Neutral Citation Number: [2025] EWHC 3107 (Ch)

Case No: CR-2024-002704

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY & COMPANIES LIST (CHD)

The Rolls Building

London

Date: 25 November 2025

Before :

His Honour Judge Cadwallader sitting as a Judge of the High Court

Between :

(1) SIMON PHILIP WEBSTER
(2) JENNIFER ANNE WEBSTER
Claimants

- and -

(1) ESMS GLOBAL LIMITED
(2) RAJESH KUMAR SOOD
(3) SARITA SOOD
Defendants

- -

- -

Edward Davies KC and **Anna Scharnetzky** (instructed by **Kingsley Napley LLP**) for the Claimants

The First Defendant did not appear

Daniel Lightman KC and **Wilson Leung** (instructed by **Reynolds Porter Chamberlain LLP**) for the Second and Third Defendants

Hearing date: 22 and 23 July 2025

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JUDGMENT

HHJ Cadwallader:

Introduction

1. This is a case about whether the Court has jurisdiction (outside the ambit of an unfair prejudice claim under section 994 Companies Act 2006) to grant relief to a member of a company where that company has declined or failed to circulate proposed written resolutions at their request.

Background

2. The claimants, Mr and Mrs Webster, are directors of, and together own or control 47.6% of the shares in, the company, ESMS Global Ltd, the first defendant. The second and third defendants, Mr and Mrs Sood, are also directors of, and together own or control another 47.6% of the shares in the company. The remaining 4.8% of the shares are held by Trident Trust Company (Guernsey) Limited ('Trident') as trustee for the company's employee benefit trust. Trident is not a director.
3. Mr Webster and Mr Sood met in 2009, and in 2011 incorporated the company for the purpose of acquiring Guy's and St Thomas' medical toxicology information services business, which the company then purchased in 2011. The terms of the purchase required the company to set up an employee benefit trust of which Trident is now trustee.
4. The relationship between the Websters and the Soods has completely broken down, and in consequence the board of directors is routinely deadlocked. A particular difficulty is that certain employees have brought litigation to enforce the company's alleged obligations under the purchase agreement in relation to the EBT. While the articles of association of the company contain provisions designed to resolve shareholder deadlocks, those provisions, which have frequently been invoked, have not resolved the difficulties and have given rise to further deadlocks. The claimants see a solution to the problem as lying with the appointment of an independent director, but the Soods do not agree. The shareholder deadlock over this might be resolved if Trident voted its shares.

However, the trust deed establishing the EBT provides that unless the company directs that Trident vote on any particular occasion, Trident must abstain from voting at any general meeting of the company. A dispute between the Websters and the Soods over whether Trident could nonetheless vote on a written resolution of the company was resolved by a decision on 20 December 2023 of the Royal Court of Guernsey to the effect that Trident might vote on written resolutions of the company. Mr and Mrs Webster have identified Mr Andrew Chamberlain as a suitable candidate willing to act as an additional and independent director, so as to break the company deadlock at board level. By letter to the company dated 6 March 2024, Mr and Mrs Webster made a request under section 292 Companies Act 2006 requiring the company to circulate written shareholder resolutions (being resolutions, accordingly, upon which Trident might vote) in the following terms

> "1. THAT, Andrew Chamberlain, having consented to act, be appointed as a director of the Company with immediate effect; and
>
> 2. THAT, subject to the passing of resolution 1 above, during the period that he holds office as a director of the Company, the Company pay Andrew Chamberlain a fee of £375 per hour gross (current at the date of this Resolution) (or such greater fee as the board of the Company shall agree)."

5. The letter required the company to circulate the resolutions to every eligible member no later than 21 days after receipt, and was sent by email attaching the proposed resolutions as well as Mr Chamberlain's notice of willingness to act. On 6 March 2024 Mr Webster deposited £50 into the company's bank account to cover the company's expenses of circulation.
6. Mr Sood's response, within a matter of minutes, was that a minimum of £150,000 would need to have been deposited to cover "the initial processes required", including paying the company's advisers "for various tax and trust matters that will need to be considered".
7. On 14 March 2024 Mr and Mrs Webster circulated a written board resolution authorising the circulation of the proposed written resolutions, which they approved and signed on 18 March 2024, but which Mr and Mrs Sood refused to sign.
8. Accordingly, the company has been prevented from circulating the written shareholder resolutions, and they have not been put to a vote.
9. Mr and Mrs Webster's solicitors sent a letter of claim to Mr and Mrs Sood on 28 March 2024, to which a response dated 16 April 2024 was sent, and on 9 May 2024 these

proceedings were commenced by way of Part 8 claim. The relief sought is an order declaring that the company is required to circulate the written resolutions pursuant to sections 292 (4) and 293 (1) to (4) of the Companies Act 2006; an order that the company shall circulate the written resolutions; and that if it fails to comply, Mr Webster as a director and officer of the company, be authorised to circulate them on behalf of the company.

10. Mr and Mrs Sood have opposed the claim on two grounds, firstly that the proposed written resolutions could not properly be moved because they are vexatious within section 292 (2) of that Act, such that the company was not required to circulate them; and secondly that in any event the Websters are not entitled to any relief because no civil cause of action arises in respect of a putative breach of sections 292 and 293 Companies Act 2006. The argument that the resolutions were vexatious was pursued energetically on the basis that Mr Chamberlain was not and would not be independent, would act as the 'yes-man' for Mr and Mrs Webster and/or Trident, and that he was secretly colluding with, among others, Mr and Mrs Webster, to "dismantle the embedded equality between Mr Webster and Mr Sood". The evidence from the Websters and Mr Chamberlain himself was that he was an employment solicitor with over 30 years' experience in board disputes, mediation and employment law, and substantial experience as a non-executive director, was independent of the Websters and all other stakeholders, and intended to "approach matters with an independent mind and try to work out how best to deal with whatever the issues are, always acting in the best interests of the company".

11. The Soods obtained permission to apply for permission to cross examine Mr Chamberlain following disclosure, but did not do so. They obtained some third party disclosure by consent. They threatened but did not purse an application for third party disclosure against Mr Chamberlain. It is fair to say that no evidence emerged which was capable of supporting the basis for the argument that the written resolutions were vexatious or that the concerns expressed about Mr Chamberlain were at all well-founded. The issue whether the proposed written resolutions were vexatious remained live, however, until 15 July 2025, one day prior to the exchange of skeleton arguments for this trial. On that day the Soods' solicitors wrote to say that at trial they would only be advancing the argument that the Websters' claim was misconceived because no civil cause of action arose for any breach on the part of the company of section 293 of the 2006 Act; and they did not intend to argue at trial that any of the exceptions in section

292(2) of that Act were applicable to the proposed written resolutions; but that they were making no admissions as to the Websters' substantive allegations, instead making a jurisdictional argument in the same way as often made by parties on a strikeout application or the determination of a preliminary issue that, even assuming the substantive allegations were true, the court did not have power to grant a remedy as a matter of law. On that basis they indicated that Mr Sood would not attend for cross-examination, and Mr Webster would not be cross-examined.

The issues

12. The parties agreed a list of issues as follows.

> "1. Is D1 (the Company) obliged pursuant to sections 292 and 293 of the Companies Act 2006 to circulate the Claimants' proposed written resolutions dated 6 March 2024 for the appointment of Mr Chamberlain as an additional director of the company to eligible members? The Second and Third Defendants are neutral as to Issue 1.
>
> 2. If so, does the Court have jurisdiction to grant the relief sought by the Claimants in this Claim?"

