Neutral Citation Number: [2015] EWHC 115 (QB)

Case No: HQ12XO4271

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/01/2015

Before :

MR JUSTICE EDIS

- -

Between :

PHILIP DAVISON SEBRY	**Claimant**
- and -	
(1) COMPANIES HOUSE	**Defendants**
(2) THE REGISTRAR OF COMPANIES	

- -
- -

Mr. Clive Freedman QC & Mr. Neil Mendoza (instructed by **Clyde & Co**) for the **Claimant**
Mr. Paul Rees QC & Mr. Neil Sheldon (instructed by **The Treasury Solicitor**) for the **Defendants**

Hearing dates: 12-14, 17-21 & 24-25 November 2014

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Judgment

Mr. Justice Edis:

1. This is a claim for damages for negligence and breach of statutory duty brought by the Claimant who was the Managing Director of a company called Taylor and Sons Limited ("the Company"). The Company went into Administration on 9th April 2009 and the Administrators assigned any cause of action it may have had to the Claimant who therefore brings this claim in the shoes of the Company. As will appear, the two Defendants are, effectively, the same person. The reason for this appears at paragraph 6 below.

2. This is the trial of 3 preliminary issues as ordered by Master Cook on 19th June 2013. The issues are defined in that Order as follows:-

    - Whether the Defendants owed the Company a duty of care under statute or common law in the terms alleged in the Claimant's Particulars of Claim ("the Duty Issue").

- Whether, if so, the Defendants breached any such duty. It is now conceded that if there was any such duty, it was breached. I do not therefore have to decide this issue. I will set out the facts relating to the breach below, because they illuminate the Duty Issue.

- Whether, if so, the Defendants' breach of duty caused the Company to enter administration ("the Causation Issue").

3. The statutory duty of care said to have been owed by the Defendants to the Company is defined in paragraph 7 of the Particulars of Claim as follows:-

> "In discharging their functions and/or maintaining the register in accordance with section 1080 of the Companies Act 2006 the 1st and/or 2nd Defendants owed a statutory duty to any company on the register, and in respect of which information was being entered or recorded, to take reasonable care and skill so as to ensure that incorrect information was not entered on the register relating to that company."

4. An identical duty is also said to arise at common law by paragraph 8 of the Particulars of Claim.

5. During the trial I allowed an application to amend the Particulars of Claim to add paragraphs 7A and 8A. I gave reasons in a separate judgment at that time. No amendment is necessary to the Preliminary Issues because they are to be read as relating to the Particulars of Claim as it now stands. The amendments are as follows:-

> "7A. Further or alternatively, without prejudice to paragraph 7 above, in discharging their functions, and/or maintaining the register in accordance with section 1080 of the Companies Act 2006, and in respect of Taylor and Sons Limited (company number 00067032) ("the Company") to show that the Company had gone into liquidation, the 1st and/or 2nd Defendants owed a statutory duty to the Company in the processing of the information which it received to take reasonable skill and care not to enter and/or record on the register information relating to a different company (bearing a different name and number) and/or otherwise incorrectly.
>
> 8A. Further or alternatively, without prejudice to paragraph 8 above, in altering and/or maintaining the register in respect of the Company to show that the Company had gone into liquidation the 1st and/or 2nd Defendants owed a common law duty of care to the Company in the processing of the information which it received to take reasonable skill and care not to enter and/or record on the register information relating to a different company (bearing a different name and number) and/or otherwise incorrectly."

THE DEFENDANTS: SUMMARY

6. I shall set out more detail about the Defendants below, but in order to assist the understanding of this judgment at the outset this paragraph contains a brief description of their function and explains why there are two of them. The Defendants are, respectively, Companies House which is an Executive Agency of the Department for Business, Innovation and Skills ("the Department"), and the Registrar of Companies who is the Chief Executive of the First Defendant. There has been some argument about whether the First Defendant should have been sued because it is said not to have any separate legal personality from the Department. An application was made to me by the Claimant to change the name of the First Defendant to the Department. I declined to rule on it until I had heard the evidence about the relationship between the Defendants, and between them and the Department, which is relevant to whether it is fair, just and reasonable to impose any duty of care on all or any of them. In the event the application was not pursued because the Second Defendant accepts that he is properly joined and liable in the event that the claim succeeds. The Treasury Solicitor confirmed that any judgment will be met and it is unthinkable in those circumstances that the Government would seek to avoid paying the judgment on the ground that the Department had not been formally joined in the proceedings. Evidence was then given by Jo Jones, Head of Policy at Companies House, who said that the Registrar has decided to meet the claim if it succeeds out of reserves controlled by him. The Registrar has statutory duties which he discharges by the agency which is Companies House. Companies House, as its name suggests, provides the buildings. It also employs the staff and administers, through them, the recording and publication of company information. It charges fees to the companies whose information it keeps and to those who use its services. In most years it pays a dividend to the Government out of those fees. It is self funding.

THE COMPANY

7. The Company was incorporated in 1900, but traced its roots back to the late 18th Century. It operated as steel fabricators and founders and was part of a group of companies. The corporate structure does not greatly matter for present purposes and I shall not set it out here. I am principally concerned with the Company itself and two companies in the group, Taylor Marine Limited (TML) and Taylor and Sons (Engineering) Limited whose fortunes were closely connected to those of the Company. Similarity in the names of companies in the same group is one reason why companies with very similar names can appear on the Register. That is also a feature of "phoenix" companies which acquire the assets of a company in liquidation. Other companies have very similar names by chance. One function of the Registrar is to ensure that no two companies are registered with an identical name. Every Companies House employee who works with the Register (and everyone else whose work involves the technical side of corporate existence) knows that this is a phenomenon which requires care. This is one reason why each company on the register has not only a unique name, but also a unique number.

8. The Company had traded successfully for many years including supplying military equipment during both World Wars. It was a well respected and substantial business which retained its family connection to the Taylor family until just a few weeks before the Administration. It was no doubt a source of pride to many people as well

as a source of income and valuable work. Its fate was big news in the engineering and steel making community in South Wales and beyond.

9. In 2008 the fortunes of the Company suffered a setback because of the recession and the banking crisis. Its largest customer, Corus (now Tata Steel), endured problems of its own which affected its demand for work from the Company. When problems came they exposed underlying weaknesses in the Company which required very urgent attention. A corporate strategy was evolved which was intended to reduce the dependence of the Company on Corus and to diversify its customer base. It also involved selling property to raise money, and reduce cost. Unhappily, the banking crisis rendered property unsaleable just at the critical time and the Company had a need for cash from another source. On the advice of its Bank, Lloyds, the Company retained a specialist accountant, Mr. Geoff Eades, to assist it in its financial restructuring to enable it to survive. Because of the way the preliminary issues have been drawn I do not have all the evidence necessary to decide whether (and if so for how long) it would have survived had not an error ("the error") been made by the staff of the Official Receiver and subsequently by the staff of the Defendants. Neither side has chosen to seek to adduce any expert evidence at this stage. It was to avoid incurring the cost of expert evidence if the action fails on other grounds that the preliminary issues were drawn as they were, but such evidence is clearly capable of being relevant to the third preliminary issue. I have considered carefully whether I should in fact decide that issue and have decided to do so on the evidence which the parties have decided to call. This means that I will answer the third question, but I will make no finding about the future path of the Company after 9th April 2009 had there been no error. That issue will be determined at a quantum hearing, if there is one.

10. The Causation Issue is a factual question. The factual context in which the Duty Issue falls to be resolved is of importance in resolving even a pure point of law on facts which are not in dispute. The authorities make it clear that any decision as to the existence or otherwise of a duty of care in a novel situation starts with a close analysis of the facts. The legal tests make it obvious that this must be so. I shall therefore set out the facts in summary but with some care. I heard a great deal of evidence and have been supplied with transcripts and extensive references to passages in the oral evidence. I have read all of the material supplied, but identify in this Judgment only those parts which are important, and then often in summary form.

THE FAILURE OF THE COMPANY

11. The evidence which I have about the financial state of the Company before the error is limited to oral evidence and a relatively small selection of documents. The Defendants contend that this evidence is insufficient to prove that the admitted breach of the alleged duty caused the Company to enter administration when it did. Their case is that the Company was at risk at all times, and that there may have been other causes of the decision to place the Company into administration than the error. The decision to place the Company into administration was taken by the Directors. I have heard from two of the Directors, Mr. Philip Sebry the Managing Director and Mr. Lloyd, who have told me why they took that decision. They told me that it was because the Company ran out of cash and the Bank would not lend it any more. They said that this was because its suppliers demanded to be paid up to date before supplying any further goods or services rather than allowing the usual 30 days credit

which actually extends to 90 days in real life. They said that this was because of the error. The Defendants did not adduce any evidence on the issue, except by cross-examining the witnesses called by the Claimant.

THE ERROR

12. On the 28th of January 2009 the Chancery Division of the High Court made a winding up order under the provisions of the Insolvency Act 1986 against Taylor and Son Limited. The Order, which did not include the company number, was received by Companies House on the 12th of February 2009, on which date a bar-code confirming receipt was affixed. On 20th of February 2009 the CHIPS system (the Companies House computer system on which the information concerning registered companies is kept) was amended by the registration of the Order, not against Taylor & Son Limited, as it should have been, but against Taylor & Sons Limited, the Company. This was done by Mr. Philip Davies, who gave evidence at the trial. The error in this case was, therefore, describing a company as being in liquidation when it was not.

13. Mr Philip Davies is a liquidation document examiner at Companies House of some thirty three years' experience. He appreciated that the Order lacked the company number and also arrived with him unaccompanied by a Notice to Companies House ('NOTCH') form to provide to the Registrar relevant information concerning the company which may not be apparent from the terms of the order, including the company number. The Official Receiver also failed to send any covering letter with the company number on it. There are two reasons why the Official Receiver's staff might have supplied the number with the Order which they wished to register. First, the Official Receiver's staff in Manchester had themselves made the same mistake as Mr. Davies was to make later. A telephone call from the Official Receiver's office was made to Mr. Sebry on the day the Order was made telling him "he" (this is how he expressed it to me) was in liquidation and giving him instructions which would have been appropriate if that had been true. He protested that he was not in liquidation and eventually sorted that out with assistance from the Company solicitor and went on holiday with his wife having no idea that the problem would re-surface while he was away. It would not have done had those responsible for the mistake in Manchester thought to supply the company number in order to ensure that no-one else made the same mistake. They failed to do this despite the fact that they agreed to pay the Company's solicitors fees for dealing with their error. The second reason why the staff of the Official Receiver might have been expected to inform Companies House of the correct company number for the company which they were actually winding up, is that the Insolvency Service issued guidance to Insolvency Practitioners in 1995 and 1997. It is available on the Insolvency Service Website and through its publication "Dear IP", see paragraph 27 of the statement of Mr. Grant who is the liquidation section team leader and is and was in 2009 the line manager of Mr. Davies. Ms. Jones confirmed in evidence that these "Dear IP" documents were seen in Companies House and that weight would normally be attached to their contents. She also said that she agreed with this advice, at least as advice to Insolvency Practitioners. This document said:-

> "It is vital for the correct company number to be quoted on all forms submitted for registration. The consequence of a document being placed on the record of another company because of the failure to provide the correct number, could,

> given the nature of the document, have a significant bearing upon that company's perceived standing."

14. It appears from the evidence that this advice was not followed and that most winding up orders arrived at Companies House in 2009 without any indication of the number of the company being wound up. This has now changed, according to the evidence of Mr. Davies which was confirmed by other more senior employees of Companies House, including Mr. Grant. It is perhaps ironic that it was Mr. Grant who produced the "Dear IP" document because it was he who was in a position to enforce it by ensuring that documents which did not bear the company number were rejected and it was he who did not do that. That document is highly relevant to the issue of foreseeability of harm from mistakes of the kind made by Mr. Davies in this case.

15. The relevant procedures which were theoretically in place at Companies House at the time were set out in the Trove Examination Policy for Winding Up Orders. If they had been followed, Mr Davies would have rejected the document due to the lack of the company number. That policy came into force on 19th of February 2003. It sets out a series of steps which the Document Examiner should take in deciding whether to register a Winding Up Order. It says that at a certain stage in that process this should happen:-

> "2.4 **Company Number**
>
> Is the company number shown on the form?
>
> - **Yes** continue check
>
> - **No** reject form – If the company number is shown on the attached L72.18 [the NOTCH form] or the covering letter, write the company number on the Winding Up Order and continue check."

