



Neutral Citation Number: [2022] EWHC 2995 (Ch)

Case Nos. 7942, 8211, 7945, 11056, 7943, 7944, 8210 of 2008, 429 of 2009
CR-2008-000012, CR-2008-000017, CR-2008-000024, CR-2008-000026, CR-2008-000027,
CR-2008-000028, CR-2008-000048, CR-2009-000052

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

7 Rolls Building
Fetter Lane, London,
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Date: 25 November 2022

IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE)
(IN ADMINISTRATION)
AND IN THE MATTER OF MABLE COMMERCIAL FUNDING LIMITED
(IN ADMINISTRATION) AND IN THE MATTER OF LEHMAN BROTHERS LIMITED
(IN ADMINISTRATION)
AND IN THE MATTER OF LB HOLDINGS INTERMEDIATE 2 LIMITED
(IN ADMINISTRATION)
AND IN THE MATTER OF ELDON STREET HOLDINGS LIMITED (IN ADMINISTRATION)
AND IN THE MATTER OF LEHMAN BROTHERS HOLDINGS PLC (IN ADMINISTRATION)
AND IN THE MATTER OF LB UK RE HOLDINGS LIMITED (IN ADMINISTRATION)
AND IN THE MATTER OF STORM FUNDING LIMITED (IN ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Before:

The Honourable Mr Justice Hildyard

Mr Ryan Perkins (instructed by Linklaters LLP) for the Applicants

Hearing date: 22 November 2022

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This judgment was handed down remotely at 10.30am on 25 November 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Approved Judgment**Mr Justice Hildyard:***Introduction*

1. This is my judgment to explain my reasons for the orders I made at the end of the hearing of applications made by the respective current Joint Administrators of eight companies within the Lehman group of companies. All eight companies have been in administration for many years. As is well known, the appointment of an administrator ceases to have effect at the end of the period of one year beginning on which it takes effect (see Paragraph 76 of Schedule B1 Insolvency Act 1986¹). However, the court has power to extend the term of office for a specified period. There is no limitation on the period or the number of times on which an extension may be granted (see Paragraph 76(2)(a)). In the case of each of the eight companies, a sequence of extension orders have been made. Now, seven of the eight companies (“the Extension Application Companies”) have sought further extensions (“the Extension Applications”). Two of the companies (LB UK RE Holdings Limited and Storm Funding Limited) have also or instead sought orders fixing the time of their Joint Administrators’ discharge from liability (“the Discharge Applications”). I have made the orders sought, except for the order of discharge sought in the case of LB UK RE Holdings: I have adjourned that application for reasons I shall explain.
2. The eight companies are:
 - (1) Lehman Brothers International (Europe), which I shall call “LBIE”
 - (2) Mable Commercial Funding Limited, which I shall call “Mable”
 - (3) Lehman Brothers Limited, which I shall call “LBL”
 - (4) LB Holdings Intermediate 2 Limited, which I shall call “LBHI2”
 - (5) Eldon Street Holdings Limited, which I shall call “Eldon”
 - (6) Lehman Brothers Holdings plc, which I shall call “LBH”
 - (7) LB UK RE Holdings Limited, which I shall call “LBUKRE”
 - (8) Storm Funding Limited, which I shall call “Storm”.
3. Each of the eight companies has been in administration for well over a decade. LBIE, LBH, LBL and LBUKRE entered into administration on 15 September 2008. Mable entered into administration on 23 September 2008; Eldon, on 9 December 2008; LBHI2, on 14 January 2009; and Storm, on 28 September 2008.
4. In the case of LBIE, Mable and Storm the last extension orders were made on 4 November 2016, in each case for a term of six years expiring on 30 November 2022.
5. In the case of LBH, LBHI2, LBL and Eldon, and following various extension orders before then, the last extension orders were made on 2 November 2020 for two years also expiring on 30 November 2022.
6. In the case of LBUKRE, the last extension order was made on 29 October 2021 for a year, again until 30 November 2022 (and again after various previous extensions).
7. As is unsurprising in the contexts of administrations which have lasted so long, there have been a number of changes in the individuals in office as Joint Administrators of the Extension Application Companies. I do not think it is necessary to chronicle these

¹ In this judgment, unless otherwise expressly stated and save for cross-references to paragraphs within the judgment, a reference to a ‘Paragraph’ is to a paragraph in Schedule B1 of the Insolvency Act 1986.

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various changes of personnel. Suffice it to say that the various orders of discharge and appointments appear regular. I shall refer to the Joint Administrators presently in office in respect of each of the Extension Application Companies and of Storm as “the Administrators”.

8. As with many things connected with the Lehman Group and the administrations following its well-known collapse in September 2008 which imperilled the entire financial system in the West, the interrelationship between the various Extension Application Companies, and the key intercompany claims between them, is complex. There was provided to me a diagram showing a simplified overview of the various interconnected cashflows between the Extension Application Companies and certain other relevant Lehman Group entities: and that is to be appended to this judgment.
9. This tale of disaster, has however, yielded some elements of a happy ending in that the process of administration has realised and enabled to be distributed tens of billions of pounds. To take the example of LBIE some £27 billion has so far been received. All of the Extension Application Companies have been in distributing administration for a number of years.
10. The probably unparalleled length of these Administrations, and the applications now before me, need to be seen in the context of the success of the processes, though obviously the Court must also consider whether there would be better alternatives now, especially given the length of the proposed extensions sought. These are:
 - (1) Three years in the case of LBIE, Mable, LBL, LBH, LBHI2 and Eldon
 - (2) Until 31 May 2023 in the case of LBUKRE.
11. These are considerable extensions especially given the statutory period of just one year for an Administration unless extended by the Court.
12. In addition to these Extension Applications, I must also deal with the Discharge Applications made by LBUKRE and Storm (the term of administration for which expires on 30 November 2022). But I shall address the Extension Applications first.

