s.171 and s.172 *Companies Act 2006* ("CA06"), reflective of the fraudulent trading claim and engaging the same law on dishonesty. I agree with Mr Vickery that one cannot speak of a fraudulent breach of s.174.

18. Miss Shuffrey draws attention to the line of authority on compilation and preservation of company records, the obligation for which is both at s.386 CA06 and an aspect of fiduciary duty.

19. In *Re Mumtaz Properties Ltd* [2011] EWCA Civ 610, having observed at [14] that "contemporaneous written documentation is of the very greatest importance in assessing credibility… It can also be significant if written documentation is absent", Arden LJ said this at [17]:

> "…it was not open to the respondent to the proceedings in the circumstances of this case to escape liability by asserting that, if the books and papers or other evidence had been available, they would have shown that they were not liable in the amount claimed by the liquidator".

20. Building on that and other authority, in *Re GHLM Trading Ltd* [2012] EWHC 61 (Ch) at [149] Newey J said that "once it is shown that a company director has received company money, it is for him to show that the payment was proper".

21. Also cited has been my own decision in *Re Shahi Tandoori Restaurant Ltd* [2021] EWHC 337 (Ch), at 32:

> "a director is anyway under the separate fiduciary obligations to cause the company to keep proper records of its transactions, and to provide an account of his own dealings with company property, of which he is treated as being a trustee".

s.127

22. s.127 voids dispositions of a company's property between presentation of a petition on which it is wound up and that order, absent a permissive court order. There is no such order in this case, nor is one sought.

Witnesses

23. Both Mr Biscoe and Mr Thiel-Czerwinke gave professional evidence based on their knowledge of the file and the Liquidators' investigations.

24. Also giving evidence for the Liquidators was Shane Wills, director of ESW Chartered Accountants ("ESW"), a chartered accountant himself, and as such preparing accounts and filings both for Recyferro and Courtside. Over the course of his dealings with Mr Crabb they became friends as well. In that context, and the circumstance that by his recollection Mr Wills had never been informed of Courtside's operation of accounts at Lloyds and at Barclays, or its purported operation of a Scheme, his evidence seemed admirably even-handed. Moreover, it is supported by the documents we have, and Mr Wills was swift to acknowledge where his recall was not reinforced by contemporaneous notes, in particular of his meetings with Mr Crabb.

25. In a plausible and well-presented manner Mr Crabb gave meticulous evidence, being allowed to answer questions at length so as to explain fully what happened. As Mr Vickery acknowledged, his answers tended to take us a long way from the original question; but they were linked in Mr Crabb's own mind, and so detailed that I reject out of hand Mr Vickery's assessment that Mr Crabb was a naif who did not know what he was doing. Mr Crabb plainly knew every detail of his business and of the case, and had thought carefully about his explanations. Seriously put as they were, picked apart and set against such documents as have been retained by others (Mr Crabb accepting that latterly he maintained a policy of destruction of Courtside's own records), they are simply a Potemkin façade. To take the most prominent example, Mr Crabb says that he had no intention of causing Courtside to file what were false VAT returns: as he had told ESW, it was operating a margin scheme for VAT alongside standard VAT: he had given ESW such figures, which for reasons of which he was unaware they had not included in the returns; but actually he now recognised that the figures he had provided ESW were themselves mis-calculated such that they did not comply with any margin scheme and actually presented a standard-VAT position. Thus there is not a single document which supports operation of any scheme; and documents which go against. The most likely conclusion is therefore that there was no scheme in operation. Further,

the account of the scheme does not itself explain why these supplementary figures, scheme or otherwise, were left off each VAT return; nor why Mr Crabb never told ESW about the Lloyds and Barclays bank accounts through which the scheme purportedly operated; indeed, as we shall see, upon direct request of HMRC Mr Crabb still only disclosed the former account.

26. I regard Mr Crabb's evidence as manipulative and given with no regard for the truth.

The claims in fraudulent trading and misfeasance

27. This is not a case in which the court can carry out a deep factual analysis based on a plethora of documents, because we have only fragmentary documentary evidence; and that is because on his own admission from about October 2017 Mr Crabb destroyed those documents which still existed following their accidental destruction by others at some date from April 2016 (like many of his others, the date is fluid); and thereafter he ensured that there was maintained no documentary record of Courtside's trade, beyond those kept by third parties such as its banks. As he told the Official Receiver in interview on 11 April 2019, "I have no way of verifying what the true position of the company is in regards to its income, expenditure, VAT liabilities and day-to-day trading activities as the records have been lost".

28. In contrast, it is a case in which a witness, Mr Crabb, has deluged the court with facts unsupported by anyone else, or by documents, through accounts which have been seriously presented but which have in every matter of substance been internally inconsistent and at odds with such documents as there are.

Structural facts and conclusions

29. Cutting away that dross, the structural facts are these.

30. Every aspect of Courtside's business was controlled by Mr Crabb alone.

31. Courtside filed VAT returns for (relevantly) the periods 08/14 to 02/18. They disclosed a total value of sales, excluding VAT, of £545,772. Leaving aside the final-period's zero return, sales varied between £16,320 for 08/15 to £93,897 for 11/14.

