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Case Nos.: CH-2025-000034 & CH-2025-000035

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

IN THE MATTER OF ORTHIOS ECO PARKS (ANGLESEY) LIMITED
AND IN THE MATTER OF ORTHIOS POWER (ANGLESEY) LIMITED
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 17/10/2025

Before :

MR JUSTICE FOXTON

Between :

(1) LAURENCE PAGDEN
(as Security Trustee under a Security and Intercreditor
Deed dated 24 December 2015)
(2) ASHER MILLER AND STEPHEN MARK KATZ
(as Joint Administrators of Orthios (Anglesey)
Technologies Ltd
- and -
CRAIG ANDREW RIDGLEY

Appellants

Respondent

Patrick Harty (instructed by **Kingsley Napley LLP**) for the **Appellants**
Matthew Weaver KC (instructed by **Mezzle Law**) for the **Respondent**

Hearing date: 9 October 2025
Draft judgment to parties: 13 October 2025

Approved Judgment

This judgment was handed down remotely at 10.00am on 17 October 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Foxton:

1. This is an appeal against an Order of ICC Judge Greenwood dated 28 November 2024 (“**the Judge**”) which dismissed the Appellants’ challenge to the Respondent’s (“**Mr Ridgley**”) remuneration and expenses as administrator of Orthios Eco Parks (Anglesey) Limited (“**OEPAL**”) and Orthios Power (Anglesey) Limited (“**OPAL**”) and together (“**the Companies**”). The appeal is brought with the permission of Mr Justice Rajah.
2. The appeal was very well argued on both sides. In addition I was very grateful to both counsel for their care and patience in helping me navigate a large and previously unfamiliar body of complex legislation. If in the paragraphs which follow, I have nonetheless managed to get lost in the thickets, the responsibility is certainly not theirs.

The background

3. The Companies formed part of the Orthios Group which operated various businesses from the former Anglesey Aluminium Ltd site in Holyhead, Anglesey (“**the Land**”). The Orthios Group raised funds from Cresta Energy Limited (“**Cresta**”) which invested £66m in bonds issued by the group through MPB Eco Parks Limited (“**MPB**”); and also from 300-400 retail investors who invested £26.4m in bonds.

4. The bonds were secured by:

- i) a fixed charge over its part of the Land granted by OEPAI;
- ii) a floating charge granted by OEPAI.
- iii) a fixed charge over its part of the Land granted by OPAL; and
- iv) a floating charge granted by OPAL.

all of which security was held by Mr Colin, as security trustee, under the terms of the Security Trust Deed.

5. The floating charges were qualified floating charges for the purpose of paragraph 14(2) of Schedule B1 to the Insolvency Act 1986 (“**the 1986 Act**”), giving Mr Colin (as Security Trustee) the right, following an Event of Default, to appoint administrators over the Companies. On 25 March 2022, Mr Colin exercised those powers and appointed the Respondent (“**Mr Ridgley**”) as administrator of the Companies. Mr Ridgley had little more than two years’ experience of accepting appointments as administrator. On the evidence, Mr Colin made the appointment without first consulting Cresta. That appointment gave Mr Ridgley the status of an office-holder (and specifically) an administrator under the Insolvency (England and Wales) Rules 2016 (“**the 2016 Rules**”) and associated legislation.
6. At some point in late April 2022, Mr Colin signed a letter approving the sale by Mr Ridgley (as administrator of the Companies) of the Land held under the fixed charges, and providing for the payment of the following amounts from the proceeds of sale of the Land:
 - i) As remuneration to Mr Ridgley, 5% of realisations up to £25m and 15% of realisations in excess of £25m.

- ii) As payment of Mr Ridgley's solicitors' fees, 1% of realisations up to £25m and 5% in excess of £25m.
- iii) As payment of the fees of the selling agent, Hilco Global ("**Hilco**"), 2% of realisations.

Mr Colin also claimed remuneration of 5% of the realised amount himself, capped at £2m.

7. When it became aware of the scale of the fees, Cresta objected to them. It estimated the value of the Land at £44m, on which basis the various fees would be very large. It informed Mr Ridgley of its objections.
8. After Mr Colin failed to react to its concerns in a manner which satisfied them, on 6 July 2022, Cresta and MPB applied to the court to remove Mr Colin from the office of Security Trustee on various grounds, including the amount of the fees agreed. This application was supported by the Financial Services Compensation Scheme, and 82% of the creditors secured under the Security Trust Deed. An application by Cresta to expedite the removal application was filed by Cresta and resisted by Mr Colin, with the support of Mr Ridgley.
9. The Land was sold on 9 September 2022 for £35m. As a result, Mr Ridgley was paid fees of £2,765,000 and Howes Percival LLP, the solicitors acting for Mr Ridgley, £755,000 (in each case exclusive of VAT). The total amount owed to bondholders and secured by the fixed and floating charges as at the date of the administration was £85.62m. The administrator reported on 28 September 2022 that "there is very little in the way of known floating charge assets that is it anticipated will result in any significant realisations being achieved". Mr Hughes of the Appellants' solicitors confirmed in evidence that the "only asset of note is the Land". I do not understand that statement to be in dispute. The evidence suggests that the value of the "prescribed part" was a little over £7,200, before taking account of expenses, with any payment to unsecured creditors nominal at best. The position, therefore, is that on any view of the figures, the value of the security subject to the fixed charges would not come close to discharging the amounts secured by those charges, and this would be so even if the fees and expenses paid in respect of the sale were significantly lower, nor would there be any realistic prospect of the secured creditors' unsecured claim materially diluting the unsecured creditors' recovery from the prescribed part. To the extent that complaint can be made about the manner in which the sale of the Land was conducted, the economic effects will have been felt by the beneficiaries of the fixed charges.
10. After the sale of the Land and payment of the fees had taken place, Mr Colin agreed to his removal, and he was removed from office by Order of HHJ Malcolm Davis-White KC on 12 October 2022. Mr Pagden was appointed in his place.
11. On 19 May 2023, the Appellants brought an application in the Insolvency and Companies List seeking relief under rule 18.34 of the 2016 Rules on the basis that the remuneration charged by Mr Ridgley, and the amount he had agreed to pay his solicitors and the agents, was in each case excessive.
12. The application was heard by ICC Judge Greenwood on 3 and 4 July. He delivered a detailed judgment rejecting the application:

- i) He held that the court did not have jurisdiction to hear the application under Rule 18.34 because Mr Ridgley's claim for remuneration was solely referable to an asset subject to a fixed charge (the Land) and was advanced under a contract with the secured creditor. He held that the court did not have jurisdiction under Part 18 of the 2016 Rules (and specifically Rule 18.34) to determine the amount of an administrator's fees and expenses which were to be paid from the proceeds of sale of an asset subject to a fixed charge, rather than assets held by the insolvent company for the benefit of its creditors. This finding gives rise to Ground 1 of the appeal.
 - ii) He rejected Mr Ridgley's contention that any Rule 18.34 claim was time-barred. There has been no cross-appeal against that determination.
 - iii) He also rejected Mr Ridgley's argument that Mr Pagden, as successor in title to Mr Colin as Security Trustee, was estopped by convention from challenging the realisation costs agreed by Mr Colin. Once again there has been no cross-appeal against that determination.
 - iv) He held (apparently as an independent reason for rejecting the application) that Mr Pagden was unable to challenge the agreement because he stood in no better position than Mr Colin in this respect, with Mr Colin having agreed the fees as a matter of contract. This is Ground 3 of the appeal.
 - v) He held that Messrs Miller and Katz did not have standing under Rule 18.34 (had it otherwise been applicable), albeit he rejected Mr Ridgley's contention that, had it been joined, OAT would not have had standing to bring a Rule 18.34 application, had the rule applied. There has been no appeal or cross-appeal in relation to this aspect of the Judge's decision.
13. The Appellants obtained permission to appeal on three grounds:
- i) Ground 1: The Judge's finding that remuneration agreed in connection with an administrator realising property which is subject to a fixed charge is not within Part 18 of the 2016 Rules and cannot be challenged under r.18.34 of the 2016 Rules.
 - ii) Ground 2: in the alternative the court should have heard and determined the Appellants' challenge to Mr Ridgley's remuneration under its inherent jurisdiction.
 - iii) Ground 3: the Judge was wrong to hold that Mr Pagden's challenge was defeated by the contract his predecessor in title as Security Trustee had entered into.
14. On 27 March 2023, the Companies were put into compulsory liquidation, and on 21 April 2023, joint liquidators were appointed by the Secretary of State.

Ground 1: The scope of r.18.34 and Pt 18 of the 2016 Rules

The Judge's judgment in more detail

15. The Judge delivered a careful and well-researched judgment and I am conscious that I do not do it justice in this short summary. The Judge's essential reasons were as follows:

- i) In a liquidation or administration, property held legally by the company can involve separate funds from which expenses and debts can be paid. The pot of assets held on behalf of the general creditors does not extend to assets held under any fixed charge (save for the asset of the equity in redemption). The pot available to meet general creditor claims and expenses, as a result of various statutory reforms which have weakened the strength of the security interest provided by a floating charge, will include assets subject to such a charge, for the purpose of meeting expenses of the administration, preferred creditors and, as to a “prescribed part”, the claims of general creditors. However, assets subject to a fixed charge remain inviolate.
- ii) Expenses of the administration, including office-holder remuneration and costs, are paid from the company’s fund and assets subject to floating charges, but not from assets subject to fixed charges which, save when the court orders otherwise in certain circumstances, are left substantially untouched by the insolvency process.
- iii) The Judge considered the overall structure of the administration of an insolvent company so far as “free assets”, and those subject to floating and fixed charges, and the clear distinction which he held that English insolvency law draws between the “company’s pot” and “the chargee’s pots” (subject to certain statutory reforms concerning assets which were subject to a floating charge”). The Judge held that Part 18 of the 2016 Rules is concerned only with remuneration and costs which amount to expenses of the administration, which will be met from “free” assets as statutorily enlarged in relation to assets subject to floating charges, a conclusion which he found to be consistent both with the terms of Part 18, and the structure he had summarised.
- iv) The Judge also referred to other circumstances and jurisdictions under which an office-holder might claim remuneration and expenses for work done in that capacity otherwise than from the company’s fund as statutorily enlarged, referring to the jurisdiction recognised in *Re Berkeley Applegate* [1989] Ch 32 and when the court authorises an administrator to sell an asset subject to a fixed charge as though it was not subject to any security under paragraph 71 of Schedule B1 of the Insolvency Act 1986 (the court having power in each case to order remuneration to be paid from the proceeds of realising assets which fall outside the company’s fund). The Judge pointed to these as occasions when remuneration is paid to an office-holder out of the proceeds of sale of fixed assets which the Judge held did not fall within the procedure in Part 18 of the 2016 Rules, and which were inconsistent with the Appellants’ argument that all remuneration received by the administrator in the course of the administration were subject to Part 18, whether paid from the “company pot” as statutorily enlarged, or from fixed charge assets.

Two contextual matters

16. Before turning to the construction of the 2016 Rules, each counsel laid particular emphasis on what they submitted was a relevant context when determining the meaning of Rule 18.34.

The status of secured assets in a liquidation or administration

17. The Judge took as the jumping off point for the enquiry into the scope of Rule 18.34 the decision of the House of Lords in *Re Leyland DAF* [2004] UKHL 9. In that case a

company was in administrative receivership and liquidation. An administrative receiver had been appointed under a floating charge and realised secured assets, and the issue arose of whether the liquidator could recover some of the expenses of the liquidation from the floating charge assets. The House of Lords held that he could not. In explaining that conclusion, the Court pointed to important features of the insolvency regime which, although discussed in the context of a floating charge in that case, remain relevant to a case such as the present where we are concerned with assets which are subject to a fixed charge:

- i) Insolvency brings into existence a special kind of trust over the insolvent company's assets which are held on trust to discharge its liabilities, the rights of the creditors not being those of conventional trust beneficiaries, but the right to have the assets administered by the liquidator in accordance with the 1986 Act ([28], [30]).
 - ii) A fixed charge (or floating charge at the point when it becomes fixed) brings into existence a separate fund in which it is the debenture holder which had the proprietary interest, with the company's interest being its equity of redemption (which forms part of the company's fund) ([29]-[30], [51]).
 - iii) Each fund bears its own costs and expenses, with the expenses of the winding up being borne by the company's fund and those of realising the charged assets by debenture holder's fund ([31], [62]-[63]).
18. The strict division between "the company's fund" and the chargee's fund has, so far as floating charges are concerned, been subject to certain statutory amendments. The Judge referred to a number of these: s.175(2) (giving preferential debts priority over the claims of the holder of a floating charge), s.176ZA(1), (reversing *Re Leyland DAF*), and s.176A (introduced by the Enterprise Act 2002 and making a "prescribed part" of assets subject to a floating charge available to meet the claims of general creditors where assets are otherwise insufficient to do so). However, none of those apply to fixed charges.
19. It is against that background that *Palmer's Company Law* (Looseleaf, reviewed September 2020), [15.542] summarises the law as follows:

"Assuming that all the requisite formalities have been fulfilled, including proper registration of the security as a company charge under Pt 25 of the Companies Act 2006 (as amended), it will be perceived that any holder of a valid, fixed charge over company assets is in a position of pre-eminent advantage in the event of the insolvent winding-up of the company. This is because, under the established principles of the law of security applicable both to personal and corporate insolvency, the holder of a valid and subsisting, fixed security over any of his debtor's property is entitled to enforce his right of realisation of that security, and so may effectively stand outside the insolvency process in satisfying the outstanding liability to such extent as the security is capable of yielding. Thereafter, if any unsatisfied balance remains due to the creditor in question, he may participate in the collective administration of the remainder of the debtor's estate, by proving for the balance and ranking for dividend according to the nature of the liability itself. Therefore, the assets within the insolvent estate which are comprised within any valid and unimpeachable fixed charge are predestined to remain outside the pool of assets available for distribution through the winding-up process itself,

except in so far as they may turn out upon realisation to yield a greater amount than is still outstanding upon the debt or liability in relation to which they serve as security. In that event, the secured creditor must pay over the surplus balance, either to the holder of any subsequent, fixed charge over the same property, or in the absence of such, to the liquidator. The different, but still appreciable, position occupied by the holder of a security which, as created, was a floating charge was explained above.”

