Michaelmas Term
[2023] UKSC 38
On appeal from: [2021] EWHC 3013 (Admin)

JUDGMENT

R (on the application of Palmer) (Appellant) *v* Northern Derbyshire Magistrates' Court and another (Respondents)

before

Lord Reed, President
Lord Hodge, Deputy President
Lord Burrows
Lady Rose
Lord Richards

JUDGMENT GIVEN ON
1 November 2023

Heard on 8 March 2023

Appellant
David Reade KC
James McWilliams
(Instructed by Sonn Macmillan Walker)

2nd Respondent
Paul Ozin KC
Georgina Hirsch
(Instructed by Insolvency Service, Criminal Enforcement, Prosecutions South)

Respondents
1) Northern Derbyshire Magistrates' Court
2) The Secretary of State for Business, Energy and Industrial Strategy

LORD RICHARDS (with whom Lord Reed, Lord Hodge, Lord Burrows and Lady Rose agree):

Introduction

1. The issue on this appeal is whether an administrator of a company appointed under the Insolvency Act 1986 ("the IA 1986") is an "officer" of the company within the meaning of the phrase "any director, manager, secretary or similar officer of the body corporate", as used in section 194 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("TULRCA").

2. The statutory context in which this issue arises is that part of TULRCA which imposes duties on employers who are proposing to make employees redundant.

3. There is a duty to consult appropriate representatives of the affected employees where the proposal is to make 20 or more employees redundant within a period of 90 days or less: section 188(1). The consultation must commence at least 45 days before the first dismissal takes effect, where 100 or more employees are to be made redundant, and at least 30 days in other cases: section 188(1A). Where there are "special circumstances which render it not reasonably practicable to comply with" these requirements, "the employer shall take all such steps towards compliance with that requirement as are reasonably practicable in those circumstances": section 188(7). Employment tribunals may make protective awards of remuneration in the event of a failure to comply with these requirements: section 189.

4. There is also a duty imposed on the employer to notify the Secretary of State of proposed redundancies, with time limits similar to those for consultation with the employees' representatives: section 193. The notice must contain such information as may be directed and the Secretary of State may require the employer to provide additional information. Section 193(7) contains the same modification of the duty in the event of special circumstances as section 188(7).

5. Directly relevant to this appeal are the offences created by section 194. Section 194(1) provides that an employer who fails to give notice to the Secretary of State in accordance with section 193 commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale. Section 194(3) provides:

> "Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, any director, manager, secretary or other similar officer of

> the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly."

Role and function of an administrator

6. As the judgment of the Divisional Court in the present case ([2021] EWHC 3013 (Admin); [2022] ICR 531) recognised, it is important to understand the role and functions of an administrator.

7. The process of administration of a company was an entirely new insolvency regime, governed by the IA 1986 and based largely on the recommendations of the Report of the Review Committee on Insolvency Law and Practice chaired by Sir Kenneth Cork (1982) (Cmnd 8558) ("the Cork Committee"). The original provisions of the IA 1986 dealing with administration were replaced by Schedule B1 to the IA 1986 ("Schedule B1"), introduced by the Enterprise Act 2002 with effect from 15 September 2003.

8. The appointment of an administrator may be made by the court, the holder of a qualifying floating charge or the company or its directors: paragraphs 2 and 10 to 34 of Schedule B1. The court, the company or its directors may appoint an administrator only if the company is or is likely to become unable to pay its debts (paragraphs 11 and 27(2)) and the holder of a qualifying floating charge may do so only if the floating charge is enforceable (paragraph 16).

9. Paragraph 1(1) of Schedule B1 defines the administrator of a company as "a person appointed under this Schedule to manage the company's affairs, business and property". The administrator is an officer of the court, whether or not appointed by the court: paragraph 45. A person appointed as administrator must be qualified to act as an insolvency practitioner in relation to a company: paragraph 6. This includes a requirement to be a member of a professional body recognised by the Secretary of State under section 391 of the IA 1986 and to be permitted to act as an insolvency practitioner by or under the rules of that body: section 390A.

