



Hilary Term
[2026] UKSC 6

On appeal from: [2024] EWCA Civ 158

JUDGMENT

**THG Plc (Respondent) v Zedra Trust Company
(Jersey) Ltd (Appellant)**

before

Lord Hodge, Deputy President

Lord Lloyd-Jones

Lord Briggs

Lord Burrows

Lord Richards

JUDGMENT GIVEN ON

25 February 2026

Heard on 17 and 18 February 2025

Appellant

Andrew Thompson KC

George McPherson

Lily Church

(Instructed by DWF Law LLP (Manchester))

Respondent

Lance Ashworth KC

Dan McCourt Fritz KC

(Instructed by Gowling WLG (UK) LLP (London))

LORD HODGE AND LORD RICHARDS (with whom Lord Lloyd-Jones and Lord Briggs agree):

1. The principal question on this appeal is whether there is a statutory limitation period which bars a member of a company from petitioning the court for a remedy under sections 994 and 996 of the Companies Act 2006 (“the CA 2006”). As discussed below, this question involves several issues, including whether either section 8 or section 9 of the Limitation Act 1980 (“the 1980 Act”) may apply to bar such a claim and whether section 36 of the 1980 Act disapplies those sections.

Factual background

2. Zedra Trust Company (Jersey) Ltd (“Zedra”), which is the appellant, is a minority shareholder in THG plc (“the Company”). The respondents are the Company and nine of its current or former directors. Zedra acquired shares in the Company in 2011 when it was a private company under the registered name of The Hut Group Ltd, and at that time held 13.2% of its issued share capital and 13.37% of members’ voting rights. By early 2019 Zedra’s holding had reduced to 8.34% of the issued share capital and 9.63% of the voting rights.

3. On 7 January 2019 Zedra presented a petition under section 994 of the CA 2006 claiming various forms of relief against the Company and its former and current directors for having conducted the affairs of the Company in a manner alleged to be unfairly prejudicial to the interests of Zedra. An application by the respondents to strike out the petition failed at first instance but was partially successful in the Court of Appeal. The outcome of the appeal was that Zedra’s allegations (i) that the directors had removed valuable co-sale rights attaching to its shares (whereby, if the Company’s founder or his spouse wished to transfer shares, they had to procure that the purchaser made an offer for a proportion of shares owned by Zedra and other shareholders), and (ii) that the directors had breached Zedra’s contractual entitlement to information as a shareholder, survived the strike out application. The Court of Appeal remitted the petition to a High Court judge for a case management conference to consider, among other things, any further applications to amend the petition.

4. Zedra applied to amend the petition in two respects. Fancourt J refused permission for the first proposed amendment, with which this appeal is not concerned. The second proposed amendment, which is the context in which the legal issues arise on this appeal, involved an allegation by Zedra that it had suffered unfair prejudice as a result of an allotment of bonus shares on 11 July 2016 paid up by capitalising £16,802 from a distributable reserve account. The bonus shares were allotted to four shareholders in proportions determined by the Company’s directors and approved by a designated shareholder majority as provided by the Company’s articles of association.

5. Zedra alleged that, by excluding it from the bonus issue, the Company’s directors had unfairly discriminated between it and the shareholders who received the shares. This, Zedra alleged, entailed a breach of the directors’ duties, including duties to act lawfully, in good faith, for proper purposes and fairly as between shareholders when exercising the power to allot shares, capitalise profits and appropriate the capitalised profits to shareholders. Zedra alleged that, if the directors had performed their duties, it would have received its pro rata entitlement to the 16,802 D ordinary shares which it would have converted immediately before an initial public offering (“the IPO”) which took place in September 2020 when the Company’s share capital was restructured and the Company became a listed public limited company. Zedra alleged that it would have sold those shares pursuant to the IPO at £5 per share and stated that its loss was the sum which it would have received by so doing. Zedra did not quantify its loss, but it appears to be in the range of £1.835 million to £1.979 million. Zedra sought an order requiring the directors who were involved in the alleged breaches of duty to pay equitable compensation for its loss. We refer to this as “the July 2016 Complaint”. It was accepted that it met the merits test for an amendment, but the respondents opposed the amendment on the grounds that there was an arguable limitation defence.

The judgments of the courts below

6. By a judgment dated 18 January 2023 ([2023] EWHC 65 (Ch)) Fancourt J rejected the respondents’ argument that the July 2016 Complaint was time-barred. He held that Zedra’s complaint could only be brought as a petition under section 994 of the CA 2006 and that Zedra by doing so was not avoiding the six-year limitation period that would apply to a claim by the Company against its directors for equitable compensation for breach of fiduciary duty. Further, relying on the judgment of the Court of Appeal in *In re Cherry Skip Hire Ltd, Bailey v Cherry Hill Skip Hire Ltd* [2022] EWCA Civ 531; [2023] Bus LR 14 (“*Cherry Hill Skip Hire*”), he held that the 1980 Act does not have a limitation period that applies to petitions under section 994. Unfairly prejudicial conduct is not a cause of action but a complaint, the remedy for which, if proved, is at the discretion of the court. If delay or acquiescence made it inequitable that relief should be granted, the court could exercise its discretion at a hearing on the merits of the petition to refuse to give relief. The respondents did not argue, on the application for permission to amend, that the July 2016 Complaint should be barred on the grounds of delay or acquiescence by Zedra.

7. The respondents appealed to the Court of Appeal which allowed their appeal. As explained in more detail below after we have set out the relevant statutory provisions, the Court of Appeal held that the July 2016 Complaint was time-barred because the limitation period of six years under section 9 of the 1980 Act applied and permission for the amendment had not been granted within that period.

8. Zedra now appeals to this court.

The relevant statutory provisions

(i) The unfair prejudice provisions

9. The statutory remedies which the court can give if a petitioner establishes unfairly prejudicial conduct, which are now set out in sections 994 and 996 of the CA 2006, are a relatively modern innovation and were first enacted in section 75 of the Companies Act 1980 and re-enacted in section 459 of the Companies Act 1985. This unfair prejudice jurisdiction replaced the discretionary power conferred on the court by section 210 of the Companies Act 1948 to give a remedy as an alternative to a just and equitable winding up of a company where the affairs of the company were being conducted in a manner oppressive to some part of its members.

10. Section 994 of the CA 2006 provides:

“(1) A member of a company may apply to the court by petition for an order under this Part on the ground—

(a) that the company’s affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or

(b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.”

In *O’Neill v Phillips* [1999] 1 WLR 1092, Lord Hoffmann, giving the leading judgment in the House of Lords, explained that the statutory remedy was available if there had been a breach of the terms upon which a shareholder had agreed that the affairs of the company would be conducted or where equitable considerations made it unfair for those conducting the company’s affairs to rely upon their strict legal powers.

11. Section 996 of the CA 2006 sets out the remedies which the court may grant if the petitioner establishes such unfairly prejudicial conduct:

“(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), the court's order may—

(a) regulate the conduct of the company's affairs in the future;

(b) require the company—

(i) to refrain from doing or continuing an act complained of, or

(ii) to do an act that the petitioner has complained it has omitted to do;

(c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;

(d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;

(e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.”

(ii) The limitation provisions

12. Section 1 of the 1980 Act states that Part I of that Act (sections 1–27D) gives the ordinary time limits for bringing actions of the classes mentioned in that Part and that those ordinary time limits are subject to extension in accordance with the provisions of Part II of the Act. Section 38, the interpretation section of the Act, defines “action” as including “any proceeding in a court of law ...”

13. Section 8, which concerns actions upon a specialty, provides:

“(1) An action upon a specialty shall not be brought after the expiration of twelve years from the date on which the cause of action accrued.

(2) Subsection (1) above shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act.”

Section 8 re-enacts section 2(3) of the Limitation Act 1939 (“the 1939 Act”) which we discuss below but replaces the proviso in section 2(3) with a separate subsection (section 8(2) of the 1980 Act) to the same effect.

14. Section 9(1), which is concerned with an action to recover a sum recoverable by virtue of an enactment, provides:

“An action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued.”

15. Also relevant to the submissions on this appeal is section 36, which is located in Part III of the Act. It provides so far as relevant:

“(1) The following time limits under this Act, that is to say—
...

(d) the time limit under section 8 for actions on a specialty;

(e) the time limit under section 9 for actions to recover a sum recoverable by virtue of any enactment ...

shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except in so far as any such time limit may be applied by the court by analogy in like manner as the corresponding time limit under any enactment repealed by the Limitation Act 1939 was applied before 1st July 1940.

(2) Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.”

The judgment of the Court of Appeal

16. The judgment of the Court of Appeal ([2024] EWCA Civ 158) comprised an impressive leading judgment by Lewison LJ, with whom Arnold LJ agreed, and a short concurring judgment by Snowden LJ. As Lewison LJ stated in the opening paragraph of his judgment, the issue on the appeal was an issue of principle: whether there is a limitation period applicable to a petition under section 994 of the CA 2006.

17. Lewison LJ stated (para 20) that it is undoubtedly received wisdom that no limitation period applies to section 994 petitions. As he stated, it was common ground and was accepted by Peter Gibson J in *Re DR Chemicals Ltd* [1989] BCLC 383; 5 BCC 39, that the effect of delay in presenting such a petition was dependent on the equitable doctrine of laches. In *Re Grandactual Ltd* [2006] BCC 73 Sir Donald Rattee stated that there was no statutory limitation period but relied on the court's discretion to refuse relief when the petitioners had participated in the company's affairs for nine years without protest before presenting their petition. Several other cases proceeded in the High Court on the basis that there was no statutory limitation period: *Re Tobian Properties Ltd* [2012] EWCA Civ 998; [2013] Bus LR 753; *Re CF Booth Ltd* [2017] EWHC 457 (Ch); *Re Edwardian Group Ltd Eстера Trust (Jersey) Ltd v Singh* [2018] EWHC 1715 (Ch); [2019] 1 BCLC 171 and *Routledge v Skerritt* [2019] EWHC 573 (Ch); [2019] BCC 812. The Court of Appeal in *Cherry Hill Skip Hire* approved the approach of Fancourt J in *Re Edwardian Group Ltd*, and *Cherry Hill Skip Hire* was in turn cited with approval in obiter statements by Lord Leggatt (with whom Lords Briggs, Hamblen and Kitchin agreed) in the Supreme Court in *Smith v Royal Bank of Scotland plc* [2023] UKSC 34; [2024] AC 955, at para 58. Unsurprisingly, there is a similar consensus among authors or editors of company law textbooks that there is no statutory limitation period for bringing a section 994 petition. See *Palmer's Company Law*, 25th ed, vol 1, para 8.3822; *Buckley on the Companies Acts* in annotations to section 994, para 31; *Gore-Browne on Companies*, 45th ed, vol 1, ch 19, para 2; *Hollington on Shareholders' Rights*, 10th ed (2024), para 7-87; and Joffe et al on *Minority Shareholders: Law, Practice, and Procedure*, 6th ed (2018), para 6.286. The Law Commission of England and Wales in its report on *Shareholder Remedies* (1997) (Law Com No 246) (Cm 3769), para 4.16, and in its report on *Limitation of Actions* (2001) (Law Com No 270), para 4.211, took the same view but both reports recommended that a limitation period be introduced. In view of these references, Lewison LJ correctly stated that the Court of Appeal was being invited to overturn over 40 years' received wisdom.

18. Having stated early in his judgment (para 11) that there is a strong public policy against the raising of stale claims, Lewison LJ addressed the question whether there was a justification for the lack of a limitation period. He then analysed the Court of Appeal's judgment in *Cherry Hill Skip Hire* and concluded that the court was not bound by its statement that there was no statutory limitation period for a section 994 petition because the Court of Appeal, like Fancourt J in *Re Edwardian Group*, had proceeded on what was common ground between the parties and had not made a free-standing decision on the

point. Lewison LJ therefore stated that the court must consider the question afresh (para 64).

19. Having then stated that a petition initiating court proceedings falls within the definition of an action in section 38(1) of the 1980 Act and that a section 994 petition could in principle fall within the scope of that Act, he turned to consider the provisions of the 1980 Act which remain in issue.

20. He addressed, first, section 8 of the 1980 Act which we have set out in para 13 above and which provides a 12-year limitation period for an action upon a specialty. He referred to the judgment of Oliver LJ in *Collin v Duke of Westminster* [1985] QB 581, a case which concerned a claim to enfranchise a leasehold house and which we discuss below, for the proposition that the section applied to an action based on a contract under seal and to an action to enforce an obligation that derived only from a statute. He stated (para 72) that in principle a petition seeking relief under section 994 of the CA 2006 is subject to the limitation period in section 8(1). He rejected an alternative submission by the respondents that Zedra was claiming equitable relief and that section 8 could be applied by analogy.

21. Secondly, recognising that section 8(2) disapplied the 12-year limitation period under section 8(1) if another provision of the 1980 Act prescribed a shorter limitation period, Lewison LJ turned to address section 9, which we have set out in para 14 above and which creates a limitation period of six years for an “action to recover any sum recoverable by virtue of any enactment”. He stated that the scope of this section seems to depend on what remedy is claimed rather than the underlying cause of action. Lewison LJ considered, among other authorities, *West Riding County Council v Huddersfield Corporation* [1957] 1 QB 540 (a money claim arising out of the statutory adjustment of local authority boundaries and the transfer of property, debts and liabilities), *Central Electricity Board v Halifax Corporation* [1963] AC 785 (an action to recover a sum of money which had vested in an electricity board on the nationalisation of the electricity industry by the Electricity Act 1947), and *Re Farmizer (Products) Ltd* [1997] 1 BCLC 589 (a claim for a monetary contribution to the assets of an insolvent company brought under the wrongful trading provisions of section 214 of the Insolvency Act 1986 (“IA 1986”). He also referred to *Rowan Companies Inc v Lambert Eggink Offshore Transport Consultants VOF* [1999] 2 Lloyd’s Rep 443, *Re Priory Garage (Walthamstow) Ltd* [2001] BPIR 144, *Hill v Spread Trustee Co Ltd* [2006] EWCA Civ 542; [2007] 1 WLR 2404, and *Smith v Royal Bank of Scotland* (above).

22. From his analysis of those cases Lewison LJ concluded (para 129) that where (i) the right to go to court is purely statutory and (ii) the only relief sought is the payment of money (whether liquidated or unliquidated) the action falls within section 9. As a result, the July 2016 Complaint which Zedra sought to raise by amendment was statute barred.

23. Snowden LJ in his concurring judgment expressed the view that because it was very rare for petitioners under section 994 of the CA 2006 to seek the payment of monetary compensation rather than another remedy such as an order for the purchase of shares, the application of section 9 of the 1980 Act to section 994 petitions had not been addressed by the courts in any reported case. He shared Lewison LJ's concern that if there were a 12-year period for non-monetary claims, that might make it more difficult to strike out petitions under section 994 on the ground of delay and run counter to the long-term policy of the courts to discourage petitioners from dragging up old grievances. He did not wish the Court of Appeal's decision in this case to undermine that policy so that the courts would continue to strike out or summarily dismiss allegations of historical misconduct which could not justify the grant of relief at a trial, even though the petition was presented within the applicable limitation period. Like Lewison LJ he considered that the precise implications of the court's decision would need to be worked out in a future case (para 162).

Zedra's challenge in summary

24. Zedra submits that section 994 petitions do not fall within the wording of either section 8 or section 9 of the 1980 Act. The relevant provisions of the CA 2006 apply as a result of a state of affairs in the management of a company, which has caused or is causing unfair prejudice to a member of the company; they confer nothing more than a right to petition the court for a discretionary remedy and that remedy is not based on a legal obligation owed to the petitioning member. Zedra argues that, in any event, Parliament in enacting sections 994–996 of the CA 2006 intended that no statutory limitation periods should apply. The flexibility in the application of sections 994 and 996 creates practical difficulties if the 1980 Act were to apply to such claims, such as ascertaining the date on which a cause of action accrues where there has been a number of related acts or omissions, questions of locus standi, and the fact that minority shareholders often lack the relevant knowledge to make a claim under section 994 while not being able to pray in aid a postponement of the limitation period under section 32 of the 1980 Act. There had developed through the case law a settled understanding that there was no statutory limitation period for section 994 petitions and Parliament did not alter the law when enacting the CA 2006. That settled understanding is a legitimate aid to interpretation of a statute. Further, if contrary to Zedra's submission, section 9 would otherwise apply to the July 2016 Complaint, that section is disapplied by section 36(1) of the 1980 Act as Zedra is seeking equitable compensation as its remedy.

The issues raised on this appeal

25. Three principal issues are raised on this appeal:

(i) Is a claim under section 994 of the CA 2006 an “action upon a specialty” falling within section 8(1) of the 1980 Act to which a 12-year limitation period is applicable unless under section 8(2) a shorter period applies?

(ii) Is the claim under section 994 of the CA 2006 in which the only relief sought is the payment of money an “action to recover any sum recoverable by virtue of any enactment” falling within section 9(1) of the 1980 Act to which a six-year limitation period is applicable?

(iii) Is the monetary relief claimed in the petition “equitable relief” within the meaning of section 36(1) of the 1980 Act and are the limitation periods in sections 8 or 9 of the 1980 Act therefore disapplied if otherwise applicable?

A question of interpretation of the 1980 Act

26. We consider that the answer to this dispute lies in the interpretation of sections 8 and 9 of the 1980 Act.

27. There is no dispute between the parties as to the correct approach to statutory interpretation. We were referred to *R (O) v Secretary of State for the Home Department* [2022] UKSC 3; [2023] AC 255, paras 30 and 31; *R v Secretary of State for the Environment, Transport and the Regions, Ex p Spath Holme Ltd* [2001] 2 AC 349, p 397C–D; and *Bennion, Bailey and Norbury on Statutory Interpretation*, 8th ed (2020) sections 24.1–24.2. A court makes an objective assessment of the meaning which a reasonable legislature as a body would be seeking to convey in using the statutory words which are being considered. That assessment looks at the words in their context, which includes the other provisions of the statute in question and the pre-existing state of the law. The court may have regard to external aids, such as law reform reports, which show the state of the law before the statute was enacted, and the legislative predecessors of the statutory provision which may cast light on the mischief being addressed and the purpose of the provision.

The meaning of “An action upon a specialty”

28. This first issue concerns the interpretation of section 8(1) of the 1980 Act, which we repeat for convenience:

“An action upon a specialty shall not be brought after the expiration of twelve years from the date on which the cause of action accrued.”

29. The Court of Appeal (paras 68–78) considered that the right to go to court under section 994 of the CA 2006 was created solely by statute and was, as a result, an action upon a specialty. Therefore, a 12-year limitation period would have applied but for section 8(2) which disapplied section 8(1) because the six-year limitation period in section 9 was applicable.