16. The company number did not appear on the Order or in any covering letter, and there was no NOTCH form. Mr Davies did not follow the policy. Instead he chose to search for the company number on the CHIPS system. He, and his line manager Mr. Grant, both say that this was common practice for staff at the time to try to assist by remedying deficiencies in documentation submitted to the Registrar, rather than simply rejecting it. Mr. Davies thought that between 40% and 60% of the documents received by the liquidation section concerning compulsory winding up orders contained no company number. The document examiners in the section sought via the CHIPS system to locate the correct company number. As far as anyone who gave evidence was aware, for the period prior to the 20th of February 2009 (which was for many years) no incorrect identification of a company by name only had ever occurred. No doubt this was because the staff were all aware of the need to check a name with special care against the register because of the frequency with which companies with very similar names are encountered. For this reason the practice continued. It was considered to provide the best way of getting the information onto the Register as expeditiously as possible. Mr. Davies was asked why he did not follow the Trove Policy and he said that he had been aware of it, but that he thought it was a training document and he did not need training because he had been doing the job for over 30 years. He said that no-one had spelt out to the relevant staff when it was introduced in

2003 or at any time afterwards that it contained a policy which they were expected to follow. This evidence suggests a lack of continuous training at Companies House at the material time. Clearly someone had felt that there was a risk of a mistake such as the present being made and introduced a policy to minimise that risk. Steps to implement that policy by giving clear instructions to the staff were not taken which means that the Trove Policy existed in name only and had no impact on the practice of the document examiners in the Winding Up Section. This is a management failure which is not Mr. Davies' fault. He suggested that given the high number of Orders which arrived without a number following the policy would reduce the value of the Register. The answer to that is that it would have done until those providing information appreciated that they had to comply with the rules or their Orders would not be registered. As soon as that message gets across, the information is provided. That is what has happened at Companies House since and because of this case. The staff were not following best practice by failing to follow the Trove Policy, but no real effort seems to have been made to ensure that this did not happen by more senior management.

17. Mr Davies' search revealed at least two companies with very similar names. If he had looked carefully, he would have seen that the name on the Winding Up Order was that of a company which was registered called Taylor & Son Limited. This company, based in Manchester, was apparently set up by a Mr. Taylor who had only one son, whereas the Taylor who set up the Company had at least two. The two companies are quite unrelated. If he had noticed the "s" on the word "Sons" in the register for the Company, and that there was no "s" in the name of the company in the Order (which was the name of a company on the Register), Mr. Davies would then have identified the correct number. He did not. The winding up order in respect of Taylor and Son Limited was one of approximately 200 documents processed by Mr Davies that day, which means he has to process them at the rate of about 1 every 2 minutes. This, however, does not entirely explain the error, because that volume of work was common and mistakes are very rare. The identification of the Company (Taylor and Sons Limited) as the subject of the Winding Up Order against Taylor and Son Limited was a careless mistake in carrying out a simple operation as well as a breach of the Trove Policy. Mr. Davies had three possible outcomes to his task. Either he might have applied the Trove Policy and rejected the documents or he might have decided not to do that and carefully identified the correct number for Taylor & Son Limited from CHIPS (which was perfectly possible), or he might have done as he did, namely tried and failed to identify the correct number for the company which had been wound up. The error therefore has two components: first a systemic failure to ensure that policies are applied and secondly an individual act of carelessness. Neither involves any exercise of judgment.

THE RESPONSE TO THE ERROR

18. During the morning of Monday the 23rd of February 2009 the Company accountant and auditor, Mr. Challenger of Watts Gregory LLP discovered from online information available to his firm that the Company was showing as being in liquidation. He was monitoring this situation because of the earlier mistake made by the Official Receiver. Mr. Sebry was on holiday with his wife. Mr. Challenger contacted Mr. Eades, the specialist "turnaround" accountant and contact was then made with Mr. Philip Evans, the Company solicitor. He had sorted out the problem

with the Official Receiver some three weeks earlier. At some time between 07.00 and 10.00 Mr. Evans telephoned the liquidation casework team of Companies House and told Mrs Sally Stenning (who has died since then) that the Register was mistakenly showing the Company as being in liquidation.

19. Mrs Stenning sought advice from senior colleagues and then removed the winding up order from the CHIPS Transaction and Contract Log, the effect of which was to return the entry concerning the Company on CHIPS to the state it was in before the registration of the winding up order on the previous Friday afternoon. I refer to the other actions she took that day below.

20. The effect of Mrs Stenning's action was to remove some only of the publicly available information concerning the winding up order from the Registrar's records. The assistance of the IT department was required to remove all references to the winding up order on the Registrar's online systems, and this was achieved by 14.39 the same day. The principal online systems are Webcheck and Companies House Direct which are available to any person in the world with internet access to search the Register. These are to be distinguished from the "bulk products" described below.

21. The correction made by Mrs. Stenning on the 23rd of February 2009 was made before the winding up order was submitted to the London Gazette for publication, in accordance with the Registrar's obligation to give public disclosure of (inter alia) winding up orders. Accordingly, there was no notice in the Gazette to the effect that the Company was in liquidation, as would be required were that to be the case. These actions corrected the Register.

22. The correction of the Register, however, did not correct the position. This is first and most importantly because the original information that the Company was in liquidation had come to the attention of an unknown number of people who had accessed the Register while it was showing. This information was then disseminated by word of mouth and, as the evidence in this case clearly showed, many of the creditors and suppliers of the Company acted on it without themselves ever seeing the original entry. Even those who did see it will not necessarily all have returned to check that they had read it correctly. The correction of the Register, in itself, is an incomplete method of correcting the misinformation.

23. Secondly, I heard evidence about the "bulk products" produced by the Defendants and sold to a small number of clients most of whom published the information to their own clients. These could not be corrected immediately in the same way as the Registrar's own online services. Information was supplied to the customers of three bulk products on Saturday 21st February 2009 (while the false information was still being published). It is not necessary to set out all the detail of the way in which this happened, but the result of the evidence which I heard from Marie Ann Flowers MBE, the Customer Relationship Manager at Companies House, and Gary Hinchey, the IT Application Support Manager at Companies House, can be summarised for present purposes quite shortly. There are three bulk products, The Daily Directory Update, the Daily Liquidation Update, and the Time Critical Daily Update. These are subscription services and their customers include well-known names such as Experian, Dunn & Bradstreet, Equifax, Jordans and others. The purpose of them is to enable information to be made available to those who need it very quickly and very widely. No alteration to this information was made at all on 23rd of February 2009.

Such alterations have to be made manually and it took Mr. Hinchey some time to decide what to do. A customer who emailed on 24th of February 2009 to Companies House to point out that the Bulk Products referred to a winding up order in relation to the Company which was not available for inspection on the website. This customer received the following response:-

> "There was a [compulsory winding up order] logged on 20/2/2009 which was subsequently errored off our system as it was against the wrong company. This is why there is no image for it but there were records on the daily feeds. I'll see if I can put through a record to take it out of liquidation on the daily feed."

24. On 26th of February 2009 an email was written by Martin Casey of Jordans who said:-

> "The company 00067032 shows on our system as being in liquidation with winding up order having been filed with you, with a filing date of 12/2/2009. CHD does not show any of this information.
>
> "Can you please let me know when and why you removed this information from your files. I hope that your reply is not going to take 10 days."

The answer was sent on 10th of March 2009, a little more than 10 days later. It said:-

> "It seems an order of court to wind up was put on to this company's record in error. This was then errored off by the Liquidation team and an "N" marker sent out in the daily directory data file for run number 9754 on 10th March."

25. The only other evidence of actual corrections being communicated to customers comes from a further email exchange with Jordans on 19th-26th of March 2009. The customer had asked why the bulk product information posted on 21st February 2009 did not appear on the Companies House website. The answer was given on 20th of March 2009:-

> "This doesn't appear on CHD (Companies House Direct) because it was errored off CHIPS on 23/2/2009. Currently there is no automatic mechanism to feed this through to the bulks."

26. Apart from answering these isolated emails, what Companies House did was to place a marker on one of the bulk products, the Daily Directory Update, on 10th of March 2009. This replaced the original "L" marker with an "N" marker. I will not seek to explain exactly what that means in detail because I am not required to decide whether this was a sufficiently clear way of resolving the problem so far as this bulk product was concerned. It is not alleged that the Defendants were negligent in failing to correct the error quickly or completely. The relevance of this is (1) if errors cannot be corrected in less than 17 days on a bulk product, this may be relevant to the existence of a duty to avoid making them in the first place and (2) the continued propagation of

the falsehood may be relevant to causation. If the original error had been decisively and widely corrected quickly it may perhaps have had less impact, but that is not what happened.

27. In respect of the other two bulk products the correction was even less rapid. The Daily Liquidation Update and the Time Critical Daily Update products do not have the facility to alter information. It was only when the notice of appointment of administrators appeared on those products that anyone relying on them would realise that the Company was not in liquidation. The false information therefore remained current on those products until the end of the trading life of the Company.

28. On the 3rd of March 2009, ten days after the error had been identified and corrected on the Register a letter of complaint was written to Companies House by Mr. Evans, the Company solicitor. The Company and its legal adviser had believed that the problem had been rectified because nobody had told them about the bulk products, which still showed the Company as being in liquidation even at that date. The letter asked for an acknowledgement of the letter within seven days and the Registrar's "*initial observations*" were invited. This was criticised by Mr. Paul Rees QC, on behalf of the Registrar, as being a rather inadequate approach to securing a remedy. On analysis, this may not matter to the determination of the preliminary issues. The fact of the matter is that Companies House did know of the error on 23rd of February 2009, and it was rapidly escalated to a senior level. Mrs. Stenning told Jackie Haralambos, then Head of Registration Customer Support, and she consulted her senior manager, Gus McDonald before Mrs. Stenning was authorised to respond to the complaint made on the telephone by Mr. Evans, the Company solicitor. Two customers had pointed out the problem with the bulk products on 24th and 26th of February, see 23-25 above. Companies House did what it thought was possible and reasonable in response to these three pieces of information. It seems unlikely that any lack of assertiveness by the Company's solicitors would operate in law to break the chain of causation. In any event, Mr. Evans explained that his aim in writing the letter as he did was to try to secure an apology in writing which his client, the Company, could then use to persuade its customers, suppliers and creditors that the liquidation was just a mistake. He felt that by keeping things low-key it would be dealt with at a lower level and perhaps he would be more likely to get a less defensive and thus more useful response. He did in fact secure the apology and this seems to me to be a reasonable exercise of professional judgment.

29. The response to the letter of complaint, including an apology, was sent on the 13th of March 2009, the same day on which a chasing letter was sent by the Company solicitors. This was a full explanation of what had happened, although it did not alert the Company to the problem of the bulk products which had been appreciated at Companies House by that date as the emails with the users of the bulk products of 24th and 26th of February show. It appears to have been received by the Company on or about 18th March 2009 because on that day Mr. Sebry emailed Mr. Lloyd Williams the Supplies Account Manager of Corus saying:-

> "Please find enclosed the letter of apology from Companies House, it's a bit academic now seeing as we have been told to leave the site as our services are no longer required by Corus."

30. A number of employees and advisers of the Company were asked by Mr. Rees in cross-examination about other ways in which they might have reacted to save the Company. In essence, they all said that they were placing all their efforts in trying to persuade suppliers and customers that they should carry on trading with them on normal terms. This involved a lot of work and they had a large number of suppliers, some of whom gave evidence in the trial. It was suggested that a round robin e-mail to all suppliers may have been sensible, but no employee or adviser of the Company thought that advertising the problem to people who may not have heard of it was likely to help, and no supplier thought that such an email would have made any difference to him.

THE THIRD PRELIMINARY ISSUE: THE CAUSATION ISSUE

31. I will deal with the Causation Issue before the Duty Issue. This is because it may be relevant to the Duty Issue. If the error caused substantial loss in this case, that may be a reason in favour of imposing a duty of care to avoid making such errors. It could not be decisive of the Duty Issue, but it is capable of being relevant.

32. As I have recorded above, at paragraph 9, neither side has called any expert evidence on the Causation Issue. For the Company I heard a great deal of factual evidence about the reasons why it went into administration when it did. I heard no evidence of any kind on this issue called by the Defendants. In one sense, therefore, the issue can be simply resolved. Mr. Sebry, the Managing Director of the Company, told me that the directors decided to put the Company into administration because it had run out of cash and the Bank refused to lend any more. He said that the cash shortage was caused by the rumour that the Company was in financial trouble, which was caused by the error. He explained that the Company depended on credit from its Bank, but also, crucially, from its suppliers. Once they started to refuse to supply goods and services without payment in full for all past supplies and payment up front for all present and future supplies the Company lost that essential line of credit. Further, without supplies a company of this kind cannot fulfil its contracts and cannot therefore earn income. There was an outflow of cash to try to maintain supplies and at the same time a reduction in income. This sharp and unexpected reduction in cash occurred just at the time when the Company was in any event trying to restructure with the benefit of additional finance from the Bank and was rapidly terminal. I found Mr. Sebry to be a truthful witness and nothing occurred during the trial to dislodge that impression. Further, what he said seemed to me to be inherently probable. Finally, on the question of why the directors decided to place the Company into administration I also heard from another director, Mr Stephen Lloyd. He also said that the error was the reason why the Company went into administration when it did. This was a decision to which these two witnesses were party and they must know why they took it. Mr. Lloyd, like Mr. Sebry, was an honest witness who was intimately involved in the events and knew enough to be a reliable source of evidence on this question. Nothing in the documents suggests that there was any other reason why the Company went into administration in April 2009. It appeared to me that Mr. Sebry felt very aggrieved by what had happened, in particular that Companies House had sold on (as he put it) the false information about the Company and had not corrected it or told him that this was the position. It is perhaps not surprising that he feels as he does, but there may be a natural desire to blame all his woes on the error rather than other causes for the loss of the business. That desire may be exacerbated

by the contingencies of litigation. I have considered whether this should qualify the weight which can be added to his evidence but have decided that I am prepared to accept what he says because he struck me as a sensible and experienced man who expressed himself with commendable moderation in all the circumstances. His account is entirely consistent with the documents I have seen and was supported by many other witnesses.

