



Neutral Citation Number: [2026] EWHC 639 (Ch)

Case No: CR-2024-001426

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

IN THE MATTER OF GREENSILL CAPITAL (UK) LIMITED
AND IN THE MATTER OF GREENSILL LIMITED
AND IN THE MATTER OF THE COMPANY DIRECTORS DISQUALIFICATION
ACT 1986

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

Date: 18 March 2026

Before :

MR JUSTICE TROWER

Between :

**THE SECRETARY OF STATE FOR BUSINESS
AND TRADE**

Claimant

- and -

ALEXANDER DAVID GREENSILL

Defendant

**David Mohyuddin KC, Carly Sandbach and Isabel Petrie (instructed by Howes Percival
LLP) for the Claimant**
Ian Winter KC and Hilary Stonefrost (instructed by Ellerman Limited) for the Defendant

Hearing dates: 4-5 March 2026

APPROVED JUDGMENT

Mr Justice Trower :

Introduction

1. On 18 November 2025, the Defendant (“Mr Greensill”) issued an application notice seeking an order striking out proceedings brought against him under section 6 of the Company Directors Disqualification Act 1986 (the “CDDA”), by the Secretary of State for Business and Trade (the “SoS”). In the alternative, he sought an order for reverse summary judgment. The proceedings were issued in March 2024, and a 6-week trial is listed to commence on 8 June 2026.
2. A number of provisions of the CDDA were referred to in the parties’ arguments. For ease of reference, they are set out in an Appendix to this judgment. Where a section or Schedule is referred to in this judgment, it is a reference to a section number or Schedule of the CDDA unless the contrary appears.
3. The proceedings arise out of the insolvencies of two English companies Greensill Capital UK Limited (“GCUK”) and its subsidiary, an SPV called Greensill Limited (“GL”). GCUK and GL were both part of the group of which an Australian company, Greensill Capital Pty Limited (“GCPTY”), is the parent. In this judgment, I shall refer to these three members of the Greensill group as the “Companies”. GCUK went into administration on 8 March 2021. GL is now in liquidation in England. GCPTY is now in liquidation in Australia.
4. Mr Greensill was a director of the Companies. The claim is made on the grounds that the SoS has received information from which it appeared to her that it is expedient, in the public interest that a disqualification order under section 6 be made against Mr Greensill with regard to his conduct as a director of the Companies.
5. Mr Greensill’s strike out application is made on the basis that, as a matter of law:
 - i) the SoS must prove that the conduct alleged to make him unfit to be concerned in the management of a company is responsible for the causes of the relevant company becoming insolvent;
 - ii) the matters which are alleged by the SoS to make Mr Greensill unfit to act as a director are not matters that were causes of the Companies becoming insolvent; and
 - iii) the SoS has not adduced any evidence from which the court could conclude that they were.
6. As a further aspect of what Mr Greensill’s skeleton argument called the Connectivity Issue, it was said that the SoS has not put before the court any material such that, the court can ascertain the actual reasons for the insolvencies of the Companies. This means that the court cannot reach a decision as to the extent to which, if at all, the unfit conduct alleged against Mr Greensill by the SoS was responsible for the insolvencies.

7. Mr Greensill also alleged that the proceedings should be struck out, because the Insolvency Service (the “IS”) has failed to conduct a fair investigation of at least some of the matters which are said to determine Mr Greensill’s unfitness. This includes a failure to investigate and present the actual reasons for the insolvencies of the Companies and a failure to use compulsory powers to obtain information readily available from third parties, which would have refuted incorrect assertions of fact made or adopted by the SoS. This conduct was said to be seriously prejudicial to the Defendant.
8. Mr Greensill’s application notice also sought orders for disclosure. In the event, the parties reached an accommodation on the disclosure dispute. It is therefore unnecessary for me to say any more about those aspects of the application, although the manner in which some documentation has and has not been disclosed to Mr Greensill bears on one of his arguments as to why there cannot now be a fair trial.
9. As I explained in a judgment, I delivered on 13 May 2025, dismissing Mr Greensill’s application for a stay of one of the issues raised by the SoS pending final judgment in proceedings in Australia ([2025] EWHC 1380 (Ch) (the “May 2025 Judgment”)), GCUK was engaged in the business of extending discounted credit to its customers in return for the assignment of receivables payable by the customers’ debtors. This was called accounts receivable financing. GCUK also extended credit, again at a discount to face value, pursuant to an alternative structure called supply chain financing. This involved advances to the customer to enable it to pay unpaid invoices from its own suppliers.
10. GCUK’s business was funded in part by advances made by Greensill Bank AG (“GBAG”), a German company which was another subsidiary of GCPTY, and in part by debt issues structured as a form of securitisation pursuant to which the receivables and their related rights were assigned to a Luxembourg note-issuing securitisation vehicle. The notes were then acquired by third party investors, many of whom invested through Credit Suisse Virtuoso SICAV-SIF (“Virtuoso”) and its sub-fund, managed by Credit Suisse Asset Management (Switzerland) AG (together “Credit Suisse”).
11. The notes were what has been described in the evidence as credit enhanced by insurance underwritten by Insurance Australia Ltd through its authorised representative, BCC Trade Credit Pty Ltd (“BCC”). Virtuoso and other entities with an interest under the Notes were known as a loss payees under the policies. Many but not all of the notes are in default and claims have now been made against the insurers in New South Wales by GBAG, Virtuoso and one other loss payee.

The Allegations made by the SoS

12. The SoS’s statement of matters determining unfitness are set out in paragraphs 10 to 46 of a lengthy re-affirmed affirmation made on 19 December 2024, in accordance with Rule 3(3) of the Insolvent Companies (Disqualification of

Unfit Directors) Proceedings Rules 1987. The deponent was Mr Ian Wilson, a Chief Investigator in the Insolvent Investigations Directorate of the IS.

13. In his affirmation (“Wilson1”), Mr Wilson alleged three broad areas of misconduct (the “Allegations”). The remainder of Wilson1 (together with Mr Wilson’s third affirmation in response to Mr Greensill’s own evidence) contains several hundred pages of evidence said by the SoS to substantiate these three categories of Allegation. Very brief summaries of the Allegations are as follows:
- i) The “Katterra Allegations”: These related to members of a US-based construction group called Katterra. In the period November and December 2020, Mr Greensill caused the Companies to enter into transactions with companies from the SoftBank Group (“SoftBank”), a multinational investment holding company, to the detriment of investors in the Katterra Notes programme. It was said that Mr Greensill caused or allowed GCUK to apply the sum of \$440m received in November 2020 otherwise than for the redemption of the Katterra Notes, causing the noteholders losses in excess of that amount.
 - ii) The “Catfoss Allegations”: From September 2018 and onwards, Mr Greensill made or caused GCUK to make a series of dishonest misrepresentations and non-disclosures to trade credit insurers providing cover in respect of finance provided by GCUK to Catfoss Renewables Ltd and Catfoss DBT Ltd (together “Catfoss”). This exposed GCUK and its investors to the risk that the existing policies would be avoided and that the insurers would refuse to provide further cover which would not be replaceable from elsewhere. These risks have eventuated in that the insurers have refused to pay, declining to accept claims for approximately US\$4.6 billion of losses incurred by investors in GCUK’s products.
 - iii) The “Insurance non-disclosure Allegations”: From August 2020 and onwards, Mr Greensill made a series of misrepresentations and non-disclosures to the boards of GCUK and GCpty in respect of the status of the trade credit insurance, including that the insurers were investigating policies and endorsements with a value of over US\$11.5 billion, had refused to acknowledge that they were on risk and that notice of non-renewal had been served. It was alleged that a consequence of this was that the boards of the Companies were unaware of these issues.
14. In paragraphs 17 and 37 of his second witness statement dated 18 November 2025, Mr Greensill’s solicitor, Mr Blake Woodfield, summarised his client’s principal complaint on the matters with which this application is concerned. He said that the SoS’s evidence was deficient because neither Mr Wilson’s affirmation nor its exhibits provided the evidence necessary for the court to consider the extent to which the conduct that is alleged to make Mr Greensill unfit to be concerned in the management of a company, was responsible for the causes of the Greensill group becoming insolvent. He then went on to assert that, because the SoS has failed to provide any or any adequate evidence that the unfit behaviour alleged against Mr Greensill was responsible for Greensill’s

insolvency, the claim as pleaded is ill-conceived and has no real prospects of success.

15. In his fourth witness statement dated 14 January 2026, Mr Morris Corker-Peacock, the solicitor with the conduct of the matter on behalf of the SoS responded to the complaint about the impact of Mr Greensill’s misconduct on the cause of the insolvencies of the Companies as follows:

“22. Causes of the Companies’ Insolvency. For the avoidance of doubt, the SoS’ claim is not mounted on the basis that Mr Greensill’s misconduct as alleged at Paragraphs 10 to 46 of Wilson1 was responsible for the causes of GL, GCUK, and/or GCPTy becoming insolvent, not least because it does not need to be.

23. I believe that this aspect of the SoS’ case is clear from Wilson1, because that specific charge is never made against Mr Greensill. Accordingly, in these proceedings Mr Greensill is not required to prove that his impugned conduct was not the cause of the Companies’ insolvencies. To be clear, though, the nature of Mr Greensill’s alleged misconduct is still such that – if made out on the balance of probabilities – it merits an upper-bracket disqualification.