32. The total amount of VAT which was payable, and paid, under those returns was £84,455. The lowest quarter was 08/15 at £2,026 and the highest 11/14 at £13,017.

33. On an annualised basis, sales were therefore around £156,000. When through ESW on 3 March 2014 Courtside applied to register for VAT, which it then was from 1 March, it stated that its anticipated value of taxable turnover in the next 12 months would be £150,000.

34. Following an investigation commenced in September 2016 HMRC issued VAT assessments on 6 March 2018 and 14 June 2019. By those, Courtside had underdeclared its VAT by £754,995: nine times its declared figure. That was on a total sales value of £5,151,975, more than nine times its declared figure.

35. HMRC's figures were not algorithmic. They were based upon Courtside's own bank statements, in particular those for an account it held at Lloyds between March 2014 and October 2014, and with Barclays from May 2015; it also held a Santander account from November 2014.

36. The figure for cash withdrawals of £2,547,370 was also taken from those accounts, of which a mere £15,250 was from Santander; £1,078,536 was from Lloyds, the balance from Barclays. As Ms Shuffrey concedes, it looks as though that figure is actually too little as in its last three quarters, of 08/17 to 02/18, cash from Barclays was actually more than £650,000 higher; but nothing turns on that.

37. The cash withdrawal figure dwarfs the sales figures declared in the VAT returns. Mr Crabb agrees that he was the sole signatory on Courtside's accounts, and solely responsible for dealing with its cash; indeed he was keen to say in cross-examination that his employees, his wife and Ewelina Szakiel, had no idea about the use of cash, and saw none of the paperwork (he says a thorough record was

kept) concerning it; and that was despite they being, in the words of his 19 June 2018 interview with the Official Receiver, "staff who did the paperwork to support the back office trading of the Company".

38. On his own evidence Mr Crabb knew how much cash was being withdrawn, and he knew why.

39. The VAT returns were prepared by ESW. In his defence Mr Crabb avers that "all sales made by the Company were accurately reported to ESW". That leaves a mis-declared gap in sales of more than £4.6m.

40. No allegations have been made against ESW. It would be an extraordinary size of error; and an extraordinary repetition of error, accruing over 15 continuous quarters.

41. It is also Mr Crabb's defence that he would have a quarterly meeting with ESW, following receipt of Courtside's financial information; and once he and they were "satisfied with the figures", ESW would prepare and file the VAT return. So the figures in the return must have matched those then agreed, and of which Mr Crabb was aware, absent gross, repeated, and unalleged negligence by ESW.

42. As to the figures which he gave ESW, Mr Crabb says this:

42.1 Courtside operated under two VAT regimes: the standard scheme, and a Margin/ Global Accounting Scheme. The latter is available to certain types of trade, and leads to a charge (in simple terms) of $1/6^{th}$ of the profit on an item. The seller therefore does not (and must not) charge VAT separately. If a Scheme is not used properly, standard VAT rules apply.

42.2 Courtside carried out its Scheme trades using the Lloyds and Barclays accounts only. There was therefore a gap in its use between the closing of the former in October 2014 and the opening of the latter in May 2015. Mr Crabb describes these accounts as the trading accounts, to distinguish them from the Santander account, which is his core account.

42.3 In his witness statement Mr Crabb says that he would calculate the profit, and then provide to ESW that figure "alongside the VAT on it which would be

subject to the reduction of one sixth under the margin scheme". It follows that these figures would disclose the non-standard VAT charge.

42.4 He then gives a worked example. Courtside buys stock for £4,900, which it sells for £6,500; a profit of £1,600 on which VAT will be due of £266. But what Courtside also does in this example is charge VAT on the sale price, albeit Mr Crabb says there was only a single figure in its invoice of £7,800. Apparently (although I emphasise that there is no claim as to this) it just pockets the £1,300 extra it had claimed for VAT.

43. That last point demonstrates the utter incredibility of this account, and Mr Crabb's evidence as a whole.

44. Moreover, such documents as we have are contrary to it.

45. Asked on the VAT-registration form "Does the business want to apply for any schemes?" the answer was "no".

46. There is a run of invoices from Courtside to Metal & Waste Recycling Ltd, essentially monthly from August 2014 to May 2015, for non-ferrous metals. Although these would apparently be within the Scheme they charge VAT separately. Mr Crabb's defence says that these were rendered during a time when Courtside was not operating the Scheme, but that is plainly not right: the Lloyds account closed only in October 2014; so Mr Crabb's secondary explanation that these invoices may have been within the 6-week closure notice period does not work either; his tertiary explanation is that he never operated the Scheme correctly.