20. I accept that the status of assets subject to a fixed charge, and in particular the fact that:
- i) they do not form part of the “trust” of assets held by the administrator (as agent of the company) on behalf of the pool of general creditors; and
 - ii) they are not an asset from which the general expenses of an administration (as opposed to the specific costs of realising the assets subject to the fixed charge) can be recovered;

are relevant when construing the ambit of Part 18 (although not necessarily determinative). In particular, this feature of insolvency law requires a degree of caution before concluding that provisions which apply to assets within the insolvency process also extend to assets which fall outside the statutory trust of the company’s assets created by the insolvency rules, and against which there is no statutory right to levy the expenses of the administration.

21. I derive some support for this conclusion from the decision of Dame Sarah Worthington QC (Hon) in *Re MK Airlines* [2018] EWHC 540 (Ch). That case involved an allegation of misfeasance against a former administrator for failing to follow insolvency rules priority rules. To enable MKA to continue trading pending a proposed sale, the putative buyer agreed to provide funding to be used for certain purposes which was paid into MKA’s bank accounts, from which the administrators drew sums to meet their remuneration and disbursements. A declaration was sought that the administrators had been in breach of fiduciary duty and misfeasance in so applying the money, the particular complaints being that the administrators had failed to follow the priority rules in r.2.76(1) of the Insolvency Rules 1986, or had drawn remuneration without approval contrary to r.2.106(3C) or had paid pre-administration costs contrary to r.2.67(1) or without the approval required by r.2.67A. The first and third breaches were upheld by the Registrar, but for present purposes I am only concerned with the first.
22. I should note that the effect of the decision on issue (ii) was that it was found that the creditors had approved the drawing of remuneration, such that the breach of fiduciary duty arguments on which Mr Harty relied (and which I address next) were not engaged. However, Dame Sarah’s decision attached considerable importance to the source and status of the funds. At [86], Dame Sarah held that the various requirements of the Insolvency Rules 1986 applied “only to the company’s assets” and did not “prohibit late investors white knights or late investors providing additional funds on terms, including terms that ... give those funders first priority purchase money security interests over those assets, or terms that operate by way of *Quistclose* trust requiring funds to be used only for nominated purposes and not to be at the free disposal of the company”. At [90], Dame Sarah noted that the administrators “could have agreed to act on terms that their remuneration was paid by third parties rather than out of company funds”, which at [97] she held that they had.

The law relating to fiduciary obligations

23. Mr Harty placed particular reliance on another contextual matter: the law relating to fiduciary obligations. His argument proceeded as follows:
- i) Administrators are fiduciaries who owe fiduciary duties to the general creditors of an insolvent company.
 - ii) Those duties include the duty not to profit from their office save as authorised by the beneficiaries, statute or the court, and not to place themselves in a position of conflict of interest subject to the same exceptions.
 - iii) Where (as is accepted will frequently be desirable), an administrator initially appointed by a floating chargee in respect of the company's assets which are not subject to a fixed charge is authorised by the fixed charge holder or the court to dispose of property subject to the fixed charge at the same time, this will breach the "no profit" and "no conflict" rules unless there is appropriate authorisation.
 - iv) Unless Part 18 of the 2016 Rules is construed as extending to remuneration paid to the administrator for the disposal of fixed charge assets as well as other assets, there is no mechanism by which the required authority can be obtained.
24. It was not disputed that an administrator of an insolvent company is in a fiduciary position vis-à-vis the shareholders and creditors of the insolvent company and this is acknowledged in numerous authorities: e.g., *Re Gertzenstein Limited* [1937] Ch 115, *Davey v Money* [2018] EWHC 766 (Ch), [341]; *Brewer v Iqbal* [2019] BCC 746 and *Pagden v Fry* [2025] EWHC 2316 (Ch), [35].
25. As to the duties which flow from that agreed premise, Mr Harty placed particular reliance on the decision in *Re Gertzenstein Limited* [1937] Ch 115, text book commentary referring to it, and the recent decision of *Pagden v Fry* [2025] EWHC 2316 (Ch).
26. In *Re Gerzenstein*, a company entered into voluntary liquidation and two liquidators were appointed, one (Mr Baron), a solicitor. The assets over which they were appointed included claims to set aside earlier transactions as a fraudulent preference (with the effect of success in such claims being to reduce the claims on the pool of assets under the stewardship of the liquidators and available for distribution to the general pool of creditors and to increase the size of that pool). Mr Baron acted as the company's solicitor in the fraudulent preference proceedings, and charged profit costs for doing so. Those costs were disallowed in taxation, by reference to what was then the Companies (Winding Up) Rules, 1929, r. 158, which provided:

"Except as provided by the Act or the Rules, a liquidator shall not under any circumstances whatever, make any arrangement for, or accept from any solicitor, auctioneer, or any other person connected with the company of which he is liquidator, or who is employed in or in connection with the winding-up of the company, any gift, remuneration, or pecuniary or other consideration or benefit whatever beyond the remuneration to which under the Act and the Rules he is entitled as liquidator, nor shall he make any arrangement for giving up, or give up any part of such remuneration to any such solicitor, auctioneer, or other person."

27. The hearing before Bennett J was a challenge to that decision, and he rejected that challenge on the basis that there was a fiduciary relationship between the liquidators and shareholders which “prevents the liquidators making a profit out of their trust”. He rejected the argument that exceptions to that broad principle might be applicable in this case, because “the language of the rule ... prohibit[s] any arrangement by which a liquidator may receive extra remuneration to that allowed by the Act and Rules.”
28. It will be noted that *Re Gerzenstein* was concerned with profit made by an administrator in relation to assets forming part of “the company pot”, and involved, in effect, a trustee of the trust created by the insolvency regime profiting from their administration of trust assets.
29. The first textbook I was referred to was *Lightman & Moss on the Law of Administrators and Receivers of Companies* (6th), [12-035]-[12-036]. The authors observe that it is “beyond doubt that the administrator can be regarded in equity as occupying the position of a fiduciary in relation to the company.” It is said to follow from this that “*in exercising his powers as agent*, the administrator must act with ‘single-minded loyalty so as to promote the interests of creditors collectively ... over his own interests’ (emphasis added – i.e. when acting as agent of the company). Footnote 128 then expands upon that statement:

“This gives way where the administrator chooses to perform his functions with the objective of realising property in order to make a distribution to one or more secured or preferential creditors (the third objective). In these circumstances, the secured or preferential creditors (as appropriate) in effect become the principal, subject to the duty to avoid unnecessary harm to the interests of the company’s creditors as a whole”.

The words “in effect become the principal” contemplate that in the scenario discussed, the administrators are “in effect” acting as agent for the secured creditors.