Preliminary matters

13. This gave rise to two questions at the outset of the trial, one as to the status of the evidence, and the other as to the Soods' stance.
14. There was no dispute that the claimants' evidence would stand as their evidence in chief; but Mr Sood's evidence could not be relied upon as evidence of the truth of its contents, because he had declined to attend for cross-examination. Reference might be made to it to show what evidence he was proposing to give. The claimant's evidence in response to that would be admissible as evidence in chief in the same way as their initial evidence.
15. The defendants' stance was that their 'no civil cause of action' issue was a shorthand reference to the jurisdictional issue; that, on the basis of *Baygreen Properties Ltd v Gil* [2002] EWCA Civ 1340, in particular at paragraphs 27-31, the court was under a duty to investigate whether it had jurisdiction independently of whether any party put the question in issue; that Issue 2 had put it in issue anyway; that the question of jurisdiction should be dealt with first; that if the court held there was no jurisdiction, it ought not to make any factual findings or decision in relation to Issue 1; and that if the court considered that it had jurisdiction, then the defendants accepted that the answer to Issue 1 should also be in the affirmative.

16. I accept both that it is open to the defendants to argue the question of jurisdiction, without limiting that question to whether the claimants' claim gave rise to a cause of action as such, and that the court should in any event consider the full ambit of the jurisdiction issue. I accept, also, that the question of jurisdiction should be dealt with first.
17. It seems to me that I cannot ignore the fact that, subject to the jurisdiction issue, the defendants now concede that the company was and is obliged pursuant to sections 292 and 293 of the Companies Act 2006 to circulate to eligible members the claimants' proposed written resolutions dated 6 March 2024 for the appointment of Mr Chamberlain as an additional director of the company.
18. I cannot regard that as a concession which is made only conditionally upon the court's determining that it has jurisdiction, if that was what was intended. Nor can I disregard the fact that the claimants' evidence is now (unconditionally) undisputed: on the contrary, it seems to me that it follows that if the court has jurisdiction to make the order sought at this trial, it will inevitably find the facts as they are set out in the claimants' undisputed evidence.
19. However, I cannot see any of those matters as having a bearing on whether the court has jurisdiction to make the order sought. The defendants' stance is, in a way, a surprising one, but that does not affect the question of jurisdiction either. I accept that if the court does not have jurisdiction to make the order sought, then obviously it will not do so, however uncomfortably that might sit with the concessions which the defendants have made.

The statutory provisions

20. Section 381A Companies Act 1985 had provided as follows.

> "(1) Anything which in the case of a private company may be done—
> (a) by resolution of the company in general meeting, or
> (b) by resolution of a meeting of any class of members of the company,
> may be done, without a meeting and without any previous notice being required, by resolution in writing signed by or on behalf of all the members of the company who at the date of the resolution would be entitled to attend and vote at such meeting…
> (4) A resolution agreed to in accordance with this section has effect as if passed—
> (a) by the company in general meeting, or
> (b) by a meeting of the relevant class of members of the company,
> as the case may be…"

21. Section 281 of the Companies Act 2006 provides:

> "(1) A resolution of the members (or of a class of members) of a private company must be passed–
> (a) as a written resolution in accordance with Chapter 2, or
> (b) at a meeting of the members (to which the provisions of Chapter 3 apply)."

22. By Section 288 (3) of the 2006 Act, a resolution may be proposed as a written resolution by the directors or by the members of a private company.

23. Section 291 of that Act makes provision in the following terms as to the manner in which written resolutions proposed by directors are to be circulated.

> "(2) The company must send or submit a copy of the resolution to every eligible member.
>
> (3) The company must do so–
>
> > (a) by sending copies at the same time (so far as reasonably practicable) to all eligible members in hard copy form, in electronic form or by means of a website, or
> >
> > (b) if it is possible to do so without undue delay, by submitting the same copy to each eligible member in turn (or different copies to each of a number of eligible members in turn), or by sending copies to some members in accordance with paragraph (a) and submitting a copy or copies to other members in accordance with paragraph (b).
>
> (4) The copy of the resolution must be accompanied by a statement informing the member–
>
> > (a) how to signify agreement to the resolution (see section 296), and
> >
> > (b) as to the date by which the resolution must be passed if it is not to lapse (see section 297).
>
> (5) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.
>
> (6) A person guilty of an offence under this section is liable–
>
> > (a) on conviction on indictment, to a fine;
> >
> > (b) on summary conviction, to a fine not exceeding the statutory maximum.
>
> (7) The validity of the resolution, if passed, is not affected by a failure to comply with this section."

24. Section 292 of the Act deals with the members' power to require circulation of written resolutions.

> "(1) The members of a private company may require the company to circulate a resolution that may properly be moved and is proposed to be moved as a written resolution.
> (2) Any resolution may properly be moved as a written resolution unless–
> > (a) it would, if passed, be ineffective (whether by reason of inconsistency with any enactment or the company's constitution or otherwise),
> > (b) it is defamatory of any person, or
> > (c) it is frivolous or vexatious.
>
> (3) Where the members require a company to circulate a resolution they may require the company to circulate with it a statement of not more than 1,000 words on the subject matter of the resolution.
> (4) A company is required to circulate the resolution and any accompanying statement once it has received requests that it do so from members representing not less than the requisite percentage of the total voting rights of all members entitled to vote on the resolution.
> (5) The "requisite percentage" is 5% or such lower percentage as is specified for this purpose in the company's articles.
> (6) A request–
> > (a) may be in hard copy form or in electronic form,
> > (b) must identify the resolution and any accompanying statement, and
> > (c) must be authenticated by the person or persons making it..."

25. So members of a private company have the power, by request, to require the company to circulate a resolution; the company is then required to circulate the resolution.
26. If it is so required then it must do it. By section 293 of the Act

> "(1) A company that is required under section 292 to circulate a resolution must send or submit to every eligible member–
> > (a) a copy of the resolution, and
> > (b) a copy of any accompanying statement."

The section provides that it must do so in certain specific ways; and it goes on to provide that

> "(5) In the event of default in complying with this section, an offence is committed by every officer of the company who is in default.
> (6) A person guilty of an offence under this section is liable–
> > (a) on conviction on indictment, to a fine;
> > (b) on summary conviction, to a fine not exceeding the statutory maximum.
>
> (7) The validity of the resolution, if passed, is not affected by a failure to comply with this section."

27. So there is an express criminal sanction against the directors (not the company) for default; but the sections do not contain any express right for a disappointed member to seek an injunction or other relief from the court to compel compliance against either the company or the directors or declare their default.
28. Section 294 of the Act provides for the expenses of circulation in the following way.

> "(1) The expenses of the company in complying with section 293 must be paid by the members who requested the circulation of the resolution unless the company resolves otherwise.
> (2) Unless the company has previously so resolved, it is not bound to comply with that section unless there is deposited with or tendered to it a sum reasonably sufficient to meet its expenses in doing so."

29. So evidently if the statutory requirements are met, the company is 'bound' to do what it has been 'required' to do, and 'must' do.

30. Section 295 of the Act provides as follows.

> "(1) A company is not required to circulate a members' statement under section 293 if, on an application by the company or another person who claims to be aggrieved, the court is satisfied that the rights conferred by section 292 and that section are being abused.
>
> (2) The court may order the members who requested the circulation of the statement to pay the whole or part of the company's costs (in Scotland, expenses) on such an application, even if they are not parties to the application."

31. So there is express provision for application to the court to except a company from the statutory requirement if it is being abused. That is not an order that the requirement not be enforced, but an order removing the requirement in those circumstances.

32. It is important to note that the wording of section 292 is that it is conferring 'rights' on the members. Those must be rights against the company. It is not simply imposing a general obligation or liability. That section 292 confers rights is confirmed by section 145 (3) of the Act, which refers to "the rights conferred by [inter alia] section 292 (right to require circulation of written resolution)."

