THE HIGH COURT

[2022] IEHC 695

[2020 16 COS]

IN THE MATTER OF SPRINREAL LIMITED (IN LIQUIDATION)

AND

IN THE MATTER OF SECTION 821 OF THE COMPANIES ACT 2014

BETWEEN

MYLES KIRBY

APPLICANT

AND

MICHAEL CARROLL

RESPONDENT

Judgment of Mr. Justice Quinn delivered on 9 December 2022

1. The applicant seeks directions following a finding made by this Court on 4 July 2022 that the respondent has acted in breach of an order of this Court made 14 February 2022 declaring that the respondent shall not for a period of five years be appointed or act in any way, whether directly or indirectly, as a director or secretary or be concerned or take part in the promotion or formation of any company unless that company meets the requirements as to capital stipulated in s. 819(3) of the Companies Act 2014 (the "Restriction Declaration").

Background

2. On 1 October 2015 an order was made by this Court (MacEochaidh J.) for the winding up of Sprinreal Limited ("the Company") and appointing the applicant liquidator.

3. On 9 March 2020 the applicant issued a Notice of Motion pursuant to s. 819 of the Act, for a restriction declaration. Following numerous adjournments and exchanges of affidavits, that application was heard on 14 February 2022 and the Restriction Declaration was made on that day.

4. The court also ordered pursuant to s. 820 (2) of the Act that the applicant recover against the respondent the costs of the application, to be adjudicated in default of agreement, and a sum of €6,220 together with such sum as may be due in respect of VAT thereon in respect of the costs and expenses of the investigation incurred by the applicant.

5. Arising from events described later in this judgment, on 10 June 2022, the applicant issued an application for the following orders: -

(i) A declaration that the respondent is in breach of the Restriction Declaration in continuing to hold the position of a director of companies that do not meet the criteria of s. 819(3) of the Act.

(ii) Directions pursuant to s. 821(2) (b) of the Act including

(i) That the applicant refer the matter to the Director of Public Prosecutions and/or the Companies Registration Office and/or the Office of the Director of Corporate Enforcement and/or;

(ii) That an order be made pursuant to s. 842 of the Act that the respondent shall not, for such period as the Court sees fit, be appointed or act as a director or other officer, statutory auditor, receiver, liquidator or examiner or be in any way, whether directly or indirectly concerned or take part in the promotion,

formation or management of any company within the meaning of s. 819 of the Companies Act 2014 or any friendly society within the meaning of the Friendly Societies Acts 1896 – 2014 or any society registered under the Industrial and Providence Societies Acts 1893 – 2014, ("a disqualification order").

6. This application was grounded on an affidavit sworn by the applicant on 24 May 2022. When the matter came before the court on 4 July 2022, the respondent appeared in person to oppose the application. He was granted leave to file a replying affidavit. That affidavit was opened to the court and submissions were made by the applicant by his counsel and by the respondent in person.

7. Having considered the affidavit evidence and the submissions on that day, the court made a declaration to the effect that the respondent was in breach of the restriction declaration made on 14 February 2022.

8. Neither the Restriction Declaration made on 14 February 2022 or the finding and order made on 4 July 2022 were appealed. Therefore, it is not necessary on this application to rehearse all of the evidence and submissions which were considered, but I shall summarise a number of those later, as they are relevant to the directions now sought by the applicant.

9. When the matter was before the court on 4 July 2022, having made the finding that the respondent was acting in breach of the restriction declaration, I adjourned the matter to 24 October 2022 before deciding on what directions or further orders would be made. This adjournment was granted in light of submissions by the respondent that he intended to remedy the breach. I directed that any affidavit to evidence such remedy of the breach be filed by 30 September 2022. No affidavit was filed by 30 September 2022.

10. When the matter came before the court on 24 October 2022, there was no appearance by or on behalf of the respondent.

11. I adjourned the matter in his absence to 7 November 2022. On 7 November 2022, the applicant was represented, and the respondent appeared in person and sought leave to file and deliver an affidavit which he said had been sworn on Friday 4 November 2022.

12. The applicant objected to the late delivery of any such affidavit. Having considered submissions I adjourned the matter to 14 November 2022 and gave leave to the respondent to file his further affidavit in advance of the adjourned hearing.