The Extension Applications

13. I start with the applicable legal provisions. Paragraph 76 of Schedule B1 to the Act provides:

“(1) The appointment of an administrator shall cease to have effect at the end of the period of one year beginning with the date on which it takes effect.

(2) But—

(a) on the application of an administrator the court may by order extend his term of office for a specified period, and

(b) an administrator’s term of office may be extended for a specified period not exceeding one year by consent.”
14. Thus, Paragraph 76(2)(a) empowers the Court to extend an administrator’s term of office for such period as the Court sees fit.

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15. The leading case dealing with the exercise of the Court’s discretion under Paragraph 76(2)(a) is the decision of Snowden J (as he then was) in *Re Nortel Networks UK Ltd* [2017] EWHC 3299 (Ch). Snowden J stated at [22]:

“The Court’s discretion under Paragraph 76(2)(a) is not circumscribed in any express way, but it is readily apparent that it should be exercised in the interests of the creditors of the company as a whole, and that the Court should have regard to all the circumstances, including (i) whether the purpose of the administration remains reasonably likely to be achieved, (ii) whether any prejudice would be caused to creditors by the extension, and (iii) any views expressed by the creditors. In that regard, where a company is making distributions to its unsecured creditors within the administration process, it is likely to be appropriate that the administrator’s term of office should be extended to allow the distributions to be made, rather than to require the company to go into liquidation, which might well increase the costs or delay the distribution process with no countervailing benefit.”

16. The same principles have been applied in a large number of other cases, including in relation to the Lehman Group. For example, in *Re Lehman Brothers International (Europe)* [2016] EWHC 3379 (Ch), I extended the administrations of certain Lehman group companies for a period of between four and six years, stating at [9]-[11]:

“[O]nce the matters have moved to the distribution mode, and whilst the administrators have things to do to complete their mandate and effect the final distribution, the working assumption, at least, should be that, unless good cause is shown for some specific advantage of the liquidation route over the administration distribution route, the implication of the courts granting the distribution status is that the administration should be maintained for as long as is reasonably necessary to complete the process of distribution and that, therefore, if an extension is necessary to enable the Administrators’ functions to be thus completed, prima facie it should be granted.

It should be said, also, when considering the length of the extensions sought that the administrators, being professional insolvency practitioners, always have the obligation to consider, on a continuing basis, whether their functions are either at an end or might more efficiently be brought to an end in favour of some other insolvency process. I have every reason to suppose that continuous review will be maintained in the context of the Lehman entities.

Furthermore, of course, individual creditors have the entitlement to apply to the court if they consider the administrations are continuing too long or for no sufficient purpose, or if there are factors which suggest, contrary to the best estimate of the joint administrators and the court at the time, the extension is excessive.”

17. In the context of the Lehman Group, there are additional and specific reasons, articulated in the Administrators’ evidence, why a company in distributing administration should not move into liquidation before being dissolved. One specific example is the “lacuna” problem relating to any unpaid statutory interest during the administration in light of the Supreme Court’s decision in *Re Lehman Brothers International (Europe) (No. 9)* [2018] AC 465: if LBIE were to move from administration into liquidation, any unpaid ‘statutory interest’ payable under rule

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14.23(7) of the Insolvency Rules 2016 in respect of the period between the commencement and termination of the administration would not be payable out of the surplus or provable in the liquidation: and see also *In the Matter of Lehman Brothers International (Europe) (in Administration) and In the Matter of the Companies Act 2006* [2018] EWHC 1980 (explaining my reasons for approving a scheme of arrangement in respect of LBIE and where I explained the ‘lacuna’ issue at [19] and [21(4)]). Put simply, if it is appropriate for the Companies to remain in insolvency proceedings at all, then, as matters presently stand, they should remain in distributing administration.

18. The question then is whether any insolvency proceedings should be continued; or whether, especially in the case of LBIE, it is now time for one or more of the Extension Application Companies to come out of Administration and be returned to its Directors as a going concern. That, after all, has for some time now been the sole remaining objective of the LBIE administrators: further, all admitted LBIE creditor claims have been paid in full, together with statutory interest at the rate of 8% simple *per annum* and some £337 million has been distributed as surplus to LBHI2 as its sole shareholder.

LBIE

19. I turn to examine this issue in more detail first in relation to LBIE, which is the lead example.
20. LBIE was the principal trading company of the Lehman group within Europe, has made considerable surplus distributions already, and is the principal entity presently envisaged to be returned to the control of directors it has already appointed.
21. I start with a description of the issues identified in Ms Grant’s First Witness Statement as being still requiring completion before the administration of LBIE is finally brought to an end.
22. First, LBIE is pursuing a claim against AG Financial Products Inc. (“AGFP”) in the Supreme Court of the State of New York (the “State Court”) in relation to a dispute over the correct termination value of a series of credit default swaps governed by a 1992 ISDA Master Agreement (the “AGFP Action”).
23. The AGFP Action was brought by the Administrators of LBIE on 28 November 2011. Following years of pre-trial discovery and interim and/or interlocutory steps, the trial of the AGFP Action commenced before Justice Crane on 18 October 2021. The trial lasted a total of five weeks, following which a subsequent evidentiary hearing took place on 28 February 2022. Between April and June 2022, the parties to the litigation exchanged two post-trial briefs. A judgment in respect of the AGFP Action is expected from the State Court this year. Once that judgment is handed down, there is a prospect that either party (or both parties) may appeal some or all of the judgment to the First Department. If an appeal against the judgment is brought, the Administrators’ evidence is that an appeal could reasonably be expected to take up to sixteen months to run its course. There is then the prospect of a further appeal to the Court of Appeals, which could take up to a further nineteen months.
24. The AGFP Action is submitted to be significant for (at least) two related reasons. First, if LBIE is successful in the action, it will obtain a judgment in its favour (of up to c. \$485 million (plus interest)) resulting in substantial further recoveries for LBIE.