<u>Issue 1</u>

<u>The power to grant injunctions</u>

33. The current edition *of Snell's Equity*, 35th ed., states at 18-005

> "Despite early attempts, the common law courts failed to add the injunction to their judicial armoury, so that the Chancellor had to come to the aid of those whose wrongs could not be adequately redressed by damages. This often necessitated concurrent proceedings: in the common law courts to establish the right, and in the Court of Chancery to obtain the remedy. The Common Law Procedure Act 1854 went some way towards meeting this defect by empowering the common law courts to grant injunctions in certain cases; but in 1875 the situation was radically altered when the courts were amalgamated and the power to grant injunctions was conferred on all Divisions of the High Court. It has been expressly enacted that interlocutory injunctions may be granted "in all cases in which it appears to the court to be just or convenient so to do", and the Supreme Court has insisted that "[t]he power of courts with equitable jurisdiction to grant injunctions is, subject to any relevant statutory restrictions,

> unlimited". This rule extends to perpetual injunctions. Although it has been said that the principles on which the court acts have not been altered, practices do change as the law develops, and it is clear that, "[l]ike any judicial power, the power to grant an injunction must be exercised in accordance with principle and any restrictions established by judicial precedent and rules of court". The claimant must still establish some legal or equitable right or interest before he can obtain an injunction."

34. So the power of courts with equitable jurisdiction to grant injunctions is, subject to any relevant statutory restrictions, unlimited: see also *Convoy Collateral Ltd v Broad Idea International* [2023] AC 389, 415 quoting *Spry, Equitable Remedies*, 9th ed. (2013), 333.

The claimants' case

35. The claimants' case is that, consistently with general modern principles, it is not required to establish a civil cause of action in order to obtain injunctive relief (citing *Koza Ltd v Akcil* [2019] 1 WLR 4830 [8]-[12] and *Phlo Technologies Ltd v Tallaght Financial Ltd* [2025] EWHC 1405 (Ch) as examples in which such relief has been so obtained in a corporate context). Moreover, the statutory provisions in this case confirm private law rights of members of private companies, and correlative duties on the companies for the benefit of a limited class of persons, namely those members making a valid request under section 292 of the 2006 Act. It is to be inferred, therefore, that Parliament intended injunctions and declarations to be available to enforce those provisions (citing *Spry, Equitable Remedies*, 9th ed., p378-380 and certain other authorities).

The defendants' case

36. The defendants' case, however, is that the relevant and long-established legal principles which apply may accurately be summarised as follows.
    (1) Where a statute creates an obligation, and expressly provides for it to be enforced in a particular manner (e.g. by way of criminal sanction), the general rule is that:
    (a) Parliament intended for that remedy to be the exclusive remedy; and that therefore
    (b) the Court has no jurisdiction to grant other types of remedies (e.g. an injunction or damages) to private individuals for a breach of that obligation.

(2) The general rule applies with particular force in the case of a statute which creates a new duty that did not exist at common law and at the same time provides a specific remedy for enforcing it.

(3) The general rule is even stronger in relation to more recent Acts, which are drafted with greater precision by professional legislative drafters, who are presumed to be familiar with the principles of statutory interpretation.

(4) However, the general rule is not conclusive. It is ultimately a question of statutory interpretation. Thus, in certain cases, it is possible to show that an exception to the general rule is applicable.

(5) One exception may be where on the true construction of the Act the obligation or prohibition was imposed for the benefit or protection of a particular class of individuals; or has created a public right and then a particular member of the public suffers particular, direct and substantial damage beyond what the rest of the public has suffered. But these are necessary, and not sufficient, conditions for the exception to arise. It is still ultimately a question of statutory interpretation, and the court will take into account all relevant factors, not just these conditions.

Before me it was expressly accepted in oral submissions on behalf of the defendants that in the present case the necessary (but not sufficient) condition under (5) was satisfied because the statutory provision was for the benefit of a limited class of persons.

37. The defendants therefore argue that section 292 Companies Act 2006, a recent statute, creates a new right, rather than a new remedy for an old right; that by expressly providing for a criminal sanction for default it implicitly excludes the power of the court to grant other relief; that the fact that provision is made to seek an order of the court to relieve the company of the obligation to circulate a resolution, but not to seek an order of the court to require the company to circulate a resolution, also points towards an intention to exclude the power of the court to grant such relief; that while the statutory right is afforded to a limited class of persons, that is not enough on its own to make this one of those exceptional cases where the jurisdiction of the court is not excluded. The position is to be contrasted with that under section 303-306 of the 2006 Act, where there is a right to sue; and compared with that under sections 324 – 343 of the Act, where there is not.

38. I turn, therefore, to consider the authorities.

The authorities

39. The defendants cite *Snell's Equity* at 18 – 025 (which cites *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch. 149, *Glossop v Heston and Isleworth Local Board* (1879) 12 Ch. D. 102; *Attorney General v Clerkenwell Vestry* [1891] 3 Ch. 527; cf. *R. (on the application of Imam) v Croydon LBC* [2023] UKSC 45) for the proposition that an injunction will not be granted merely to compel the performance of positive statutory duties. While accepting that it is ultimately a question of statutory interpretation, the defendants' argument starts with the observation that on the face of things what the Websters seek by way of relief runs counter to that restriction.

40. It is clear, however, that the distinction to which the passage in *Snell* draws attention is to be drawn between cases in which a claimant is complaining of a private wrong, and those where, under colour of such a wrong, he is merely attempting to compel the defendants to fulfil their statutory duty. Where the claimants are complaining of a private wrong, this proposition is not the place to start, therefore. It is a question of statutory interpretation.

41. The defendant relies on *Doe v Bridges* (1831) 1 B & Ad 847, 859, where it was said that

> "… where an Act creates an obligation, and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner."

As pointed out in *Bennion, Bailey and Norbury, Statutory Interpretation*, 8th ed., 363, this may be regarded as an application of the expressio unius principle: that is, that where an Act mentions one or more things, by implication it includes other things of the same kind. In the case of *Bridges*, the statute provided that where land tax charged on lands owned by a bishop had been redeemed with money raised for that purpose by virtue of statute, the land-tax should be considered as yearly rent payable to such bishop and his successors, over and above the reserved rent (if any) during the demise existing at the time of the sale: the statutory provision for recovery by such an additional rent meant there could be no other means of enforcing the payment.

42. In *Wolverhampton New Waterworks Co v Hawkesford* (1859) 6 CB NS 336, 356, Willes J stated:

> "There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law: there, unless the statute contains words which expressly or by necessary implication exclude the common law remedy, and [sic] the party suing has his election to pursue either that or the statutory remedy. The second class of cases is, where the statute gives the right to sue merely, but provides no particular form of remedy: there, the party can only proceed by action at common law. But there is a third class, viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. The present case falls within this latter class, if any liability at all exists. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to. The company are bound to follow the form of remedy provided by the statute which gives them the right to sue."

43. In that case s.21 of the Companies Clauses Consolidation Act 1845 provided that

> "It shall be lawful for the company from time to time to make such calls of money upon the respective shareholders, in respect of the amount of capital respectively subscribed or owing by them, as they shall think fit, provided that twenty-one days' notice at the least be given of each call, and that no call exceed the prescribed amount, if any, and that successive calls be not made at less than the prescribed interval, if any, and that the aggregate amount of calls made in any one year do not exceed the prescribed amount, if any ; and every shareholder shall be liable to pay the amount of the calls so made, in respect of the shares held by him, to the persons and at the times and places from time to time appointed by the company."

The company claimant had made the calls, and the defendant made default, but was not a shareholder, merely a subscriber. There was no cause of action under the statutory provision. Because Willes J concluded that the provision was one of a series of enactments which at once created the liability and prescribed the remedy, there was no room to argue that a subscriber had undertaken an independent obligation to the company to pay calls. The approach in relation to the third class of cases was described by Lord Jenkins as *"not open to doubt"* in *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1960] AC 260.

44. The defendants argue that this too is a case where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it, so that no other remedy is available. I accept that this is a case where a liability not existing at common law is created by statute: the rights granted by section 292 Companies Act 2006 are wholly new. The question is as to the application of the expressio unius principle to this particular statutory provision.