33. I would have been prepared to resolve the Causation Issue in favour of the Company on this simple basis, but since so much other evidence has been called for the Company and submissions made by both sides at length it is necessary to go a little further. I do not intend to set out the submissions at length in this judgment because they were very long and detailed and because they were supplied to me in writing and a record exists for future reference if required. I mean no discourtesy to the great skill and care expended by both sides in their construction by this approach. I read them with care and found them helpful, but in the end this is quite a simple factual issue on which the evidence is all one way.

34. The Company was trading at a profit until the end of its last trading years and had reserves of over £5,000,000. The recession and the banking crisis caused it difficulties in 2008 which it addressed by taking a series of steps after consultation with its Bank. The Bank suggested that the Company should retain a specialist accountant to turn it around, and this resulted in the appointment of Mr. Geoff Eades who gave evidence before me. His evidence was truthful and impressive and, once again, proves the Company's case on the Causation Issue on its own. He was effectively seconded from his firm for an extended period of time to work at the premises of the Company. By the time of the error, he had become very familiar with the way the Company operated and was actually there (unlike Mr. Sebry) when the error was discovered. He saw at first hand what happened and was involved in efforts to try to save the Company. He is not entirely independent, perhaps, but he is an experienced professional man whose livelihood did not depend on the Company. His evidence is entitled to great weight in my judgment.

35. Mr. Eades told me that by the 20th of February 2009, when its liquidation was announced by Companies House, the Company had taken the following steps:-

- it had taken his advice and introduced more effective financial controls;
- it had made redundancies, particularly in Port Talbot, so as to deal with a loss of non-urgent business from Corus in the autumn of 2008;
- it had negotiated with its bank a £750,000 increase in its facilities which had been granted informally on 18th of February 2009 and formally on 19th of February 2009; this event is evidentially important because it means that immediately before the error the Bank was persuaded (at a time when Banks were less easy to persuade than they had been) that the Company had a viable future with this level of increased funding; the Bank said, according to Mr. Eades, that the Company should not come back for more; this is therefore strong contemporaneous evidence that at that date the Company had a future;

- since the start of 2009, the business climate had begun to improve and the Company had received an increase in orders from Corus and strong indications that it would receive 3 RNLI contracts;

- its sister company Taylor Marine was about to have a substantial increase in its business and its application for letter of credit facilities had been accepted by its bank; this promising situation paradoxically worsened the short term position of the Company because until the letter of credit facilities came on stream, the Company financed the increased level of business of its subsidiary out of its overdraft. In the end, those facilities never did become available;

- proposals were in hand for the payment of arrears of PAYE and VAT to the HMRC over an "athletic" period of 18-24 months.

36. The evidence which I heard in addition to Mr. Sebry and Mr. Eades came from other professionals advising the Company at the time, namely its accountant (Mr David Challenger) and its lawyer (Mr Philip Evans); its banker (Mr Matthew Pearce); employees of the Company Mr Huw Jones (its financial controller), Mr Scheeres (of Taylor Products and formerly a non-executive director of the Company), Mr Stephen Day (works manager), Karen Jones (an office administrator for the subsidiary Blastpride) and Mrs Sebry (the Claimant's wife who dealt with HMRC); suppliers including Mr Paul Boyce (of Fleet Direct), Mr Matthew Paul (of Powertek) and Dominic Waters (of Work Tool Hire); and Ian Watkins, an experienced businessman and the Managing Director of Cyrus. His evidence was of particular significance because he acquired part of the business of the Company from the Administrator and was able to explain that, provided there was enough cash to run the business, the prospects were very good. He was an undoubted beneficiary of the error which enabled him to acquire a valuable business at a very reasonable cost.

37. I had no reason to doubt the truthfulness of any of these witnesses, and every reason to believe them. In each case their evidence was sensibly given and in each case there was no motive to misrepresent the truth. It is fair to summarise the effect of all this evidence by one sentence: None of these witnesses, from their own standpoints, has any doubt at all that the error was a disaster for the Company. I heard graphic evidence about how the rumour spread and, particularly from the suppliers, about how their immediate reaction was to refuse further credit. They were hard times for the suppliers as well as for the Company and all businesses involved were concerned for their own survival. Their reaction was undoubtedly caused by the error because prior to it the Company's suppliers had been happily trading on ordinary 30 day credit terms, and, as the figures show, actually affording longer periods of credit than that.

38. The Defendants, confronted with this large body of direct evidence, advanced a case which was developed only through cross-examination. They did not identify or plead any other rival cause for the administration, but probed the evidence to try to find one. Essentially, three areas were explored:-

- The possibility that Corus might have terminated its long relationship with the Company on 10th of March 2009 for some other reason, and that if that had not happened the Company might have been able to continue to trade. This idea was really based on the apparent fact that Corus had reports from Graydon (which is a credit reference agency which takes information from ICC, a bulk

product customer) showing that the Company was not in liquidation by the time it took the decision to remove the Company from its site. However, Corus (now Tata) has refused to cooperate with either party in the preparation for this trial and I have heard no evidence from it as to its motives. The documents are also very silent on the subject and Mr. Sebry had no real insight into the Corus thought process. He described the meeting at which he was told that the relationship was over, but did not know why. His thought process is best seen from the email which I have set out at paragraph 29 above. He thought that the apology and explanation from Companies House might have been useful if it had been received before the decision to terminate the relationship. This suggests that he at least thought that there was a causal relationship between the error and the termination. This is confirmed by the evidence which was adduced after a waiver of privilege by the Company about the efforts which Mr. Sebry made to try to persuade Corus to provide evidence about the reason for their decision. He was unsuccessful, but he tried hard. It seems unlikely he would have done this if he knew that there was some other reason for the decision than the error.

- There was also a suggestion that the loss of 3 RNLI contracts which had been expected had contributed to the failure of the Company. This was rejected by the witnesses on the ground that no income from the contracts was to be expected for some months after these events. On the contrary, had they been secured they would have entailed the costs of setting up the necessary work in order to fulfil them. In the short term therefore they would have caused expenses and produced income and profit only after that. In the time frame with which I am concerned they were therefore not capable of rectifying the cash shortage. The suggestion that if they had been secured they would have reassured suppliers and others about the strength of the Company seems to me to be speculative. The suppliers from whom I heard were interested in running their own businesses rather than analysing those of their customers. Their judgments about the creditworthiness of their customers were not made at leisure. In any event on the evidence of Mr. Lloyd I find that the reason for the loss of the contracts was the error by Companies House. They created an environment in which no-one wanted to deal with the Company.

- There was a suggestion that the way in which the Company responded to the publication of the liquidation might have resulted in the administration. This must involve a suggestion that the failure of the Company to protect its interests was so far from what might be expected of any reasonable company that it amounts to a break in the chain of causation between the error and the administration. This included, as I have recorded at paragraph 28 above that the Company should have complained more vigorously than it did to Companies House. It also included a suggestion that a round robin email from the Company's accountants might have been successful. The professionals involved, Mr. Evans the solicitor and Mr. Challenger the accountant, dealt with these suggestions. Mr. Challenger said he would not have been prepared to write such an email to suppliers. That seemed to me to be sensible since it would inevitably result in questions from suppliers about whether he could say that they would be paid if they restored supplies. He could not possibly answer those questions on behalf of the Company in the firestorm which was

then raging around its future. Apart from his professional difficulties as auditor in writing such an email, the practical outcome seems to me to be highly questionable. I have dealt with what Mr. Evans said about the letter he wrote to Companies House at paragraph 28 above.

39. It would be pure speculation for me to conclude on the evidence that Corus had some other reason for its decision to terminate a very old relationship within 3 weeks of the error. The absence of evidence from Corus is a result of a decision which both parties have made not to call any witness from Corus and not to seek any third party disclosure of documents from Corus. Mr. Sebry explained why he did not take these steps and produced a letter from Corus which said that there were no documents relating to the meeting at which his Company was dismissed from the site. I do not know why the Defendants did not explore the issue as they could have done if they wished by calling witnesses under a summons or seeking documents by the same means. The result is that the evidence which I do have dictates the outcome. I conclude that on the balance of probability Corus terminated the Company's role on site because of its concerns about its future which were fuelled by rumours by that date. This is confirmed by the evidence which Mr. Sebry and others gave about the investment by Corus in harmonising IT systems very shortly before February 2009. This suggests that until the error Corus expected a long future relationship.

40. I have set out above a brief summary of the evidence about the bulk products, the 3 information dissemination systems operated by the Defendants which continued to publish the liquidation of the Company after the 23rd of February 2009. The result of this is that the Defendants' pleaded case that the error was promptly corrected fails on the facts. Even if it had been, the difficulty of stopping a rumour which has such an authoritative starting point as Companies House cannot be understated. The relevance of this to the question of causation is that there is no need to infer that there must have been some other cause for the administration because the publication was so short and quickly corrected. It was not short and it was not quickly corrected.

41. There was abundant evidence of the impact of this kind of information being on the register for even a short period of time. Mr. Eades, Mr. Huw Jones, Mr. Scheeres, Mr. Watkins, Mr. Day, Mr. Boyce, Mr. Lloyd and Mr. Challenger all spoke of this. I have no difficulty in accepting this proposition. A mistake of this kind is likely to be particularly toxic for a company like this. It was not so big as to be able to refute the rumour easily. The appearance of a winding up order on a Companies House feed in relation to a major multi-national company would probably cause little damage. It would probably not be believed and would be such major news that the truth would be on all major national media news services within minutes. Conversely a tiny company with a very low level of business may be able to speak directly to everyone who is interested in its fate very quickly. Rumours would not damage it very much because very few people will have heard of it. A company in the middle, such as the one concerned in this litigation, is probably most vulnerable. It was a well-known name in its business and in its region and so generated much interest. On the other hand it was not so big that rumours of its liquidation were thought likely to be untrue.

42. Mr. Sebry said that some people at Corus did not believe him when he sought to correct the error in early March 2009. The Graydon reports in the bundles indicate a correction was made in the long form report before that time. However, he said that when he spoke to Corus, in the person of Mr Lloyd Williams, he had a one page alert

from Graydon. I have not seen any such document, but this does not mean that it did not exist. On the contrary, it seems likely that it did. Graydon obtained its information from ICC which was a customer for the bulk products. At some stage a short alert is bound to have existed, and once it exists in hard copy it will not cease to exist because a correction to the full report is made later. The alert may have been generated while the information was "live", between 20th and 23rd of February 2009, or from the bulk products which remained inaccurate even after an attempt to rectify the position had been made. ICC was a customer for the Daily Directory Update and the Daily Liquidation Update, one of which was not corrected until 10th March 2009 and the other was not corrected until after the Company had gone into administration. There is therefore no proper basis to reject Mr. Sebry's evidence about this.

43. Apart from the information supplied to the Bank in support of the Company's application for additional overdraft funding in February 2009, the principal financial material which was examined and explained in evidence is a series of Aged Creditors Analysis documents. These are relevant to the contention that the suppliers started to behave differently after and because of the error and the figures were chiefly dealt with by Mr. Huw Jones in his evidence. He has retained a great deal of documentation belonging to the Company on his personal computer (he no longer works for it, of course as after its administration it was dissolved). This is apparently the principal source of documents concerning the Company. The Analysis documents are lists of creditors showing the balances due to each and their ages. There are columns for 4 months, being the month in which the Analysis was prepared and 3 earlier months, and there is a column for "older debts". It was not the practice to enter debts during the current month, so the current month column in each case is a list of zero or negative balances (a negative balance will arise if a debt is paid before it is entered on to the system). The system then lists the debts for the following three months and those which are older than that. The documents show that the Company did not always pay its suppliers within 30 days and that significant balances were outstanding at 90 days, and that there were some debts older than that. This was described in evidence as not abnormal, and not a cause for concern, at least while the suppliers had no reason to distrust the financial strength of the Company. Once that trust went, it meant that there were substantial debts due immediately and which were then urgently sought. In summary these documents show

DATE OF ANALYSIS	Balance	Current	Month 1	Month 2	Month 3	Older
17 December 2008	1,777,135	-263,281.14	283,508.44	786,447.45	501,360.32	469,100.08
19 January 2009	1,675,952	-107,300.71	291,085.45	576,073.21	385,438.96	530,655.20
30 January 2009	1,826,022	-18,231.82	401,178.12	713,092.97	397,667.98	332,315.49
Average of 3 above	**1,759,703**	**-129,604.56**	**325,257.34**	**691,871.21**	**428,155.75**	**444,023.59**
4 March 2009	1,017,176	-180,583.18	258,201.25	323,299.97	144,108.51	472,149.86

44. The above Table shows that on 4th of March 2009 the total balance of debt owed by the Company was well over half a million pounds less than it had been in any of the three earlier months and was nearly three quarters of a million pounds less than the average of those three months. This is the sharp fall in indebtedness which was said by Mr. Jones and Mr. Sebry to have resulted from the sudden demand by suppliers for payments. I was told of one incident where a manager employed by the Company needed some gloves so that its employees could work. The supplier refused to supply these fairly cheap items without immediate payment in full of all outstanding debts,

whether they were current or older than 30 days. The men could not work without gloves and the debt was therefore paid.