24. In any event, Mr Woodfield’s statement at Woodfield2/§17 and Woodfield2/§37 is an inaccurate characterisation of Wilson1 and the exhibits thereto. Rather, Wilson1 and the accompanying exhibits do “provide the evidence necessary for the Court to consider the extent to which the conduct that is alleged to make Mr. Greensill unfit to be concerned in the management of a company was responsible for the causes of Greensill becoming insolvent so as to justify a disqualification order in the public interest”.

16. Mr Corker-Peacock then went on to identify those parts of Wilson1 which identified the factors that GCUK’s administrators regarded to be the causes of the failure of GCUK and the wider Greensill group, none of which refers to Mr Greensill’s conduct. He said that it was plain that this evidence does allow the court to consider the extent to which (if at all) Mr Greensill’s impugned conduct was responsible for the causes of the Companies’ insolvencies. It followed from this that the real nub of Mr Woodfield’s criticism of Wilson1 was not that it lacks evidence going to the “actual reasons for Greensill’s insolvency” but that it fails to show that Mr Greensill’s behaviour was responsible for Greensill’s insolvency. He said that this criticism was flawed because the CDDA contains no such requirement.

The Investigation by the IS and the SoS

17. In light of the way in which the application has been advanced on behalf of Mr Greensill, it is necessary to give a brief summary of the history of the investigation conducted by the IS in the period of three years between the time that GCUK and GL became insolvent and the commencement of these

proceedings. It is said that the way in which the Allegations were developed demonstrates that, although the IS initially considered that the SoS was required to prove that Mr Greensill was responsible for the causes of the insolvencies, the SoS then withdrew from that position for reasons that had nothing to do with a belief that there was no legal need to prove connectivity between Mr Greensill's conduct and the insolvencies.

18. On 29 April 2022, Mr Wilson wrote to Mr Greensill stating that the SoS had instructed the IS to investigate GCUK, GL and another group company by then in administration, Greensill Capital Management Company (UK) Ltd ("GCMC"), and the conduct of their directors. He said that this investigation was to enable recommendations to be made as to whether the SoS should commence proceedings under the CDDA.
19. On 4 May 2022, the IS informed Mr Greensill's solicitors that the investigation was in what was called a brief scoping phase and that the matters likely to be investigated were:
 - i) the general nature of GCUK's, GCMC's and GL's involvement in the marketing of receivables, the disclosure of risks to the eventual investors and any problems with the insurance protections;
 - ii) the controls in place to limit the risk of funding receivables, based on invoices which may not have been accurate, particularly in relation to the Gupta Family Group of companies ("GFG");
 - iii) the whole history of the Katerra participation agreements over receivables, directly related to GL, but also including the day-to-day involvement of GCUK and possibly GCMC;
 - iv) GCUK's accreditation for and issue of loans in relation to the Government-backed Coronavirus Business Interruption Loan Scheme ("CLBILS"); and
 - v) some matters of accounting, potentially including VAT.
20. At the same time, the IS also made clear that the scope of its investigation could alter at any stage especially in the initial months. Mr Greensill has asserted on this application that the only allegation that has survived to be made in these proceedings is that relating to the Katerra participation agreement. Even if that is correct, to describe any of the five identified matters as allegations rather than areas for investigation gives the wrong impression of the nature of the exercise at that stage.
21. The 4 May letter was followed up with a letter dated 29 June 2022, which asked eleven questions, including questions relating to CLBILs and GFG. This was then followed up by further rounds of questioning through to July 2023. In his skeleton argument for this application, Mr Greensill characterised these enquiries as including an investigation of him by the IS in relation to the causes of the insolvencies.

22. On 15 November 2023, Mr Wilson wrote to Mr Greensill (now only referring to GCUK and GL, but not GCMC) indicating that the IS intended to recommend to the SoS that disqualification proceedings be brought against him. This has been called the “pre-s.16 notice” and identified the three broad areas which still found the Allegations on which the SoS now relies.
23. In relation to each of three broad areas, it is said by Mr Greensill that the IS was alleging that his misconduct in relation to each of them had caused or contributed to the insolvencies of GCUK and GL. What was said to have been a causal link between Mr Greensill’s misconduct and the insolvencies is said to be as follows:
 - i) As to the Katterra Allegations, the IS alleged that the failure to satisfy the German banking regulator (“BaFin”) resulted in the closure of GBAG in March 2021, which “brought GCUK’s trading to a cessation with the result that the investor in the Katterra Notes programme sustained a loss of \$440 million”.
 - ii) As to the Catfoss Allegations, the IS alleged that Mr Greensill’s misrepresentations to the insurers invalidated “all insurance cover across the wider portfolio of GCUK facilities” as a result of which, the insurer declined to pay out on “multiple claims totalling \$4.8 billion”.
 - iii) As to the Insurance non-disclosure Allegations, the IS alleged that the failure of Mr Greensill to inform the boards of GCUK and GCpty of the likely non-renewal of insurance resulting in the insurers declining to pay out on “claims of \$2.19 billion relating to losses incurred by investors” prevented the directors from making informed decisions about the problem.
24. Mr Greensill was also notified that, if the SoS were to accept the recommendation that disqualification proceedings should be started, the SoS may also decide to seek a compensation order against him for the loss resulting from some or all the misconduct alleged. He was also informed that compensation orders are aimed at making directors financially accountable for the consequences of their unfit conduct and that the court can make a compensation order, if a director is subject to a disqualification order and the conduct for which he is disqualified has caused a quantifiable loss to one or more creditors of an insolvent company.
25. It was suggested in Mr Greensill’s skeleton argument that a compensation order may only be made by a court if it concludes that the defendant’s conduct has caused loss to one or more creditors of an insolvent company and it is satisfied that the defendant was responsible for the causes of the insolvency (i.e. that both requirements have to be satisfied). It was then said that it would not have been appropriate for the SoS to indicate that a compensation order might be sought unless an investigation had taken place into these issues.
26. It is said by Mr Greensill that two of the areas identified in the pre-s.16 notice (Catfoss DBT and the issues relating to the Insurance non-disclosure Allegations), had never previously featured as part of the investigation and Mr

Greensill had never been asked to comment on them. It was also said that the court should proceed on the basis that the GFG and CLBILS parts of the case, originally identified as a matter for investigation, were abandoned in November 2023 not because the SoS formed the view that it was not legally necessary to allege and prove connectivity between the Defendant's conduct and the insolvencies, but for other, political, reasons.

27. The evidence adduced on Mr Greensill's behalf from his solicitor, Mr Blake Woodfield, asserts that it is Mr Greensill's belief that, until the very last minute, the SoS was going to include allegations relating to CLBILS in the pre-s.16 notice. He suggests that those allegations would have been "undoubtedly closely connected to the insolvency of Companies", but that when they were excluded for political reasons, the IS "felt obliged to identify other allegations to include in these proceedings despite not having investigated them properly. Far from being to Mr Greensill's advantage, this has resulted in the SoS putting matters before the Court where the evidential picture is at best only partially complete, and at worst is wholly inadequate." This is a point to which I will return later in this judgment.
28. On 23 February 2024, some three months after the service of the pre-s.16 notice, the SoS served the Defendant notice of her intention to start legal proceedings in accordance with section 16(1) (the "s.16 notice"). Mr Greensill contended that the s.16 notice fundamentally altered the nature of the allegations made in the pre-s.16 Notice:
- i) In relation to the Katterra Allegation it was said that three new allegations were made which did not allege responsibility for the insolvencies. They amounted to a failure to exercise reasonable care (section 172 of the Companies Act 2006 ("CA 2006")) and a failure to promote the success of the companies (section 174 of CA 2006), but were a very long way from an allegation that the Defendant caused the insolvencies.
 - ii) In relation to the Catfoss Allegation it was said that the allegations that the misrepresentations invalidated all of the trade credit insurance policies and caused the insurers to decline to pay out on "multiple claims totalling \$4.8 billion" were abandoned. It was also said that new allegations were made about Catfoss DBT and breaches of sections 172 and 174 of CA 2006 that are a long way from an allegation that Mr Greensill caused the insolvencies.
 - iii) In relation to the Insurance non-disclosure Allegations it was said that any suggestion that the non-disclosure had caused the insolvency was abandoned and new allegations were made about breaches of sections 172 and 174 of CA 2006 that are a long way from an allegation that the Defendant caused the insolvencies.
29. The SoS does not accept that the s.16 notice fundamentally altered the nature of the allegations made in the pre-s.16 Notice. Having compared the two, I agree that is the case, anyway in the sense that both documents make essentially the same allegations in relation to essentially the same three areas of investigation. In my view to describe what was said in the s.16 notice as a fundamental

alteration of the nature of the allegations made in the pre-s.16 notice is a substantial exaggeration of what has occurred.