47. We also have internal ESW emails from Mr Wills for two quarters which contain Mr Crabb's figures. As set out in a 1 October 2014 email, for August 2014 Mr Crabb disclosed outputs of £22,450 with VAT thereon of £4,490; and inputs of £1,006 with VAT of £167.60; so £4,322 was due. Those are figures on the usual basis: 20% charged on outputs, and the input VAT figure deducted from that: nothing to do with a Scheme, and no mention of a profit figure and a figure for VAT referable to that profit. At the end of the email Mr Wills wrote "I haven't seen the records, other than a few receipts that Nick had, but he

assures me he has it all recorded. I have just helped him make the online payment": so Mr Crabb knew the amount being declared and paid.

48. Mr Wills' 24 June 2015 email is as to the May 2015 quarter figures, which he has "just run through" with Mr Crabb; they are on the same basis; and Mr Anstis of ESW is asked to submit the return which contains them. There is a copy of this VAT return, which confirms a 20% calculation for the VAT due on sales. This quarter is of less assistance, as the Barclays account was only set up at its end, and the undeclared VAT was a mere £102; but it does show that there was no change in the way Mr Crabb reported his figures.

49. Also on the standard basis are the returns to 30 November 2014 and for 28 February 2015 (being the other returns we have; again, the February quarter was within the Santander-only trading period, and undeclared VAT was only £4,979).

50. We also have the calculation sheets for the returns for August 2015 and August 2016 through to November 2017, all on the usual 20% basis. They also include a list of bank payments, to be treated as inputs. These come from the Santander account only, despite the existence of the Barclays account. For May 2016 there is a sales day book, compiled by ESW, in which all sales are tabulated on a gross and net basis, with a column for the 20% VAT as well.

51. In short, there are no documents which support the running of a Scheme; and such documents as speak to it are directly against it. Mr Crabb's "admission" that he made errors in running the Scheme is not to the point: it is a purported explanation for the fact that every piece of evidence points to his running Courtside's VAT affairs on a standard basis.

52. Further, although proposed as such, the Scheme cannot be an explanation for the huge discrepancies between declared and undeclared VAT, and declared and undeclared turnover; especially so when we know that the VAT return figures were agreed with Mr Crabb.

53. Mr Crabb has used the idea of the Scheme as an overlay to the real point, which is the operation of the Lloyds and Barclays trading accounts and his disclosure

of them. He did not give ESW the figures passing through either of those accounts. There is no viable explanation for such failure, the effect of which was that Courtside was not accounting for the VAT it ought, and that his use of the accounts was without the slightest oversight.

54. So the trading accounts through which the Company carried out most of its business were hidden deliberately by Mr Crabb, from HMRC, from ESW, and (apparently) from his staff. That allowed his extraction from them of millions of pounds in cash, which if it was ever documented is no longer so, as on Mr Crabb's admission the documents have been destroyed deliberately.

55. These facts point inexorably to Mr Crabb having deliberately caused Courtside to carry out its business in a manner intended to defraud HMRC through deliberate mis-declarations of VAT throughout Courtside's existence; achieved through keeping secret its trading accounts; and permitting his unrestrained and undocumented use of the monies in those accounts. He was also therefore manifestly in breach of his duties under in particular s.171 and s.172.

56. More detailed aspects of that will be addressed below.

ESW's knowledge

57. Mr Wills' evidence is consistent with the structural facts.

> "Neither ESW generally nor I specifically were aware of either Recyferro or Courtside operating separate 'trading accounts' and we were never informed of such by the Respondent, Recyferro or the Company".

The only account of Courtside's of which they were told was Santander.

58. Neither were they aware of or informed about "Recyferro and/ or the Company operating any margin scheme, ie the VAT margin scheme or the global accounting scheme". He says they never received any documents from Recyferro or Courtside which indicated use of the Schemes. Their first

knowledge was when Mr Crabb told them of it at a meeting on 25 April 2018. That was despite the quarterly meetings.

59. On 5 February 2019 ESW wrote to the Official Receiver to state that:

> "Mr Crabb only notified us of the existence of the Lloyds Bank account… following the assessment raised by HMRC on 6 March 2018.
>
> Consequently, we had no knowledge of, and did not give any advice to Mr Crabb regarding the VAT liability on trading through this account, and no amounts in this respect were declared within the above returns", being those for the quarters 5/14, 8/14 and 11/14.

60. It is notable that there ESW refers only to the Lloyds account. HMRC raised assessments in March 2018 and June 2019 respectively for the Lloyds and Barclays account. As at March 2018 it had only become aware of the Lloyds account. So too, it seems, ESW.

61. Yet the issue of which accounts Courtside was using was one which HMRC had first raised on 22 September 2016 when it wrote to Courtside to inform it of a check on its 31 May 2015 corporation tax return, and also to ESW as its adviser. The inspector, Mr Brathwaite, was "looking at the whole of the return, so that I can check that it is accurate and complete". Enclosed with each was a request for information and documents, ending with a request to

> "Forward for examination all the business books, records, bank statements, cheque book stubs, and paying in book stubs and stock records for the period from 12 February 2014 to 31 May 2015. This includes all the prime records of income and expenditure and assets and liabilities".

62. ESW provided the information and records of which it was aware by letter of 14 December 2016. Although those records ought to have included full records of the Lloyds account and, for the fraction of May 2015 for which it was operational, the Barclays account, and although Mr Crabb had been asked for his assistance in their compilation, only records for Santander and its transactions were forthcoming.