30. The meaning of the somewhat archaic words an “action upon a specialty” is not self-evident. In M Franks, *Limitation of Actions*, 3rd ed (1959), p 188, commenting on section 2(3) of the 1939 Act, the author stated that a specialty is “an archaic word of somewhat imprecise meaning; it includes contracts and other obligations in documents under seal, and also, traditionally, obligations arising under statutes.” In a footnote to this statement the author explained that the imprecision arose because the word “specialty” was used to describe both the document and the obligation.

31. To ascertain whether the Court of Appeal was correct in holding that the section 994 petition was an action upon a specialty we must look closely at the legislative history of sections 8 and 9 and the case law relevant to those sections and their statutory predecessors.

The position at common law

32. At common law an action upon a specialty historically took the form of an action of covenant or an action of debt. An action of debt upon a specialty was an action to recover a liquidated or certain sum of money which was due as a debt by virtue of a document under seal. No further proof of the debt was required. An action of debt was also available even though not due under a deed, but it was then necessary to prove some quid pro quo for the debt.

33. An action of covenant has a more complex history, but importantly by the early 19th century it had become an action in which a party claimed damages for the breach of a promise under seal.

34. In the 13th and early 14th centuries an action of covenant was available for the breach of any covenant, written or unwritten, and the remedies available were either enforcing the performance of the agreement (if performance were possible) or monetary damages. Such actions could also be used to assert proprietary or possessory rights in relation to land: Holdsworth, *A History of English Law*, 5th ed (1942) (“Holdsworth”), vol 3, pp 418–419; Biancalana, “Actions of Covenant, 1200–1330” (2002) 20 *Law and History Review* 1. The action could not be used for the recovery of debt: Pollock and Maitland, *The History of English Law before the Time of Edward I*, 2nd ed (1898) (“Pollock and Maitland”), vol 2, p 219. Over time, starting from the early 14th century, the action came to be brought only to enforce rights (other than debt) in a document under

seal: Holdsworth, vol 3, pp 419–420; Pollock and Maitland, vol 2, p 219; Ibbetson, *A Historical Introduction to the Law of Obligations* (1999), (“Ibbetson”) pp 24–28. The requirement that the action be based on a document under seal led to a falling off of actions of covenant and the growth of a practice of making agreements with conditional bonds which could be enforced through actions of debt: Ibbetson, pp 28-30.

35. With the growth of equity, orders in the common law courts to compel performance of an obligation under seal gave way to orders for specific performance in the Court of Chancery: Baker: *An Introduction to English Legal History* (5th ed 2019), p 348, *Snell’s Equity*, 35th ed (2025), para 17-001. However, an action of covenant continued to be used to recover unliquidated damages for breach of an obligation under seal.

36. Matthew Bacon’s *A New Abridgement of the Law*, 7th ed (1832) (“Bacon’s Abridgement”), vol 2, pp 336–337 discussed the definition of covenant and actions of covenant:

“But the word is generally taken in the law of England, and indeed is here considered, in a more restrained sense, and applied only to an agreement in writing under seal. By covenants therefore are meant those clauses of agreement contained in a deed, whereby either party stipulates for the truth of certain facts, or binds himself to perform, or forbear doing, some thing to the other. For the breach of these covenants the party injured is entitled to relief by (a) an action, or writ of covenant against the covenantor, founded on the deed ...

“A covenant is not a duty, nor cause of action, till it be broken; so that it is not discharged by a release of all actions: and *when it is broken, the action* is not founded merely on the specialty, as if it were a duty, but savours of trespass, and *sounds in damages*, and therefore an accord is a good plea to it.” (Emphasis added.)

37. *The Oxford History of the Laws of England* (2010), vol 12, p 314, describing the state of the law in 1820, states that an action of covenant was one of the three main forms of action for seeking monetary compensation for breaches of contract at common law, the others being the action of debt and the action of assumpsit. By this time, as noted above, the action of covenant had been restricted to an action for damages for breach of a covenant under seal and survived until the Judicature Acts 1873–1875. It is so treated in modern law dictionaries (*Jowitt’s Dictionary of English Law* and *Osborn’s Concise Law Dictionary*).

38. As we will seek to show, this is significant to a proper understanding of the scope of sections 8 and 9 of the 1980 Act.

39. A deed under seal was not evidence of the promise or agreement but had operative effect on its own: Holdsworth, vol 3, pp 417–419; Ibbetson, pp 20–22. Thus, as Viscount Maugham explained in *R v Williams* [1942] AC 541 at p 555, a pre-existing obligation, if any, was transformed into a higher form of obligation by operation of merger: an action upon a specialty was an action to enforce an obligation of a higher form. See by way of analogy the doctrine of merger in relation to judgments of a court which this court discussed in *Zavarco plc v Nasir* [2025] UKSC 5; [2025] AC 738.

40. It appears that the historical origin of treating monetary obligations arising under statutes as specialties is that a statute bore the Royal Seal and was treated as the highest form of specialty: Canny, *Limitation of Actions in England and Wales* (2013), p 269. As is discussed further below, while actions of debt could be brought to enforce payment of ascertained amounts due under statute, an action of covenant was by its nature restricted to the enforcement of obligations contained in deeds made between parties. It had no application to statutory obligations (save perhaps where the statute created a contract, as with the constitution of a company provided in a private Act of Parliament).

Legislative history

41. Current limitation periods have evolved out of earlier legislation. Section 3 of the Limitation Act 1623 (“the 1623 Act”) provided a six-year limitation period from the date of the accrual of the cause of action in among others, “all Actions of Debt grounded upon any Lending or Contract without Specialty; all Actions of Debt for Arreages of Rent”. There is case law on the exclusion from this statutory limitation period of debts due on a specialty, including debts due under a statute. Thus, a statutory claim for tithes and a statutory claim for damages against a sheriff for allowing an imprisoned debtor to escape were held not to fall within the 1623 Act: *Talory v Jackson* (1638) 4 Cro Car 513; 79 ER 1043; and *Jones v Pope* (1665) 1 Wms Saund 37; 85 ER 49. Bacon’s *Abridgement* recorded the law immediately before the enactment which we discuss in the next paragraph. At pp 227–228 of volume 5, he recorded case law that an action for rent arrears under a lease by indenture fell outside the 1623 Act because such a lease was equal to a specialty, that an action for debt on an arbitrator’s award under the arbitrator’s hand and seal was similarly outside the 1623 Act, but, citing *Renew v Axton* (1687) Carth 3, 226; 90 ER 607, that an action brought against the drawer of a bill of exchange fell within the Act because “such bill is not of as high a nature as a specialty.”

42. Until 1833 there was no statutory limitation period in relation to actions upon a specialty. Section 3 of the Civil Procedure Act 1833 (“the 1833 Act”) introduced a limitation period of twenty years for “all Actions of Covenant or Debt upon any Bond or

other Specialty”. It remained in force for more than a century, but both forms of action covered by section 3 had become obsolete and disappeared by the time Parliament came to review the law of limitation, as discussed below.

43. The Law Revision Committee reviewed this limitation period in its *Fifth Interim Report: Statutes of Limitation* (1936) (Cmd 5334) (“the 1936 Report”) at paras 4–5.

44. Although the Law Revision Committee saw significant merit in a common period of limitation for all common law actions, it recommended the preservation of a longer period in the case of specialty actions than for actions founded on simple contract. It thought that there ought to be a method by which rights could be protected from the operation of statutes of limitation for a considerable period, and that “It should at least be possible for a prudent man to secure his position by executing an instrument under seal”. It recommended a period of 12 years in place of the then applicable 20 years. It justified the recommendation on two bases. The first was that money was advanced under bonds or debentures or similar instruments which the parties did not intend would be repaid for a long period and on which the payment of interest was waived or suspended. It would be inconvenient to require a lender to call in his loan within six years to preserve his rights. Secondly, there were transactions in which a party would not know of claims arising for many years, referring as an example to *Lynn v Bamber* [1930] 2 KB 72, which concerned an action for breach of warranty as to the species of plum trees sold to a fruit grower (although that case concerned a simple contract and an argument based on fraudulent misrepresentation and concealment).

45. The Law Revision Committee noted that the term “specialty” prima facie included a statute and recognised that this had “given rise to difficulties of construction, and very fine distinctions have been drawn between cases where the whole cause of action arises out of, and depends on, the statute, and other cases where, though there would be no cause of action without the statute, the action to some extent arises from a liability outside the statute”. In the light of these difficulties, the Committee recommended as follows (para 5, p 9):

“With regard to actions arising by virtue of statutory provisions, to which at present the twenty year period applies as being actions upon a specialty, we recommend that in future the six year period should apply, but this recommendation is not intended to affect any special period of limitation prescribed by any enactment for special classes of action.”

46. It seems clear from the 1936 Report, including the passage just quoted, that the Committee regarded claims for sums recoverable by virtue of a statute as the only statutory claims which fell within the concept of an action upon a specialty. The 1939 Act

gave effect to the Report's recommendations. The 1939 Act preserved the concept of an action upon a specialty, to which a 12-year limitation period applied, but fixed a six-year limitation period for actions to recover a sum recoverable by virtue of an enactment.

47. The 1939 Act contained two relevant provisions. First, in section 2(3) it provided:

“An action upon a specialty shall not be brought after the expiration of twelve years from the date on which the cause of action accrued:

Provided that this subsection shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act.”

Secondly, section 2(1)(d) provided for such a shorter period of limitation by introducing a six-year limitation period for “actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture.” Thus, in place of section 3 of the 1833 Act, the 1939 Act created a general rule of a 12-year limitation period for actions “upon a specialty” and a shorter period of six years for actions to recover money recoverable by virtue of an enactment. The scope of the re-enacted version of section 2(1)(d) of the 1939 Act, now section 9 of the 1980 Act, is a central issue on this appeal.

48. The change in the wording from section 3 of the 1833 Act (“all Actions of Covenant or Debt upon any Bond or other Specialty”) to section 2(3) of the 1939 Act (an “action upon a specialty”) reflects the abolition of the old forms of action in the 19th century, thereby removing one of the difficulties created by section 3 and identified in the 1936 report at para 4. It would clearly have been wrong to continue to include the words “of covenant or debt” in the revised provision.

49. In 1977 the Law Reform Committee in its *Twenty-First Report; Final Report on Limitation of Actions* (September 1977) (Cmnd 6923) (“the 1977 Report”) at para 2.59 recommended against the repeal of the 12-year limitation period for actions upon a specialty, although a majority of consultees had advocated repeal. It stated: “For practical purposes, a specialty may be treated as an obligation entered into by deed under seal, a form often used for, among other transactions, major building contracts.” It considered that the use of a specialty remained a convenient way by which parties could stipulate for an abnormally long limitation period. It did not address claims based on a statute or the six-year limitation period for sums recoverable under a statute in section 2(1)(d) of the 1939 Act.

50. The 1980 Act gave effect to the recommendations of the 1977 Report. Sections 2(3) and 2(1)(d) of the 1939 Act were re-enacted as sections 8 and 9 respectively of the 1980 Act.

UK case law on section 3 of the 1833 Act

51. On this appeal we are concerned with actions based on a statute. There were a significant number of authorities concerning the application of section 3 of the 1833 Act to claims alleged to arise under statutes, all of which were claims for the payment of a debt. As noted above, an action of covenant would lie between parties to a deed, and not to claims under a statute. It followed that, as regards statutory claims, section 3 applied only to actions of debt. The issues which commonly arose in the authorities were, first, whether the action arose out of a statute or from a liability which existed independently of a statute, albeit affected by a statute, and, secondly, whether the action was an action of debt within the meaning of that form of action: see the 1936 Report at para 4.

52. The Court was referred to four authorities dealing with the application of section 3 of the 1833 Act.

53. In *Cork and Bandon Railway Co v Goode* (1853) 13 CB 826 (“*Cork and Bandon Railway*”) the railway company sued one of its members in an action of debt for calls on unpaid shares. The company sought judgment on the basis that the debt arose under the combined effect of the Companies Clauses Consolidation Act 1845 and the Cork and Bandon Railway Act 1845. The defendant pleaded a limitation defence, arguing that the causes of action were under the contracts to purchase the shares which were contracts without specialty. The company asserted that the limitation period was 20 years under section 3 of the 1833 Act as the claim was an action of debt on a statutory liability and therefore was an action upon a specialty. It was the statutes which empowered the company to make calls and imposed liability on shareholders to pay the amount of those calls. The Court of Common Pleas upheld the company’s argument. Jervis CJ stated (pp 834–835):

“This is an action of debt: it professes to be an action upon [the above-mentioned statutes]. I think it is an action upon statute ... But for the act of parliament, no action could be brought by the company against one of its own members. This, therefore, is an action brought in respect of *a liability created by statute*, and therefore is an action founded upon the statute, and the plea which relies upon the six years’ limitation is no answer to it ...” (Emphasis added.)Maule J (p 835) agreed that it was not an action upon a contract without specialty but that it was brought upon the two statutes. He stated:

“It is manifest, upon reading the declaration, that it is a declaration in debt upon these two statutes. Now, *a declaration in debt upon a statute, is a declaration upon a specialty*; and it is not the less so because the facts which bring the defendant within the liability, are facts dehors the statute: that must constantly arise in actions for liabilities arising out of statutes. ... There may, undoubtedly, be cases where a statute enables an action to be brought, which nevertheless is not an action on the act of parliament. But the question is, whether that state of things exists here. I think it manifestly appears that this is an action of debt, and upon the statute, and therefore an action upon a specialty.” (Emphasis added.)

Cresswell and Talfourd JJ gave concurring judgments, the former speaking of “a statutory liability to pay the calls”.

54. In *Aylott v West Ham Corporation* [1927] 1 Ch 30, (“*Aylott*”) the defendant local authority in order to encourage its employees to volunteer for military service had in 1914 passed a resolution, which was advertised in the local press, entitling those employees who did so to their full pay less their service pay. The local authority had no power to make the payments purportedly authorised by the resolution, but retrospective legislation passed in 1916 made such resolutions passed by local authorities binding on them. The plaintiff employee sued the local authority for increments in pay which he would have received if he had remained at home in their employment. The local authority pleaded a limitation defence of six years under the Limitation Act 1623 on the basis that the cause of action was a simple contract and not a specialty debt arising under the 1916 legislation and therefore that section 3 of the 1833 Act did not apply. Romer J at first instance and the Court of Appeal upheld the local authority’s contention. Lord Hanworth MR (p 50) accepted the approach of the court in *Cork and Bandon Railway* that where a plaintiff in making a claim in debt has to rely upon the terms of a statute the nature of the claim is one of specialty. In this case, however, the employee’s claim in debt arose out of an agreement entered into in 1914 which the 1916 statute merely validated. The 1916 statute did not give the plaintiff a statutory right to sue for the debt. Warrington LJ reached the same view, holding (pp 51–52) that in order to bring the action within the 1833 Act the action must be an action of debt upon a statute.

55. Similarly, in *Gutsell v Reeve* [1936] 1 KB 272, the Court of Appeal rejected the assertion that a claim for minimum wages imposed by statutory order of the Agricultural Wages Board was an action for debt upon a specialty. The court instead interpreted the minimum wage legislation as altering the terms of the parties’ contract so that there was a contractual obligation to pay the minimum wage. Lord Wright MR (at p 280) said that the question was “whether the action is an action of debt upon a specialty; and if the claim is a claim under the statute it is, within the meaning of the expression, a claim upon a specialty.” He then examined closely the judgments of the Court of Common Pleas in

Cork and Bandon Railway before addressing the legislation which he interpreted as upholding the contract of employment, except to the extent that it altered the rate of wages to be paid, by striking out the lower rate of wages and inserting the minimum wage. The Court held that the claim was based on the contract and the six-year limitation period of the 1623 Act therefore barred the claim.

56. In *Pratt v Cook, Son & Co (St Paul's) Ltd* [1940] AC 437 (“*Pratt v Cook*”), the House of Lords addressed a claim under the Truck Act 1831 by an employee for payment of that part of his wages which he had received other than in cash. The Truck Act created an obligation to pay wages in cash and section 1 of that Act rendered void a contract which provided otherwise. Section 4 of the Act gave the employee the right to recover so much of his wages as had not been paid in cash. The judgment was principally concerned with the interpretation of the Truck Act 1831 but a question of limitation, which is relevant to this appeal, also arose. The House of Lords unanimously upheld the decisions of the courts below that the employee’s cause of action was created solely by section 4 of the Truck Act and that the 20-year limitation period under the 1833 Act for an action for debt upon a specialty applied. See Lord Atkin at p 446, Lord Russell of Killowen at p 449 and Lord Wright at p 456.

UK case law on the 1939 Act and the 1980 Act

57. The reformulated provisions of the 1939 Act, and their counterparts in the 1980 Act, have been considered in a number of authorities. All of them until 1980 concerned monetary claims.

58. In *West Riding County Council v Huddersfield Corporation* (“*West Riding*”) Lord Goddard CJ addressed a special case stated by an arbitrator which arose out of a dispute about the financial adjustments to be made pursuant to section 151 of the Local Government Act 1933 (“the LGA”). This followed an alteration of local authority boundaries which extended the defendant’s boundaries to include areas which had previously been part of the county of the West Riding of Yorkshire. That section empowered the public bodies affected by an alteration of local authority boundaries to agree a financial adjustment, including the transfer of property, and, by subsection (3), provided for arbitration in the event that they were unable to reach agreement. In its defence to the claim by the West Riding County Council (“WRCC”) for a financial adjustment Huddersfield Corporation pleaded that the claim was barred by section 2(1)(d) of the 1939 Act, the predecessor to section 9 of the 1980 Act. Lord Goddard stated that it was obvious from the terms of section 151 of the LGA that in most cases the adjustment would involve the payment of money. In this case, WRCC made two money claims and went to arbitration over what was in reality “simply an action to recover a sum of money by virtue of the provisions of section 151” of the LGA (p 546–547). As the claim for money had not been made within six years after the transfer, it was barred by section 2(1)(d) of the 1939 Act.

59. In *Central Electricity Board v Halifax Corporation* (“CEB”) the House of Lords addressed a limitation defence under section 2(1)(d) of the 1939 Act in the context of a transfer of non-financial assets from a local authority acting as a statutory undertaker to the appropriate area electricity board and a transfer of investments and cash to the British Electricity Authority, which was the predecessor of the Central Electricity Board (“CEB”), on the nationalisation of the electricity industry by the Electricity Act 1947. That Act vested in the CEB’s predecessor such investments and cash held by a local authority in that capacity on the vesting date which was 1 April 1948. Immediately before that date, Halifax Corporation transferred a sum of money which had been accumulated out of the revenues of the undertaking from its electricity account into its general bank account. The CEB intimated its claim to those funds to Halifax Corporation but did not take any other action to obtain those funds for over eight years after the vesting date. In giving judgment in the House of Lords, Lord Reid assumed in CEB’s favour that the action was an action upon a specialty but held that section 2(1)(d) of the 1939 Act applied, giving rise to a six-year limitation period. He stated (p 799):

“If the words of section 2(1)(d) are given their ordinary meaning I have no doubt that they cover this case. The sum sued for is only recoverable because it vested in the appellants’ predecessors ‘by virtue of this Act and without further assurance’ (see section 14(1)), and this is an action to recover it. I doubt whether the words of section 2(1)(d) are capable in any context of bearing a meaning which would not cover this case...”

