



Neutral Citation Number:[2022] EWHC 1060 (Ch)

Case No 57 of 2017

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

**IN BANKRUPTCY**  
**IN THE MATTER OF JONATHAN FERSTER**

Date: 6 May 2022

Before :

**HHJ Halliwell sitting at a Judge of the High Court at Manchester**

Between :

**Louise Mary Brittain**  
**(as trustee in bankruptcy of Jonathan Ferster)**

**Applicant**

- and -

**(1) Jonathan Ferster (a bankrupt)**  
**(2) Jonathan Seeds**  
**(3) Evolution Software (UK) Limited**

**Respondents**

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**Mr Jack Watson and Mr Ram Lakshman** (instructed by **Gunnercooke LLP**) for the  
**Applicant**

**Mr Richard Chapman QC and Ms Victoria Roberts** (instructed by **Knox Insolvency Limited**) for the **Respondents**

Hearing dates: 6-10 December 2021, 21 January 2022

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**APPROVED JUDGMENT**

This judgment was handed down remotely by circulation to the parties' representative by email and release to the National Archive. The date and time for hand-down is deemed to be Friday 6 May 2022 at 2pm.

## **His Honour Judge Halliwell**

### ***(1) Introduction***

1. These proceedings arise from the bankruptcy of Mr Jonathan Ferster (“**Mr Ferster**”). Mr Ferster’s trustee in bankruptcy, Ms Louise Brittain (“**the Trustee**”), has issued two separate applications for an order suspending Mr Ferster’s discharge from bankruptcy under *Section 279(3)* and the provision of a witness statement and documents under *Section 366(1)* of the *Insolvency Act 1986*. These applications are now before me.
2. As parties to the *Section 366* application, the Trustee has joined Mr Jonathan Seeds (“**Mr Seeds**”) and Evolution Software (UK) Limited (“**Evolution Software UK**”) in addition to Mr Ferster himself. Mr Seeds cohabits with Mr Ferster as his partner and has done so for upwards of twenty years. However, they have not married one another and they are not civil partners. Evolution Software UK provides services for online gaming businesses. Mr Seeds is registered as its majority shareholder.
3. At the hearing before me, Messrs Jack Watson and Ram Lakshman, of counsel, have appeared on behalf of the Trustee. Mr Richard Chapman QC and Ms Victoria Roberts, of counsel, have appeared on behalf of all three respondents.

### ***(2) Background***

4. Mr Fester was once in business with his brothers, Messrs Warren and Stuart Ferster. In 2004, they formed or acquired Interactive Technology Corporation Limited (“**ITC**”) as the vehicle for an online gaming business.
5. Ten years later, during the Autumn of 2014, their relationship descended into acrimony when Messrs Warren and Stuart Ferster discovered that Mr Ferster had drawn unauthorised remuneration and unlawfully transferred funds from ITC to other companies in which he had an interest. On behalf of ITC, they commenced proceedings against Mr Ferster and a series of companies with which Mr Ferster was alleged to have a connection or transferred funds. In those proceedings, they obtained a freezing and property preservation order. They also brought their own personal claim against Mr Ferster. Mr Ferster himself petitioned for relief in respect of ITC under the provisions of *Section 994* of the *Companies Act 2006*.
6. In June-July 2016, the proceedings were tried together before Morgan J. Having found Mr Ferster to have acted dishonestly and deliberately given false evidence, Morgan J gave judgment for ITC. He ruled that ITC owned the online gaming business. He also concluded

that Mr Ferster had unlawfully transferred ITC's assets to other companies, drawn excessive remuneration and claimed expenses to which he was not entitled. Morgan J's judgment is at [2016] EWHC 2896 (Ch).

7. On 19 May 2017, ITC presented a bankruptcy petition and, on 10 July 2017, Mr Ferster was adjudged bankrupt. On 19 July 2017, the Trustee was appointed Mr Ferster's trustee in bankruptcy. As at 4 July 2018, Mr Ferster's unsecured creditors had submitted proofs in the bankruptcy amounting to some £14,799,928.90, including ITC's proof for £14,170,933.99.
8. Under *Section 279(1)* of the *Insolvency Act 1986*, Mr Ferster was scheduled to be discharged from bankruptcy on 10 July 2018, one year after commencement of the bankruptcy. However, on 6 July 2018, the Trustee applied to the Court for an order suspending discharge. In support of her application, the Trustee filed a witness statement dated 5 July 2018, alleging that Mr Ferster had failed to respond fully to her enquiries about the amounts secured by a second charge over his house in favour of Fedelta Trustees (IOM) Limited ("**Fedelta Trustees**") and, more generally, his involvement in the business of "CasinoMax" ("**CasinoMax**") and Evolution Software UK. Fedelta Trustees were trustees of the J Ferster 1989 Settlement Trust ("**the 1989 Trust**"), an Isle of Man trust set up by Mr Ferster himself in 1989. CasinoMax is used as a trade name by Entertainment Software Group NV ("**Entertainment Software**"), a company registered in Curacao. It was at least implicit in the Trustee's enquiries that she had reason to believe Mr Ferster was involved in the formation and management of CasinoMax and had an interest in the assets of Entertainment Software. More generally, the Trustee perceived that Mr Ferster was seeking to conceal assets held or acquired on his behalf before and after he was adjudged bankrupt.
9. On 9 July 2018, HHJ Stephen Davies made an order ("**the July Order**") under *Rule 12.10* of the *Insolvency (England and Wales) Rules 2016*, suspending discharge on an interim basis. It was recorded in the July Order that there were *reasonable grounds for considering* that [Mr Ferster] had failed to give the Trustee such information as she reasonably required to carry out her functions. This was not in the same terms as the formula required by *Rule 10.142(9)(e)* of the *Insolvency (England and Wales) Rules 2016* which requires orders to contain a statement that it appears to the court that the bankrupt has *failed to comply* with his obligations. No doubt, this is because the order was made on an interim basis, apparently without first notifying Mr Ferster or giving him an opportunity to respond. This was implicitly on the grounds that the Trustee had sought to provide Mr Ferster with the

opportunity to provide the information required until the last possible moment but he had ultimately failed to do so. It is not suggested, on behalf of Mr Ferster, that the discrepancy with the statutory formula invalidated the July Order itself. It operated to suspend discharge until after 14 August 2014.