45. Mr. Jones, in evidence, produced some further documents from his computer namely HJ/2 a bank statement created by the Company's Sage Accounting system, and HJ/3 a series of Customer Activity Summaries for various customer accounts from 1st of February 2009. The Bank Statements were more illuminating. They were produced by Mr. Jones over a weekend during the trial from his computer, and had not been extensively analysed before his evidence was given. I gave a ruling on Tuesday the 18th November 2014 which appears on page 22 and following of the transcript for that day. I refused the Claimant permission to rely on this recently discovered material as part of his case, but acknowledged that if the Defendants pursued the case they had been advancing in cross-examination of other witnesses, Mr. Jones would inevitably say that he did have information which could answer those questions. The Defendants had had the material for 24 hours by that time, and had an opportunity to decide whether to ask questions which would require Mr. Jones to refer to it if he were to give a truthful answer. If that resulted in unfairness to the Defendants, I would hear submissions on whether I should decline to hear the 3rd preliminary issue but should order that it be tried with the quantum issue if I found in favour of the Claimant on the Duty Issue. In the event, Mr. Rees QC did cross-examine about the loss of cash from the Company after 20th of February 2009 and the reasons for that, and Mr. Jones did use his newly produced documents. I was not asked to take any further step to address any resulting unfairness and did not do so.

46. Mr. Jones ran his eyes over them in the witness box and identified what he called "unplanned payments" after the 20th of February 2009 which he said showed payments to suppliers which were only made because of demands of this kind and which would not have been made if the suppliers had not been behaving as they did because of the error. At page 82 of the Transcript for the 18th November 2009 in cross-examination he said:-

> "I am sure that if you do a weekly or a monthly comparison you can see that at the end of February at the beginning of March significantly more left the bank account than would normally have been the case. I would probably take a stab first three weeks after the notice was issued, three quarters of a million."

47. This was challenged and he was invited both by Mr. Rees and, in re-examination, by Mr. Freedman to identify the payments he had in mind. These were then totalled up by counsel for the purposes of their closing submissions and they came to a total of approximately £794,000. I have no reason at all to doubt Mr. Jones' identification of these unplanned payments and comparison of them and their dates with the Aged Debt Analysis, where possible, broadly supports his evidence on this issue. Mr. Jones also noted that the Bank Statement showed that the new facility was rapidly reached in March 2009 and that more cash was therefore required. The first unpaid cheque was on 25th of March 2009, which was about the time when the Company made its last effort to persuade the Bank to increase the facility again, which was refused, and therefore also about the time when the decision to place the Company into

administration had to be taken. The Bank Statement therefore entirely supports the evidence of Mr. Sebry about the history of events after the error, which was evidence he gave when he did not know it would be produced.

48. It would be possible to write many pages about the evidence which I heard on the Causation Issue. Some of it was very detailed. I do not think that any further explanation is required to show why I have come to the conclusion that the Claimant succeeds on the Causation Issue and find for the reasons I have given that the Claimant has proved that the reason why the Company went into administration in April 2009 was the error made by Mr. Philip Davies. There is no evidence of any other precipitating factor, and the suggestion made by the Defendants that actions of others or of the Company in addressing the consequences of the error were new causes which break the chain of causation between the error and the administration are without foundation.

THE DUTY ISSUE

COMPANIES HOUSE AND THE REGISTRAR

49. Companies House dates back to 1844. I am concerned with its role in February 2009. At that time full implementation of the Companies Act 2006 was under way and that work was completed in October 2009. The status of Companies House was governed by the Government Trading Act 1990 and the Government Trading Funds Act 1973. An Order was made under those provisions in 1991, SI 1991/1795, the Companies House Trading Fund Order 1991. It has been amended since February 2009, but those amendments are immaterial to any issue before me. The effect of this was to establish a fund to finance the operations of Companies House "in the interests of improved efficiency and effectiveness of the management of those operations". The operations to be funded by this means are defined in Schedule 1 to the 1991 Order as follows:-

> **"**SCHEDULE 1 THE FUNDED OPERATIONS
>
> 1. The following operations with respect to companies and other forms of business organisation required by law to register, or register information, with the registrar of companies:
>
> (a)the registration and striking off the register of such entities;
>
> (b)the regulation of the registered names of such entities;
>
> (c)the registration or recording of information required by law to be submitted to the registrar in respect of such entities;
>
> (d)the maintenance of records required by law to be kept by the registrar concerning such entities;
>
> (e)the making available for inspection of those records and the provision of copies of such records or of any information contained in or based upon those records;

> (f)the administration and enforcement of laws relating to such entities, including the consideration and pursuit of complaints about the breach of such laws;
>
> (g)the provision of guidance on matters relating to the law and practice governing such entities.
>
> 2. The regulation of business names, including the administration and enforcement of laws governing the use of business names (including the consideration and pursuit of complaints about the breach of such laws) and the provision of guidance on matters relating to the law and practice governing the use of business names.
>
> 3. Without prejudice to the foregoing, the performance by the registrar of companies of any function of his imposed on him by law as at 1st October 1991 and the performance of any functions of the Secretary of State as are performed as at that date by any officer employed within Companies House.
>
> 4. Operations incidental, conducive or otherwise ancillary to the foregoing."

50. On 28th of March 2008 the Registrar gave evidence to the Business Enterprise and Regulatory Reform Committee as part of the process which resulted in a Report HC 456 by the Business and Enterprise Committee on 21st of November 2008. The Report contains a great deal of information and records general satisfaction with the performance of Companies House, but there was a concern felt by the Committee that Companies House could do more to ensure that users of the Register clearly understood that Companies House received and registered information from third parties and carried out very few checks on it. They felt that there was a danger that some users thought that "because Companies House is an agency of government, its data can be relied upon to be authoritative – it cannot". The Report did not identify any concern about mistakes made by staff at Companies House. It contained the following information:-

> "DATA HANDLED
>
> 6. All limited companies in England, Wales and Scotland are registered at Companies House, more than 2.5 million in total. Companies House holds a huge amount of data: its database contains 315 million pages of company information. In 2005/06, 120 new companies were formed every working hour and 42 documents were processed every minute. In addition one company document was bought every 4 seconds. (See table 1)

[There is then a Table which sets out further information demonstrating the very large scale of the operation of Companies House.]

> 7. The information filed at Companies House is used by a variety of people and organisations for a mixture of purposes. For example, it can be used by a member of the public to check a company's details before buying its goods or services; and it can be used by businesses to find out about potential customers or suppliers and to monitor competition. Credit reference agencies, banks and law enforcement agencies also use the data."

51. In his evidence to the Committee, the Registrar had explained that the requirements on companies to supply information to the Register had been part of the basis on which they were granted limited liability. He said:-

> "The purpose of making that information available is really the nub of what Companies House is there to do. In order to allow business access to easy and readily accessible information, and in order to allow people to assess the performance of companies and assess the track record of directors in companies, in return for that limited liability status that information is provided. That enables people to make informed decisions about who they want to do business with, who they want to work with as their clients, who they want to work with as suppliers and who indeed they believe to have good credit, for example.
>
> …….
>
> Oh, a vast range of people use the services of Companies House. Typically, it is companies who are determining whether or not another company is a good one to do business with. Credit reference agencies use Companies House to assess the track record of directors."

52. With effect from 21st of June 2008 Companies House published a Framework Document. The Parliamentary Undersecretary of State said this in the Foreword:-

> "Companies House was only the second Executive Agency to be established, in 1988, and it has continued to evolve since then. Customer-facing Agencies are at the forefront of modernising public services and should be at the leading edge of technological change in Government.
>
> …….
>
> Trading Funds like Companies House have an important part to play in delivering Government services efficiently and effectively benefiting both companies and customers who search for company information."

53. The Framework Document sets out the aims and policy of Companies House as it then was. Full implementation of the Companies Act 2006 was under way and,

among other things, this Act introduced the concept of the "Register". There was, at the time, a move from paper to digital filing of materials. The document says, among other things:-

> "4.1 The mission for Companies House is to be the foundation of company information exchange in the UK: helping business, informing the public, benefiting the economy. The key elements of the strategy revolve around Customers – knowing its customers and recognizing their different needs."

54. Under "Performance Targets" the Framework Document says:-

> "The targets currently cover the following areas:
>
> Customer to provide high quality services (for example to resolved complaints within a specified time, to achieve a specified level of customer satisfaction and maintain a specified level of systems availability);"

55. Under "Customers" the Framework Document says:-

> "6.17 Companies House has a responsibility to all its customers and endeavours to provide them with high quality services, which represent value for money and are courteously and efficiently delivered."

56. The Annual Report of Companies House 2008/09 and the joint statement of the Registrar (referred to as the chief executive) prepared with the chief of the steering board says:-

> "Our role as an efficient mechanism for the exchange of information is especially important now – when UK businesses are experiencing difficult economic circumstances.
>
> For customers searching the register, we recognise that there is a major benefit in having a register which is accurate and gives efficient access to information essential to confident decision-making in the business community.
>
> Of course, companies filing information also benefit from this because the completeness of a company's record may influence its credit rating and the decisions of others thinking of doing business with it."

57. The Annual Report of Companies House 2008/09 contains a statement recognising:-

> "….the danger of an incomplete record damaging a company's credit rating with a potential adverse effect on its ability to do business."

58. Companies House and the Registrar publish a "Code of Compliance" brochure which explains their aims. This is a relevant document because although it post-dates the failure of Taylor & Sons Limited in April 2009 it is not suggested that anything has changed since that date. The document explains in language which is designed to be accessible what professionals have always understood to be the function and aspiration of the Registrar. I will quote some sections.

> "We are the heart of company information in the UK, recording the life events of companies for all to see. Our vision is to be a world class information exchange; accessible, easy to use and trusted."
>
> "At heart of our work at Companies House are values which reflect our determination to be customer focused in everything we do. The values are
>
> - Doing it right
> - Making a difference
> - Working together"
>
> "What you can expect from us
>
> You are entitled to expect the following from Companies House
>
> An efficient service
>
> We will achieve this by
>
> - Providing up to date information promptly and accurately…"

59. This material permits a number of findings which were canvassed with the relevant witnesses called on behalf of the Defendants, Jo Jones, Head of Policy, Marie Flowers, MBE, and Jacqueline Haralambos and accepted by them.

- The importance of Companies House is that it operates in the interest of the public generally by making information about companies available to anyone who wants it. This is an important function which enables limited liability to function fairly and therefore benefits the economy of England and Wales.

- Companies House does not seek to verify or check information which it makes available except in very limited respects. Document Examiners are employed to ensure that information provided by companies about themselves or by others providing information about companies or directors comply with the requirements of the Registrar. Their function is not to exercise any judgment about whether the contents of those documents are accurate, reliable or complete. They consider only the form of the information and not its substance.

- In carrying out this function, the Registrar and his staff understand that in addition to the benefit provided to the public generally in supporting the economy, they also provide a service to (among others) those wishing to extend credit to a company and to the company itself. The company benefits from this process because its suppliers and bankers are able to confirm details

about its existence, status and assets from the material which appears on the register.

- Inaccurate information which is created by the Registrar's staff because a mistake of processing occurs is capable of causing loss to the public generally, or a large and unascertainable class of the public, to those who decide to extend credit to a company, and also to the company itself. It is therefore important that the Registrar should exercise care and skill in ensuring that such mistakes do not occur. An inaccurate register is to be avoided by all possible means. This is not to say that he owes a duty enforceable by civil action to anyone who suffers loss as a result of inaccuracy, which I shall decide later in this judgment. It simply states what is obvious.

- This is not a situation where there are competing public or private interests which the Registrar and his staff must balance. In the area of the functions of Companies House with which I am concerned, there is only one outcome which is in the public interest. Information supplied to Companies House must not be inaccurately transcribed on to the Register. The relevant public official is not in the position of a police officer deciding what action to take after a complaint has been made of domestic violence, or a social worker deciding whether to institute care proceedings in respect of children. There is not a series of options which may all be acceptable. The public official is performing an essentially mechanical function in posting information which comes from an external source in the right place on the Register.