30. Mr David Mohyuddin KC for the SoS accepted, and indeed positively asserted, that nothing in the Allegations made in the section of Wilson1 which set out the statement of matters alleging unfitness (paragraphs 10 to 46), amounted to an allegation that Mr Greensill caused the insolvency. To that extent, the substance of what was alleged against him in the s.16 notice was the same. Of equal relevance, in the light of some of the complaints made by Mr Greensill, what Mr Corker-Peacock said in paragraph 22 of his witness statement almost two years after the s.16 notice and over a year after Wilson1 (which itself was a re-affirmation) was not new.
31. However, Mr Greensill submitted that the manner in which the SoS came to a position in which he abandoned what had previously been an allegation that misconduct by Mr Greensill caused the insolvencies, or was responsible for the causes of the insolvencies meant that there could not be a fair trial. This was an alternative basis on which the strike out application was advanced, and I will revert to it later in this judgment in that context. But it is said to set the scene for the primary ground for the strike out application, which was that the SoS's claim was bound to fail because he now made no allegation that the misconduct committed by Mr Greensill was responsible for the causes of the insolvency of the Companies.

Mr Greensill's submissions on the Connectivity Issue

32. The starting point for Mr Greensill's application was that, as a matter of law, where proceedings are brought under section 6, the SoS must prove that the director's conduct relied on as constituting unfitness, caused the insolvency. His skeleton argument made clear that, when the word "caused" was used in this context, it was to be treated as shorthand for "caused or was responsible for the causes of the company becoming insolvent". It was also said that causation as a matter of English law is not required, but there must be what Mr Ian Winter KC for Mr Greensill called "some, not trivial, some connectivity" between the alleged misconduct and the insolvency or the causes of the insolvency.
33. In support of this argument, it was contended that section 6(1A) requires that at least part of the conduct alleged to make a defendant unfit, must be in relation to any matter connected with or arising out of the insolvency. It was also submitted that section 12C requires that, in determining that a person is unfit and what the period of disqualification should be, the court must consider "the extent to which the person was responsible for the causes of a company becoming insolvent".
34. This focus on insolvency as the primary pre-requisite for the existence of the jurisdiction was said to be emphasised by the fact that section 6 is reserved for misconduct in relation to an insolvent company. He pointed out that section 6(1)(a) states, that the court shall make the order where "the court is satisfied (i) that the person is or has been a director of a company which has at any time

become insolvent”. It was also said that section 6(1)(b) then makes the secondary pre-requisite that it was the person’s conduct as a director of a company which is insolvent that makes him unfit.

35. In his argument, Mr Winter then contrasted these requirements to section 8 which applies generally to a person’s conduct as a director of the relevant company, whether or not it has become insolvent. He pointed out that section 8 makes no reference to insolvency in the sub-section that empowers the court to order disqualification and establishes a discretion to make such an order where “it is satisfied that the director or shadow director’s conduct “in relation to the company” makes him unfit”. He submitted that section 8 therefore covers any conduct of a director in relation to a company and is not limited to his conduct ‘qua director’ or when he is formally acting in that role. He said that it would cover disreputable conduct away from the board room as long as it is in relation to the company. He said that it did not matter whether the company in fact suffered harm as a result of the conduct.
36. This distinction between general conduct in relation to a company with which section 8 is concerned and conduct by a director *qua* director with which section 6 is concerned was said to make sense, because only that latter category of conduct might be responsible for the causes of the insolvency. This was the reason disqualification is mandatory under section 6 where the conduct must have caused the insolvency. Conduct in that context will be a more serious case than the conduct under section 8, with the consequence that disqualification is discretionary. It was also said to be why the compulsory powers in section 7(4) to obtain evidence is available for an application under section 6 but not for one under section 8.
37. It was also said that this aspect of the argument was supported by *Secretary of State for Trade and Industry v Baker* [1999] 1 BCLC 433 at 483, where Jonathan Parker J compared section 6 with section 8 and highlighted the significance which Parliament attached to the fact that the company in question has become insolvent. There are also many other examples of instances in which the court has stressed the fact that, the purpose of section 6 is to protect the public and potential creditors from losing money through companies becoming insolvent when directors of those companies are people unfit to be concerned in the management of a company: e.g., Dillon L.J. in *Re Sevenoaks Stationers (Retail) Ltd* [1991] Ch 164 at 176.
38. The conclusion which Mr Greensill invited the court to draw from these authorities was that the requirement in section 6 that the company has become insolvent is of core importance and is what differentiates the power under section 6 from that under section 8. It cannot have been intended that section 6 and section 8 should have identical scope, whilst at the same time making the disqualification under section 6 mandatory and with a minimum period. Likewise, he said that it could not have been intended that what he called the “more serious features” of section 6 should require there to have been an insolvency, whilst not intending that the conduct underpinning the exercise of the jurisdiction should have caused the insolvency.

39. It was then submitted that section 12C(1) and Schedule 1 paragraph 2 requires that the court, in determining unfitness and the period of disqualification, must have regard to the extent to which the person was responsible for the causes of a company becoming insolvent. This enquiry was not as to whether the defendant had caused the insolvency in any strict legal sense, but raised a different and broader question on the extent to which the director's failings were responsible for the causes of the insolvency. This was answered in the *Barings* case by the judge's analysis of, amongst other matters, the extent of the respective directors' responsibility for the ability of Nick Leeson to carry out his unauthorised activities; those activities being the proximate cause of the company's collapse.
40. It was further submitted that the exercise which the CDDA requires the court to carry out was summarised in a passage from the judgment of Chadwick LJ in an earlier interlocutory appeal in the *Barings* case (*Secretary of State for Trade and Industry v Baker (No 2)* [1999] 1 WLR 1985, 1933), where the issue arose on an application to stay the disqualification proceedings on the basis that they covered the same ground as SFA disciplinary proceedings thereby infringing the principle against double jeopardy:
- “The disqualification proceedings, therefore, will necessarily involve an investigation into the very matter which was held not to be relevant in the S.F.A. proceedings—namely, what responsibility did Mr. Baker have as a director of Baring Brothers & Co. Ltd., for the insolvency of Baring Brothers & Co. Ltd.”
41. It was said that similar statements of principle are to be found in the judgments in two other section 6 cases: Falk J in *Re Keeping Kids CO, Official Receiver v Batmanghelidjh* [2021] EWHC 175 (“*Keeping Kids*”) and HHJ McCahill in *Secretary of State for Trade and Industry v Golby* [2005] WL 40000742 at [37]. A citation from the latter was said to make the point about the significance of the insolvency:
- “Indeed, the extent of a director's responsibility for the causes of a company becoming insolvent is expressly made material by Part II of Schedule 1 to the Act. Moreover, even if the Court made a finding of misconduct against a director, the question would still remain whether, in all the circumstances, the Court should exercise its discretion to disqualify. This would inevitably involve a consideration of the extent of any loss or harm to which that misconduct gave rise. Such consequences are also relevant to the Court's assessment of the seriousness or relative seriousness of the conduct complained of and are important, not only in considering whether an order for disqualification should be made, but also in determining any appropriate period of any disqualification.”
42. One answer to this line of argument was advanced by Mr Mohyuddin in his skeleton, in which he said that there have been plenty of successful applications for disqualification orders where the proven misconduct cannot have been a cause of the relevant company's insolvency. He made specific reference by way of illustration to: *Re Swift 736 Limited, Secretary of State for Trade and Industry v Ettinger* [1993] BCLC 896, *Re Javazzi Limited, Secretary of State for*

Business, Energy and Industrial Strategy v Rajgor [2021] 2 BCLC 82, *Re Westmid Packing Services Limited (No 3)*, *Secretary of State for Trade and Industry v Griffiths* [1998] BCC 836 and *Secretary of State for Trade and Industry v Blunt* [2006] BCC 112.

43. However, in his oral submissions, Mr Mohyuddin accepted that relying on these cases for the proposition advanced in his skeleton argument was putting the point too high. In part this is because the question is the extent of the director's responsibility for the causes of the company's insolvency, not whether the conduct itself was a cause (anyway in any direct or proximate sense). For this reason it is not necessary for me to address them in any detail. It suffices to say that they are all cases in which the court was carrying out an assessment of the factors to which it is required to have regard when determining unfitness, without analysing the causes of insolvency in any detail. In each of these cases, the court concentrated on breaches and failings relating to matters other than the defendant's direct responsibility for the causes of the insolvency: the filing of accounts, the keeping of accounting records, ignorance of the company's true financial position and a post-insolvency failure to be truthful with an insolvency office-holder. For the most part, they said little if anything about the director's responsibility for the causes of the company's insolvency.
44. However, I accept Mr Winter's submission that they do not in themselves demonstrate that the court found unfitness where it is clear that there was no connection at all between the conduct and the insolvency. Thus in *Swift 736* and *Westmid* the court made findings of responsibility for other breaches which were capable of having a bearing on the defendant's responsibility for the causes of the company's insolvency, even though there was no specific reference to that factor. In *Blunt* the judge seems to have found that some responsibility for the causes of the insolvency was made out (see the reference to the relevant paragraph of Schedule 1 at [2006] BCC 112 at [22]), while in *Javazzi*, the position was clearer, because the judge ([2021] 2 BCLC 82 at [95]) made specific reference to the defendant being solely responsible for the causes of the company's insolvency, albeit most of the judgment was concerned with failures in relation to accounting records.
45. Mr Winter recognised that there is at least one case which is impossible to reconcile with the submission that proof of some level of responsibility for the causes of the company's insolvency is a jurisdictional pre-requisite to the making of a disqualification order. This was the decision of ICC Judge Jones in *Re Blue Coral Trading Ltd, Secretary of State for Business, Energy and Industrial Strategy v Tershana* [2018] EWHC 622 (Ch), a case in which there was no adversarial argument because the defendant did not appear. The breach of statutory duty relied on by the SoS arose out of the company's employment practices, which did not include sufficient immigration checks to satisfy the requirements of the Immigration, Asylum and Nationality Act 2006. ICC Judge Jones said the following at [12] and [13]:

“12. The second issue which arises is whether breach of the 2006 Act attributable to Mr Tershani's actions and/or omissions as a director can be a potential ground of misconduct. The purpose of the CDDA is not to enforce immigration law. Furthermore, breach of the 2006 Act will occur,

if the facts establish it, irrespective of the financial position of the company concerned. There need be no link between breach and the subsequent insolvency, albeit that such a link is identified in this claim.