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Second, as part of the AGFP Action, AGFP has asserted counterclaims against LBIE for \$20.7 million (plus interest and costs). If AGFP is successful in the action, it will be a creditor of LBIE and its claim will fall to be treated in accordance with the English insolvency framework and LBIE's scheme of arrangement (the "Scheme").

25. The Joint Administrators submit that it is clearly appropriate that LBIE should remain in administration until the uncertainty surrounding the AGFP Action is resolved (whether through the conclusion of the proceedings in New York or consensually). They suggest that this may well take up to three years.
26. The LBIE Administrators have considered whether it would be possible for the AGFP Action to be dealt with by the directors of LBIE in the event of the termination of the LBIE Administrators' term of office. However, they submit that given that the decision and appeals in the AGFP Action could result in AGFP being a creditor of LBIE, it is more appropriate for LBIE to remain in administration so that distributions can be made in accordance with the Scheme and the English insolvency framework.
27. There are various other outstanding matters in the LBIE administration. In summary:
 - (1) In relation to my judgment handed down on 11 October 2022 in the "Firth Rixson" application issued by the Administrators: see [2022] EWHC 2532 (Ch), it is presently uncertain whether Firth Rixson will seek permission to appeal and, if so, whether permission will be granted. A consequential hearing has been listed in December 2022.
 - (2) The Administrators of LBIE are continuing to collect various assets, including a tax refund in the US, receivables owing by Mable and Singularis Holdings Limited, and other miscellaneous assets.
 - (3) Finally, there are some disputed expense claims further detailed in Ms Grant's first Witness Statement which the Administrators of LBIE are working to resolve.
28. The Administrators of LBIE also stress that no objection to the extension they seek has been received from interested parties nor otherwise has anyone indicated an intention to oppose the present application.
29. The Administrators gave notice of the Application as follows:
 - (1) In their progress report dated 12 April 2022, the Administrators notified creditors of LBIE that they intended to make an application to extend their terms of office.
 - (2) On 13 October 2022, the Administrators published a further progress report on the LBIE administration page of the PwC website. That progress report indicated that the Administrators intended to apply to for a further extension of their terms of office for a period of three years.
 - (3) Posting information on the administration website is the method by which the administrators have generally communicated with LBIE's creditors in the course of the administration, save where some other statutorily stipulated method applied.

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- (4) No person has raised any objection. Indeed, the directly economically impacted party (namely LBHI2 as shareholder of LBIE) is itself seeking an equivalent extension as part of this Application.
30. In summary, the Administrators submit that in all the circumstances, it is appropriate to extend the administration of LBIE until 30 November 2025.
31. The fact that there is no opposition or objection from the persons economically interested is a relevant and important factor: but it does not, of course, necessarily follow that the Court should accede to the application for extension. I must be satisfied that it is appropriate to exercise my judicial discretion to grant what is put forward, including as to the length of the extension sought.
32. I must consider all the circumstances; and, in particular, as it seems to me, whether there are any viable and preferable alternatives. I must also weigh cost against benefit, so far as I can, and be satisfied that the length of extension is truly justified, as best I can tell from the evidence.
33. Ordinarily, the comparator will be likely to be with the alternative insolvency process of liquidation. In this case, however, it is clear that liquidation would be a much less appropriate process. In addition to specific considerations such as the ‘lacuna’ issue to which I have referred above, liquidation would negate the objectives of the administration of LBIE: LBIE is solvent and the objective is its full restoration as a going concern. Liquidation is not an appropriate alternative.
34. In those circumstances, the question is whether the process of administration is really required or justified, having regard to the matters outstanding. This was a matter addressed, but only lightly dealt with, in the Administrators’ evidence and skeleton argument; and prior to the hearing I made a request for further details in relation to all of the Extension Application Companies, but especially LBIE.
35. I have been provided with a helpful elaboration by email of the Administrators’ position that it would neither be possible nor desirable for LBIE to be returned to its directors now, or at any time prior to the ultimate conclusion of the AFGP action to which I have referred.
36. The Administrators put forward the following as “key points”:
- (1) Depending on the outcome of the AGFP Action, AGFP could end up being a creditor of LBIE for US\$20.7 million plus statutory interest and costs. (AGFP’s claim is disputed – indeed, it is LBIE’s position that AGFP is a debtor of LBIE for US\$485 million – but this is the issue that falls to be determined in the AGFP Action.) It is not considered that the directors of LBIE would be the appropriate people to deal with an inbound claim against LBIE’s estate. Instead, it is appropriate for AGFP to receive distributions in the administration of LBIE in accordance with the statutory scheme, in the same way as every other creditor of LBIE. The Administrators, as officers of the Court, will ensure that any distributions are properly made to AGFP. It does not appear that there has been any previous case in which a distributing administration has been terminated prior to the conclusion of the proof and distribution process, and it is hard to see how this would work in practice.