60. He rejected the appellants’ argument that there was a distinction between bringing a common law action to enforce a property right which a statute had conferred, which (it was argued) was covered by section 2(3) of the 1939 Act (now section 8 of the 1980 Act) and suing on a cause of action given by an Act of Parliament, to which section 2(1)(d) (now section 9 of the 1980 Act) applied. The appellants submitted that this distinction was seen in *Gutsell v Reeve* and *Pratt v Cook*, (see paras 55 and 56 above) which addressed the pre-1939 legislation and that the distinction was retained in the 1939 Act. Lord Reid disagreed, and stated:

“this distinction seems to me so difficult that it does not surprise me that Parliament should abolish it, and the words of section 2(1)(d) are so clear that I do not think it possible to force on them the interpretation which the appellants put forward.”

61. Lord Morris of Borth-y-Gest agreed, stating (p 803):

“the wording introduced by section 2(1)(d) of the Limitation Act 1939, namely, ‘actions to recover any sum recoverable by virtue of any enactment,’ seems to me to be wording which precisely covers the present action. It was an action to recover the sum of £34,500 which was recoverable by virtue of the Act of 1947. Even if the action could be said to be an action upon a specialty, the provisions of section 2(3) did not apply because the period of six years was prescribed by section 2(1)(d).”

62. Lord Hodson expressly agreed with Lord Reid. Lord Guest stated that he was “in agreement with your Lordships” and said that the appellants’ action was for the sum alleged to be due to them from the respondents under the Electricity Acts 1947 and 1957 (p 805). Lord Pearce also agreed, observing (p 807) that the funds vested on 1 April 1948 and thereafter the transferees had all the ordinary legal rights attached to the ownership of property.

63. What *West Riding* and *CEB* have in common is that in each case the relevant statute created the obligation for payment, in the first case directly as a financial adjustment and in the second indirectly by vesting property (ie money) in the statutory transferee, thereby enabling it to bring a common law action to recover its property.

64. The language of section 2(1)(d) of the 1939 Act and section 9 of the 1980 Act, applying to an action “to recover any sum recoverable by virtue of any enactment”, arguably casts a wider net than section 3 of the 1833 Act which confined claims to those which could be brought by an action of covenant or debt. English authorities on those sections have given them a wider meaning.

65. In *Pegler v Railway Executive* [1948] AC 332, an employee of a railway company whose employment was transferred to an amalgamated railway company under statute was entitled to claim compensation if the transfer placed him in a worse position as regards his conditions of service. The legislation provided for any disputes to be submitted to arbitration, with the arbitrators empowered to “award him such sum to be paid by the amalgamated company as they think sufficient to compensate him for such loss or injury.” The plaintiff employee’s claim for compensation was resisted on the ground that it was barred by the six-year time limit imposed by section 2(1)(d) of the 1939 Act. Among other submissions, the plaintiff argued that time did not start to run until he suffered an actual loss which he could quantify. The House of Lords, affirming the decisions of the courts below, rejected this submission and held that section 2(1)(d) applied to a claim for unliquidated compensation. This is an example of a claim to which section 3 of the 1833 Act would not have applied because an action of debt required an ascertained amount whereas, by reason of its broader wording, the time limit of six years provided by section 2(1)(d) did apply.

66. In *Hillingdon London Borough Council v ARC Ltd* [1999] Ch 139, the Council sought a declaration that a claim made by the defendant to the Lands Tribunal for the assessment of compensation due in respect of the compulsory purchase of land which it had acquired was barred by operation of section 9 of the 1980 Act. The Court of Appeal (Nourse, Potter and Mummery LJJ) held that a cause of action may accrue for “any sum recoverable by virtue of any enactment” although the sum has yet to be quantified by some process of agreement or adjudication: see para 25.

67. The courts went a step further in *Re Farmizer (Products) Ltd* [1997] 1 BCLC 589 (“*Farmizer*”). The Court of Appeal (Peter Gibson, Potter and Butler-Sloss LJJ) was concerned with an application under the wrongful trading provision in section 214 of IA 1986 which empowers the court at its discretion to order that a director of an insolvent company, which is in the course of being wound up, make a contribution to that company’s assets. Section 214(1) provides that the court on the application of a liquidator of a company may declare that a person is “to be liable to make such contribution (if any) to the company’s assets as the court thinks proper.” The liquidators of the insolvent company applied under this provision for such a declaration.

68. An issue arose as to the limitation period, if any, applicable to the liquidator’s claim. Blackburne J at first instance rejected a submission that no limitation period applied to the liquidators’ claim: see [1995] 2 BCLC 462. He held, first, referring to the test in *Collin v Duke of Westminster* [1985] QB 581 (“*Collin*”) to which we refer below, that the wrongful trading claim was a claim upon a specialty because the claim derived from the statutory provision and, secondly, that section 9(1) of the 1980 Act applied, giving rise to a limitation period of six years. Blackburne J’s decision that it was a claim upon a specialty was not challenged on appeal, but the liquidator submitted that the claim did not come within section 9(1). Peter Gibson LJ, giving the substantive judgment of the Court of Appeal, rejected the argument that section 9(1) could not apply because the court had a discretion whether to make a declaration. He rejected a submission that a contribution under section 214 could be other than a sum of money. However, he said that, if that were wrong, the court should look to what was actually being claimed in the proceedings to determine whether section 8 or section 9 applied. We will return to this fallback position below.

69. Although not a claim under a statute, we should mention *Aiken v Stewart Wrightson Members’ Agency Ltd* [1995] 1 WLR 1281. In that case the relevant claims were claims by members of Lloyd’s syndicates against their managing agents under contracts executed under seal. Potter J quoted from the 1936 Report and the 1977 Report and held that the obligations covered by section 8(1) included the obligation to pay damages for breach of a contract under seal. That conclusion is consistent with the 1833 Act which treated actions of covenant as well as actions of debt as actions upon a specialty.

Collin

70. It would appear that the first occasion on which the courts developed the concept of an action upon a specialty beyond monetary claims was the decision of the Court of Appeal in *Collin*. It was also the first occasion on which it appears that the courts applied either section 2(3) of the 1939 Act or section 8 of the 1980 Act to a claim based on a statute.

71. *Collin* concerned a tardily pursued application by the lessee of a house under a long lease to acquire the freehold under the Leasehold Reform Act 1967. The arguments relevant to the current appeal relate to the concept of an action upon a specialty in section 8(1) of the 1980 Act. The lessee gave notice to the lessor of his desire to enfranchise his lease in January 1975 and, by a counter-notice given in March 1975, the lessor denied the lessee's right to enfranchise the lease. Over seven years later, in December 1982, the lessee commenced proceedings for a declaration that he was entitled to acquire the freehold of the house. The landlords argued that the claim arose in contract in accordance with section 5 of the Leasehold Reform Act and that the limitation period was therefore six years from the date on which the cause of action accrued, which was held to be the date of the notice in January 1975. The Court of Appeal held that section 5 did not give rise to a contractual right but merely regulated the way in which claims could be pursued. The Court held that the obligation to enfranchise arose from section 8(1) of that Act, which obliged the landlord to grant the tenant the freehold of the property if the tenant gave him the relevant notice in writing.

72. Having reached that conclusion, there was no provision of the 1980 Act which barred the lessee's application. It did not therefore matter whether there was no provision of the 1980 Act applicable to the case or whether it was subject to a limitation period, for example of 12 years under section 8. Counsel for the lessee submitted that there was no applicable limitation period but, in the alternative, that section 8 applied.

73. The conclusion reached by Oliver LJ, with whose judgment May LJ and Sir Roger Ormrod agreed, was both obiter and expressed in qualified terms:

“In my judgment, if and so far as the Limitation Act 1980 applies to a cause of action arising out of the enfranchisement provisions of the Leasehold Reform Act, the applicable provisions are those contained in section 8 and the appropriate period of limitation is 12 years.”

74. In giving his reasons for this conclusion, Oliver LJ laid stress on the fact that the Leasehold Reform Act conferred a right on a qualifying lessee who gave the appropriate

notice to acquire the freehold of the leased property and a corresponding obligation on the lessor to transfer the freehold title to the lessee.

75. At p 601D, Oliver LJ said that it was from section 8(1) of the Leasehold Reform Act “that the rights and duties of the respective parties stem and any claims which fall to be adjudicated upon by the court are *claims arising from those statutory rights and obligations*” (emphasis added). At p 601H, he said:

“The obvious and most common case of an action upon a specialty is an action based on a contract under seal, but it is clear that ‘specialty’ was not originally confined to such contracts but extended also to *obligations imposed by statute*.” (Emphasis added.)

He noted that this was consistent with the earlier authorities, many of which we have discussed above, all of which were concerned with whether a sum of money was due as a debt upon a statute.

76. On this basis, which for convenience we will call “the narrow *Collin* view”, section 8 of the 1980 Act applies only to the enforcement of obligations created by a deed or statute.

77. At p 602, Oliver LJ stated the test for the application of section 8 of the 1980 Act in terms which have since been understood as providing a different and broader basis for the application of section 8, namely that it applies to any claim which can only be brought under a statutory provision (which for convenience we will call “the wider *Collin* view”). He said at p 602:

“It seems to me to be quite clear that in the instant case any cause of action which the applicant has derived from the statute and from the statute alone. Apart from the statutory provisions he could have no claim and it is only by virtue of the statute and the regulations made thereunder that there can be ascertained the amount of the price to be paid under the statutory contract the terms of which can be gathered only from the sections of the Act and the Schedules.”

78. We will return to this case, which for the first time stated that an action upon a specialty went beyond actions to enforce the payment of a sum of money due under statute to include an action to enforce a non-monetary statutory right, such as the right to obtain the freehold of leased property.

Cases since Collin

79. Since *Collin*, the courts have in some cases relied on the wider *Collin* view as regards the meaning of an action upon a specialty under section 8 of the 1980 Act and the question arises as to whether that wider view is good law. We have earlier referred to the obiter comment of Peter Gibson LJ in *Farmizer* and we now look at three further cases which support this wider view and look at case law in other common law jurisdictions with similar legislation before addressing that question.

80. In *Re Priory Garage (Walthamstow) Ltd* [2001] BPIR 144 (“*Priory Garage*”) John Randall QC, sitting as a Deputy Judge of the High Court, held that applications to set aside transactions under sections 238–241 of the IA 1986 (challenges by a liquidator to transactions at an undervalue and voidable preferences), which gave the court a wide discretion as to the remedy to restore the position of the company, were generally actions upon a specialty and were subject to a 12-year limitation period. This however proceeded on the agreed position of counsel, as he recorded (p 149): “It is common ground between the parties that a ‘specialty’ includes an Act of Parliament and that prima facie a statutory cause of action created by the Insolvency Act 1986 will be a specialty within the meaning of sections 8 and 9 of the Limitation Act.” He was referred to *Collin* and *Farmizer*, and, through the judgment in *Collin*, indirectly to *Cork and Bandon Railway*, *Gutsell v Reeve*, and *Pratt v Cook*.

81. The next case adopting the wider *Collin* view is *Rahman v Sterling Credit Ltd* [2001] 1 WLR 496, (“*Rahman*”) which was a claim to reopen a credit bargain under sections 137 and 139 of the Consumer Credit Act 1974 (“the 1974 Act”) on the ground that it was extortionate. The question of limitation arose for the first time in the Court of Appeal. Mummery LJ gave the lead judgment with which Simon Brown LJ agreed, in which he rejected a long line of reported decisions by district judges that the relevant limitation period for such applications was six years from the date of the credit bargain. Those decisions had been made on the basis that such applications were not actions upon a specialty under section 8 of the 1980 Act but were actions to recover a sum of money recoverable by virtue of the 1974 Act and accordingly section 9 of the 1980 Act applied. Holding that conclusion to be wrong, Mummery LJ referred to *Collin* and stated that its reasoning applied to section 139 of the 1974 Act because the borrower’s cause of action arose only out of the provisions of that Act (p 502). The result was that the limitation period depended upon the remedy which Mr Rahman sought. Section 8 of the 1980 Act would apply, giving a 12-year limitation period, if Mr Rahman sought to reopen the loan agreement to be relieved from obligations to make future payments. If he claimed repayment of sums already paid under the credit bargain, the limitation period would be six years under section 9 of the 1980 Act.

82. Finally, in *Hill v Spread Trustee Co Ltd* [2007] 1 WLR 2404 (“*Hill v Spread Trustee*”), the Court of Appeal (Waller and Arden LJJ and Sir Martin Nourse) addressed

the period of limitation under the 1980 Act which was applicable to a challenge to a transaction at an undervalue defrauding creditors of a bankrupt under section 423 of the IA 1986. In her judgment Arden LJ, having identified practical difficulties which would arise by applying the 1980 Act to section 423, said that nevertheless the policy of the 1980 Act was that there should be an end to litigation and that was in the public interest. She stated at para 113: “On this basis, there is no reason why claims under this section should not be subject to some time limit.” In her discussion of the relevant limitation periods between paras 115 and 118 Arden LJ distinguished between statutory claims for non-monetary relief, which she held fell under section 8(1) of the 1980 Act, and claims to recover a sum of money under a statute which fell under section 9. Referring to *Collin, Aylott* and *Pratt v Cook* she stated (para 116): “The essence of a specialty is a covenant under seal or an obligation imposed by statute”. This approach, Arden LJ concluded (para 118), was consistent with *Farmizer* and *Priory Garage*.

83. Sir Martin Nourse analysed the question of limitation differently. He addressed three questions. The first was whether there was a period of limitation at all. His answer was that there is no general rule that an action brought by a trustee in bankruptcy is not subject to the provisions of the 1980 Act, and he relied on *Priory Garage* for the conclusion that there was no exception for a claim under section 423 (para 143). The second question was whether the claims fell within section 8(1) or section 9(1) of the 1980 Act. He held that, as the main claim was in substance to set aside a settlement, it was an action upon a specialty under section 8(1) of the 1980 Act, but the point was academic because the action was commenced more than 12 years after the settlement was made and less than six years after the bankruptcy order was made. The third question therefore was to identify when the limitation period started. He agreed with the district judge that the limitation period began on the date of the bankruptcy order. Waller LJ agreed with Sir Martin Nourse on these matters.

84. For completeness we refer to the judgment of this court in *Smith v Royal Bank of Scotland*, which concerned a claim under section 140A of the 1974 Act for repayment of monthly premiums paid on a payment protection insurance policy linked to a credit card agreement on the ground that the credit relationship was unfair. In that case it was common ground between the parties that section 9 of the 1980 Act applied, and the only issue argued before the Supreme Court was the date at which the cause of action accrued. The court held that the cause of action did not accrue until the credit relationship had ended. The question whether section 9 of the 1980 Act applied to the claim was not addressed in argument or by the court.

85. Before reaching any conclusion about the validity of the judicial extension of the concept of an action upon a specialty and the meaning of section 9 of the 1980 Act it is helpful to consider the approach to similar or identical statutory provisions in other common law jurisdictions.

Case law in other common law jurisdictions

86. Other common law courts have similarly struggled with the concept of an action upon a specialty. They have generally taken a narrow view of its scope.

87. In Australia, limitation is covered by State legislation. English law, including the 1623 Act, applied either from the date of the State's original settlement (in the case of South Australia and Western Australia) or by reason of the Australian Courts Act 1828 (in the case of New South Wales, which then included what is now Victoria and Queensland, and Tasmania). Subsequently, but at different times, States adopted their own legislation, which was often (and in some cases remains) in a form similar to section 3 of the 1833 Act.

88. The Supreme Court of Western Australia in *State Government Insurance Commission v Teal* [1990] 2 WAR 105 ("*Teal*"), addressed section 38(1)(e) of the State's Limitation Act 1935 which applied a 20-year limitation period to "actions of covenant or of debt upon any bond or other specialty". In his judgment, Commissioner D R Williams QC described a specialty as "a term usually used to denote a contract under seal and a specialty debt is an obligation under seal securing a debt." Referring to among other cases *Cork and Bandon Railway, R v Williams* and *Collin*, he stated: "However a specialty may also be a debt due under a statute". There were therefore two questions to be answered: (i) was the action an action of debt, and (ii) was it a claim upon a statute? He added (pp 118–119) that the Limitation Act needed a thorough redrafting to avoid having to consider forms of action which had been abolished more than a century previously.

89. Similarly, in *Carabelas v Scott* [2003] SASC 389; 177 FLR 334 ("*Carabelas*"), the Supreme Court of South Australia (Full Court) addressed section 34 of the State's Limitation of Actions Act 1936 which established a 15-year limitation period for "all actions of covenant or debt upon any bond or other specialty or upon any judgment or recognisance". A corporation in liquidation brought a claim against its former directors for misfeasance under section 229(7) of the Companies (South Australia) Code. This provision authorised the corporation to recover "as a debt due to the corporation" profits made as a result of the misfeasance and an amount equal to any loss or damage caused to the corporation. The court held that the claim for misfeasance was an action upon a specialty within section 34 of the statute. Doyle CJ, in a judgment with which Prior and Vanstone JJ concurred, adopted the reasoning in *Teal* and stated that although a claim might be made apart from the statute, both the right and the remedy were based wholly on the statute. He called for statutory reform, agreeing with Commissioner Williams that it should not be necessary to delve into the legal complexities which the statutory language generated (paras 76–77).

90. We mention also a judgment of the Supreme Court of Victoria, *Haque v State of Victoria* [2024] VSC 703 (“*Haque*”), in which Harris J, interpreting the phrase “action upon a bond or other specialty” in section 5(3) of Victoria’s Limitation of Actions Act 1958, referred to the reasoning in *Teal* and *Carabelas* and in *Martin v Diamantikos* [1964] VR 593, and stated (para 49):

“the term ‘specialty’ in section 5(3) of the LAA refers generally to a contract under seal, with a specialty debt being a debt due under seal. It may also extend to debts due under a statute.”

Harris J saw further support for this view in the use in section 5(3) of the composite phrase “bond or other specialty”.

91. Some States have amended their limitation legislation to include provisions similar to section 9 of the 1980 Act. Section 10(1)(d) of Queensland’s Limitation of Actions Act 1974 imposes a limitation period of six years for “an action to recover a sum recoverable by virtue of any enactment”. In *Ashtrail Pty Ltd v Gold Coast City Council* [2020] QCA 82; 4 Qd R 192 (“*Ashtrail*”), the Queensland Court of Appeal addressed a limitation defence under section 10(1)(d). The Council sought a declaration that a planning authorisation was valid as a preliminary step to seeking to recover infrastructure contributions from Ashtrail. The Court of Appeal rejected Ashtrail’s limitation defence, stating at para 77:

“First, [section 10(1)(d)] only applies to ‘an action to recover a sum’. The Council’s proceedings were not of that character. The proceedings were for declaratory relief, the grant of which always depended upon an exercise of discretion in favour of the Council. *An action to recover a sum is apt to describe an action for a debt*, rather than declaratory relief depending upon the exercise of discretion.” (Emphasis added.)