The evidence

13. In his affidavit grounding this application sworn on 24 May 2022, the applicant says that after the making of the Restriction Declaration, he wrote on 23 March 2022 to fourteen companies of which the respondent was listed as a current director, notifying them of the Restriction Declaration. Initially he received no responses. Later he received a telephone call from Laura Carroll, the respondent's daughter, who is a director of one of the companies, namely The Eighth Degree Consulting Limited. Ms. Carroll informed the applicant that she was not aware of the Restriction Declaration and that she would take steps to remove the respondent as a director of the company of which she was a director. A Form B 10 recording the resignation of the respondent as a director of that company was filed in the Companies Registration Office on 30 March 2022.

14. The applicant's solicitors Dillon Eustace, then wrote to the respondent notifying him of the breach and that unless he provided proof of resignation from the relevant companies or the alternative proof of appropriate capitalisation complying with s. 819(3) of the Act, the matter would be brought to the attention of the court.

15. Through further correspondence it transpired that steps had been taken to obtain the necessary clearance from Revenue to proceed with a request for voluntary strike off in respect of nine of the companies, namely Kylefort Limited, Gellbay Limited, Xzerv Group

Limited, Zanalon Limited, Venamar Limited, DCDR Pharmacy Limited, Tipp Medical Group Limited, Tipp Town Pharmacy Limited and MYLD Pharmacy Holdings Limited.

16. The respondent resigned as a director of four of the companies, Xzerv Limited, Glamford Limited, Galsur Limited and The Eighth Degree Consulting Limited.

17. In three of these companies, Xzerv Limited, Glamford Limited and Galsur Limited, the respondent's wife, Yvonne Carroll, is a director and his son Darragh Carroll is the secretary.

18. The respondent's daughter Laura Carroll, together with others, is a director of The Eighth Degree Consulting Limited.

19. The respondent did not resign as a director of Tipp Medical Limited. By email of 29 April 2022 to the applicant he said: -

> *"The issued share capital of Tipp Medical Limited* <u>*is being increased*</u> *from €1075 (comprising €107,500 ordinary shares of €0.01 each) to €100,000 (comprising 10 million ordinary shares of €0.01 each) by converting and capitalising part of the share premium account which is currently €1,138,964".* (emphasis added)

20. In his grounding affidavit for this application, the applicant says that since February 2020, the respondent had "alluded to the imminent prospect of being in a position to invest €100,000 in the company, however this has never materialised". The applicant said that the respondent's stated intention to capitalise Tipp Medical Limited in line with s. 819 (3) by the end of June did not change his position in respect of the jeopardy which may be caused to a company or creditors by the respondent continuing to act as a director in breach of the Restriction Declaration.

21. The applicant said that he had formed the opinion that the respondent was continuing to act as a director of companies in breach of the Restriction Declaration and jeopardising the interests of the companies or their creditors.

22. The applicant summarised the core complaint which he had made in the restriction application. He says that the Company did not have any trade of its own or its own bank account and was an artificial structure whereby PAYE/PRSI liabilities of the group of companies controlled by the respondent were "housed in a shell company" away from the trading entities and assets of the group. He said that the effect of the structure was to isolate Revenue liabilities in a company that had no ability to discharge those liabilities or any enforceable contractual arrangement to compel other entities in the group to do so.

Respondent's evidence

23. In his replying affidavit sworn 4 July 2022, the respondent exhibited verification in the form of letters from Revenue that Revenue had no objection to the nine companies referred to earlier being struck off the Register of Companies.

24. The respondent exhibited up to date Companies Registration Office searches verifying that he is no longer a director of Xzerv Limited, Galsur Limited, Glamford Limited and The Eighth Degree Consulting Limited.

25. At the hearing on 4 July 2022 and again at the hearing on 14 November 2022, the respondent, to his credit, acknowledged that in companies where his wife was a director of companies, he retained influence. He did not pretend that he was not continuing to hold a position of influence or direction in relation to those companies, notwithstanding his resignation.

26. The respondent also exhibited tax clearance letters in respect of each of Xzerv Limited, Galsur Limited, Glamford Limited and Tipp Medical Limited.

27. As regards the capitalisation of Tipp Medical Limited, the only averment made by the respondent was a bare and unverified averment as follows: -

"On foot of that restriction order the only company of which I now remain a director is Tipp Medical Limited where the issued share capital is over €100,000 as required by the legislation".