63. There ensued the correspondence which led to the first assessment, which itself caused Courtside to cease to trade and HMRC to present the winding-up petition on which it entered liquidation.

64. That the information provided in December 2016 was incomplete is shown by the Inspector's first observation in his letter of 6 January 2017: "I note that the Santander business bank account provided to me was opened on 4 November 2014. Please let me have sight of the business bank account from the commencement of the business (12 February 2014) to date of closure or to 31 May 2015".

65. The response to this direct formal request was not disclosure of the Lloyds account. Instead, by telephone call of 23 February, supplemented by letter of 6 March 2017, ESW said that

> "Our client has advised us that he had difficulties initially in opening a bank account for the company. He applied to open an account in March 2014, but became engaged in protracted correspondence with the bank regarding the necessary Environmental Agency licences of the business before Santander agreed to open the account in November 2014".

66. I observe that that incomplete and false explanation is of a type with Mr Crabb's evidence to this court, its untruth sought to be masked by assumedly correct but non-central details. The letter continued in that same manner:

> "Our client explained that he overcame this issue by agreeing with his customer at the time to be paid in cash for the initial few sales invoices raised. The intention was that this arrangement should only be in place for a few weeks until the company bank account was opened. As it became apparent that there were delays in opening the bank account, both parties realised that an alternative arrangement had to be sought because of the potential levels of cash involved".

67. There is an irony in the last point: more than £1m in cash had passed out of the strenuously-undisclosed Lloyds account. The arrangement was instead that

there would be settlement of some of what Courtside was due by provision of other scrap.

68. As to the cash, ESW's 6 March letter enclosed a cash reconciliation for the period to the end of 31 May 2015, and confirmed that the cash drawings debited to the director's loan account was a balancing figure: £30,740 cash had been received, and £5,400 drawn from Santander; after expenses and wages paid in cash, the balance of £18,043 was the DLA figure.

69. Also enclosed was an excerpt from a sales book maintained by Mr Crabb himself, showing invoices numbered 16-20, 29 September through to 15 October 2014, each rendered with VAT at 20%.

70. There is nothing to indicate operation of a Scheme.

71. After further enquiries and requests, on 10 May 2017 ESW was providing the Inspector with details of Mr Crabb's attempts from February 2014 to open an account with the Co-operative Bank; having "lost patience" with it, he approached other banks "including Metrobank and Santander": again, a deliberate non-disclosure. This letter also enclosed a "scrap metal sales summary" for the year ended 31 May 2015, consisting of 13 invoices from 4 August 2014 to 5 May 2015, each with 20% VAT; these were apparently those in which scrap was taken in exchange, and as already observed above, as they were for non-ferrous scrap they would be expected to be within the Scheme.

72. It is not clear how HMRC discovered the Lloyds account. It is not disclosed in the pre-6 March 2018 assessment correspondence in the bundles.

> "This assessment has been made because HMRC holds evidence, including sales invoices, to show that between 25th March 2014 and 28th October 2014 payments were made to a bank account… held in the name of Courtside… with Lloyds. In the absence of evidence to the contrary, it is reasonable to assume that these payments related to supplies made by the company. The level of payments made to the account far exceeds the level of… sales declared by Courtside… on the VAT returns submitted by or on behalf of the company in respect of its 05/14, 08/14 and 11/14 return periods".

The underdeclared VAT was assessed at £219,363.

73. No challenge was made by Courtside. Instead, in its substantial response to the assessment, ESW's letter of 4 May 2018 said this:

> "We have now met with our client who has acknowledged that the Company did operate the bank account noted in your letter, and the transactions on this account have been omitted from the VAT returns and accounts.
>
> The director has explained that this account was utilised as a trading account for the buying and selling of predominantly non-ferrous metals, reclaimed bricks and other recyclable construction materials. For VAT purposes he believed this represented trading in 'second hand goods', so that a margin scheme would apply, and the company would only need to declare any profit element of the trading and VAT on that profit alone.
>
> During the course of our discussions, the director admitted that in many instances purchases had been made by cash from a wide range of sources".

74. ESW is presenting the information which it had learned at its meeting with Mr Crabb on 25 April. It concludes with Mr Crabb's accepting "that he has failed to take reasonable care due to:

> "1. Failure to properly incorporate the transactions on this bank account within the Company's accounts.
>
> 2. Failure to determine the correct VAT treatment of trading activities through this account, and the application of the margin scheme not appropriate to those trading activities.
>
> 3. Failure to declare income in relation to 3 sales arising from this trading credited to his personal bank account.
>
> In view of the above, our client accepts that there is a liability to VAT. As a result, the company is now insolvent and has ceased trading, and the

director has therefore met with Begbies Traynor on 25 April 2018 in order to obtain insolvency advice".