10. Mr Ferster filed a witness statement dated 8 August 2018 taking issue with the Trustee about the extent to which he had co-operated with the Trustee and the information provided in response to her inquiries. He was unable to state how much was secured by the second charge but confirmed he had already advised the Trustee, at interview, that he was involved with Casinamax and Evolution Software UK. Although he had sought to respond to the Trustee's inquiries about the companies, Mr Ferster was unable to provide all the information requested.
11. Following a contested hearing on 14 August 2018 ("**the August 2018 Order**"), HHJ Stephen Davies made an order suspending discharge until 10 January 2019. Consistently with the requirements of *Rule 10.142(9)(e)* and *(f)* of the *2016 Rules*, it was recorded in the August 2014 Order that Mr Ferster was "failing to comply with his obligations under Part IX of the Insolvency Act 1986 by failing to give [the Trustee] such information as to his affairs as [the Trustee] reasonably requires for the purpose of carrying out her functions within the meaning of *Section 333* of the *Insolvency Act 1986* being information in respect of (a) the purported 'loans' made to [Mr Ferster from the 1989 Trust] and (b) [Mr Ferster's] involvement with [Entertainment Software, Evolution Software] and related brands (together 'Casino Max')." It was also recorded that the Judge expected Mr Ferster to take "positive steps, within the six month suspension period, to provide or procure the provision of (1) information or documents in relation to payments made to or to be made to him from the 1989 Trust and (2) an open account of any interest, direct or indirect, and/or involvement in CasinoMax".
12. On 16 December 2018, the Trustee entered into an income payments agreement with Mr Ferster under which he agreed to pay the sum of £43,564 and the sum of £1 per annum until 31 January 2022. It can be seen from the Trustee's Progress Report dated 25 August 2020 that the sum of £43,564.65 was eventually paid, as part of a settlement subsequently reached with Fedelta Trustees together with the sum of £14,470 in respect of a claim for after-acquired property, compendiously described as the sum of £58,034.65 in respect of Mr Ferster's "life interest from Trust".

13. However, from 10 January 2019 until the commencement of this hearing, Mr Ferster's bankruptcy was repeatedly suspended by a succession of orders. These included an order dated 16 April 2019 in which District Judge Obodai suspended discharge until 10 January 2020, an order dated 7 January 2020 in which District Judge Richmond suspended discharge until the final hearing of the Trustee's present application dated 19 December 2019 and an order of District Judge Obodai dated 27 April 2020 in the same terms. In each order it was recorded that Mr Ferster had not complied with his obligations under the 1986 Act since he had failed to provide the Trustee with information that she reasonably required.
14. During this period, Mr Ferster repeatedly responded to the Trustee's requisitions but at no stage was the Trustee satisfied she had been presented with an accurate and comprehensive account. She thus sought to administer additional inquiries in the light of Mr Ferster's responses.
15. The pattern of their correspondence is reflected in an exchange of correspondence dated 12 December 2019 and 3 January 2020 between their respective solicitors at the time, DAC Beachcroft ("**DAC**") and Knox Insolvency ("**Knox Insolvency Limited**"), in which DAC delivered a series of requisitions about matters such as the ownership of Entertainment Software and Evolution Software UK, Mr Ferster's own role in Evolution Software UK and the communications between these companies and other companies thought to be involved in funding the CasinoMax business, including Digital Way International Limited ("**Digital Way**"), a company registered in Hong Kong. Knox Insolvency provided a detailed response in which some questions were directly answered, others more obliquely and some not properly addressed. She was advised that "so far as [Mr Ferster] is aware", Mr Seeds was "the ultimate beneficial owner of [Evolution Software UK]" and, a third party, Mr Graham Taylor, was the owner of Entertainment Software. She was also advised that Mr Taylor would remain as such until repayment of a loan. When the loan was repaid, Mr Seeds would "get official control". However rather than being provided with the results of a search for the relevant communications, she was advised simply that one particular medium of communication - text messages - was "generally" limited to Mr Ferster's "children and close friends".
16. The Trustee reached agreement with Fedelta Trustees in relation to the amount secured by their second charge over Mr Ferster's house although she continued to make inquiries about the Trust. It can be seen from the Trustee's Progress Report to Creditors dated 10 September 2021 ("**the Trustee's 2021 Progress Report**") that, when Mr Ferster's house

was sold, the sum of £1,520,033.63 was remitted to Coutts & Co in respect of the first charge and the sum of £115,000 was remitted to Fedelta in respect of the second charge. This amount was specifically agreed and approved by the Trustee. By the time of the Trustee's 2021 Progress Report, the Trustee had realised assets amounting to £2,058,207.28, including £1,709,859.71 in respect of Mr Ferster's freehold land and property, £58,034.65 in respect of Mr Ferster's life interest from the Trust and £99,600 from his watches. However, her cost of realisations amounted to some £1,186,819, including £395,305.70 in respect of her office holders' fees and £378,565.09 in respect of legal fees.

17. In broad terms, the Trustee's current application for an order suspending discharge was issued on the basis that, in response to her requisitions, Mr Ferster has failed to provide satisfactory or sufficiently comprehensive information in relation to (1) his involvement in Evolution Software UK, Entertainment Software or CasinoMax, (2) how he is funding his current lifestyle (3) the Fedelta Trust and the assets of the Fedelta Trust and (4) what has become of some specific pre-bankruptcy assets, including some number plates for his vehicles and his watches.
18. The Trustee's *Section 366* application is for disclosure of emails sent to and from a designated email address in respect of Evolution Software (Jonathan@evosoft.io) ("**the Email Address**") and provision of a joint income and expenditure account from Mr Ferster and Mr Seeds.

