

# MAITLAND

## Limitation and Insolvency Act Claims: The New Landscape Post THG v Zedra [2026] UKSC 6

[Catherine Addy KC](#) and [Rebecca Page KC](#) consider the Supreme Court decision in *THG Plc v Zedra Trust Company (Jersey) Ltd* [2026] UKSC 6 and its wider impact on limitation periods for claims under the Insolvency Act 1986, including s.238 to s.241, s.339 to 342 and s.423 to 425 (amongst others)

1. On 25 February 2026 the Supreme Court handed down its landmark decision in *THG Plc v Zedra Trust Company (Jersey) Ltd* [2026] UKSC 6. By a majority of 4 to 1 it held that no period of limitation applies to claims for unfair prejudice under s.994 of the Companies Act 2006 ('**CA 2006**'), overturning the decision of the Court of Appeal.
2. That, in itself, is a highly significant development in the field of company law. But the impact of the decision does not stop there.
3. First, logically, the reasoning of the majority in relation to s.8 and s.9 of the Limitation Act 1980 ('**1980 Act**') would at first sight appear to be equally apt to claims under s.423 of the Insolvency Act 1986 ('**IA 1986**') for transactions defrauding creditors ('**s. 423 claims**') and, potentially, claims under s.238/s.339 for transactions at an undervalue ('**TUV**') and s.239/s.340 for preferences.
4. Second, the majority expressly stated (at [155]) that the decisions in *Priory Garage (Walthamstow) Ltd* [2001] BPIR 144 ('**Priory Garage**') which concerned s.238-241 of the IA 1986 and *Hill v Spread Trustee Co Ltd* [2007] 1 WLR 2404 concerning s.423 IA 1986 ('**Hill v Spread Trustee**') were wrongly decided as regards the application of a 6-year period of limitation under s. 9 of the 1980 Act.
5. Third, the majority said that it was satisfied (at [117]) that insofar as the parties in *Priory Garage* and the court "perhaps" in *Hill v Spread Trustee* relied on the view that an 'action upon a specialty' under s.8 of the 1980 Act is wide enough to include any claim which can only be brought under a statutory provision, they were wrong to do so.

6. The Supreme Court has not, however, overruled Priory Garage or Hill v Spread Trustee. How, then, are limitation periods for TUV, preference and s.423 claims (and other potential claims under the IA 1986) to be approached in this new landscape?
7. In considering these questions, it is vital to keep in mind that the remedies available under (i) s.994 to 996 CA 2006 for unfair prejudice; (ii) s.241 and s.342 IA 1986 for TUVs and preferences; and (iii) s.423 to 425 IA 1986 share common features in that: (1) the jurisdiction under those sections is wide enough for the court to order 'monetary' and 'non-monetary' relief (such as setting aside a transaction or making other orders for restoring the position to what it would otherwise have been if the transaction had not been entered into); and (2) they confer a wide discretion on the court as to the appropriate remedy.

### **THG v Zedra: Essential Background**

8. The limitation issue arose in THG v Zedra on an application to amend a s.994 petition to include allegations by Zedra of unfair prejudice which had occurred more than 6 years earlier. Importantly, by the amendments Zedra sought a monetary remedy, namely compensation for alleged financial loss. THG opposed the amendment contending that a 6-year period of limitation applied under s.9 of the 1980 Act on the ground that it was "*an action to recover any sum recoverable by virtue of any enactment*".
9. At first instance Fancourt J rejected THG's argument that the amendment was time-barred. He held (in summary) that Zedra's complaint could only be brought as a petition under s.994 CA 2006 and that the 1980 Act does not have a limitation period that applies to petitions under s.994.
10. The Court of Appeal allowed THG's appeal. It held that (1) where the right to go to court is purely statutory, it is an 'action upon a specialty' within s.8(1) of the 1980 Act; but (2) (recognising that s.8(2) disapplied the 12-year limitation period under s.8(1) if another provision of the 1980 Act prescribed a shorter limitation period) given the only relief sought by the amendment was the payment of money, the 6-year period under s.9 of the 1980 Act applied.

### **Issues before the Supreme Court**

11. The principal issues that arose before the Supreme Court were therefore:
  - (1) Whether a claim under s.994 of the CA2006 was an "*action upon a specialty*" within s.8(1) of the 1980 Act to which a 12-year limitation

period applies (unless under s.8(2) of the 1980 Act a shorter period applies);

- (2) Whether a claim under s.994 of the CA 2006 in which the only relief sought is the payment of money is an “*action to recover any sum recoverable by virtue of any enactment*” falling within s.9(1) of the 1980 Act to which a 6-year limitation period is applicable;
- (3) Whether the monetary relief claimed in the petition was “*equitable relief*” within the meaning of s. 36(1) of the 1980 Act such that the limitation periods in s.8 or s.9 of the 1980 Act were disapplied (if otherwise applicable).