92. The decision in *Ashtrail* represents a narrower reading of section 10(1)(d) than the English courts have given to section 2(1)(d) of the 1939 Act and section 9 of the 1980 Act, by restricting it to “an action for a debt”, rather than including claims for unliquidated sums. The exclusion of any relief that is dependent on an exercise of discretion by the court runs counter to the decision in *Farmizer*.

93. Australian jurisprudence has confined actions based on an enactment to actions to recover debts. There is no support for the limitation provisions to apply to actions for non-monetary relief.

94. In Canada statutory reform has removed all references to actions upon a specialty from limitation statutes in all provinces. But case law on now superseded statutes drew on English case law and treated an action upon a specialty as an action to enforce a debt obligation. In *AM Smith & Co Ltd v The Queen* [1982] 1 FC 153 the Federal Court of Canada (Court of Appeal) rejected an argument that a claim for compensation for the withdrawal of a licence under the Saltfish Act 1970 was an action upon a specialty because it was not enough that a statute created a right to compensation; the claim must be for a liquidated amount (Ryan J, with whom Pratte and Le Dain JJ agreed, at para 8 and para 15ff). Before the Limitations of Actions Act 1873 (Nova Scotia), the law was the same as in England, including section 3 of the 1833 Act. Section 25 of the 1873 Act provided a 20-year limitation period for “all actions upon any bond or other specialty”, omitting the reference to actions of covenant or debt. Ryan J surmised at paras 22–23 that this omission was on account of the effective abolition of forms of action in Nova Scotia by statute in 1853. At para 23, Ryan J said that it seemed unlikely that “by the 1873 provision in respect of actions on deeds and other specialties, it was intended not only to capture (among other things) actions for debt on a statute, but also to extend the then existing limitation period from six years to twenty years in respect of actions for unliquidated sums on statutory causes of action”. Still less, it might be said, was it intended to introduce without any express provision a limitation period for non-monetary claims.

95. In other cases, the Canadian courts have gone further and excluded from the scope of actions on a specialty claims for unliquidated damages for breach of the terms of a deed under seal: see *Suburban Construction Ltd v Newfoundland and Labrador Housing Corporation*; 38 DLR (4th) 150, *South-West Oxford v Bailak* (1990) 75 OR (2d) 360 and 872899 *Ontario Inc v Iacovoni*; 163 DLR (4th) 263 and *Kenmont Management Inc v Saint John Port Authority* 210 DLR (4th) 676. These cases narrow the scope of actions upon a specialty further than the position in English law under section 3 of the 1833 Act and thereafter, because as earlier explained unliquidated damages for breach of a deed under seal were recoverable in an action of covenant, although not of course in an action of debt.

96. There is no support in the Canadian authorities for extending the scope of actions on a specialty to include non-monetary claims.

97. In Hong Kong section 4(1)(d) and 4(3) of the Limitation Ordinance 1965 are in substantially the same terms as section 2(1)(d) and 2(3) of the 1939 Act, providing respectively a six-year limitation period for an action to recover sums recoverable by virtue of an enactment and a 12-year limitation period for an action upon a specialty, save where other provision is made. Expressly basing themselves on the decisions in *Collin* and in cases following it, the Hong Kong courts have taken a broader view of an action upon a specialty by applying the limitation period of 12 years to actions for non-monetary relief based on a statute.

98. *Re Faith Dee Ltd* [2013] HKCFI 189, a first instance decision of the High Court, involved a claim by a liquidator of a company for a declaration to nullify a series of transactions on the ground that they were unfair preference transactions and were void under section 266B of the Companies Ordinance. In that case it was common ground that the application was an action upon a specialty: see para 70. Similarly, it was common ground before the Court of First Instance and the Court of Appeal in *Securities and Futures Commission v Lu Ruifeng and Others* [2020] HKCFI 1806; [2021] 1 HKC 543 and [2022] HKCA 326; [2022] 3 HKC 143 that an action by the Securities and Futures Commission against a former director of a listed company under section 213(2)(b) of the Securities and Futures Ordinance arising from insider dealing by the former director was an action upon a specialty. If the claim was essentially for non-monetary relief, a 12-year limitation period applied but if the substance and essential nature of the action was to recover monetary compensation a six-year period would apply under section 4(1)(d) of the Limitation Ordinance: para 60. In his judgment, G Lam JA, with whom Au JA agreed, followed the English cases in saying that, for the purposes of section 4(1)(d) of the Ordinance, sums recoverable by virtue of an enactment were not restricted to debts or liquidated sums but included sums which could not be quantified when the action was commenced: para 50(2).

99. In New Zealand the courts in *Otaihape Farmers' Meat & Produce Co Ltd v Carlson* [1926] NZLR 121 and *Stellin Construction Ltd v Carr* [1948] NZLR 578 have addressed arguments relating to an action upon a specialty in the context of a claim for sums due on shares in a company and a claim under a sealed contract respectively but have not addressed the boundaries of the concept of an action upon a specialty.

100. New Zealand's present Limitation Act does not have an equivalent to section 9 of the 1980 Act, but the now repealed Limitation Act 1950 had a provision (section 4(1)(d)) which covered "actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture." Andrew Thompson KC for Zedra cited the case of *Alligators Fast Food Ltd v Chen* [2018] NZHC 587 ("*Alligators Fast Food*"), in which the plaintiff shareholders brought a claim for, among other remedies, relief under section 174 of the Companies Act 1993 (New Zealand) in respect of oppressive or unfairly prejudicial conduct of a company's affairs. Associate Judge R M Bell stated (para 50):

"The court's exercise of its power under section 174 involves the application of equitable principles. 'Actions to recover any sum recoverable by virtue of any enactment' is apt to cover claims where a money order is available as a matter of right. That is consistent with the actions in section 4(1)(a) actions in tort or contract, (b) actions to enforce a recognisance and (c) actions to enforce an award. It is not, however, apt to refer to a proceeding where the court is required to weigh equitable considerations and to decide which of a number of remedies

best fits the circumstances of the case. When the court in its discretion orders compensation under section 174(2)(b), it is not granting relief which the plaintiff can claim as a matter of right, but has selected that remedy as appropriate to relieve against the unfairly prejudicial conduct.” (Emphasis added.)

The judge added at para 51 that it would be odd to apply section 4(1)(d) to claims under section 174. He said:

“It could apply only to the court’s power to order compensation under section 174(2)(b). There seems no principled reason why money orders under section 174 should be subject to a time limit, but others should not be. Moreover, given the equitable nature of the court’s jurisdiction, it is antithetical that black letter time-bars should apply.”

101. The judgment of the Malaysian High Court in *Tan Geok Hwa v Centamin Construction & Development Sdn Bhd and Others* [2019] MLJU 1500 (“*Tan Geok Hwa*”) contains a discussion of the equivalent to section 9 of the 1980 Act in section 6(1)(d) of the Limitation Act 1953 which establishes a six-year limitation period for “actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or of a sum by way of penalty or forfeiture.” The case concerned an application for a remedy for shareholder oppression under section 346 of the Companies Act 2016. The judge, Azizul Azmi Adnan J, held that the statutory cause of action did not fall within section 6(1)(d) even if the court were to make an order for the payment of compensation. After referring to a company law textbook and the Law Commission’s report on *Limitation of Actions*, he pointed out that the usual remedy under the statute was for the plaintiff’s shares to be bought out or for the company to be wound up. The remedy which the plaintiff sought was for payment of dividends which had been withheld. Referring to the statement of Millett LJ in *Paragon Finance plc v D B Thakerar & Co* [1999] 1 All ER 400, 414 (“*Paragon Finance*”) that, although the 1939 and 1980 Acts are perhaps not wholly consistent in this respect, “any principled system of limitation should be based on the cause of action and not the remedy”, the judge stated (para 59):

“It would stand to reason that the applicability of limitation should be determined based not upon the remedy that is being sought, but rather based upon the nature of the cause of action. This, in my judgment, would be the only coherent way to differentiate between different classes of actions and the applicability of limitation thereto. For instance, in an oppression action, it should not matter whether the plaintiff seeks to impose a restraint on the company, for his shares to be bought out, for the company to be wound up, or for a

compensatory payment to be made to him. The period of limitation, if any, should be the same, regardless of the remedy sought, for as long as the actions are founded upon the same specific cause of action.”

Analogies in Commonwealth company legislation

102. Before we consider the correct interpretation of sections 8 and 9 of the 1980 Act, we briefly address submissions about the application of limitation periods to analogous statutory company law remedies in other common law countries to see if it can cast any light on the interpretation of the 1980 Act.

103. Mr Thompson referred to the Corporations Act 2001 in Australia which in sections 232 and 233 empowers the court to make an order if the conduct of the company’s affairs “is ... unfairly prejudicial to ... a member or members whether in that capacity or in any other capacity.” In *Hylepin Pty Ltd v Doshay Pty Ltd* [2020] FCA 1370, O’Bryan J at para 27 cited authorities and stated that a claim under section 232 is not subject to any limitation period and that the court could make orders even if the oppressive conduct had ceased. He also stated that delay in bringing proceedings is a relevant factor in the exercise of the court’s discretion to grant a remedy. While the wording of the statute uses the present tense (“is ... unfairly prejudicial”), the High Court of Australia has clarified that the oppression provisions apply even if the conduct complained of has yet to occur or has ceased: *Campbell v Backoffice Investments Pty Ltd* [2009] HCA 25; 238 CLR 304, French CJ at para 65, Gummow, Hayne, Heydon and Kiefel JJ at para 182.

104. In New Zealand, the Companies Act 1993 provides in section 174 for relief against “oppressive, unfairly discriminatory, or unfairly prejudicial” conduct. In *Alligators Fast Food* Bell J addressed an argument that a claim under section 174 was subject to a statutory limitation period of six years as an action to recover a sum recoverable by virtue of an enactment under section 4(1)(d) of the now repealed Limitation Act 1950. We have quoted above from his judgment. He observed at para 50 that, when the court orders compensation under section 174(2)(b), it is not granting relief which the plaintiff can claim as a matter of right, but it is selecting an appropriate remedy to relieve against the unfairly prejudicial conduct. At para 51 he stated that it would be odd for there to be that limitation period when the court ordered monetary compensation but no limitation period where the court granted other remedies under section 174 and that it would be antithetical to the equitable nature of the court’s jurisdiction that black letter time bars should apply. At para 54 he referred to the judgment of Sir Donald Rattee in *Re Grandactual Ltd* and stated that the court may refuse relief on the ground of delay.

105. As Lance Ashworth KC for the Company points out, the relevant New Zealand statute had a limitation period of 12 years for an action on a deed but did not have a

limitation period for an action upon a specialty as exists in England and Wales under section 8 of the 1980 Act. Bell J was therefore considering the six-year limitation period for actions to recover a sum recoverable under a statute in a different statutory context from that which would apply under the 1980 Act, but it nonetheless seems to us that his points would remain valid even if the New Zealand statute had included a 12-year limitation period for actions on a specialty.

106. In the British Virgin Islands, the BVI Business Companies Act (Revised) 2020 in section 184I allows a member of a company to petition for relief where the affairs of the company “have been, are being or are likely to be, conducted in a manner that is ... oppressive, unfairly discriminatory, or unfairly prejudicial to him or her”. In *JF Ming Inc v Ming Siu Hung* [2017] CA 11 Blenman JA at para 86 observed that it was “settled law” that no statutory limitation period applies to such claims but that delay by the petitioner would be relevant in assessing the fairness of the treatment of the minority and as to the appropriate remedy. In that case, as Mr Ashworth points out, there was no pleaded issue of limitation, and no authority was cited for the existence of settled law.

107. Mr Ashworth draws the court’s attention to the position in Canada, referring to section 227 of the Business Corporations Act 2002 in British Columbia, which provides a similar range of remedies against the conduct of a company’s affairs in an oppressive manner or acts of the company that are unfairly prejudicial to one or more shareholders, and to the decision of the British Columbia Court of Appeal in *Brockman v Valmont Industries Holland BV* [2022] BCCA 80. In that case the Court of Appeal applied a two-year limitation period under section 6 of the Limitation Act SBC 2012, which provides that “a court proceeding in respect of a claim must not be commenced more than two years after the day on which the claim is discovered”, to the continuous and ongoing conduct of which the shareholder complained. As a result, claims in relation to oppressive conduct which had occurred more than two years before the commencement of the proceedings were barred notwithstanding that the oppressive conduct was ongoing. In giving the judgment of the court, Harris J in para 22 saw the matter as one of interpreting the express words of section 6 of the 2012 Act. That statutory provision confined the petitioner’s complaint to oppressive conduct which occurred within the limitation period of two years before he presented his petition.

108. In Canada, each province has its own limitation legislation which is worded differently. Unsurprisingly, therefore, there are different approaches to the question whether an oppression petition is subject to a statutory limitation period. For example, in Manitoba section 2(1)(n) of the Limitation of Actions Act 1987 has a catch-all provision imposing a six-year limitation on “any other action for which provision is not specifically made in this Act”, which the Manitoba Court of Appeal has held applies to an oppression petition: *Jaska v Jaska* 141 DLR (4th) 385 at para 23. The Ontario Court of Appeal held that there was no limitation period for an oppression claim, observing that the Ontario legislation did not have a catch-all provision: *Waxman v Waxman* 186 OAC 201. The Alberta Court of Appeal considered that the relief sought in an oppression petition is

equitable in nature and applied section 4(1)(e) of Alberta's Limitation of Actions Act which applied to "actions grounded on an equitable ground of relief": *Seidel v Kerr* 2003 ABCA 267; 330 AR 284. In *Hughes v Bob Tallman Investments Inc* 2005 MBCA 16; 250 DLR (4th) 74, paras 24–29, the Manitoba Court of Appeal applied an analogous statutory provision to an oppression petition on the basis that such claims were a statutory extension of equity. In *Incorporated Broadcasters Ltd v CanWest Global Communications Corporation* 2008 MBQB 296; 300 DLR (4th) 577, MM Monnin CJ in the Manitoba Court of Queen's Bench suggested that, while a limitation period should apply to oppression petitions, there remained uncertainty as to which specific statutory limitation period applied.

109. What can be drawn by analogy to the common law jurisdictions to which we were referred? While in each case there are statutory provisions of company law which provide similar remedies for shareholders who are the victims of unfairly prejudicial conduct, the application of limitation provisions to such claims depends upon the terms of the relevant limitation statutes. In New Zealand there is a six-year limitation period for an action to recover a sum recoverable under statute but otherwise no limitation period for an action on any specialty except a deed. The British Columbian and Manitoban statutory limitation periods have no precise analogue in the 1980 Act. What we take from this consideration of other common law jurisdictions is that, while some judges advocate for a limitation period on policy grounds, several jurisdictions do not appear to have encountered significant difficulty from the absence of a statutory limitation period in relation to such claims and from treating delay by the petitioner in initiating an application to the court as a factor militating against the grant of a remedy in the exercise by the court of its discretion under the relevant company legislation.

The proper interpretation of section 8 of the 1980 Act

110. The case law which addresses claims which were or were argued to be created by statute and which we have set out in paras 53–56 above is consistent with the view that an action upon a specialty, when applied to a statute, was an action for the payment of a debt. In *Cork and Bandon Railway* the court treated the action as an action of debt on a liability created by statute and therefore an action upon a specialty. Similarly, in *Aylott* Lord Hanworth MR and Warrington LJ held that the action must be an action of debt upon a statute in order to exclude the six-year limitation defence of the 1623 Act and bring the action within the 1833 Act. *Gutsell v Reeve* and *Pratt v Cook* adopted the same approach. Other cases consistent with that view include *Tobacco Pipe Makers' Co v Loder* (1851) 16 QB 765, *Shepherd v Hills* (1855) 11 Exch 55 and *Thomson v Lord Clanmorris* [1900] 1 Ch 718.

111. In short, until *Collin*, there were no cases in recent centuries in which an action upon a specialty had been for anything other than monetary relief. The same is true of Australia, Canada and the other common law jurisdictions referred to above.

112. In *Collin*, Oliver LJ concluded that an action upon a specialty included an action seeking non-monetary relief. We have earlier referred to the two possible bases for Oliver LJ's conclusion that, if the 1980 Act applied at all to the claim to enfranchise a leasehold property, it was subject to section 8. The wider *Collin* view focuses on the right under a statute to bring proceedings, while the narrower *Collin* view bases the application of section 8 on the creation of an enforceable obligation by a statute or deed. The wider *Collin* view was adopted in *Priory Garage* and *Rahman* and (but this is less clear) in *Hill v Spread Trustee*. In each of those cases, the relevant provision entitled the claimant to bring proceedings for relief either where certain transactions had taken place or in respect of a past or present state of affairs.

113. In the present case, Lewison LJ based his decision that section 8 applied to unfair prejudice petitions firmly on the wider *Collin* view. Having set out Oliver LJ's statement of the wider view at p 602 of *Collin*, Lewison LJ said at para 72:

“A member of a company has no right to petition for relief for unfair prejudice apart from section 994. The right to go to court is not one created either by the common law or by equity. That is illustrated by the instant case in which Zedra's petition is based upon breach of statutory duties (which codify earlier fiduciary duties) which are owed by the directors to the company rather than to Zedra itself. It follows, in my judgment, that in principle a petition seeking relief under section 994 is subject to the limitation period laid down in section 8.”

114. In our view, the Court of Appeal was wrong in the present case, and was wrong in *Rahman*, to treat the wider *Collin* view as the basis of Oliver LJ's conclusion in *Collin*. As we have shown, Oliver LJ stressed that the action brought by Mr Collin was to enforce the obligation imposed by statute on his lessor to enfranchise his lease. The passage relied on as expressing the wider *Collin* view cannot be divorced from that basic feature of the claim. In our judgment, Oliver LJ was not proposing the mere existence of a statutory cause of action as sufficient to bring section 8 of the 1980 Act into play. We accept the submission of Mr Thompson that the true basis of Oliver LJ's conclusion was that the Leasehold Reform Act was the source of the rights and obligations which the action was brought to enforce.

115. In our judgment, 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. It is unquestionable that prior to the 1939 Act actions upon a specialty were actions to enforce obligations created by a deed or statute, as the cases dealing with the 1833 Act clearly show. There is no basis to suggest that the 1939 Act was designed to change fundamentally the nature of an action upon a specialty, so as to extend it from actions to enforce statutory obligations to embrace all proceedings for which a statute may make provision.

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.

117. We are satisfied for these reasons that the Court of Appeal was wrong to hold that section 8 of the 1980 Act applied to petitions under sections 994–996. We are 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.