10. Paragraph 3 sets out the purpose of an administration. Paragraph 3(1) and (2) provide (the purposes stated in paragraph 3(1) being in descending order of priority):

> "(1) The administrator of a company must perform his functions with the objective of— (a) rescuing the company as a going concern, or (b) achieving a better result for the

company's creditors as a whole than would be likely if the company were wound up (without first being in administration), or (c) realising property in order to make a distribution to one or more secured or preferential creditors.

(2) Subject to sub-paragraph (4), the administrator of a company must perform his functions in the interests of the company's creditors as a whole."

The facts

11. As the issue on this appeal is one of principle and statutory construction, not affected by the circumstances of this particular case, the facts can be briefly summarised and, for the purposes of the appeal, they are not in dispute.

12. The appellant, Robert Palmer, was appointed as one of three joint administrators of West Coast Capital (USC) Ltd ("USC") on 13 January 2015. Among the joint administrators, Mr Palmer had responsibility for employees and preferential claims.

13. USC was a member of the Sports Direct group and traded as a retailer of clothing, footwear and accessories from premises predominantly in the north of England and Scotland. The operations in Scotland included an office and warehouse in Dundonald. On the same day as their appointment, the joint administrators sold the whole of the business of USC, other than the warehouse in Dundonald, as a "pre-pack" sale to another company in the Sports Direct group. By a "pre-pack" sale is meant a sale which has in large part been arranged before the administrators are appointed but with the binding sale agreement being made by the administrators.

14. Prior to the appointment of the administrators, a statutory demand for nearly £1.3 million had been served on USC on 17 December 2014. On 23 December 2014, the sole director of USC, Michael Forsey, resolved to take steps to place USC in administration. Having taken the requisite preliminary steps in early January 2015, USC went into administration on 13 January and the joint administrators were appointed. Prior to that date, all operations at the Dundonald warehouse ceased. By 11 January 2015, all stock, IT equipment and other property had been removed from the warehouse.

15. On 14 January 2015, the employees at the Dundonald warehouse were handed a letter signed by Mr Palmer, stating that they were at risk of redundancy and giving notice of USC's intention to consult with them at a staff meeting that day. Shortly afterwards, they were handed a further letter, also signed by Mr Palmer, dismissing them with effect from that day.

16. No notice of the redundancies was given to the Secretary of State until the relevant form, signed by Mr Palmer, was emailed on 4 February 2015.

The proceedings

17. In July 2015, criminal proceedings were commenced in the Northern Derbyshire Magistrates' Court by the Secretary of State under section 194(3) against Mr Forsey and Mr Palmer. It was alleged that Mr Forsey, as the director of USC, consented to, connived at, or neglected to prevent the failure by USC to notify the Secretary of State of the proposed redundancies from early January 2015 to 13 January 2015 when USC went into administration. The same charge was brought against Mr Palmer, in his capacity as the administrator of USC, from the time that it went into administration to 4 February 2015.

18. Mr Forsey and Mr Palmer entered pleas of not guilty on 14 October 2015. A number of legal issues were raised by them. The legal issue giving rise to the present appeal was heard and determined by District Judge Andrew Davison, in the Northern Derbyshire Magistrates' Court, in May 2018. In a reserved judgment given on 29 May 2018, District Judge Davison ruled that an administrator is an officer of a company within the meaning of section 194(3) of TULRCA.