28. The remainder of the respondent's replying affidavits on this application, both his affidavit on 4 July 2022 and as will be seen later, his affidavit of 4 November 2022 is to repeat his objections to the merits of original finding , never appealed, of failure to act honestly and responsibly in relation to the affairs of the Company and the making of the Restriction Declaration. He repeats his description of the manner in which he had operated the group of companies, including the Company as the entity responsible for the processing of employee payroll and payment of related taxes. He repeats assertions that the difficulties encountered in the group were aggravated by what he regarded as a flawed examinership process in 2015, and decisions taken by third parties such as NAMA, being in control of the landlord of one of the trading premises at Drogheda, the role of Revenue in voting against an examiner's proposals for a scheme of arrangement and that the group's working capital facilities were lost by virtue of decisions regarding terms of business taken by trading partners Uniphar plc and Cahill May Roberts.

29. The respondent repeated his assertions that the manner in which he had operated the group's affairs and in particular the Company in liquidation was common practice within the retail pharmacy industry.

30. All of these matters were ventilated and considered at the hearing on 14 February 2022 before the Restriction Declaration was made, and repeated at the hearing on 4 July 2022 when I made the finding that the respondent was acting in breach of the Restriction Declaration.

31. In the supplemental affidavit sworn 4 November 2022 the respondent gave only the following evidence regarding recapitalisation of Tipp Medical Limited in para. 8: -

"Tipp Medical Limited has had a total of €1,140,039 invested in it as equity for shares. This money was subsequently lent down to subsidiary companies to fund fit outs and working capital. I understand that this company meets the €100,000 capital requirement for me to remain as sole director and shareholder. See Exhibit 3".

32. Exhibit 3 is a one – page document headed "Tipp Medical Limited – Statement of Financial Position as at 31 October 2020". This appears to be an extract from financial statements to 31 October 2020. No verification of those financial statements such as a signed copy was exhibited and the only page presented is page 4, which includes two relevant lines under the heading "Capital and Reserves" as follows: -

"Called up share capital presented as equity - €1075

Share premium account - €1,138,964".

33. None of the notes to this statement were provided.

34. The contents of this page are stated to be a description of the share capital as of 31 October 2020. This is the only evidence presented and is not an update of the information provided on 29 April 2022 (see paragraph 19 above) when the respondent had stated, "The issued share capital of Tipp Medical Limited is <u>being</u> increased from 1075" (emphasis added).

<u>Examinership of Tipp Medical Limited</u>

35. The attention of the court was drawn to a scheme of arrangement in respect of Tipp Medical Limited which was confirmed by order of Butler J. on 25 September 2015. The contents of the proposals as confirmed were appended to that order and presented in court.

36. In the particulars of the company appended to the scheme in Appendix 1, reference is made to an authorised share capital of one million ordinary shares at €0.01 each and an issued share capital of 107,500 ordinary shares held by the respondent.

37. The scheme as confirmed stated that the rights of the existing member of the company were "impaired by the proposals". The details of the impairment were not stated in the scheme save to note that the shareholding of the existing member would be diluted by the issue of 10,000 ordinary shares to the investor for a sum of €10,000. The "investor" referred to in Appendix 3 of the proposal is Yvonne Carroll and the respondent. Two forms of investment were referred to as follows: -

(a) €10,000 by way of equity for issued share capital.

(b) €182,764.43 by way of long term loans subordinated to payments under the proposals. The company shall distribute the sum of €113,882 to Sprinreal Limited to allow for the implementation of proposals in respect of that company.

38. Sprinreal Limited is of course the company now in liquidation.

39. Since the respondent informed the applicant on 29 April 2022 that the share capital of Tipp Medical Limited "is being increased", this historic information about the scheme of arrangement was of no assistance to verify compliance of Tipp Medical Limited with s. 819 (3) of the Act.

40. Before leaving the evidence it is relevant to note that in his affidavit of 4 November 2022, the respondent confirms that he is the sole shareholder either directly or through Tipp Medical Limited, of the three other companies of which he is no longer a director, namely Galsur Limited, Xzerv Limited and Glamford Limited.

41. For Galsur Limited he exhibited an extract from a balance sheet as of 31 October 2020 showing "called up share capital presented as equity" of €100 and in the case of Xzerv Limited he exhibited a balance sheet as of 31 December 2021 showing a "called up share capital presented as equity" of €2. Again, in that case reference is made to a share premium account of €299,999.

42. No financial statements are exhibited in relation to Glamford Limited which apparently does not trade.

43. The respondent was afforded time to remedy the failure to comply with s. 819(3) and to demonstrate such compliance. The bald statement in his para. 8 that Tipp Medical Limited now meets the requirements of s. 819(3) and the exhibited one page from the financial statements as at 31 October 2020 are not evidence of compliance with s. 819(3). Accordingly, no information is before the court to alter the finding made on 4 July 2022.

