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

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

Date: 17/04/2019

Before :

THE HONOURABLE MR JUSTICE NORRIS

- -

Between :

(1) Vincent John Green	**Petitioners**
(2) Mark Newman	
(as joint Administrators of each of the Respondent Companies)	
- and -	
(1) SCL Group Limited	**Respondents**
(2) SCL Analytics Limited	
(3) SCL Commercial Limited	
(4) SCL Social Limited	
(5) SCL Elections Limited	
(6) Cambridge Analytica (UK) Limited	

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Catherine Addy QC and Mark Watson-Gandy (instructed by **Underwoods**) for the **Petitioners**
Andreas Gledhill QC and Eleni Dinenis (instructed by **ITN**) for the **Professor David Carroll**

Hearing dates: 18 March 2019

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Approved Judgment

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

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THE HONOURABLE MR JUSTICE NORRIS

Mr Justice Norris :

1. The troubles of the business carried on by companies in the group colloquially known as "Cambridge Analytica" are well known. The business involved the acquisition of commercial data from multiple vendors, its amalgamation and analysis (including "psychographic profiling" using models developed by academics at the University of Cambridge), and the use of the product of that analysis to facilitate targeted advertising and messaging ("micro-targeting") for clients. Amongst those clients were political parties and campaign groups who used the services of Cambridge Analytica to seek to influence voting behaviour.

2. This business model involved the creation of vast databases. Cambridge Analytica said publicly that it held up to 5000 data points on each of over 230 million American voters. Critics of Cambridge Analytica say that some of these data points were created through the misuse of data provided by 87 million Facebook users (some of whom had completed on-line surveys which afforded access to data on Facebook "friends").

3. It was said at the hearing before me that Cambridge Analytica companies in the UK had access to some 700 terabytes of data (the equivalent of 52 billion pages of information). Public disquiet about the sourcing, aggregation and analysis of such vast quantities of data and its use for micro-targeting (not simply by Cambridge Analytica but also by others such as Facebook) dated back to newspaper articles published in December 2015: and it remained a matter of concern during the US Presidential elections in 2016.

4. One American voter was Professor David Carroll ("Prof. Carroll"). He is an associate professor of media design at the Parsons School of Design in New York. His area of interest is on-line behavioural advertising techniques. His expertise includes an examination of how within vast databases "de-anonymization" techniques can be used to re-identify an individual from anonymous information. Academic curiosity and a general desire to ensure that his personal data was not used for purposes which he regarded as unsettling led him on 10 January 2017 to submit a Subject Access Request ("SAR") to SCL Group Limited (one of the UK Cambridge Analytica companies) seeking to find out whether it (or any associated company) held any of his personal data, what was the legal basis for any processing of that data and "for each data point, full information as to its source".

5. He did not receive a reply which he regarded as satisfactory and instructed solicitors to write "a letter before action" requesting a full response and outlining a claim for compensation for distress caused by breach of the Data Protection Act 1998 ("DPA"), for tortious misuse of private information, and for breach of confidence. According to the evidence of Prof. Carroll's solicitor "no response that can be put before the Court was received". That probably means that some form of "without prejudice" response was given.

6. In May 2017, further press reports alleged the illegal harvesting of data from "friends" of Facebook users who had completed an on-line survey. At about the same time the topic engaged the interest of the UK Information Commissioners' Office ("ICO") which commenced a formal investigation into Cambridge Analytica as part of a general investigation into the role of data analytics in the political process. As an incident of that investigation the ICO sought to assist Prof. Carroll in the pursuit of his SAR:

however, Cambridge Analytica declined to engage with the process. Notwithstanding the public disquiet and the refusal to engage in regulatory oversight, the Cambridge Analytica business continued to trade: there was, for example, no petition by the Secretary of State to wind up the companies on the ground that their activities were contrary to the public interest.

7. But the public disquiet magnified hugely when in March 2018 (i) a Cambridge Analytica "whistleblower" made public allegations (which he very shortly thereafter confirmed in evidence to the Digital, Culture, Media and Sport Committee of the House of Commons ("DCMSCom") then working on the "fake news" phenomenon) that Cambridge Analytica *did* exploit the personal data of Facebook users (in contradiction of evidence earlier given to the DCMSCom by the CEO and principal mind of Cambridge Analytica ("Mr Nix")): and (ii) a television documentary about Cambridge Analytica included material from Mr Nix apparently acknowledging involvement with the manipulation of social media to influence elections around the world, with misinformation and with "dirty tricks".

8. On 23 March 2018 the ICO raided the offices of Cambridge Analytica and seized several servers and a significant quantity of evidence (but incidentally also taking the accounting books and records of Cambridge Analytica). As at July 2018 the ICO was still examining this material to see whether the law had been broken by and whether any regulatory action needed to be taken against Cambridge Analytica in the light of significant data protection concerns and apparent poor practice. Eventually in November 2018 the ICO considered that it had identified serious breaches of data protection principles, justifying a fine. It did not, however, commence any criminal proceedings relating to the general conduct of the Cambridge Analytica business (though it did bring proceedings relating to one specific failure, as will appear).

9. It is at this point necessary to identify certain of the companies associated with the "Cambridge Analytica" business. The ultimate holding company is Emerdata Ltd ("Emerdata"). Emerdata's majority shareholder is a Delaware corporation (Cambridge Analytica Holdings LLC), and 21% of its shares are held by three individuals (Mr Nix, Julian Wheatland ("Mr Wheatland") and Nigel Oakes ("Mr Oakes")). Mr Wheatland is now its sole director.

10. One of Emerdata's subsidiaries is SCL Group Ltd ("Group"). It is a non-trading holding company.

11. Group has one subsidiary, namely, SCL Analytics Ltd ("Analytics"), which is also a non-trading company. At one time Group also had a minority interest in another company – SCL Insight Limited ("Insight").

12. The trading subsidiaries of Analytics are (i) SCL Commercial Limited ("Commercial") which provided data analysis to commercial customers: (ii) SCL Social Limited ("Social") which provided campaign management and communications services to political customers; and (iii) SCL Elections Limited ("Elections") which was the main trading company and employed 61 people (and presumably serviced the requirements of Commercial and Social as well as conducting its own business).

13. Elections itself had one dormant subsidiary, Cambridge Analytica (UK) Ltd ("Cambridge UK").

14. I shall refer to Group, Analytics, Commercial, Social, Elections, and Cambridge UK (so omitting Insight) as "the Relevant Companies".

15. I return to the narrative, going back to the time of the "whistleblowing" and the television documentary. On 16 March 2018 Prof. Carroll issued proceedings naming as defendants Group, Elections and Cambridge UK. The claim (settled by two leading counsel and two juniors) was founded on section 7 of the DPA and sought an order that "the Defendant" comply in full with Prof. Carroll's SAR by a specified date. It was accompanied by an application for "pre-action disclosure" seeking the provision of certain documents before pursuit of the DPA s.7 claim: this demand for disclosure sprang from Prof. Carroll's concerns about the processing of his data and (it was said) was needed to enable him to understand the methodologies used by the defendants in obtaining the data held on him and how that data was used to "profile" him. There was no monetary claim and the causes of action that had been referred to in the letter before action were not pleaded out. The assembling of such legal firepower gives a hint that there is something more to Prof. Carroll's action than a claim for modest compensation. On his "crowdfunding" page Prof. Carroll provides the explanation: he solicits donations to fund his "campaign" to establish the principle that companies cannot use personal data in any way they see fit. On 12 April 2018 Group, Elections and Cambridge UK acknowledged service and indicated an intention to defend. No defences were filed.

16. The controversy arising from the public disclosures in March 2018 put off customers of the Relevant Companies and greatly interfered with their business. The sudden toxicity of the brand meant that clients cancelled contracts and sought immediate return of payments made. The inability to access accounting data held by the ICO (and a general state of disarray in the books of the Relevant Companies because of a disruptive change in accounting software) meant that the Relevant Companies were failing to pay their debts as and when due, and rife speculation was undermining their ability to do so in the future.