30. The footnote refers to paragraph 3 of Schedule B1 to the 1986 Act. This provides:
- “(1) The administrator of a company must perform his functions with the objective of—
- (a) rescuing the company as going concern or
 - (b) achieving a better result for the company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or
 - (c) realising property in order to make a distribution to one or more secured or preferential creditors.
- (2) Subject to sub-paragraph (4), the administrator of a company must perform his functions in the interests of the company's creditors as a whole.
- (3) The administrator must perform his functions with the objective specified in sub-paragraph (1)(a) unless he thinks either—

- (a) that it is not reasonably practicable to achieve that objective, or
 - (b) that the objective specified in sub-paragraph (1)(b) would achieve a better result for the company's creditors as a whole.
- (4) The administrator may perform his functions with the objective specified in sub-paragraph (1)(c) only if—
 - (a) he thinks that it is not reasonably practicable to achieve either of the objectives specified in sub-paragraph (1)(a) and (b), and
 - (b) he does not unnecessarily harm the interests of the creditors of the company as a whole.”
- 31. It will be necessary to consider that nuanced statement of the administrator’s duties below.
- 32. *Lightman & Moss* continue at [12-036] that “we can expect fiduciary obligations insofar as they are applied to administrators to be flexed and moulded to the administrator’s role”, before stating that it follows from the administrator’s status as fiduciary that “he must not take an unauthorised profit from his position”. The footnote to that statement explains:

“This extends to the administrator’s remuneration, which may only be drawn insofar as authorised in principle under the 2016 Rules: see *Re Gertzenstein*”.
- 33. The text does not discuss the position where the administrator is realising security subject to a fixed charge, and the circumstances in which the administrator can agree to perform this role.
- 34. The second textbook is *McPherson & Keay: The Law of Company Liquidation* (5th), [8-050]-[8.52]). This refers to the “fundamental principle of equity that persons who occupy a fiduciary position shall not permit their personal interests to conflict with the interests of those whom it is their duty to protect”. It is stated that “liquidators are not permitted, either directly or indirectly to profit from their office otherwise than to the extent expressly authorised by law” (for which *Re Gerzenstein* is cited as authority) and that “they are only entitled to their authorised remuneration”.
- 35. Finally, *Pagden v Fry* [2025] EWHC 2316 (Ch). The issue for decision in that case was whether liquidators dealing with a members’ voluntary liquidation could limit their liability. One argument relied upon in support of the argument that they could not turned on the statutory trust which arose when a company went into liquidation (which would be a trust in respect of the company’s fund). In that context, at [35], Thompsell J stated “clearly, as the trustee of a statutory trust, a liquidator is a fiduciary and owes corresponding fiduciary duties, such as a duty not to profit otherwise than through the remuneration allowed in statute – see *Re Gerzenstein Limited* ...” The decision was not concerned with the position of the administrator when realising a fixed security.
- 36. While I broadly accept the foundations of Mr Harty’s argument, I do not accept they take him as far as he suggests. In particular, I am not persuaded that the fiduciary duties owed by an administrator to the general creditors inevitably prevents the administrator from

acting to realise fixed security without the consent of the creditors as a whole or a court order. That might be highly inconvenient, in circumstances, for example, where there are better prospects of realising assets “for the benefit of the company as a whole” if land and buildings subject to a fixed charge and uncharged work-in-progress or stock-in-trade are marketed together.

37. The reference in *Lightman & Moss* to the “fiduciary obligations insofar as they are applied to administrators” being “flexed and moulded to the administrator’s role” seem wholly apposite. Inherent in paragraph 3 of Schedule B1 is that the duties owed by an administrator always extends beyond the general creditors (Paragraph 3.1(b)). When the objective at paragraph 3.1(c) is engaged, the priority accorded to the interests of secured and unsecured creditors is not the same. I accept that an administrator will have less freedom than an administrative receiver in realising security, reflecting statutory reforms intended to achieve that outcome, and those reforms have reduced the extent to which the charge-holder is master of their own fate, e.g. by empowering an administrator to require a receiver appointed by the charge holder under a charge to vacate office (paragraph 41(2) of Schedule B1). However, an administrator still has a level of freedom in dealing with fixed assets so far as the interests of the general creditors are concerned, which Mr Boardman, for example, did not enjoy when considering the interests of the Phipps family.
38. *Goode on Principles of Corporate Insolvency Law* (5th) [11-28] explain the position as follows:

“[An administrator] has less freedom than that possessed by the administrative receiver, because the latter, whilst under a duty to use reasonable endeavours to obtain the best price, was free to determine the timing of any realisations and could thus proceed to an early sale even if delay would have resulted in enhancement of the value of the security and would not have prejudiced his debenture-holder. Now he has to avoid unnecessary harm to the general body of creditors. “Harm” is considered to be the equivalent of “prejudice”. He is still entitled to subordinate the interests of the general body of creditors to those of secured and preferential creditors, since para. 3(2) of Sc.B1 makes it clear that his duty to the general creditors is subject to the pursuit of the third objective. But he must avoid causing harm which is not necessary for the protection of the creditors for whom his realisations are intended. This imposes on him the duty to consider all aspects of the administration, including the timing of realisations. It is also a signal that the existence of security substantially in excess of the debt owed to the secured creditor or creditors does not entitle him to be lax in managing the business and realising the assets.”
39. That background, in my assessment, diminishes the forensic force of Mr Harty’s argument that Rule 18.34 must extend to an administrator’s remuneration to be paid from the proceeds of realising assets subject to a fixed charge for the costs of doing so. I would also note that the duty of avoiding “unnecessary harm” to the general body of creditors is essentially aimed at (i) prejudice to the equity of redemption and (ii) prejudice where that part of the secured debt which cannot be met from the proceeds of the security dilutes the claims of unsecured creditors to the company’s fund. However there are many cases (and this is one of them) in which even the most optimistic estimate of the net proceeds of realising the security will not come close to meeting the amount of the secured debt (such that there is no meaningful equity of redemption to speak of), and where there is

no realistic prospect of dilution because the amount of “free funds” and the prescribed part is miniscule, even before taking account of the administrator’s claim for expenses and the expense of distribution. It would, in my view, be surprising if the effect of Part 18 was to subject an administrator’s remuneration for realising fixed charge assets in those circumstances to some form of control and challenge by the general body of creditors in all cases, including where there is no equity of redemption to be prejudiced, and no real prospect of “dilution” of any distribution to general creditors.

40. My conclusion that Mr Harty is wrong to submit that any agreement by an administrator with a fixed charge holder to realise security presumptively involves a breach of the fiduciary duties owed by an administrator to the general creditors derives some support from other matters.
41. First, the terms of Rule 18.38 which is more conveniently addressed when considering Part 18 below.
42. Second, Mr Weaver KC referred to two decisions of ICC judges which he suggested were inconsistent in their outcome with that position. It is fair to say that neither directly addresses the issue or seems to have received argument on it, and, therefore the assistance to be derived from them is limited. However, they feature a provision of more general interest, and for that reason, I will address them in a little more detail. Both decisions involved applications under paragraph 71 of Schedule B1 to the 1986 Act which permits the court to empower an administrator to dispose of property which is subject to a fixed charge as if no security was in place. It is agreed in this case that the agreement of April 2022 as referred to at [6] above effectively placed Mr Ridgley in the same position as if a court order of this kind had been made.
43. In the first, *Townsend v Biscoe* [2010] WL 3166608, an agreement had been reached between charge-holder and administrator and recorded in a consent order (I would note that, but for that last act, the position would have been the same as in this case, and Mr Harty would have said administrator was not able to enter into such an agreement without the consent of (presumably all) the creditors – another feature which I regard as an unlikely outcome of his submissions). A dispute arose as the priority of payments of the proceeds of sale which was the subject of correspondence. The administrators wrote to the charge-holder setting out the proposed priority and the amount to be paid at each stage, saying that if this was not accepted, they would seek directions from the court. This was held to give rise to an estoppel which precluded the charge-holder from complaining that the relevant priority scheme had not been followed. Clearly this did not involve a dispute between an administrator and the general creditors, but the extent to which the terms applicable to the realisation of the security appear to have been regarded as a matter regulated by private law as between charge-holder and administrator is noteworthy. That is not to say that there would be no routes of legal redress to those harmed by those terms or the terms on which any sale might be conducted, including as to remuneration.
44. The second is *Duffy and Bell v NKJ Pension Trustees Limited* [2020] EWHC 1835 (Ch), another paragraph 71 case. In that case (as in this) the security to be realised would only meet part of the secured debt. The court made the paragraph 71 order, in which the court contemplated that what would constitute “the net proceeds of disposal of the property” for paragraph 71(3)(a) purposes could be a matter for agreement between the parties, which merits a similar comment.