44. The respondent concludes his affidavit by repeating objections to his original restriction: -

> *"I say to restrict me is onerous and as sole shareholder in these companies it would further damage the future prospects of these companies and their employment potential. Nothing has been proven against me or my companies. Sprinreal Limited should never have been put into examinership or receivership in the first place and it was poor advice received from the examiners, Hughes Blake Accountants, that created this situation in the first instance. We had traded quite successfully up to the examinership that started this and we had already been maintaining our tax clearance as it was vital to us".*

45. The applicant submits that the respondent's insistence on repeating his defence of the original structure and treatment of Revenue liabilities "suggests a likelihood that he will employ it or something similar again in his continued operation of the companies".

46. It was in these circumstances the applicant formed the opinion that the interests of Tipp Medical Limited and other companies and their respective creditors are jeopardised by the continuing breach of the Restriction Declaration.

47. The absence of evidence to demonstrate compliance with the requirements of s. 819 (3), as to capital, coupled with the respondent's persistent reliance on matters articulated by

him before the Restriction Declaration was made, validate the applicant's opinion that the respondent's conduct jeopardises the interests of other companies and their creditors. The provisions of s. 821 therefore apply to the respondent, and I shall direct that the applicant report the matter to the parties he proposes, namely the Corporate Enforcement Agency, the Director of Public Prosecutions and the Registrar of Companies.

48. The next question is whether I should, as urged by the applicant, make an order pursuant to paragraph 2 (2) of the Notice of Motion and pursuant to s. 842 of the Act, namely a disqualification order.

The legislation

49. In considering whether to make a disqualification order, it is important to put this application in the context of the relevant provisions of the Act.

50. Section 821 provides as follows:-

> *"(1) This section applies if the liquidator of an insolvent company is of the opinion that—*
>
> *(a) a restricted person is appointed or is acting in any way, whether directly or indirectly, as a director of, or is concerned or taking part in the formation or promotion of, another company, and*
>
> *(b) the interests of that other company or its creditors may be jeopardised by the matters referred to in paragraph (a).*
>
> *(2) In any case to which this section applies—*
>
> *(a) the liquidator shall inform the court of his or her opinion as soon as practicable, and*
>
> *(b) the court, on being so informed by the liquidator, shall make whatever order it sees fit.*

(3) A liquidator who, without reasonable excuse, fails to comply with subsection (2)(a) shall be guilty of a category 3 offence."

51. Section 842 identifies the ten grounds on which the court may make an order of disqualification. The grounds identified in s. 842 are the following:-

(a) fraud;

(b) breach of duty;

(c) that a declaration of fraudulent or reckless trading has been made (Section 610);

(d) conduct rendering the person unfit to be concerned in the management of a company;

(e) conduct disclosed in a report of inspectors appointed by the Court or under the Act which renders the person unfit to be concerned with the management of a company;

(f) persistent default in relation to relevant requirements (being statutory returns and notices to the Registrar of Companies);

(g) a finding of guilt in respect of two or more offences under s. 286 (offences in relation to accounting records);

(h) where a person has been a director of an insolvent company at a time when a notice of strike off was given by the Registrar of Companies and the company was subsequently struck off;

(i) being disqualified under the laws of another state.

52. Although s. 842 refers across to a number of statutory provisions, notably s. 610 relating to fraudulent and reckless trading, and infringements of s. 286 by failure to keep proper accounting records, no reference is made to acting in breach of a restriction declaration. However, the list within s. 842 is not exhaustive of the consequences of acting in such a breach, because automatic disqualification following a conviction for acting in breach of a restriction declaration (see paragraphs 54 and 55 below) is not mentioned.

53. The consequences for a person of acting in breach of a restriction declaration are identified in a number of other provisions of the Act, notably the following.

54. Section 855 provides that a person who acts in breach of a disqualification order or a declaration of restriction shall be guilty of an offence.

55. Section 855(2) provides that a person convicted of such an offence shall be deemed to be subject to a disqualification order from the date of that conviction.

56. Section 859 provides that, where a person acts in breach of a declaration of restriction and the next company in respect of which he has acted in breach of the provisions of s. 819 is wound up insolvent, either at a time when he has been acting in breach of s. 819 or within twelve months thereafter, the court may impose a declaration of personal liability in respect of the debts of that company incurred at a time when he was so acting.

57. Other consequences of a restriction declaration include the fact that a restricted person's name appears on the public register of Restricted Persons maintained by the Registrar pursuant to s. 823 of the Act.