17. On 24th of April 2018 a solicitor acting on behalf of Emerdata approached Crowe UK LLP ("Crowe"). Crowe holds itself out as one of the leading UK insolvency firms but in the second rank (and so substantially cheaper than "the Big Four"). The individual who dealt with the enquiry was Mr Green, an insolvency practitioner with some 40 years' experience. It was explained to him that Emerdata was in effect an investment vehicle which raised funds from external sources to finance the workings of the Relevant Companies and that it was a very substantial creditor and wanted to ensure a proper recovery. Emerdata was not itself an external creditor but the holding company of the Relevant Companies: and it must have been clear to Mr Green that Emerdata was (for its own reasons) arranging for advice to be given to the Relevant Companies. On 26 April 2018 Mr Green gave advice to the board of Emerdata and to the board of each Relevant Company (and at that stage also to Insight) as to the options, given the common view that the Relevant Companies were insolvent. Mr Green considered that administration would facilitate the sale of assets (principally intellectual property) and preserve jobs (reducing redundancy claims). In the letter of engagement between Crowe and Emerdata Mr Green advised in these terms: -

> "To date, as the Company's adviser, we owed our prime duty to the Company acting through its Board and took appropriate steps to ensure that the Board received appropriate advice on the

> available options. From now on, as our insolvency practitioners become potential Administrators, they will have to take a more independent and balanced approach, arranging for independent valuations of assets and recording information about the Company's affairs and dealings without compromising their future duty as administrators. Any advice that they give from this point will have to remain independent to avoid compromising the potential appointment as Administrators and will have to be disclosed to the court and the creditors. Once appointed Administrators, our insolvency practitioners will owe their prime duty to the creditors as a whole and must act as officers of the Court. They will have to realise and distribute assets, maximising realisations for creditors in order to achieve the statutory objective of the Administration. This may require them to investigate transactions and disposals and take recovery action against individual directors or submit adverse reports to the Secretary of State when reporting under the Company Directors Disqualification Act… This may, from the Board's perspective, appear hostile, although the administrators will merely be fulfilling their statutory duty as required."

The passage gives every appearance of being part of a standard form engagement letter and in the context in which it was used has to be read as explaining to Emerdata and to each of the Relevant Companies what the role of Crowe partners would be if appointed administrators of each of the Relevant Companies.

18. The letter of engagement addressed the question of fees. For advice and assistance up to and including placing each Relevant Company into administration there was a fixed fee of £25,000. The engagement letter said that "the Board" should make arrangements to pay that sum plus VAT immediately. The letter is to be read as requiring that payment be made by Emerdata (not by each of the Relevant Companies). The engagement letter also dealt with post-administration costs, dealing first with how they would be ascertained, then with how they would be raised, and concluding: -

> "In circumstances where we anticipate that there may be insufficient funds available from the realisation of assets we shall require our fees to be guaranteed by the directors and a payment on account will be requested before notices are dispatched to the court."

This passage again gives every appearance of being part of a standard form engagement letter and in the context in which it was used is probably to be read as requiring a fee guarantee by Emerdata (to whose board the letter is addressed) rather than a personal guarantee from each of the directors of each of the Relevant Companies.

19. Before submitting the letter of engagement Crowe undertook an internal review to ensure compliance with the Insolvency Code of Ethics. This included a consideration of whether the Emerdata funding arrangement would influence the conduct of any administration. Given that the funding was commercially justified (to achieve recovery for Emerdata) and unconditional the potential appointment passed the review process.

20. The upshot of the engagement was that Mr Green began to assemble financial information about each of the Relevant Companies (using draft figures that had been prepared over the preceding weeks by a financial consultant) and between 28 and 30 April 2018 caused estimated outcome statements to be prepared on a liquidation and on an administration basis using those draft figures (some of which related to the year end 31 December 2017). During this process Insight dropped out of the picture (Group's shareholding being sold to Insight's majority shareholder, Mr Oakes). The estimated outcome statements showed that any return to creditors (on a group basis) was dependent on a sale of the business (or part of it), and if such could be achieved in administration then further benefits flowed from enhanced return on tangible assets, enhanced recovery of debtors and the elimination of redundancy claims. The notes to the estimated outcome statements disclosed the pre-administration funding arrangement but were silent as to any future underwriting.

21. Administration applications were prepared, not by Emerdata as creditor, but by each of the Relevant Companies itself. These were, therefore, the companies' own applications acting by Mr Wheatland. The proposed administrators were Mr Green and his colleague Mr Newman (who had 30 years' experience as an insolvency practitioner). On 1 May 2018 each gave a certificate that in his opinion one of the purposes of the administration was reasonably likely to be achieved. These certificates must record the independent, impartial and objective views of an expert in the field (albeit on limited information): the Court relies upon them as such. The basis of the opinion appears to have been (i) general experience that realisations within an administration tend to be higher than in a liquidation and that the position disclosed in the estimated outcome statement supported this; (ii) the belief derived from Mr Wheatland that Mr Nix and/or another outside investor may make a bid; (iii) a recognition that a competitor may make a bid; (iv) the belief that the Relevant Companies were in a position to trade for long enough to realise some work in progress (albeit that the value of that WIP was speculative) and to collect debts.

22. The administration applications were brought before Hildyard J in the interim applications Court late on 2 May 2018. The proposed administrators filed no evidence but took the relatively unusual step of appearing by their own Counsel to ensure that their views (as opposed to those of the Relevant Companies) on a difficult case were made known to the judge. The matter was not concluded on 2 May 2018 because the judge was not satisfied about the appointment of Mr Wheatland as director of some of the Relevant Companies on whose behalf he had purported to act in coordinating the administration applications; and the judge was troubled over what seemed to him to be a very fine balance between administration and immediate liquidation.

23. Overnight on the 2/3 May 2018 there was an announcement in New York that the Cambridge Analytica companies were "closing their doors" rather than embark upon "wrongful trading", notwithstanding that they had received a report from an independent QC (Julian Malins QC) that the group was to a degree the victim of a fanciful press. This caused the judge on 3 May 2018 to consider the impact of that announcement upon the postulated sale, and to enquire whether it was

> "… the sober and considered views of the proposed administrators acting as insolvency practitioners and as officers of the court that notwithstanding the events of yesterday…. that

> there is a real likelihood of being able to realise the proprietary information and the business of the companies at a profit."

He went on to enquire:

> "Is this not time, despite the urgency… for a really, really considered view as to whether, in all these new circumstances, administration is really going to likely result in achievement of the statutory purposes? … It will not be determinative but it will be highly influential… and it will figure in my judgment if I were to order administration."

24. Upon consideration the joint administrators confirmed the belief set out in their certificates. They believed that there was a chance, provided the matter was seized urgently: and they had a team standing by.

25. Hildyard J was much tempted to put the Relevant Companies into liquidation and to appoint the Official Receiver as liquidator, but concluded:

> "in the end, and relying as I do on the sober assessment of the insolvency practitioners concerned, I feel that the balance comes down, just, in favour of supposing that there is a real prospect of a better result in the event of administration and therefore that, unless there are some supervening or overriding reasons why in the exercise of my discretion I should refuse relief, I shall permit the matter so to proceed. This is the case especially since it does or would result in the reins being immediately taken up by professional persons independent of the present directors and answerable to the court."

As to the immediate marketing of the businesses of the Relevant Companies Hildyard J noted: -

> "If [the presently envisaged first marketing steps] elicit no third-party response, that would cause the proposed joint administrators to, if not immediately apply for liquidation, at least return to the court to explain further the difficulty. …"

26. The judge then made orders appointing Mr Green and Mr Newman as administrators of each of the Relevant Companies, an order which (as I have noted) he considered:

> "does or would result in the reins being immediately taken up by professional persons independent of the present directors and answerable to the Court."