13. The answer to that second issue is that it can. I accept the extremely helpful submissions of Ms Chorfi, Counsel for the Secretary of State, establishing that answer. The wording of section 6(b) of the CDDA only requires conduct amounting to unfitness to be established. This is not restricted, either expressly or by implication, to conduct which caused or is otherwise relevant to the insolvency. As Peter Gibson J said in *Re Bath Glass Ltd* (1988) 4 BCC 130:

“Any misconduct of the respondent qua director may be relevant, even if it does not fall within a specific section of the Companies Act or the Insolvency Act”.

46. Mr Winter submitted (a) that *Bath Glass* was not relevant because it had nothing to say about connectivity and (b) that Judge Jones in *Blue Coral* did not analyse why the immigration legislation was an applicable statute for the purposes of Schedule 1 to the CDDA. He therefore said that it was not an authority which assisted in the present case, quite apart from being one which I was not bound to follow and was not in any event the subject of adversarial argument. He submitted that this case was a very weak basis for the SoS to contend that an application under section 6 could be sustained, without proof of at least some non-trivial connection between the misconduct of the defendant and the insolvency of the relevant company.

Conclusions on the Connectivity Issue

47. I have reached the clear conclusion that there are no grounds to strike out the claim form and/or the statement of matters determining unfitness against Mr Greensill on the basis that the SoS does not seek to prove as a threshold issue that Mr Greensill had some non-trivial responsibility for the causes of the insolvencies of GCUK and GL. Nor do I consider that Mr Greensill is entitled to relief by way of summary judgment under CPR 24.3 on the basis that the SoS has no real prospect of succeeding on the claim and there is no other compelling reason why the case should be disposed of at trial.
48. In my judgment, to accept Mr Greensill’s case on the Connectivity Issue would be to distort the scheme of the legislation and to impose a restriction on the jurisdiction to make a disqualification order under section 6 which is not justified by its terms. There are a number of reasons for this.
49. The first reason is that I do not consider that the language of section 6 can be read as introducing a causal link of the kind suggested by Mr Winter. Section 6(1) sets out the matters of which the court has to be satisfied in order for it to have jurisdiction to make a disqualification order under that section. It identifies only two jurisdictional pre-conditions. The first is that the person concerned either is or has been a director of a company which has become insolvent

(section 6(1)(a)(i)), or has been a director of a company which has been dissolved without becoming insolvent (section 6(1)(a)(ii)). The second is that the person's conduct as a director makes them unfit to be concerned in the management of a company (section 6(1)(b)).

50. There is nothing spelt out in section 6(1) which makes it a pre-requisite to the exercise of the jurisdiction that the person's conduct must have been (anyway in part) responsible for the causes of the relevant company's insolvency. That concept only comes in at the later stage when the court is considering the defendant's conduct in the round and, in accordance with section 12C(4), is having regard to the extent of his responsibility as one, but only one, of the matters listed in Schedule 1 to be taken into account when determining unfitness.
51. Section 6(1)(a) and section 6(1)(b) are drafted as freestanding pre-conditions without prescribing any causal link between the status of the individual director with which section 6(1)(a) is concerned and his conduct which is dealt with in section 6(1)(b). Indeed the existence of section 6(1)(a)(ii), is inconsistent with Mr Greensill's argument. It obviously cannot be necessary for the SoS to establish in all cases that the person concerned has been responsible (in any sense) for the causes of the relevant company becoming insolvent if the subsection explicitly provides that an application can be made under section 6 where that has not happened because the company has been dissolved without becoming insolvent.
52. That would not be a complete answer if the threshold issue for which Mr Greensill contends is said to apply only where the requirements of section 6(1)(a)(i) are satisfied. But, if that were to be the case, it is to be expected that there would be some indication on the face of section 6 that the jurisdictional pre-requisites for sections 6(1)(a)(i) and 6(1)(a)(ii) were different. There is none.
53. It seems to me that this conclusion is also consistent with the fact that the subsection expressly contemplates that the company may only have become insolvent after the person was no longer a director – see the words in parentheses in both section 6(1)(a)(i) and section 6(1)(a)(ii). I accept that this is not a determinative consideration, but the fact that Parliament contemplated that the companies concerned may only have become insolvent some time after the person concerned ceased being a director weakens any argument that the jurisdiction nonetheless depends on a causal link between their conduct as a director and the insolvency. As a matter of language and structure the pre-conditions are free-standing and independent.
54. The second reason is that the emphasis given by Mr Greensill to section 6(1A) is in my view misplaced. Section 6(1A) recognises that not all section 6 cases involve the relevant company becoming insolvent, but then provides that, where it has, the relevant person's conduct as a director includes a particular category of conduct to be taken into account (i.e., that in relation to any matter connected with or arising out of the insolvency). It does not mandate that there must have been such conduct, nor does it supply a definition of what is conduct within the

meaning of section 6. It simply identifies what that conduct will include, where it occurs in cases in which a company has become insolvent.

55. However, it does not have anything to say about conduct amounting to some level of responsibility for the causes of the insolvency, save to the extent that a level of responsibility for a cause of the company becoming insolvent would presumably amount to a connection with the insolvency. It also describes a wider category of conduct which is inconsistent with Mr Greensill's argument, because it specifically refers to conduct "arising out of" the insolvency. This is wide enough to cover conduct occurring after the company has become insolvent and cannot therefore in itself be responsible for a cause of the insolvency.
56. In short, even recognising that the words "conduct in relation to any matter connected with ... the insolvency" in section 6(1A) encapsulates a level of responsibility for the causes of the company becoming insolvent, the language does not mandate proof that any such conduct occurred as a threshold for liability. It simply clarifies that, if and to the extent that it does occur, and whether it is of benefit to or detrimental to the interests of the insolvent estate, both pre- and post-insolvency conduct connected with or arising out of the insolvency is part of the conduct to be taken into account in determining whether a director is unfit. The fact that it does no more than that is also consistent with the language of sections 8(2B) and 12C(6) which provide for section 6(1A) to apply for the purposes of those sections as it applies for the purposes of section 6.
57. The third reason is that a comparison of the circumstances in which section 6 is engaged with those in which section 8 is engaged does not lead to the conclusion for which Mr Greensill contends. Although, there is no doubt that the circumstances are different, those differences do not support a conclusion that, while proof that the defendant had some responsibility for the causes of insolvency is not required for an application under section 8, it is a threshold issue for an application under section 6.
58. In light of the emphasis which Mr Winter placed in his submissions on the differences between section 6 and section 8, it is appropriate to summarise both those differences on the one hand and on the other hand the respects in which the legislation contemplates that the approach under the two sections is the same. As to the differences:
 - i) An application under section 6 requires the SoS to prove that the person against whom the order is sought to be made is or has been a director of a company which has become insolvent or been dissolved without becoming insolvent (section 6(1)(a)), while an application under section 8 only requires the SoS to prove that he has been a director of a company, without reference to the question of whether or not it has become insolvent (section 8(1)).
 - ii) On an application under section 6, the conduct which the court must be satisfied renders a person unfit must be conduct "as a director of" the company which has become insolvent or been dissolved without

becoming insolvent (section 6(1)(b)), while the relevant conduct for the purposes of section 8 need only be “in relation to” the company of which he is or has been a director (section 8(2)).