### **Action upon a “specialty”: s.8 of the 1980 Act**

12. The first issue turned on what is meant by an “*action upon a specialty*” in s.8 of the 1980 Act.
13. After an extensive review of the English and Commonwealth authorities, in giving the judgment of the majority Lord Hodge and Lord Richards summarised that there had been no cases in recent centuries in which an action upon a specialty had been found to be for anything other than ‘monetary relief’, until the case of Collin v Duke of Westminster [1985] QB 581 (**Collin**). As Collin underpins the Supreme Court’s reasoning, it is important to consider what it decides.
14. Collin concerned a claim by a tenant to acquire the freehold title to a property under the Leasehold Reform Act 1967 (**1967 Act**). The landlord argued that a 6-year limitation period applied under s.5 of the 1980 Act on the basis that service of the relevant notices under the 1967 Act created a contract for sale. The tenant argued that the 1967 Act contained a self-contained set of rules to which the 1980 Act did not apply at all, but that in the alternative, assuming a period of limitation under the 1980 Act did apply, it was a period of 12 years prescribed by s.8 of the 1980 Act on the basis that the claim for enfranchisement was an action upon a specialty. The Court of Appeal rejected the landlord’s argument that s.5 of the 1980 Act applied but said that “*the more general question of whether the Limitation Act applies at all becomes academic if [the tenant’s] further point is a good one*” (Collin p.601E). The Court of Appeal concluded (obiter and in qualified terms) that “*if and so far as*” the 1980 Act applies to a cause of action arising out of the enfranchisement provisions of the Leasehold Reform Act, the applicable provisions are those in s. 8 of the 1980 Act and the appropriate period of limitation is 12 years (see the discussion in the majority judgment in THG v Zedra [71] – [73]).

15. It was in this context in Collin, that Oliver LJ referred to the test for the application of s. 8 of the 1980 Act and the meaning of an “*action upon a speciality*”. He did so in two ways:

(1) First, that whilst “*the obvious and most common case of an action upon a speciality is an action based on a contract under seal... a ‘specialty’ was not originally confined to such contracts, but extended also to **obligations imposed by statute***” (Collin p.601H, **emphasis added**). The majority in THG v Zedra refers to this as the ‘**narrow Collin view**’ ([75]-[76]).

(2) Second, a broader basis, namely that section 8 applies to any claim which can only be brought under a statutory provision, which Oliver LJ expressed as “*any cause of action which the applicant has **derived from the statute and from the statute alone***” (Collin p.602D, **emphasis added**). This was the passage relied on by Lewison LJ in the Court of Appeal in support of the conclusion that where the right to go to court is purely statutory it is an ‘action on a speciality’ within s.8(1). The majority in THG v Zedra referred to this as the “**wider Collin view**” [77].

16. In their review of the English authorities, the majority in THG v Zedra considered (amongst others) three insolvency cases where the wider Collin view had been relied on:

(1) In Re Farmizer (Products) Ltd [1997] 1 BCLC 589 (**‘Farmizer’**) the Court of Appeal was concerned with an application by liquidators of a company against its directors claiming compensation for wrongful trading under s.214 IA 1986. Under s.214(1) IA 1986 the court “*may*” declare that a person “*is liable to make such contribution (if any) to the company’s assets as the court thinks proper*”. At first instance, Blackburne J rejected a submission that no limitation applied to the claim and held (i) referring to Collin, that the wrongful trading claim was a claim on a speciality because the claim derived from the statutory provision; but (ii) that s.9(1) of the 1980 Act applied giving rise to a limitation period of 6 years (pursuant to the operation of s.8(2)). The liquidators appealed the decision on s.9(1) but did not challenge the decision that a s.214 claim was a claim upon a speciality. The Court of Appeal dismissed the appeal, holding that a claim under s.214 for a contribution to the assets of a company were proceedings “*to recover any sum recoverable by virtue of any enactment*” notwithstanding that the court had a discretion whether to make a declaration at all and as to the amount. It therefore held that s.214 was governed by s.9(1). However, in his judgment Peter Gibson LJ also said (obiter) that if that was wrong, the court should look to see what was actually being claimed in the proceedings to determine whether s.8 or s.9 applied (referring to West Riding of Yorkshire CC v Huddersfield Corp [1957] 1 QB

540 in support of this view). This became known as the ‘look and see’ approach.