27. Upon appointment administrators were bound:

    (a) To review their opinion about the objective of the administration;

(b) Having decided upon seeking a better return for creditors than would be achieved by an immediate liquidation, then to perform their functions in relation to that objective in the interests of the company's creditors as a whole;

(c) To perform their functions as quickly and as efficiently as was reasonably practicable;

(d) Recognising that acting in the interests of the company's creditors as a whole may involve the balancing of competing sectional interests, to avoid acting so as unfairly to harm the interests of any particular creditor or group of creditors;

(e) To get under their control the property of the company and to manage the affairs, business and property of the company;

(f) In so doing, to consider the conduct of every person who was a director of the company at any time in the three years preceding the administration (with a view to assisting the Secretary of State on disqualification issues);

(g) To examine as part of their duties under (e) and (f) what civil claims might lie at the suit of the company.

(This list is not exhaustive and is shaped by the issues that arise in this case).

28. Upon appointment the Joint Administrators attended at the premises of the Relevant Companies and soon appreciated that they could not continue to trade, nor could they progress WIP (because the ICO held the servers and laptops). The Joint Administrators sought the return of that hardware by consenting to the imaging by the ICO of all drives; this secured the return of the laptops but not the servers (where further passwords were required).

29. Meanwhile, the Joint Administrators engaged qualified agents to list and value the tangible assets and to market the businesses, a task that was hampered by the absence of reliable financial information and by a hostile and uncooperative attitude on the part of the staff. The professional valuers nonetheless thought there was significant value in the business. A "taster" e-mail was sent to 18,000 potential purchasers, the opportunity was listed on the agent's website and there were direct approaches to competitors. This generated some interest and 13 potential purchasers completed "non-disclosure" agreements enabling them to receive sales particulars. Only four offers were received. None was from Mr Nix. All were disappointing and two were derisory. The agents advised against acceptance. By close of business on 22 May 2018 (the expiry of the last deadline for offers) it was clear that no sale of the whole or part of the undertaking was possible and the employment of the 61 staff was terminated. There was an *ex situ* valuation of tangible assets at £49,400: but in the event the highest offer was for £12,200.

30. The Joint Administrators pursued Statements of Affairs from Mr Wheatland, which were received on 22 June 2108. They then prepared and circulated proposals to the creditors. The proposal was that the Relevant Companies be placed in compulsory liquidation and that the Joint Administrators should be appointed Joint Liquidators. The proposal for Elections disclosed that the Joint Administrators had been paid £135,000 by Emerdata in respect of fees (against a time-cost comparator of £165,400), that Crowe would be seeking a total fixed fee of £350,000 for all work to complete the process, and that Emerdata had paid the costs of the professional advisers engaged by the Joint Administrators.

31. The proposals of the Joint Administrators were accepted by the creditors of each of the Relevant Companies. In relation to Analytics, Commercial and Social only one creditor had submitted a proof: it voted for the proposals. In the case of Group and of Cambridge UK eight "data claimants" (including Prof. Carroll) had submitted proofs for £5000-£20,000 each. The claims were not admitted for voting purposes because Group was a holding company that did not handle digital data and Cambridge UK was dormant: the remaining creditors voted for the proposal.

32. In the case of Elections 98.8% of the creditors voted in favour of the proposals and 1.2% against. The 1.2% comprised 12 "data claimants" (and three ordinary creditors). One "data claimant" claimed £10 (which was objected to but given full value for voting purposes). 11 "data claimants" (of whom none had issued proceedings seeking compensation, but amongst whom Prof. Carroll had issued his proceedings for satisfaction of his SAR and pre-action disclosure) claimed £5000-£20,000 each. In the Insolvency Rules 2016 ("IR") rule 15.31 provides that votes are calculated according to the amount of each creditor's claim. Where the creditor has a claim for an unliquidated or an unascertained amount he or she may nonetheless vote in respect of it if the chairman of the meeting decides to put upon it an estimated minimum value for the purpose of entitlement to vote and admits the claim for that purpose. The Joint Administrators put an estimated minimum value on the claim of Prof. Carroll and of the other "data claimants" of £5000 (being the minimum value put upon the claim by those claimants themselves) and admitted them for voting purposes.

33. Creditors who were "unconnected" with Elections (for the purposes of the Insolvency Act 1986) exceeded £928,000: they are providers of professional services (solicitors and accountants), advertising and media suppliers, HMRC, recruitment agencies, and individuals who had supplied products or operational services and the like. IR 15.34 provides that the view of the majority of the creditors shall not prevail if those voting against the proposition include more than half in value of the creditors who are "unconnected". Even if the Joint Administrators had put a *minimum* value on the "data claimants'" claims equal to the *maximum* which they claimed (£20,000) this disabling provision would not have been triggered. So there is no doubt that the majority view of the creditors as a whole (and of the unconnected creditors) was to approve each Relevant Company going into liquidation with the Joint Administrators being appointed joint liquidators.

34. On 11 August 2018 the Joint Administrators presented petitions for this relief, together with their release as administrators forthwith. Prof. Carroll objected. As originally expressed his objection was that he was "concerned that the administrators [were] insufficiently objective" and would "fail to hold the balance fairly as between him… and the directors/shareholders of Cambridge Analytica who were responsible for their

initial appointment". But as of 6 December 2018, this has ripened into a full-blown attack on their personal integrity and their professional competence, vigorously presented by Mr Gledhill QC and Ms Dinenis. Prof. Carroll supports a winding up; but he objects to the appointment of the Joint Administrators as joint liquidators, and to their release.

35. Where an administration is followed by a winding up a power to appoint the administrator as liquidator immediately upon his appointment as administrator ceasing to have effect arises under section 140 of the Insolvency Act 1986 ("IA86"). If no appointment is made under section 140, then by section 136 IA86 the Official Receiver becomes the liquidator. Alternative courses then become open. First the Official Receiver may (under section 136(4) IA86) or must upon the request of one quarter of the creditors by value (under section 136(5)(c) IA86) seek nominations from the company's creditors and contributories as to the identity of a liquidator to be appointed in place of the Official Receiver. Alternatively, the Official Receiver may apply to the Secretary of State for the appointment of a person as liquidator in his place. (I refer to "a power" because the terms of Schedule B1 to IA86 also confer general powers that can be used for the purpose of making such appointments).

36. When there is a contest over the identity of the liquidator to be appointed I think the guidance as to the exercise of the discretion is well settled: -

(a) the fundamental question is what will be conducive to both the proper operation of the process of liquidation and to justice as between all those interested in the liquidation;

(b) although the majority vote of the creditors will in the normal course prevail, creditors holding the majority vote do not have an absolute right as to the choice of liquidator;

(c) the liquidator should not be a person (nor be the choice of a person) who has a duty or purpose which conflicts with the duties of the liquidator;

(d) the liquidator should not be the nominee of the person against whom the company has hostile or conflicting claims or whose conduct in relation to the affairs of the company is under investigation;

(e) the liquidator needs to act (and be seen to act) in the best interests of the creditors as a whole and properly to investigate all claims;

(f) it is no objection that a liquidator is the choice of a person who is concerned to pursue the claims of the company through the liquidator.

(I have largely adopted the formulation by Mr Stuart Isaacs QC in Stanleys International Betting Ltd [2011] EWHC 1732 (Ch): it was not cited to me, but I believe it is uncontroversial).

37. There were five themes underlying the multiple objections of Prof. Carroll: -

(a) there were real concerns about the making of the administration order;

(b) there was an overwhelming case for independent investigation as to what happened (in the very widest sense) before administration and the joint administrators could not be trusted to cooperate in that process;

(c) the conduct of the joint administrators has fallen below the standards to be expected of such officeholders;

(d) if I were to appoint the joint administrators there would be a real risk of undermining public confidence in the insolvency process;

(e) it was important to avoid a mechanistic exercise of totting up the value of creditors' votes.