45. In *Institute of Patent Agents v Lockwood* [1894] AC 347 certain legislation provided that a person was not entitled to describe himself as a patent agent unless registered, and that to be registered he must pay an annual fee; and that if someone knowingly described themselves as a patent agent without registration, they were liable on summary conviction to a fine. The defendant patent agent had refused to pay his fee. The Institute sued, effectively, for a declaration that he was not entitled to describe himself as a patent agent, and for an order preventing him from doing so. The House of Lords rejected the claim on the basis that a new offence had been created and, but for the enactment creating the offence, the defendant had done nothing of which anyone would have a legal right to complain; and because suing him in the Court of Session was both inconvenient and absurd: Herschell CJ at pp. 361, 362. Lord Watson considered that the legislature had intended the matter to be dealt with as a crime, rather than to create for the patent agents who were registered a right which they could defend against those who were not: ibid., p. 363.

46. This authority is readily distinguishable from the present, in that here the Companies Act 2006 has created rights vested in a class of members, which are rights against the company.

47. In *Pasmore v Oswaldtwistle Urban District Council* [1898] AC 387 the private owner of a paper mill sought an order to require the local authority to make such sewers as were necessary for effectually draining his premises, by attempting to sue on its duty under section 15 Public Health Act 1875 to make such sewers as might be necessary for effectually draining the district for the purposes of that Act. But the House of Lords agreed with the Court of Appeal in concluding that the only remedy for neglect of its duty was given by section 299 of that Act, a complaint to the Local Government Board. The principle in *Doe v Bridges* was applied: the obligation created by the statute was created by the statute alone, which also created a specified remedy. It was important that the jurisdiction to call upon the whole district to reform their mode of dealing with sewage and drainage should not be in the hands of any particular individual: per Earl of Halsbury LC at p. 395.

48. Lord MacNaghten observed at p. 397 that whether the general rule was to prevail (that is, the one in *Doe v Bridges*), or an exception to the general rule was to be admitted, must depend on the scope and language of the Act which creates the obligation and on considerations of policy and convenience. That was a case, therefore, in which the statute had imposed an obligation for the benefit of the public, without creating any

private rights. The enforcement of any such right by individual members of the public directly against the board would be, to say the least, extremely inconvenient. That is not the case here: here, private rights are explicitly created; and there is no reason to suppose that any particular inconvenience would be occasioned by their being enforced directly by the individuals having the benefit of them.

49. In *Stevens v Chown* [1901] 1 Ch 894 the lessee of Sidmouth market and tolls sued for a declaration that the defendants were not entitled to offer for sale within the parish of Sidmouth any commodity usually sold in public markets except in accordance with the Sidmouth Market Acts 1839 and 1846, and after payment of the tolls payable thereunder, and for an injunction, an account of tolls due, and damages. It was argued against the claimant that the case fell within the third class of cases mentioned by Willes J in the *Wolverhampton* case; but the court held that it fell within the first of the classes to which he had referred, namely, the one where there is a liability existing at common law and which is only re-enacted by statute with a special form of remedy. The statute really only regulated the ancient market rights. Moreover, it was argued that unless an action at law would lie the court would not have granted an injunction - but the court disagreed, principally on the ground that the rights sought to be protected were property rights.

50. Farwell J held that if one found that the statute enacts, either by way of new creation or by way of restatement of an ancient right, a right of property, that at once gives rise to the jurisdiction of the court to protect that right. If a statute provides a particular remedy for the infringement of the right of property thereby created or re-enacted, the jurisdiction of the High Court to protect that right by injunction is not excluded, unless the statute expressly says so: ibid., p 905, 906. He distinguished *Institute of Patent Agents v Lockwood* in the following terms

> "There really is nothing at all in what I have determined or in any of the cases to which I have referred in any way inconsistent with the language of Lord Herschell, who was referring to the creation of a new offence; nor was it a question of property at all; it was simply that a patent agent who acted without having conformed to some statutory provision—it is immaterial to say what—was liable to a penalty of 20l. That would not be within any branch of the ancient jurisdiction of the Court of Chancery; it certainly does not come within any principle on which I have acted to-day, and it appears to me really to be not relevant to the present case."

51. It is clear, therefore, that the passages in the *Wolverhampton* case to which I have referred represent the state of the law, and *Stevens v Chown* is an example of the application of those principles, and not an authority to the contrary.

52. In *Butler (or Black) v Fife Coal Company Ld* [1912] AC 149 the claimant was the widow of the defendant's employee killed by an outbreak of poisonous gas while working in its mine. She sued for damages at common law, alternatively under the Employers Liability Act 1880. The statute provided for a penalty. Lord Kinnear stated

> "There is no reasonable ground for maintaining that a proceeding by way of penalty is the only remedy allowed by the statute. The principle explained by Lord Cairns in *Atkinson v. Newcastle Waterworks Co.* and by Lord Herschell in *Cowley v. Newmarket Local Board* solves the question. We are to consider the scope and purpose of the statute and in particular for whose benefit it is intended. Now the object of the present statute is plain. It was intended to compel mine owners to make due provision for the safety of the men working in their mines, and the persons for whose benefit all these rules are to be enforced are the persons exposed to danger. But when a duty of this kind is imposed for the benefit of particular persons, there arises at common law a correlative right in those persons who may be injured by its contravention."

Accordingly, the widow might succeed in a claim under the statute.

53. In the present case, while there is plainly a public interest in directors ensuring that the company complies with section 292 Companies Act 2006, which is appropriate to be protected by Parliament's imposing a criminal penalty in case of default, there is equally to be considered the private right of members against the company for failing to circulate draft resolutions which they propose. That private right is created by statute and, in my judgment, is in the nature of a property right forming part of the bundle of rights which come with being a shareholder.

54. The fact that the public interest is served by the imposition of a criminal penalty on the directors, for which explicit provision of course has to be made, does not mean that the private rights can only be enforced by prosecuting the directors, or by the possibility of such a prosecution.

55. Not only is the statutory provision for the benefit of a limited class of persons, that is members who propose a resolution, but the statute is couched in terms of granting them a right, and a right against the company; which right, as I have said, is in the nature of a property right appurtenant to the membership of the company.

56. The creation of criminal offences is most naturally and properly for the purpose of protecting public rights, not private ones.

57. While it cannot be ruled out that Parliament might in some cases intend by the provision of a criminal sanction alone that it be the only manner in which statutory duties imposed for the benefit of individuals rather than the public may be protected, it is hard to see how that can be so in the present case, where private property rights are created for a

limited class of persons with a direct interest in the vindication of those rights, and where there is no possible reason for supposing that the direct enforcement of those rights would cause public inconvenience, or in any way run counter to the policy behind the imposition of a criminal sanction.

58. Moreover the criminal remedy, or the threat of it, is wholly inadequate for the purpose of vindicating the private rights: it is directed against the directors, not the company; a conviction does not ensure compliance, and non-compliance following a successful outcome can only be met with the threat of further prosecution, but no new offence might have been committed; compliance after prosecution where an offence had been committed would presumably only go to mitigation.

59. Additionally, there is no apparent reason why if an injunction is available under section 996 Companies Act 2006, it ought not in principle to be available in proceedings such as these: the only real objection is that the provision of a criminal sanction excludes the possibility of any other remedy. If so, it is hard to see why an injunction should be available under section 996 of the Act either.

60. In *Phillips v Britannia Hygienic Laundry Co Ltd* [1923] 2 KB 832 the owner of a vehicle damaged when a wheel came off a motor lorry (which was a light locomotive under the relevant Act) sued the owners of the lorry for breach of Article II, clause 6, of the Motorcars (Use and Construction) Order 1904, which provided, "the motorcar and all the fittings thereof shall be in such a condition as not to cause, or to be likely to cause, danger to any person on the motorcar or on any highway". The order was made under section 6 (1) Locomotives on Highways Act 1896, which empowered the Local Government Board to make regulations with respect to the use of light locomotives on highways and their construction. It was held that the duty imposed by the order was a public duty, and only to be enforced by the penalty imposed for breach of it, and not otherwise. The principle in *Doe v. Bridges* and *Pasmore v. Oswaldtwistle Urban Council* was applied. Moreover, the public using the highway is not a class, but the public; the clause was for the benefit of the public generally, and it cannot have been intended that a person aggrieved should have a civil remedy in addition to the fine for which the order provided.