118. The writers of this judgment take the view that for the reasons set out in paras 119–123 below the Court of Appeal in *Collin* was wrong to apply section 8 of the 1980 Act to the claim for enfranchisement. Lord Lloyd-Jones and Lord Briggs take the view that the 12-year limitation period in section 8 applies to non-monetary obligations created by statute for the reasons set out in paras 124–128 below. But as we state below, it is not necessary or appropriate to decide this point as it has no effect on the outcome of this appeal.

119. It will be recalled that the 1939 Act, in response to the 1936 Report, reduced the limitation period for actions upon a specialty from 20 years to 12 years. The statutory formulation in section 2(3) of the 1939 Act understandably made no reference to the obsolete forms of action (actions of covenant or actions of debt) but there is no indication in the 1936 Report that it sought to alter what had before then been understood as an action upon a specialty for the purpose of limitation. If it had been intended, by the omission of the obsolete words, to include all claims on a statute within the scope of section 2(3), some discussion of this might have been expected and wording other than the somewhat obscure phrase an “action upon a specialty” might have been used.

120. It is noteworthy that Australian and Canadian jurisprudence has treated an action upon a specialty as referring to a debt due under a statute, while the different approach

taken in Hong Kong has been expressly based on *Collin*. In this country senior judges have supported the view that Parliament intended to exclude a claim for payment of a debt under a statute from the concept of a specialty, thereby restricting “specialty” in section 2(3) of the 1939 Act and section 8 of the 1980 Act to debts or obligations in contracts under seal. In *Leivers v Barber, Walker and Co Ltd* [1943] KB 385, 398, Goddard LJ stated that in his opinion the 1939 Act had confined “specialties” to deeds or contracts under seal (and thus excluded statutes). Lord Reid in *CEB* at p 799 supported Goddard LJ’s view, to which the Court of Appeal referred in *Bolsover District Council v Ashfield Nominees Ltd* [2010] EWCA Civ 1129; [2011] Bus LR 492 at para 27.

121. We have earlier referred to and quoted from the judgment of Oliver LJ in *Collin*. He rightly held at p 602 that Mr Collin’s cause of action derived solely from the Leasehold Reform Act 1967. He continued: “Subject, therefore, to one question, namely whether the word ‘specialty’ as used in the Limitation Act 1939 and the Act of 1980 *has assumed a more limited meaning than it originally bore*, I have no doubt at all that the applicant’s claim is a claim on a specialty” (emphasis added). At p 603, he said: “I do not for my part see that it follows that *the ancient and accepted meaning of ‘specialty’ as including causes of action based on statute* was in any way altered” (emphasis added). He said that he had found the argument of counsel for Mr Collin persuasive and held that the 12-year limitation period applied to the claim, which had therefore been brought in time.

122. Oliver LJ’s conclusion is based on the false premise that “the ancient and accepted meaning of ‘specialty’ [included] causes of action based on statute”. The accepted meaning of specialty when relating to a statute never included all causes of action based on a statute but was confined to actions to recover ascertained sums as debts. The question was not whether the word “specialty” as used in the 1939 and 1980 Acts had “assumed a more limited meaning than it originally bore” but whether it had assumed a wider meaning. For the reasons given above, we are satisfied that it did not do so.

123. It may be objected that, if no statutory limitation period applies to an action to enforce a statutory non-monetary obligation such as that in *Collin*, the way is left open for stale claims to be made many years after the right became enforceable. However, any order to enforce the statutory obligation would be an order for specific performance or an injunction. They are equitable remedies to which section 36 of the 1980 Act applies (see para 15 above). The clear intention of section 36(2) is to ensure that laches and other bars based on delay shall apply to the grant of equitable remedies. Given the terms of section 36(2), there is no reason why laches and other equitable factors concerned with delay would not apply in proceedings to enforce statutory obligations.

124. Lord Lloyd-Jones and Lord Briggs on the other hand take the view that the 1939 Act provided a limitation period of 12 years in relation to non-monetary obligations created by statute. Section 2(3) of the 1939 Act removed all reference to the forms of action, the relevant one being the action of debt upon a specialty. Instead, it spoke simply

of an “action upon a specialty”. Section 2(1)(d) of the 1939 Act provided the shorter limitation period of six years for monetary obligations created by statute. The 1939 Act thus created and the 1980 Act preserved a distinction between claims to enforce monetary obligations created by statute, which have a limitation period of six years, and claims to enforce non-monetary obligations created by statute, which have a limitation period of 12 years.

125. There has never been a statutory definition of a specialty. It is a term which lawyers have used to describe on the one hand a higher form of obligation and on the other the document itself, whether a statute or deed, which creates the obligation. In the 1939 Act and in the 1980 Act the term “specialty” is used in the latter sense.

126. Further, while the cases addressing the 1833 Act, which we have cited, were all concerned with monetary claims, the reasoning of the House of Lords in *Pratt v Cook* treated the statute as the specialty. Thus, Lord Atkin, with whom Lord Thankerton agreed, stated at p 446:

“There is a new cause of action created by section 4 ... No such cause of action exists apart from the statute”.

Lord Russell of Killowen stated at p 449:

“The appellant is bringing an action which but for section 4 of the Act he could not bring. The action is therefore brought on a specialty and the limitation period is twenty years.”

Their Lordships treated the action of debt to recover the arrears of wages as an action of debt upon a specialty because they treated the statute as the specialty.

127. The 1939 Act did not enact precisely what the Law Revision Committee recommended. While the Law Revision Committee had recommended a six-year limitation period for all actions arising by virtue of statutory provisions (see para 45 above), the 1939 Act limited the six-year period to actions to recover sums recoverable by virtue of a statute. Other actions to enforce obligations created by statute remained subject to the 12-year limitation period under section 2(3) of the 1939 Act and now under section 8 of the 1980 Act.

128. It is striking that nobody has challenged the reasoning in *Collin* in over 30 years and Mr Thompson does not do so.

129. We agree that it is not appropriate for the court to reach a concluded view on this question. The question has not been addressed by counsel, and any conclusion would be obiter commentary on what were obiter dicta in *Collin*.

The proper interpretation of section 9 of the 1980 Act

130. A claim for relief under sections 994–996 of the Companies Act 2006 is not an action upon a specialty for the purposes of section 8 of the 1980 Act. The question remains, however, whether section 9 applies to a petition under section 994 if the relief sought is confined to, or includes, a monetary claim. We turn now to consider that issue.

131. Section 8 would, but for section 9, apply to any claim for an ascertained debt arising by virtue of a statute, for the reasons given above. The effect of the combination of section 2(1)(d) and 2(3) of the 1939 Act, and sections 8 and 9 of the 1980 Act is, as Oliver LJ correctly said in *Collin*, to apply a six-year limitation period to an action to recover statutory debts which would otherwise have been subject to a 12-year limitation period. Such an action is unquestionably an “action upon a specialty” within the meaning of section 2(3) and section 8(1) but it fell within the proviso to section 2(3), and it falls within section 8(2), as an action for which a shorter period of limitation is prescribed by another provision of the Act in question, namely section 2(1)(d) of the 1939 Act and section 9 of the 1980 Act.

132. It does not necessarily follow that section 9 is confined to claims for ascertained debts. It introduces a limitation period for an action for “any sum recoverable by virtue of any enactment”. To the extent that those words encompass a wider group of monetary claims, such as claims for unliquidated sums, section 2(3) of the 1939 Act imposed, and section 9 of the 1980 Act continues to impose, a limitation period for some claims which are not actions upon a specialty and were not previously subject to a limitation period.

133. The relevant relief sought by Zedra in its petition under section 994 is an order that the respondent directors pay equitable compensation to redress the loss it allegedly suffered by its exclusion from the issue of bonus shares.

134. The first question is therefore to consider the scope of section 9, in the sense of the claims to which it applies.

135. The wording of section 9 (“any sum recoverable by virtue of any enactment”) is capable of casting a wider net than simply ascertained statutory debts. As discussed above, courts in Australia and Canada have restricted similarly worded provisions to ascertained debts under a statute, in other words only to those statutory claims which were encompassed within section 3 of the 1833 Act or similar legislation. The English courts

have given a wider meaning to those words, so as to include claims under statute for unascertained sums (*Pegler v Railway Executive*, *Hillingdon London Borough Council v ARC Ltd*) and, further, to monetary claims which are subject to the exercise of the court's discretion (*Farmizer*). While there are substantial arguments in favour of the narrow view, we consider that the broad wording of section 9 justifies the conclusion reached in the English cases.

136. It follows that a claim for compensation for loss suffered by a shareholder might be capable of falling within section 9. Suppose that a statute provided that if a shareholder were unlawfully excluded from a bonus issue, the shareholder was entitled to bring an action for compensation for resulting loss. In such a case, section 9 would apply: see *Hillingdon London Borough Council v ARC Ltd*.

137. A claim under section 994, however, is not a claim to enforce a liquidated or unliquidated obligation arising under a statute but is a claim that the court should make such order as it thinks fit for giving relief in respect of the matters complained of. The court has the widest possible discretion as to the orders it may make, examples of which are listed in paragraphs (a)-(e) of section 996(2).

138. While he acknowledged this aspect of the court's powers, Lewison LJ concluded that it did not result in different treatment of a claim under section 994 for the purposes of section 9 of the 1980 Act.

139. Lewison LJ started by considering *West Riding* and *CEB*. As regards *West Riding*, he noted that under the relevant legislation a local authority could seek non-monetary relief, such as the transfer of property, as well as orders for payment. However, the plaintiff local authority in that case claimed two liquidated sums on the basis not that the court would exercise a discretion to make such order as it thought just or fit but that it was entitled under the terms of the legislation to payment of those sums. As Lord Goddard CJ put it at p 546: "In my opinion this is a money claim... If the local authority which loses part of its area to another corporation or body can show that it has suffered financial loss within the meaning of [the] section, a loss which has to be adjusted, then it has a claim for the money".

140. The claim in *CEB* was a simple claim for payment of a debt. Before the transfers provided for by the Electricity Act 1947 took effect, Halifax Corporation held a sum of £34,500 plus interest derived from its activities as an electricity undertaker. By operation of the Act, the plaintiff's predecessor was entitled to that sum and the action was brought to recover it. It does not seem to us that it provides any assistance in the present case.

141. Lewison LJ then referred to *Farmizer*. The striking feature of that case is that the liquidator's entitlement to any payment order under section 214 of the IA 1986 was

dependent on the exercise of a discretion by the court. However, once the court decided to make an order in favour of the liquidator, it could only take the form of an order for the payment of money. It was in that context that Peter Gibson LJ held that the sum ordered to be paid was recoverable by virtue of section 214. He rejected the submission that relief under section 214 could take a non-monetary form. The statement in his judgment at p 599 that a monetary claim would still come within section 9 even if non-monetary relief were possible was expressly made on the basis that he was wrong in his primary view that non-monetary relief was not available under the section. It is not entirely clear whether he was there envisaging that section 214 might have been drafted to give the court a discretion whether to give relief in monetary or non-monetary form. If he were hypothetically envisaging section 214 in that form, we consider for the reasons given below that he was wrong to adopt a ‘look and see’ approach and to say that section 9 would apply if monetary relief were claimed. *Farmizer* does not assist in the present case.

142. Most obviously in point to the present case were the decisions in *Priory Garage* and *Hill v Spread Trustee*. Those cases concerned respectively sections 238–241 and section 423 of IA 1986. Under those sections the court is given the widest discretion to make such orders as it thinks fit (section 239(2) and section 423(2)) and examples of possible orders are given in section 241(1) and section 425(1). In *Priory Garage*, the judge said at p 160 (sub-paras (3)–(4)) that, although a wide range of orders was available to the court, an application under sections 238–241 will be subject to section 9 “if it can fairly be said that the substance or the essential nature of the application is ‘to recover a sum recoverable by virtue of’ those sections”, and that in the event of doubt as to whether the claim falls within section 8 or section 9, the court will apply a “look and see” approach, examining the true nature of the relief sought. A similar point was made by Arden LJ in *Hill v Spread Trustee* at para 115, but not by the majority (Sir Martin Nourse and Waller LJ).

143. At paras 119–123 of his judgment, Lewison LJ considered five objections to this approach advanced by counsel for Zedra. The first was that *Farmizer* was concerned with the narrow wording of section 214 of the IA 1986, not with the broad powers of the court under section 996 of the CA 2006. Lewison LJ rejected this submission on the basis of the obiter remarks of Peter Gibson LJ which we have disapproved above. The second was that cases such as *West Riding* were confined to cases where the statute specifically provides for the recovery of money and imposes an obligation on the defendant to pay it. Lewison LJ rejected this point on the basis that the statute also provided that there might be non-monetary relief. As explained in paras 58–63 above, we consider that the point made on behalf of Zedra was well-founded. The third objection was that the application of limitation periods to unfair prejudice petitions would lead to undesirable consequences. We agree with Lewison LJ that this is not a sound objection. Our reason is that policy considerations specific to such petitions cannot affect the construction of the general provisions of sections 8 and 9 of the 1980 Act.

144. Lewison LJ accepted that there was more force in the fourth and fifth objections. The fourth was that to apply a six-year limitation period to some claims under the same statutory provision but not to others would create arbitrary distinctions, and the fifth was that it was unworkable to allow a petition to go forward in respect of some remedies but not others. Lewison LJ rejected these two objections principally by reference to *Hill v Spread Trustee* and *Rahman*.

145. We consider these to be formidable objections, and their importance is demonstrated by the correct analysis of the nature of relief available under sections 994–996. Although a petition will specify the orders that the petitioner wishes the court to make, there is no entitlement to any particular form of relief. It is for the court to decide what it considers to be the appropriate orders to make, and it does so by reference to the state of affairs existing when it gives judgment: *Grace v Biagioli* [2005] EWCA Civ 1222; [2006] 2 BCLC 70 at paras 73–74. The court may grant relief that has not been sought by any party, and in deciding on the appropriate relief the court will take account of the interests of non-parties such as other shareholders: *Re Neath Rugby Ltd (No 2)* [2009] EWCA Civ 291; [2009] 2 BCLC 427 at paras 84 and 91. Other factors relevant to the exercise by the court of its discretion as to the relief, if any, which it will give are the proportionality of the remedy to the conduct found to be unfairly prejudicial (*Re Phoenix Office Supplies Ltd and others* [2002] EWCA Civ 1740, [2003] 1 BCLC 76 at para 51) and the petitioner’s own conduct (*Interactive Technology Corporation Ltd v Ferster* [2016] EWHC 2896 (Ch) at para 318 and the cases there cited).

146. The court’s order may provide for the payment of a specified sum, by way of compensation or otherwise, but that is not a sum “recoverable by virtue of” sections 994–996. The respondent’s obligation to pay it arises only by virtue of the court’s exercise of its very wide discretion. The petition might request a monetary remedy, but it does not follow that the court will consider that to be the appropriate order to make. The court might conclude that relief should take the form of the transfer of property rather than a monetary payment; such relief would clearly not fall within section 9. The application of section 9 to a petition would mean that a petition could proceed for any relief that the court considered fit other than a monetary order. Such a result borders on the absurd.

147. These were points which Lord Leggatt discussed in his judgment in *Smith v Royal Bank of Scotland*, when considering the original provisions of the Consumer Credit Act 1974 providing relief against extortionate credit bargains, which were replaced by those concerning unfair relationships between creditors and debtors. At para 48 he noted that *Rahman* had established that the period of limitation for actions under those original provisions depended on the nature of the relief sought. It had the effect that, insofar as the debtor was seeking relief from indebtedness under the credit agreement, the claim was “an action upon a specialty” to which a 12-year limitation period applied under section 8 but, insofar as the debtor was seeking repayment of payments already made, the claim fell within section 9 with a six-year period.

148. Lord Leggatt said at para 49:

“From the point of view of limitation, this regime had two palpable defects. First, where a claim was brought more than six years but less than 12 years after an extortionate credit bargain was made, the extent of the relief which the court could grant depended on what sums the debtor had already paid and what sum was still outstanding. This appears arbitrary. In *Rahman v Sterling Credit Ltd*... [the] Court of Appeal held that, insofar as the debtor was seeking relief from the obligation to pay amounts still owing, the action had been brought in time as the applicable limitation period was 12 years; but any claim for repayment of sums of money already paid under the credit agreement would be time-barred. Thus, a debtor who had made greater payments under an extortionate credit bargain was disadvantaged in comparison with a debtor who had paid less and accumulated large arrears. It is hard to see any logic in this.”

149. The lack of any logic in such a result led Ralph Gibson LJ, giving the judgment of the Court of Appeal in *British Coal Corporation v Ellistown Pipes Ltd* [1994] RVR 81, a case concerning section 2(4) of the Coal Industry Act 1975 which obliged the Corporation to pay compensation for damage to land or to make good the damage, to say at p 90:

“For my part, I am reluctant to attribute to Parliament the intention to create in one section of the 1975 Act obligations upon BCC in respect of which two limitation periods are applicable.”

150. We agree with Bell J in *Alligators Fast Food* at para 51 that it “would be odd to apply section 4(1)(d) of the Limitation Act 1950 to claims under section 174” of the Companies Act 1993. It could apply only to the court’s power to order compensation under section 174(2)(b). There seems no principled reason why money orders under section 174 should be subject to a time limit, but others should not be.”

151. The solution advocated by the respondent to the problems posed by the wide choice of orders available to the court under section 996 and the impossibility of accurately predicting the order(s) that the court may make is the “look and see” approach adopted by the judge in *Priory Garage*. This involves an analysis for which there is no warrant in the legislation. The judge thought it was supported by Lord Goddard’s judgment in *West Riding* and by *Farmizer*, but we disagree. No such issue arose in *West Riding* because it was a claim only for monetary payments to which (on the facts) it was

entitled under the statute. Nor can *Farmizer* provide support because only a monetary remedy is available under section 214 of the IA 1986. It was accepted in *Priory Garage* that a claim under sections 238–241 of the IA 1986 as regards a particular transaction involves a single cause of action but the judge’s approach, where more than one remedy was sought, was to “look to see what the substance or essential nature of the relief truly sought by the applicant in the particular case before it is” (p 160). If the court determined that the relief “truly sought” by the applicant was an order for the payment of money, section 9 would apply, but otherwise section 8 would apply. For this purpose: “The court is not limited just to the words of the pleading. The court may look at the substance behind the pleading” (p 160). In order to look at “the substance behind the pleading”, the court examined “the factual background to check whether [the primary head of relief sought] reflects the substance of the position” and analysed “the true nature of the evidence before me, and its significance as to the type of relief which may result in this case.” In our view, this evaluative process is particularly ill-suited to deciding whether an action is time-barred. Adopting the words of Ralph Gibson LJ quoted at para 149 above, we would be reluctant to attribute such an intention to Parliament.

152. We would be even more reluctant to accept the respondent’s submission on this appeal that the court should, if necessary, wait and see what relief the court is minded to grant at the end of the trial before deciding that the action was time-barred. Having regard to the time and resources of the parties and the court, it is difficult to see that any sensible regime would allow unfair prejudice petitions or other actions to proceed on this basis.