45. Both cases are also of interest in highlighting paragraph 71. On Mr Harty's case, this provides court sanction for an administrator to undertake a role which might otherwise give rise to a breach of fiduciary duty, absent creditor consent. However, neither paragraph 71, Rule 3.49 of the 2016 Rules nor the case law suggest that this is its purpose. Rule 3.49, for example, does not require notice of an application to be served on creditors (still less all of them). So far as I am able to ascertain from a brief review, the authorities on paragraph 71 applications do not address as a relevant factor the effect of granting the order on the administrator's fiduciary duties owed to the general creditors.
46. By contrast the paragraph 71 jurisdiction, and the cases discussing its exercise, note that the "normal right" of the charge-holder is to control the realisation of the assets held subject to the charge. For example Deputy ICC Judge Agnello KC in the recent decision of *Kennedy v Fonds Rusnano Capital SA* [2025] EWHC 112 (Ch), [73] noted that "the effect of orders made pursuant to paragraph 71 is that the holder of the relevant security will lose the ability to realise the security itself as and when it would normally be entitled to do so." Clearly a court order vesting the power of sale with an administrator rather than leaving the charge-holder to appoint a receiver, or agreement in lieu of such an order, will reduce the paramountcy of the security-holder's interests (as the passage from *Goode* makes clear). But a clear statutory basis would ordinarily be expected for a curtailment of those normal rights. A similar sentiment is expressed by Knox J in *Re ARV Aviation Ltd* (1988) 4 BCC 708 when addressing a predecessor provision, s.15 of the 1986 Act. At p.712, when addressing an argument as to the scope of s.15(5), he rejected a possible interpretation because "it would be capricious to attribute to Parliament which, a priori would not be anxious to dilute the rights and security of a secured creditor".

Part 18 of the 2016 Rules

47. Part 18 of the 2016 Rules concerns "reporting and remuneration of office-holders". It imposes various duties on office-holders in administrations, windings-up (i.e. liquidators) and bankruptcy (trustee's in bankruptcy).
48. Before turning to the terms of Part 18, it is helpful to consider some other provisions of the Rules and the 1986 Act which are of assistance in interpreting it.
49. First, the following provisions of Part 3, Chapter 10 addressing the expenses of the administration:
 - i) Rule 3.50 provides that "all fees, costs, charges and other expenses incurred in the course of the administration are to be treated as expenses of the administration" and that "the expenses associated with the prescribed part must be paid out of the prescribed part". Rule 1.2 ascribes the same meaning to "prescribed part" as in s.176A(2)(a) of the 1986 Act. Its effect is that where there is a floating charge over a company's assets, a "prescribed part" of the assets thus caught are to be made available to general creditors (that part being prescribed by delegated legislation (the Insolvency Act 1986 (Prescribed Part) Order 2003/2097)).
 - ii) The terms of Rule 3.50 support the view that it is concerned with amounts being met from assets which form part of the administration (i.e. "the company's pot"), with expenses concerning a sub-set of those assets ("the prescribed part") being met from the prescribed part. Those provisions support the view that the focus of

the 2016 Rules so far as administrator's fees and expenses are concerned is from assets within the administrative process. i.e. free assets and floating charge assets.

- iii) Rule 3.51 sets out the priority order of expenses of the administration. The editors of *Sealy & Millman: Annotated Guide to Insolvency Legislation 2025* observe in their commentary on this rule, "the priority rule does not apply to payment of expenses out of assets which do not form part of the company's property but which, e.g. were forwarded to the company for an agreed specific purpose (such as payment of administrators' remuneration)." It will be apparent that the example given (drawn from *Re MKA Airlines Ltd (in liquidation)* [2018] WHC 540 Ch))) is simply that, not an exhaustive statement of the position. Assets held subject to a fixed charge do not "form part of the company's property".

50. Second, paragraph 99 of Schedule B1 to the 1986 Act addressing "the former administrator's remuneration and expenses" (a provision, as was explained to me, of wider significance than might first appear to the uninitiated, on the basis that an administrator's right to remuneration strictly arises at the end of the administration when they have become a "former administrator", albeit the practical inconvenience of such an arrangement is mitigated by the facility of payments on account). Consistent with the asset-based focus of the broad structure of English insolvency law (see [17]-[22]) and the provisions considered in the preceding paragraph, paragraph 99(3) provides:

"The former administrator's remuneration and expenses shall be-

- (a) charged on and payable out of property of which he had custody or control immediately before cessation; and
- (b) payable in priority to any security to which paragraph 70 applies."

51. Paragraph 70 grants to the administrator an equivalent power of sale in respect of assets subject to a floating charge as can be ordered by the Court under paragraph 71 in relation to fixed charge assets. The absence in paragraph 99(3) of any reference to paragraph 71 reflects the overriding point that the regulation of administrator remuneration under the Rules is not concerned with remuneration for realising assets subject to a fixed charge and paid from that source. *Sealy and Milman* state in their commentary on paragraph 99:

"Remuneration and expenses can be paid under para.99(3) only out of property that is beneficially owned by the company, and not property held by it on trust for others (except to the extent that remuneration and expenses are incurred in relation to trust property and for the benefit of trust beneficiaries)"

(citing *Gillan v HEC Enterprises Ltd* [2016] EWHC 3179 (Ch), where this point is made at [29]). That case considers the circumstances in which an administrator may come to assume the role of trustee in relation to trust assets held by the company, by orders made under the inherent jurisdiction of the court. The fixing of the administrator's remuneration in such cases was not, so far as I have been able to ascertain, conducted under the Part 18 procedure but by the court (see for example *Gillan*, [117]).

52. These provisions, together with the general structure of English insolvency law, evidence an important distinction so far as administrator remuneration is concerned between amounts paid from the company's assets (as statutorily enlarged in relation to floating

charge assets) and those held by the company beneficially for others (including, for this purpose, those held under fixed charges, any equity of redemption notwithstanding).

53. This structure is replicated in the provisions addressing liquidators' remuneration and expenses in a winding-up (Rule 7.108 in Part 6) and the trustee's remuneration in bankruptcy (Rules 10.48 to 10.49 of Part 10). This is significant because Part 18 sets out a scheme applicable to all three classes of office-holder.
54. In circumstances in which the 2016 Rules define where the remuneration and expenses of office-holders falling within their ambit are to be paid from, that provides a strong indication that the references to remuneration in Part 18 are concerned with remuneration from those sources. It would be rather surprising, and take clear language, if the Rules in Part 18 were to regulate the remuneration and expenses relating to the realising of assets which do not form part of the insolvency process and which the Rules do not identify as a source from which the relevant remuneration of the office-holder is to be paid.