61. Obviously, where by contrast the court concludes the duty imposed is not just a public duty, but also confers private rights on a limited class of persons, the position is otherwise.

62. In *Cutler v Wandsworth Stadium Ltd* [1949] AC 398 House of Lords again quoted from and applied the general rule laid down by Lord Tenterden CJ in *Doe v Bridges* and noted that the rule had been followed by the House itself in *Pasmore*. An individual bookmaker sued the occupier of a licensed dog racing track in which a totalisator was lawfully in operation, for failure contrary to section 11 (2) (b) Betting and Lotteries Act 1934 to provide him with space on the track where he could conveniently carry on bookmaking, seeking injunctive and declaratory relief. The statutory provision provided that in case of breach, the operator and, if corporate, its directors, would be guilty of a criminal offence. Section 11 provided as follows:

> "(1) Notwithstanding any enactment or rule of law to the contrary, it shall be lawful on any licensed track being a dog racecourse for the occupier of the track or any person authorized by him in writing –
>
> > (a) to set up and keep a totalisator, whether in a building or not ; and
> >
> > (b) on any appointed day, while the public are admitted to the track for the purpose of attending dog races and no other sporting events are taking place on the track, to operate a totalisator so set up, but only for effecting with persons resorting to the track betting transactions on dog races run on that track on that day ; and for any person to effect betting transactions by means of a totalisator lawfully operated.
>
> (2) The occupier of a licensed track-
>
> > (a) shall not, so long as a totalisator is being lawfully operated on the track, exclude any person from the track by reason only that he proposes to carry on bookmaking on the track; and
> >
> > (b) shall take such steps as are necessary to secure that, so long as a totalisator is being lawfully operated on the track, there is available for bookmakers space on the track where they can conveniently carry on bookmaking in connexion with dog races run on the track on that day; and every person who contravenes, or fails to comply with, any of the provisions of this sub-section shall be guilty of an offence."

Lord Simonds stated, at p. 407

> "It is, I think, true that it is often a difficult question, whether, where a statutory obligation is placed on A., B. who conceives himself to be damnified by A.'s breach of it has a right of action against him. But on the present case I cannot entertain any doubt. I do not propose to try to formulate any rules by reference to which such a question can infallibly be answered. The only rule which in all circumstances is valid is that the answer must depend on a consideration of the whole Act and the circumstances, including the pre-existing law, in which it was enacted. But that there are indications which point with more or less force to the one answer or the other is clear from authorities which, even where they do not bind, will have great weight with the House. For instance, if a statutory duty is prescribed but no remedy by way of penalty or otherwise for its breach is imposed, it can be assumed that a right of civil action accrues to the person who

> is damnified by the breach. For, if it were not so, the statute would be but a pious aspiration. But " where an Act" (I cite now from the judgment of Lord Tenterden C.J. in *Doe v. Bridges* " creates an obligation, and enforces the performance in a specified manner, we take it to be a general rule that performance cannot be enforced in any other manner." This passage was cited with approval by the Earl of Halsbury L.C. in *Pasmore v. Oswaldtwistle Urban District Council*. But this general rule is subject to exceptions. It may be that, though a specific remedy is provided by the Act, yet the person injured has a personal right of action in addition. I cannot state that proposition more happily, or indeed more favourably to the appellant, than in the words of Lord Kinnear in *Black v. Fife Coal Co. Ld.*: "If the duty be established, I do not think there "is any serious question as to the civil liability. There is no reasonable ground for maintaining that a proceeding by way of penalty is the only remedy allowed by the statute…"

And at p. 408,

> "…beyond the single fact that the performance of by the respondents of their statutory duty will redound to the advantage of certain bookmakers, of whom the appellant may be one, I see neither in this Act nor in its attendant circumstances any element which takes this case out of the general rule which I have taken from Lord Tenterden's judgment in *Doe v. Bridges*. It was argued that the rule had no application where the statutory remedy was by way of criminal proceedings for a penalty. But I see no ground for this distinction. The implication is, if anything, in the opposite direction. For the sanction of criminal proceedings emphasizes that this statutory obligation, like many others which the Act contains, is imposed for the public benefit and that the breach of it is a public not a private wrong. So reading it, I have no doubt that the primary intention of the Act was to regulate in certain respects the conduct of race tracks and in particular the conduct of betting operations thereon. If in consequence of those regulations being observed some bookmakers will be benefited, that does not mean that the Act was passed for the benefit of bookmakers in the sense in which it was said of a Factory Act that it was passed in favour of the workmen in factories."

63. In the present case, of course, a criminal sanction is imposed, and that is an indication that the statutory obligation is imposed for the public benefit and that the breach of it is a public wrong. But I cannot accept that, where the statutory obligation uses the language of granting rights to individuals, the obligation is not also imposed for their private benefit. Unless the criminal sanction imposed is intended for the enforcement of their private rights, I cannot see its imposition as implicitly excluding the enforcement of the private rights by action. It seems to be relevant to the consideration of the question whether the criminal section is intended for the enforcement of private rights, whether it is directed against the person owing the duty, and whether conviction and sentence, or the threat of them, are likely to secure compliance in any given case of default: see the observations of Lord Normand in this case at pp. 414-415.

64. I accept that a criminal sanction may be regarded as a specified manner of enforcing a duty, even if it is, in a sense, an indirect way of doing so. In the same case, Lord du Parcq said at p. 410

> "It must be recognized, however, that the courts have laid down, not indeed rigid rules, but principles which have been found to afford some guidance when it is sought to ascertain the intention of Parliament. In *Phillips v. Britannia Hygienic Laundry Co. Ld.* (5) Bankes L.J. cited a well-known passage from the speech of Lord Macnaghten in *Pasmore v. Oswaldtwistle Urban District Council*, in which that noble and learned Lord, referred to the statement of Lord Tenterden in *Doe v. Bridges*, spoke of the "general rule " that " where an Act creates an obligation, and enforces "the performance in a specified manner . . . . that performance cannot be enforced in any other manner." "Whether the general rule is to prevail," (said Lord Macnaghten) " or "an exception to the general rule is to be admitted, must depend on the scope and language of the Act which creates the obligation and on considerations of policy and convenience." In my opinion Bankes L.J. rightly applied this principle in *Phillips's* case. I do not agree with Mr. Pritt's submission that it is heretical to regard criminal proceedings which may be followed by fine and imprisonment as a "specified manner" of enforcing a duty. I think that it is both orthodox and right so to regard them."

I do not, however, see that passage as requiring a court to regard a criminal sanction as necessarily directed to the enforcement of private rights, if there are such rights; or its presence as being in all cases an indication that there are no private rights, but only public interest. In the present case, there are plainly private rights, but only expressly a criminal sanction: it is hard to see how the statute could on that ground be construed as not after all conferring private rights.

65. At p. 411 he continued as follows.

> "Now, the law having been thus stated and, as I believe, correctly stated in the Court of Appeal in 1923, the Act with which your Lordships are at present concerned was passed eleven years later. During that intervening period the dictum of Lord Tenterden had, I think, been consistently followed in the sense in which it was understood by Bankes L.J. It is, therefore, legitimate to assume that those who were engaged in drafting the Betting and Lotteries Act, 1934, had in mind the principle of construction which had thus been laid down. It was not thought fit to break with tradition and to state explicitly in the Act whether or not an aggrieved bookmaker was to have a right of civil action, but Parliament must be taken to have known that if it preferred to avoid the crudity of a blunt statement and to leave its intention in that regard to be inferred by the courts, the " general rule " would prevail unless the " scope and language " of the Act established the exception. It cannot be supposed that the draftsman is blind to the principles which the courts have laid down for their own guidance when it becomes necessary for them to fill in such gaps as Parliament may choose to leave in its enactments. There is an inevitable interaction between the methods of parliamentary drafting and the principles of judicial interpretation. I do not

> find in the present case any indication that Parliament sought to manifest an intention that an exception to the general rule should be created."