- (2) In Priory Garages John Randall QC (sitting as a Deputy Judge) held that applications to set aside transactions under s.238-241 IA 1986 were generally actions upon a specialty. However, this had been common ground between the parties (see p.149), although the Deputy Judge said that if authority was needed for this, it may be found in Collin and Re Farmizer (although distinguishable as a case decided under s.214). The Deputy Judge also endorsed the ‘look and see’ approach in cases where there was doubt as to whether the claim under s.238-241 IA 1986 falls into the 12-year or 6-year category.
- (3) In Hill v Spread Trustee the Court of Appeal was unanimous in its reasoning that s.423 is subject to the 1980 Act and that such claims were subject to either s.8 or s.9 LA1980. The Court of Appeal was, however, split on the question before it, namely when the limitation period began to run. The majority held that where the claim was brought by a trustee in bankruptcy, time started to run on the date of the bankruptcy order (Arden LJ dissenting). In the course of their judgments they found that there was no inherent objection to the notion that there could be separate limitation periods for different applicants under s.423. Arden LJ distinguished between statutory claims for non-monetary relief which she held fell within s.8(1) of the 1980 Act and claims to recover a sum of money under statute which she held fell within s.9. She referred, without criticism, to the ‘look and see’ approach at [115] of her judgment and to West Riding and Farmizer. In his judgment, Sir Martin Nourse (with whom Waller LJ agreed) found that claims under s.423 by a trustee in bankruptcy fall within s.8 or s.9 of the 1980 Act, stating that his view, like the judge below (Judge Weeks QC in [2005] BPIR 842 at p.915 to p.916) was that since the main claim was in substance a claim to set aside a transaction, the action was an “*action upon a specialty*” within s.8(1). Judge Weeks at p.914 had, however, followed Priory Garages on this point in which (as set out above) it was common ground that applications to set aside transactions under s.238 – 241 were actions upon a specialty and Collin and Farmizer (which relied on the wider Collin view) were relied on as authority for this proposition.

17. Although not mentioned in the Supreme Court judgments, Priory Garages and Hill v Spread Trustee were applied (obiter) at first instance in JSC BTA Bank v Ablyazov [2016] EWHC 3071 (Comm) [143] – [157], a creditor’s (rather than an office-holder’s) claim under s.423. Here, the judge considered, standing back and identifying the “*substance or essential nature*” of the claim made under s.423 – which was for the return of funds to an account held jointly by the respondent with the debtor – that, had it not failed on the facts, it would have been an action

for a sum recoverable by statute falling within s.9(1). There was no dispute between the parties in this case that a claim under s.423 was an “*action upon a specialty*” for the purpose of s.8(1) (following Hill v Spread Trustee) and the judge proceeded on that basis. However, since s.9(1) prescribed a shorter period of limitation, that 6-year period was held to apply pursuant to s.8(2), subject to any extension pursuant to the application of s.32 of the 1980 Act which was itself disputed on the facts. Whilst it was not an issue on the appeal, the Court of Appeal did not demur from the judge’s conclusion that s.9(1) applied in their (likewise obiter) comments on the postponement of limitation periods under s.32 of the 1980 Act ([2018] BPIR 898 [48]).

18. Similarly, and whilst also not referred to in the Supreme Court’s judgments, in Re MSD Cash & Carry [2018] EWHC 1325 (Ch) (**‘MSD’**) (a decision of the High Court) it was held (although it was also common ground) that the primary limitation period applicable to a preference claim under s.239 and 241 of the IA 1986 was that applicable to an action upon a specialty, being 12 years, but that the combined effect of section 8(2) and 9(1) of the 1980 Act was to reduce the limitation period to 6 years if the claim was properly to be characterised as an action to recover a sum by virtue of a statute under s.9 of the 1980 Act. Priory Garages and Farmizer were considered by the court in MSD and appear to have been relied on in reaching this conclusion.
19. In THG v Zedra the Supreme Court also considered the case of Rahman v Sterling Credit Ltd [2001] 1 WLR 496 (**‘Rahman’**) which was a claim to reopen a credit bargain under s.137 and s.139 of the Consumer Credit Act 1974 (**‘1974 Act’**). In Rahman the Court of Appeal relied on the wider Collin view in concluding that s.8 applied to s.139 of the 1974 Act as the cause of action only arose out of the provisions of that Act. They held that the limitation period depended on the remedy sought, such that where it was sought to reopen the loan agreement and be relieved of obligations in the future, a 12 year limitation period would apply, whereas if the claim was to recover a sum of money for payments already made, a 6-year limitation period would apply pursuant to s.9(1).

### **Majority Decision in THG v Zedra on “*action upon a specialty*”**

20. The majority of the Supreme Court found that the Court of Appeal in THG v Zedra and in Rahman, were wrong to treat the ‘wider Collin view’ as the basis of Oliver LJ’s conclusion in Collin [114].
21. Lord Hodge and Lord Richards (with whom Lord Lloyd-Jones and Lord Briggs agreed) took the view that in Collin, Oliver LJ was not proposing the mere existence of a statutory cause of action as sufficient to bring s. 8 of the 1980 Act into play. They accepted Zedra’s submission that the true basis of Oliver LJ’s

conclusion was that the 1967 Act was the source of the rights and obligations which the action was brought to enforce and concluded “*it is of the essence of an action upon a specialty that it is an action to enforce **an obligation created by a deed or statute***” [114]-[115] (**emphasis added**).