19. Mr Palmer was given permission for judicial review of District Judge Davison's decision. In a judgment given on 12 November 2021, the Divisional Court (Andrews LJ and Linden J) ([2022] ICR 531) upheld the decision below and dismissed the claim for judicial review. Andrews LJ, giving the judgment of the court, reviewed the provisions of Schedule B1 which set out the obligations, functions and powers of an administrator. From these it was clear that an administrator had the day-to-day conduct of the affairs of the company from the time of appointment, including the power to make employees redundant. On this basis, and having regard to a line of authority to which I will refer, it was held that an administrator was an "officer" for the purposes of section 194(3). The Divisional Court was concerned that, if an administrator was not an "officer", there would be nothing to deter non-compliance and the criminal sanction would be meaningless in the case of a company in administration, leaving a vacuum in a situation in which collective redundancies were likely to take place.

"Officer" in the IA 1986

20. Neither TULRCA nor any other enactment defines "officer" for the purposes of section 194(3), nor is there any clear statement in any authority of which I am aware which can be taken as a definition of what is generally understood to be an officer. I will return to that question, but in those circumstances the first recourse must be to the IA 1986, as the statute which created and governs the process of administration and the

position of an administrator, to determine whether, as a matter of statutory interpretation, an administrator of a company should be classified as an officer of that company.

21. Both as originally enacted and in its current form, the IA 1986 contains a large number of references to an "officer" of a company – nearly 120 as originally enacted and some 170 in its current form. None of those references suggests that an administrator is an officer of a company. Importantly, some of the references clearly show that an administrator is not considered to be an officer of a company.

22. "Officer" is defined in section 251, for the purposes of the IA 1986 as it applies to company insolvency: "'officer', in relation to a body corporate, includes a director, manager or secretary". This formulation is taken from the Companies Acts. It is not an exhaustive definition, but it is very surprising, if administrators are to be categorised as officers, that they were not expressly included in that definition, given in particular that administration was created by the Act.

23. That an administrator is not an "officer" is shown, for example, by section 212 which provides a procedure for misfeasance claims in a liquidation. Section 212(1) states:

> "This section applies if in the course of the winding up of a company it appears that a person who—
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> (a) is or has been an officer of the company,
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> (b) has acted as liquidator, administrator or administrative receiver of the company, or
>
> (c) not being a person falling within paragraph (a) or (b), is or has been concerned, or has taken part, in the promotion, formation or management of the company,
>
> has misapplied or retained, or become accountable for, any money or other property of the company, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the company."

24. This provision very clearly distinguishes between an officer of a company and an administrator. For reasons addressed later in this judgment, it is to be noted that subsection (1)(c) identifies a further category of person, who is neither an officer nor an administrator, liquidator or administrative receiver, but who "is or has been concerned, or has taken part, in the … management of the company".

25. Other provisions make the same distinction. In its original form, the IA 1986 dealt with administration in Part II (sections 8-27). Section 12(1) required business documents issued by a company in administration to state the administrator's name and that "the affairs, business and property of the company are being managed by the administrator". Section 12(2) provided that, if default were made in complying with section 12(1), the company and "any of the following persons who without reasonable excuse authorises or permits the default, namely, the administrator and any officer of the company, is liable to a fine". Section 14(4) provided:

> "Any power conferred on the company or its officers, whether by this Act or the Companies Act or by the memorandum or articles of association, which could be exercised in such a way as to interfere with the exercise by the administrator of his powers is not exercisable except with the consent of the administrator, which may be given either generally or in relation to particular cases."

Section 22 obliged an administrator to require persons listed in section 22(3) to prepare a statement of affairs, and those persons included "those who are or have been officers of the company".

26. The same distinction is found in Schedule B1, which replaced the original administration provisions. Paragraph 45 is a re-enactment in different form of section 12 of the IA 1986 and provides in paragraph 45(2) that "[a]ny of the following persons commits an offence if without reasonable excuse the person authorises or permits a contravention of sub-paragraph (1) – (a) the administrator, (b) an officer of the company, and (c) the company". Schedule B1 paragraph 64 provides that a "company in administration or an officer of a company in administration may not exercise a management power without the consent of the administrator".

27. In my judgment, these and other provisions of the IA 1986 provide a clear picture that the legislation, in creating the process of administration, did not classify an administrator as an officer of the company in administration.