- iii) An application under section 6 can only be brought within the three-year period after the company has become insolvent or been dissolved without becoming insolvent (section 7(2)), while there is no such time limitation for section 8. In part this is due to section 8 not explicitly contemplating an insolvency to which the period can be anchored, although section 8(2B) confirms that the company to which a section 8 application relates may have become insolvent. In other words, insolvency may have occurred, but it is not necessary that it has.
 - iv) While both sections provide for a maximum period of disqualification of 15 years, there is a minimum period for an order made under section 6 (section 6(4)), but there is no minimum period for an order made under section 8 (section 8(4)).
 - v) On an application under section 6, the court is required to make a disqualification order for a minimum period of two years once it has determined that the director is unfit to be concerned in the management of a company (the word used in section 6(1) is “shall”). On an application under section 8, the court is not required to make a disqualification order at all even where it is satisfied that his conduct in relation to the company makes him unfit (the word used in section 8(2) is “may”).
 - vi) The provisions of section 7 apply to an application under section 6, but they do not apply to an application under section 8. This gives the SoS and the official receiver powers to obtain such information and inspect such books, papers and records relevant to the director’s conduct as a director as they may require for carrying out their functions in making an application under section 6. As is apparent from *Re Pantmaenog Timber Co Ltd* [2003] UKHL 49 (“*Pantmaenog*”), this provision applies in a very similar context to the context in which section 236 of IA 1986 operates.
59. Despite these differences, there are important respects in which the jurisdictions are the same, most specifically the matters which the court is required to take into account when determining unfitness. That is dealt with by section 12C which (by reference to Schedule 1 and section 12C(4)) provides a list of matters to which the court must have regard in all cases in which it is required to determine either (a) whether a person’s conduct as a director makes them unfit, i.e. including on a section 6 application (see section 12C(1)(a)), or (b) whether to exercise any discretion to make a disqualification order under section 8 (see section 12C(1)(b)).
60. In this regard it is significant that there is no distinction in the matters required to be taken into account as between a section 6 application and an application under section 8. Neither section 12C, nor Schedule 1 are drafted to provide that any responsibility the person concerned may have for the causes of the company

becoming insolvent is anything other than one of the several matters to which section 12C(4) requires the court to have regard. The language is clear: like all the other matters referred to in Schedule 1, the weight which must be given to this factor will depend on all the circumstances of the case.

61. In my view, it is perfectly coherent for Parliament to have legislated to provide for one procedure where a company has become insolvent or been dissolved without becoming insolvent, and another procedure where those circumstances are not present. The intervention of insolvency or dissolution is capable in itself of being a sufficiently significant difference to justify the use of what Mr Winter called the “more serious section” (i.e., section 6) without there also being a need to show a connectivity or causal link between the conduct and the causes of the insolvency.
62. Put another way, a case in which it can simply be proved that a director of a company which has become insolvent has misconducted himself in a manner which causes loss to a particular group of creditors may be just as serious as one in which it can also be proved that such a director has misconducted himself in a manner which renders him responsible for the causes of the company’s insolvency. There is no reason why questions of causation should have to feature as a characteristic which distinguishes between the two types of claim.
63. Having regard to the differences and the similarities in the round, I can see no reason why some form of causal link between the conduct relied on and the responsibility for the causes of insolvency (however weak) should be read into the circumstances in which the section 6 jurisdiction is capable of being exercised. This was certainly the view of Falk J in *Keeping Kids* at [816] and [817], in which the judge said the following about the provisions equivalent to sections 12C and an earlier version of Schedule 1 in force at the relevant time:

“816. ... Under the version of the legislation in force at the relevant time s.9 required the court to “have regard in particular” to the matters mentioned in Schedule 1, which relevantly included at paragraph 6: “The extent of the director’s responsibility for the causes of the company becoming insolvent.”

817. I agree with Ms Anderson that causation of insolvency is not a jurisdictional threshold. I also agree that the extent of the director’s responsibility for the causes of the company becoming insolvent is only one factor for the court to consider, albeit, I would add, one to which it should have “particular” regard.”
64. The fourth reason is alluded to in the passage I have just cited from Falk J’s judgment in *Keeping Kids*. Schedule 1 is explicitly concerned with the nature, extent and frequency of the director’s conduct to which each of the matters referred to relates. It is clear that an assessment of these matters requires the court to carry out an evaluative exercise which must focus on the facts of any particular case, and in any particular case any one or more of the listed matters may not be present or alleged.

65. In other words, the extent of the person's responsibility for the causes of the company becoming insolvent (where that is applicable), and I stress the word is "extent", is one of the several matters to be taken into account in assessing whether unfitness has been established under both section 6 and section 8. The fact that the legislation requires the court to have regard to where on a scale of responsibility the conduct of the director concerned lies is difficult to reconcile with the submission that there is a hard-edged threshold.
66. The fifth reason is that the difficulties in applying Mr Winter's non-trivial connectivity test are sufficient to make it improbable that Parliament intended such a test as a jurisdictional pre-condition to the commencement and operation of what is intended to be a relatively summary process. It is understandable that Mr Winter eschewed a "but for" test as the applicable principle, but a non-trivial connectivity test as a threshold issue seems to me to introduce a jurisdictional hurdle for no very good reason in light of the exercise the court is required to carry out under section 12C and Schedule 1 in any event. It may lead to irrational distinctions having to be drawn between cases where the test is satisfied and those where it is not.
67. It is one thing to have a clear-cut jurisdictional distinction between cases where a company has become insolvent (or has been dissolved without becoming insolvent) and cases where it has not. That is easy to apply. It is quite another to have to ask whether there are non-trivial connections between the conduct alleged against the director and the company becoming insolvent (or being dissolved without becoming insolvent) as a pre-condition to making the application or granting the relief. While fairness requires the extent of the responsibility to be taken into account when the jurisdiction is exercised, I regard it as much more logical for that exercise to be carried out at the stage of weighing up the significance of all the matters referred to in section 12C and Schedule 1 than as a threshold issue.
68. The sixth and final reason is that, on a proper analysis, none of the authorities to which I was referred by Mr Winter support the submission that, for the jurisdiction to arise under section 6, the misconduct alleged must be to some extent responsible for the causes of the company becoming insolvent. That is not the language in which any of the judgments were couched, a conclusion which applies as much to the judgments in the *Barings* cases on which much reliance was placed by Mr Greensill, as it does to the other authorities.
69. The most that can be said is that, in assessing unfitness, the court was concerned to evaluate the extent of the director's responsibility for the causes of the insolvency. That is not surprising, because it is the exercise that the court is and always has been required to carry out by section 12C and its statutory predecessor, the former section 9 having regard to Schedule 1. The findings that have then been made have always related to the *extent* of the responsibility where that responsibility is one of the matters which is alleged to give rise to the unfitness. That is far removed from any endorsement of a requirement that, in every case under section 6, something amounting to responsibility for the insolvency must be shown, or that the court is making such a finding as a necessary pre-condition to its ability to make a disqualification order.

Was the SoS's decision to proceed unlawful?

70. It was also part of Mr Greensill's case that the SoS's decision to proceed under section 6 was unlawful. The argument was that, before commencing proceedings under section 6, the SoS has to make a decision that it is expedient in the public interest for a disqualification order to be made (see section 7(1)). Mr Winter said that, at the stage of making that determination, the SoS is under a duty to have regard in particular to the matters set out in Schedule 1. He submitted that the existence of that duty meant that the SoS is required to be satisfied that the connectivity between the misconduct of the defendant and the insolvency of the company can be established before deciding to make that application.
71. He then went on to submit that, in the present case, either:
- i) the SoS did make an assessment as to connectivity, concluded that there was such connectivity but later abandoned this position, with the consequence that the proceedings are now being maintained on a materially different basis from that on which the decision to bring proceedings was taken (and are unlawful); or
 - ii) no such assessment was made, in which case both the decision under section 7(1) to bring proceedings under section 6 and the decision to reserve the right to seek a compensation order were taken in breach of the statutory requirements under the Act.
72. In light of the conclusions I have reached as to the Connectivity Issue, I do not accept much of what is said in Mr Greensill's argument on this aspect of the dispute. In particular, it is not necessary for the SoS to be satisfied that any particular form of connectivity between the misconduct of the defendant and the insolvency of the company has been established when deciding whether it is expedient in the public interest that a disqualification should be made under section 6. This conclusion undermines the principal basis on which the unlawfulness argument is advanced.
73. However, there are two aspects of what is said by Mr Greensill on this point with which I should deal. The first is related to what is said to have been a change of mind by the SoS in relation to the allegations that were made. He said that the pre-s.16 notice stated that the Allegations which were the subject of that notice had caused the insolvencies, but that the position changed by the time of the s.16 notice itself. It was then said that because the s.16 notice made no reference to whether the SoS had decided under section 7(1) to apply under section 6 or had decided to apply under section 8, the court should infer either that the SoS failed to give proper consideration to whether to bring the proceedings under section 6 or under section 8, or that the SoS failed to review the consequences of the decision to abandon the allegation that Mr Greensill's misconduct caused the insolvencies.