22. The majority then considered whether s.994-996 CA 2006 ‘created’ or enforced any substantive obligations. They held that they did not and that s.994-996 existed to provide relief in respect of a “state of affairs” at [116]:

“Sections 994–996 of the CA 2006 do not create any substantive obligations. Directors are, of course, subject to fiduciary obligations, and breach of those obligations may found a petition for relief under sections 994–996, but those sections do not impose those obligations. The sections, in appropriate cases where the breach of such obligations results in unfair prejudice to members, enable members to obtain such relief as the court thinks fit. Likewise, if breaches by directors or members of the articles of association or shareholders’ agreements give rise to unfair prejudice to members, the obligations are created not by statute but by the articles or agreements, but the members may seek relief in respect of the unfair prejudice resulting from the breaches. Relief is also commonly sought where there is no breach of an enforceable obligation, but where a state of affairs exists as regards a company that results in or constitutes unfair prejudice to one or more members. In short, sections 994–996 exist to provide relief in respect of a state of affairs. They neither contain nor enforce obligations. This is supported by section 995 which enables the Secretary of State, an independent party, to bring proceedings for relief under section 996.”

23. In concluding (at [117]) that the Court of Appeal was therefore wrong to hold that s.8 of the 1980 Act applied to s.994 petitions, the majority said that they were “*also satisfied that, insofar as the parties in Priory Garage and the courts in Rahman and perhaps in Hill v Spread Trustee relied on the wider Collin view, they were wrong to do so. However, we have not been invited to overrule those cases nor have we heard argument as to whether they can be justified on another basis*”.

### **A subsidiary issue**

24. Whilst it does not affect the majority’s conclusion that s.8 of the 1980 does not apply to s.994 petitions, the majority itself was split on the question of whether an “*action upon a specialty*” is confined to claims to enforce *monetary* obligations [118].

25. In summary, Lord Hodge and Lord Richards took the view that an ‘action upon a specialty’ is confined to monetary obligations and that the Court of Appeal in Collin was wrong to apply s.8(1) of the 1980 Act to a claim for enfranchisement (i.e. to a non-monetary obligation) [118]-[123]. Conversely, Lord Lloyd-Jones and Lord Briggs took the view that s.8(1) does apply to non-monetary obligations created by statute and therefore a 12-year limitation period applies to any such claims [124]-[128].
26. However, this issue did not need to be decided as it had no effect on the outcome of the appeal given the finding of the majority that the wider Collin view was wrong and that s.994 did not create any obligations in any event. As they put it at [129] any conclusion on this point “*would be obiter commentary on what were obiter dicta in Collin*”. Nor did the subject matter of the amendment in THG v Zedra seek non-monetary relief. This question will therefore need to be argued and decided in an appropriate case, where a non-monetary obligation arising under a statute is sought to be enforced.

#### **Action for sums recoverable by virtue of statute: section 9 of the 1980 Act**

27. Whilst a claim under s.994 is not an action upon a specialty to which a 12-year limitation period applies under s.8 of the 1980 Act, the second question remained as to whether s.9 of the 1980 Act nevertheless applies a 6-year limitation period, if the relief sought on the petition is confined to, or includes, a monetary claim.
28. Section 9 of the 1980 Act applies a 6-year limitation period to “*An action to recover any sum recoverable by virtue of any enactment*”.
29. On the preliminary question of whether this only applied to claims for an ascertained sum, the majority concluded (at [135]) that the English courts had historically been right to give a wider meaning to the words, and that s.9 was capable of applying to claims under statute for unascertained sums and to monetary claims which are the subject of the court’s discretion.
30. The majority considered, however, that a claim under s.994 CA 2006 is not a claim to enforce either a liquidated or unliquidated obligation arising under statute at all. Rather it is a claim that the court should make “*such order as it thinks fit for giving relief in respect of the matters complained of*” [137].
31. In the Court of Appeal, Lewison LJ adopted the ‘look and see’ approach (relying on cases including Farmizer, Rahman and Hill) concluding that where the only relief sought was the payment of money (whether liquidated or unliquidated) the action falls within s.9 of the 1980 Act with the consequence that a 6-year limitation period applies.