66. In the present case, however, there is such an indication. Section 292 Companies Act 2006 does not impose an obligation on the company which merely happens to benefit the relevant class of members: it explicitly confers rights against the company upon those members.

67. One of the difficulties that Lord Reid found in accepting that the section in question conferred rights which could be enforced by civil action were that he found they were not capable of reasonably precise definition: p 417. No such difficulty arises in the present case, however, where the rights are explicit.

68. *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1960] AC 260 was a case in which a private act, the Malvern Hills Act 1924, which was promoted to preserve the amenities of the hills against quarrying, provided that for the protection of the claimant company, which carried on extensive quarrying in the area, the provisions of the Act should only apply to the company subject to certain heads of agreement, which were made binding by the Act. The Town and Country Planning General Development Order 1950 provided that development authorised by any local or private act of Parliament might be undertaken without planning permission. The company sought declarations that the proposed development was so authorised, and that ministerial decisions refusing it planning permission or granting permission subject to conditions were of no effect. The Ministry argued that the court had no jurisdiction because, by sections 15 and 17 of the Town and Country Planning Act 1947, the decision of the Minister was final; and the only method of determining a question was provided by section 17 (1) of that Act, which provided that a person might apply to the local authority to determine it.

69. The court held that section 17 merely provided an alternative method of having the question determined by the Minister, and did not oust the jurisdiction of the court to grant declarations.

70. Viscount Simonds held that it was a principle not by any means to be whittled down that the subject's recourse to the courts for the determination of his rights was not to be excluded except by clear words. Lord Jenkins affirmed the validity of the principle in *Doe v Bridges*, but it did not apply, because there was an existing common law remedy which had not been abrogated by statute: pp287, 304.

71. Lord Jenkins said

> "Where a statute creates a new right which has no existence apart from the statute creating it, and the statute creating the right at the same time prescribes a particular method of enforcing it, then, in the words of Lord Watson in *Barraclough v. Brown*, "the right and the remedy are given uno flatu, and the one cannot be dissociated from the other." As Lord Herschell put it in the same case, the party asserting the right cannot "claim to recover by virtue of the statute, and at the same time insist upon doing so by means other than those prescribed by the statute which alone confers the right." The principle is wholly apposite in cases comparable to *Barraclough v. Brown*. If A has a right founded entirely upon a particular statute to recover a sum of money from B, and the statute goes on to provide that the sum in question may be recovered in proceedings of a particular kind, then it is wholly reasonable to impute to the legislature an intention that the sum in question, recoverable solely by virtue of the statute, should be recoverable in proceedings of the kind provided by the statute and not otherwise. The statute puts upon B for the benefit of A a liability to which B could not otherwise be subjected, and at the same time prescribes a particular form of proceedings in which it may be enforced. No doubt B must then submit to being amerced to the extent and in the manner provided by the statute. But the incidents of the burden cast upon B by the terms of the statute are not to be changed from or made more onerous than those which the statute provides, as they would be if A was at liberty to recover the sum in question, or seek a declaration of his right to recover it, in any other form of proceedings to which he might choose to have recourse. As it seems to me, the purpose underlying the principle is the protection of the person against whom the statutory right is asserted from oppression on the part of the person asserting it."

72. In the present case, the claimants' rights are indeed founded entirely upon the relevant provisions of the 2006 Act, which provides a mechanism for enforcement by criminal prosecution. On the face of things, it falls within the third class of cases identified by Willes J. (cases where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it). But this is not a case where a mere new liability is created, but one in which a personal right is conferred upon company members as against the company. The criminal sanction is not imposed for the purpose of their enforcing that right, but only with a view to the general enforcement of the liability in the interests of the public. To that extent, it is a case which also falls within the second class of cases identified by Willes J (where the statute gives the right to sue merely, but provides no particular form of remedy: there, the party can only proceed by action at common law).

73. *Doe v Bridges* and *Cutler* were both cited with approval by the House of Lords in *Lonrho Ltd v Shell Petroleum Co Ltd (No 2)* [1982] AC 173, in which Lord Diplock held that the correct starting point, where an Act creates an obligation and enforces the

performance in a specified manner, was the principle in *Doe v Bridges*: p. 185B. He then identified two exceptions at p. 185D-G:

> "… there are two classes of exception to this general rule. The first is where upon the true construction of the Act it is apparent that the obligation or prohibition was imposed for the benefit or protection of a particular class of individuals, as in the case of the Factories Acts and similar legislation. As Lord Kinnear put it in *Butler (or Black) v Fife Coal Co Ltd* [1912] AC 149, 165, in the case of such a statute:
>
> > 'There is no reasonable ground for maintaining that a proceeding by way of penalty is the only remedy allowed by the statute… We are to consider the scope and purpose of the statute and in particular for whose benefit it is intended. Now the object of the present statute is plain. It was intended to compel mine owners to make due provision for the safety of the men working in their mines, and the persons for whose benefit all these rules are to be enforced are the persons exposed to danger. But when a duty of this kind is imposed for the benefit of particular persons there arises at common law a correlative right in those persons who may be injured by its contravention.'
>
> The second exception is where the statute creates a public right (i.e. a right to be enjoyed by all those of Her Majesty's subjects who wish to avail themselves of it) and a particular member of the public suffers what Brett J in *Benjamin v Storr* (1874) LR 9 CP 400, 407, described as 'particular, direct, and substantial' damage 'other and different from that which was common to all the rest of the public'."

74. In my judgment, the present case is an example of the first exception to which Lord Diplock there referred. But the defendants argue that *R v Deputy Governor of Parkhurst Prison, ex parte Hague* [1992] 1 AC 58 provides an important clarification of those supposed exceptions, relying in particular on the speech of Lord Jauncey at pp. 170H-171A where he said

> "The fact that a particular provision was intended to protect certain individuals is not of itself sufficient to confer private law rights of action upon them, something more is required to show that the legislature intended such conferment."

In the present case, however, the statutory provision was not merely intended to protect certain individuals, but expressly conferred rights upon them. That is the "something more" which is, in my judgment, sufficient for the claimants' purposes.

75. In *X (Minors) v Bedfordshire CC* [1995] 2 AC 633 Lord Browne-Wilkinson stated, at pp. 731D-H:

> "The basic proposition is that in the ordinary case a breach of statutory duty does not, by itself, give rise to any private law cause of action. However a private law cause of action will arise if it can be shown, as a matter of construction of the statute, that the statutory duty was imposed for the protection of a limited class of the public and that Parliament intended to confer on

> members of that class a private right of action for breach of the duty. There is no general rule by reference to which it can be decided whether a statute does create such a right of action but there are a number of indicators. If the statute provides no other remedy for its breach and the Parliamentary intention to protect a limited class is shown, that indicates that there may be a private right of action since otherwise there is no method of securing the protection the statute was intended to confer. If the statute does provide some other means of enforcing the duty that will normally indicate that the statutory right was intended to be enforceable by those means and not by private right of action: *Cutler v Wandsworth Stadium Ltd* [1949] AC 398; *Lonrho Ltd v Shell Petroleum Co Ltd (No. 2)* [1982] AC 173. However, the mere existence of some other statutory remedy is not necessarily decisive. It is still possible to show that on the true construction of the statute the protected class was intended by Parliament to have a private remedy. Thus the specific duties imposed on employers in relation to factory premises are enforceable by an action for damages, notwithstanding the imposition by the statutes of criminal penalties for any breach: see *Groves v Wimborne (Lord)* [1898] 2 Q.B. 402 … the question is one of statutory construction and therefore each case turns on the provisions in the relevant statute…"

(*Bedfordshire* was partially overruled in *N v Poole Borough Council* [2019] UKSC 25, but not on this aspect (see *Poole*, [74], [83]).