28. I do not consider this to be a surprising result. It had for many years prior to the enactment of the IA 1986 been established, by the decision of the Court of Appeal in *In*

re B Johnson & Co (Builders) Ltd [1955] Ch 634, that a receiver and manager appointed by the holder of a floating charge was not an officer of the company. There are unquestionably significant differences between an administrator, on the one hand, and a receiver and manager on the other. The Divisional Court was right to consider that the answer in the present case was not provided by simply transposing the decision in that case to the position of an administrator. However, there are also similarities, not least that under most fixed and floating charges, the receiver and manager appointed by the charge-holder exercised almost complete control over the business, affairs and property of the company and, unless and until the company went into liquidation, did so as agent of the company. Provided that it was in the interests of the charge-holder, the receiver and manager would carry on the business of the company. As the administration process was conceived by the Cork Committee as a development of receivership, it is not surprising that the IA 1986 should not treat an administrator as an officer of the company.

The authorities

29. In concluding that an administrator is an officer of the company in administration, the Divisional Court placed reliance on two first instance decisions in the Chancery Division.

30. In *In re Home Treat Ltd* [1991] BCC 165, the administrators of a company, concerned that the company's business might be ultra vires, applied for a direction under section 14 of the IA 1986 that they continue to carry on that business. It was, as the judge, Harman J, observed, clearly in the interests of the creditors and in the interests of the members as guarantors of the company's bank liabilities that they should continue with the business. The object of the application, which was not opposed, was "plainly a beneficial one" (p 167). For reasons that it is unnecessary to recite, Harman J considered that the direction sought would not provide the administrators with sufficient protection, but he was prepared to make an order under section 727 of the Companies Act 1985 (now section 1157 of the Companies Act 2006) to relieve the administrators of any liability for breach of duty in carrying on a business which was or might be ultra vires.

31. The power of the court under section 727 was restricted to relieving from liability "an officer of a company or a person employed by a company as auditor (whether he is or is not an officer of the company)". Harman J therefore had to be satisfied that the administrators were officers of the company for the purposes of section 727.

32. He first referred to the decision of Parker J in *In re X Co Ltd* [1907] 2 Ch 92 that a liquidator might be given leave to do a certain act concerned with a memorandum under the Stamp Act "on the footing that he is an officer of the company" and to a

statement in the notes in *Buckley on the Companies Acts,* 14th ed (1981) that "semble, a liquidator is an officer within the meaning of this section". From this, he reasoned that, if a liquidator was an officer of a company, the same must be true of an administrator, whose primary function was not to wind up the company but to conduct its business with a view to its survival as a going concern. As I will explain, *In re X Co Ltd* is very slender authority for the view that a liquidator is an officer of a company, which no doubt explains the cautionary "*semble*" in *Buckley.* (The footnote first appeared in the 9th edition of *Buckley* (1909), when it was still edited by its original author, who was by then Buckley LJ. The footnote was even more tentative: "*Semble,* a voluntary liquidator may be an 'officer' within the section".)

33. The kernel of Harman J's reasoning appears at p 170:

> "[Counsel] puts it that on the words of the English language, an administrator plainly holds an office; that is certainly correct. He is an officer of the court; that is undoubtedly correct. He is also, by conducting the business of the company, as it seems to me, an officer of the company. He is appointed under section 8(2) of the Insolvency act 1986 by an order directing that the affairs, business and property of the company shall be managed by the administrator.
>
> It seems to me quite clear that the word 'officer', which merely means somebody who holds an office, and an office in relation to the company, can apply to an administrator."

34. With respect to Harman J, the fact that an administrator is an officer of the court and holds the office of administrator in relation to a company is not a sound basis for concluding that the administrator is an "officer of the company". In truth, it does no more than state the conclusion. What perhaps lay at the heart of his reasons was that an administrator is appointed to manage the affairs, business and property of the company. That was not, however, on the authority of *In re B Johnson & Co (Builders) Ltd*, a sufficient basis for concluding that a receiver and manager appointed by a debenture holder was an officer of the company. For reasons I will develop, it is also an insufficient basis for holding an administrator to be an officer of the company.