**(3) Witnesses**

19. In support of her case, the Trustee has personally made ten witness statements in these proceedings. Each of her witness statements were admitted in evidence. However, to a substantial extent, they were filed so as to exhibit documentation and explain the progress of the bankruptcy. The Respondents elected not to challenge the Trustee's testimony in cross examination.
20. On behalf of the Respondents, Messrs Ferster and Seeds each gave evidence personally together with Mr Christopher Kay, the sole director of Evolution Software UK.
21. Mr Ferster was cross examined at length on his involvement in the business of CasinoMax and Evolution Software UK, his relationship with Mr Seeds and the funding of his lifestyle. The gist of his evidence was that, following the failure, in April 2017, of an IVA proposal in respect of his affairs, Mr Ferster ceased to have a substantial role or interest in any such

business. The businesses were substantially funded by Mr Taylor. Mr Seeds had taken on a significant managerial role.

22. Mr Ferster's oral evidence was at times inconsistent with the evidence in his witness statements. For example in his oral testimony, he attributed his withdrawal from business to the specific requirements of Mr Taylor rather than his own state of mind. As it happens, he can be seen to have continued to play a role in the business by attending events and conferences on behalf of Evolution Software UK although the Trustee considers that Mr Ferster's role in the businesses was more fundamental. Other aspects of Mr Ferster's oral evidence were implausible. Mr Ferster contends that the Email Address was held and maintained by Mr Seeds himself, not Mr Ferster. When it emerged that the email messages for that address were entered on his own personal mobile phone rather than Mr Seeds' phone, Mr Ferster contended this was simply because Mr Ferster had a better phone. During the day, he would repeatedly hand over his phone to Mr Seeds to enable Mr Seeds himself to deal with the messages. This passage of Mr Ferster's testimony was entirely unconvincing. It would, of course, have been open to Mr Ferster to act as a consultant or agent for Mr Seeds. However, that is not the way in which his evidence was presented.
23. Mr Seeds' evidence was also unconvincing. He accepted that the relevant businesses were similar in nature to ITC's business operations when Mr Ferster was a director and contended that he had become acquainted with the business through his relationship with Mr Ferster himself. However, it was evident in cross examination that he did not have a clear understanding of the business. Moreover, his evidence about the ownership of the businesses was confused. At one point, he appeared to state he held 100% of the shares of Entertainment Software, he then suggested that it was held on trust and, finally, that Mr Taylor held 50% of the shares but he, Mr Seeds himself, was "hoping to buy some extra". He later stated that his shares were held on trust for him by Mr Taylor or Gikata Holdings Limited.
24. In contrast, Mr Kay's evidence was clear and straightforward. He was unaware of the beneficial ownership of Entertainment Software and could not give specific evidence about the respective roles of Mr Ferster and Mr Seeds although he had only limited acquaintance with Mr Seeds. He stated that it would potentially be very damaging to the business of Evolution Software for confidential information about its business activities to be disclosed to ITC.

***(4) Expert evidence***

25. By an order on 5 July 2021, District Judge Bever gave Mr Ferster permission to rely on the expert evidence of Dr Ruth Anne Jarman, who is professionally qualified as an adult psychiatrist. She was called to give expert evidence in relation to Mr Ferster's mental health and the effect this might have had on his memory in connection with the Trustee's application to suspend Mr Ferster's discharge from bankruptcy.
26. Dr Jarman's evidence was primarily based on her assessment of Mr Ferster at a single interview on 11<sup>th</sup> December 2020 and his GP records. Whilst the records showed that Mr Ferster had suffered from depression as long ago as November 1993, his records showed a marked deterioration in his mental health from April 2017.
27. Based on the limited evidence available to her, Dr Jarman's evidence was careful and measured. She concluded that, since April 2017 or thereabouts, Mr Ferster has been suffering from a mixed anxiety and depressive disorder which is likely to have affected his short-term memory compounded by issues in relation to the retention of information. To the extent his cognitive functioning has been affected, it might have impaired his short-term powers of recall since that time but not for any longer. It is thus unlikely to have affected his powers of recall prior to April 2017. Dr Jarman was unable to obtain Mr Ferster's counselling records since no such records are available and, to a substantial extent, her evidence was based on what he has been told by Mr Ferster himself.
28. Subject to the limitations on the evidence available to her, I am satisfied Dr Jarman's evidence was reliable and Mr Ferster has been suffering from episodes of depression since April 2017. Given the events in his life since that time, this is by no means surprising. I also accept that it may have been accompanied by a modest loss of cognitive function. However, based on Mr Ferster's available medical records and the limited opportunity accorded to Dr Jarman to examine him, it cannot be put any higher.
29. More generally, I am satisfied that the relevant defects and inconsistencies in Mr Ferster's evidence cannot simply be attributed to the measure of his cognitive impairment identified by Dr Jarman.

***(5) The Application to suspend Mr Ferster's discharge from bankruptcy***

30. Prior to the *Insolvency Act 1976*, there was no automatic discharge. The *1976 Act* made provision for automatic discharge on the fifth anniversary of bankruptcy. However, the *Cork Report (1982 Cmnd 8558 Paras 610-611)* recommended that this should be replaced



with a system for automatic *review* after five years on the basis that the bankrupt should be discharged at that stage unless the trustee “puts forward some very strong objection” and liberty to the bankrupt to apply for his discharge twelve months from the date of bankruptcy. This was seen to be consistent with the general aims in *Paragraph 198* of the Cork Report, including the realisation of the bankrupt’s assets “to satisfy his debts with the minimum of delay and expense”, the relief and protection of the bankrupt whilst having regard to the rights of his creditors and for appropriate measures to be taken against a bankrupt where his conduct merits criticism or punishment.