32. The majority of the Supreme Court disagreed. In their view there were two “*formidable objections*” [145] to this approach: it was arbitrary to apply a 6-year limitation period to some claims under the same statutory provision but not to others, and that it would be unworkable to allow a petition to go forward in respect of some remedies but not others.
33. However the crux of their decision appears to be that whilst the court “*may*” provide for the payment of a specified sum by way of compensation as relief under s.994 and 996 CA 2006, that is not a sum “*recoverable by virtue of*” s.994 because “*The respondent’s obligation to pay it arises only by virtue of the court’s exercise of its very wide discretion*” [146].
34. The majority rejected the ‘*look and see*’ approach as involving an analysis “*for which there is no warrant in the legislation*” [151]. They found it to be unsupported by either (i) West Riding because it was a claim only for monetary payments to which the claimant was entitled under the relevant statute or (ii) Farmizer because only a monetary remedy is available under s.214 IA 1986. The majority criticised the ‘*look and see*’ approach as set out in Priory Garage (p.160) as requiring an “*evaluative process*” which is “*particularly ill-suited to deciding whether an action is time-barred*” and therefore they were “*reluctant to attribute such an intention to Parliament*”.
35. In concluding that s.9 of the 1980 Act does not apply to a s.994 petition, even where it includes a request for monetary relief the majority notably held [155]:

“We consider that claims under statutory provisions which confer a wide discretion as to remedy are not claims to which section 9 applies. For these reasons also, we consider that *Priory Garage, Hill v Spread Trustee* and *Rahman* were wrongly decided as regards section 9 of the 1980 Act.”

36. Further, at [156] the majority stated:

“English case law has interpreted such monetary claims as extending beyond actions for debt upon a statute, ... to include unascertained sums and monetary claims which are subject to the exercise of the court’s discretion. There is no warrant however for applying sections 8 or 9 of the 1980 Act to causes of action in which the court is given a wide discretion as to **the nature of** the relief which it may give, such as under s.994-996 of the CA 2006.” (**emphasis added**)

37. This conclusion is said (at [157]) to be consistent with the principle that a period of limitation should relate to a cause of action and not a particular remedy (as observed by Millett LJ in Paragon Finance Plc v DB Thackerar & Co [1999] 1 All ER 400 at 414a-b).

### **Fallback position: s.36 of the 1980 Act and Equitable Relief**

38. Given the decision of the Supreme Court that neither s.8 nor s.9 of the 1980 Act apply to claims under s.994 CA 2006, nothing turned on Zedra's fallback argument that if s.9 of the 1980 Act was otherwise held to apply, it would be disapplied under s.36 of the 1980 Act (except insofar as the time limit may be applied by analogy in like manner to the court's practice before the commencement of the 1939 Limitation Act) because the claim was for 'equitable compensation'. The majority rejected this argument on the same ground as the Court of Appeal, namely that Zedra was not claiming equitable relief. Rather it was claiming relief from unfairly prejudicial conduct which is only available because s.996 CA 2006 gives the court the power to grant such relief.

### **Dissenting Judgment**

39. It is right to highlight that Lord Burrows disagreed with the majority in his dissenting judgment. As to the first issue, he considered a s.994 claim to be an action upon a specialty to which a 12-year limitation period applies under s.8 of the 1980 Act, on the basis that it is a cause of action that would not arise apart from statute (i.e. he endorsed the wider Collin view) [204] – [205]). As to the second issue, it was in his view incorrect to treat a discretionary monetary remedy as falling outside s.9 of the 1980 Act and he considered that the 'look and see' approach had been applied without apparent difficulty for over 65 years (i.e. since West Riding). He concluded (at [225]) that "*the majority's approach would require an overruling of the main cases in this area and I see no justification for such an overhaul of the established law*" and that if there was any doubt as to the correct interpretation of the 1980 Act, a purposive approach favours the imposition of a limitation period.

### **Impact on claims under the Insolvency Act**

40. The ratio of THG v Zedra is that s.8 and s.9 of the 1980 Act do not apply to shareholders' unfair prejudice petitions under s.994-996 of the CA 2006.
41. However, the underlying reasoning is *prima facie* applicable to at least s.423 claims and, potentially, to claims under s.238 to 241 and s.339 to 342 of the IA 1986. Moreover, the majority has stated that Priory Garages and Hill v Spread Trustee were "wrong" insofar as they relied on the wider Collin view and that they were

“*wrongly decided*” as regards s.9 of the 1980 Act. Those decisions have, however, expressly not been overruled ([117]).