60. I will now deal with the evidence of Ms. Jo Jones, the Head of Strategy and Policy at Companies House. She gave evidence over two days and made a witness statement. In summary, she said that no mistake of this kind had ever happened before as far as she was aware. Her evidence was as follows:-

> "Q. are you aware of any case between 2006 and now, other than this case, when the name of a trading company was wrongly entered as having been in compulsory liquidation?
>
> A. I am not personally aware of those cases. I know by things that have been said anecdotally in Companies House that there may have been cases, but I wouldn't be able to comment on any particular case.
>
> Q. Well, what you did tell us was you'd not received any complaint about any such case, or any claim?
>
> A. Not to me or my team.
>
> Q. Or any action?
>
> A. Not to me or my team.
>
> Q. And you weren't aware of any you said as well?
>
> A. Not in the course of my formal role, no.

Q. Well, you're here as the lead witness on behalf of Companies House dealing with the evidence relating to this problem. Surely in that capacity you had caused inquiries to be made as to whether there had been any similar type of case, either before or after?

A. As far as I'm aware, there have been no similar cases that have resulted in a formal complaint.

MR JUSTICE EDIS: We did that yesterday, but what Mr Freedman is asking now is basically, whatever the result of it may have been, has this ever happened before? A. Not that I'm aware.

MR FREEDMAN: So that applies to compulsory liquidation. Let's move on from that to a creditor's voluntary liquidation. You very helpfully explain what that is in your second statement.

A. Yes.

Q. Are you aware of any creditor's voluntary liquidation wrongly posted as being in a liquidation, when in fact there hadn't been a liquidation?

A. Not that I'm aware of.

Q. And that's whether before or after February 2009?

A. Yes.

Q. You helpfully explain a member's voluntary liquidation, with a declaration of solvency. Are you aware of any mistake about a member's voluntary liquidation?

A. Not that I'm aware of.

Q. Are you aware about a company being said to have entered into administration when that was false?

A. I am aware that there's been a case in the past where we had a number of fraudulently filed voluntary arrangements which were, therefore, put against the wrong company. Well, put against a company and they were fraudulently filed.

Q. So in that type of case, both the Companies Registry and the company itself were the victims of a fraud?

A. Yes.

Q. What we're not talking about is we're not talking about some mistake in processing by Companies House, whereby

> the Companies House receives the right information and it puts the wrong information on the register?
>
> A. That's correct.
>
> Q. So no information about a mistake in Companies House leading to the identification of the wrong company in administration; that's correct, isn't it?
>
> A. It is, yes.
>
> Q. And it's correct also about voluntary arrangements?
>
> A. Yes."

61. I am confident that in the extensive investigation which must have resulted from this case any earlier examples of similar errors would have been uncovered. Given the very large number of entries which have therefore been made over many years it follows that it is not very difficult to avoid such errors. If it was difficult, there would have been more than one since records began. This is confirmed by a document at page 207-209 of Bundle D3. This is the result of sampling by Companies House designed to assess its Data Capture Accuracy Performance, which is a matter of fundamental importance to its success as an organisation. It covers the 5 years 2008/09 to 2012/13, although there are no figures for 2010/11. It shows that where information is entered having been received on paper documents 98.40% of entries were free of Policy Errors in 2008/09, 96.6% in 2009/10, 97.4% in 2011/12 and 97.5% in 2012/13. I was told that the error with which I am concerned would be described as a Policy Error for this purpose, but it is not the only kind of Policy Error which can occur. If that is wrong, then the overall accuracy result to include other kinds of error is somewhat lower and is about 95% for each of the years covered. Where documents are submitted to Companies House digitally the number of entries free of Policy Errors rises to 100% and the overall percentage of pieces of work free of any error of any kind to a little over 99%, see page 209.

62. Therefore, I proceed on the basis that the kind of error with which I am concerned is very rare, or unprecedented, which can only be because it is easy to avoid.

63. Ms. Jones dealt also with the important question of what the adverse consequences might be to the public interest, or to any competing private interest, of the imposition of a duty of care to avoid placing an entry on the Register showing that a company was in liquidation when it was not. She deals with this in paragraphs 36-39 of her witness statement. She principally says that the result would be to slow down processes in order to include more checks to eradicate mistakes, and that this would require extra funding". She says that this would "impact on the economy, as information would take longer to reach the Register". She says also that extra provision would have to be made for claims resulting from "mistakes that are inevitable in any organisation as large as this one." Perhaps surprisingly, she says two things:-

- That no detailed analysis has been carried out on the financial mechanism of the Trading Fund to ascertain how any type of potential liability of this nature could be funded and managed.

- That the Registrar would, if such a duty were held to exist, have to consider how he processed documents and what further checks would need to be in place to eradicate the risk of another claim of this sort.

64. The reason why this is surprising is that it might be expected that in view of this event and the subsequent claim an organisation like Companies House would undertake some contingency planning to establish a means of funding such liabilities as may be held to exist, and to undertake an exercise to eradicate errors in the future whether there is a duty or not. In fact, in the present context, the staff in the Insolvency Section have reacted to the case, as I have already said, by applying the Trove Policy and insisting that they are provided with the company number by the external provider of information. I was also told that there is an increased amount of checking of work by supervisors. It is enough to record, perhaps, that this evidence is a long way short of establishing serious adverse consequences from the imposition of a duty of care. Companies House is self-funding and charges fees. If it is under any legal liability to companies to ensure that the information recorded against them is recorded against the company referred to in the information supplied and not to another company, then it will have to adjust its fee structure and seek insurance against the risk. Ms. Jones was asked about the availability of insurance and said that she did not know, see the transcript for 19th of November 2014 and pages 140-143. Increased cost resulting from the imposition of a duty is a relevant factor in deciding whether a duty should be imposed, no doubt, but it is not a weighty one. It will be balanced by the loss to the person who has been damaged by the carelessness of the putative tortfeasor.

65. Ms. Jones was asked in cross-examination to expand somewhat on her written evidence about the possible adverse consequences of a duty of care. She said this:-

> "Q. Have you worked out what -- if this court were to hold that there was a duty of care, what further checks would be required to eradicate the risk or to reduce the risk?
>
> A. Firstly, I should say we don't consider that we could ever completely eradicate the risks; so we are talking about what could be done to reduce it. We have done some work on what other measures could be put in place; and that, of course, assumes that there are measures that can be put in place. Those would be the sort of things that I was referring to, before, where we entered data twice; where two people did something and we compared the results. It would be activities such as that.
>
> Q. But you wouldn't -- it wouldn't take very much, would it, just to have some form of supervision to make sure that there wasn't wide scale disregard of policies of the Registrar?
>
> A. And that supervision, I believe, exists now. I have said that I believe that the policies are followed. So the question would

> be: what else would we need to put in place, given that we accept that with human beings carrying out these activities, there will be mistakes from time to time? So it's about what we would do, to try to, as near as we could, eradicate mistakes.
>
> Q. So you have addressed the matter by making sure that policies of the Registrar, such as the TROVE examination policy, are followed?
>
> A. We have, in terms of following the policy. That doesn't mean that we have eliminated any potential risk"

66. It is fair to conclude from this evidence taken as a whole that additional supervision, checking and sampling could reduce the already very low risk still further. It could not eradicate all risk. These steps would all be possible, but might involve additional cost. This would be money spent on the principal duty of the Defendants, namely the keeping of an accurate Register, rather than on some unproductive sideline. There is no evidence that the raising of this money and the obtaining of insurance if thought necessary would adversely affect the quality of the service provided by the Defendants, nor that it would be impossible.

67. After I gave leave to amend the Particulars of Claim to restate the duty contended for both at common law and under the statute Ms. Jones produced a second witness statement in which she explained that the apparent narrowing of the scope of the duty in the new pleading did not in reality narrow the scope at all. The importance of the evidence coming from the defendant in a case where the existence of a duty of care arising out of the careless performance of a statutory duty was emphasised by Lord Browne-Wilkinson in *X (Minors) v Bedfordshire CC* [1995] 2 AC 633 at 741 B-D when he explained why such issues should be decided at trial rather than on an application to strike out the claim. The evidence which I have heard concerns the activity of the insolvency section of the Companies House operation, and the recording of winding up orders. This case concerns the making of a false statement that a company was the subject of a compulsory winding up order and was therefore insolvent. If that had been true and if it was still trading (it was) it may therefore have been doing so fraudulently. On these facts foreseeability of harm is obvious if the statement was untrue. Whether that is so in the case of other types of entry on the Register will be the subject of evidence and argument in cases concerning that type of entry and nothing in this judgment indicates in any way what the outcome of any such case may be. For example, it would not follow from the imposition of a duty in this case that harm would be foreseeable when entering the name of a company secretary in relation to the wrong company. Similarly, when I approach the issue of proximity it will be simply on the question of whether there is a sufficient relationship between the Registrar and the Company when a winding up order is entered against it. It would not follow from the imposition of a duty in this case that any duty was owed to any of the very large class of unascertainable persons who may suffer loss by learning of false information about a company as result of an error made by Companies House. Whether Ms. Jones is therefore right about the fears she expresses in her second statement is a matter of law. It is an entirely legitimate exercise for her to point out the ramifications of the duty contended for, because if they are unacceptably wide that would be a reason for holding that it was not fair, just and reasonable to impose the duty. I return to this subject later in this judgment.

68. The evidence from the Defendants does not establish that any discretionary decision was involved in this case. The carelessness fell into two parts namely failing to follow the Trove Policy and then misreading the document and the CHIPS system. Obviously no discretionary decision was involved in the latter careless act. It is also clear, on the evidence, that no discretionary decision was involved in the failure to implement the Trove Policy. Neither Mr. Grant nor Mr. Davies were authorised to decide whether to ignore instructions from senior management such as those in the Trove Policy. No-one is said to have deliberately decided not to train staff in the Trove Policy for some policy reason between 2003 and 2009.

THE STATUTORY FRAMEWORK OF THE REGISTRAR'S FUNCTION

69. Part 35 of the Companies Act 2006 establishes the Register. The Companies Act 1985 did not use that term. The provisions of the 2006 Act are not reflected in the 1985 Act and one reason for that is the vastly increased use of computerised systems which occurred between 1985 and 2006. Section 1068 of the 2006 Act provided:-

> **"1068 Registrar's requirements as to form, authentication and manner of delivery**
>
> (1) The registrar may impose requirements as to the form, authentication and manner of delivery of documents required or authorised to be delivered to the registrar under any enactment.
>
> (2) As regards the form of the document, the registrar may–
>
> (a) require the contents of the document to be in a standard form;
>
> (b) impose requirements for the purpose of enabling the document to be scanned or copied.
>
> (3) As regards authentication, the registrar may–
>
> (a) require the document to be authenticated by a particular person or a person of a particular description;
>
> (b) specify the means of authentication;
>
> (c) require the document to contain or be accompanied by the name or registered number of the company to which it relates (or both)."

70. In July 2009 (with effect from October 2009) section 1068(3) was amended so that it reads:-

> "(c) require the document to contain or be accompanied by the name or registered number (or both) of the company (or other body) to which it relates."

71. Section 1072 provides:-

> **"Requirements for proper delivery**
>
> (1) A document delivered to the registrar is not properly delivered unless all the following requirements are met—
>
> (a) the requirements of the provision under which the document is to be delivered to the registrar as regards—
>
> (i) the contents of the document, and
>
> (ii) form, authentication and manner of delivery;
>
> (b) any applicable requirements under—
>
> section 1068 (registrar's requirements as to form, authentication and manner of delivery)……"

72. Section 1073 provides:-

> **"Power to accept documents not meeting requirements for proper delivery**
>
> The registrar may accept (and register) a document that does not comply with the requirements for proper delivery."

73. Section 1080 as it was at the relevant time provided:-

> **"1080 The register**
>
> (1) The registrar shall continue to keep records of–
>
> (a) the information contained in documents delivered to the registrar under any enactment,
>
> (b) certificates of incorporation issued by the registrar, and
>
> (c) certificates issued by the registrar under section 869(5) or 885(4) (certificates of registration of charge).
>
> (2) The records relating to companies are referred to collectively in the Companies Acts as *"the register"*.
>
> (3) Information deriving from documents subject to the Directive disclosure requirements (see section 1078) that are delivered to the registrar on or after 1st January 2007 must be kept by the registrar in electronic form.
>
> (4) Subject to that, information contained in documents delivered to the registrar may be recorded and kept in any form the registrar thinks fit, provided it is possible to inspect it and produce a copy of it.

> This is sufficient compliance with any duty of the registrar to keep, file or register the document or to record the information contained in it.
>
> (5) The records kept by the registrar must be such that information relating to a company is associated with that company, in such manner as the registrar may determine, so as to enable all the information relating to the company to be retrieved."