76. Accordingly, the mere existence of some other statutory remedy is not necessarily decisive. I conclude that on the true construction of this statute, the members of the company were intended to have a private remedy, notwithstanding the imposition of a criminal penalty.

77. In *Morrison Sports Ltd v Scottish Power UK plc* [2010] UKSC 37 the Supreme Court took the same approach as in the *Bedfordshire* case. The pursuers owned properties which were damaged by fire and sued the electricity supplier for breach of statutory duties under the Electricity Supply Regulations 1988. The Supreme Court held that the Regulations made no express provision for liability to compensate, and it was a matter of construction whether the duty under them had been imposed for the protection of a limited class of the public on whom Parliament intended to confer a private right of action. If the statutory instrument provided some means other than a private law action for damages of enforcing the duty, that would normally indicate that statutory right was intended to be enforceable in that way and not otherwise. In that case the scheme of the 1989 Act contained carefully worked out provisions for various forms of enforcement by or on behalf of the Secretary of State; and it was also hard to identify a limited class of the public for whose protection the regulations had been enacted: so a private right of action did not arise.

78. In *Campbell v Peter Gordon Joiners Ltd* [2016] UKSC 38 the Supreme Court did not disagree with the similar approach of Lord Brodie to this point in the Inner House.

79. The defendants contend, however, that their argument is directly supported by the comments of the hugely experienced ICC Judge Barber in *Kamenetskiy v Zolotarev* [2023] EWHC 2619 (Ch) (a case involving a written shareholders' resolution under section 292 of the 2006 Act), at [79]-[80]:

> "79. … there must be a valid decision of the board to circulate the resolutions on the company's behalf. There is no 'self-help' mechanism enabling the shareholders to circulate the resolutions themselves. This is supported by the ratio in [*Re Sprout Land Holdings Ltd* [2019] EWHC 806 (Ch)] itself, where a written resolution was held invalid when it was circulated by one of the directors, rather than following a board resolution.
>
> 80. If the First and Second Defendants [as shareholders in the Company] had been frustrated in any way at the Company's response to their request [pursuant to section 292 of CA 2006] for written resolutions to be circulated, their remedy was to require a general meeting, or to deal with the matter on a *Duomatic* basis. They did neither at the time."

80. In their skeleton argument the defendants argue:

> "This is a clear judicial statement that if a shareholder has requested the company to circulate a written resolution under sections 292 and 293 of CA 2006, but to no avail, the shareholder's remedy is (*"…their remedy was…"*) to require a general meeting or obtain unanimous shareholder consent under the *Duomatic* principle. The shareholder does not have a right to apply to court for an order compelling such circulation: having considered *Sprout*, no such right was identified by ICC Judge Barber (a highly experienced company judge) in *Kamenetskiy*, and no such right is mentioned anywhere in sections 292-295 of CA 2006."

However, neither *Sprout* nor *Kamenetskiy* was concerned to address the issue presently under consideration.

Texts

81. Against this background, I should consider the other textbooks to which I have been referred. As I see it, there is nothing in the passages to which I was referred in *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed., which is inconsistent with the approach I have identified above.

82. As to the applicable principles, it seems to me that the passage upon which the claimants placed considerable reliance on *Spry, Equitable Remedies* 9th ed. (2013), at pp. 378-380, goes further than the authorities set out above would justify. It states as follows.

"… it is only on very rare occasions that the conferring of special statutory remedies or the provision of penalties should be construed as abrogating or curtailing rights to injunctive and other such relief that otherwise exist on the application of general equitable principles. Indeed, it is difficult to envisage that statutory provisions should be construed as impliedly bringing about this position unless there exist very special circumstances, such as where the statutory remedy in question closely resembles the remedy of injunction and in all the circumstances an inference is found that an exclusive reformulation or consolidation of general equitable rights has been intended pro tanto.

In the second place, a different position arises when the precise right that it is sought to establish by injunction did not exist before the passage of the material statutory instrument and it appears that that instrument has both created the material right and also set out a remedy or procedure by which it may be established. If it is sought, not to rely on the statutory procedure that has been set out, but rather to obtain the issue of an injunction, it must first be shown that the new right created by the statute is sufficiently similar to other rights that are enforced by injunctions for it to be possible to regard that new right as susceptible of equitable protection. Prima facie any statutory right should be regarded as susceptible of equitable protection or enforcement unless it has a special characteristic that on recognised principles induces a court with equitable jurisdiction to relegate plaintiffs to legal remedies, such as where they merely seek to enforce an obligation for which damages are an adequate remedy [citing *Institute of Patent Agents v Lockwood* [1894] AC 347, 361 – 362; *Thorne v British Broadcasting Corporation* [1967] 1 WLR 1104]. Secondly, if it is shown that the right asserted is otherwise susceptible of protection by injunction, it must be asked whether, as a matter of statutory intention, the right to an injunction is excluded… the proper question is one of construction, that is, whether or not the intention has been shown that the material statutory remedy or procedure should be exclusive in this respect [*footnote*: a legislative intention to exclude relief by injunction is not often to be inferred. A jurisdiction to grant injunctions is presumed not to be excluded, in the absence of a clear indication to that effect, where the material rights are on general principles susceptible of protection in equity]. So where, for example, a right of property has been created, "the remedy by injunction is available unless positively excluded, and such an exclusion is not to be inferred merely from the provision of a particular remedy, whether penal or otherwise" [citing *Attorney-General v T.S. Gill & Son Pty Ltd* (1927) V.L.R. 22 at p. 29, citing *Stevens v Chown* [1901] 1 Ch 894.] … Accordingly, although it has sometimes been suggested that provisions creating a special statutory remedy in respect of a new statutory right should ordinarily be regarded as exclusive, the better the view now is that, where the right in question is of such a nature as to be inherently susceptible of enforcement by injunction, the statutory remedy is not exclusive unless there is a clear indication that it should be so regarded [citing inter alia *Attorney-General v Ashbourne Recreation Ground Co* [1903]1 Ch 101]. Although generally no such indication is found, nonetheless exceptional cases sometimes arise. When it is sought to establish that a statutory remedy or procedure is exclusive in this sense, important matters that may provide some indicia of intention are the nature of the right that has been created by the statutory instrument in question, the probable efficacy of the penalty or remedies set out

> if it were an exclusive procedure, the nature of the tribunal before which the material statutory proceedings are to be taken and the extent to which it, or the person entitled to institute those proceedings, may be obliged to take into account administrative or other special considerations, any restriction of the class of persons who are entitled to avail themselves of the statutory procedure and the appropriateness of that procedure effectively to prevent future breaches, as opposed to the mere provision of compensation for past breaches; and generally account is taken of any other matter by which it may appear that that procedure is or is not intended to be exclusive in the sense that no right should exist to the obtaining of an injunction.
> It is important to note that although it is often asked generally whether the statutory procedure that is in question is exclusive, it is in truth necessary to ask precisely whether there has been an exclusion or denial of the particular remedy that is sought. It may be that some remedies are, whilst others are not, left open… It should be stressed generally that when once a plaintiff is able to establish a statutory right of a kind that is ordinarily regarded as appropriate for protection by injunction, it is only very rarely found that there is a statutory intention to deny a right to injunctive relief that is otherwise appropriate."

It does not mention *Doe v Bridges*, *Pasmore*, *Cutler*, *Lonrho*, *Bedfordshire*, *R v Deputy Governor of Parkhurst Prison*, *Hague* or *Morrison Sports Ltd v Scottish Power UK plc.* What it says about *Lockwood* is not borne out by the passage to which it refers. The passage appears to be of little assistance for present purposes.