I will address these themes in the context of the affairs of Elections, which is the most significant of the Relevant Companies. Ms Addy QC accepted that the identity of the joint liquidators of Elections was really the key issue, and that to appoint the Joint Administrators as joint liquidators of the smaller Relevant Companies simply because Prof. Carroll could not object (because he was not a creditor) did not make sense.

38. First, the Joint Administrators were accused of lack of candour in their failure to tell Hildyard J about the existence of the proceedings commenced by Prof. Carroll. Of course, those who apply for an administration order *ex parte* owe the court the usual duty of candour. The applicant (the company, the directors or a creditor) must make full and frank disclosure of all facts relevant to the exercise of the discretion. The Joint Administrators were not the applicants: they fulfilled two roles. First, they were giving an expert certificate, and as such under a duty to give an independent objective opinion based on what they knew as to whether the making of an administration order was reasonably likely to achieve the purpose of the administration. Second, they were candidates for appointment as officers of the court, and as such under a duty to disclose facts known to them which were material to their appointment even if embarrassing to the applicant.

39. I do not consider that the failure of the Joint Administrators to tell Hildyard J about Prof. Carroll's proceedings constituted a breach of either duty. It is clear on the evidence that the Joint Administrators did not become aware of Prof. Carroll's proceedings until 17 May 2018 (a fortnight after their appointment).

40. In the light of that hard fact Mr Gledhill QC submitted (i) that the duty of candour included a duty to make reasonable enquiries (relying on a passage at paragraph 25.3.5 of the White Book concerning the duties of applicants for "without notice" interim remedies); (ii) that the Joint Administrators must have failed to make enquiries about what proceedings were on foot which might be affected by the automatic stay arising under paragraph 43 of Schedule B1 to IA 86; (iii) that if they had made such enquiries then Prof. Carroll's claim would have come to light; (iv) if it had come to light and been

disclosed to the Court then Hildyard J might have modified the automatic stay to permit the proceedings to continue notwithstanding the administration order. He relied on Re OGX [2016] Bus LR 121 (a case in which Mr Gledhill QC appeared). That case concerned an application for recognition of Brazilian insolvency proceedings specifically in order to obtain a stay of a London arbitration, where the judge was not told that the subject matter of the arbitration was not affected by the collective proceedings of which recognition was sought. Mr Gledhill QC further submitted that Hildyard J ought to have been told that an administration order would suppress attempts to ascertain what had happened prior to April 2018.

41. I do not accept this submission. It does not accurately address the position of proposed administrators in an administration application made by a company, or by its directors or by a creditor. A proposed administrator should make such reasonable enquiries as bear upon his ability to provide a certificate or upon his ability to perform the duties of his office. As part of the former he may (but is not in every case bound to) enquire as to proceedings brought by creditors in respect of outstanding debts or by third parties claiming assets: they bear upon proof of insolvency and the options in administration. As part of the latter he will, for example, invariably check whether any prior professional relationship may inhibit the discharge of his office. But, given the focus of the proposed administrator's role at the time of the application for an administration order, he is under no duty to make himself as fully informed about the company's general affairs as is the applicant for the order. In general (there is always the possibility of an exceptional case) he or she is not before appointment bound to seek out every piece of litigation in which the company is involved and to consider the impact of a statutory moratorium upon it: not least because the alternative will generally be liquidation, which will impose its own stringent moratorium under s.130 IA86. If the proposed administrator is alerted to the existence of litigation he or she may properly take the view that the question whether any such proceedings ought to be excepted from the general moratorium is correctly addressed in the context of a specific application for that purpose made by the claimant after the administrator is in office and has access to a much greater range of material, and where the shape of the administration and the interests of the creditors as a whole are clearer.

42. Further, the Joint Administrators were not bound (as part of their duty of candour) to inform Hildyard J that the making of an administration order would suppress attempts to ascertain what had happened prior to April 2018. That is because the administration order does not have that effect, as the ICO itself has made clear. A stay of the proceedings brought by Prof. Carroll does not have that effect either; investigations can continue. Indeed, within days of the making of the administration order Prof. Carroll himself (in apparent ignorance of its effect) proposed to the Defendants to his claim that there should be a stay pending the outcome of the current investigations by the ICO. The complaint that administration suppressed investigations seems contrived.

43. Second, the Joint Administrators have been accused of a lack of candour in relation to the disclosure of the amount and funding of their fees. Their pre-appointment costs (both as to amount and source of funding) were clearly disclosed in their Estimated Outcome Statement: they would have to be disclosed in the proposals put to creditors. The Emerdata "guarantee" of any "shortfall" in relation to *post-appointment* costs was not disclosed in the Estimated Outcome Statement. It was not volunteered by Counsel for the Joint Administrators (the state of whose instructions I do not know) nor was it

disclosed in response to the judge's general enquiry as to whether there were any other matters of which he should be told. But the arrangement was disclosed when the judge asked again after Counsel had taken further instructions. (In being told of the arrangement the judge was given by Counsel a figure for estimated costs which, if correctly transcribed from the audio record, does not match that in the Estimated Outcome Statement and the derivation of which is unknown). I do not think these events demonstrate a lack of candour.

44. Emerdata is the major creditor and the holding company. In the absence of any statutory scheme for funding administrations the situation in which a major creditor underwrites the cost of an administration in order to obtain the best recovery is by no means unusual. (In the present case, according to the solicitors for the Joint Administrators, funds for the administration have been raised by Emerdata directly from independent investors for that purpose). The situation in which a holding company underwrites the costs of the administration of its subsidiaries (rather than cutting the subsidiaries and their creditors adrift and bringing about unfunded stagnant administrations) is more rarely encountered but may be thought to be a matter for commendation rather than criticism. I can understand why experienced and senior joint administrators would not regard it as a material matter.

45. But proposed administrators must appreciate that they are not the sole judges of "materiality" and should where necessary be prepared to expose their own judgment to consideration by others (including the Court). This the Joint Administrators "belatedly" did (as Hildyard J described it) with the same consequence as if they had made earlier disclosure. I do not consider that it demonstrates a lack of candour on the part of the Joint Administrators (any more than did Hildyard J when he appointed them), though I do think it was a misjudgement not to have volunteered the information earlier.

46. Third, the Joint Administrators are accused of not telling the truth in relation to costs, which renders them unfit to be liquidators. The total estimated figure for costs in the Estimated Outcome statement is £397,500 (including £220,000 for post-administration fees). The Joint Administrators' proposals to creditors of the Relevant Companies sought approval for fixed fees (for all work done and to be done) for the administrators totalling £600,000. This work included liaising with the ICO and with American regulatory authorities, a review of the Relevant Companies and their financial transactions with the wider group, and compliance with statutory duties "which may identify potential recovery actions". The fact that initial estimates (based on 4 days' familiarity) are in the light of experience demonstrated to be inaccurate does not of itself mean that the Joint Administrators initially did not tell the truth or lacked candour. Nor was the amount of the chargeable fees settled. The approval of creditors was needed, and fees proposed for Elections were subject to further scrutiny by a Creditors' Committee. In all cases the proposed fees themselves are open to challenge if in the event their level unfairly harms the interests of the creditors.

47. Fourth, the Joint Administrators are charged with professional incompetence and with a lack of integrity (in that they espoused the cause of the Relevant Companies) in certifying that there was a reasonable prospect of achieving the purpose of the administration. This lack of competence and lack of objectivity it is said disables the Joint Administrators from acting as joint liquidators.