74. Quite apart from the fact that this argument is undermined anyway in part by the Connectivity Issue, the evidence falls well short of substantiating Mr Greensill's case that the SoS did other than have regard at the outset, and thereafter keep under review, the question of the extent to which Mr Greensill was responsible for the causes GCUK and GL becoming insolvent. I was not shown any clear evidence which justifies a conclusion that the SoS did not have regard to the current state of the Allegations when she determined that the application should be made, let alone to the strike out standard. The fact that they differed in some respects from the allegations made at the time of the pre-s.16 notice (although not to the extent suggested in Mr Greensill's skeleton argument: see what I have already said earlier in this judgment) is consistent with a lawfully conducted continuing process of review.
75. The second point is that I do not accept that there is any material significance in the fact that the s.16 notice expressly reserved the SoS's right to seek a compensation order against Mr Greensill. It is said that the SoS could only lawfully reserve the right to seek a compensation order if he or she had concluded that the alleged misconduct was at least capable of having caused loss. It is then said that the reservation of rights appears to mean that the SoS failed to consider the impact of the decision to abandon the allegation that the Defendant had caused the insolvencies on the ability of the SoS to seek a compensation order.
76. Even if a reservation of rights can in itself be stigmatised as unlawful, it seems to me that the last part of this submission is unsustainable. There are two preconditions to the making of a compensation order set out in section 15A(3). The first is that the person is subject to a disqualification order. The second is that the conduct for which the director has been subjected to a disqualification order has caused loss to one or more creditors of a company which has become insolvent, or which has been dissolved without becoming insolvent. The statute makes no link between those two preconditions on the one hand and the question of whether the relevant director has some level of non-trivial responsibility for the causes of the company becoming insolvent (if that is what occurred) on the other.
77. Section 15A makes plain that the test is not whether the conduct has caused the company to become insolvent, but is whether the relevant conduct has caused loss to one or more creditors of a company which has become insolvent. They are not the same thing, a self-evident truth which is recognised by the different types of compensation order the court is empowered to make as prescribed by section 15B, viz., to pay an amount specified in the order:
- i) to the Secretary of State for the benefit of a specified creditor or creditors or a class or classes of creditor so specified; or
 - ii) as a contribution to the assets of a company so specified.

Fairness of the investigation conducted by the IS and the SoS

78. As I explained at the outset, Mr Greensill also advanced his strike-out application on the basis that the IS had failed to conduct a fair investigation of at least some of the matters which are said to determine Mr Greensill's unfitness. It is said that the manner in which the case is put forward is unfair and an abuse of process.
79. His starting point was *Re Finelist Limited, The Secretary of State for Trade and Industry v Swan* [2003] EWHC 1780 at [17] in which Laddie J summarised the position as follows:
- “It is not sufficient for the director to know and understand the allegations he has to meet. There is an obligation on the SoS to set out in the affidavit or affirmation in support the main parts of the evidence on which she is to rely. This is all the more important because, as noted above, there is no particulars of claim which will identify the key facts upon which the court will be asked to exercise its powers. Fairness to the director demands that he knows not only the allegations of unfitness but also the essential facts which are to be relied on in support of them”.
80. This is a crisp summary of the position, which was developed in a little more detail in the judgment of Falk J in *Keeping Kids* where the judge said the following at [798]:
- “I must reiterate the points made at [733] above. A disqualification order involves penal consequences, and a defendant to disqualification proceedings must know and have proper notice of the case they have to meet. The substance of the case that the defendant is required to meet must be set out (*Re Lo-Line Electric Motors Ltd* [1988] (Ch) 477 at pp.486-487 per Sir Nicholas Browne-Wilkinson VC; *Re Sevenoaks Stationers (Retail) Ltd* [1991] (Ch) 164 at pp.176-177 per Dillon LJ; *Secretary of State for Trade and Industry v Goldberg* [2003] EWHC 2843 at [51] per Lewison J). The defendant should be able to ascertain with clarity exactly what the allegations are and on what evidence the applicant intends to rely, and there is a duty not to overstate the case against the defendant, to put it in a balanced way, and not to omit significant evidence in their favour (*Re Finelist* [2004] BCC 877 at [16] to [21])”.
81. Having regard to those legal principles, which were not challenged by the SoS, Mr Winter submitted that, once the IS had decided to abandon any argument based on connectivity, there needed to be a re-evaluation of the affirmation which must by then have been in draft, so that it focused on the allegations actually being made (and the evidence in support of them), irrespective of whether or not they had anything to do with the insolvency. It was said that Wilson¹ made repeated reference to the consequences of Mr Greensill's conduct on the economic wellbeing of the Companies, thereby carrying with it an inference that such conduct caused the insolvencies. It was said that this evidence seriously prejudiced Mr Greensill by hinting that he caused the insolvencies but without formally doing so. It was said that this made it

impossible for Mr Greensill to deal with the allegations because there was “no articulated ‘charge’ to push back against”.

82. Three examples were given in Mr Greensill’s skeleton argument. The first related to Katerra. He said that Wilson1 made repeated references to the problems that GCUK was facing in relation to BaFin having ‘gated’ part of the US\$440 million obtained from SoftBank, and noting that “by this stage GCUK’s liquidity and solvency was in question...” It was said that Wilson1 then melded the liquidity problems of GCUK generally into other issues: those specific to GBAG, liquidity issues relating to GFG, the insurance renewal problems and Credit Suisse’s suspension of further investment in GCUK’s assets.
83. It was said that this section of Wilson1 ended with what amounted to an invitation to the court to conclude that those issues were brought about by the Katerra restructuring and thus that it was a cause of the insolvencies. This meant that the case ends up in what Mr Winter called a thoroughly confused position in which Mr Greensill runs the risk that the court will reach adverse conclusions about the extent to which the Katerra Allegation caused the insolvencies, whilst that allegation has not in fact been made against him.
84. The second related to GFG and its relationship with GCUK, in respect of which Wilson1 contains an allegation that it was GCUK’s inability to manage the GFG \$7.5 billion exposure risk that was “ultimately key to the failure and cessation of GCUK’s business”. In that context Wilson1 asserts that “despite the critical nature of GCUK’s involvement with GFG, Mr Greensill kept the relationship with GFG closely to himself with limited involvement at a senior level by other directors and management of GCUK”. This is said to amount to an invitation to the court to draw adverse inferences from Mr Greensill’s conduct, directly related to a cause of the insolvencies, when he is not alleged to have misconducted himself in that regard.
85. The third example relates to Catfoss. It is alleged in Wilson1 that misrepresentations in relation to Catfoss resulted in policies providing cover of c.US\$4.6 billion being void, a defence which has been raised by insurers in the litigation in Australia. Mr Greensill says that this amounts to an invitation to the court to conclude that his alleged misrepresentations were connected to or responsible for the insolvencies. He says that this is highly prejudicial because, whilst he does not face an allegation that he caused the policies to be invalidated as a result of which the Companies became insolvent, he risks having his conduct evaluated on that basis.
86. As I have already alluded to earlier in this judgment, this state of affairs is said to have arisen because the IS’ investigation originally set out to prove that Mr Greensill did indeed cause the insolvencies, an objective which has now been abandoned. It is said that the SoS has failed to discharge his duty to identify the true nature of his case. The complaint is that the clarification of the SoS’s position has only come about as a result of the current strike out application, but Wilson1 has not been amended to remove the wider allegations that the Defendant caused the insolvencies. It is said that for this reason alone, these

proceedings should be struck out as an abuse because it can now be seen that there cannot be a fair trial.

87. Although the skeleton argument only referred to three examples out of an affirmation that ran to 300 pages, it was clear from Mr Winter's oral submissions that it was Mr Greensill's case that these kinds of point were so insidious and so all pervasive that the only way of ensuring a fair trial was for the proceedings to be struck out as an abuse and for the SoS (if so advised) to start again, presumably with an application under section 8. He submitted that there was so much in the affirmation which involved the bleeding of one thing into another across a very large number of areas without relating them to the Allegations which were made, the only way forward was for the SoS to formulate his allegation clearly and then to identify the material by which the allegations are proved: i.e., evidence that is focused on matters that amount to misconduct.
88. I do not accept that this complaint is well-founded. I think it is clear from both the s.16 notice and Wilson1 that the focus of the Allegations was on the detriment to the noteholders as a result of Mr Greensill's alleged misconduct in relation to the Katterra Allegations. More generally, I accept Mr Mohyuddin's submission that the financial position of the Companies is contextually relevant to the misconduct alleged against Mr Greensill, even though it is no part of the SoS's case that this misconduct caused or was responsible for causing their insolvency. This is well illustrated by an example I was shown from the evidence of an instance in which Mr Wilson's opinion of something which he said was a cause of GCUK's failure (its inability to manage the GFG exposure risk) was a matter with which Mr Greensill expressed his own well-reasoned agreement.
89. This example also illustrates another aspect of the complaint which is that Mr Greensill has not demonstrated that he has suffered any illegitimate prejudice by the manner in which this evidence has been presented. Mr Greensill has been able to give substantial evidence to counter the points made in Wilson1 and it remains open to him at the trial, assisted as he will be by an able legal team and the voluminous documentation which has now been disclosed, to argue that the evidence adduced by the SoS does not prove the Allegations made against him to the requisite standard. Both when the proceedings were issued and now, the Allegations made by the SoS did not include one to the effect that he had been responsible for the causes of the Companies' insolvency. It follows that when the court (in accordance with its duty under section 12C(4)) is having regard to paragraph 2 of Schedule 1 it will be no part of the SoS's case that Mr Greensill caused or contributed to the Companies' insolvencies.
90. It also follows that I do not accept that Mr Greensill has established that the process adopted by the SoS in preparing the case for trial was unfair, or that the court can assume that Wilson1 had already been drafted by the time that the decision to abandon an argument based on connectivity had been made. As Mr Mohyuddin said in oral argument, the submission to that effect was put at a very high level and I agree that it is ultimately based on speculation rather than hard evidence. In my view Mr Greensill falls well short of establishing anything

approaching the type of abuse of process which might justify the striking out of the claim.