42. How, then, are the courts (and litigants) to approach questions of limitation in future Insolvency Act claims? It seems plain from the majority’s reasoning and their clearly stated position at [155] that, whilst Priory Garages and Hill v Spread Trustee have not been formally overruled, there can be no doubt that the Supreme Court has determined clearly that they were “*wrongly decided*” in so far as they held that s.9 of the 1980 Act applied to the corresponding claims (i.e. those under s.238 to 241 and s.423). However, the question of whether s.8 of the 1980 Act applies to such claims is more difficult, with the Supreme Court only making clear that they were wrong in so far as they relied upon the wider Collin view and leaving open the possibility that they might be justified on other grounds.
43. Prima facie, despite the Supreme Court making clear that they were not overruling Hill v Spread Trustee, there would seem to be no basis to distinguish between the nature of the court’s jurisdiction under s.994 to s.996 (which the Supreme Court has held means that s.8 of the 1980 Act does not apply) and the court’s jurisdiction pursuant to s.423 to 425 of the IA 1986. In each case the court has a wide jurisdiction to make such order (if any) as it thinks fit to address a particular set of facts. Undoubtedly, as and when the Court of Appeal considers these issues, it can depart from its own decision in Hill v Spread Trustee, if (as seems likely) it considers it to be inconsistent with the Supreme Court’s reasoning in THG v Zedra. As held in Young v Bristol Aeroplane Co. Ltd [1944] KB 718, and approved by the House of Lords in Davis v Johnson [1979] AC 264, the Court of Appeal can, indeed is bound, “*to refuse to follow a decision of its own which, though not expressly overruled, cannot in its opinion, stand with a decision of the House of Lords*”. Arguably, however, a strict application of the principle of *stare decisis* would mean that a first instance judge, and a High Court Judge hearing any relevant appeal, remains bound by the ratio in Hill v Spread Trustee, such that an appeal may be necessary and a leapfrog appeal could even be justified for the purposes of establishing conclusively whether s.8 of the 1980 Act applies to Insolvency Act claims.
44. Meanwhile, drawing the threads together and whilst it is important to keep in mind that the ratio of THG v Zedra does not relate to the IA 1986, it would appear to follow from the reasoning of the majority of the Supreme Court that:
- (1) Contrary to previous authority, including Priory Garage and JSC BTA Bank v Ablyazov, a 6-year limitation period under s.9 of the 1980 Act is now very unlikely to be held to apply to any claims under s.238 to 241 or s.423 IA 1986, even in cases where the only remedy claimed is monetary relief. This

is because the Supreme Court determined that “*claims under statutory provisions which confer a wide discretion as to remedy*” do not fall within s.9 of the 1980 Act; and, as regards the application of s.9, stated in unqualified terms that it considers that Priory Garage was “*wrongly decided*”. Whilst JSC BTA Bank v Abyazov (which concerned s.423) and MSD (which concerned s.239) were not referred to by the Supreme Court in its majority judgment as having been “*wrongly decided*” (or at all), for the purposes of s.9 of the 1980 Act there is no basis to distinguish between the breadth of the relief which may be granted by the court in the exercise of its discretion pursuant to s.994 to 996 CA 2006, s.423 to 425 IA 1986 and s. 238 to 241 IA 1986. Likewise, there is no obvious reason why the position should differ in bankruptcy, as s.339 to 342 IA 1986 reflect the language of s.238 to 241 IA 1986 in this respect. Accordingly, even where only a monetary sum or compensation is sought and ordered by the court pursuant to its jurisdiction under any of those statutory provisions, such amount would not be “*recoverable by virtue of*” any of those statutory provisions: the respondent’s obligation to pay arising only by virtue of the court’s exercise of its very wide discretion.

- (2) However, the position in relation to wrongful trading claims under s.214 IA 1986 appears to be different. The majority distinguished Farmizer when disavowing the ‘*look and see*’ approach, noting at [151] that it provided no support for that approach on the basis that “*only a monetary remedy is available under s.214 of the IA 1986*”. It is not therefore a provision which confers on the court a “*wide discretion as to remedy*”. Nor, does the majority suggest that the Court of Appeal was wrong in Farmizer to conclude that a claim under s.214 for a “*contribution*” to the assets of a company is a claim “*to recover any sum recoverable by virtue of any enactment*” within s.9 of the 1980 Act. On the contrary, they appear to consider (at [135]) that the broad wording of s.9 justifies the conclusion reached in that particular case. This was so even though such monetary claims are subject to the exercise of the court’s discretion (both as to whether to make any such order, as well as to the amount of the contribution to be paid). It seems very likely therefore that the courts will continue to conclude that a 6-year limitation period applies to claims under s.214 IA 1986 pursuant to s.9 of the 1980 Act.
- (3) Although the majority judgment is silent on fraudulent trading claims under s.213 IA 1986, given the material similarity in the language with s.214 it would seem very unlikely that any distinction should be made between the two statutory provisions on questions of limitation. Both sections provide that the court, on the application of the liquidator, “*may declare*” the relevant person “*liable to make such contribution (if any) to the company’s assets as the court thinks proper*”. In addition, it is notable (particularly given the composition of the Supreme Court - comprising 4 of the same Justices), that there is no mention of the concession made by the parties in Bilta (UK) Ltd

(in liquidation) and others v Tradition Financial Services Ltd [2025] UKSC 18 (less than a year previously), which was recorded with approval at [17] of that Judgment, that a 6-year period of limitation applies to fraudulent trading claims under s.213 IA 1986 pursuant to s.9 of the 1980 Act. Given the profile of both cases, it seems highly unlikely that this would not have been mentioned if the majority had any reason to doubt the correctness of this concession.