FIRST PRELIMINARY ISSUE: THE LAW

74. This is an area of law which has been the subject of continuous development since *Hedley Byrne v. Heller* [1963] 2 AC 465 was decided on 28th May 1963. That case constituted a significant extension of the law of negligence and its ramifications continue to be worked out. Liability exists where a person chooses to make a statement and does so carelessly causing economic loss. Alongside that development, the law has grappled with the principles by which claims for loss attributable to careless exercise of statutory powers or duties. Public bodies have been subject to claims which have caused the higher courts to engage in a debate between generations of judges creating a principled body of law. All the while Parliament has no doubt been aware of this and there is evidence in the statute book of Parliament providing for immunity from suit in certain instances. The Companies Act 2006 was enacted at a time when this problem was well known, and had been for decades. It contains no immunity from suit for the Registrar.

75. The milestones of this process are well known, and I have been provided with over 1,000 pages of authority. There is little purpose in a judge at first instance attempting to improve on the account of this epic legal process given by the higher courts, repeatedly, as they have grappled with different manifestations of the problem. It is enough to say that I have read, in many cases not for the first time, the authorities which have been cited. I will identify the decisions which have been most helpful in reaching a decision in this case and thereby explain my reasoning.

76. Lord Browne-Wilkinson in *X (Minors) v Bedfordshire CC* [1995] 2 AC 633 at 731 said:-

> "The principles applicable in determining whether such statutory cause of action exists are now well established, although the application of those principles in any particular case remains difficult. 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] A.C. 398; *Lonrho Ltd. v. Shell Petroleum Co. Ltd. (No. 2)* [1982] A.C. 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. Wimbome (Lord)* [1898] 2 Q.B. 402."

And at 734-735 he said:-

> "In my judgment the correct view is that in order to found a cause of action flowing from the careless exercise of statutory powers or duties, the plaintiff has to show that the circumstances are such as to raise a duty of care at common law. The mere assertion of the careless exercise of a statutory power or duty is not sufficient."

77. The mechanisms for determining whether there is a common law duty of care have been extensively considered. The shift from *Anns v. London Borough of Merton* [1978] AC 728 to *Caparo Industries v. Dickman* [1990] 2 AC 605 and *Murphy v. Brentwood* [1991] AC 398 perhaps began with the decision of the Privy Council in *Yuen Kun Yeu v. The Attorney General of Hong Kong* 1988 1 AC 175. This case has some factual similarity to the present and requires some consideration. The Commissioner of Deposit-taking Companies in Hong Kong registered a company as a deposit-taking company pursuant to section 10 of the Deposit-taking Companies Ordinance. The company subsequently went into liquidation. The plaintiffs, who lost the moneys they had deposited with the company, brought an action for damages for negligence against the Attorney-General of Hong Kong, representing the commissioner, alleging that they had made the deposits in reliance upon the company's registration and that the commissioner knew or ought to have known had he taken reasonable care that the company's affairs were being conducted fraudulently, speculatively and to the detriment of its depositors, that he should have ensured the company's compliance with the Ordinance, and that he ought not to have registered the company or that he should have revoked its registration, under section 14(1) of the Ordinance before the plaintiffs made their deposits. The claim failed on two grounds, first that there was no sufficient relationship between the commissioner and the plaintiffs to give rise to a duty of care. The decision was not framed using the word "proximity" because it pre-dated *Caparo* but it was in emphasising that element of the kind of relationship which can create a duty that the Privy Council moved the law away from *Anns.* The second ground of the decision was that the commissioner

had not in fact made any representation as to the status of the company on which the plaintiffs were entitled to rely. That was a case, unlike the present, where the damage was said to have been caused to the plaintiffs because they relied on what they said was a statement made by the defendant.

78. The most recent and comprehensive analysis by the House of Lords came in *Commissioners of Customs & Excise v. Barclays Bank plc* [2007] 1 AC 181. In that case the Claimant attempted to sue the Bank for damages. The Bank had been given notice of a freezing order obtained by the Claimant and carelessly allowed assets of its customer to be dissipated in breach of the order, causing economic loss to the Claimant. The claim failed because it was held that the Bank owed the Claimant no duty of care to comply with the order. That was a duty imposed by the court and punishable as a contempt, but this did not give rise to any liability in damages.

79. There have been broadly three approaches to the determination of the existence or otherwise of a duty of care at law. Incrementalism (essentially argument from precedent), assumption of responsibility and the "three stage *Caparo* test". The meaning of these concepts and their relationship with each other had been controversial, and the House of Lords in the *Customs & Excise* case explained where the law had reached. Lord Hoffmann said:-

> "The question of whether the order can have generated a duty of care is comparable with the question of whether a statutory duty can generate a common law duty of care. The answer is that it cannot: see *Gorringe v Calderdale Metropolitan Borough Council* [2004] 1 WLR 1057. The statue either creates a statutory duty or it does not (that is not to say, as I have already mentioned, that conduct undertaken pursuant to a statutory duty cannot generate a duty of care in the same way as the same conduct undertaken voluntarily)."

80. In paragraphs 5-8 of the Opinion of Lord Bingham he made 5 "general observations". I will not set them out in full, but will summarise them. Lord Bingham suggests that the judge should start with assumption of responsibility. This should be judged objectively, and is a sufficient but not necessary condition of liability. If answered in the affirmative a duty will be found, if not, further consideration is necessary. That further consideration involves an application of the three stage *Caparo* test, which is not without difficulty. The incremental test has little value as a test in itself. If the facts of the present case are similar in legally significant ways to an earlier case where a duty has been found, then the two other tests will more easily be held to have been satisfied. Lord Bingham's final observation was:-

> "Fifthly, it seems to me that the outcomes (or majority outcomes) of the leading cases cited above are in every or almost every instance sensible and just, irrespective of the test applied to achieve that outcome. This is not to disparage the value of and need for a test of liability in tortious negligence, which any law of tort must propound if it is not to become a morass of single instances. But it does in my opinion concentrate attention on the detailed circumstances of the particular case and the particular relationship between the

> parties in the context of their legal and factual situation as a whole."

81. Lord Hoffmann suggested that the terms which describe the tests are slogans rather than helpful analytical tools and explained the phrase "assumption of responsibility" doubting its utility in some cases where others had found it helpful. He continued at paragraph 38 in an important passage in the context of the present case:-

> "Even in this context, however, the notion of assumption of responsibility serves a different, weaker, but nevertheless useful purpose in drawing attention to the fact that a duty of care is ordinarily generated by something which the defendant has decided to do: giving a reference, supplying a report, managing a syndicate, making ginger beer. It does not much matter why he decided to do it; it may be that he thought it would be profitable or it may be that he was providing a service pursuant to some statutory duty, as in *Phelps v Hillingdon London Borough Council* [2001] 2 AC 619 and *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223."

82. Lord Walker in *Customs and Excise* at para 73, said:-

> "But in the modern context the word "voluntary" is being used, it seems to me, with the connotation of "conscious", "considered" or "deliberate". That appears, for instance, in *White v Jones* [1995] 2 AC 207 , both in the speech of Lord Browne-Wilkinson, at p 274, and in the dissenting speech of Lord Mustill, at pp 286–287. That is particularly important in considering whether the defendant has undertaken responsibility for economic loss towards anyone other than the person or persons with whom he is in an obviously proximate relationship. In such cases the voluntary assumption of responsibility towards others, judged objectively, may provide the necessary proximity…"

83. In the same case at paragraphs 94-111, Lord Mance recognises cases where there has been found to be liability without a voluntary assumption of responsibility. He decided the case on the basis of the third limb of *Caparo*, namely that which was fair, just and reasonable. He then regarded as decisive the issue of an assumption of responsibility, but he echoed Lord Hoffmann remarking *"Here, the bank has not been entrusted by statute or otherwise with the provision of any public service."*

THE SUBMISSIONS

84. It is the Registrar's contention that in his originally pleaded case the Claimant asserts that the duties as alleged are owed by the Registrar to every one of the approximately three million companies on the Register at any one time, and they relate to all information "*relating to*" those companies on the Register. The duties for which the Claimant contends in this part of his claim are not limited to the recording of particular types of information, whether concerning liquidation or otherwise; nor has he sought to limit the scope of the duty by reference to any concept of foreseeability

of damage. The Registrar says that albeit the type of document is apparently narrowed in the amended case the use of the connected phrase "*processed*" results in a duty which is wide.

85. It is the Registrar's case that when considering whether a duty of care arises of the type for which the Claimant contends, it will be appropriate for this Court to consider whether the logic underpinning such a duty in the context of the Registrar of Companies would extend to the imposition of a similar duty on other public bodies which keep registers of information in the public interest. I have referred to the evidence about this at paragraph 67 above and to the limits on the scope of the decision which I have to take. This approach to an argument based on the suggested wide scope of a proposed duty of care (sometimes referred to as the "floodgates argument") is conventional. In *Spring v Guardian Assurance* [1995] 2 AC 296 Lord Lowry at p.327B said:-

> "It is in the tradition of the English case law method to decide this appeal on its facts and not to be deterred by reflecting on all the possible situations in which a reference might be called for."

Similarly, Lord Slynn at [p.336F-G] said:-

> "Nor does it follow that if a duty of care is recognised in some situations it must exist in all situations. It seems to me that for the purposes of deciding whether the law recognises the duty as being fair, just and reasonable there may be a difference between the situation where it is an employer or ex-employer who gives a reference and the situation where a reference is given by someone who has only a social acquaintance with the person the subject of the reference. There may be difficult situations in between but these will, as is the common practice, have to be worked out in particular situations."

86. The Registrar relies on the discussion of *Anns v. London Borough of Merton* [1978] AC 728 and *Murphy v. Brentwood* [1991] AC 398 in *Reeman v Department of Transport* [1997] PNLR 618 at 633-636. In *Reeman* the Court of Appeal decided that no duty of care was owed to a purchaser of a vessel which had been negligently certified as seaworthy while owned by another person. The Court considered the scope of the duty contended for and applied the more restrictive approach to this exercise which originated in *Murphy v. Brentwood.* It is of some interest that Phillips LJ, with whom the other members of the court agreed before adding some additional reasons of their own, held only that it was "at least arguable that no duty of care is owed to the owner of a vessel in relation to the process of survey and certification" see Phillips LJ at page 629D. This illustrates that a decision that a duty is, or is not, owed to a particular Claimant does not mean that the same result follows in respect of a Claimant who is in a different position. That decision rested on the requirements of proximity and the "fair, just and reasonable" element of the *Caparo* test. The approach to assumption of responsibility is of interest in the present context. Peter Gibson LJ addressed that concept more fully than the other members of the court and said at 637B:-

> "However, Mr Ullstein also argues that the alternative test of assumption of responsibility, which was applied in cases such as *Henderson v. Merrett Syndicates Ltd* [1995] 2 AC. 145, was also satisfied. For my part, I have some difficulty in seeing how that can be the appropriate test in a case such as the present where there is no contract between the plaintiffs and the Department, nor a situation the equivalent of contract, particularly if the adjective 'voluntary' is applied to 'assumption' as it sometimes is, given that the Department was acting under a statutory duty imposed upon it. I have even greater difficulty in seeing how the Department could be said to have assumed responsibility to the plaintiffs by issuing the certificates when the Department in 1977 and 1986 was at the request of the owner of the vessel performing that statutory duty and could not have known who, whether corporations or individuals during the currency of the certificate, might become the successors in title to that owner. The circumstances of the present case are wholly different from those, for example, of the managing agents providing services for the identified names in the *Henderson* case or the solicitor drafting a will under which identified beneficiaries were intended to take in *White v. Jones* [1995] 2 AC. 207, in which cases the defendants were found to have assumed responsibility to the plaintiffs."

87. *Reeman* is a case on which the Registrar places considerable weight. Three strands in the decision therefore need to be emphasised.

88. First, Phillips LJ analysed the purpose for which the statutory certification system existed, namely to promote safety at sea and not to provide a pre-purchase survey service for commercial organisations who might later decide to buy the vessel. The Claimant had used the certificate for a fundamentally different purpose from that for which it was created. In the present case the Company did not use the misstatement at all, in the sense that it did not rely on it. It suffered injury because other people relied on it. They used it for exactly the purpose for which it was intended, namely by placing in the public domain information supplied by third parties about the Company's financial position to enable the business community to decide whether to trade with the Company and, if so, on what terms.

89. Secondly, the class of persons who might become entitled to rely on the duty if one were owed was not ascertainable at the time of the negligent statement. This defeated the claim on the proximity element of the *Caparo* test. At 638A Peter Gibson LJ put the matter in this way:-

> "Lord Bridge indicated what he meant when he quoted with approval the words of Denning L.J. in *Candler v. Crane, Christmas* & *Co.* [1951] 2 K.B. 164 at pages 180-181:
>
> > "Secondly, to whom do these professional people owe this duty? I will take accountants, but the same reasoning applies to the others. They owe the duty, of course, to their employer or client and also I think to any third person to whom they

> themselves show the accounts, or to whom they know their employer is going to show the accounts, so as to induce him to invest money or take some other action on them. But I do not think the duty can be extended still further so as to include strangers of whom they have heard nothing and to whom their employer without their knowledge may choose to show their accounts. Once the accountants have handed their accounts to their employer they are not, as a rule, responsible for what he does with them without their knowledge or consent. ... The test of proximity in these cases is: did the accountants know that the accounts were required for submission to the plaintiff and use by him?"