153. The second “palpable defect” identified by Lord Leggatt in *Smith v Royal Bank of Scotland* was “the fact that a claim for relief of any kind under sections 137–140 [of the Consumer Credit Act 1974] became time-barred by reason of section 8 of the Limitation Act 1980 after 12 years” (para 50). It was argued by the respondent bank that if claims which opened up for consideration the whole history of the relationship, including matters arising more than 12 years before the issue of proceedings, were allowed, “then absurd consequences follow” (para 54). As to this, Lord Leggatt pointed to the court’s discretion to make no order at all, even if it has found the relationship to be unfair, for example if the claimant has known of the relevant facts for a long time but has chosen to take no action. The regime under sections 140A–140C was “not unique in treating the consequence of delay in bringing proceedings as a matter governed partly or even wholly by an exercise of judicial discretion rather than a statutory time limit” (para 58). He gave as an example petitions under section 994 of the Companies Act 2006 and referred to *Re Edwardian Group Ltd* and *Cherry Hill Skip Hire*.

154. The points made by Lord Leggatt apply, in our judgment, with equal force to other legislative provisions, such as sections 994–996, which give the court a wide discretion as to the relief which it may give.

155. For these reasons, we consider that section 9 of the 1980 Act does not apply to a petition under section 994, even if it does include a request for monetary relief. 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.

156. It is striking how far those cases had moved from the origin of what became sections 8 and 9 of the 1980 Act, which was the result of the recommendation of the 1936 Report to separate monetary claims under a statute from the limitation provision applying to actions upon a specialty. As we have stated, the 1936 Report recommended (p 9):

“With regard to actions arising by virtue of statutory provisions, to which at present the twenty year period applies as being actions upon a specialty, we recommend that in future the six year period should apply ...” (Emphasis added.)

English case law has interpreted such monetary claims as extending beyond actions for debt upon a statute, which were caught by the limitation provisions of the 1833 Act, to include unascertained sums and monetary claims which are subject to the exercise of the court’s discretion. See para 135 above. 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 section 994–996 of the CA 2006.

157. This conclusion is consistent with principle. As Millett LJ observed in *Paragon Finance*, a limitation period should relate to a cause of action and not a particular remedy. That principle was prayed in aid in the Malaysian case of *Tan Geok Hwa* (para 101 above) and in the New Zealand case of *Alligators Fast Food* (para 100 above).

158. Overall, therefore, in disagreement with the Court of Appeal, we conclude that neither section 8 nor section 9 of the 1980 Act creates a limitation period which is applicable to applications under sections 994 and 996 of the CA 2006.

159. In view of this conclusion, we address the other submissions briefly.

The other submissions

(i) Section 36 of the 1980 Act

160. We set out section 36 of the 1980 Act in para 15 above. It will be recalled that it disapplies sections 8 and 9 to any claim for, among other things, equitable relief 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 Act.

161. Zedra's fall-back contention is that, if section 9 were otherwise held to apply to its claim, the claim which it makes for equitable compensation against the Company's directors is a claim for equitable relief and section 36 disapplies section 9. Zedra submits that, while the immediate source of the court's power is statutory, the nature of the relief sought and its ultimate source are in substance equitable.

162. The short answer to this contention is that given by Lewison LJ at para 85 of his judgment. Zedra is not claiming equitable relief. It is claiming relief from unfairly prejudicial conduct in the management of the Company and that relief is available only because section 996 of the 2006 Act gives the court power to grant such relief. As a shareholder, Zedra does not have a claim against the directors for breach of fiduciary duty and a claim under section 994 does not depend upon the existence of such a duty: see the judgment of David Richards LJ in the earlier judgment of the Court of Appeal in this dispute: *Re The Hut Group Ltd* [2021] EWCA Civ 904; [2021] 2 BCLC 373, para 66.

(ii) Settled understanding

163. Zedra also submits that a settled understanding as to the meaning of a statute is a legitimate aid to its interpretation where a statutory provision is ambiguous. It refers to *R (N) v Lewisham London Borough Council* [2014] UKSC 62; [2015] AC 1259 in which Lord Carnwath discussed a settled understanding principle at paras 81–98 and Lord Hodge, writing the majority judgment (Lords Wilson, Clarke of Stone-cum-Ebony and Toulson in agreement), suggested at para 53 that such a principle is available if there is ambiguity in the statutory provision.

164. As Mr Thompson properly points out, both Lord Neuberger and Lady Hale, at paras 147–148 and 168, expressed reservations about the principle. Lord Neuberger expressed caution about second-guessing Parliament where it had merely re-enacted a previous statutory provision. He questioned the constitutional propriety of the Supreme Court, in reliance on a decision of the Court of Appeal interpreting an earlier statute, holding that a current statute meant something other than this court thought that it meant (para 147). Further, he expressed “even greater reservations” that a court should give

effect to a customary meaning if that clashed with its fundamental duty to give effect to the will of Parliament as expressed in statute (para 148). Lady Hale shared Lord Neuberger's concerns, pointing out that people should know that decisions of lower courts can be overturned on appeal (para 168).

165. The scope and role of a settled understanding have not been authoritatively resolved. On the one hand the Judicial Committee of the Privy Council in *Primeo Fund v Bank of Bermuda (Cayman) Ltd* [2023] UKPC 40; [2024] AC 727 in its discussion of the scope for a plea of contributory negligence in a defence to a contractual claim attached considerable importance to the fact that *Forsikringsaktieselskapet Vesta v Butcher* [1989] AC 852 had been accepted as settled law for 35 years (para 353). On the other hand, Lord Hamblen in *Wathen-Fayed v Secretary of State for Housing, Communities and Local Government* [2025] UKSC 32; [2025] 1 WLR 3693, in a judgment with which Lord Reed, Lord Leggatt, Lord Stephens and Lady Simler agreed, stated that it had not yet been authoritatively determined whether settled practice is relevant to statutory interpretation and stated: "If there is such a principle, there is much to be said for the view that its relevance is limited to providing evidence that the statutory words are capable of conveying the settled meaning and that that meaning is workable in practice..." (paras 62 and 66).

166. It is not necessary in this case to venture further in a discussion of the boundaries of a principle of interpretation of statutes in which some weight may be placed on settled practice. It does not apply in this case. This is, first, because there is no reported English judicial decision before this case in which a judge has addressed himself or herself to both the interpretation of sections 8 or 9 of the 1980 Act and the application of either section to what are now the unfair prejudice provisions in sections 994 and 996 of the CA 2006. A settled practice, or widespread belief, is not the same as an authoritative decision on the meaning of provisions of the 1980 Act. Secondly, in cases such as *Rahman* the courts have held that there are limitation periods applicable to statutory provisions, such as section 139 of the Consumer Credit Act 1974 which, by giving the court a wide range of forms of discretionary relief, can be seen as in some measure analogous to sections 994 and 996 of the CA 2006.

(iii) Considerations of policy

167. It is generally in the public interest that stale claims are not allowed to proceed, and that there should be finality in litigation, including in applications under section 994 of the CA 2006. But such broadly textured policy considerations have a limited role to play in the interpretation of the 1980 Act, which provides varied time limits for the commencement of different claims and provides no limitation periods for certain causes of action.

168. It is not a good policy argument for imposing a limitation period on a section 994 application that another claim, which is subject to a limitation period, had been available and that the making of an application under section 994 could be a means of pursuing a claim which avoids that other limitation period. It may be that Zedra could have pursued a claim against the Company if it could show that the directors and other shareholders had targeted it in order to dilute its shareholding: *Tianrui (International) Holding Co Ltd v China Shanshui Cement Group Ltd* [2024] UKPC 36; [2025] AC 709. But that does not mean that an applicant should not be able to take advantage of a different cause of action which has a more generous limitation period or no limitation period. Parliament has provided a range of remedies which the court can give if an applicant can establish unfairly prejudicial conduct in the management of a company. The question whether there is a limitation period governing applications under section 994 of the CA 2006 is answered by interpreting the 1980 Act.

169. The Law Commission in its report on *Limitation of Actions*, referring to *DR Chemicals* (above), suggested that there was no limitation period in relation to applications under what is now section 994 of the CA 2006, but that delay may bar relief. It recommended that Parliament introduce a limitation period of three years from when the claimant knows or should know of the event which gives it grounds for making such an application. Whether there should be such a limitation period is a question of policy for Parliament; it is not for the courts to determine.

170. Because we have concluded that there is no limitation period in the 1980 Act governing applications under section 994 of the CA 2006, the concerns which Snowden LJ expressed in his concurring opinion (paras 160–162) about the ability of the court to withhold a remedy on the ground of delay causing prejudice to another party before the expiry of a statutory limitation period do not arise. Whether or not there is a statutory limitation period, the court in addressing an application under section 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. See *Re Edwardian Group Ltd*, Fancourt J at paras 571, 602–609; *Cherry Hill Skip Hire*, Andrews LJ at para 36; and *Smith v Royal Bank of Scotland*, Lord Leggatt at paras 54–60, Lord Hodge at para 89.

171. We observe in conclusion that judges in more than one jurisdiction have drawn attention to the difficulties in interpreting provisions which have the same or substantially the same wording as sections 8 and 9 of the 1980 Act, because their true meaning lies deep in our legal history. If Parliament were to bring forward legislation to reform the rules of limitation, there may be a case for addressing the problems to which sections 8 and 9 of the 1980 Act have given rise by using clearer language to define their scope.

Conclusion

172. In conclusion, for the reasons set out above, an application under section 994 of the CA 2006 is not subject to the limitation provisions in sections 8 or 9 of the 1980 Act. We would therefore allow the appeal.

LORD BURROWS (DISSENTING):

1. Introduction

173. The issue in this appeal is whether there is a limitation period, under the Limitation Act 1980 (“LA”), for an unfair prejudice petition. In general terms, such a petition, which is provided for by section 994 of the Companies Act 2006 (“the 2006 Act”), can be brought by a shareholder of a company against, for example, other shareholders and the directors of the company, on the basis that the affairs of the company have been conducted in a manner that has unfairly prejudiced the shareholder.

174. In this case, the petition was presented on 7 January 2019 by the appellant, Zedra Trust Company (Jersey) Ltd (“Zedra”), a minority shareholder in THG plc. The respondents are THG plc and nine individuals who are, or were, directors of THG plc. The petition originally made a number of complaints, all of which were struck out or dismissed. However, on an application to amend the petition issued on 22 June 2022, and heard on 16 December 2022, with judgment given on 18 January 2023, Fancourt J allowed Zedra to amend by pleading that it had been wrongly excluded from a bonus share issue on 11 July 2016: [2023] EWHC 65 (Ch).

175. The important fact as regards limitation is that the amendment to the petition was allowed even though the alleged unfair prejudice, to which the amendment related, took place more than six years before the date that the amendment was allowed. Under section 35 of the LA (and Civil Procedure Rules 17.4) that would not have been permissible had there been a six-year limitation period because the amendment was making a new claim more than six years after the alleged unfair prejudice (and that new claim did not arise out of substantially the same facts as already alleged).

176. That amended petition, so far as relevant, alleges that the directors were in breach of their duty to act lawfully, in good faith, for proper purposes and fairly as between different shareholders when exercising the power to allot shares and the power to capitalise profits and appropriate the capitalised profits to shareholders. There is a specific allegation that the directors acted “in bad faith and/or for improper purposes in order to prejudice Zedra’s interests as a minority shareholder”. The petition goes on to allege that the effect of that conduct was that Zedra lost the right to additional shares and thereby

suffered a loss comprising the additional amount which it would have realised on the flotation of THG in September 2020. The principal claim for relief for unfair prejudice is for an order that the relevant directors pay “equitable compensation” to Zedra for that loss.

177. In allowing the relevant amendment to the petition, Fancourt J reasoned that, as recognised in *Bailey v Cherry Hill Skip Hire Ltd* [2022] EWCA Civ 531; [2023] Bus LR 14 (“*Cherry Hill Skip Hire*”), which had applied his own earlier decision in *Re Edwardian Group Ltd* [2018] EWHC 1715 (Ch); [2019] 1 BCLC 171, there was no limitation period for unfair prejudice petitions under the LA. Rather delay by the petitioner was to be dealt with by the court in the exercise of its general discretion whether to make an order for unfair prejudice. There was an analogy to be drawn with the doctrines of laches and acquiescence which apply to equitable remedies. The exercise of the statutory discretion, as with laches and acquiescence, was fact-specific and would need to be decided at trial. Given that there was no limitation period (and, more specifically, no limitation period of six years) the amendment to the petition could, and should, be allowed even though more than six years had elapsed since the alleged unfair prejudice. Fancourt J made clear that his decision to allow the amendment did not preclude the respondents from arguing at trial that the compensation sought should be refused because of the delay in making the allegations in the amended petition.

178. Fancourt J’s decision was reversed by the Court of Appeal: [2024] EWCA Civ 158; [2024] Ch 318. The leading judgment was given by Lewison LJ, with whom Arnold LJ and Snowden LJ agreed (the latter giving his own short concurring judgment). Lewison LJ reasoned that, contrary to 40 years of received wisdom — as accepted, albeit largely without argument, in a number of first instance decisions and, although not binding because common ground, by the Court of Appeal in *Cherry Hill Skip Hire* and in obiter dicta in this court in *Smith v Royal Bank of Scotland plc* [2023] UKSC 34; [2024] AC 955, para 58 — there was a limitation period applicable to unfair prejudice petitions. Such petitions fell within sections 8 and 9 of the LA so that the limitation period was 12 years or if, as here, the petition was seeking a monetary order, six years. The amendment to the petition should therefore not have been allowed.

179. Zedra now appeals to the Supreme Court and submits that the Court of Appeal was wrong to decide that there is a limitation period for an unfair prejudice petition.

2. *The benefits of limitation periods*

180. Limitation periods are a statutory creation unknown to the common law. They serve important purposes. In particular, they protect defendants from stale claims. That includes protecting a defendant against a deterioration of helpful evidence. Limitation periods also have benefits for claimants and for the State. They provide an incentive for

claimants to act relatively quickly once there is the possibility of a claim which may mean that good evidence for the claimant is preserved and not lost. Swift action may also reduce costs. For the State, the more reliable the evidence, the more likely it is that the proceedings and outcome will be fair and thereby comply with the rule of law.

181. Lord Sumption, albeit dissenting in the equal pay case of *Abdulla v Birmingham City Council* [2012] UKSC 47; [2012] ICR 1419, said the following, at para 41, with which I agree:

“issues of limitation are bedevilled by an unarticulated tendency to treat it as an unmeritorious procedural technicality. This is, I think, unjustified. Limitation in English law is generally procedural. But it is not a technicality, nor is it necessarily unmeritorious. It has been part of English statute law for nearly four centuries. It has generated analogous non-statutory principles in equity. Some form of limitation is a feature of almost all other systems of law. And it has been accepted in principle in the jurisprudence of both the Court of Justice of the European Union and the European Court of Human Rights. Limitation reflects a fundamental and all but universal legal policy that the litigation of stale claims is potentially a significant injustice. Delay impoverishes the evidence available to determine the claim, prolongs uncertainty, impedes the definitive settlement of the parties’ mutual affairs and consumes scarce judicial resources in dealing with claims that should have been brought long ago or not at all.”

182. The general modern law on limitation periods is contained in the LA. Given the advantages of limitation periods, it is rare in the modern law for there to be actions that do not have limitation periods unless that is expressly laid down in the LA. Put another way, in the light of those advantages, if the wording of the LA is unclear but, on one interpretation, may impose a limitation period, a purposive interpretation tends to favour there being a limitation period rather than the reverse.

183. It is against that background that I turn to consider whether the Court of Appeal was correct that a petition for unfair prejudice has a limitation period.

3. Relevant statutory provisions

(i) Limitation of actions

184. The general statute on the limitation of actions is the LA. This relevantly provides as follows:

“8 Time limit for actions on a specialty.

(1) An action upon a specialty shall not be brought after the expiration of twelve years from the date on which the cause of action accrued.

(2) Subsection (1) above shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act.

9 Time limit for actions for sums recoverable by statute.

(1) An action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of six years from the date on which the cause of action accrued.

...

38 Interpretation.

(1) In this Act, unless the context otherwise requires—

‘action’ includes any proceeding in a court of law, including an ecclesiastical court; ...

39 Saving for other limitation enactments.

This Act shall not apply to any action ... for which a period of limitation is prescribed by or under any other enactment (whether passed before or after the passing of this Act) ...”

(ii) Unfair prejudice

185. Section 994 of the 2006 Act relevantly provides:

“994 Petition by company member

(1) A member of a company may apply to the court by petition for an order under this Part on the ground—

(a) that the company’s affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or

(b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.”

186. By section 996:

“996 Powers of the court under this Part

(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2) Without prejudice to the generality of subsection (1), the court’s order may—

(a) regulate the conduct of the company’s affairs in the future;

(b) require the company—

(i) to refrain from doing or continuing an act complained of, or

(ii) to do an act that the petitioner has complained it has omitted to do;

(c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;

(d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;

(e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly."

4. Does section 8(1) of the LA apply to unfair prejudice petitions: is such a petition "an action upon a specialty"?

187. "Action" is defined in section 38(1) of the LA as including "any proceeding in a court of law". That definition applies to a petition for a discretionary order such as that under sections 994 and 996 of the Companies Act 2006. Andrew Thompson KC for the appellant, Zedra, did not seek to argue to the contrary. For the purposes of section 8(1) of the LA, therefore, the question becomes, what is meant by a specialty?

188. It was in the Limitation Act 1623 that some limitation periods were first laid down. For example, there was a six-year limitation period laid down for an action of debt upon a simple contract. Over 200 years later, a limitation period (then of 20 years) for an action upon a "specialty" — "all actions of covenant or debt upon any bond or other specialty" — was first enacted in the Civil Procedure Act 1833, section 3. Section 3 was a difficult and long-winded provision that also laid down, inter alia, a limitation period of two years for "all actions for penalties, damages, or sums of money given to the party grieved, by any statute". In so far as a specialty included a statute, the potential conflict between those two limitation periods was largely avoided because in *Thomson v Lord Clanmorris* [1900] 1 Ch 718, the Court of Appeal construed the two-year limitation period as applying only to penal actions. As the Law Revision Committee in its *Fifth Interim Report: Statutes of Limitation* (1936) (Cmnd 5334) commented at p 8: "There is therefore, as a result of this decision, no conflict with the 'specialty' provision, but the drafting of the section is exceedingly confused." The Committee had earlier recognised, at p 7, that "Actions on a specialty are [in section 3 of the Civil Procedure Act 1833] given a limit of 20 years, and

the term ‘specialty’ prima facie includes a statute”. The Committee recommended reform that, while retaining a longer limitation period (but reduced to 12 years) for actions on a specialty, sought to remove the difficulties caused by the previous drafting.