35. The decision of Harman J was followed by Newey J in *In re Powertrain Ltd* [2015] EWHC 3998 (Ch); [2016] BCC 216, which was also an unopposed application for directions, in this case by liquidators. In a winding-up which had lasted for over ten years, they sought authorisation to make distributions to creditors without regard to claims that could yet emerge and for relief as officers of the company under section 1157 of the Companies Act 2006. Newey J found support in *In re X Co Ltd* and in *In re*

Home Treat Ltd, for the proposition that a liquidator is an officer of a company for the purposes of section 1157. He regarded *In re Home Treat Ltd* as the most helpful authority, with Harman J's reasoning equally applicable to liquidators, which he accordingly followed. Newey J did not separately analyse the issue.

36. In neither of these cases was there any consideration of the clear distinction drawn in the IA 1986 between administrators and liquidators on the one hand and officers of a company, on the other hand, and in my judgment, in holding that administrators and liquidators were officers of a company for the purposes of section 1157 of the Companies Act 2006 and its predecessor, they were wrongly decided.

37. In *In re X Co Ltd*, the liquidator applied for directions as to whether he should pay the stamp duty due on a pre-liquidation contract for the issue of fully paid shares for a consideration other than cash. Contrary to section 7 of the Companies Act 1900, the company had failed to file the contract with the registrar of companies within one month after the allotment of the shares. When the liquidator found the contract among the company's papers, his attempt to file it was refused by the registrar on the grounds that ad valorem stamp duty had first to be paid on it.

38. Section 7(2) provided, in terms very similar to section 194(3) of TULRCA, that "If default is made in complying with the requirements of this section, every director, manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine". As appears from the report of the argument, Parker J considered that, if the liquidator was an "officer of the company" and so liable to a fine for non-compliance, that would provide a good ground for giving him a direction to pay the stamp duty and to file the contract. It is interesting to note that counsel for the Board of Trade, the Secretary of State's predecessor, submitted that the liquidator was not an officer of the company.

39. Parker J did not give a reasoned judgment but simply said, at p 96, that he gave the liquidator leave to file the contract and for that purpose to pay the stamp duty "on the footing that he is an officer of the company, and might be liable to penalties under section 7 of the Companies Act 1900".

40. Given the circumstances of the application and the absence of a reasoned judgment, little weight can be placed on this decision. For reasons I shall explain, it is in my judgment wrong but, in any event, it provides no substantial basis for a conclusion that an administrator is an officer of a company.

41. We were also referred to *Schofield v Smith* [2022] EWCA Civ 824; [2022] BCC 1265, a decision of the Court of Appeal given after the Divisional Court's judgment in the present case. The appeal concerned the interpretation of a settlement agreement to

which companies in administration were parties. Under the agreement, claims against "affiliates" of those companies were released. "Affiliates" was defined to include "employees" which in turn was defined to include officers and agents. The Court of Appeal held that the administrators fell within the extended definition of "employees" and that claims against them were therefore released. In his judgment, Newey LJ (with whom Arnold and Warby LJJ agreed) referred to *In re X Co Ltd, In re Home Treat Ltd, In re Powertrain Ltd* and the Divisional Court's judgment in the present case and held that the administrators were officers of the companies in administration and were also, having regard to paragraph 69 of Schedule B1 to the IA 1986, agents of those companies. While the decision is correct on the basis that the administrators were agents of the companies, it was wrong to categorise them as officers of those companies.

Meaning of "officer" in section 194(3) TULRCA

42. If, as a general proposition, an administrator is not an officer of a company, as I consider to be correct, an administrator could nonetheless fall within section 194(3) of TULRCA if an extended meaning were given to "other similar officer" in that provision to include an administrator for the purposes of that sub-section.