31. It is significant that, with enactment of the *Insolvency Act 1986*, Parliament opted for automatic discharge rather than review and, in doing so, shortened the operative period from five years to three. It can thus be seen to have favoured a simpler procedure with an expectation that bankrupts would generally be discharged from bankruptcy earlier than previously envisaged. Under the *Enterprise Act 2002*, which came into force on 1 April 2004, the automatic discharge period was reduced to one year.

32. *Section 279(1)* of the *Insolvency Act 1986* thus provides that a bankrupt is discharged from bankruptcy at the end of the period of one year beginning with the commencement of the bankruptcy.

33. However, *Section 279(3) – (5)* provide as follows.

“(3) On the application of the official receiver or the trustee of a bankrupt’s estate, the court may order that the period specified in subsection (1) shall to cease to run until –

- (a) the end of a specified period, or
- (b) the fulfilment of a specified condition.

(4) The Court may make an order under subsection (3) only if satisfied that the bankrupt has failed or is failing to comply with an obligation under this Part.

(5) In sub-section (3)(b) ‘condition’ includes a condition requiring that the court be satisfied of something”.

34. In *Shierson v Rastogi [2007] EWHC 1266* at [7], Morritt C made the following observations.

“A discharge from bankruptcy has various consequences. It releases the bankrupt from the debts prescribed in s281 of the IA 1986. It removes the disqualification imposed by s11 of the Company Directors Disqualification Act 1986 from being concerned in

the promotion, formation and management of a company without the leave of the court. Acts or omissions of the bankrupt occurring after discharge cannot constitute a bankruptcy offence under chapter VI, see s350(3). Accordingly a bankrupt may, after his discharge, obtain credit or engage in business, see s360. But discharge from bankruptcy does not affect the continuing obligations of a bankrupt to assist the official receiver or the trustee in bankruptcy with the provision of information and the recovery of assets...”

35. Following discharge, the bankrupt thus remains under a duty, under *Section 333(1)* and (3) of the *Act*, to give to the trustee such information as to his affairs as she may reasonably require for the purpose of carrying out her functions, attending on the trustee at such times and doing such things as reasonably required. He must continue to co-operate with the trustee in connection with the realisation of assets that vested in the trustee on her appointment. Following discharge, such assets remain part of the bankrupt’s estate. Moreover, discharge does not, in itself, release the bankrupt from statutory claims in respect of transactions at an undervalue or preferences under *Section 339-40* of the *1986 Act*. However, the trustee’s right to claim *after acquired* property is generally exercisable in respect of property acquired prior to discharge only, *IA 1986 s307(2)(c)*. Moreover, discharge brings to an end the trustee’s right to apply for an income payments order under *Section 310* of the *1986 Act*.
36. Since the purpose of the current statutory regime is, in broad terms, to provide a framework for the efficient realisation, application and distribution of a bankrupt’s assets with a streamlined exit route and safeguards to maintain the integrity of the system and ensure compliance, the statutory power, in *Section 279(3)* of the *1986 Act*, for a court to suspend discharge is to be exercised consistently with these requirements.
37. It can thus be exercised with a view to enforcing or “incentivising” compliance and as an aid to the effective performance of the trustee’s statutory functions of collecting, realising and distributing the trustee’s estate, *Bramston v Haut* [2013] 1 WLR 1720 at [51] (*Kitchen LJ*) and *Hellard v Kapoor* [2013] EWHC 2204 at [9] (Penelope Reed QC sitting as a Deputy High Court Judge). If, as suggested, part of “the purpose of the section is to penalise a non-compliant bankrupt”, this is now incidental to the more general purpose of enforcing compliance. However, it is not axiomatic there can be no discharge until there has been full compliance. This is at least implicit in *Kitchen LJ*’s guidance in *Bramston v Haut* (*supra*); it is also consistent with the scope of the statutory discretion which is not subject to any

express limitations or conditions. Moreover, in exercising its discretion, the Court should not lose sight of the range of powers that can be deployed in support of the trustee's statutory functions. In the absence of good reason to the contrary, a bankrupt will automatically be discharged at the end of the statutory period.

38. When *Section 279(3)* and *(4)* are construed together, they involve a two stage test. In *Weir v Hilsdon [2017] EWHC 983* at [18], Nugee J (as he was then) put it in the following way.

“...a Court considering an application has first to be satisfied that the bankrupt has failed or is failing to comply with a relevant obligation (the jurisdiction stage or threshold question), and then must consider how it is to exercise its discretion (the discretion stage)...”

***(a) The Threshold Question***

39. The Threshold Question arises from *Section 279(4)* which requires me to determine whether Mr Ferster has failed or is failing to comply with an obligation under *Part IX* of the *1986 Act*. This includes his statutory obligations, under *Section 333(1)* to give such information as to his affairs and do such things as the Trustee reasonably requires. However, “given the broad scope of [his] statutory obligations a bankrupt will not ‘fail to comply’ if he...has done all that could reasonably be done to fulfil those obligations”, *Keely v Bell [2016] EWHC 308 (Ch) at [10(b)]* (Norris J).

40. In order to ascertain the full extent of Mr Ferster's estate as a bankrupt, at the commencement of the bankruptcy, together with any after acquired property and his income prior to discharge, the Trustee has repeatedly made inquiries of Mr Ferster. However, over time, her inquiries have evolved and, in some respects, the nature and focus of such inquiries have shifted. When HHJ Stephen Davies was initially persuaded to make an order suspending discharge, he did so on the basis that Mr Ferster had not provided sufficient information in relation to loans from the 1989 Trust and his involvement with Evolution Software UK and Entertainment Software. The Trustee's main cause for concern in relation to the 1989 Trust was that Mr Ferster had not provided her with sufficient information about the amounts secured in favour of the trust against Mr Ferster's house although she also raised issues about Mr Ferster's source of income from the trust. Her inquiries in relation to Evolution Software UK and Entertainment Software were no doubt made with a view to ascertaining what interest, if any, Mr Ferster might have in these companies and their businesses. It was recorded in a recital to HHJ Davies's order dated 14 August 2018 that

he expected Mr Ferster “within the six-month period of suspension, to take positive steps to provide or procure the provision of (1) information or documents in relation to payments made or to be made to [him from the 1989 Trust]; and (2) an open account of any interest, direct or indirect, and/or any involvement in CasinoMax”.