189. That reform was brought about (although perhaps not in the precise way envisaged by the Law Revision Committee) by the Limitation Act 1939, sections 2(3) and 2(1)(d). Section 2(1)(d) laid down a six-year limitation period from the date when the cause of action accrued in respect of “actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture.” By section 2(3):

“An action upon a specialty shall not be brought after the expiration of twelve years from the date on which the cause of action accrued:

Provided that this subsection shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act.”

The reform therefore reduced the limitation period for an action upon a specialty from 20 years to 12 years and, of particular importance to this appeal, section 2(3) made clear that, in so far as there was any overlap between actions upon a specialty and actions for sums recoverable by statute, the shorter limitation period applicable to the latter took precedence. Sections 2(3) and 2(1)(d) of the 1939 Act were in substance re-enacted (although the latter had an exclusion of a penalty or forfeiture) in what are now, respectively, sections 8 and 9(1) of the LA.

190. But there has never been a statutory definition of a specialty. It has therefore been for the courts to decide, as a matter of statutory interpretation (taking account of the common law), what was meant. Most obviously, a specialty includes a contract made by deed (which no longer requires a seal); and, for the purposes of the law of limitation, it does not matter whether the action on such a specialty is for a debt or damages. In the modern law, the most obvious example of the importance of this is in relation to building contracts. By reason of section 8(1) of the LA, where a building contract is made by deed, the limitation period for actions on the contract, whether for debt or damages, is 12 years and not the six years that applies to simple contracts (under section 5 of the LA).

191. The courts interpreted the term “specialty” in section 3 of the Civil Procedure Act 1833 as extending beyond actions based on contracts made by deed to include actions based on statutes. That is, a statute was viewed as a type of specialty, analogous to a contract made by deed. This interpretation is not surprising. Contracts made by deed and statutes are both formal written documents which may confer legal rights. The formality

of a statute meant that actions based on it were readily treated in the same way as actions on a deed: see, eg, the reference to a statute bearing the Royal Seal as the highest form of specialty in Canny, *Limitation of Actions in England and Wales* (2013), p 269.

192. In several cases, applying section 3 of the Civil Procedure Act 1833, the courts had to decide whether the action being brought was on a simple contract or on a statute because, if it was the latter, the longer limitation period of 20 years for an action on a specialty (rather than the six years for simple contract actions laid down in the Limitation Act 1623) applied: see, eg, *Aylott v West Ham Corporation* [1927] 1 Ch 30; *Gutsell v Reeve* [1936] 1 KB 272. The leading case was *Pratt v Cook, Son & Co (St Paul's) Ltd* [1940] AC 437 (“*Pratt*”). The initial question at issue was the correct interpretation of the Truck Act 1831. The claimant’s action, under section 4 of the Act, was to recover from his former employers arrears of wages, for upwards of 15 years, at the rate of 10s a week that had not been paid to him in current coin. Rather the employer had provided the claimant with meals to the value of 10s a week. The action succeeded with the House of Lords (Lord Romer dissenting) deciding that it was contrary to the 1831 Act for the claimant to be partly paid by the provision of meals rather than by money wages. It was also held that there was no limitation defence because, applying section 3 of the Civil Procedure Act 1833, the limitation period was 20 years. That was because the claimant’s action was for the recovery of a debt on a specialty. The specialty was the statute.

193. In the words of Lord Atkin, with whom Lord Thankerton agreed, at p 446:

“There is a new cause of action created by section 4 ... No such cause of action exists apart from the statute...”

As Lord Russell succinctly expressed the position at p 449:

“Upon the question of limitation I agree with the view which is, I believe, shared by all before whom this case has been argued. The appellant is bringing an action which but for section 4 of the Act he could not bring. The action is therefore brought on a specialty and the limitation period is twenty years.”

194. The reasoning on limitation was therefore focused on whether the statute or the underlying contract was the basis of the debt claimed; and it was decided that it was the former. It is important to stress that the House of Lords was treating the statute as the specialty. The action in (or for the) debt was based on a specialty, ie on a statute. It was the statute that was the specialty not the debt.

195. Subsequent to the enactment of the Limitation Act 1939, the leading modern case on section 8(1) of the LA is *Collin v Duke of Westminster* [1985] QB 581 (“*Collin*”). Here a tenant under a long lease of a house sought an order that he had the right, conferred by the Leasehold Reform Act 1967, to buy the freehold of the house from the owner. It was argued by the owner that the action was time-barred because the tenant’s right to buy had accrued but had been rejected by the owner more than six years before the present claim had been brought and the relevant limitation period was for breach of contract which was six years from the breach. The Court of Appeal rejected that argument holding that the relevant limitation period was the 12-year period laid down in section 8(1) of the LA. The tenant’s action to enforce (or to have a declaration of) his statutory right to buy was held to be an action upon a specialty.

196. Oliver LJ giving the judgment (with which May LJ and Sir Roger Ormrod agreed) said that the relevant test for whether the action was on a specialty within section 8(1) of the LA was whether the cause of action existed apart from the statute. Here the right to buy did not so exist: it was clearly dependent on the statute.

197. Oliver LJ said at p 602:

“Broadly the test is whether any cause of action exists apart from the statute: per Lord Atkin [in *Pratt*] at p 446.

“It seems to me to be quite clear that in the instant case any cause of action which the applicant has derived from the statute and from the statute alone. Apart from the statutory provisions he could have no claim ...”

198. Oliver LJ had earlier pointed out that a “specialty” had from early times embraced not only contracts under seal but also statutes. He said at p 601:

“The obvious and most common case of an action upon a specialty is an action based on a contract under seal, but it is clear that ‘specialty’ was not originally confined to such contracts but extended also to obligations imposed by statute. Under the Statute of Limitations of 1623 (21 Jac 1, c 16) no limit was prescribed for actions on a specialty and it was not until the Civil Procedure Act of 1833 (3 & 4 Will 4, c 42) that a time limit of 20 years was introduced for actions of debt ‘upon any bond or other specialty’: section 3. There was no statutory definition of a specialty but it was established in *Cork and Bandon Railway Co v Goode* (1853) 13 CB 826 that (to adopt the words of Lord Hanworth MR in *Aylott v West Ham*

Corporation [1927] 1 Ch 30, 50): ‘where a plaintiff relies and has to rely upon the terms of a statute so that his claim is under the statute the nature of the claim is one of specialty and the 20 years applies.’”

199. Oliver LJ at p 603 also rejected an argument (based on obiter dicta of Goddard LJ in *Leivers v Barber, Walker & Co Ltd* [1943] KB 385, 398) that, following the enactment of the Limitation Act 1939, “specialty” in what was then section 2(3) of the 1939 Act and is now section 8(1) of the LA, was confined to contractual deeds. He said:

“... I do not for my part see that it follows that the ancient and accepted meaning of ‘specialty’ as including causes of action based on statute was in any way altered ... [I]t would, in my judgment, be wrong to deduce ... that the word ‘specialty’ where it is used in the Limitation Acts is, as a matter of construction, confined to specialty debts much less to obligations arising specifically under contracts under seal and in no other way.”

200. It is also worth stressing that Oliver LJ was deciding that, on the facts of the case, the action was on a specialty and that the relevant limitation period was therefore 12 years. Hence he said at p 602 that, subject to the point about contractual deeds (that, as I have just explained in para 199, he went on to reject): “I have no doubt at all that the applicant’s claim is a claim on a specialty.” Although it is true that, once he had decided that the limitation period was not the period for a simple contract of six years, he did not need to decide that a limitation period of 12 years applied, the whole basis of his reasoning was that one or other of those two limitation periods applied.

201. Mr Thompson, for the appellant, submitted that the correct interpretation of Oliver LJ’s judgment is that it is only where a statute creates an obligation that it falls within the meaning of “specialty”. Oliver LJ’s words, at p 601 (set out at para 198 above), were, therefore, the true and narrow test as opposed to the broader wording, at p 602 (set out at para 197 above), of whether the cause of action would exist apart from the statute. I reject that submission. Not only is it contrary to the reasoning in *Pratt*, which was relied on by Oliver LJ and where there was no mention of the statutory laying down of an obligation as being crucial to the test, but also there was no suggestion in Oliver LJ’s own judgment that the relevant test turned on whether the statute created an obligation. While it is correct that the facts of *Collin* did concern the creation by statute of a right in the tenant to purchase the freehold, and hence a correlative obligation to sell on the landlord, there was no focus on the importance of there being that obligation. Rather the discussion focused on whether there would be a claim apart from the statute. In any event, it is hard to see any good reason why the law would draw a distinction between obligations created by statute and other causes of action created by statute. The root concept in relation to the

law on limitation of actions is that there is a cause of action so that, if a statute is a form of specialty, and if the statute creates a cause of action, there is no good reason to restrict its scope to obligations created by the statutory cause of action. It is also not clear how one distinguishes a cause of action that creates an obligation from one that does not. It is at least arguable that, at one level, all causes of action can be analysed in terms of rights and obligations. Indeed, on the facts of the instant case, it might be said, although Mr Thompson argued to the contrary, that the relevant defendants did have an obligation to the claimant, imposed by statute, not to conduct the affairs of the company so as to unfairly prejudice the claimant. Indeed, unfair prejudice is commonly established by reason of there being a breach of directors' duties (as is alleged in this case), albeit owed to the company, or a breach of shareholder agreements.

202. I also reject, as resting on another problematic distinction, Mr Thompson's closely related suggestion that the unfair prejudice provisions are concerned not with a cause of action but with the regulation by the court of a state of affairs, namely the internal affairs of the company. Again, one might say that all causes of action rest on a state of affairs (eg a breach of contract) regulated by a judicial remedy (eg damages). We are not here dealing with a situation where there is no cause of action and one is merely dealing with an administrative order (as, for example, where there is an application for a new trustee or for directions in relation to trust property).

203. It may be that what Mr Thompson had in mind through these submissions is that sections 994 and 996 create a wide statutory discretion so that there is no right to any particular relief. I address, albeit to reject, that type of argument later on (see paras 221–223). All that I need to say here is that, in my view, the meaning of an action on a specialty is not affected by the discretionary nature of the statutory relief.

204. Subsequent cases have applied the test in *Collin* in a way that is consistent with what I consider to be the correct interpretation of Oliver LJ's judgment. That is, they have decided that a cause of action based on (ie that would not arise apart from) a statute is an action upon a specialty, within section 8(1), without focusing on whether the statute has imposed an obligation (or a debt). Put another way, it has been thought sufficient that the cause of action was dependent on the statute and would not have existed without it. See, eg, *Re Farmizer (Products) Ltd* [1995] BCC 926, 933 (Blackburne J) (and this was not challenged in the Court of Appeal: [1997] 1 BCLC 589, 594); *Re Priors Garage (Walthamstow) Ltd* [2001] BPIR 144, 149 (although this point was common ground between the parties, it was held to be supported by the authorities of *Collin* and *Re Farmizer (Products) Ltd*); and *Rahman v Sterling Credit Ltd* [2001] 1 WLR 496 ("*Rahman*") in which the Court of Appeal applied *Collin* in deciding that a claim to reopen a loan transaction as an extortionate credit agreement under section 139 of the Consumer Credit Act 1974 fell within section 8(1) of the LA so that the limitation period was 12 years. See also the discussion of *Rahman*, holding that it was binding Court of Appeal authority on the limitation point, in *Nolan v Wright* [2009] EWHC 305 (Ch).

205. Therefore, as decided by the Court of Appeal in this case, the previously widespread view that there is no limitation period for an unfair prejudice petition was flawed as being contrary to the correct and accepted meaning of an action upon a specialty as including a cause of action created by a statute. As one would have expected, given the advantages of limitation periods, there is a limitation period under the LA for an unfair prejudice petition. That period is prima facie 12 years because an unfair prejudice petition falls within section 8(1) as being an action upon a specialty. By section 8(1), the limitation period is 12 years from the date on which the cause of action accrued unless, by reason of section 8(2), a shorter period of limitation is prescribed by any other provision within the LA. In particular, there is a shorter period of six years for sums recoverable by statute by reason of section 9(1) of the LA.

206. As is said by Andrew McGee, *Limitation Periods*, 9th ed (2022), para 4.020:

“There is room for a distinction between actions upon a statute and actions to recover a sum of money due under an enactment. Statutes may create a variety of rights, and not all of them will be rights to recover a sum of money. It is only those provisions which do confer such a right that are affected by section 9 of the 1980 Act. Other rights under statute, it is submitted, fall under section 8 as being actions upon a specialty and the appropriate period of limitation is 12 years.”

207. With great respect, I cannot agree with what I understand to be the view taken by Lord Hodge and Lord Richards to the effect that, in the context of sections 8 and 9 of the LA, a “specialty” means only a debt provided by statute (or is confined to monetary relief provided by statute). That is to take too narrow a meaning of “specialty” and involves treating the reasoning and the decisions in several of the above cases — in particular, the Court of Appeal in *Collin* — as incorrect. Although the House of Lords in *Pratt* was dealing with the Civil Procedure Act 1833, section 3, that narrow meaning is also inconsistent with their Lordships’ reasoning: although it is true that the case involved a debt claim and, of course, the relevant wording of section 3 was a “debt” on a specialty, their Lordships treated the statute as the specialty (ie as the basis of the debt) rather than the debt provided by the statute being the specialty (see paras 192–194 above). The Law Commission in its wide-ranging examination of the modern law on limitation (see Law Commission Report, *Limitation of Actions* (2001) (Law Com No 270)) did not suggest that *Collin* was incorrectly reasoned or decided and I am unaware of any academic opinion to that effect.

208. Similarly, and again with great respect, I also cannot agree with the view of Lord Lloyd-Jones and Lord Briggs that section 994 does not create an action on a specialty because it does not create an obligation. I have already set out, at paras 201–202, my objections to that approach in addressing and rejecting the submissions of Mr Thompson.

209. Given my conclusion on section 8(1), the next question is whether section 9(1) of the LA here applies so that, as laid down in section 8(2), the relevant limitation period for the unfair prejudice petition in this case is the shorter period of six years rather than 12 years.

5. *Does section 9(1) of the LA apply to the unfair prejudice petition in this case?*

210. Section 9(1) lays down that the limitation period for an action to recover any sum recoverable by virtue of any enactment is six years from the date on which the cause of action accrued. For the application by the House of Lords of that subsection (which, at the time, was section 2(1)(d) of the Limitation Act 1939), see *Central Electricity Board v Halifax Corporation* [1963] AC 785. The primary issue in that case was the date at which the cause of action accrued and the decision, while consistent with the approach I take to the correct relationship between section 8(1) and 9(1), is of no real assistance on the matters we have to decide on this appeal.

211. On the facts of this case the petition, somewhat unusually (frequently the order is for a compulsory purchase of the shareholders' shares), seeks compensation in respect of the loss that Zedra alleges it has suffered by reason of the unfair prejudice. It is therefore not in dispute that Zedra is seeking a monetary sum. It is also not in dispute that, in the exercise of its discretion, a court has the power to order compensation on an unfair prejudice petition even though, in section 996, compensation is not specified as an order that the court can make. That is because the discretion in section 996(1) is framed in very wide terms. The court "may make such order as it thinks fit for giving relief in respect of the matters complained of". Section 996(2), which specifies particular orders that may be made, makes clear at the start ("Without prejudice to the generality of subsection (1), the court's order may...") that the particular orders set out are examples of orders that may be made and are not the only possible orders.

212. On the face of it, therefore, a petition for an order or award of compensation for unfair prejudice is an action to recover a sum recoverable by virtue of a statute to which a six-year limitation period applies.

213. A central objection put by Mr Thompson to that straightforward interpretation is that, because other non-monetary awards and orders can be made in the exercise of the court's discretion under section 996, the claim for compensation falls outside section 9(1) of the LA. He submits that it cannot be correct that different limitation periods might apply to different unfair prejudice petitions depending on what is being sought or what the court ultimately decides to order. Indeed, the appropriate relief, which is ultimately a matter for the court not the petitioner, may change because of a change of circumstances between the bringing of the petition and the order of the court. In such discretionary

terrain, so it is argued, it is inappropriate for there to be a limitation period that applies to a monetary order.

214. I reject those submissions. While it is unusual in the LA for limitation periods to be determined by the remedy rather than by the cause of action, section 9 is clearly an exception to the general position because it is explicitly confined to the recovery of sums (under a statute) and not other remedies (under a statute). There can therefore be no objection to a different limitation period applying as between different remedies for a particular statutory cause of action. There are other exceptions in the LA to the cause of action, rather than the remedy, being determinative. Most obviously, while there is a limitation period for damages for breach of contract (for example, under section 5 of the LA) there is no limitation period for specific performance of a contract and delay is instead dealt with by the equitable doctrine of laches: *P & O Nedlloyd BV v Arab Metals Co (No 2) (The UB Tiger)* [2006] EWCA Civ 1717; [2007] 1 WLR 2288. Similarly, while there are limitation periods for damages for a tort (under, for example, section 2 of the LA), there appears to be no limitation period for an injunction for a tort (assuming, albeit not a matter for decision on this appeal, that the “by analogy” provision in section 36(1) of the LA does not apply): instead delay in bringing proceedings for an injunction is dealt with by the equitable doctrine of laches.

215. In *Rahman* (see para 204 above) the Court of Appeal, at p 502, accepted that different discretionary relief (in reopening an extortionate credit agreement under section 139 of the Consumer Credit Act 1974) could attract a different limitation period: ie a claim to recover a monetary sum would have fallen within section 9(1) of the LA rather than section 8(1). Moreover, there have been several cases (I shall here focus on three such cases) where courts have held that the correct approach where there is a statutory judicial discretion, which includes the discretion to make a monetary order, is to “look and see” what is in substance being claimed. The approach taken has been that section 9(1) applies where in substance a monetary order is being sought.

216. The first case is *West Riding County Council v Huddersfield Corporation* [1957] 1 QB 540 (“*West Riding*”). This concerned certain adjustments, as between local authorities, consequential on boundary changes. By section 151 of the Local Government Act 1933 agreements could be made between the relevant authorities (with arbitration provided for in default of agreement) for the purpose of making consequential adjustments to “property, income, debts, liabilities and expenses”. In this case, West Riding CC had submitted claims for financial adjustment to Huddersfield Corp but the two local authorities could not reach agreement so the matter had been referred to an arbitrator. One of the defences raised by Huddersfield Corp was that the claims for financial adjustment were time-barred because they were made more than six years after the boundary changes. Although it was clear that the statute permitted non-monetary adjustments to be made, Lord Goddard CJ, sitting as a single judge, made clear that what was actually being claimed here, as would usually be the case under section 151, were monetary sums which fell within what was then section 2(1)(d) of the Limitation Act

1939 and is now section 9(1) of the LA. The claims were therefore time-barred by the six-year limitation period.