43. Applying conventional principles of statutory construction, I see no scope for such an extended reading. There is no hint in the language of the section that an expansive interpretation should be given to it. On the contrary, the restriction to an officer who can be said to be "similar" to a director, manager or secretary militates against an expansive interpretation.

44. In seeking to resolve the issue, both parties made submissions to this court and to the Divisional Court based on policy considerations.

45. Counsel for the appellant stressed the difficulties caused to administrators by the Secretary of State's interpretation. Following their appointment, administrators will often need to act swiftly in deciding whether employees should be retained or made redundant and in any event will be taken to have adopted existing contracts of employment, thereby giving priority to the claims of employees not only over other creditors but also over the administrators for their costs and expenses, if the administrators continued existing contracts of employment for more than 14 days after their appointment: see paragraph 99 of Schedule B1 to the IA 1986 and the decision of the House of Lords in *Powdrill v Watson* [1995] 2 AC 394. This confronts administrators with the dilemma of either acting swiftly in the interests of achieving the statutory purposes of administration or complying with the notice requirements under sections 193 and 194.

46. Counsel was right to identify this dilemma but reliance on it as an aid to the construction of section 194 proves too much. It might provide a ground for excluding companies in administration from sections 193 and 194, but it is not suggested that they are excluded. If section 194 otherwise applied to administrators, the case for excluding them but not companies in administration is difficult to see, all the more so as section 194(1) imposes a criminal sanction on the company. No offence will be committed in any case where "there are special circumstances rendering it not reasonably practicable for the employer to comply" with those requirements: section 193(7). It has been held that the fact of insolvency is not on its own sufficient to amount to "special circumstances": see *Clarks of Hove Ltd v Bakers' Union* [1978] 1 WLR 1207. It has also been held that the appointment of an administrator under the IA 1986 does not per se render it impracticable for the company as employer to comply with the requirements of what is now section 193 TULRCA, and that whether it does so must depend on the circumstances of the case: *In re Hartlebury Printers Ltd* [1992] BCC 428 (Morritt J).

47. The Secretary of State advanced a different policy reason which, it was submitted, provided a good ground for construing section 194(3) as applying to administrators. The Divisional Court found this persuasive and Andrews LJ said at para 113 that if section 194(3) did not apply to administrators:

> "This would mean that in practice, in circumstances in which the notice would have served a useful purpose, there would be nothing to deter non-compliance, and the criminal sanction would be meaningless… If administrators are not caught by section 194(3) it would (as Mr Ozin put it) leave a vacuum in responsibility that would fail to protect the interests of workers and, we would add, the interests of their representatives and the Secretary of State."

48. With this in mind, the Divisional Court adopted a functional test for determining the persons who came within the category of "other similar officers". At para 129 of the judgment, Andrews LJ said:

> "Parliament must have intended that in principle anyone with responsibility for the day to day management and control of the corporate entity should be capable of being fixed with personal liability for the employer's failure to give the statutory notices which they had brought about."

49. At paras 130-131, Andrews LJ said:

> "130. In section 194(3) the word 'similar' qualifies 'officer' and, as a matter of ordinary language, would naturally be understood to refer to someone who carries out the types of functions undertaken by the officers of the company who are expressly identified in the same sentence. We agree with Mr Ozin's submission that the focus of Parliament in this part of TULRCA is on the functions undertaken by the individual concerned, not on the duties which they owe. An administrator would naturally be understood to be a 'similar officer' to a director or manager, as he is responsible for conducting or managing the business of the company as a whole and the functions he undertakes are similar. In practical terms, once the administrator assumes office there is no-one else who could give the statutory notices on behalf of the company, unless they do so under his direction. …
>
> 131. It is clear from the language of section 194(3), reinforced by section 194(4), that the focus is upon any individual acting in a sufficiently senior managerial capacity who could be regarded as bearing some responsibility, in practical terms, for the corporate body's failure to give the requisite notice to the Secretary of State."