83. *Kosmin & Roberts, Company Meetings and Resolutions, Law, Practice and Procedure*, 3rd ed., 15.38 specifically considers s.292 Companies Act 2006 but does not consider the question whether there is a right of direct enforcement, or assumes there is not without discussing the point. It says,

> "However, it should be noted that there is no method by which the members themselves may circulate the proposed written resolution in the event of default by the directors (ie there is no equivalent to s 305 relating to the members' power to call a meeting where the board fails to do so under s 304). The question therefore arises as to what is the sanction for breach of s 292 by the company apart from the criminal penalty in s 293(5) and (6). The failure of the board to comply with their obligation to circulate to eligible members a copy of a valid resolution and accompanying statement proposed by members is clearly a serious breach of statutory duty and arguably constitutes a breach of fiduciary duty by those directors contrary to CA 2006, s 171. The Board's omission to carry this obligation may also amount to unfairly prejudicial conduct of the affairs of the company within the meaning of CA 2006, s 994. In these circumstances the members whose rights have been infringed will be entitled to present an 'unfair prejudice' petition to the court under s 994 seeking appropriate relief under CA 2006, s 996. In their petition the members may seek a mandatory injunction from the court under s 996(2)(b), ordering the directors to comply with s 292 and rectify their failure to circulate the resolution and the accompanying statement."

If the editors do not consider that there is an enforceable private right, they do not explain why not.

84. In her commentary on section 292 in *Hannigan: Company Law* 7th ed., (2024), §17-30 to §17-32 Professor Hannigan does not suggest that if a company fails to comply with section 292 the requesting member is able to apply to court for an order compelling the company to do so. Instead, she suggests:

> "If the directors refuse [to circulate a written resolution proposed by members], the shareholders should consider whether they can call a general meeting or use the *Duomatic* principle [citing *Kamenetskiy*, at [80]]."

Again, if she does not consider that there is an enforceable private right, she does not explain why not. *Kamenetskiy* is not in my view authority for that proposition.

<u>The defendants' argument</u>

85. I turn, therefore, to the defendants' argument summarised above, and set out at greater length in paragraphs 78 to 94 of their skeleton argument.

86. I accept, of course that the Companies Act 2006 is a recent statute embodying a modern form of drafting. I accept too that it creates a new right, rather than a new remedy for an old right. I do not accept that by expressly providing for a criminal sanction for default it implicitly excludes the power of the court to grant other relief, because it creates a new private right, which requires a remedy; and I do not regard the criminal sanction as having been intended to be the only available remedy for a breach of that right. The fact that provision is made to seek an order of the court to relieve the company of the obligation to circulate a resolution, but not to seek an order of the court to require the company to circulate a resolution, does not point towards an intention to exclude the power of the court to grant such relief, because it is not directed to the enforcement of members' rights, but to a right, which would not exist apart from that provision, for the company to seek to be relieved from its correlative duty. I do not accept that the principle is that where a <u>statutory right is afforded to</u> a limited class of persons, that is not enough on its own to make this one of those exceptional cases where the jurisdiction of the court is not excluded. The true principle is that where a <u>statutory duty is provided for the benefit of</u> a limited class of persons, that is not enough on its own to make this one of those exceptional cases where the jurisdiction of the court is not excluded. But at least in this case, I have concluded that the statute provides a positive right to members, and that is sufficient to bring it within the exception.

Section 303-306

87. The position is to be contrasted with that under section 303-306 of the 2006 Act, where there is an explicit right to apply to the court. The difference that makes a difference is that, under those provisions there is a right to call a meeting if the directors do not do so when required, and the right to apply to the court applies if it is impracticable for any reason to do so or to conduct it as prescribed. The contrast sheds no light on section 292 Companies Act 2006.

Sections 324 – 343

88. A comparison with sections 324 – 343 of the Act begs the question whether those provisions do or do not leave room for a private remedy. The editors of *Kosmin & Roberts, Company Meetings and Resolutions, Law, Practice and Procedure*, 3rd ed., at 23.428 consider not, but give no reasons.

Other provisions

89. The industry of counsel for the defendants sought to draw comparisons with 27 other provisions of the 2006 Act, where Parliament had expressly provided for the court to have power to order compliance. It was submitted that this was an indication that where, by contrast, it had not done so, it cannot have intended that the court should have power to order compliance. I recognise that there might be some force in this point where, as in relation to s.292, the provisions which might be enforced explicitly provide private rights (as opposed to merely imposing duties on the company), and do so to a limited class of persons. Most if not all of these do not, on a cursory inspection, appear to be such provisions. But if any are (ss. 229(5), 238(5), 358(7), 373(2), 759, 794, and 817(4) are perhaps candidates) it is impossible to discern within the ambit of the current proceedings, and on the argument on the point before me, what policy considerations may or may not have led to differential treatment.

Conclusion

90. Accordingly, I conclude that the court has jurisdiction to grant the relief sought by the claimants in this claim. I do not consider that the statutory provisions in question are ambiguous or obscure or lead to an absurdity, nor do I regard the Hansard statements relied upon by the defendants as clear, and I conclude that accordingly they are not admissible: *Darwall v Dartmoor National Park Authority* [2025] UKSC 20, at [40].

Implied term

91. In the circumstances, it is unnecessary to consider the claimants' alternative argument that their rights under sections 292 and 293 of the Act fall to be implied into the company's articles of association, and are enforceable as a matter of contract. The argument only arises if there is no enforceable right under statute, and if the reason that there is not is because the relevant provisions are to be construed as excluding a private right to sue, it might be hard to see how they might be implied into a contract, or if so implied, why they should be construed differently so as to allow them to be sued on. However, as I say, I do not need to consider the point.

Issue 2

92. The defendants have conceded Issue 2, namely that the company is obliged pursuant to sections 292 and 293 of the Companies Act 2006 to circulate the claimants' proposed written resolutions dated 6 March 2024 for the appointment of Mr Chamberlain as an additional director of the company to eligible members. Had they not done so, on the basis of the unchallenged evidence I should in any event have determined issue 2 in favour of the claimants. The proposed resolutions are not, and have not been claimed to be, defamatory of any person. They are not frivolous or vexatious. They are not proposed for improper purposes as regards the company: see *Kaye v Oxford House (Wimbledon) Management Co Ltd* [2019] EWHC 2181 (Ch) [134]. Whatever may have been the motives of the defendants in abandoning this point, they abandoned nothing of value. The claimants have complied with the statutory requirements which entitle them to require the company to circulate the proposed resolutions, and the company was obliged to do so in accordance with the statutory provision. The claimants have deposited with or tendered to the company a sum which I accept is reasonably sufficient to meet its expenses in complying with that obligation.

Relief

93. There remains the question what relief ought to be granted.

Declaration

94. I am satisfied that the Soods have prevented the company from complying with its statutory obligations to the Websters under sections 292 and 293 of the Act. Accordingly, I consider that it would be just for this court to grant the declaration

sought. The defendants have been vigorously opposing the proposition which the declaration will contain. It obviously serves a useful purpose, not least in putting it beyond doubt that the Websters' proposed written resolutions may 'properly be moved' for the purposes of section 292 has been determined in the claimants' favour. That clarifies the matter for the company and the individual parties, and anyone else concerned. There is no good reason not to grant a declaration. I do not regard the claim to a declaration as a mere appendix to the claim for an injunction.

Injunction

95. The court has power to grant the injunction sought. It is just and convenient to do so: section 37(1) of the Senior Courts Act 1981; *Convoy Collateral Ltd v Broad Idea International* [2023] AC 389. The grant of an injunction is, I consider, necessary and appropriate to give effect to the rights of the claimants and their interest in having those rights upheld by the performance by the company of its obligations. There is nothing in the statute, properly construed, that detracts from the ordinary right of persons in the position of the claimants to have their rights enforced in that way.

Ancillary order

96. I accept that the court has jurisdiction to grant an ancillary order enabling Mr Webster to circulate the proposed written resolutions if the company fails to do so, given the obdurate opposition to allowing the company to comply with its obligations hitherto displayed by the defendants. While it is to be hoped that an injunction against the company would be complied with, I cannot be sufficiently certain that it will be. It is appropriate for the court to add a mechanism in support of its injunction to allow Mr Webster to circulate the proposed written resolutions if the company fails to do so.
97. The parties are invited if possible to agree a form of order and if not to submit competing drafts.