41. In District Judge Obodai’s order dated 16 April 2016, it was recorded that Mr Ferster had failed to give the Trustee such information, as she reasonably required, in particular as to (a) his relationship and interaction with the 1989 Trust; (b) loans to him from the 1989 Trust, and (c) his involvement with Evolution Software UK and Entertainment Software. By the time of District Judge Richmond’s order dated 7 January 2020, it was recorded that the parties agreed Mr Ferster had failed to provide sufficient information in relation to his involvement with Evolution Software UK and Entertainment Software but they had failed to reach agreement as to whether he was otherwise in breach of his obligations to the Trustee and, taking a pragmatic view, the Court made no finding as to whether he was otherwise in breach. By her order dated 29 April 2020, District Judge Obodai adopted precisely the same formula as District Judge Richmond.
42. Mr Chapman and Ms Roberts accept, on Mr Ferster’s behalf, that the findings of non-compliance on the face of the orders dated 14 August 2018 and 29 April 2020 are sufficient to satisfy the Threshold Question in the Trustee’s favour. I can see no reason to treat the orders dated 16 April 2019 and 7 January 2020 any differently.
43. Whilst the Trustee remains dissatisfied with the extent of the information she has obtained about Mr Ferster’s interest and involvement in the businesses, there is no longer a live issue about the amounts that were secured against Mr Ferster’s house before the property was sold and the focus of the Trustee’s enquiries on some of the other issues has shifted. In part, the Trustee’s inquiries have evolved in response to information provided by Mr Ferster but the Trustee has also elected to pursue new lines of inquiry as and when it has occurred to her to do so. In response, Mr Ferster has repeatedly provided the Trustee with detailed answers to their inquiries through his solicitors. By way of example, in their letter dated 3 January 2020, Knox Insolvency responded to some 59 requisitions for information with a detailed answer to each requisition. This letter alone amounted to some 50 pages. He has also filed eight witness statements in these proceedings. To a substantial extent these are directed to the Trustee’s requisitions or matters arising from them.

44. However, the Trustee maintains that some of the information provided by Mr Ferster in response to her inquiries is internally inconsistent or implausible, for example in relation to the ownership of Entertainment Software and Gikata Holdings Limited. In other respects, she maintains that Mr Ferster has evaded her questions or declined to provide the information specifically sought, for example he has declined to provide her with a joint income and expenditure statement in respect of Mr Seeds and himself on the basis he believes that he can be under no obligation to provide information in relation to Mr Seeds.
45. The Trustee contends that, in broad terms, Mr Ferster has failed to provide her with sufficient information or documentation in relation to four continuing areas of inquiry, namely (1) his “involvement” with Evolution Software UK and Entertainment Software, (2) how Mr Ferster is funding his current lifestyle, (3) the assets of the 1989 Trust, and (4) details of what has happened to some specific pre-bankruptcy assets, including some number plates and watches.
46. This is a complex bankruptcy and the requisitions of Mr Ferster have been extensive and burdensome. However, I am satisfied that, in at least some significant respects, he has not done all that he reasonably could to fulfil those obligations. Moreover, there are substantial grounds to suggest this continues to be the case in each of the four respects identified by the Trustee.
47. Firstly, whilst Mr Ferster complains that the parties have simply reached an impasse on the information he has disclosed about his involvement in the businesses on the basis that the Trustee simply refuses to accept his involvement is as limited as he says, Mr Ferster has demonstrably failed to provide all the documentation requested of him. In particular, he has omitted to provide the WhatsApp messages or similar communications he has sent or received in relation to Evolution Software UK and Entertainment Software. In their letter dated 3 January 2020, Knox Insolvency advised the Trustee that “generally he only sends text messages to his children and close friends” and that the Trustee had herself taken “copies of the data on [Mr Ferster’s] phone and laptop” but they did not confirm that she had been provided with the entirety of such messages or communications.
48. Secondly, whilst Mr Ferster maintains that his current lifestyle is being funded by Mr Seeds, he has not provided particulars of the income and expenditure on which his lifestyle is based. Nor, indeed, has Mr Seeds provided information from which this can be properly assessed.

49. Thirdly, Mr Ferster has failed to provide all the information requisitioned from him in relation to the assets of the 1989 Trust, including what has become of shares he historically transferred to the trust and a dividend declared by Yamada Corporation which was, at one stage, due to be paid to the Trust for distribution to Mr Ferster himself.
50. Fourthly, Mr Ferster has failed to provide information about at least some pre-bankruptcy assets which have also been the subject to inquiry on behalf of the Trustee, including some number plates and watches.

*(b) The Discretion Stage*

51. A bankrupt's statutory discharge is not lightly to be suspended. Once the statutory threshold is cleared, it remains necessary to show there is good reason to suspend discharge consistent with the purposes of the regime to which I have referred in Para 36 above, including the efficient realisation of the bankrupt's assets and the integrity of the system as a whole. Moreover, I should only make an order suspending discharge if reasonable and proportionate to do so.
52. Applying this test, I am satisfied that I should make an order suspending discharge for a fixed period expiring on 10 July 2022, the fifth anniversary of the bankruptcy. I shall do so for the following reasons.
53. Firstly, Mr Ferster is in *continuing* breach of his statutory obligations under *Part IX* of the *1986 Act*, at least in the four respects on which the Trustee now relies. It is notable that the Trustee's enquiries have shifted over time. I am also mindful that, at an early stage, Mr Ferster instructed solicitors to respond to the Trustee's enquiries and they have sought to co-operate with her in the sense that they have repeatedly provided her with a detailed response to such enquiries. Whilst, at times, they have taken issue with the extent of the enquiries and, at times, their response has been evasive, they have not gone out of their way to be obstructive. However, it remains the case that they have omitted to provide important information that could be of material assistance to the Trustee in the performance of her statutory functions in each of the four respects on which the Trustee now relies.
54. Secondly, whilst it is true that Mr Ferster was first made bankrupt as long ago as 10 July 2017 and, as Mr Chapman observed in his submissions, the procedural history reveals a shifting pattern of requests for information and late applications for suspension on the part of the Trustee, it is open to me to make an order suspending the bankruptcy for a finite period combined with specific directions for Mr Ferster to provide and disclose specific

information and classes of document. It will remain open to the Trustee to make a further application to postpone the bankruptcy. However, if there is no material change of circumstances and he complies with these directions, Mr Ferster can have a reasonable expectation that there will be no further suspension.