Part 18

55. Finally, I turn to Part 18, "Reporting and Remuneration of Office-holders" (viz the three types of office-holder I have already referred to). Rule 18.3 provides for the provision of progress reports which, by Rule 18.4, are to contain "the basis fixed for the remuneration of the office-holder under Rules 18.16 and 18.18 to 18.21 as applicable."
56. Rule 18.16 provides that remuneration must be on one of three stipulated basis or a combination thereof: a percentage of the value of property dealt with; or of property recovered; or by reference to time spent; or a set-amount. It precludes the choice of some other measure, and to that extent, if applicable to the realisation by the administrator of property subject to a fixed charge, would constrain the security-holder's choice.
57. While it is fair to say that the options available seem fairly comprehensive, they may not include an hourly rate with a costs cap (*Re Pudsey Seel Services Ltd* [2015] BPIR 1459), so if Rule 18.16 applies to the administrator's remuneration for realising property subject to a fixed charge, this will involve some restriction of the security-holder's "normal rights". In any event, there is ample room for disagreement as to which of the three alternatives or any combination thereof is most likely to optimise the net price obtained, in circumstances in which a significant influence as the basis to be adopted would be one of the "normal rights" of a security-holder.
58. *Sealy & Milman* comment on Rule 18.16:

"An office-holder may, in an appropriate case, also be paid remuneration and allowed expenses for work done in relation to property which does not form part of the assets in the insolvency procedure, for instance property held by the company on trust or property subject to a fixed or floating charge, where the chargee has not appointed a receiver"

(referring, inter alia, to *Re Berkeley Applegate (Investment Consultants) Ltd (No 3)* and *Gillan v HEC Enterprises Ltd* [2016] EWHC 3179 (Ch).

59. Rule 18.17 addresses remuneration of joint-office holders. For present purposes, it suffices to note that where the joint office-holders disagree as to the appropriate

apportionment between them, the matter may be referred “to the committee” (viz the creditor’s committee); to the creditors (by a decision procedure) or, so far as relevant, “the court”. A wholly secured creditor is not permitted to be a member of a creditor’s committee (Rule 17.4(2)(b)) and its vote has no weight in a decision procedure (Rule 15.31(4)). A partially secured creditor’s vote counts to the extent of any unsecured amount only (Rule 15.31(5)).

60. Rule 18.18 is an important provision and merits setting out in full.

“(1) This rule applies to the determination of the officer-holder's remuneration in an administration.

(2) It is for the committee to determine the basis of remuneration.

(3) If the committee fails to determine the basis of the remuneration or there is no committee then the basis of remuneration must be fixed by a decision of the creditors by a decision procedure except in a case under paragraph (4).

(4) Where the administrator has made a statement under paragraph 52(1)(b) of Schedule B1 that there are insufficient funds for distribution to unsecured creditors other than out of the prescribed part and either there is no committee, or the committee fails to determine the basis of remuneration, the basis of the administrator's remuneration may be fixed by—

(a) the consent of each of the secured creditors; or

(b) if the administrator has made or intends to make a distribution to preferential creditors—

(i) the consent of each of the secured creditors, and

(ii) a decision of the preferential creditors in a decision procedure.”

61. On Mr Harty’s case, this rule applies to the determination of the basis of the administrator’s remuneration for realising security subject to a fixed charge (either with the security-holder’s consent or following a paragraph 71 order). It must follow, on that case, that this is so even if there is no prospect of a surplus after the secured debts are satisfied (so that the secured creditor is bearing all of the realisation risk); or only a minimal surplus on an optimistic disposal, with the security-holder carrying by far the greater realisation risk (e.g. where the asset is estimated to achieve between £8m and £10.5m and the amount of the secured debt is £10m).

62. The decision-making structure under Rules 18.17 and 18.18 is, in my view, fundamentally inconsistent with Mr Harty’s case that it governs an administrator’s remuneration for realising assets held under a fixed charge to be paid from the proceeds of sale of assets subject to that charge. In circumstances in which there will be some form of distribution to unsecured creditors, the security-holder is excluded from any decision as to the basis of remuneration, even though this a normal right of such a security-holder, and the economic risk of the final amount realised may principally be borne by the security-holder. It also shuts the security-holder out from seeking what it believes to be

the preferred basis of remuneration (which might have implications for the timing of any sale as well as the net proceeds).

63. Mr Harty's answer to this was to point to Rule 18.18(4). This provision, which has no counterpart in Rule 18.17 in any event, applies where there will be no distribution in any amount to unsecured creditors other than from the "prescribed part" (i.e. from assets subject to a floating charge) and there either is no creditors' committee (as may well, but not necessarily, be the case) or the committee has failed agree the basis of remuneration. That presupposes:
- i) The fixed security-holder is fully-secured.
 - ii) There is some security for the floating charge-holder.
 - iii) There are no "free assets".
64. While on Mr Harty's case, the fixed security-holder will have a voice in fixing the basis of the administrator's remuneration in this scenario (provided that there is no creditors' committee which itself determines the basis of remuneration), each floating-chargee will have an equal voice, even in a case where the potential surplus above the secured debt is small, and the risks of realisation may be principally borne by the holder of the fixed security (cf. the example above). Where the surplus above the debts secured by the fixed charge will involve payment to preferred creditors, the influence of the fixed charge-holder is further diluted by the need for the support of the preferred creditors in a decision-committee.
65. In reply, Mr Harty skilfully deployed scenarios which, he said, showed that the provision worked in a sensible fashion on his construction of Part 18. I was not ultimately persuaded that even his examples sufficiently justified the degree of attenuation of the security-holders' rights. However, even if there are instances when Rule 18.18 might operate sensibly on the Appellants' construction, in my view a surer guide to the intended operation of Part 18 is the immediate impression the decision-making process in Part 18 gives. That strongly suggests that the remuneration being addressed in Rule 18.18(2) is that which will be paid from the company's assets without the benefit of the prescribed part, and Rule 18.18(4) remuneration which would fall to be paid from the prescribed part, at which point the floating charge-holders whose economic interests are engaged come to the fore.
66. I would also note that if similar issues arose in relation to liquidators in a winding-up or a trustee in bankruptcy (i.e. as to their remuneration for realising property subject to a fixed-charge), there is no equivalent to Rule 18.18(4) in Rules 18.20 and 18.21.
67. Under Rule 18.23, if the basis of an administrator's remuneration is not fixed by Rules 18 to 20, the administrator must apply to the court for it to be fixed. Rule 18.24 allows an administrator who considers the rate or amount of remuneration to be insufficient or the basis fixed to be inappropriate to request an increase from "the creditors" (Rules 18.25 to 18.27) or the court (Rule 18.28). These provisions raise similar issues in relation to the decision whether or not to approve an increase or change of basis as were addressed in connection with Rule 18.18, as does the review provision (Rule 18.29); the provision for drawing in excess of an estimate (Rule 18.30) and the provision regulating the apportionment of set fees (Rule 18.32).