50. In my judgment, this functional approach to the meaning of a "similar officer of the body corporate" is not borne out either by the language of the provision or its context. There are a number of reasons for this.

51. First, if the legislative purpose had been to adopt a functional test, there was no difficulty in doing so. Instead of "or other similar officer of the body corporate", a well-worn phrase such as "or other person concerned in the management of the body corporate" or similar phrase could and, in my view, would have been used. See, for example: section 212(1)(c) of the IA 1986 set out in para 23 above; sections 133(1), 216(3) and 217 of the IA 1986; section 1(1) of the Company Directors Disqualification Act 1986; and section 1187 of the Companies Act 2006.

52. This is the approach which has been adopted in Australia. Section 9 of the Corporations Act 2001 defines "officer" by reference to different categories, including a director or secretary of a corporation; "a person (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the corporation"; a receiver, or receiver and manager, of the property of the corporation; an administrator of the corporation; and a liquidator of the corporation.

53. Second, section 194(4) expressly widens the scope of section 193(3) to include, in addition to officers of the body corporate, members of a body corporate where "the affairs of the body corporate are managed by its members". I am unable to agree with the view of the Divisional Court, at para 131, that this reinforces that "director, manager, secretary or other similar officer" in section 194(3) is directed at "any individual acting in a sufficiently senior managerial capacity who could be regarded as bearing some responsibility, in practical terms, for the corporate body's failure to give the requisite notice to the Secretary of State". If that were the case, the general words suggested above would have been used in section 194(3) and section 194(4) would have been unnecessary.

54. Third, long before the enactment of section 194 and its predecessors, the Court of Appeal had held that a receiver and manager appointed under a debenture was not an officer of the company, despite the fact that in most cases a receiver and manager would have complete control over the day to day running of the business of the company, and would carry out all acts as agent of the company unless and until the company was wound up. Likewise, a receiver and manager appointed by the court, as may happen for example in the event of deadlock caused by divisions between the shareholders, is not an officer of the company despite having complete control of the company and its business, albeit as an officer of the court and not as an agent of the company: see *In re B Johnson & Co (Builders) Ltd* [1955] 1 Ch 634, 646 (per Evershed MR). The relevance of the Court of Appeal's decision in that case is that, if the purpose had been to apply a functional test of the sort propounded by the Divisional Court, section 194 would have been drafted in a way that included a receiver and manager.

55. What then is meant by an "officer" of the body corporate in the context of a provision such as section 194? In my judgment, the answer is tolerably clear. It is essentially a constitutional test. Does the person hold an office within the constitutional structure of the body corporate, as is the case with directors, managers and secretaries? That is the normal meaning of an officer of a company or other institution, and the normal meaning is emphasised by the prior reference to directors, managers and secretaries, all of whom are officers in the conventional sense, together for good measure with the words "other similar" before "officers". It is possible, but generally unlikely that registered companies will have other types of officer, but a "body corporate" may take many forms – statutory companies, bodies incorporated by royal charter (which include a wide variety of educational, charitable and other not for profit organisations, as well as a small number of older commercial concerns) and foreign bodies corporate. The officers of these bodies will have a wide variety of titles and functions, and those who are similar to directors, managers and secretaries will be potentially liable under section 194(3). The director of roads of a local authority has been held to be an officer for the purposes of a similar provision in the Health and Safety at Work etc Act 1974: *Armour v Skeen* 1977 SLT 71.

56. For the reasons given above, an administrator of a company appointed under the IA 1986 is not in my judgment an "officer" of the company within the meaning of section 194(3) TULRCA. I would allow the appeal and quash the decision of the District Judge in the Northern Derbyshire Magistrates Court dated 29 May 2018 that Mr Palmer as the administrator of USC was an officer of USC within the meaning of section 194(3) of TULRCA.