55. However, contrary to Mr Watson's submissions, it would be inappropriate for me to make an order providing, on analogy with *Mawer v Bland* [2012] EWHC 3122 (Ch) or *Wilson v Williams* [2015] EWHC 1841(Ch), for the bankruptcy to continue until the Trustee files a report confirming that Mr Ferster has complied, to her satisfaction, with his duties and obligations or fully co-operated with her in the bankruptcy. Whilst the courts have jurisdiction to make such orders, they do not sit comfortably with the statutory regime for automatic discharge under the 1986 Act which Parliament opted to introduce in preference to the system of review favoured by the Cork Report. For the reasons given by Nugee J in *Hilsdon v Weir* (*supra*) at [98] – [102], including the perceived need for a bankrupt to know when the discharge will take place, they should not be imposed as a matter of routine. Such an order is not tantamount to the delegation of the Court's discretion to the Trustee and the Trustee can reasonably be expected to exercise her functions consistently with her duties to the court. Moreover, the bankrupt is himself entitled to apply to the court for relief. However, it is ultimately for the court to determine whether to postpone discharge following a full and detailed examination of the case. If the court chooses to do so subject to conditions, there should be minimal room for uncertainty about the application of such conditions. Moreover, particular caution is exercisable in a case such as this where there is already a lengthy procedural history and the Trustee's requisitions have shifted over time. In the present case, the Trustee is entirely funded by ITC. This is not unusual and does not, in itself, expose her to a conflict in the sense that ITC's interest might somehow be inconsistent with the interests of the other creditors and her functions as trustee. However, given the historical background to the bankruptcy and the level of personal acrimony between Mr Ferster and his brothers, each of whom remain in office as directors of ITC, it is possible such an order would expose the Trustee herself and the conduct of the bankruptcy to unusual and unnecessary demands if I were simply to make a *Mawer v Bland* order in the form sought by Mr Watson.

56. In *Hilsdon v Weir* (*supra*), Nugee J observed, at [102], that "there is obviously a spectrum between bankrupts who are being as difficult as possible and doing everything to frustrate the trustee's inquiries, and those who are in the main cooperative and seeking to provide

information to the trustee but have nevertheless failed to comply properly with their obligations. Where any particular bankrupt lies on the spectrum seems to me to be of the first importance in deciding what form of order, if any, under s. 279(3) is appropriate". Mr Watson submits that, in the present case, Mr Ferster is at the recalcitrant end of the spectrum. I do not accept that this is so. It cannot reasonably be said he has been as difficult as possible or done everything he can to frustrate the Trustee's inquiries. He has withheld some significant information and documentation from the Trustee, including information pertaining to the four material areas of inquiry identified by the Trustee. However, through his solicitors, Mr Ferster has generally co-operated with the Trustee in her inquiries and, in doing so, provided her with a substantial amount of information. If it is necessary or helpful for me to determine Mr Ferster's position on a spectrum of this kind, it is likely to be somewhere in the middle.

57. I am mindful that the oral evidence of Messrs Ferster and Seeds was unsatisfactory. I was left with the impression that they have deliberately understated Mr Ferster's role in the relevant businesses. It is also more than conceivable the Trustee is correct in her perception that Mr Ferster has sought to conceal assets. However, the essential nature of the Trustee's case against Mr Ferster on the main issues can already be discerned. This is that she has reason to believe Mr Ferster is the beneficial owner of shares in Entertainment Software and Evolution Software UK Limited but is unable to identify the evidential basis therefor without further information from Mr Ferster himself. However, Mr Ferster denies he has any interest in the companies and, having taken that position, it is inherently unlikely he will be persuaded to concede it or, indeed, to state anything to suggest he might have such an interest. Specific areas of enquiry have been identified some of which have a bearing on these issues. These merit a full response. However, once that has happened, the Trustee can reasonably be expected to pursue her claims for substantive relief. The merits of her claims can then be determined in court.

58. The time has come for pro-active case management. Consistently with this, I shall make an order providing for Mr Ferster's discharge from bankruptcy to be suspended until the fifth anniversary of his bankruptcy, 10 July 2022. At the same time, I shall make specific directions for the provision of information and documentation in respect of the Trustee's reasonable requisitions based on a draft initially provided by Mr Watson. However, the draft will be subject to significant amendments. For the avoidance of doubt, the order shall comprehend documents to which the Trustee is entitled under her *Section 366* application



but it is not limited to such information and documents. If the Trustee perceives that this has not been provided, she will be entitled to apply to the court for further relief including a further suspension of the bankruptcy. However, I am mindful that a substantial amount of information and documentation has already been provided to the Trustee and, once Mr Ferster is discharged from bankruptcy, he will remain subject to his statutory duties to provide her with information under *Section 333* of the *2006 Act*. If Mr Ferster can be seen to have reasonably co-operated with the Trustee in providing the information and documentation sought pursuant to his obligations under this order, the Trustee should not assume that the bankruptcy order will be extended further in the absence of a compelling case to the contrary.