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- (2) In particular, if LBIE remains in administration until the conclusion of the AGFP Action, then this will ensure that AGFP can receive statutory interest on any admitted claim. If LBIE were to exit administration prior to the conclusion of the AGFP Action, then there would be material uncertainty as to the status of AGFP's statutory interest entitlement. There would, in effect, be another potential "lacuna" problem, since it is unclear what might happen to statutory interest entitlements where a company exits a distributing administration before those entitlements are paid. It could be argued that the effect of terminating an administration is to terminate the statutory trust pursuant to which statutory interest is payable. It might theoretically be possible to address these problems by implementing some form of trust structure, so as synthetically to replicate the effect (as regards statutory interest) of a distribution in administration, but this would be complex and would, absent a court determination to the effect that AGFP was not being prejudiced as a consequence, almost certainly require AGFP's consent (and it is not considered that AGFP would be likely to agree to any course of action which could affect its rights to statutory interest in any way).
- (3) In addition, there would be no countervailing benefit in returning LBIE to its directors prior to the conclusion of the AGFP Action. As noted above, the Five Companies will need to remain in administration (with officeholders from PwC appointed). Indeed, one of the Five Companies is LBHI2, which is the shareholder of LBIE. Asset realisations will move between LBIE and the other Five Companies. Given that LBHI2 will remain in administration together with the other Five Companies, nothing would be gained by taking LBHI2's subsidiary (LBIE) out of administration now. There would not be any material costs savings, since the functions of the LBIE Administrators would instead be carried out by a board of directors who would likely continue to engage PwC personnel to assist them in their work.

37. In those circumstances, the Administrators respectfully reiterate their submission that the only real option is for LBIE to remain in administration for the time being (before being returned to its directors in due course). The Administrators have suggested that a three-year extension would be appropriate in order to allow the AGFP Action to run its course, and to avoid the costs of seeking another extension.
38. I have been persuaded by these submissions as elaborated. I have taken into account the costs of administration (as summarised in a letter from Linklaters LLP on behalf of the Administrators to the Court dated 22 November 2022). I have been satisfied that it is appropriate to grant the extensions of the Administrators' term of office in respect of LBIE as proposed. I made an order accordingly.

Whether extension of LBIE Administration justifies extension in the case of the other five companies

39. The Administrators then went on to submit that if the extension sought in LBIE is appropriate and granted by the Court, as I have now ordered, then it also follows that a number of the other Companies should have their administrations extended for the same period of time. This is a consequence of the manner in which distributions will flow between LBIE and the other Companies.

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40. I should, however, note at the outset that the position in respect of those other companies is to be distinguished from the position relating to LBIE in this important respect: LBIE is the only one of the Six Companies for which the statutory purpose of the administration is the first objective specified by Paragraph 3(1) of Schedule B1. For each of the Five Companies, the Administrators are pursuing the second objective specified by Paragraph 3(1). Moreover, as explained in the evidence, the Five Companies have not yet realised all their assets, and it is likely to take some time before they do so. This is primarily because the Five Companies (except for Mable) are directly or indirectly entitled to the realisations in LBIE's estate and must therefore await the outcome of the AGFP Action in the US (which, as already explained, could be a protracted process). If LBIE is successful in the AGFP Action, then a portion of the proceeds will end up being divided up (directly or indirectly) between the other companies, as apparent from the structure chart attached to this judgment. Mable is in a slightly different position, in that its assets have long-dated maturities and will need to be collected over a significant period of time (and ultimately distributed to LBIE).
41. In the result, the Administrators submit that Mable, LBL, LBHI2, Eldon and LBH (which I shall refer to compositely as "the Five Companies") will need to remain in administration in order to realise their assets and distribute those realisations to their creditors. There can be no question of placing the Five Companies into liquidation (for the reasons explained in the evidence and in the skeleton). Neither are those companies in a position to be returned to their directors at this time. The only one of the Five Companies which might potentially be capable of being returned to the control of its directors in due course is LBL, and it is unknown whether and when this might happen (since there is currently a shortfall in LBL's assets against LBL's creditor entitlements).
42. I am satisfied that these considerations, and the complexity of the interconnected inter-Group cashflows as illustrated by the diagram in the Appendix to this judgment), militate strongly in favour of the extensions sought. For completeness, however, I consider each of the Five Companies in turn.

Mable

43. I start with Mable, which entered into administration on 23 September 2008, and is the holding company for a number of subsidiaries within the Lehman Group, including Storm. Mable was a funding vehicle for mortgage assets and asset-backed debt financing.
44. Following a compromise agreement entered into between Mable and its creditors on 13 April 2021, all of Mable's assets, except its claim against LBHI, were transferred to LBIE, though for regulatory reasons Mable retained bare legal title to its interests in two mortgage providers, Southern Pacific Mortgages Limited ("SPML") and Preferred Mortgages Limited ("PML").
45. LBIE is now the sole unsubordinated creditor of Mable. There remain further assets in Mable's estate to be realised for the benefit of LBIE, namely further "long tail" recoveries from investments in SPML and PML as well as future distributions from an admitted claim against Lehman Brothers Holdings, Inc. ("LBHI"). Mable's recoveries from SPML and PML are currently expected to continue until 2041.