75. Once again, Mr Crabb's admissions are false and incomplete; and that despite the statement at the letter's beginning that "Both this firm and our client fully appreciate the seriousness of this matter"; it continued, wrongly for Mr Crabb, that "this has come to light shortly before the engagement partner's extended annual vacation over the Easter period". Nowhere in this letter is there mention of the Barclays account. That is despite its referring to HMRC's having, during a recent phone conversation "queried the existence of a third company bank account". Instead, the letter says "our client has advised that this is not the case".

76. Mr Crabb persisted in hiding the Barclays account.

77. On 19 June 2018 he had his first interview with the Official Receiver. Regrettably we have only his answers, not the questions, but there is no mention of the Barclays account; and as with the Lloyds account, it is not known how it came to the attention of HMRC. The April 2019 interview ended with more admissions from Mr Crabb which did not tell the whole story.

> "I admit that I have neglected my duties in relation to:
>
> (i) Ensuring that the company maintained and preserved adequate accounting records.
>
> (ii) Submitting correct VAT and other returns for the company.
>
> (iii) Producing accurate prepared accounts for the company".

He has been disqualified for 4 years, I understand on the basis of those admissions.

78. On 28 January 2020 Mr Crabb was interviewed by the Liquidators. There is a transcript of that interview. As with the recording of the answers he provided to the Official Receiver, Mr Crabb disputes that it is accurate. There are places in which there has been an obvious failure of language, but other than that the

transcript reads naturally. I also reject his point on the Official Receiver statements: each is accompanied by a *Perjury Act 1911* statement that Mr Crabb has read and approved the contents.

79. Before the Liquidators Mr Crabb was taken to ESW's 4 May letter. He said that its wording "definitely implies" that ESW had no knowledge of the Scheme before the meeting. He then described a theme which he has at times maintained at trial, that Mr Wills was not aware, but at an initial meeting with ESW "when they took on the company as a client", he was "pretty certain" that "I mentioned that this is what I was doing" to another man at ESW. Within this theme is which company is referred to: it is clearly enough Courtside in this context, although Mr Crabb said at times it was Recyferro. The interview concluded with a question: "the question is, in terms of did you inform your accountants of your use of the scheme prior to you operating the scheme?". The answer was "No", continuing into another theme, the distinction between the core account and trading account.

80. It is unnecessary to do more than sketch in Mr Crabb's changing evidence on this point. That "no" is consistent with Mr Wills' evidence, and absent any corroborative evidence of the operation of a Scheme in respect of either Recyferro or the Company is the true position; again, Mr Wills professes no knowledge of Recyferro's use of a Scheme.

81. In his 28 January 2020 interview Mr Crabb said that before first using the Scheme at Recyferro he had not received written advice from accountants, or advice on what documents were necessary to be kept. He had operated the Scheme from 2007, and continued it at Courtside. This morphed into the meeting with the un-remembered accountant at ESW, and by his Defence into a positive recollection that in about February 2014 he had told either or both of Shane Wills and Stephen Anstis of ESW that Courtside would be operating a Scheme. His witness statement has a different line: he had met Mr Wills before Recyferro's incorporation, and "confirmed with him that I intended for Recyferro to operate the VAT Margin Scheme"; and before instructing ESW to act as accountants to Courtside "I confirmed to them that Courtside would be

utilising the margin scheme as Recyferro before it had previously done. No issues were raised".

82. Mr Crabb also told the Official Receiver on 19 June 2018 that he "took advice on applying VAT on a profit basis in 2002 [in respect of] my old company, there was no issue in HMRC's assessment" following an investigation "as such I carried on applying VAT in this way". Mr Wills confirms that there was a tax enquiry with respect to Recyferro's year end 28 February 2011 accounts. He confirms that ESW acted in that, and that he himself "dealt with most aspects".

> "The utilisation of the Global Accounting Scheme by Recyferro and the paying of VAT on the margin of the profit between sales and purchases of scrap metal did not form part of this enquiry. Further, there was no information (business records or explanations) supplied to us by either Recyferro or the Respondent during the course of the enquiry to indicate a margin scheme was being operated".

83. A more elaborate, and different, account was given in the Official Receiver interview of 11 April 2019. This described Mr Crabb's company Crabb and Forward Limited, which was involved in a different business from Recyferro and Courtside, being incorporated to receive his commissions on flute sales, as well as involvement in manufacturing bespoke jewellery, and refurbishing antique jewellery. In "around 2002" he met a Mr Moore from HMRC who "advised me of the VAT margin scheme and provided me with some documents on it. I then used this way of working our VAT for this company". Mr Crabb says that this is a mis-statement and the reference is to Recyferro; but it is a statement specific on its face, and confirmed by him at the time as true and accurate (even if it was not). Moreover, the next paragraph says "I took my understanding of the VAT margin scheme that I had used in Crabb and Forward Ltd and brought it over into the new company". He took further advice from a non-ESW accountant, Peggy Thatcher, and when Courtside was incorporated "I then took the way I was calculating the VAT (the margin scheme) for Recyferro… over to the new company". At this point "I did not discuss the way I thought VAT should be calculated with… ESW. The reason for this was because I had been doing things this way previously with Recyferro… and saw

no reason to discuss it with them. The first the accountants knew of the issues therefore was when I discussed it with them when HMRC came up with their VAT assessments".