- (4) Logically, the same reasoning must apply to any claims under s.246ZA and s.246ZB IA 1986 (the similarly drafted fraudulent trading and wrongful trading provisions applicable in administration). Such claims will likewise be subject to a 6-year limitation period under s.9 of the 1980 Act.
- (5) The majority Judgment is also silent on the position in respect of s.217 IA 1986 (personal liability for debts of a company following contravention of s.216). Section 217(1) provides that “A person is personally responsible for all the relevant debts of a company” if certain requirements are met (essentially concerning their involvement in the management of a company which, in respect of that person, is trading with a prohibited name). Section 217(2) provides for joint and several liability: “Where a person is personally responsible under this section for the relevant debts of a company, he is jointly and severally liable in respect of those debts with the company and any other person who, whether under this section or otherwise, is so liable”. There is nothing in the language of the section that requires an order to be made by the court as a pre-requisite to the creation of the respondent’s liability. On the contrary, they are made liable for the debts by virtue of the statutory provision itself. It would therefore seem that a claim under this section would properly be regarded as “an action upon a speciality” (the relevant obligation being created by the statute). However, this is highly likely to be academic, given that s.8(2) provides that s.8(1) does not affect any action for which a shorter period of limitation is prescribed and that s.9(1) will almost certainly be held to apply given the nature of the obligation, namely personal liability for the debts of the company (and as to which there is no discretion on the part of the court). A 6-year period of limitation, pursuant to s.9(1) of the 1980 Act will therefore apply to claims under s.217 IA 1986.
- (6) The position as to whether s.8(1) nevertheless applies to TUV, preference and s.423 claims is more nuanced. Applying the reasoning in respect of which the majority in THG v Zedra were all agreed, whether a 12-year period of limitation pursuant to s.8(1) of the 1980 Act will apply to any claims under the IA 1986 that are not subject to a 6-year limitation period pursuant to s.9(1) and/or s.8(2) of the 1980 Act, depends on whether the relevant statutory provision ‘creates an obligation’ (such that it is a specialty). If, however, the relevant provision of the IA 1986 pursuant to which the claim is made instead confers upon the court a wide jurisdiction to grant relief in respect of a ‘state of affairs’ (as the Supreme Court found to be the case in

relation to s.994 to 996 CA 2006) it is very likely that the courts will now find that (contrary to previous authority) no limitation period applies to such claims under the 1980 Act. In this regard, each relevant statutory provision will require separate consideration.

- a. It is difficult to see how s.423 to 425 IA 1986 could be considered by any court to be materially different to s.994 to 996 CA 2006 in this respect. In both cases, the statutory provisions confer upon the court a very wide discretion to grant relief (or not) in respect of a factual 'state of affairs'. The language of s.423 IA 1986 cannot be said to 'create' any 'obligation'; rather it confers upon the court a remedial jurisdiction. As with s.996(1) CA 2006, the court's discretion under 423(2) is two-fold: (i) whether to make an order at all; and (ii) as to the nature of the relief: (s.423(2) "*the court may, if satisfied under the next section, make such order as it thinks fit...*"). Accordingly, a respondent is not under any restorative or compensatory obligation unless and until the court has determined the nature of the appropriate relief to be granted and made such an order against them.
- b. The language of s.238 to s.241 and s.339 to 342 IA 1986 is however different: Those statutory provisions each state that, where the relevant factual conditions are met, the court "*shall*"<sup>1</sup> make "*such order as it thinks fit*" for restoring the position to what it would have been if the insolvent company or bankrupt had not entered into the transaction or preference. A literal reading of these words, particularly in contradistinction to s.423 IA 1986 (and s.994 CA 2006), would lead to the conclusion that the making of an order is mandatory (assuming the requirements of the section are established) and that only the question of the *nature* of the relief is discretionary. Notably, however, despite the legislature's use of the word "*shall*" the courts have interpreted the words "*such order as it thinks fit*" as apt to confer on the court an overall discretion which is wide enough, if justice requires, to make no order against the other party (Re Paramount Airways [1993] Ch 223 at 239G; which was relied upon in the bankruptcy context in Singla v Brown [2008] Ch 357 at [51] – [60], where it was said that it was a "*very limited discretion*" not to make an order in "*exceptional*" circumstances, and, more recently, in Re Fowlds; Bucknall v Wilson [2021] EWHC 2149 (Ch) at [73]).
- c. This issue arose in Paramount Airways in the context of determining whether s.238 applied to "*any person*" with extra-territorial effect. In determining that it did, the Court of Appeal considered that the

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<sup>1</sup> s.238(3), s.239(3), s.339(2) and s.340(2) IA1986

court's discretion to decline relief was one of two safeguards built into the statutory scheme (the other being the requirement for permission to serve out of the jurisdiction). The Court of Appeal's approach on this point was endorsed by Lord Sumption, and Lord Toulson and Lord Hodge in Bilta v Nazir [2016] AC 1 [110] [215]. However, the question of whether relief under s.238 was "mandatory" was not before the court or separately considered in the judgments in Bilta. It may be arguable before an appellate court that Paramount Airways went too far on this point and that it was not necessary for it to do so in order for s.238 to be found to have extra-territorial effect: that the use of the word "shall" in s.238-239 and 339-340 should be given its ordinary and natural meaning as being mandatory; it is also in sharp contradistinction with the word "may" in s.213-214 and s.423 consistent with Parliament intending the sections to operate differently; in an extra-territorial context, permission to serve out of the jurisdiction should be an adequate safeguard (as it is in other civil claims where relief cannot be declined by the court as a matter of discretion) such that a strained construction of the word "shall" was not necessary or justified in Paramount Airways in any event (and should not have been applied in the cases which have followed it on this point).