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46. The Administrators told me that they are assessing how they might realise the value of those investments sooner and/or transfer Mable's interest in those investments so as to enable Mable to be dissolved but they submitted that in the absence of a clear pathway to resolution at this time, it is appropriate to tie the length of Mable's proposed extension to that of LBIE.
47. The Administrators of Mable gave notice of the Application as follows:
- (1) In their progress report dated 20 April 2022, the Administrators notified creditors of Mable that they intended to make an application to extend their terms of office.
 - (2) On 21 October 2022, the Administrators published the relevant progress report on the Mable administration page of the PwC website. That progress report indicated that the Administrators intended to apply to request a further extension of their terms of office for a period of three years.
 - (3) Posting information on the administration website is the method by which the administrators have generally communicated with Mable's creditors in the course of the administration, save where some other statutorily stipulated method applied.
 - (4) No person has raised any objection, or otherwise indicated an intention to oppose the present application. Indeed, the directly economically impacted party (namely LBIE) is itself seeking an equivalent extension as part of this Application.
48. In the circumstances, the Administrators submit that it is appropriate to extend the administration of Mable until 30 November 2025.
49. I have accepted this, and made an extension order accordingly.

LBL

50. LBL entered into administration on 15 September 2008. Prior to its entry into administration, LBL was a service company providing administrative and infrastructure services to other companies within the Lehman Group in the UK and Europe, being reimbursed on a recharge basis for costs incurred in the provision of services.
51. The administration of LBL is currently in "distribution mode", and the Administrators still have certain outstanding tasks to complete in order to effect final distributions to creditors.
52. Most notably, they expect to receive further distributions from LBH, which will enable them to make further payments of statutory interest to LBL's own creditors, as well as to make any distributions in due course to HMRC in respect of certain claims that have been intimated but not yet adjudicated upon, and another anticipated claim.
53. The distributions from LBH to LBL will be derived from distributions made by LBHI2 to LBH (since LBH has a subordinated claim against LBHI2). As noted above, LBHI2 is the shareholder of LBIE (and will therefore receive distributions from LBIE). The intercompany funds flows are represented in the diagram in the Appendix to this judgment.

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54. For this reason, the Administrators submitted that it appears likely that LBL will continue to receive and then make onward distributions for up to three years, given the length of the proposed extension of LBIE's administration. In turn, they submit that it is therefore appropriate to tie the length of LBL's proposed extension to that of LBIE.
55. The Administrators of LBL gave notice of the Application as follows:
- (1) In their progress report dated 13 October 2022, the Administrators notified creditors of LBL that they intended to make an application to extend their terms of office. The Administrators published the relevant progress report on the LBL administration page of the PwC website.
 - (2) Posting information on the administration website is the method by which the administrators have generally communicated with LBL's creditors in the course of the administration, save where some other statutorily stipulated method applied.
 - (3) Further, the Administrators informed the creditors' committee of LBL at its most recent meeting, held on 23 June 2022, that they intended to make an application to extend their term of office.
 - (4) On 24 October 2022, the Administrators published a notice on the LBL administration page of the PwC website. That notice advised creditors that the Administrators intended to apply for an order extending their term of office for three years.
 - (5) No person has raised any objection, or otherwise indicated an intention to oppose the present application.
56. In the circumstances, the Administrators submit that it is appropriate to extend the administration of LBL until 30 November 2025.
57. I accepted this and made an extension order accordingly.

LBHI2

58. LBHI2 entered into administration on 14 January 2009. LBHI2 is a holding company, the only material assets of which (other than tax losses) were its subordinated debt claims and its shareholding in LBIE (and other affiliate debt).
59. The total amount of distributions that will eventually be received from LBIE will depend on the ultimate outcome of the LBIE estate. LBHI2 has two outstanding creditor claims, including one made by LBH (which holds a priority subordinated debt claim against LBHI2).
60. For this reason, it appears likely that LBHI2 will continue to receive and then make onward distributions for up to three years, given the length of the proposed extension of LBIE's administration. Again, the Administrators submit that it is therefore considered appropriate to tie the length of LBHI2's proposed extension to that of LBIE.

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61. The Administrators of LBHI2 gave notice of the Application as follows:
- (1) In their progress report dated 5 August 2022, the Administrators notified creditors of LBHI2 that they intended to make an application to extend their terms of office.
 - (2) The Administrators published a notice to similar effect on the LBHI2 administration page of the PwC website on 19 October 2022. That notice indicated that the Administrators intended to apply to request a further extension of their terms of office for a period of three years. Posting information on the administration website is the method by which the administrators have generally communicated with LBHI2's creditors in the course of the administration, save where some other statutorily stipulated method applied. The Administrators also gave specific notice of the Application to LBHI2's two subordinated creditors.
 - (3) No person has raised any objection, or otherwise indicated an intention to oppose the present application.
62. In the circumstances, the Administrators submit that it is appropriate to extend the administration of LBHI2 until 30 November 2025.
63. I accepted this and made an extension order accordingly.