48. The argument about competence (but not the challenge to integrity) has some weight. It runs as follows. The fundamental assumption being made was that the Relevant Companies would continue to be active for a short time after the commencement of administration. On this assumption, during this time it would be possible to make some realisation of the value of work in progress (and perhaps collect debts): and it would also be possible to solicit offers for the businesses on a "going concern" basis. As to realising WIP, the proposed joint administrators knew or should have known that the ICO had on the 23 March 2018 seized the servers and some of the laptops which the Relevant Companies used, and so it was from the outset unclear upon what basis any WIP could be realised. As to a "going concern" sale, it was known that there was a lack of firm financial information and that made such a sale unrealistic. That this was so is demonstrated by the facts (i) that when the Joint Administrators visited the offices of the Relevant Companies it immediately became clear to them that due to the seizure of the servers and laptops staff were unable to undertake or to continue any project work for clients so that the businesses were unable actively to trade; and (ii) that only four disappointingly low offers were received when the businesses were marketed (none from Mr Nix or another investor). That is the argument.

49. Setting on one side the "hindsight" element ("this is what actually happened, so it should have been foreseen") the argument is nonetheless a serious one. It embodies the concerns expressed by Hildyard J over the two days of the hearing.

50. The question for the proposed administrators was whether at the date of the hearing (and in particular on its second day), and looking ahead from the standpoint of their then-current knowledge, they were able to abide by the statement in their respective consents to act that "the purpose of administration was *reasonably likely* to be achieved" i.e. that there was a real prospect of that outcome. This is a question of immediate judgment, where there may be a reasonable difference of view.

51. The evidence shows (i) that the proposed administrators were highly experienced; (ii) that they had been told by Mr Wheatland that concrete expressions of interest had been received from Mr Nix and from another potential investor for "the businesses"; (iii) that the proposed administrators contemplated the possibility of bids from competitors; (iv) that whilst the ICO had seized both servers and laptops it was prepared to return them once certain passwords had been provided (presumably to facilitate taking mirror copies of all relevant drives); (v) that the proposed administrators appear not to have anticipated a lack of co-operation on the part of Elections' employees; (vi) that the proposed administrators appear not to have anticipated that overseas enforcement agencies might seek to restrict the sale of laptops, servers and data; (vii) that (at the express request of the judge) the proposed administrators specifically addressed the impact of the overnight press announcement of the closure of the Cambridge Analytic businesses upon any sale.

52. Given that context, upon consideration in my judgment it is not possible to characterise the considered view of the proposed administrators (that there remained a real prospect of a better return to creditors than would be achieved in an immediate liquidation) as irrational, perverse or outside the range of views that might be held by reasonably competent practitioners (even if some proposed office-holders would have taken a different view): and there is no expert evidence to suggest otherwise. The storm of allegations that the tools had been misused (data analytics had been used to influence voters) did not at that stage obviously mean that the tools themselves (the data analytics

software and aggregated databases) had no value. Value would only evaporate once it became clear that the data analytics software *necessarily* involved unlawful data processing or that the databases included *inseparable* unlawfully acquired data: this appears only to have emerged with clarity in the ICO reports of November 2018. In my judgment it was not unrealistic to think that there was a short window of opportunity to exploit that uncertainty and to realise and to collect in assets before they also evaporated. I do not consider that the fact that each of the proposed administrators gave the appropriate certificate (and stood by it) disqualifies either as a candidate for appointment as liquidator.

53. Fifth, the Joint Administrators are charged with actual bias in their treatment of Prof. Carroll. This charge is laid in three contexts: (a) the initial failure of the Joint Administrators to provide Prof. Carroll with every document deployed at the hearing of the administration application; (b) an alleged attempt to obtain their appointment as liquidators without scrutiny; and (c) the failure to do anything to see if Prof. Carroll has a claim (and to treat him as a representative of other potential data claimants with total claims of the order of £43 billion).

54. I deal first with the failure to provide documents. On 19 June 2018 (repeating a request made on 22 May 2018) Prof. Carroll's solicitors sought the provision of copies of all the materials that were adduced at the administration order hearing together with notes of the oral submissions. The letters appear to proceed on the footing that the Joint Administrators were the applicants for the administration order, and that Prof. Carroll (as a member of the class of unsecured creditors) was in the same position as a respondent to a "without notice application". The letter made no offer to pay the reasonable costs of satisfying the request (and so threw that burden onto the general body of creditors): nor did it indicate that Prof. Carroll had sought the material on the Court file but had been unsuccessful in his attempt. The solicitors for the Joint Administrators advised Prof. Carroll's solicitors to redirect the request to the solicitors acting for the Relevant Companies. Save in one respect, in my judgment that was a proper response consistent with the duty to run the administration in the interests of the general body of creditors as a whole.

55. The one qualification I make is that in my view the Joint Administrators ought to have provided (immediately and without charge) copies of the pre-appointment certificates which they signed, of the Estimated Outcome Statements and of their Counsel's skeleton argument - material generated by or on behalf of the Joint Administrators that was not voluminous and must have been readily at hand. That would have struck a fairer balance between the personal interests of Prof. Carroll and the interests of the general body of creditors as a whole. An administrator must balance the need to proceed with the administration in the interests of creditors as a whole against the desirability of responding to legitimate enquiries from individual creditors: see Four Private Investment Funds (below).

56. The solicitors for the Relevant Companies would not assist Prof. Carroll: so he reverted to the Joint Administrators. They took their stand on the observations of Blackburne J in Four Private Investment Funds v Lomas [2008] EWHC 2869 at paragraphs [46] to [48] (that it was for them to decide where the balance lay between the personal interests of Prof. Carroll and the interests of the general body of creditors as a whole) and maintained that stand notwithstanding a repeated threat to seek personal costs orders against them if they did not succumb to the demands of Prof. Carroll. They agreed to

provide him with a transcript of the judgment (which they had ordered in May 2018) when it was obtained; and it was not their fault that the transcript did not reach them until 12 December 2018. To respond in that way is not plainly wrongful conduct (although others may have taken a different view, given that the request related to the circumstances of appointment). But I do think they were plainly wrong not to have provided the material which they themselves had produced or caused to be produced in relation to their appointment.

57. The Joint Administrators did in December 2018 permit Prof. Carroll to bring an application for disclosure of the documents (notwithstanding the moratorium) and they did submit to an order for the provision of the documents (even though that entailed the Joint Administrators obtaining the documents from the applicants' solicitors). The change of view is plausibly grounded on the fact that evidence making trenchant criticisms of the Joint Administrators had been filed on behalf of Prof. Carroll on 6 December 2018 which made disclosure sensible. The change of stance cannot be read as an acknowledgement that the earlier stance was erroneous. There is nothing in their conduct which disqualifies the Joint Administrators from appointment as liquidators.

58. I turn to deal with the present application. Prof. Carroll says that the Joint Administrators have been obstructive and partisan and actually biased against him. He says that he was not told of the issue of the present application nor was he informed of its first hearing date. When he learned of its hearing date he asked for it to be adjourned, explaining that because the Joint Administrators had been selected by the Relevant Companies they might not be objective: but in the light of that ground of objection the Joint Administrators refused an adjournment and said they would press for their appointment as liquidators. The Court adjourned the hearing of its own motion. Before the adjourned hearing Prof Carroll made his disclosure application returnable on the same date, which the Joint Administrators did not seek to stay. Four days before the return date the Joint Administrators filed additional evidence. On the day preceding that return date Prof. Carroll caused to be served a 75-paragraph witness statement with 900 pages of exhibits ("Naik 3"). By the time of Naik 3 Counsel for the Joint Administrators had already filed a skeleton argument seeking an order for their appointment as liquidators. At the hearing (at which Prof. Carroll appeared by Leading Counsel) the Joint Administrators effectively consented to a disclosure order (they say in the light of Naik 3) and to the re-listing of the case.

59. I do not intend now to examine the rights and wrongs of these procedural steps (though I have read all the relevant documents), because it may be necessary to take them into account when costs come to be considered. I focus on the thrust of the argument as to obstruction. A finding of obstruction, actual bias and partisanship against an officer of the Court based upon written evidence alone is a strong thing: so I ask myself: "Are the acts of the Joint Administrators disclosed by the incontrovertible parts of the documentary record so perverse that they can only be attributed to bias?". I answer that in the negative. The acts are equally consistent with the office holders thinking in good faith (for good reason or bad) that they had a strong case for commonly granted relief, which was supported by the majority of the general body of creditors, and that the ground of objection was one routinely made and regularly regarded as insufficient. Whether in acting in accordance with that belief they took into account "the overriding objective" is a different question. But there is no proven "bias" that disqualifies them from further appointment.