- d. If the view in Paramount Airways that has been adopted largely without question in the subsequent cases continues to be upheld, there will be little if any basis to distinguish the operation of these sections from s.423 IA 1986 and s.994 CA 2006 for the purposes of considering whether they might be considered a speciality.
- e. However, on a literal reading of the provisions (contrasting them with others in the IA 1986 and s.994 CA 2006), such that the court would have no discretion as to *whether* to make an order but only as to the nature of the relief to be granted in order to restore the position to what it would otherwise have been, the question would arise as to whether the mandatory nature of such relief would be sufficient for such statutory provisions to be regarded as 'creating' an obligation that might be held to be a specialty.
- f. If Lord Hodge and Lord Richards are correct in their view that an action upon a speciality is confined to monetary obligations, then the answer would seem to be 'no' in any event. If, however, Lord Briggs and Lord Lloyd Jones are right that s.8(1) applies to non-monetary obligations created by statute, then this distinction could be relevant. The answer may, however, still be that it is sufficient to negate the creation of any 'obligation' that the section confers a wide discretion

on the court as to the nature of the remedy (regardless of whether there is no discretion as to whether *an* order should be made to restore the position to what it would otherwise have been if the relevant transaction had not been entered into). This would be consistent with the majority's conclusion at [156] that there is "no warrant... for applying sections **8 or 9** of the 1980 Act to causes of action in which the court is given a wide discretion as to the nature of the relief which it may give, such as under section 994-996 of the CA 2006" (**emphasis added**). However, in reaching this conclusion, understandably the Supreme Court majority was not considering the potentially materially different language of s.238-239 and s.339-340. Therefore this issue, along with the thorny issue of whether non-monetary obligations can ever suffice, are points which remain to be determined in an appropriate case(s).

- g. Meanwhile, for as long as the view expressed in Paramount Airways, that the use of the word "*shall*" in s.238-239 IA 1986 does not exclude the discretion for the court to make no order if it thinks fit not to do so (and which has been applied by first instance judges in the context of s.339-340 IA 1986), continues to prevail, it is very likely that the courts will conclude that – as with claims under s.423 IA 986 and s.994 CA 2006 – no period of limitation applies to any claims under s.238-239 and s.339-340 IA 1986 pursuant to the 1980 Act.

- (7) A claimant should not, however, delay in pursuing their claim under any of the IA 1986 provisions. In their judgment at [170] the majority stated that "*whether or not there is a statutory limitation period, the court in addressing an application under s.994 of the CA 2006 may take account of unjustified delay by the claimant which has an adverse effect on a respondent or other persons when exercising its discretion to grant or refuse a particular remedy or any remedy*". Again, this would certainly seem to follow in relation to s.423 (where the order and nature of the relief are both expressed to be discretionary). But there is more scope for argument as to the position under s.238-239 and s.339-340 (as set out above and in Re Ramrattan (in Bankruptcy) [2010] BPIR 1210 [34] – [35] where Mann J concluded that delay by itself within the limitation period is not a reason for not exercising a discretion in favour of granting relief). Where however delay is "unjustified", because of acquiescence or delay occasions prejudice to the respondent or a third party, it seems this can be a factor in fashioning the relief under s.238-239 and 339-340, and on the basis of the Paramount Airways view it seems that this may extend to declining relief altogether. Where office-holders are guilty of inordinate and inexcusable delay in prosecuting their claims *after* issuing proceedings, they may be struck out (Farmizer and Hamblin v Field [2000] BPIR 621). Lord Burrows' dissenting judgment is instructive on laches, acquiescence and delay.

- (8) Whilst the precise boundaries of the effect of delay in TUV, preference and s.423 claims in light of THG v Zedra remains to be argued, there can be no doubt that the one point on which judges in the Court of Appeal and the Supreme Court all agreed, was that delay was undesirable and to be avoided. Nevertheless, the decision is undoubtedly significant as its reasoning is of wide application and may well breathe new life into old claims under the IA 1986 (and other statutory provisions) which were previously considered stale on limitation grounds. However, notwithstanding the new post THG v Zedra landscape, well-advised litigants will still issue and pursue their claims without delay.

**11 March 2026**

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