Eldon Street

64. Eldon entered into administration on 9 December 2008. Prior to the collapse of the Lehman Group, Eldon was the holding company for a number of the Lehman Group's real estate investments. It held investments in subsidiaries, as well as receivables from many of them.
65. Eldon has made distributions to unsecured creditors, totalling £211.2 million and USD 4.2 million (equating to a cumulative dividend of approximately 48.12 pence in the pound). Eldon's primary anticipated source of further realisations is any additional statutory interest in due course to be received on its admitted claim in LBH's administration. The quantum and timing of any such further receipts depends to a significant degree on the quantum and timing of recoveries that LBH in due course receives in respect of its claims against LBHI2 and LBL. In turn, the quantum and timing of those recoveries by LBH depend upon the quantum and timing of further distributions in due course to be made by LBIE. The Administrators submit that it is therefore appropriate to tie the length of Eldon's proposed extension to that of LBIE.
66. The Administrators of Eldon Street gave notice of the Application as follows:
- (1) In their progress report dated 6 July 2022, the Administrators notified creditors of Eldon that they intended to make an application to extend their terms of office.
 - (2) The Administrators published a notice to similar effect on the Eldon administration page of the PwC website on 19 October 2022. That notice indicated that the Administrators intended to apply to request a further extension of their terms of office for a period of three years. Posting information on the administration website is the method by which the administrators have generally communicated with Eldon creditors in the

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course of the administration, save where some other statutorily stipulated method applied.

- (3) No person has raised any objection, or otherwise indicated an intention to oppose the present application.

67. In the circumstances, the Administrators submit that it is appropriate to extend the administration of Eldon until 30 November 2025.

68. I accepted this and made an extension order accordingly.

LBH

69. LBH entered into administration on 15 September 2008. The principal activity of LBH was to hold investments in a range of assets, the majority of which were held through subsidiaries or joint ventures, although it had some proprietary investments of its own.

70. As already explained above, there is a significant degree of interconnectivity between the various Companies. LBH has a subordinated claim against LBHI2. In turn, LBHI2 is the shareholder of LBIE and will receive distributions from LBIE. LBH also owes intercompany debts to LBL and Eldon, and subordinated debts to LBHI and LB GP No. 1 Ltd. For this reason, it appears likely that LBH will continue to receive and then make onward distributions for up to three years, given the length of the proposed extension of LBIE's administration. The Administrators submit that it is therefore appropriate to tie the length of LBH's proposed extension to that of LBIE.

71. The Administrators of LBH gave notice of the Application as follows:

- (1) In their progress report dated 13 October 2022, the Administrators notified creditors of LBH that they intended to make an application to extend their terms of office for a period of three years. This was posted to the LBH administration page of the PwC website. Posting information on the administration website is the method by which the administrators have generally communicated with LBH's creditors in the course of the administration, save where some other statutorily stipulated method applied.
- (2) No person has raised any objection, or otherwise indicated an intention to oppose the present application.

72. In the circumstances, the Administrators submit that it is appropriate to extend the administration of LBH until 30 November 2025.

73. I accepted this and made an extension order accordingly.

LBUKRE

74. LBUKRE is not one of the Five Companies but it is one of the Extension Application Companies. In respect of LBUKRE, the Administrators seek a shorter extension of their term of office (until 31 May 2023).

75. The evidence is that the administration of LBUKRE is substantially complete. The only remaining tasks are to agree the final tax position of LBUKRE with HMRC, pay any outstanding tax (which will in any event be more than covered by the reserves currently held by the Administrators in respect of LBUKRE), and distribute the

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remaining assets of LBUKRE to its sole remaining creditor (namely LBHI). LBUKRE will then be dissolved under Paragraph 84 of Schedule B1 without further order of the Court. The Administrators expect that these tasks can be completed by 31 May 2023.

76. The Administrators of LBUKRE gave notice of the Application as follows:
- (1) The Administrators of LBUKRE gave notice in their progress report dated 12 October 2022 of their intention to apply for a short extension to their term of office and to fix the time of their discharge.
 - (2) On 18 October 2022, the Administrators of LBUKRE published a similar notice, specifying the length of the further short extension to be sought, on the dedicated PwC website for the LBUKRE administration (which is the method by which the Administrators of LBUKRE have generally communicated with creditors during the administration, save where some other statutorily stipulated method applied), and they gave specific notice to the only remaining creditors of LBUKRE (namely LBHI and, potentially, HMRC) on 17 and 21 October 2022 respectively.
 - (3) No person has raised any objection, or otherwise indicated an intention to oppose the present application.
77. In the circumstances, the Administrators submit that it is appropriate to extend the administration of LBUKRE until 31 May 2023.
78. Once again, I accept this and made an extension order accordingly.

Applications for Discharge of Administrators

79. Lastly, I turn to the Discharge Applications made by the respective Administrators of LBUKRE and Storm for orders fixing the time at which the Administrators shall be discharged from liability under Paragraph 98(2)(c) of Schedule B1 to the Act.
80. It is proposed that the discharge from liability shall take effect 28 days after the Administrators of LBUKRE and Storm (as applicable) send their final progress report to the creditors of the relevant Company, save in respect of any claims notified to them before that date.

Relevant legal principles

81. As to my jurisdiction and the ambit of my discretion in this context, Paragraph 98 of Schedule B1 provides, so far as material, as follows:
- “(1) Where a person ceases to be the administrator of a company (whether because he vacates office by reason of resignation, death or otherwise, because he is removed from office or because his appointment ceases to have effect) he is discharged from liability in respect of any action of his as administrator.*
- (2) The discharge provided by sub-paragraph (1) takes effect—*
- (a) in the case of an administrator who dies, on the filing with the court of notice of his death,*

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(b) in the case of an administrator appointed under paragraph 14 or 22 who has not made a statement under paragraph 52(1)(b), at a time appointed by resolution of the creditors' committee or, if there is no committee, by decision of the creditors ...

(c) in any case, at a time specified by the court ...

(4) Discharge—

(a) applies to liability accrued before the discharge takes effect, and

(b) does not prevent the exercise of the court's powers under paragraph 75.”