68. That brings us to Rule 18.34 which provides:

“18.34.— Remuneration and expenses: application to court by a creditor or member on grounds that remuneration or expenses are excessive

- (1) This rule applies to an application in an administration, a winding-up or a bankruptcy made by a person mentioned in paragraph (2) on the grounds that—
 - (a) the remuneration charged by the office-holder is in all the circumstances excessive;
 - (b) the basis fixed for the office-holder's remuneration under rules 18.16, 18.18, 18.19, 18.20 and 18.21 (as applicable) is inappropriate; or
 - (c) the expenses incurred by the office-holder are in all the circumstances excessive.
- (2) The following may make such an application for one or more of the orders set out in rule 18.36 or 18.37 as applicable—
 - (a) a secured creditor,
 - (b) an unsecured creditor with either—
 - (i) the concurrence of at least 10% in value of the unsecured creditors (including that creditor), or
 - (ii) the permission of the court, or
 - (c) in a members' voluntary winding up—
 - (i) members of the company with at least 10% of the total voting rights of all the members having the right to vote at general meetings of the company, or
 - (ii) a member of the company with the permission of the court.
- (3) The application by a creditor or member must be made no later than eight weeks after receipt by the applicant of the progress report under rule 18.3, or final report or account under rule 18.14 which first reports the charging of the remuneration or the incurring of the expenses in question (“the relevant report”).”

69. Against the legal framework and statutory background I have set out, in my view the Judge was clearly correct to conclude that the “remuneration” with which Rule 18.34 is concerned is that payable to the administrator in respect of the administration assets as part of the insolvency process, from the company’s assets as statutorily enlarged by the assets which are subject to a floating charge. This provides a much better fit with the

structure of English insolvency law so far as relevant to this application, the scheme of the 2016 Rules more generally, and the specific operation of Part 18. In respect of all of the provisions of Part 18 which Mr Harty contends curtail the security-holder's natural rights in relation to the realisation of assets subject to a fixed-charge, I would look for some positive language that this was intended. Not only is there none, but Part 18 would work in a wholly surprising and uncommercial way if Mr Harty's construction was right.

70. I should deal briefly with the textual support which Mr Harty says he does get from Rule 18.34:

- i) I am not persuaded, as Mr Harty submitted, that this issue turns on the ordinary meaning of the word "remuneration", such that anything in the nature of remuneration received by the administrator falls within the court's Rule 18.34 power. While Mr Harty can point to Rule 18.38 in which the same word (remuneration) is used to describe amounts received by liquidators and trustees in realising fixed assets for the benefit of the security holder, that provides a very weak indication that the use of the word elsewhere in Part 18 is intended to include such remuneration. I return to Rule 18.38 below.
- ii) The reference to the fact that a secured creditor may make a Rule 18.34 application (Rule 18.34(2)(a)). However, that reflects the role of a secured creditor under a floating charge whose assets do form part of the company's fund as statutorily extended.
- iii) By contrast, I see at least some force in Mr Weaver KC's argument by reference to Rule 18.36(4). This sets out the orders which the court "must make" if it concludes that the Rule 18.34 challenge is established, one of the four alternatives being "an order that some or all of the remuneration or expenses in question is not to be treated as expenses of the administration". That provision could never operate so far as remuneration for realising fixed charge assets is concerned, although I accept it might be said that Rule 18.36(4) is a portmanteau provision catering for a number of different alternatives, and it is not necessarily the case that each potential order is capable of being made in each case in which Rule 18.36 is applicable. The same point can be made about Rule 18.37(4)(c).
- iv) A similar point can also be made in relation to Rules 18.36(6) and 18.37(6), which provide that "unless the court orders otherwise, the costs of the application must be paid by the applicant, and are not payable as an expense of the administration". I have struggled to identify circumstances in which an order that the costs be paid as an expense of the administration could ever be appropriate if the application was brought by the fixed-charge holder to complain about costs incurred in realising the assets which are subject to that charge.

71. Finally, there is Rule 18.38, which offered something for both sides, but rather more for Mr Weaver KC. It provides:

- "(1) A liquidator or trustee [an administrator is not mentioned] who realises assets on behalf of a secured creditor is entitled to such sum by way of remuneration as is arrived at as follows, unless the liquidator or trustee has agreed otherwise with the secured creditor—

- (a) in a winding up—
 - (i) where the assets are subject to a charge which when created was a mortgage or a fixed charge, such sum as is arrived at by applying the realisation scale in Schedule 11 to the monies received in respect of the assets realised (including any sums received in respect of Value Added Tax on them but after deducting any sums spent out of money received in carrying on the business of the company),
 - (ii) where the assets are subject to a charge which when created was a floating charge such sum as is arrived at by—
 - (aa) first applying the realisation scale in Schedule 11 to monies received by the liquidator from the realisation of the assets (including any Value Added Tax on the realisation but ignoring any sums received which are spent in carrying on the business of the company),
 - (bb) then by adding to the sum arrived at under sub-paragraph (a)(ii)(aa) such sum as is arrived at by applying the distribution scale in Schedule 11 to the value of the assets distributed to the holder of the charge and payments made in respect of preferential debts; or
 - (b) in a bankruptcy such sum as is arrived at by applying the realisation scale in Schedule 11 to the monies received in respect of the assets realised (including any Value Added Tax on them).
- (2) The sum to which the liquidator or trustee is entitled must be taken out of the proceeds of the realisation.”
72. The opening words, with the reference to a liquidator or trustee realising security “on behalf of a secured creditor”, and excluding the application of Rule 18.38 from cases where the office-holder and secured creditor have agreed some alternative, reinforces my view that Part 18 is not to be interpreted on the basis that remuneration for office-holders who have agreed contractual rates with fixed-charge holders for realising their security falls within provisions such as Rules 18.16 to 18.37.
73. In addition, I agree with Mr Weaver KC that where there is no such agreement, Rule 18.38 contemplates the application of Schedule 11 rates, not the operation of the Part 18 procedure for fixing by the creditors’ committee, a right to seek increases and decreases etc. While Mr Harty suggested that the Schedule 11 rates ought to be capable of being displaced by applications under the earlier rules of Part 18 (with the liquidator or trustee being entitled to apply to under Rule 18.24 and the general creditors being entitled to seek a reduction under Rule 18.34), that would appear to be inconsistent with the terms of Rule 18.38, and with the deployment of Schedule 11 as “remuneration of last resort” in Rule 18.22.
74. Mr Harty suggests that the use of the word remuneration in Rule 18.38 to refer to sums incurred in realising security which does not form part of the company’s fund as

statutorily enhanced suggests that the word “remuneration” has the same meaning elsewhere in Part 18. However, that argument proves too much. “Remuneration” in Rule 18.38 is limited to sums coming out of the assets realised (Rule 18.38(2)) and does not, for example, involve applying Schedule 11 rates to Rule 18.16 remuneration. Mr Harty does not suggest that limited meaning carries over to the rest of Part 18. In each case, the issue of what remuneration means depends on the context in which it appears.