84. In cross-examination we heard each alternative. Mr Crabb's final position was that he made assumptions that those to whom he had already explained the Scheme for Recyferro would "understand" that the concept had been transferred from Courtside. He said that although he had never received written advice on the Schemes, he had read the HMRC guidance.

85. What none of this explains is why, when on his own evidence the Scheme was running for such time as Courtside held a trading account, because in his mind it could only operate properly through a separate account, Mr Crabb was keeping the trading accounts secret from ESW.

86. Two other factors are to be drawn from that.

87. First, were it right that Courtside were operating a Scheme, which would be through a trading account, he would have to have informed ESW at the outset that the Scheme was running; on closure of the Lloyds account that it was no longer running; and on opening of the Barclays account that it was again active. Each of these prompts makes it the more remarkable that ESW never recorded the Scheme in the statutory returns, and was never aware of it.

88. Secondly, while in his witness statement Mr Crabb said that he had done just that, in cross-examination he said that while he had told ESW of the closure of the Lloyds account, he never disclosed the opening of the Barclays account.

89. Finally as to Courtside's supposed running of a Scheme, Mr Crabb has provided no coherent explanation of what information he gave ESW each quarter for the VAT return which would allow it to complete the return including both the standard application of VAT and the Scheme rate. That evidence has already been described. In his witness statement he laments that "It appears that ESW calculated VAT only on the 'core account' on the standard VAT rules and ignored [the] VAT figures which I had given them in respect of the trading account". But what were those figures? In cross-examination he said he had

provided a precis of the profit margin figure (although he also said that the profit margin figures were not separated from other information, and were anyway at a standard 20%), but no total sales figures which could be inserted into the form; yet at his 11 April 2019 interview he had said that he had given ESW "a single figure for the Company's turnover". That last indicates, as do the documents, that the only information he gave was for completion of VAT returns on a standard basis; as indeed was appropriate for the one bank account which he had disclosed to ESW, the Santander account. Mr Wills said that for purposes of completion of standard VAT accounts, there were no deficiencies in the information he was given.

Document destruction

90. So there was maintenance of ongoing information sufficient for preparation of the quarterly VAT returns (albeit on their circumscribed basis) and the annual accounts: copies of the Santander statements, once it was opened, and purchase and expense invoices for those transactions. In cross-examination Mr Wills confirmed that he had also seen a sales day book in the context of the HMRC enquiry. That must have been limited to pre-Santander and Santander transactions. Mr Crabb said in cross-examination there was a day trading book, which covered only the Santander account, which may be the same document.

91. Mr Crabb's defence provides a detailed account of what happened to the rest.

> "…around June 2014 the Company entered into an oral contract with waste removal operatives, believed to be from the Traveller community, to remove from the Company's premises unprofitable low level waste, including paper and cardboard. The Company's hard copy books and records for the period from incorporation to October 2016 were contained in cardboard boxes. In the absence of the Respondent from the Company's warehouse premises, and without the knowledge or consent of the Respondent, the waste removal operatives inadvertently removed the Company's hard copy books and records and, it is assumed, disposed of the same".

> "The Respondent admits that he did not keep hard copies of all of the Company's books and records for the period from October 2016 to the date of liquidation. Until October 2017 the Respondent retained soft copies of the Company's books and records on his laptop. The soft copies were destroyed as a consequence of a ransomware attack in or around October 2017… the Respondent instructed a friend, a computer expert, to attempt to recover the data contained on the laptop's hard drive… the expert was unable to do so… the laptop was scrapped by the Respondent following its return to him".

92. That account does not give a date for the unwilled removal, although it sounds as if it were in October 2016. It is unclear what soft copies were kept on the infected laptop. It sidesteps Mr Crabb's April 2019 admission that he breached his duties in failing to ensure Courtside "maintained and preserved adequate accounting records".

93. Mr Crabb says he did deliver to the Official Receiver "various sales invoices; cheque books; bank statements and paying in books", which were "core records". "I did not provide records in respect of the purchase and sale (i.e. the trading). These had… been inadvertently destroyed and thereafter destroyed on a monthly basis by me".

94. In his witness statement Mr Crabb says that Courtside had kept waste transfer notes; weighbridge tickets; invoices for sales and purchases, and on the computer a ledger with "details of the various purchases of reclaimed material". This ledger was updated monthly from his daily longhand notes, which at all times he destroyed after transcription, and from the other retained documents.

95. He says further that by "the time of the loss of the data (approximately October 2017) I had stopped inputting data as a result of the loss and destruction of books and records, not by my hands". So the computer was an incomplete record anyway. He had been unable to access its data because of a "virus/ ransomware attack"; took it to his friend, who could not get it to work and suggested it be scrapped, which it was.

96. Thus far this gives an October 2016 date for the unwilled loss of records. However, his statement continues:

> "I accept that after October 2017 I purposefully destroyed business records. I did this after discovering the loss of the accumulated records of the business from what I assume was an inadvertent error on the part of members of the travelling community who were engaged by the company to remove cardboard and other items of rubbish… I accept that this was a serious error on my part, however it was not done with fraud in mind".