82. As is apparent from Paragraph 98(1), a discharge from liability is an automatic consequence of an administrator's appointment ceasing to have effect. The exercise of discretion only relates to the time at which the discharge takes effect.
83. In the case of an administrator appointed out of Court (by the directors or the holder of a qualifying floating charge), the time of discharge can be fixed without the need to apply to the Court: see Paragraph 98(2)(b). However, where an administrator has been appointed by the Court (as in the case of LBUKRE here), the time of discharge must be fixed by the Court: see Paragraph 98(2)(c). It is also clearly permissible (albeit not mandatory) for the time of discharge to be fixed by the Court in the case of an administrator appointed out of court, as was the case in respect of the original Administrators of Storm.
84. As explained in Sealy & Milman: Annotated Guide to the Insolvency Legislation (25th edition), *“the court's usual practice is to fix a date 28 days after the administrator has filed his final report”*. The reason for the discharge of administrators was explained by Sales J in *Re Hellas Telecommunications (Luxembourg) II SCA* [2013] 1 BCLC 426 at [96]:
- “In my view, there are no good grounds to depart from what I was told is the usual practice of ordering that an administrator be discharged from liability under paragraph 98 of Schedule B1 to take effect 28 days after he has filed his final report. The reason that it will usually be right to order such a discharge is that the administrator will no longer retain in his hands the assets of the company out of which he is entitled to meet any liability properly incurred by him, so that it is unfair to leave him on risk generally. In so far as there is a good arguable case against him of improper conduct or misfeasance, that can be proceeded with after the discharge is given, in accordance with paragraph 98 of Schedule B1 read with paragraph 75.”*
85. Paragraph 98(4)(b) ensures that the discharge of an administrator does not operate as a bar on any claims for misfeasance under Paragraph 75 of Schedule B1. A creditor who wishes to bring a claim for misfeasance against an administrator after the date of discharge must seek permission from the Court: see Paragraph 75(6). The position was explained by Rose J in *Re Angel Group Ltd* [2016] 2 BCLC 509 at [35]:
- “The court's powers under paragraph 75 of Schedule B1 relate to examining the conduct of a person who has been an administrator on the application of one of the people listed in paragraph 75(2). The application must allege misconduct falling within the four kinds set out there, including that the administrator has breached a fiduciary or other duty in relation to the company. Such an*

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application can be made against an administrator who has been discharged provided permission of the court is obtained. So, as Ms Smith put it, discharge is not absolute.”

86. Rose J also explained that there is no need for an administrator to point to any specific justification for obtaining a discharge (e.g., some prejudice that might otherwise be suffered). See *Re Angel Group* at [37]:

“I accept Ms Smith’s submission that paragraphs 98 and 75 of Schedule B1, read together, create a framework under which the administrators will generally be discharged from liability in respect of their actions as administrator once they cease to act, and that after discharge any claim must be made by application under paragraph 75 and requires the permission of the court. I do not agree, therefore, that the current administrators have to be able to point to some particular prejudice that they will suffer if they are not given their discharge for some considerable period.”

87. Where an administrator applies to fix the time of his discharge under Paragraph 98(2)(c), there are essentially two matters that need to be dealt with in the evidence. First, the administrator should explain in evidence whether he is the subject of any potential claims. Second, the administrator should notify creditors of the application and inform the Court as to whether any claims have been notified (or whether anyone objects to the proposed discharge). See *Re Nortel Networks France SAS* [2019] EWHC 2447 (Ch) at [19] per Snowden J:

“When asked to grant a discharge, the Court is naturally concerned to ascertain what, if any, liabilities the administrators in question might possibly have in respect of any of their actions. In that regard, the Administrators are not aware of any claims intimated or made against them which have not been dealt with under the Global Settlement or during the course of NNF’s administration, and none of the Administrators are aware of any facts which would give rise to any such claim. Importantly in this respect, the former creditors of the Company and the creditors of NNSA have been given notice of the Administrators’ intention to seek a discharge, and no objections have been raised. I therefore consider that it is unlikely in the extreme that any claims still exist in respect of the administration.”

88. In short, therefore, as it seems to me:

- (1) discharge itself is the consequence of the application and operation of paragraph 98(1) and there is neither need nor room for any order in that regard;
- (2) the timing of the discharge, however, must be fixed: in the case of an administrator appointed out of court, this may be done by the creditors’ committee or if there is none by decision of the creditors, but in the case of a court-ordered administration this must be by the court (which, for the avoidance of doubt, has power to fix “*In any case*”);
- (3) the purpose of discharge, as well as good order, is to insulate the administrators, once they no longer retain assets of the company out of which they are entitled to meet any liability properly incurred by them, from liability in respect of claims relating to their handling of the administration, except for

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claims already notified and misfeasance claims brought with the permission of the court pursuant to paragraph 75;

- (4) the order fixing the time will ordinarily be sought and made before the termination of the Administrators' appointment, but will not be such as to take effect before such cessation;
- (5) the order fixing the time of discharge will ordinarily stipulate that discharge is not to take effect for a further period (usually about 28 days) after cessation of the Administrators' appointment to give a final opportunity for review of their handling of the administration by, for example where the company has moved into liquidation, by the liquidator, and for any claims to be advanced which might justify a charge over the company's assets.