60. I turn to the alleged failure of the Joint Administrators to do anything to see if Prof. Carroll had a good claim. I can deal with this shortly. Insolvency is a class remedy in which individual legal rights are transformed into rights to participate in the insolvency process, that process itself being conducted in the interests of the general body of creditors. When insolvency intervened Prof. Carroll had rights in relation to his data and had threatened a monetary claim. His right to participate in the insolvency included a right to apply to pursue his "data rights" and a right to prove in respect of his claim. Reflecting those rights Prof. Carroll was admitted to vote at the minimum value he put on his claim, though he was not permitted to pursue his claim (a view he did not challenge by applying to the Court).

61. As a creditor it is for him to prove his monetary claim. In relation to his "data rights", it is again for him to pursue them. If he did so, the two questions the Joint Administrators had to ask were: "Is it in the interests of the general body of creditors or a necessary part of the discharge of our statutory duties to help Prof. Carroll pursue his "data rights"? If we decide not to help, does that cause unfair harm to the interests of Prof. Carroll?". In the second question the relevant "interests" are Prof. Carroll's interests as a *creditor*, not his interests as a curious academic or as someone leading a campaign to establish a principle about the use of data or as someone who is unsettled by what might have happened to his data in the past. It was within the range of decisions properly made by competent administrators to decide (when they learned of Prof. Carroll's claims on 17 May 2018) that it was not in the interests of the creditors as a whole to embark upon a search within 700 terabytes of data for the source of potentially 5000 items relating to Prof. Carroll, given that the relevant servers were in the custody of the ICO and the employees of Elections were imminently either to be transferred to the purchaser under a "going concern" sale or to be made redundant in the event of no such sale. They could properly take the view that to treat Prof. Carroll in the same way as the other "data claimants" would not cause unfair harm to his interests as a creditor.

62. Implicit in Prof. Carroll's complaint is assumption that it was the general duty of the Joint Administrators to investigate "data breaches" occurring before their appointment. In my judgment there was no such general duty. The duty of the administrators was to seek to achieve the objectives of the administration as quickly and as efficiently as was reasonably practicable. This related to achieving an economic return to the creditors (not to investigating the company's compliance with data protection laws), to fulfilling their statutory duties to investigate the directors, and to exiting from the administration in an appropriate way.

63. As part of their duties in relation to asset recovery (and as part of their statutory reporting duties) the Joint Administrators would be bound to examine the material available to them to see if there were grounds to investigate any potential breaches of the duties owed by the directors *to the company* or (in any "twilight" period) *to the creditors* (or some one or more of them). It would not be part of this investigatory duty to examine whether there were breaches of duty owed by the directors *to particular third parties* (such as a "data subject"). Investigations of that nature are properly the province of external regulators. Nor would it be part of their investigatory duty to examine whether there were breaches of duty owed *by the company* to particular third parties if they considered that there was no prospect of a distribution to such third parties (such as a "data subject") or if they considered that any claims by such parties could be sufficiently addressed in the adjudication process in the event that a

distribution occurred. Administrators can quite properly devote available resources to effecting recoveries before expending them on distribution issues.

64. It would be part of the duty of an administrator as an officer of the Court to assist a regulator in such investigations insofar as such assistance did not itself impede the achievement of the purposes of the administration. The failure of the Joint Administrators to investigate Prof. Carroll's claims on his behalf but at the expense of the creditors as a whole does not demonstrate actual bias which renders the Joint Administrators unfit to be appointed liquidators.

65. I add a footnote to this point. Mr Gledhill QC also submitted that the Joint Administrators ought to have helped Prof. Carroll because he was but one of many potential claimants who had claims of up to £43bn. I disagree. There were 11 "data claimants" (and one who claimed the return of a £10 fee). They were the creditors for whose benefit (as part of the general body or creditors) the administration was to be conducted. The Joint Administrators were here under no obligation to canvass further claims: and they were not obliged to conduct the administration taking account of the interest of those who had not made claims.

66. Sixth, Prof. Carroll says that the Joint Administrators have misconducted themselves in office and this renders them unfit for appointment. This argument is advanced in three contexts: (a) the nature of the present application; (b) the conviction of the Elections on a summons by the ICO; (c) the loss of assets.

67. As to the first (the present application), Counsel for Prof. Carroll submit that once it became clear (on or about 22 May 2018) that there was not going to be anything like a "going concern" sale then it was improper for the Joint Administrators to continue with the administration and they should have applied forthwith to the Court either for directions or for a compulsory winding up and the appointment of the Official Receiver as liquidator (particularly in the light of the views expressed by the judge). It is submitted that the preparation and submission of proposals to creditors was improper, and (it should be inferred) was designed to entrench the Joint Administrators and to strengthen their claim to appointment as joint liquidators.

68. I agree that the Joint Administrators could have applied for directions soon after 22 May 2018: they had been given some judicial encouragement by Hildyard J. The applicants would be expected to place before the Court what their proposals were in the light of the knowledge they had gained, and sensible proposals would have been for the winding up of Elections and to offer themselves for appointment as liquidators (being already in harness). I also agree that the Joint Administrators could have applied soon after 22 May 2018 for the compulsory winding up of Elections (though I do not agree that it would have been usual to seek the appointment of the Official Receiver as liquidator). I think that such an application would probably have been made pursuant to paragraph 79(2)(a) of Schedule B1 to IA86 for their appointment as administrators to cease to have effect, and that the Joint Administrators would probably have asked the Court to make a winding up order under paragraph 79(4) (as was done in Graico Properties [2016] EWHC 2827) again offering themselves for appointment (being already in harness).

69. But I do not think it was outside the range of decisions properly open to competent administrators to await the delivery of the Statement of Affairs, to ascertain from that

(and from the disorganised financial records of Elections) who were the creditors affected by any decision as to the way forward, and to canvass the views of those creditors. There is no evidence that they embarked on that course to strengthen their own positions; and bad faith or improper motive is not an inference necessarily to be drawn.

70. As to the second (the conviction of Elections), on 4 May 2018 (and therefore on the day after the commencement of the administration) the ICO sent an Enforcement Notice to Elections requiring the company to provide better answers than had already been given to Prof. Carroll's SAR, including in particular a description of the source of personal data (including that used to compile the "models" disclosed to Prof. Carroll) and a description of the recipients or classes of recipient to whom the data had been or maybe disclosed.

71. The "data controller" to whom the notice was addressed was Elections. The servers on which the data were stored were in the custody and under the control of the ICO already: and Elections did not have access. It was established in Re Southern Pacific Personal Loans Ltd [2014] Ch 426 that where a company holds and processes data then it is the company alone (and not the company and its directors together) which is the data controller; and the fact that the company becomes subject to an insolvency process does not of itself make the office holder a "data controller". The office holder will only become a "data controller" if he takes decisions about the processing of the data as principal in his capacity as liquidator (or administrator) rather than as agent of the company. Accordingly

> "[office holders] are not personally responsible for compliance with the provisions of the DPA in respect of the data processed by the company, including but not limited to [SARs] made under section 7" (*ibid* at [38]).

72. Since the Enforcement Notice was addressed to Elections and since the Joint Administrators were not themselves "data controllers" and given that the servers were in the custody and control of the ICO itself and (from 22 May 2018) Elections had no staff, the Joint Administrators did nothing to comply with the Enforcement Notice: nor did they seek to set it aside by means of an appeal under s.48 DPA 1998.