97. The October 2017 date is not an error. Mr Crabb describes how he snapped his Achilles tendon on holiday in Tenerife in April 2016; was then for some time unable to "move around the warehouse where the business records were stored"; he was also unable to see the records "as a result of a large disused transformer being stored between where I sat" and them; they consisted of "books and records of the purchases and sales (i.e. Waste Transfer Notes; Weighbridge Tickets; and Invoices)", "stored in archive boxes on metal shelving", which the removers must have thought were rubbish.

> "It was not until September 2017 that I discovered that the books and records were missing. It was only as a result of me needing to put together some documents for ESW that I had cause to enter that part of the premises… My panic at discovering the loss of the books and records led me to make the fatal error in the purposeful destruction of the continuing books and records. I cannot say why I did this, other than out of panic".

98. Deliberately destroying records, the destruction of others of which has caused one to panic, is a highly implausible reaction; the more so as the destruction assumedly continued over many months.

99. In terms, this also fails to explain what happened to the records between the assumed removal (for which no date is given) and discovery (after which it admits records were destroyed).

100. It also fails to explain why Mr Crabb did not immediately, or ever, turn to his friend Mr Wills for advice.

101. It also seems to me notable that although it is Mr Crabb's case that the trading records were therefore gone, and thereafter deliberately destroyed, sufficient records were at least for a time maintained such as to enable Courtside to file its false VAT returns. Consistent with the non-disclosure of the Lloyds and Barclays trading accounts, it is the records of the trading through those which have never come to light at any time.

102. I therefore conclude that Mr Crabb destroyed Courtside's trading records deliberately, such as to mask its real trading position.

103. That conclusion is reinforced by the smattering of different accounts which Mr Crabb has given.

104. At his June 2018 interview he described the computer as "used for emails", without any reference to it containing books and records. Nor was there reference to it being scrapped; on the contrary it "comes up with a white screen… I don't think it has any value". The missing records, "cleared from the site as part of a rubbish clearance" he believed to be those from "half way through 2015 to November 2017". His record-keeping had fallen behind anyway consequent on his tendon injury.

105. His April 2019 interview gave the date for disposal of the records as around April 2016. "The records that were thrown away would have included all the company's records up until [that] point". He discovered this "in around March 2017… I tried to find out where they had gone, or who had taken them, but I was unable to find this out". The travellers do not feature, but panic does:

> "After these records were thrown out I panicked and I think this is where I failed in my duty of care to the company. Realising that I no longer had complete records for the company I just ended up throwing out any records that the company had on a weekly basis".

106. He acknowledged that the records he gave the accountants for the returns "would have been incomplete due to the margin scheme I was using", which so far as comprehensible appears to say they were not given Scheme records. The computer did have "soft copies of the… records… up until around late 2017.

However the computer got a virus and the records were lost. I did not keep any soft copies of the records after this date".

107. When in January 2020 Mr Crabb was interviewed by the Liquidators, he explained that after the 8 by 12 foot transformer had been craned in, which meant he could not see the existing records, he put later records "into a separate section". He had no need to check the earlier records until it came to compilation of the annual accounts. He could not remember when this was. It can be observed that as the unexpected removal was not of all documents, those between removal and discovery were later destroyed by Mr Crabb.

108. In cross-examination Mr Crabb elaborated the travellers story. He had made an oral agreement with them in about June 2014 to clear cardboard and low-value waste. Those who came were not a specific group, but varying individuals, some of whom also brought in items for purchase. The transformer had arrived long before April 2016 (which gives another swathe of documents destroyed not by the travellers but Mr Crabb). Usually they cleared items at his direction, and they had never before touched the records. In a new elaboration he said that when he questioned the travellers, it was explained that the records had been removed when they were clearing contaminated cardboard. Mr Crabb was also drawn to say that they had removed the records from October 2016 to September 2017, which cannot stand with his other evidence.

Cash

109. Mr Crabb says in his defence that the cash withdrawals of £2,547,370 were entirely for the purchase of stock. Mr Vickery points to the unlikelihood of Courtside generating more than £5m in turnover without the acquisition of significant amounts of stock. He has produced a chart showing that, leaving aside the quarters 08/17-02/18, without the cash being ascribed to purchases gross quarterly profit varied between 54% and 1,319%, averaging about 281%.

110. Those submissions demonstrate the difficulty in Mr Crabb's position. Despite being under an obligation as director of Courtside to maintain its records

showing its transactions at any one time, those documents have been destroyed, in my view deliberately (to the extent they ever existed), but in his view deliberately only for those from about April 2016. There is simply no record of the use of any pound of this large cash figure; put another away, there is no record of the use of any of it for the benefit of Courtside. The cash was, of course, always in the hands of Mr Crabb.