The applications in this case

89. Pursuant to the Discharge Applications, the Administrators of LBUKRE and Storm seek an order fixing the time at which the Administrators shall be discharged from liability under Paragraph 98(2)(c) of Schedule B1 to the Act.
90. Whereas the administration of LBUKRE commenced by way of an order of the court (on 15 September 2008), so that the timing of the Administrators' discharge must be fixed by the court pursuant to Paragraph 98(2), Storm entered into administration by a resolution of its directors (dated 22 September 2008) pursuant to Paragraph 22 of Schedule B1. However, although ordinarily in the case of an administrator appointed under Paragraph 22 the date of discharge may be fixed (pursuant to Paragraph 98(2)(b)) by a resolution of the creditors' committee (failing which by decision of the creditors), an order of the court fixing the date of discharge is sought also in the case of Storm pursuant to Paragraph 98(2)(c). That is because the Administrators' proposals for achieving the purposes of Storm's administration included a resolution which was subsequently approved by creditors to the effect that "*The Administrators shall be discharged from liability pursuant to Paragraph 98(1) Schedule B1 IA86 in respect of any action of theirs as Administrators at a time determined by the court.*"
91. In their Application Notice the Administrators proposed that the discharge from liability shall take effect 28 days after the Administrators of LBUKRE and Storm (as applicable) send their final progress report to the creditors of the relevant Company, save in respect of any claims notified to them before that date.
92. The Administrators of LBUKRE and Storm have confirmed in evidence that are not aware of any claim being threatened against them, nor of any circumstances which might lead to such a claim.
93. The application to fix the time of discharge has been notified to creditors as follows:
 - (1) In the case of LBUKRE, as already described in Paragraph 76 above.
 - (2) In the case of Storm, the Administrators of Storm gave notice in their progress report dated 25 October 2022 of their intention to apply to fix the time of their discharge. The progress report was published on the dedicated PwC website for the Storm administration (which is the method by which the Administrators

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of Storm have generally communicated with creditors during the administration, save where some other statutorily stipulated method applied).

94. I address first the position of Storm, because it does not seem to me to involve any unusual aspect, whereas the order sought in respect of LBUKRE is more unusual because it is not proposed to take effect for many months.

Storm

95. The administration of Storm is due to terminate on 30 November 2022. No extension of that administration is sought. Instead, the Administrators will cause Storm to be dissolved without further order of the Court under Paragraph 84 of Schedule B1. After paying a final cash dividend (prior to 30 November 2022), Storm will have no further assets for distribution.
96. Thus, the ending of Storm's administration and the cessation of its Administrators is practically certain and imminent. It falls within the general run of applications made for the time of discharge to be fixed.
97. Subject to a small amendment which I proposed and which Counsel for the Administrators agreed (see below) the order sought would fix the time of discharge as in just over 28 days' time. I prefer to fix the timing by reference to the registration by the Registrar of Companies of a notice from the Administrators pursuant to Paragraph 84(1), for the reason explained in *In the Matter of Lehman Brothers UK Holdings Limited* [2016] EWHC 3552 (Ch), and that is the small amendment to the draft order which has been accepted. I have made a discharge order accordingly.

LBUKRE

98. The position in relation to LBUKRE is more unusual. An extension of the Administrators' term of office has been sought and indeed granted, albeit for the relatively short period of some six months. There is an element of futurity and at least a theoretical possibility of some change of circumstances (such has already occasioned a delay in bringing the administration of LBUKRE to an end).
99. Nevertheless, the Administrators submitted that:
- (1) the administration of LBUKRE is substantially complete. Although the Administrators have applied for an extension of their term of office until 31 May 2023, that short extension is intended to be the final extension;
 - (2) the Court undoubtedly has the power to do so under Paragraph 98(2)(c), and it is submitted that the Court should exercise its discretion to make such an order, thereby avoiding a further hearing for the time of discharge to be fixed at a separate hearing and saving costs.
100. The Administrators stressed, more particularly, that (a) the element of futurity, in the sense of the order fixing the time of discharge preceding the termination of the Administrators' appointment is not of itself unusual, and the fact that it is greater than usual is no bar to the exercise of the jurisdiction; (b) the application is not premature, in that this is an available opportunity and an order now would avoid the cost of a further application; (c) Counsel and his team's researches have not unearthed any case or learning suggesting that the jurisdiction is unavailable or should not be exercised in such circumstances; (d) the administration has already been in being for 14 years: the

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possibility of some new claim surfacing after all that time is exiguously remote and further, the element of futurity is small in comparison; and (e) the only persons with any identified economic or financial interest are HMRC and LBHI, both of which have been notified and neither of which has expressed or indicated any objection: indeed, LBHI has confirmed by email that it has no objection to the Application and more generally, there is no reason to believe that anyone objects to the order sought by the Administrators.

101. These are powerful considerations which were cogently advanced by Mr Perkins of Counsel (to whom I am grateful for his helpful submissions). Even so, and although I do not regard there as being any jurisdictional impediment, in exercising my discretion, I prefer not to make an order at this stage. That may be thought and ultimately prove to be over-cautious; but the unexpected delays in finalising arrangements with HMRC which had some time ago been thought to have been completed encourages caution; and so too does the pragmatic consideration that the justification for the unusual order is ultimately simply the saving of costs, and I consider that this may largely be achieved in another way.
102. As I proposed to Mr Perkins, I shall direct that the application should be stood over to be restored to the Court and dealt with on the papers. In my judgment, unless there is some change in circumstances, the court is very likely then to make the usual order. Any supporting Witness Statement can, I should have thought (and Mr Perkins was inclined to agree) be very short, and the position can briefly be explained by reference to what by then will be the Administrators' latest and last progress report. Assuming that I shall still be the assigned judge I can of course be reminded of my disposition to make the order at that time, absent significant change in circumstances.