59. I shall thus make an order requiring Mr Ferster, to the best of his knowledge and ability, to provide the Trustee with scheduled information and documents. This includes information in relation to the corporate structure of the vehicles for the CasinoMax business, the source of funds for such business, Mr Ferster's relationship with the same and the disclosure of relevant communications. It also includes specific information relating to the 1989 Trust and the relevant number plates and watches. This is in addition to the documentation sought under the Trustee's *Section 366* application. Mr Ferster must provide the relevant information and documents on or before 4pm on 10 June 2022. This will allow him five weeks to do so. In allowing Mr Ferster as long as five weeks, I am mindful this will be a substantial exercise; he is thus likely to seek professional assistance and the relevant period will incorporate the Queens Jubilee Holiday on 2-3 June 2022. The information and documents relate to the Trustee's continuing areas of enquiry and, in my judgment, they are material to the Trustee's reasonable requisitions and enquiry. They are also proportionate in ambit.

60. If and once Mr Ferster is discharged from bankruptcy, there will be a 42 day time limit for the Trustee to serve notice on him claiming after acquired property under *Section 307* of the *2006 Act*. Moreover, whilst an income payments order under *Section 310* may be scheduled so as to end after discharge, it can only be made on an application instituted by the trustee before the discharge of the bankrupt, *s310(1A)*. However, if Mr Ferster complies with all directions pursuant to this judgment, the Trustee is likely to have sufficient information to take action under these provisions. Moreover, the court has already made an income payments order in respect of Mr Ferster under the provisions of *Section 310* of the *2006 Act*. By her order dated 16 April 2019, itself made by consent, District Judge Obodai

directed Mr Ferster to pay, by instalment, the sum of £43,658.65 out of his income. It is not suggested Mr Ferster has failed to comply with this order. There is an issue between the parties whether the court could now make a further income payments order on the basis it has jurisdiction to make two or more successive income payment orders notwithstanding the three year restriction in *Section 310(6)* of the *2006 Act*. It is un-necessary for me to resolve this issue at this stage. Whilst there does not appear to be any express statutory restriction on successive applications, the three year restriction could certainly inform the court in the exercise of its discretion. However, in my judgment it would be inappropriate for me to make an order, at this stage, suspending Mr Ferster's discharge beyond 10 July 2022 on the ground there is a hypothetical possibility evidence may ultimately come to light warranting a further application under *Section 310* notwithstanding the Trustee's argument that, if there is such a possibility, it arises from Mr Ferster's failure to provide all the information the Trustee has reasonably sought.

***(6) The Section 366 Application***

61. *Section 366(1)* of the *Insolvency Act 1986* provides for the court, upon application, to summon before it three classes of person, namely:

- (a) "the bankrupt or the bankrupt's spouse or former spouse or civil partner of former civil partner";
- (b) "any person known or believed to have any property comprised in the bankrupt's estate in his possession or to be indebted to the bankrupt";
- (c) "any person appearing to the court to be able to give information concerning the bankrupt or the bankrupt's dealings, affairs or property".

62. It is then provided that "the court may require any such person as is mentioned in paragraph (b) or (c) to submit a witness statement verified by a statement of truth to the court containing an account of his dealings with the bankrupt or to produce any documents in his possession or under his control relating to the bankrupt or the bankrupt's dealings, affairs or property".

63. By her Application dated 15 April 2021, the Trustee seeks:

- 63.1. disclosure of the emails sent and received ("**the Emails**") from the Email Address from its creation in 2017; and

- 63.2. a joint income and expenditure statement from Mr Ferster and Mr Seeds including any supporting information and/or documentation to include (a) details of any benefit applied for or received by Mr Seed; and (b) details of any and all income (including any loans and the amount of any loans) since the date of the bankruptcy.
64. The application for disclosure of emails is intended to be subject to a condition that privileged emails should be withheld subject to verification by a statement of truth signed by Mr Seeds and Evolution Software (UK).
65. Messrs Watson and Lakshman submit that *Section 366* is to be construed consistently with the Court's analogous jurisdiction in respect of companies under *Section 236* of the *1986 Act*. On this basis, they submit that the jurisdiction is not limited to relief for the purpose of reconstituting the bankrupt's knowledge rather it is to be deployed to enable the office holder to complete her functions, *British & Commonwealth Holdings v Spicer and Oppenheim [1993] AC 426, 437A-439D*. It is thus for the office holder to show she reasonably requires the information sought and then for the court to carry out a balancing exercise, weighing the potential importance of such information against the potential oppressiveness to the respondents of being required to prove it, *Sasea Finance Ltd (in liquidation) v KPMG [1998] BCC 2016 (ChD) at 220F*. I am satisfied that each of these propositions is consistent with established authority and amounts to an accurate statement of applicable legal principles.
66. The Trustee seeks disclosure of the Emails on the basis that that they are likely to contain information pertaining to the conduct of the CasinoMax business and there is reason to believe that they will also throw light on the respective roles of Mr Ferster and Mr Seeds in the business and, by inference, their rights or interest in the business assets of and the beneficial ownership of Entertainment Software.
67. Mr Ferster and Mr Seeds both maintain that the Email Address was and is operated by Mr Seeds only, not Mr Ferster. However, the Trustee submits that this is unlikely to be so. She contends it is likely that the name chosen, "Jonathan", is likely to have been chosen because they share the same name and it would enable them to obscure Mr Ferster's role in sending and receiving communications from this address. The testimony of Mr Ferster and Mr Seeds in cross examination added significantly to the Trustee's case on these issues. It emerged that communications to and from the Email Address were entered on Mr Ferster's mobile phone. Moreover, following their cross examination, I was left with the impression

that Mr Ferster was better acquainted than Mr Seeds with the underlying nature of the business and its demands notwithstanding that they maintain that the business was operated by Mr Seeds.