Failure by the SoS to obtain relevant material from third parties

91. It was also said by Mr Greensill that the SoS's conduct of these proceedings has been unfair because he has failed to obtain relevant material both from the Companies and other third parties. The consequence of this is that the trial of the Katterra Allegations and the Catfoss Allegations would take place in circumstances where material exists that contradicts each claim, but that material is not before the court. There is a similar complaint in relation to the Insurance non-disclosure Allegations, because it is said that it would proceed in circumstances where the SoS has not acted fairly in preparing and presenting the case.

92. Mr Greensill submitted, and I agree, that the SoS has a duty to keep the proceedings under review throughout their progress. As was said in *Pantmaenog* at [39]:

“The Secretary of State is under a continuing duty to keep the position under review. Proceedings can be brought and continued only if it appears, and continues to appear, to the Secretary of State that it is expedient in the public interest that an order be made”.

93. Mr Greensill also submitted that the SoS is under a continuing obligation to investigate so as to obtain all relevant material, and to keep it under review, so as to be able to make properly informed decisions as to whether to bring or continue the proceedings. I do not agree that this is a wholly accurate way of describing the duty of the SoS. It seems to me that the decision of Newey J in *Re Stakefield (Midlands) Limited, The Secretary of State for Business, Innovation and Skills v Doffman* [2010] EWHC 2518 at [11] to [14] more accurately reflects the true position as follows:

- i) it may be incumbent on the SoS to provide a defendant with documents in his possession regardless of whether any court order to that effect has been made;
- ii) whilst the SoS must act fairly, there is no established duty on the SoS to interview or obtain documents from third parties, nor to ensure that investigations are carried out;
- iii) it is theoretically open to a defendant to challenge by way of judicial review a decision to institute or continue disqualification proceedings and he can in an appropriate case apply to have the proceedings struck out as too weak to be allowed to proceed;
- iv) it is always open to a defendant to secure missing evidence himself (including, if necessary, by applying for non-party disclosure or serving

witness summonses) and to draw attention at trial to the deficiencies in the investigations carried out by the SoS and the evidence; and

- v) the defendant will not usually be able to have the proceedings struck out on the basis that the SoS has committed a breach of duty by failing to obtain evidence or otherwise to investigate.

94. Newey J then concluded his analysis of the position in the following passage at [15] and [16] of his judgment (cited with approval by the Court of Appeal in *Cathie v Secretary of State for Business, Innovation and Skills (No.2)* [2012] EWCA Civ 739 at [41]):

“15. Where, however imperfect the investigations may have been, the Secretary of State has in fact assembled evidence of a defendant's unfitness to be concerned in the management of a company, it is, as I see it, for the court to determine at trial whether the Secretary of State has made out his case. If, in the event, the evidence proves to be sufficient to establish unfitness, the defendant should be disqualified even if the Secretary of State failed to obtain relevant evidence or ensure a thorough investigation. On the other hand, the defendant may be able to point to the absence of evidence or investigation to cast doubt on the Secretary of State's case.

16.. Even where a defendant can demonstrate that the Secretary of State has failed in his duties, it will not always, by any means, follow that the proceedings should be struck out.”

95. The criticisms which Mr Greensill then went on to make related to the manner in which the IS failed to obtain the correct material from the Companies, in part through the approach taken to identifying relevant non-privileged material resulting in substantial volumes of exculpatory documents being wrongly withheld or belatedly disclosed. It is said that much of this material contradicts core aspects of the SoS's case. He said that it is only at this very late stage that the issue is now being addressed as a result of continued representations made by Mr Greensill and his lawyers and that the material has not been considered by the SOS in discharging his duties under the CDDA and forms no part of his case.
96. A similar complaint arises in relation to the SoS's failure to investigate matters properly through not obtaining relevant material from third parties such as Credit Suisse, the insurers and GBAG amongst others. The way in which the consequence of what is said to be this failure to investigate is described relates to his characterisation of the allegations against him as effectively involving fraud. It is said that this cannot be proved without access to the contemporaneous documentation and that the SoS has not properly informed himself of the contemporaneous documentation which is available. Mr Greensill's skeleton argument puts some flesh on the bare bones of this complaint by reference to each of the three areas in which allegations are made against him.
97. As to the Katterra Allegations it is said that the SoS should have but did not obtain documentation and witness evidence from Credit Suisse. This should

have been done because it is alleged that identifiable individuals were lied to by Mr Greensill. It is also said that, during the course of proceedings between Credit Suisse and SoftBank (the judgment of Miles J is at [2025] EWHC 2631 (Ch)), documentation was referred to which tended to support Mr Greensill's case that Credit Suisse was aware of the implications of the Kattera restructuring. There were also said to be emails with employees of Credit Suisse which tend to suggest that he did not lie to Credit Suisse, when it is alleged by the SoS that he did, and that those emails are not available to the court or Mr Greensill.

98. It is Mr Greensill's case that it follows from this that he has been forced to put in his own evidence in these disqualification proceedings relying on incomplete information and what he describes as a "hazy" recollection, rather than a coherent and contemporaneous documentary record. This will fundamentally jeopardise the fairness of the proceedings, because the trial will take place on an incomplete basis in circumstances where material evidence exists which does or may contradict the SoS's case.
99. As to the Catfoss Allegations, these are based on a defence being advanced by the insurers in the proceedings brought against them by Credit Suisse in Australia. They are said to be based only on that defence and not on any independent investigation by the SoS or even the contemporaneous documents. The consequence of this is said to be that the SoS is adopting a one-sided approach because he refuses to acknowledge that Credit Suisse's claim in Australia is that the policies remain valid and enforceable. In that regard it is said that the SoS has not to date articulated a coherent position as to the enforceability of the insurance policies, nor has he considered the evidence in the Australian proceedings. This is said to be inconsistent with the SoS's obligation to present his case fairly and in a balanced manner. It is also said that there has been no attempt to distinguish the issues which the SoS is able to prove by direct evidence from those on which he relies as a matter of inference.
100. A further aspect of unfairness in relation to the Catfoss Allegations is said to flow from the contention that they depend entirely on it being proved that Mr Greensill either failed to disclose, or misrepresented, material matters to BCC's head of trade credit, Mr Greg Brereton (for a summary of what occurred see paragraphs 12ff of the May 2025 Judgment). It is said that Mr Greensill's case that he never withheld any relevant information from Mr Brereton, and never made any misrepresentations to him or BCC, cannot be tested or disproved in the absence of Mr Brereton's evidence or the documentary record.
101. Mr Greensill also says that, in the Australian proceedings, there have been allegations by Credit Suisse that Mr Brereton has committed a serious fraud to mislead or misrepresent the status of the insurance policies he had written. That is said to be of direct relevance to the Catfoss Allegations because, if it is right, they give rise to an inference that the decision not to extend the Companies' insurance policies in March 2021 and the insurers' refusal of cover under those policies were the result of Mr Brereton's deceit or misconduct, rather than anything said or done by Mr Greensill.

102. It was submitted that none of the material which has now become available in the context of the Australian proceedings has been obtained or considered by the SoS, notwithstanding that he is now aware of it in light of the evidence set out in paragraphs 71ff of the third witness statement of Mr Woodfield filed in these proceedings on 28 January 2026. There is also said to be further material emanating from Marsh Ltd, which emerged during the course of proceedings against them in a case called the White Oak trial (which settled after the trial had concluded). This is said to indicate that Mr Greensill and the Companies were not apprised of the full extent of the issues relating to Mr Brereton's authority to enter into the policies. It is said that this materially undermines the SoS's assertion that Mr Greensill misled the insurers. Indeed the emerging evidence is said to suggest that it was Mr Brereton and BCC who misled or defrauded other parties.
103. In summary, Mr Greensill submitted that, although some Marsh documents have been disclosed in these proceedings, the White Oak trial transcripts demonstrate that a significant volume of additional material, directly bearing on the knowledge and conduct of BCC and Mr Brereton, was not obtained by the SoS and, consequently, has not been considered by the SoS. It is said that it follows that the SoS cannot provide any assurance to the court that all relevant, potentially exculpatory material has been considered and placed before the court and it is not therefore possible for there to be a fair trial in respect of the Catfoss Allegations.
104. As to the Insurance non-disclosure Allegations, the SoS's case is that Mr Greensill failed to inform the boards of GCUK and GCPTY of material developments regarding the Companies' insurance position. But Mr Greensill says that this allegation has been advanced without an investigation of the records of the very directors (Divya Eapen, Sean Hanafin, David Brierwood, Maurice Thompson, and Pat Allin) said not to have been informed. Mr Greensill says the SoS's position is that he is not under an obligation to do so, and has indicated that it is matter for Mr Greensill to investigate himself and to contact GCUK's administrators directly for that purpose.
105. Mr Greensill illustrated the significance of the approach adopted by the SoS by reference to memos dating from the period between July and September 2020, which established that, upon learning of Mr Brereton's dismissal by BCC, he informed the executive team at the Companies. Thereafter, and with the express approval of the Chairman and the Head of the Risk Committee, the Companies' executive committee team collectively resolved not to circulate the information more widely. It is said that these documents, including in particular a document called the Kuyk Memo and two later emails fundamentally undermined the entire premise of the Insurance non-disclosure Allegations, because they refuted the SoS's case that the board members were unaware of, or were excluded from, material developments affecting the Companies' insurance cover. In summary, it is said that while the SoS alleges that Mr Greensill deliberately withheld information from the Companies' board, the documents show that he did precisely the opposite.
106. It was then said that none of these documents was reviewed or considered by the SoS prior to making the Allegations advanced in Wilson1 and that, if the

SoS had investigated the matter properly at the time, it is inconceivable that she would have made them and allowed the relevant material to be wrongly quarantined as privileged for years, only being disclosed in July and September 2025 and February 2026 respectively. In short it is said that the SoS has not acted fairly in preparing or presenting the case on the Insurance non-disclosure Allegation and it, like the other two Allegations, should be struck out as an abuse.