217. Secondly, in *Re Farmizer (Products) Ltd* [1997] 1 BCLC 589 proceedings were brought by the liquidators of a company against the directors of the company for wrongful trading under section 214 of the Insolvency Act 1986. A declaration was sought that the directors should make a contribution of at least £1.25m to the assets of the company. There had been delays by the liquidators in bringing, and prosecuting, the claim. Peter Gibson LJ (with whose judgment the other judges agreed) was of the view that the relevant contribution had to be in money and not in kind. But alternatively, if the correct interpretation were that, at the court's discretion, the contribution could be made other than in a sum of money (for example, by a transfer of property), Peter Gibson LJ held that, nevertheless, section 9(1) of the LA applied because it was a monetary contribution that was being claimed. Peter Gibson LJ said the following at p 599:

“even if the contribution, liability for which the court can declare under section 214, could be other than in a sum of money, nevertheless the claim made by the liquidators against [the directors] comes within section 9(1). The decision in the *West Riding* case supports the view that when the statutory provision relied on for the recovery of a sum enables the court to make an order either to give monetary relief or relief in some other non-monetary form, one should look to what was actually being claimed in the proceedings. An argument that the section would not be satisfied if the relief given need not sound in money was not accepted, Lord Goddard CJ looking to what had actually been sought. In the present case, although the summons by which the section 214 claim was made did not specify a sum for the claimed contribution, it is clear from the liquidators' affidavit in support of the summons that they were seeking to recover a sum of money. Accordingly section 9(1) is satisfied ...”

218. The third case is *Re Priory Garage (Walthamstow) Ltd* [2001] BPIR 144 where there had been a compulsory winding up of a company, PGW Ltd, on 24 March 1993. Over six years later, on 15 July 1999, the liquidator issued proceedings under sections 238–241 of the Insolvency Act 1986 against a former director, G, seeking to set aside certain transfers to G as transactions at an undervalue or as unlawful preferences and for monetary relief. G submitted that the claims were outside the limitation period of six years. It was held by John Randall QC, sitting as a Deputy High Court Judge, that the limitation period was here 12 years and not six years so that the claims were not time-barred. It was common ground between the parties (supported by the authorities of *Collin* and *Re Farmizer*) that claims under sections 238–241 were within section 8 of the LA as actions on a specialty so that, prima facie, a 12-year limitation period applied. Applying

the “look and see” approach, which the judge observed had originated in the *West Riding* case and had been applied in *Re Farmizer*, the essential question was whether the shorter period of six years under section 9(1) of the LA here applied. In deciding that it did not, John Randall QC considered that the primary relief sought was the setting aside of the transfers and that the monetary relief claimed was merely ancillary to that. The applicable limitation period was therefore 12 years so that the liquidator’s claim was not statute-barred.

219. For completeness on section 9(1), I should mention that, although neither case takes matters further on the “look and see” approach, we were also referred by counsel on both sides to two further cases. In *Hill v Spread Trustee Co Ltd* [2006] EWCA Civ 542; [2007] 1 WLR 2404, the Court of Appeal decided that, while one of two possible limitation periods applied to the claim under section 423 of the Insolvency Act 1986, no decision was needed as to whether it was the limitation period in section 8(1) or section 9(1) of the LA. A bankruptcy order had been made against Henry Nurkowski in 1999. In 2002, Mr Nurkowski’s trustee in bankruptcy applied for relief under section 423 of the Insolvency Act 1986 alleging that there had been transactions defrauding creditors pre-1999 (going back to 1989). It was held by the Court of Appeal that there was a limitation period applicable to claims under section 423 of the Insolvency Act 1986 which was either 12 years under section 8(1) of the LA, because the action was on a specialty, or six years under section 9(1) of the LA, if the claim was for a monetary sum. The crucial issue in the case was when time started to run for either of those limitation periods. The majority (Sir Martin Nourse and Waller LJ, Arden LJ dissenting on this issue) held that the cause of action accrued, and therefore time started to run, when the bankruptcy order was made in 1999 so that there was no limitation defence whether the period was 12 years or six years.

220. Finally, in the Supreme Court in *Smith v Royal Bank of Scotland plc* [2023] UKSC 34; [2024] AC 955, it was common ground (as made clear at para 31 of the leading judgment given by Lord Leggatt) that section 9(1) of the LA applied to claims made under the “unfair relationship” provisions of the Consumer Credit Act 1974, sections 140A–140C. The claims were for the repayment of money paid to a bank by credit card holders who were sold payment protection insurance policies by the bank. The question at issue was not whether there was a limitation period but was rather the date at which the six years limitation period started to run — ie when did the cause of action accrue? It was held that that was not until the credit relationship had ended so that the claims were not time-barred.

221. What appeared to underlie some of Mr Thompson’s submissions on this appeal was that it is unworkable and unprincipled to apply a limitation period to a statute which confers a wide discretion especially where a court may order one or more of a menu of different possible remedies. In particular, it would be objectionable to have a six-year limitation period applying to only one of those remedies — awarding a monetary sum —

while other remedies were subject to a 12-year limitation period or no limitation period at all. The “look and see” approach was therefore flawed.

222. That sort of objection was explicitly considered and rejected by Lewison LJ in the Court of Appeal. He said at paras 120 and 123:

“[Counsel for Zedra] argued that to apply a six-year limitation period to some claims under section 994 but not to others would create arbitrary distinctions as between different claims under the same statutory provision. [He also] argued, where a petition claimed a number of different remedies, some pecuniary and others not, it would be unworkable to allow some claims to go forward and for others not to ...

[Those] objections do have more force [than others Lewison LJ had rejected]. But in *Hill v Spread Trustee* all three members of the court were sanguine about that prospect (although for different reasons). In *Rahman Mummery* LJ was explicit that different heads of relief claimed under the same statutory provision attracted different limitation periods ... The critical distinction was between claims under an enactment for non-monetary relief and those claims under an enactment for monetary relief. In *The UB Tiger* [2007] 1 WLR 2288 the court specifically contemplated that a limitation period might apply (either directly or by analogy) to one head of relief claimed, but not to another. Likewise, in a case of professional malpractice the same facts may give rise to concurrent claims in contract and tort; each with its own limitation period ... In such cases it is for the claimant to choose how to frame his case.”

223. I agree with what Lewison LJ there said. I would stress that it would fly in the face of a large body of law if one were to accept that a limitation period cannot be sensibly applied to a statutory cause of action where the statute confers a discretion on the court as to whether a remedy should be awarded or what the appropriate remedy might be. There are many statutes where the remedy is discretionary and yet a limitation period is expressly laid down in the statute or it has been held that the LA applies. In addition to the cases considered in paras 215 – 219 above, one thinks of the statutory discretion under, for example, the Financial Services and Markets Act 2000, sections 26 – 30 (discussed in *Bhattacharya v Oaksix Holdings Ltd* [2021] EWHC 1326 (Ch)); and the Companies Act 2006, sections 125 and 128, and the Procurement Act 2023, sections 100 – 106 (where limitation periods are laid down in the statutes).

224. Pulling the threads together, my conclusions on section 9(1) of the LA (and its relationship to section 8(1) and its application to this case) are as follows:

(i) Examination of the approach to statutory discretionary regimes, other than that under sections 994 and 996 of the 2006 Act, adds further weight to the view that the Court of Appeal was correct in this case to depart from the received wisdom that there is no limitation period for unfair prejudice petitions.

(ii) The limitation period of six years laid down in section 9(1) of the LA applies where the unfair prejudice petition (as in this case) seeks a monetary order. Albeit unusual, such an order can be made, at the court's discretion, under sections 994 and 996 of the 2006 Act.

(iii) The limitation period of 12 years laid down in section 8(1) of the LA applies to other non-monetary orders that can be made under sections 994 and 996 (eg a compulsory share purchase at a value adjusted to reflect the financial effect on the company of the alleged misconduct).

(iv) In deciding whether the petition is seeking a monetary order or a non-monetary order, the court must "look and see" what is in substance being sought. There is no objection to having different limitation periods applying to the different orders that may be made. If the claimant seeks a monetary order under section 996, that remedy will be time-barred six years after accrual of the cause of action (by reason of section 9(1) of the LA) but other remedies under section 996 will have the longer limitation period of 12 years (by reason of section 8(1)). Acceptance of that is not to dispute that, in an ideal world, there would be a single limitation period for all remedies for the same cause of action (unfair prejudice). But that would require reform of the LA 1980 (see para 238 below) whereas our role is to interpret the LA 1980 as is.

(v) Time starts to run, under both section 8(1) and 9(1), from the date of the unfair prejudice which is the date when the cause of action accrues.

(vi) On the facts of this case, the petitioner is claiming compensation which is a monetary order so that section 9(1) applies. The relevant limitation period applicable to the unfair prejudice petition in this case is therefore six years. As the alleged unfair prejudice occurred more than six years before permission to amend the petition was given, that amendment should not have been permitted. The Court of Appeal was therefore correct to have overturned Fancourt J's decision.

225. Again, on this issue, I find myself in respectful disagreement with the views of the majority. In my view, it is incorrect to treat a discretionary monetary remedy as falling

outside section 9(1) of the LA and the “look and see” approach has been applied, without apparent difficulty, for over 65 years (ie since *West Riding*). 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. Moreover, where there is any doubt as to the correct interpretation of the LA, a purposive interpretation, for the reasons set out at the start of this judgment, favours the imposition of a limitation period (see para 182 above).

6. *The relationship between delay or laches and a limitation period*

226. In the light of the above conclusions, there is a final important issue that I must address. As there is a limitation period of 12 years or six years for unfair prejudice petitions, what is the relevance, if any, of delay by the claimant in issuing a petition **within** those periods? Can a court, exercising its discretion under section 996 of the 2006 Act, refuse to make an order because of delay by the claimant **within** the 12-year or six-year period?

227. In examining those questions, it is helpful to look at the relationship between the LA and the equitable doctrine of laches. This is because, although the unfair prejudice provisions — and hence the judicial discretion conferred by statute both as regards whether to make any order and if so what order — are not the same as an equitable discretion (which is judge-made), the two are clearly closely linked. One would therefore expect a similar approach to be taken to delay within a limitation period in applying the statutory discretion as is taken in respect of how laches applies within a limitation period.

228. By the equitable doctrine of laches, an equitable remedy (such as specific performance or an injunction or equitable compensation or an account of profits) may be barred where there has been such an unreasonable delay by the claimant in commencing proceedings that it is unjust to the defendant for the equitable remedy to be granted. In contrast to the standard position under the LA, where time runs from the accrual of the cause of action, under the doctrine of laches it would appear that the delay can only be unreasonable, and therefore only runs, from when the claimant discovered, or ought reasonably to have discovered, the reason for seeking the remedy: see *Lindsay Petroleum Co v Hurd* (1874) LR 5 PC 221, 241–242.

229. Although in principle mere delay (with the requisite knowledge) may bar the remedy, the defendant alleging laches will almost invariably have to establish that it (or a third party) has suffered, or will suffer, prejudice consequent on the delay (for example, prejudice in defending the claim or in complying with the remedy): see *Lindsay Petroleum Co v Hurd* (1874) LR 5 PC 221, 240; *P & O Nedlloyd BV v Arab Metals Co (No 2) (The UB Tiger)* [2006] EWCA Civ 1717; [2007] 1 WLR 2288, paras 55–63; *Fisher v Brooker* [2009] UKHL 41; [2009] 1 WLR 1764, at para 64. There is therefore a

distinction between laches in the rare sense of mere delay and laches in its usual sense of delay plus prejudice to the defendant (or a third party).

230. Although sometimes not clearly separated out from laches, acquiescence is different from laches because it requires a representation by the claimant, usually implied from its conduct, that it is giving up (ie waiving) its rights which the defendant then relies on. Acquiescence, unlike laches, is a form of estoppel.

231. The distinctions between laches in its rare sense of mere delay, laches in its usual sense of delay plus prejudice, and acquiescence are crucial in understanding the relationship between laches and the LA. Section 36(2) of the LA reads that “Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.” It might be thought that this subsection means that the courts could still apply laches despite there being a statutory limitation period. However, in so far as laches is concerned with mere delay, that would arguably undermine the purpose of having a statutory limitation period (although a possible counterargument is that, because laches runs from the date of discoverability rather than the accrual of the cause of action, even mere delay does not undermine there being a limitation period).

232. On balance, the best interpretation is that section 36(2) is not referring to laches in its rare sense of mere delay. Rather it is referring, alongside acquiescence, to laches in its usual sense of delay plus prejudice to the defendant (or a third party). Although not precisely spelt out, this is consistent with what was said in, eg, *Re Pauling’s Settlement Trusts* [1962] 1 WLR 86, 115 (Wilberforce J) approved by the Court of Appeal [1964] Ch 303; and *Re Loftus* [2006] EWCA Civ 1124; [2007] 1 WLR 591, at para 37. Most importantly, this was the precise reasoning of Moore-Bick LJ in obiter dicta in *P & O Nedlloyd BV v Arab Metals Co (No 2) (The UB Tiger)* [2006] EWCA Civ 1717; [2007] 1 WLR 2288, at para 61:

“if and to the extent that a limitation period is applicable to the claim, it is difficult to see why mere delay should defeat the claim until the limitation period has expired ... Equally, however, I can see no reason in principle why, in a case where a limitation period does apply, unjustified delay coupled with an adverse effect of some kind on the defendant or a third party should not be capable of providing a defence in the form of laches even before the expiration of the limitation period.”

I agree.

233. A similar approach can, and should, be taken to the effect of delay in the context of the statutory discretion under section 996 of the 2006 Act. Mere delay will be a rare

case. Almost invariably, unjustified delay will mean that there is prejudice to the defendant or a third party. If that is so, then a court, exercising its statutory discretion, can refuse to make the order sought even though the relevant limitation period has not expired.

234. This is important as it goes a long way to meeting the concerns adverted to by both Lewison LJ and Snowden LJ in the Court of Appeal that a limitation period of 12 years (or even six years) may be too long for unfair prejudice petitions. Lewison LJ said the following at para 126:

“What is, perhaps, more troubling [than imposing a 12-year limitation period for non-monetary relief such as a buy-out order] is if a 12-year limitation period applies to claims for non-monetary relief, whether the court can dismiss a claim brought within the limitation period on the ground of delay. If and to the extent that a limitation period applies to a claim, the claimant has, at least in principle, the full statutory period within which to bring his claim. It would thus normally be inappropriate to strike out the claim merely because of delay. It may be that on particular facts it could be seen that the claimant had acquiesced in the state of affairs of which he complains, with the consequence that the court’s discretion would not be exercised in his favour even if he were to prove all his allegations. In such a case it would, I think, be possible for the court to give summary judgment in the defendant’s favour. Although this question was mentioned in oral argument, it was not the subject of any developed submissions. I therefore prefer to leave that question to a case in which it matters.”

235. Similarly, Snowden LJ said the following at paras 160–162:

“The issue that has given me significant pause for thought is the one identified by Lewison LJ in para 126 above, namely that it is generally thought to be impossible for a court to strike out or summarily dismiss a claim on the basis of inordinate delay if it is brought within an applicable statutory limitation period: see *Birkett v James* [1978] AC 297, 320.

It is notorious that many petitions under section 994 can, if unchecked, lead to disproportionately lengthy and expensive trials. Such petitions require robust case management if they are to comply with the overriding objective. Accordingly, the policy of the courts since the relatively early days of the unfair

prejudice jurisdiction has been to discourage litigants from dredging up old grievances and to encourage them to focus on a limited number of specific, current complaints ...

I would not wish this decision to be seen as reversing that trend or providing any encouragement to petitioners to advance stale complaints under section 994. Judges should not be discouraged, in appropriate cases, from striking out or summarily dismissing allegations of historical misconduct if it can clearly be seen, at an interim stage, that even though the petition was presented within the applicable limitation period, no reasonable judge could consider that such matters would justify the exercise of discretion to grant the relief sought at trial. However, as Lewison LJ has indicated, the precise implications of our decision in this respect will need to be worked out in a future case in which it matters.”

236. I would make four comments on these observations. First, applying the analysis that I have put forward above, where there is delay by the petitioner (after the date of discoverability) plus prejudice to the defendant or a third party or where there has been acquiescence by the petitioner, the analogous approach to the doctrines of laches or acquiescence for equitable remedies suggests that the unfair prejudice petition may be barred, as a matter of statutory discretion, even though the petition is brought within the limitation period.

237. Secondly, it is ironic that the recognition of a limitation period for unfair prejudice petitions should give rise to concerns that stale claims might now be allowed to proceed. The very purpose of limitation periods is to stop such claims in a clear and certain, albeit blunt, way. Indeed, on the facts of this case, if the decision of the Court of Appeal is upheld, the application of a six-year limitation period will precisely operate so as to bar an amendment of the petition raising historic allegations.

238. Thirdly, if the concern is that a limitation period of 12 years is too long for non-monetary orders under unfair prejudice petitions, the answer is legislative reform to shorten the period. My own view is that, in modern times with speedy modes of communication and access to information, 12 years from accrual is far too long a limitation period for any action on a specialty. In this respect, the Law Commission’s recommendations for a core regime, across the board, of a limitation period of three years from discoverability with a long-stop of ten years from the accrual of the cause of action or breach of duty cry out to be implemented: Law Commission Report, *Limitation of Actions* (2001) (Law Com No 270). It is noteworthy that the Law Commission, having consulted specifically on the point, recommended that petitions under section 994 of the 2006 Act (then section 459 of the Companies Act 1985) should be made subject to that

core regime: Report paras 4.211–4.218. (I should declare that I was the Law Commissioner with primary responsibility for the Consultation Paper No 151, *Limitation of Actions* (1998), see esp paras 13.154–13.158, although I had left the Law Commission prior to the completion and publication of the Report.)

239. Fourthly, where the objectionable delay is not in starting the proceedings (which is what limitation periods are concerned with) but in failing to prosecute them, the petition can be struck out for want of prosecution/abuse of process. In the age of case management guided by the overriding objective, the approach laid down in *Birkett v James* [1978] AC 297 (that, subject to very exceptional circumstances, a claim cannot be struck out for want of prosecution where the limitation period has not expired, because fresh proceedings can simply be issued) is no longer applied. See, eg, *Biguzzi v Rank Leisure plc* [1999] 1 WLR 1926; *Securum Finance Ltd v Ashton* [2001] Ch 291.

240. My conclusion is that at least once it is recognised that, in exercising the court's discretion, delay plus prejudice, and acquiescence, can bar a petition even within the limitation period, there can be no rational objection to accepting that, as one would expect, the LA does provide a limitation period for unfair prejudice petitions.

7. Overall conclusion

241. In this case, the petitioner alleging unfair prejudice is claiming compensation which is a monetary order so that section 9(1) of the LA applies and the limitation period is six years (and not 12 years under section 8(1) which is the default limitation period because a claim for unfair prejudice is an action on a specialty). As the alleged unfair prejudice occurred more than six years before permission to amend the petition was given, that amendment should not have been permitted. It follows that I agree with the reasoning and decision of the Court of Appeal in this case. For all the above reasons, I would therefore dismiss the appeal.