58. A company having on its board a restricted director is itself subject to restrictions on the forms of transaction it may enter into or resolutions which it may pass (see ss. 826, 827, 828 and 829).

59. Nowhere does the Act stipulate that a consequence of acting in breach of a restriction order should be disqualification. Therefore, disqualification is not an automatic consequence of so acting. The nearest the Act goes to this consequence is the automatic disqualification which follows from a conviction for acting in breach of a restriction declaration (Section 855(2)). But the fact that such a conviction results in automatic disqualification, does not mean the court does not have jurisdiction in an appropriate case to make a disqualification order after hearing evidence and submissions.

<u>This application</u>

60. The applicant urges the court to apply the provisions of s. 842(b) which is breach of duty or s. 842(d) which is conduct which renders a person unfit to be concerned in the management of a company.

61. The grounding affidavit of the applicant does not expand on which breaches of duty or conduct rendering the respondent unfit to be concerned to the management of the company are relied on. The focus of that affidavit is to illustrate to the court that the grounds for an application under s. 821 have arisen, namely that jeopardy may be caused to Tipp Medical Ltd and other companies and their respective creditors by the respondent continuing to act as a director in breach of the restriction order. I have concluded earlier that the continuing conduct revealed by the respondent's own affidavits and submissions presents this jeopardy.

62. This Court must take seriously the evidence and findings that the respondent has acted in breach of the Restriction Declaration and that his actions create the jeopardy identified by the applicant. Breach of a restriction declaration is not only a clear contravention of provisions of the Act, but also a breach of an order of the court. In many other situations such a breach would attract even more serious sanctions. It seems to me that this conduct at least renders the respondent unfit to be concerned in the management of a company.

63. Having made that finding I must consider how to exercise the discretion conferred by s. 842.

Discretion

64. The purpose of s. 842 and the sanction of disqualification was considered at some length by the Supreme Court in a *Cahill v. Grimes (Re CB Readymix Ltd in Liquidation)* [2002] IR 372.

65. In that case, the court (Murphy J.) considered and approved the statement made by Browne-Wilkinson V.C. in *Re Lo-Line Ltd* [1988] CH 477, where it was emphasised that the primary purpose of a disqualification is not to punish the individual concerned but to protect

the public against the future conduct of companies by persons whose past records as directors of insolvent companies have shown them to be a danger to creditors and others.

66. The Court cited with approval the approach taken by the judge in the High Court where he had noted that, when given an opportunity to reconsider his arguments, the respondent in that case had *"continued in a vein as to betoken a total disregard in his conduct complained of"*. The court continued *"it was the fact that the respondent could not then – and does not now – appreciate the gravity of his misconduct that justifies the conclusion that he is unfit to hold the office of a liquidator and casts serious doubt upon his suitability to participate in the management of any company"*.

67. Whilst the facts in *Cahill v. Grimes* were very different to those which arise here the observations of the court regarding the failure of the respondent in that case to recognise the gravity of his conduct are apposite in this case where the respondent has persisted in his assertions that he did nothing wrong, notwithstanding the findings which led to the Restriction Declaration made on 14 February 2022.

68. In his submissions to the court, the respondent made the following observations:-

(1) That he enjoys now a good relationship with the Revenue Commissioners and with other trade counterparties.

(2) That, if a disqualification order is made, he may be left with no alternative but to initiate a liquidation of the remaining companies in the group, with consequential loss of employment.

(3) That, if necessary, he will arrange to restructure the affairs of his businesses such that they are conducted otherwise than through limited liability companies.

(4) That the effect of any restriction (as he put it, ignoring yet again that a restriction declaration has already been made) is to *"further damage the future prospect of these companies and their employment potential"*. He repeats his assertion that the Company

would never have been put into either examinership or receivership (being an erroneous reference to the liquidation of the company) in the first place were it not for poor advice received from the examiners which he says *"created the situation in the first instance"*.

69. Where the purpose of the sanction of disqualification now sought by the applicant is to ensure that members of the public and other trade counterparties are protected from the consequences of any repetition of the conduct which gave rise to these proceedings the court must take into account the following:-

(1) The failure of the respondent to recognise, even in the face of findings already made by this court, the gravity of his conduct.

(2) There is no evidence before this Court that the failure of the Company to discharge its debts and its insolvent liquidation were caused by the actions of trade counterparties, the former examiner of the company or of the Revenue Commissioners.

(3) No evidence of the current employment levels which the respondent says would be saved if he were not disqualified has been placed before the court.