107. I do not accept that submission. It is obviously the case that the SoS has a duty to act fairly, and as Falk J explained in *Keeping Kids* at [898ff] this can extend to and affect the investigation process, including the choice of whom to interview and the questions asked as well as the content of the documentary evidence. In that case, the judge was particularly concerned that the evidence at trial disclosed a failure by witnesses for the SoS to appreciate the importance of the duty to present the case in a balanced way.

108. However, it is also important to bear in mind the principles explained by Newey J in *Stakefield* and in particular the passage at paragraph [12]:

“I do not read the authorities to which I have been taken as establishing any duty on the Secretary of State to interview or obtain documents from third parties, nor to ensure that investigations are carried out. *Hennessey* and *Ward* deal with "evidence which the prosecution have gathered", not with materials which could have been assembled but which have not been.”

109. In my view, given the extent of the materials which have been disclosed to or obtained by Mr Greensill, and the period of preparation time which has expired since the Allegations have been made, it is not possible to say on this application that it was so unfair of the SoS to adopt the approach that he has that the proceedings should be struck out. A much more granular approach to such an application would be required, which should have been made at a much earlier stage in the proceedings if it were to be made at all. As matters currently stand, any questions as to why potentially exculpatory material may not be available is a matter for the trial. It remains open to Mr Greensill to run these types of argument at that stage. In my judgment, it is only at the trial that the court will be able to put them into their proper context and make a fully balanced assessment of whether they can or should be upheld.

110. I also do not consider that Mr Greensill has made out his complaint that it can now be seen that documentation which has only been obtained since Wilson1 was affirmed has not been given appropriate consideration by the SoS in his duty to keep under review the question of whether it continues to be in the public interest for these proceedings to be pursued. There is simply no evidence on the back of which it is possible for the court to reach a conclusion that that is what occurred.

111. In all the circumstances, Mr Greensill has not established that the claim should be struck out on these grounds. Even if there were to have been the imperfections in the investigation alleged by Mr Greensill (and I am far from accepting he has established that there have been), this is a case in which what Newey J said in [15] of his judgment in *Stakefield* has real resonance:

“Where, however imperfect the investigations may have been, the Secretary of State has in fact assembled evidence of a defendant's unfitness to be concerned in the management of a company, it is, as I see it, for the court to determine at trial whether the Secretary of State has made out his case.”

112. Mr Greensill's strike out application will therefore be dismissed.

APPENDIX

Provisions of the CDDA referred to in the argument

1.- Disqualification orders: general.

(1) In the circumstances specified below in this Act a court may, and under sections 6, 8ZF and 9A shall, make against a person a disqualification order, that is to say an order that for a period specified in the order –

(a) he shall not be a director of a company, ...

6.- Duty of court to disqualify unfit directors

(1) The court shall make a disqualification order against a person in any case where, on an application under this section

(a) the court is satisfied-

(i) that the person is or has been a director of a company which has at any time become insolvent (whether while the person was a director or subsequently), or

(ii) that the person has been a director of a company which has at any time been dissolved without becoming insolvent (whether while the person was a director or subsequently), and

(b) the court is satisfied that the person's conduct as a director of that company (either taken alone or taken together with the person's conduct as a director of one or more other companies or overseas companies) makes the person unfit to be concerned in the management of a company.

(1A) In this section references to a person's conduct as a director of any company or overseas company include, where that company or overseas company has become insolvent, references to that person's conduct in relation to any matter connected with or arising out of the insolvency.

(2) For the purposes of this section, a company becomes insolvent if-

(a) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up,

(b) the company enters administration, or

(c) an administrative receiver of the company is appointed.

...

(4) Under this section the minimum period of disqualification is 2 years, and the maximum period is 15 years.

7. Disqualification orders under section 6: applications and acceptance of undertakings

(1) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order under section 6 should be made against any person, an application for the making of such an order against that person may be made-

(a) by the Secretary of State, or

...

(2) Except with the leave of the court, an application for the making under that section of a disqualification order against any person shall not be made after the end of the period of 3 years beginning with –

(a) in a case where the person is or has been a director of a company which has become insolvent, the day on which the company became insolvent, or

(b) in a case where the person has been a director of a company which has been dissolved without becoming insolvent, the day on which the company was dissolved.

...

(4) The Secretary of State or the official receiver may require any person

(a) to furnish him with such information with respect to that person's or another person's conduct as a director of a company which has at any time become insolvent or been dissolved without becoming insolvent (whether while the person was a director or subsequently), and

(b) to produce and permit inspection of such books, papers and other records as are considered by the Secretary of State or (as the case may be) the official receiver to be relevant to that person's or another person's conduct as such a director,

as the Secretary of State or the official receiver may reasonably require for the purpose of determining whether to exercise, or of exercising, any function of his under this section.

(5) Subsections (1A) and (2) of section 6 apply for the purposes of this section as they apply for the purposes of that section.

8. Disqualification of director on finding of unfitness

(1) If it appears to the Secretary of State that it is expedient in the public interest that a disqualification order should be made against a person who is, or has been, a director or shadow director of a company, he may apply to the court for such an order.

(2) The court may make a disqualification order against a person where, on an application under this section of that Act, it is satisfied that his conduct in relation to the company (either taken alone or taken together with his conduct as a director or shadow director of one or more other companies or overseas companies) makes him unfit to be concerned in the management of a company.

...

(2B) Subsection (1A) of section 6 applies for the purposes of this section as it applies for the purposes of that section.

...

(4) The maximum period of disqualification under this section is 15 years.

12C Determining unfitness etc: matters to be taken into account

(1) This section applies where a court must determine-

(a) whether a person's conduct as a director of one or more companies or overseas companies makes the person unfit to be concerned in the management of a company;

(b) whether to exercise any discretion it has to make a disqualification order under any of sections 2 to 4, 5A, 8, 8ZG or 10;

(c) where the court has decided to make a disqualification order under any of those sections or is required to make an order under section 6 or 8ZF, what the period of disqualification should be.

...

(3) This section also applies where the Secretary of State must determine

(a) whether a person's conduct as a director of one or more companies or overseas companies makes the person unfit to be concerned in the management of a company;

...

(4) In making any such determination in relation to a person, the court or the Secretary of State ... (as the case may be) must-

(a) in every case, have regard in particular to the matters set out in paragraphs 1 to 4 of Schedule 1;

(b) in a case where the person concerned is or has been a director of a company or overseas company, also have regard in particular to the matters set out in paragraphs 5 to 7 of that Schedule.

...

(6) Subsection (1A) of section 6 applies for the purposes of this section as it applies for the purposes of that section.

...

15A Compensation orders and undertakings

(1) The court may make a compensation order against a person on the application of the Secretary of State if it is satisfied that the conditions mentioned in subsection (3) are met.

...

(3) The conditions are that-

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

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

(4) An "insolvent company" is a company that is or has been insolvent and a company becomes insolvent if-

(a) the company goes into liquidation at a time when its assets are insufficient for the payment of its debts and other liabilities and the expenses of the winding up,

(b) the company enters administration, or

(c) an administrative receiver of the company is appointed.

...

15B Amounts payable under compensation orders and undertakings

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

- (a) to the Secretary of State for the benefit of-
 - (i) a creditor or creditors specified in the order;
 - (ii) a class or classes of creditor so specified;
- (b) as a contribution to the assets of a company so specified.

...

16.- Application for disqualification order

(1) A person intending to apply for the making of a disqualification order shall give not less than 10 days' notice of his intention to the person against whom the order is sought; ...

SCHEDULE 1

DETERMINING UNFITNESS ETC: MATTERS TO BE TAKEN INTO ACCOUNT

Matters to be taken into account in all cases

1. The extent to which the person was responsible for the causes of any material contravention by a company or overseas company of any applicable legislative or other requirement.
2. Where applicable, the extent to which the person was responsible for the causes of a company or overseas company becoming insolvent.
3. The frequency of conduct of the person which falls within paragraph 1 or 2.
4. The nature and extent of any loss or harm caused, or any potential loss or harm which could have been caused, by the person's conduct in relation to a company or overseas company.

Additional matters to be taken into account where person is or has been a director

5. Any misfeasance or breach of any fiduciary duty by the director in relation to a company or overseas company.
6. Any material breach of any legislative or other obligation of the director which applies as a result of being a director of a company or overseas company.

7. The frequency of conduct of the director which falls within paragraph 5 or 6.

Interpretation

8. Subsections (1A) to (2A) of section 6 apply for the purposes of this Schedule as they apply for the purposes of that section.

9. In this Schedule “director” includes a shadow director.