Arguments from consequence

75. Mr Harty sought to support his contention by various arguments as to the consequences of the rival constructions. I address the issue of what other means there are to complain about the fees and expenses Mr Ridgley has charged below, but for present purposes I should note that Mr Harty does not complain Rule 18.34 is the only available route, albeit he submits that it is the superior and most obvious route.
76. Mr Harty submits that unless he is right about the ambit of Rule 18.34, there may be cases in which the only persons with an economic interest in the amount of the administrator’s remuneration are the general creditors under the equity of redemption or to avoid dilution, but that they would have no ability to complain under Rule 18.34. In my view, there are the following answers to this point:
 - i) As already referred to, it is not suggested that there are no other means of complaints being brought by those with a proper interest in them.
 - ii) As discussed at [49]-[67], Mr Harty’s construction would give the general creditors rights of control in relation to the remuneration where they had no economic interest in this matter, and deprive the security holder of control when it did have such an interest. I find that the more unlikely outcome.
77. It is also said that Mr Weaver KC’s construction might require different routes to be taken by the general creditors to challenge an administrator’s fees depending on whether they were fees relating to the administration of the “company pot” (under Rule 18.34) or where it was said that the administrator’s fees in realising assets outside that pot impaired the equity in redemption or “diluted” the distribution. However, that reflects the very different nature of the issues:
 - i) The general creditors have a direct interest in the company pot, which is held by the administrator for their benefit.
 - ii) By contrast, the interest in assets subject to a fixed charge is contingent on a surplus of realisable value over the debt secured by the fixed charge. There may (as in this case) be no such surplus.
 - iii) It is the secured creditor under the fixed charge who has the primary rights in relation to the realisation of the fixed charge assets, and the basis on which the administrator should be remunerated for realising it.
 - iv) Mr Harty accepts that a complaint by the general creditors that the equity in redemption had been damaged by poor marketing efforts or a sale at an undervalue would have to be subject to some other form of procedure. However, the suggestion that the net proceeds of realisation has also been reduced by excessive charges and

expenses has more in common with that complaint (in that both concern the same duties by the administrator to the holders of the equity of redemption and involve prejudice to the same interest) than a complaint about the remuneration received by the administrator for its handling of the company's fund.

78. It is said that if the amounts received by the administrator from the proceeds of sale of assets subject to a fixed charge fall outside Part 18, the general creditors are deprived of the information they would obtain about such remuneration under Rule 18.3(1)(f) and 18.4. As those rules expressly require disclosure of "the basis fixed for remuneration of the office-holder under rules 18.16 and 18.18" I accept that this complaint may be true of those particular provisions. However, it is far from the case that there are no means by which the general creditors can obtain information about fixed charge remuneration (or, indeed, the fixed charge sale price or *Berkeley Applegate* remuneration). Mr Weaver KC pointed to Rule 18.3(1) which provides for the administrator to report on details of payments and receipts and, more pertinently, Rule 18.3(1)(i) which provides for disclosure of "any other information of relevance to the creditors". The administrator will also have disclosure obligations under Statement of Insolvency Practice 9.
79. Finally, it might be thought that a logical consequence of Mr Harty's construction would be that *Berkeley Applegate* remuneration would be subject to the Part 18 procedure, including Rule 18.34 (although Mr Harty disputed this, saying as such remuneration was authorised under the court's inherent jurisdiction it did not fall within Part 18). I can understand why Mr Harty made that concession:
- i) The contrary argument would involve the application of Part 18 even though that jurisdiction can arise in cases in which the general creditors have no equity in redemption in relation to the assets in respect of which remuneration is sought (or any possible economic interest).
 - ii) The authorities on *Berkeley Applegate* remuneration offer no hint of Part 18's application and it is wholly unclear how the provisions in Part relating to rights to seek an increase in remuneration or reduce the amount to be paid could apply to remuneration fixed by the court or agreed with the owners of the relevant assets.
80. However, that necessary concession has obvious implications for Mr Harty's argument. First, it necessarily entails that the references to "remuneration" in Part 18 do not encompass all claims by an administrator to remuneration for work done in the course of or in connection with the administration. Second, it involves a distinction in relation to the application of Part 18 by reference to the legal source of the right to remuneration.

Conclusion

81. For these reasons, I agree with the decision of the Judge that the Appellants cannot challenge the amounts paid to Mr Ridgley by way of remuneration and expenses for the realisation of the Land under Rule 18.34.

Ground 2

82. It is not surprising, given the facts and circumstances of Mr Ridgley's remuneration as outlined above, that Mr Weaver KC was at pains to point out that he was not submitting that there were no means by which someone with appropriate locus could challenge the

amount of that remuneration. The Judge identified four possible means in his judgment at [83]-[90]: under paragraph 74 and 75 of Schedule B1 to the 1986 Act; under the court's inherent jurisdiction and under the principle in *Ex Parte James* (1874) LR 9 Ch App 609. To these might be added the possibility of conventional private law claims for breach of duty by the secured creditors against the Security Trustee, or, depending on the facts, some species of accessory liability against Mr Ridgley himself although of course those would be inherently more complex claims than simply "you paid (were paid) too much".

83. The Appellants ask the court, if it rejects the Rule 18.34 argument, to reduce Mr Ridgley's remuneration by way of an order under its inherent jurisdiction. However, relief of this kind was not sought from the Judge, who accordingly made no ruling upon it. The Judge noted (at [89]) that some of the alternative means of challenging the remuneration might raise "different issues of substance from those raised on the application", and that the relevant issues had not been explored on the applications before him. While the Appellants did obtain permission to appeal on Ground 2, I am not persuaded that this enables them to run on appeal for the first time a case which was not advanced before the Judge and on which he made no findings.
84. I accept that there are cases which lend support to the view that, where there is an obvious lacuna in the 2016 Rules in relation to who has standing to seek a particular form of relief available under those rules, the court may be willing to grant similar relief under its inherent jurisdiction. I was referred to *Re Hotel Company 42 The Calls Limited* [2013] EWHC 3925, where HHJ Purle QC indicated support for the view that a member of a company in administration might seek similar relief to that available from a creditor in terms of challenging an administrator's remuneration.
85. The argument that a similar jurisdiction can be exercised in relation to an administrator's remuneration for realising assets which did not form part of the company's "pot", and where there is no realistic equity of redemption or prospect of dilution, appears to me to be a more challenging one, because my conclusion on the ambit of Part 18 reflects a fundamental divide between the company's assets (as statutorily enlarged) and those of third parties. Where there has been extensive statutory regulation of an area over which the court has an inherent supervisory jurisdiction, the extent to which the latter can be used to provide relief not available under the former is a complex one (see for example *Harrison v Tew* [1990] 2 AC 523). I received very little argument on this issue, which is a further difficulty of the attempt to raise the issue for the first time on appeal.
86. In these circumstances, I dismiss Ground 2 on the basis that the point is not properly open on an appeal from the Judge's judgment, without expressing a final view on its merits.

Ground 3

87. In view of my conclusions on Grounds 1 and 2, Ground 3 does not arise. In any event, it would not have been determinative if, as Mr Weaver KC realistically accepted, an application to join OAT to the Rule 18.34 application would succeed if an otherwise viable Rule 18.34 application was available.

Conclusion

88. For these reasons, which are substantially the same as those given by the Judge in his learned and careful judgment, the appeal is dismissed. I have only set out my reasons at such length to do justice to the high quality of argument I received from both sides.