73. Whilst the implications of the Southern Pacific decision remain to be worked through, I think the Joint Administrators may have asked themselves the wrong question. The question was not: "What as do we as administrators have to do meet our obligations under the Enforcement Notice?". Southern Pacific answers that question. It was rather: "What does Elections have to do to meet its obligations under the Enforcement Notice? What can we, within our powers of management as administrators, do to enable Elections to meet those obligations? Is it in the interests of the creditors as a whole that we should bring about those actions?".

74. At all events the Joint Administrators did nothing. They took the view that they were not data controllers; and that the cost of complying would be disproportionate to the value of the assets and would impact adversely on recovery.

75. The ICO therefore sought to commence criminal proceedings against Elections. The Joint Administrators gave their consent to the commencement of such proceedings (which they were not bound to do). When the summons was issued they took the advice of senior Counsel practising in regulatory law. The advice received (it appears from Counsel's later skeleton argument) was that Elections had a good defence to the charge on several grounds. Amongst the grounds were (i) that Elections was not a data controller since it had no control over its servers; (ii) Elections had acted with all due diligence given that its director did not have access to servers or the staff to interrogate the servers and could not exercise management powers; and (iii) the decision in Southern Pacific (*supra*) made clear that the Joint Administrators had no responsibility. A "not guilty" plea was entered.

76. When skeleton arguments were exchanged it became apparent that Counsel for the ICO was going to argue that Elections was culpable because it *did* have access to the data but it had simply not asked the ICO (which retained possession of the servers) specifically for the data which the ICO itself had required Elections to produce. The trial judge (rightly in my view) considered this a strange situation. But in view of that argument (and of the response of the ICO to other defences raised) the Joint Administrators were advised that Elections should plead guilty. They agreed a "basis of plea". It included the following: -

> "[Elections] accepts that it has not complied with the Enforcement Notice, nor has it sought to exercise its right of appeal against the Notice or contacted the ICO to discuss recovery of information in order to comply."

The Joint Administrators cannot go behind this.

77. In consequence of the plea Elections received a £15,000 fine and had to pay a £170 victim surcharge and £6000 costs. These rank as unsecured claims in the administration.

78. In my judgment the Joint Administrators were not guilty of misconduct in relation to the Enforcement Notice (although they did not appreciate the legal niceties of a novel situation in a developing area of the law). Their judgment that the costs of compliance with the Enforcement Notice were disproportionate is not demonstrated to be wrong. Attempts at compliance would have involved incurring costs that would have ranked as an expense of the administration: non-compliance has resulted in some costs (taking advice on the summons) and in an additional unsecured claim. There is no evidence that the latter situation is more burdensome to creditors than the former. In truth, Prof. Carroll's complaints do not touch upon his interests *as creditor*. They are, as correspondence from his solicitors makes clear, grounded upon his desire for his own data and to advance his view of the public interest. The administration was not being run with a view to providing Prof. Carroll with his data, or to satisfy his academic curiosity, or to promote his campaign. It had altogether more prosaic objectives focussing on the rights and interests of all creditors.

79. As to the third aspect (loss of assets) I will deal with both instances of this very shortly. By obtaining some passwords from Elections' employees and providing them to the ICO the Joint Administrators recovered five laptops (the data having been "mirror imaged" by the ICO). These laptops were stored in a secure room to which only Crowe staff and two employees had access keys. Notwithstanding that, the laptops were stolen

on 22 May 2018 (the date when employment contracts were terminated). This says nothing about the suitability of the Joint Administrators to be liquidators.

80. The other instance is that a third-party cyber security expert who liaises with Prof. Carroll has expressed the view that for a time (now ended) the cloud-based server infrastructure of the Cambridge Analytics business may not have been completely disabled following administration, raising the possibility that former employees of Elections may still have accessed data for new deployments. The Joint Administrators had engaged specialist IT consultants by no later than 22 May 2018 and from that date restricted access to the Relevant Companies' cloud-based material to themselves and their staff, their IT consultants and the ICO. The speculation (it is no more than that) that former employees may (perhaps via a publicly available source code repository) have gained access to some unspecified material by bypassing the restrictions put in place by the Joint Administrators on the advice of their IT consultants says nothing about the suitability of the Joint Administrators to be liquidators.

81. Seventh, Prof. Carroll says that the present funding arrangements mean that the Joint Administrators are incapable of being objective, that there is an overwhelming case for an independent investigation into what happened (in the widest sense) before the administration of Elections, that the joint Administrators cannot be trusted to undertake it or co-operate in it, and that there is a real risk that the appointment of the Joint Administrators as liquidators would undermine public confidence in the insolvency process. This view is not supported by any other creditor: but on the other hand, no creditor has emerged to fight the Joint Administrators' corner and (beyond answering the charges against them and putting in evidence about the actual course of the administration) they can do little to advance their own cause.

82. As to the funding arrangement, I have indicated that it is not unusual for a principal creditor to take on the burden and (although more unusual) not a matter for criticism that a holding company should do so. The existence of the funding arrangement did not of itself cause Hildyard J to think that the Joint Administrators were not independent (as the citations from his carefully expressed judgment demonstrate). It is right to note that in the light of having to spend some 1535 man-hours to date the fees of the Joint Administrators have risen from an anticipated £220,000 (at the time of the EOS) to £600,000 (at the time proposals were put to creditors): and it is fair to take into account the fact that the Joint Administrators have been paid £221,000 by Emerdata and will look to it for the balance in the event that there are no realisations. Those events mean that the Joint Administrators have constantly to ask themselves the question posed by Hildyard J: "whether the identity of their paymaster might make more difficult the independence required of them".

83. But it is not a question that admits of only one answer. Emerdata was the provider of funds to the Relevant Companies, those funds being raised from investors. Emerdata wants its money (about £6.4m) back. It has every incentive to support the Joint Administrators. There is no suggestion that Elections has any claim against Emerdata that the Joint Administrators might want to pursue: but if they did, and if Emerdata refused to fund it, then the Joint Administrators would be duty bound to seek alternative funding, thereby finding themselves in no worse a position than most administrators who have claims to investigate but no money with which to pursue them. The Joint Administrators did have claims against Mr Nix on his loan account. Mr Nix is a minority shareholder in Emerdata. The Joint Administrators pursued him: and Emerdata

paid for them to do so. They effected recovery. There may be more claims against Mr Nix as a former director and officer of Elections, and perhaps against others. The Joint Administrators have liaised with the Insolvency Service (and with the Public Interest Official Receiver) about such potential claims: and it appears that Emerdata is willing to pay for them to do so (because Emerdata is on the creditors' committee of Elections which approved the Joint Administrators' proposals for a fixed fee covering that work). The sale of Group's interest in Insight to Mr Oakes invites examination. Mr Oakes is a shareholder in Emerdata. The Joint Administrators say that this is already in hand: and Emerdata is funding it. In practice "the identity of the paymaster" has not inhibited enquiry.

84. I therefore do not accept that the funding arrangement means that the Joint Administrators cannot be objective. But they must, of course, constantly ask themselves the question posed by Hildyard J.: and they will want periodically to review the availability of other sources of funding (and to assess the impact of its inevitable cost on the interests of the creditors as a whole).

85. As to the case for an independent investigation in the widest sense into the activities of the Cambridge Analytica business in acquiring, aggregating and analysing personal data, I certainly agree that there is a strong case for it. I simply do not accept that an insolvency process is the appropriate machinery to use. Administration is about the collection of assets and the ascertainment of claims, about realisation and distribution in some cases and about re-organisation in others. It is about businesses and unpaid creditors and jobs: and administrators are given the tools appropriate to that task. Liquidation is not in substance different. Whilst each entails performance of statutory reporting duties (an important interest of the community at large) neither process is a free-floating public enquiry into possible unlawful activity implicit in the business model of the insolvent company (be that unlawful activity a contravention of some licence condition or a breach of food hygiene requirements or health and safety at work regulations or data protection rules).