111. In his witness statement Mr Crabb says that the "majority of scrap purchases were paid for in cash by the company. This was standard practice at the time and the majority of scrap purchasers in the market would pay in cash". In cross-examination at one point he tried to pass this off as referable to Recyferro, but that is not what it says; indeed this quotation was prefaced "As regards the use of cash in the business, this was for the benefit of the company". At another point in his statement he uses much the same words: "the majority of purchases of materials were made in cash. This was normal at the time in the scrap metal, arisings and demolition business".

112. Perhaps surprisingly, the *Scrap Metal Dealers Act 2013* was not raised until the court referred to it on the second day of trial, in order that Mr Crabb could be given the warning as to self-incrimination. Its s.12 created an offence of buying scrap metal for cash, in force from 1 October 2013 and therefore covering all of Courtside's such dealings. Mr Crabb said he was aware of the prohibitions, but had been told by two sources including a larger supplier that they did not apply to purchases from travellers, who were unable to open bank accounts, and whose rights would therefore be infringed if unable to receive cash. I shall say nothing about that; and not being part of anybody's case the Act and its prohibitions do not impinge on my decision.

113. Mr Crabb said that while Courtside received very few cash payments, he would make almost daily cash withdrawals for purchases, which were recorded by way of retention (for a time) of underlying documents rather than in a ledger.

114. Without any documents, Mr Crabb is left with bald statements:

> "The simple fact is that the cash withdrawals were legitimate business expenses, used to create revenue for onward sale of scrap metal and other

arisings, and were not used for my personal benefit. There is no evidence to suggest that this was the case".

115. He is right to say that there is no direct evidence of his retention or use of any of the cash.

116. He also makes the point on Courtside needing to buy stock; and says that if there were real evidence of his use of the cash, that would have formed part of the disqualification claim against him, and HMRC would have initiated a COP9 investigation.

117. What others may have done is beside the point. Anyway, there may still be a COP9 investigation, and on 28 April 2022 Mr Crabb's solicitors wrote to the Liquidators', Wedlake Bell, referring to proceedings before the First Tier Tribunal by which Mr Crabb was challenging assessments to tax on his returns 2012-2016, so including some of the trading period of Courtside (although Mr Crabb said it related only to Recyferro, which cannot be right on the dates). These "have increased his income by some £4 million and his tax liability by approximately £2 million… Together with interest and charges HMRC have claimed that our client needs to make payment to them amounting to approximately £4 million".

118. I do not doubt that in fact Mr Crabb did use some of the cash in making purchases for Courtside. But it is impossible to rationalise from that that he used all the cash in that way. Indeed, so far as there is any information from which an informed assessment might be made, it will be recalled that when ESW drew up a cash reconciliation to 31 May 2015, of the £30,740 cash £18,043 was attributed to Mr Crabb's own director's loan account, as unused elsewhere. Those were figures in respect of the Santander account only, through which, Mr Crabb says, few purchases of stock for cash were made; but it tells us that cash withdrawals were made which were not for specific business purposes; and there is no reason why that would be any different for the deliberately-undisclosed Lloyds and Barclays accounts. Indeed, that they were hidden by Mr Crabb indicates they would be more likely to be exploited illegitimately.

119. Considered in the context of his fiduciary duties, Mr Crabb has plainly failed to keep records adequate to explain the use of Courtside's monies in his own hands. That is through his own calculated decision, which must have been intended for his own benefit. He cannot bring into his accounting for these monies an unevidenced sum of indefinite amount; indeed, aside from his highly improbable position that all cash was used for purchases, no sum has been proposed.

120. The deliberate non-maintenance of records was also an aspect of his fraud. It shields the actual use of the monies from outsiders' prying eyes. Even without the overlay of his fiduciary duties, he cannot pray in aid of his exoneration for these monies his own decision to conceal their use. Mr Crabb's fraudulent scheme has enabled him to have unhindered use of Courtside's cash, which in the event has left insufficient funds for payment of the target of the fraud, HMRC. It has been a matter for him what evidence was retained which would explain its use.

Orders: fraudulent trading and misfeasance

121. As above, it seems to me that the proper measure of contribution on these facts, and whether under s.213 or s.212, is the cash sum of £2,547,370; subject to the agreed non-recoupment of monies insofar as they would circulate back to the members.

s.127

122. This has occupied no time at trial. There is actually no plea to it, so it is deemed admitted.

123. Between presentation of the HMRC petition and winding up £15,500 was paid to Mr Crabb or for his benefit. There is no validation order, and he must restore these monies.

124. Over the same period, and again without validation, £960 was paid to his wife and £11,966 to third parties. Mr Crabb is bound to compensate Courtside in these amounts totalling £12,926 as being paid misfeasantly, through failing to consider the interests of Courtside's other creditors.

Conclusion

125. Subject to submissions at the consequentials hearing, I therefore find Mr Crabb liable for the sums of £2,547,370, £15,500 and £12,926.

126. There having been a finding of fraudulent trading, there must also be consideration at the consequentials hearing of s.10 *Company Directors Disqualification Act 1986*. While I would envisage giving directions through to a further hearing on that, I would appreciate details of Mr Crabb's existing disqualification.