> In my judgment the members of the identifiable class must be capable of identification at the time of the making of the negligent statement. It is not sufficient that the plaintiffs should be members of a generic class capable of description at that time, whether as potential purchasers or successors in title of the owner who asks for the certificate. That would be to create a potential liability to an open-ended class and I observe that in *Smith v. Bush* [1990] 1 A.C. 831 at 865, Lord Griffiths, in finding that a duty of care was owed by a prospective mortgagee's valuer to the prospective mortgagor, limited to that prospective mortgagor the extent of the liability and was not prepared to extend liability to protect subsequent purchasers."

90. Thirdly, the Court of Appeal distinguished *White v. Jones.* I have set out what Peter Gibson LJ said above, and Phillips LJ said this:-

> "Mr Ullstein submitted that justice required the existence of a duty of care in the present case, because no alternative avenue of redress was open to Mr and Mrs Reeman. In this, he submitted, the present case resembled *White v. Jones.* I do not find the comparison valid. *White v. Jones* involved the question of whether a solicitor who was instructed to draw up a will owed a duty of care in tort to the proposed beneficiaries under it. In such a situation, were a duty of care not owed, no alternative remedy would ever be available to the beneficiaries. In a case such as the present, however, it will always be open to a party entering into a commercial transaction in relation to a certificated vessel to take steps, such as surveying the vessel or stipulating for contractual warranties, that will provide protection against the risk that the certificate does not reflect the true condition of the vessel."

91. The position of the Company in the present case is in this respect, in my judgment, comparable to that of the beneficiaries under the will. They had no way of protecting themselves against the loss of a gift under a will when they were not parties to the arrangement under which it was drawn up. The Company had no way of protecting itself against harm resulting from the promulgation of a false statement that it was in liquidation. That there is a conceptual similarity between the Company and the

disappointed beneficiaries is perhaps shown by the importance of the decision in *Ministry of Housing and Local Government v. Sharp* [1970] 2 Q.B. 223 to the decision in *Ross v. Caunters* [1980] Ch 297, *White v. Jones*' famous predecessor. *Sharp* is an important case in the present argument and I shall return to it later.

92. One insight supported by this comparison is that there is a distinction between the Company, about whom a statement is made by others, and the users of the Register at large who obtain and use the information on it. Those users know that false information appears on the Register for a wide variety of reasons, and Companies House published a disclaimer which makes it clear that it publishes information supplied to it by others and does not warrant the accuracy of it. They have ways of checking information before they act on it in a commercial environment. A company about whom a statement is made and a disappointed beneficiary have in common the fact that they are blameless and defenceless victims of an act of carelessness in which they have no role at all.

93. If it is right that there is some similarity between the position of the Company and the beneficiaries in *White v. Jones*, it is necessary to consider that decision to test the extent to which it affords any assistance to the Company. Mr. Rees QC, in his closing submissions relies on this decision as support for his case. He cites Lord Browne-Wilkinson at 274F:-

> "The law of England does not impose any general duty of care to avoid negligent misstatements or to avoid causing pure economic loss even if economic damage to the plaintiff was foreseeable. However, such a duty of care will arise if there is a special relationship between the parties. Although the categories of cases in which such special relationships can be held to exist are not closed, as yet only two categories have been identified, viz. (1) where there is a fiduciary relationship; and (2) where the defendant has voluntarily answered a question or tenders skilled advice or services in circumstances where he knows or ought to know that an identified plaintiff will rely on his answers or advice. In both these categories the special relationship is created by the defendant voluntarily assuming to act in the matter by involving himself in the plaintiff's affairs or by choosing to speak."

94. Mr. Rees says that the actions of the Registrar in receiving information from third parties and recording it on the Register in accordance with his statutory function do not fall within either of the two categories identified in *White v Jones*. There is no fiduciary relationship between the Registrar and the Company and there was no tendering of advice by the Registrar, whether voluntarily or otherwise. The effect of the Claimant's claim would be, therefore, to add a further category of common law liability to those recognised by the law to date: namely "*where a public body publishes information about the defendant in accordance with a statutory duty*." I observe that there is a danger in relying too closely on statements in the authorities which concern cases where the damage was suffered as a result of the Claimant relying on a negligent misstatement which is not the case here. This is a point made by Lord Browne-Wilkinson when reviewing *Hedley Byrne* in *White v. Jones* at 272D:-

> "Second, since this House was concerned with cases of negligent misstatement or advice, it was inevitable that any test laid down required both that the plaintiff should rely on the statement or advice and that the defendant could reasonably foresee that he would do so. In the case of claims based on negligent statements (as opposed to negligent actions) the plaintiff will have no cause of action at all unless he can show damage and he can only have suffered damage if he has relied on the negligent statement. Nor will a defendant be shown to have satisfied the requirement that he should foresee damage to the plaintiff unless he foresees such reliance by the plaintiff as to give rise to the damage. Therefore although reliance by the plaintiff is an essential ingredient in a case based on negligent misstatement or advice, it does not follow that in all cases based on negligent action or inaction by the defendant it is necessary in order to demonstrate a special relationship that the plaintiff has in fact relied on the defendant or the defendant has foreseen such reliance. If in such a case careless conduct can be foreseen as likely to cause and does in fact cause damage to the plaintiff that should be sufficient to found liability."

95. Further, Lord Browne-Wilkinson's dictum cited by Mr. Rees and set out above at paragraph 93 does not mean that there are only two categories of case where such a duty arises, since Lord Browne-Wilkinson went on to point out that the case before him was not in either of those categories, but to hold that there was a duty nonetheless. He said that the law is not "ossified", see 275D. It is perhaps also worth pointing out the sentence immediately prior to the passage quoted by Mr Rees reads:-

> "Let me now seek to bring together these various strands so far as is necessary for the purposes of this case: I am not purporting to give any comprehensive statement of this aspect of the law."

96. As I have indicated above, those users of the Register who did rely on the statement are not in the same position as the Company, who did not. Some of those users will have suffered economic loss by doing so in that they cancelled profitable hire contracts (for example) when they did not need to, and, had they known the truth, they would not have done so. If any of them were to make a claim, they would face formidable difficulties of the kind which defeated the claim in *Reeman*. Similarly, individuals whose livelihood depended on the Company may also have suffered financial loss because of its failure. They would form part of a large class of people whose financial interest may be affected in some way by the fate of the Company. Claims by them would also face serious difficulty because that class would be unascertainable at the time of the negligence. Claims of that kind would fall foul of the decision of the Privy Council in *Yuen Kun Yeu v. Attorney General of Hong Kong* [1988] 1 AC 175 to which I have referred above.

97. Mr. Rees says about *White v. Jones* that it required an extension of the law. In that he is right. The majority, he submits, justified this by equating the obligation owed to an intended beneficiary to a similar status to that of a fiduciary nature which has no application to the case now before the Court. In my judgment the decision in *White v.*

Jones cannot be restricted so narrowly. First, neither Lord Goff nor Lord Nolan mentioned the concept of fiduciary duty in their speeches. Secondly, Lord Browne-Wilkinson said at 271C:-

> "In my judgment, there are three points relevant to the present case which should be gathered from *Nocton's* case. First, there can be special relationships between the parties which give rise to the law treating the defendant as having assumed a duty to be careful in circumstances where, apart from such relationship, no duty of care would exist. Second, a fiduciary relationship is one of those special relationships. Third, a fiduciary relationship is not the only such special relationship: other relationships may be held to give rise to the same duty."

98. Lord Browne-Wilkinson then embarked on an analysis of the nature of a fiduciary duty to enable a principle to be developed which would determine what other relationships may be sufficiently "special" to give rise to a duty. Naturally in the context of an extension of the solicitor's duty (which included fiduciary duties) to other parties, the nature of the duty owed to his client was the starting point. In the present case, however, the court is not concerned with extending a duty owed by the defendant to A to a duty owed also to B. The issue is whether a duty was owed at all, to anyone. Therefore the reasoning of Lord Browne-Wilkinson analysing the nature of the admitted duty to see whether it justified an extension is not necessary in this case.

99. Lord Nolan, the third member of the majority, expressed himself in brief and illuminating terms. First he said at 292F:-

> "My Lords, I would dismiss this appeal. I would do so because, on the basis of the simple facts found by the Court of Appeal—namely that each of the respondents lost at least £9,000 in consequence of the appellants' inexcusable delay in drawing up a fresh will for Mr. Barratt—the respondents' claim appears to me to satisfy the criteria laid down by the decisions of your Lordships' House in *Caparo Industries Pic.* v. *Dickman* [1990] 2 A.C. 605 and *Murphy v. Brentwood District Council* [1991] 1 A.C. 398."

100. Later in his judgment, at 293F Lord Nolan said this (with two passages underlined by me):-

> "They stem from the appellants' argument that the decision under appeal extends tortious liability into what should be the exclusive domain of contract. The force of this argument has of course been substantially diminished by the intervening decision of your Lordships' House in *Henderson v. Merrett Syndicates Ltd.* [1995] 2 A.C. 145 which shows that a contractual duty of care owed by the defendant to A may perfectly well coexist with an equivalent tortious duty of care to B. Both duties depend upon an assumption of responsibility by the defendant. In the former case the responsibility is assumed

> by the making of the contract and is defined by its terms. In the latter the responsibility is assumed by the defendant embarking upon a potentially harmful activity and is defined by the general law. If the defendant drives his car on the highway, he implicitly assumes a responsibility towards other road users, and they in turn implicitly rely on him to discharge that responsibility. By taking his car on to the road, he holds himself out as a reasonably careful driver.
>
> In the same way, as it seems to me, a professional man or an artisan who undertakes to exercise his skill in a manner which, to his knowledge, may cause loss to others if carelessly performed, may thereby implicitly assume a legal responsibility towards them. The fact that he is doing so in pursuance of a contractual duty or a statutory function cannot of itself exclude that responsibility. The most that can be said is that it may be one of the circumstances to be taken into account in determining the nature and extent of the responsibility."

101. There is no doubt that all three members of the majority in *White v. Jones* concentrated firmly on the factual context of the case before them. They regarded it as obvious that in the context of a family solicitor dealing with wills where the bequests were often small but much needed a duty should be imposed if this could be done without doing violence to established legal principle. The case turned in the end on their willingness to enlarge the concept of "assumption of responsibility" to provide the solution where a relationship existed between the Claimant and the Defendant which was in some way "special" so that by undertaking a task at the request of the testator (in that case) the solicitor assumed responsibility for doing that task carefully to those whom it was intended to benefit, even though the solicitor may never have had any dealings with them at all. The reason why the tortfeasor had decided to make himself responsible for doing the task was not of much importance, at least to Lord Nolan. His reference to a statutory function underlined by me in the passage at paragraph 100 above should be read in conjunction with the statement of Lord Hoffmann in the *Customs and Excise* case cited at paragraph 79 above. The difficulty expressed by Peter Gibson LJ in *Reeman* (paragraph 86 above) in accepting that a person performing a statutory duty could be said to have assumed responsibility for the task and thus become subject to a duty of care may have been reduced had he had the benefit of Lord Hoffman's speech.

102. The last cases which I wish to mention at this stage are *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223 and *St John Poulton's Trustee in Bankruptcy v Ministry of Justice* [2011] Ch 1. These cases both have a real factual similarity to the present. They produced different answers. In *Sharp* Mr. Sharp was the local land registrar charged by statute with keeping the local registry, and where requested searching it and issuing a certificate setting forth the result. A clerk was seconded by Hemel Hempstead Rural District Council to assist Mr Sharp with this work. The clerk negligently issued an inaccurate certificate to a prospective purchaser of land, omitting any reference to a claim to reimbursement of compensation which the Ministry had against the seller. The effect was to extinguish the right which the Ministry would otherwise have had to pursue its claim against the purchaser. It was

conceded that, if the clerk was liable in negligence to the Ministry, then the council was vicariously liable for its clerk. The Court of Appeal held that the clerk was so liable. Lord Denning MR, at p 268F-G, did not agree that a duty of care could only arise when there was a voluntary assumption of responsibility. Salmon LJ said, at p 279:-

> "It has been argued . . . that since the council did not voluntarily make the search or prepare the certificate for their clerk's signature they did not voluntarily assume responsibility for the accuracy of the certificate and accordingly owed no duty to the minister. I do not accept that, in all cases, it necessarily depends upon a voluntary assumption of responsibility."