86. The proposition that a liquidation does not involve a general enquiry is subject to one qualification. Where a winding-up order is made it is the duty of the official receiver (whether or not he is the liquidator) to investigate the causes of the company's failure and generally the promotion, formation, business, dealings and affairs of the company and to make such report (if any) as he thinks fit to the Court: s.132 IA86. That investigation will be undertaken even if the Joint Administrators are appointed liquidators.

87. An insolvency process does not take the place of an investigation by the ICO at public expense (though the Joint Administrators have the duty of co-operation I have mentioned). It is not a substitute for an enquiry by DCMSCom at public expense (though the periodic reports and the analysis of financial information undertaken by the Joint Administrators would undoubtedly assist). It is not a substitute for an investigation by the National Crime Agency (as was in July 2018 recommended by DCMSCom on the basis that Emerdata was the holding company of and a creditor of Elections and that some laptops had been stolen). I think it is an error for Prof. Carroll to seek to divert this administration or any succeeding liquidation into an investigation "in the widest sense" into the activities of Cambridge Analytica at the expense of the general body of creditors.

88. As to the remaining points under this head, I do not think there is anything of weight in them. From the outset Crowe has put on record the essential independence of an office holder and warned of the perception that what its officeholders may have to do may appear hostile to directors and officers. There is material demonstrating that they have advanced claims and are examining claims against those formerly interested in Elections and Group. There is evidence that they have sought to prevent such people making use of data held by the Relevant Companies. There is evidence that they are co-operating with supervisory authorities. Of course, if they remain in office (but as liquidators) it is possible that rife speculation or a storm of adverse comment on social media may generate an apparent loss of public confidence in the insolvency process: but that cannot dissuade an independent Court from doing what it thinks right in the interests of the general body of creditors.

89. There is one final thread which emerges during several of the points made by Prof. Carroll. It is submitted on his behalf that the Joint Administrators are wrongly characterising him as "a contingent creditor" (with the implication that they are devaluing or belittling his claim). The point was made as an assertion, without supporting analysis: but my reaction to it (without the benefit of argument) is that the criticism is misplaced. A contingent creditor is a person towards whom, under an existing obligation, a company may or will become subject to a present liability upon the happening of some future event: Re Williams Hockley Limited [1962] 1 WLR 555 at 558. People with unadjudicated statutory tort claims against a company requiring proof of damage may properly be so characterised: Re Armstrong Whitworth Securities Limited [1947] Ch 673. Whatever the general view of the mode of operation of the Cambridge Analytica business, Prof. Carroll has yet to establish that *his* personal data has been unlawfully acquired (he acknowledges that his data does not derive from Facebook) or unlawfully processed; and the present liability of Elections to pay compensation has yet to be determined or quantified. The uncertainties attending establishing these matters are precisely why the relief sought in Prof. Carroll's existing action is "pre-action disclosure" not an award of compensation. But whether my view is correct or not I can understand why the Joint Administrators so characterised it without thereby belittling it: and they have treated the claim entirely correctly pending its adjudication.

90. I think I have addressed all of the multiple points raised in Naik 3 on behalf of Prof. Carroll (as elaborated in Naik 4). But that is not enough. Before granting the relief sought I must be satisfied that it is right so to do according to settled principle. Because many of the issues have arisen in the course of addressing Prof. Carroll's objections I can do so shortly.

91. First, in my judgment to follow the conventional course and to appoint the Joint Administrators as liquidators would be conducive to the proper operation of the liquidation. They have spent at least 1535 man-hours getting to grips with the complexities of the insolvencies of the Relevant Companies. It is pointless to require new officeholders to go over some of the same ground again. New officeholders could, of course, build on the work of the Joint Administrators (for example by taking as their starting point the corrected and verified statement of assets and liabilities which the Joint Administrators have prepared). But it is inevitable that there will be a duplication of effort until the same level of understanding can be achieved.

92. Moreover, the Joint Administrators have in place a funding arrangement enabling them to undertake their work. Whilst it may be assumed that Emerdata (if driven by a commercial desire to maximise recoveries) would fund the process whatever the identity of the officeholders, Emerdata may balk at having to fund any duplicative or familiarisation work: I see no point in risking this funding gap.

93. Second, from the material I have seen I am satisfied that the Joint Administrators, if appointed liquidators, would do justice between all those interested in the liquidation. From the personal perspective of Prof. Carroll it may seem that his "non-creditor" interests (discovering how Cambridge Analytica worked and how it acquired and processed data) have not been given the prominent attention he would wish. But if one stands back and adopts the perspective of the general body of creditors then I do not think it can fairly be said that the Joint Administrators have taken decisions which have harmed the interests of the creditors as a whole or have given some sectional preference. The response to the Enforcement Notice (and the incurring of the fine and costs burden) may be thought to come closest: but that was essentially a commercial judgement exercised in an uncertain legal context and in relation to which the Joint Administrators took and acted on proper advice as the matter progressed.

94. Third, the Joint Administrators are not the choice of any person who has a purpose which conflicts with the proper course of the liquidation. Their appointment as Joint Administrators was at the behest of the Relevant Companies: but Hildyard J did not consider that either that or the funding arrangement in place meant that they were not independent professionals, and nor do I. As candidate liquidators the Joint Administrators are the choice of the clear majority of creditors (who are given the opportunity to propose anyone else). Mr Gledhill QC submits that those creditors did not know of the litany of complaints which Prof. Carroll has. But Prof. Carroll's complaints are complaints that he was treated the same as everybody else rather than having his particular interests (shared with a dozen other "data claimants" who do not themselves complain) being addressed in the manner he would wish. So Prof. Carroll's complaints were unlikely to be of interest to the vast majority of creditors.

95. Fourth, whilst I do not regard the wishes of the majority of creditors to be determinative, I do regard them as a major factor in the decision process, requiring some counter of weight to justify overriding them. This approach is not to be dismissed by a sole objector (claiming £20,000 amongst total claims of some £8 million) as "mechanistic vote counting".

96. Fifth, I see no reason to doubt that the Joint Administrators if appointed will act (and be seen to act) in the interests of *the creditors as a whole*. An appreciation of that focus may have led the Joint Administrators on occasion perhaps to give too little weight to legitimate requests of Prof. Carroll. But misjudgements of that order do not stand in the way of an otherwise warranted appointment: compare Re Charnley Davies Business Services Ltd [(1987)3 BCC 408.

97. I shall therefore appoint the Joint Administrators to be joint liquidators of the Relevant Companies in the expectation that they will conduct the liquidations for the benefit of the creditors as a whole, faithfully discharging their statutory reporting duties, and generally co-operating with the supervisory authorities (including in particular the Official Receiver) to the extent that their resources permit, even though there may be no direct economic benefit to the general body of creditors.

98. This leaves over one point. The Joint Administrators seek an order under paragraph 98 of Schedule B1 granting them forthwith a discharge and release from liability as administrators. Such relief is commonly granted if creditors have been given advance notice of the intention to seek it and have given their approval: see for a recent example West End Key Estate Management [2017] EWHC 958.

99. Prof. Carroll objects to the Joint Administrators being given a discharge or release. He does so as a matter of principle, and not because he has a specific complaint he wishes to pursue that would be inhibited by a release. (A release under para.98 of Schedule B1 to IA86 would not prevent Prof. Carroll from pursuing a properly arguable misfeasance claim under para. 75 of Schedule B1 in any event). At the hearing it was accepted that a discharge will have to occur, but in its ultimate and most refined form Mr Gledhill QC's submission was that the release should be three months after the appointment of an independent liquidator, with a "longstop" date of six months.

100. I am appointing the Joint Administrators to be liquidators. They are imminently due to produce a report to creditors. Although the majority of creditors are content for there to be a release contemporaneous with the end of the administration, I shall direct that their discharge be effective 28 days after the date of that final report. In a case of some public interest it will enable creditors (as creditors) to raise questions without formulating them as allegations of misfeasance. Since the administrators will not have in their hands any part of the administration estate I would propose (subject to argument) that the costs of dealing with questions arising on the final report shall (subject to further order) be treated as costs of the liquidation.