(4) The court must take seriously the consequence of finding that the order made on 14 February 2022 has been breached.

70. It is to the credit of the respondent that he acknowledges that, in respect of those companies which have not been listed for strike off, but where he is no longer a director and his wife is a director, he remains in a position of influence. Nonetheless, it seems to me that, when account is taken of the totality of the above findings and the manner in which the respondent has met this application, I should exercise the discretion to make an order of disqualification pursuant to s. 842.

Duration of disqualification

71. I heard submissions from both parties as to the length of a period of disqualification and the court has been referred to the decisions in *Re Clawhammer Ltd* [2005] IR 504,

Director of Corporate Enforcement v. Bailey [2013] IEHC 561 and *Re Eurosurgical Limited (In Liquidation)* [2022] IEHC 10.

72. In particular, counsel for the applicant referred me to the discussion by Finlay Geoghegan J. in *Re Clawhammer* of the different periods which may be appropriate for disqualification orders. The court discussed the comparative effects of sanctions of restriction pursuant to s. 819 (formerly s. 150 of the Act of 1990) and of disqualification pursuant to s. 842 (formerly s. 160 of the Act of 1990) and observed that the Oireachtas intended a disqualification order to be a more serious sanction than restriction, although in practice the latter may operate to prevent certain respondents from acting as directors. That case related to companies which were struck off the Register of Companies involuntarily and the court applied a range of periods depending on the circumstances and evidence available in relation to the respondents in the case of each company before the court. Disqualification orders were made for five years for the respondents in most of the companies. In one exceptional instance considered there, the period imposed was only one year. That related to a company where the court received evidence that the directors had discharged "almost all of the creditors" and the amount of Revenue debt left unpaid was "relatively small."

73. Longer periods of disqualification were imposed in *Director of Corporate Enforcement v. Baile*y, being seven years, and in *Re Eurosurgical Limited*, being a range of between nine years and nine months for one respondent, fourteen years and three months for another two, and fifteen years for another.

74. The respondent submitted, and I accept, that there were significant distinctions between the facts and the scale and gravity of conduct in those cases, particularly *Euro surgical* and *Bailey*, and the circumstances of this case.

75. Counsel for the applicant acknowledged that this case was closer, to the extent that any comparison can be made at all, to that of *Re Clawhammer Limited*.

76. The respondent also submitted that, as he is now 63 years of age, the effect of any period of disqualification being five years or longer would be to potentially eliminate him conducting business at any time for the remainder of his life.

77. Two mitigating factors inform my consideration of the length of the disqualification order.

78. Firstly, in respect of the fourteen companies of which the respondent was a director at the time that the Restriction Declaration was made, steps were taken to initiate a voluntary dissolution of nine of the companies, and the respondent resigned from a further four companies. This reduced the principal controversy in this application, to the situation of Tipp Medical Limited from which he has not resigned.

79. Secondly, the respondent's acknowledgement that he remains in a position of influence in those companies from which he has resigned and where family members remain on the board is to his credit, although it has informed the court in deciding to make the disqualification order.

80. In placing this case in the scale of appropriate periods of disqualification, I regard breach of a court declaration of restriction as serious, and potentially warranting an order in a range of five to seven years. Taking account of the mitigating factors referred to above, I conclude that the appropriate period of disqualification should be three years.

81. The Restriction Declaration itself remains in force for its original period of five years from 14 February 2022.

Relief

82. Section 847 of the Act provides that the court may, if it considers that it is just and equitable, grant relief in whole or in part or on such terms and conditions as it sees fit from a disqualification order, on an application made by the person who is subject to a disqualification order.

83. Section 822 contains a similar provision where a restriction order is made under s. 819 or an order is made under s. 821 (2).

84. I make no comment in this judgment as to whether such application would have any prospect of success, and it would be determined by reference to the evidence supporting it. I simply draw the existence of these sections to the attention of the respondent, having regard to the fact that he is unrepresented.

Order

85. I shall make an order that for a period of three years the respondent be disqualified from being appointed or acting as a director or other officer, statutory auditor, receiver, liquidator or examiner or being in any way, whether directly or indirectly, concerned or taking part in the promotion, formation or management of each of the following;

(a) A company within the meaning of Section 819(6) of the Act

(b) Any friendly society within the meaning of the Friendly Societies Acts 1896 to 2014

(c) Any society registered under the Industrial and Provident Societies Acts 1893 to 2014.

86. The Restriction Declaration will continue in force.

87. The matter will be listed before this Court one week after the electronic delivery of this judgment for any submissions as to costs.