68. I am thus satisfied that the Trustee has shown she reasonably seeks disclosure of the Emails to help elicit beneficial ownership and control of the CasinoMax business.
69. It remains necessary for me to carry out the balancing exercise identified in *Cloverbay Ltd v BCCI [1991] Ch 90* and *Sasea Finance Ltd (in liquidation) v KPMG (supra)* of weighing the Trustee's reasonable requirements against the potential oppressiveness to Mr Ferster and Mr Seeds of an order for disclosure. Whilst, the process of disclosure is capable of being time consuming and burdensome, particularly if it is necessary for them to sift the email messages to select emails for production, I am satisfied it would be reasonable and proportionate for me to make an order requiring disclosure in view of the nature and significance of the relevant issues in relation to CasinoMax.
70. On this basis, the main issue between the parties is to the terms on which I should make such an order. Mr Chapman submits that there should be minimal interference with third party rights or, indeed, the right of Mr Seeds and Mr Ferster, under *ECHR Article 8*, to respect for their private and family life. Relying on the observations of Arnold J (as he was) in *Re Scholsberg (a bankrupt) [2018] BPIR 182* at [53], he also submitted that, if I make such an order, the Trustee will be under a duty of confidence only to use the documentation for the purpose for which it is disclosed. Mr Chapman did not suggest that these principles would preclude me from making an order for disclosure and in my judgment they do not do so. However, Mr Chapman was correct in submitting that, so far as possible without undermining the substance of the relief, the order should be consistent with each of these principles.
71. Mr Chapman submitted that this could best be achieved by appointing an independent solicitor to undertake a review of the Emails and himself provide the Trustee with communication to and from Mr Ferster only. Persuasively, as his submissions were presented, I take the view that this would be un-necessarily time consuming and complex. Moreover, this mechanism does not, in itself, dispose of the fundamental issue in relation to the classes of Email which are to be protected from disclosure.
72. I shall make an order providing for Mr Seeds and Mr Ferster to disclose and produce to the Trustee's solicitor on or before 4pm on 10 June 2022 all Emails save (1) such Emails as are

privileged and (2) such Emails as can be seen, on their face, to be between persons other than Mr Ferster. Evolution Software UK will be subject to the same order. However, it will obviously be in a position only to disclose documents in its control. By the same time and date, the Respondents must (1) file and serve a witness statement identifying the Emails disclosed and confirming the process chosen for disclosure; and (2) serve on the Trustee's solicitors a disclosure certificate confirming that they have disclosed and produced all such Emails and to the best of their knowledge and belief complied with the terms of this order. The order shall also be subject to a condition providing that save where permitted by the court the Trustee may use all disclosed Emails for the purpose only of these proceedings and, for the avoidance of doubt, will not disclose such Emails to any third party, including ITC. The order shall be made on this basis in order to accommodate the principles identified by Mr Chapman and to avoid the risk of misuse of the information in third party hands, including the potential damage to the business interests of Entertainment Software and Evolution Software UK.

73. The Trustee's Application for a *joint* income and expenditure statement from Mr Ferster and Mr Seeds does not fully reflect the statutory jurisdiction in *Section 366* for the court to make an order requiring any person mentioned in *Section 366(1)(b)* or *(c)* to submit a witness statement containing an account of his dealings with the bankrupt or produce documents relating to the bankrupt or his affairs. Mr Seeds plainly falls within the scope of *Section 366(1)(c)* as a person who is capable of giving material information concerning Mr Ferster and his affairs. To the extent it is relevant, the Trustee also has reason to believe Mr Seeds holds property comprised in the bankrupt's estate in satisfaction of *Section 366(1)(b)*. In view of the nature of the length and nature of the relationship between Mr Ferster and Mr Seeds, financial and otherwise, and Mr Ferster's putative dependence on Mr Seeds to fund his lifestyle, I am also satisfied there is good reason for me to make an order requiring Mr Seeds to make a witness statement under *Section 366(1)* containing a full account of his dealings with Mr Ferster and to produce all documents in his possession pertaining to this account. I shall thus make an order in those terms. It shall require Mr Seeds to provide details of his expenditure for Mr Ferster's benefit and the source of funds for such expenditure. He must also produce all bank statements exhibiting such expenditure and the source of funds for the same. However, *Section 366(1)* does not make specific provision for a person mentioned in *Section 366(1)(b)* or *(c)* to make a statement jointly with the bankrupt. I am not invited to make such an order under composite statutory

powers and can see no reason, at this stage, to make an order requiring Mr Ferster and Mr Seeds to make a joint statement. However, it will be open to the Trustee to make further enquiries of Mr Ferster in the light of Mr Seeds' statement and, if considered necessary, apply to the Court for further relief at that stage.

*(7) Disposal*

74. Mr Ferster's discharge from bankruptcy shall thus be suspended until the fifth anniversary of his bankruptcy, 10 July 2022. However, by 4pm on 10 June 2022, Mr Ferster must, to the best of his knowledge and ability, provide the Trustee with the information and documents listed in a schedule under the order pursuant to this judgment. By the same time and date, Messrs Ferster and Seeds must also disclose and provide to the Trustee's Solicitor all Emails, as defined, other than such Emails as are privileged and can be seen, on their face, to be between persons other than Mr Ferster. This will be subject to the Trustee's undertaking that she will not use the disclosed Emails otherwise than for applications within the bankruptcy proceedings save where expressly permitted by the court and, for the avoidance of doubt, will not disclose the Emails to third parties, including ITC. By the same time and date, Messrs Ferster and Seeds must file and serve on the Trustee's solicitors (1) a witness statement identifying the disclosed Emails and confirming the process by which they were chosen for disclosure and (2) a disclosure certificate confirming that they have disclosed and produced all such Emails and to the best of their knowledge and belief complied with the terms of this order.
75. There shall also be an order requiring Mr Seeds to file and serve on the Trustee by 4pm on 10 June 2022 a witness statement, verified by a statement of truth, containing a full account of his dealings with Mr Ferster and exhibiting all documents in his control pertaining to this account. It will obviously be open to the Trustee to make further inquiries of Mr Ferster in the light of the contents of Mr Seeds' witness statement. However, I am not satisfied this would, in itself, be a good reason to postpone Mr Ferster's discharge from bankruptcy further.
76. I shall hear further from counsel in relation to all consequential orders and directions and costs.