103. He added that he was anyway far from satisfied that the council did not voluntarily assume responsibility in circumstances where they had chosen to discharge this somewhat pedestrian task through their clerk, so that their registrar might be left free to carry out other far more difficult and important functions on their behalf. Cross LJ, at p 291B saw:-

> "No sufficient reason why in an appropriate case the liability should not extend to cases in which the defendant is obliged to make the statement which proves to be false."

104. In *St John Poulton's Trustee* the failure of the Court to give notice of a bankruptcy order to the Land Registry could not found a cause of action in negligence because the omission in that case was based simply on a failure to act in accordance with the statute. Lloyd LJ distinguished *Sharp* at paragraph 95 as follows:-

> "Mr Ullstein relied on Sharp's case by analogy, submitting that the employee of the council for whose fault the council was found to be vicariously liable was only doing that which was required by the Act. The difference is that the employee was carrying out a search of the register and issuing a certificate as to the result of that search. Either in the search or in recording its result, the employee was careless by not noticing or not recording the relevant local land charge. That is quite different from the fault alleged in the present case of not sending to the Chief Land Registrar a notice of the petition and a request to enter it in the register of pending actions. There might, I suppose, be a case where a fault could arise under the rule through careless performance of the statutory duty, for example, if the notice gave the wrong name for the debtor. I do not need to consider what the position would be in that case. The present case is simply that of not giving the notice at all, not of trying to do so but failing to do so properly and effectively through lack of care or attention."

105. I have noted Lord Hoffmann's citation of *Sharp* in the *Customs & Excise* case at paragraph 81 above and observe that although it has been a controversial case, and important in the development of the law of negligence particularly in the context of statutory duties, it has never been held to have been wrongly decided. There have

been many occasions when that could have happened, had it been the case. On the contrary, *Sharp* was approved by Lord Slynn of Hadley in *Spring v Guardian Assurance plc* [1995] 2 AC 296, 332F-G, and Lord Mance in the *Customs & Excise* case held that *Sharp* had been rightly decided at paragraph 110.

THE DUTY ISSUE: DISCUSSION AND DECISION

106. I approach this issue on the basis that I am not satisfied that there is a cause of action for damages for breach of statutory duty against the Registrar in relation to his functions under the 2006 Act. In view of my conclusion on the common law duty of care it is not necessary for me to decide this question, but I shall assume that the answer is in favour of the Registrar. The reason for this is that the 2006 Act is a statute which regulates the keeping of the Register and imposes duties on the Registrar for that purpose. The Register publishes information which is available to the whole world, because it is available on the internet. Whereas the common law of negligence has control mechanisms designed to restrict the class of person who can claim damages for economic loss, the imposition of a statutory duty which gave rise to a claim for damages at the suit of anyone who suffered economic loss by reason of any act or omission which was a breach of the statutory duties imposed would create a very wide duty indeed. I can see nothing in the Act to justify a finding that this was the intention of Parliament.

107. I propose to approach the question of a common law duty of care by applying each of the three tests for the existence of a duty of care at law which are described above. The sensible order seems to me to be first to consider assumption of responsibility, then to assess the three stage *Caparo* test and finally to see whether any duty is sustainable by analogy with other decided cases so as to represent an incremental development of the law. This is the approach mandated by Lord Bingham in the *Customs & Excise* case, see paragraph 80 above.

ASSUMPTION OF RESPONSIBILITY

108. I have set out above extracts from the *Customs & Excise* case and *White v. Jones* and compared them with the remarks of Peter Gibson LJ in *Reeman*. It seems clear that the word "voluntary" sometimes used in formulations of this concept does not mean that it cannot arise where the case concerns the negligent performance of a statutory duty. The phrase of Lord Nolan in *White v. Jones* is the simplest and clearest expression of this. So far as the relevance of that factor is concerned, he said:-

> "The fact that he is doing so in pursuance of a contractual duty or a statutory function cannot of itself exclude that responsibility. The most that can be said is that it may be one of the circumstances to be taken into account in determining the nature and extent of the responsibility"

109. I understand this to mean that if a person does an act which is capable of causing harm to a particular person if done carelessly he will be held to have assumed responsibility to that person in respect of that task unless (where the act is done further to a contractual duty or statutory function) the terms of the contract or the statute negate or limit that responsibility.

110. It is clear from the decision in *White v. Jones* that this concept may be adapted to meet the clear justice of the case. Necessarily, assumption of responsibility is a concept in which proximity plays a major part. In *White v. Jones* the question of what was fair, just and reasonable also featured. The first and second stages of my three-stage task are not, therefore, quite as distinct as they may appear. Some of my reasons for my conclusion on stage 1, assumption of responsibility, can therefore be transposed directly to the proximity and fair, just and reasonable parts of stage 2, the *Caparo* test. I shall not repeat them.

111. It appears to me that where the Registrar undertakes to alter the status of a company on the Register which it is his duty to keep, in particular by recording a winding up order against it, he does assume a responsibility to that company (but not to anyone else) to take reasonable care to ensure that the winding up order is not registered against the wrong company. This does not impose a duty to verify information supplied by a third party such as an Insolvency Practitioner, but only to ensure that the information is accurately recorded on the Register. This special relationship between the Registrar and the company arises because it is foreseeable that if a company is wrongly said on the Register to be in liquidation it will suffer serious harm. My finding on the Causation Issue shows that in this case that harm amounted to the destruction of a company which had traded for over 100 years and which owned a valuable business. The nature of the exercise also supports the finding of such a relationship. The company is not consulted before its liquidation appears and has no opportunity to protest that the entry, if made, will be a mistake. Effectively, the system places a degree of trust therefore in the Registrar's staff to ensure that it does not damage companies which have no way of defending themselves against errors. When such an exercise is performed in private and behind closed doors, those doing it have truly assumed responsibility for it: indeed no-one else is in any way involved in it. The responsibility for it is entirely placed on the Registrar and his staff. At the time of each entry, it is not the case that a duty is owed to every company on the Register. The duty only arises when the record of a company is altered in a way which will probably cause serious harm if it is done carelessly. At that point the class of persons to whom the duty is owed is confined to one company. *White v. Jones* makes it clear that the class can be adjusted to meet considerations of practical justice and in my judgment practical justice suggests strongly that it should contain, but be limited to, the Company whose record is being changed.

112. In assessing the requirements of "practical justice" for this purpose I am squarely considering what is fair, just and reasonable. The relevant factors, in my judgment, are these:-

- Unless a remedy is provided by the common law of negligence a company damaged by carelessness in these circumstances can have no remedy. In *Arthur JS Hall v. Simons* [2002] 1 AC 615 the House of Lords emphasised the need for any immunity to be rigorously justified as being in the public interest. In *Van Colle v. Chief Constable of Hertfordshire* [2009] 1 AC 225 the House of Lords held the police owed no common law duty of care to protect individuals from harm caused by criminals since such a duty would encourage defensive policing and divert manpower and resources from their primary function of suppressing crime and apprehending criminals in the interest of the community as a whole. This is an illustration of a situation where a remedy

may properly be denied, but such considerations are wholly absent from the present case.

- It is not difficult for the staff of the Registrar to avoid errors of this kind. They hardly ever make them.

- Apart from the factors identified by Ms. Jones in her two witness statements there is no reason not to impose a duty. This is not a case where society requires its servants to be free to exercise a judgment without fear of litigation, or where there are any public policy reasons for denying a duty. Ms. Jones makes it clear that the only downside resulting from the imposition of a duty is that the Registrar may feel the need to spend money in ensuring the accuracy of the Register. The accuracy of the Register is obviously a societal good. No-one suggests that an inaccurate register is a desirable outcome. The funding necessary for any such increased scrutiny of changes to the Register will have to be provided by adjustments to the fees paid by companies and by users of the Register. The funding for meeting any claims for damages will have to be met in the same way or by insurance. Ms. Jones's evidence does not persuade me that these outcomes will cause any particular difficulty in an environment where proper application of the Trove Policy would have prevented this error, and where increased use of information provided to the Registrar digitally will further reduce the already very small risk of errors in reading that information and transposing it accurately on to the Register.

- There are no aspects of the statutory duty or contractual relationship between the Company and Companies House which should operate to limit the nature and extent of the responsibility. Section 1080(5) provides:-

  > "(5) The records kept by the registrar must be such that information relating to a company is associated with that company, in such manner as the registrar may determine, so as to enable all the information relating to the company to be retrieved."

  This means that the imposition of a duty would tend to reinforce the statute by requiring Companies House to do exactly what it is already required to do by statute. The information relating to a company must be complete, accurate and easily retrievable.

- In any event balancing the harm actually done to the Company in this case against the potential adverse impact upon Companies House it is clear that the balance favours the loss falling on Companies House rather than the Company. The evidence of Ms. Jones is very general in nature and deals with risks which are unquantified. It does not establish what the actual cost of a duty is likely to be, neither does it establish that it will not be possible to arrange for the payment of that cost, whatever it is. On the other hand the effect of imposing the loss on Companies House will be that it is ultimately borne by either the business community (limited companies and users of the Register who pay fees) or by the public at large.

- Given that the system of registration is compulsory because it is designed to benefit the business community and the national economy by enhancing the benefit of limited liability, it does not seem unjust to impose liability on those who benefit from the system (ultimately the public) for harm done by its faulty operation.

- The ultimate effect of the imposition of this duty is likely to be to improve the accuracy of the Register which is plainly in the public interest. The rather leisurely approach to the correction of the bulk products which occurred in this case perhaps illustrates the kind of conduct which might be far less likely if all concerned realised that the Registrar may be held liable in damages unless rapid and effective action is taken. That would be a salutary outcome of this litigation.

113. For these reasons I conclude that on the facts of this case there was a relationship between the Company and Companies House, at the time when Mr. Davies entered the winding up order against it, which was a "special" one in the sense used by Lord Browne-Wilkinson in *White v. Jones*. It follows that there was an assumption of responsibility and that the Company is entitled to succeed on the Duty Issue.

THE THREE STAGE TEST IN *CAPARO*

114. In this case foreseeability of harm is obvious. Therefore the limbs of this test which are in play are proximity and whether it is fair, just and reasonable to impose a duty. I approach this independently of my conclusion on assumption of responsibility but not independently of my reasoning on that question. I have already set out in that context the factors which appear to me to give rise to proximity, namely that the duty was owed to one individual company whose identity was readily discoverable by Mr. Davies. To say that it was also owed to every other company on the Register is only to say that a hospital owes a duty to each patient which it treats, and may come to owe duties to many thousands of people in the course of a year. That is of course true, but not a reason for denying that the hospital ever owes any duty. Very large organisations such as hospitals who impact on the wellbeing of a very large number of people owe a very large number of duties to a very large number of people. The class is limited and its members ascertainable at the stage when treatment is given.

115. When considering the question of whether it is fair, just and reasonable to impose a duty, I take into account the factors which I listed above when examining the "practical justice" aspect of assumption of responsibility. For those reasons I consider that it is fair, just and reasonable to impose this duty of care. When the Court reaches this stage of the test, foreseeability and proximity have been established. The basis for the denial of a remedy in these circumstances on this third ground must be very compelling. I can find no proper ground in this case on which to conclude that it would not be fair, just and reasonable to impose a duty to avoid foreseeable harm to a sufficiently proximate victim.

ANALOGY AND INCREMENTALISM

116. At this point the decision in *Sharp* becomes highly relevant. *St John Poulton's Trustee* is also material because there the court distinguished *Sharp* on the basis that unlike *Sharp* the case before it involved a pure omission. The case before me does not involve an omission: it involves the entry of false information on the Register, which is a positive act of the kind done in *Sharp*. I do not mean to suggest that there is no distinction between the present case and *Sharp's* case. If that were so, it would be enough simply to say so, and that I am bound by *Sharp.* What I do say is that the similarity between this case and *Sharp* is sufficiently close so that the imposition of a duty is foreshadowed in a previously decided case which has been held to have been rightly decided at the highest level, and more than once. In such circumstances the imposition of a duty can accurately and properly be described as "incremental". The comparative authority cited, including *Shaddock & Associates Pty Ltd v Parramatta City Council (No 1)* [1981] HCA 59; (1981) 150 CLR 225 (28 October 1981), *Walsh & Anor -v- South Tipperary County Council* [2011] IEHC 503, is also relevant to the issue of analogy from precedent. Again, there are distinctions between those cases and the present, but the fact that duties were found to exist there is relevant when considering whether the duty I am considering would, if found, be an entirely novel development.

117. Therefore this is a situation where each of the three posited tests for the existence of a duty of care in a novel situation provides the same answer.

CONCLUSION

118. For these reasons I answer the Duty Issue by holding that the Registrar owes a duty of care when entering a winding up order on the Register to take reasonable care to ensure that the Order is not registered against the wrong company. That duty is owed to any Company which is not in liquidation but which is wrongly recorded on the Register as having been wound up by order of the court. The duty extends to taking reasonable care to enter the Order on the record of the Company named in the Order, and not any other company. It does not extend to checking information supplied by third parties. It extends only to entering that information accurately on the Register.