Neutral Citation Number: [2022] EWHC 1946 (Ch)

Case No: BR-2019-000436

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

IN BANKRUPTCY
IN THE MATTER OF DAVID GERALD VIVIAN FITZWILLIAM DE FREITAS
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 4 August 2022

Before :

DEPUTY ICC JUDGE PASSFIELD

- -

Between :

THE COMMISSIONERS FOR HER MAJESTY'S REVENUE AND CUSTSOMS

Petitioners

- and -

DAVID GERALD VIVIAN FITZWILLIAM DE FREITAS

Debtor

- -
- -

Raj Arumugam (instructed by the General Counsel and Solicitor to HM Revenue and Customs) for the **Petitioners**
Anthony Pavlovich (acting pro bono, instructed by Advocate) for the **Debtor**

Hearing date: 20 May 2022

- -

APPROVED JUDGMENT

Deputy ICC Judge Passfield :

1. On 20 May 2022, I heard a bankruptcy petition ("**the Petition**") presented by HM Revenue and Customs ("**HMRC**") against David de Freitas ("**the Debtor**"). That hearing took place in private in accordance with paragraph 5 of the Order of Deputy ICC Judge Lambert dated 23 February 2021. This is because, as a result of tragic and regrettable personal circumstances for which I express a great deal of sympathy, the Debtor suffers from mental health issues which he wishes to remain confidential. For the purposes of these proceedings, it is common ground that by reason of those mental health issues (the details of which were set out in the evidence before me), the Debtor has a disability within the meaning of s.6(1) of the Equality Act 2010 ("**EA 2010**"). I will need to address the consequences of that so far as the Petition is concerned in due course.

2. As the parties' submissions occupied the court for the entirety of the day set aside for the hearing, and given that the case raises complex and potentially novel issues, I indicated that I would hand down a written judgment in public but take care so far as possible to avoid the disclosure of the relevant confidential information. This is that written judgment.

3. At the hearing, HMRC was represented by Raj Arumugam and the Debtor by Anthony Pavlovich. I am grateful to both counsel for the careful and helpful way in which they set out the relevant arguments in their written and oral submissions, which was of great assistance. I also record my particular thanks to Mr Pavlovich, who has represented the Debtor through Advocate and, as recorded in the Debtor's costs schedule, has dedicated approximately 62 hours of advice and representation to the Debtor on a *pro bono* basis since November 2019.

Overview

4. By the Petition, HMRC claims that the Debtor is indebted to it in the total sum of £130,812.26 in respect of unpaid self-assessment tax, penalties and interest for 15 tax years from 1998/99 to 2000/2001 and 2005/06 to 2015/16 and seeks a bankruptcy order against him.

5. The Debtor seeks the dismissal of the Petition on four grounds, which are set out in his Amended Grounds for Opposing Bankruptcy Petition dated 11 March 2021 ("**the Amended Grounds of Opposition**") and summarised in paragraph 2 of Mr Pavlovich's skeleton argument as follows:

   i) there is an ongoing ADR process relating to the petition debt. A previous, similar petition was dismissed to allow ADR to continue;

   ii) the Debtor is able to pay or to compound for any debt that may be due;

   iii) the Petition is defective in that it contains incorrect information;

   iv) the Court is invited to dismiss the Petition as a matter of discretion because of the effect of HMRC's conduct on the Debtor's mental health.

6. Alternatively, if I am not satisfied that it is appropriate to dismiss the Petition, the Debtor seeks an adjournment of the Petition for a period of 42 days to enable him to raise the funds to pay the petition debt in full. Whilst HMRC opposes an adjournment in principle, in the event that I conclude that an adjournment would be appropriate, it does not oppose the period of 42 days sought by the Debtor.

Background

7. Since at least the 1998/99 tax year, the Debtor has carried on business as a financial adviser on a self-employed basis.

8. On 29 April 2015, HMRC presented a bankruptcy petition against the Debtor for unpaid self-assessment tax, interest and penalties in the tax years from 1998/99 to 2000/01 and 2005/06 to 2012/13 in the total sum of £89,731.06 ("**the Prior Petition**"). On 24 August 2015, Registrar Briggs (as he then was) dismissed the Prior Petition and, on 6 May 2016, Asplin J (as she then was) dismissed HMRC's appeal against that decision (*HMRC v de Freitas* [2016] EWHC 1433 (Ch); [2016] BPIR 1179). Although I have not been provided with a transcript of the hearing before Registrar Briggs, the relevant extracts are set out in paragraph 10 of Asplin J's judgment. In summary, the Debtor contends that when he filed his self-assessment tax returns for the tax periods in question he was unaware (because HMRC had not updated the relevant manuals) that he was entitled to set off certain expenses (including council tax and mortgage interest payments) against his tax liability. Accordingly, he issued a complaint to HMRC. As I explain in more detail below, this involved a potential four stage process: two-tiers of complaint to HMRC and further complaints to respectively The Adjudicator's Office ("**the Adjudicator**") and the Parliamentary and Health Service Ombudsman ("**the Ombudsman**"). At the time of the hearing before Registrar Briggs, the Debtor's complaints to HMRC had been rejected, but he had not yet submitted (but intended to submit) a further complaint to the Adjudicator. In essence, Registrar Briggs concluded that it would be wrong to allow HMRC to pursue a bankruptcy petition against the Debtor before the determination of that complaint by the Adjudicator. Asplin J was

satisfied that this was a proper exercise of the Registrar's discretion on the facts of the case.

9. On 4 January 2016, the Debtor submitted his complaint to the Adjudicator, which was rejected on 27 January 2017. The Debtor has not produced any of the documentation relating to that complaint in his evidence in these proceedings.

10. On 28 July 2017, HMRC served on the Debtor a statutory demand dated 17 July 2017 ("**the Demand**") in the total sum of £130,812.26, comprising: (i) the debts claimed in the Prior Petition; (ii) unpaid self-assessment tax, interest and penalties for the tax years 2013/14 to 2015/16; and (iii) self-assessed payments on account and interest for the tax year 2016/17.

11. On 14 August 2017, the Debtor applied to set aside the Demand pursuant to r.10.5(5)(d) of the Insolvency (England and Wales) Rules 2016 ("**IR 2016**") on the grounds that it would be an abuse of process for HMRC to present a bankruptcy petition against him because there had been no substantial change since the hearing before Registrar Briggs on 24 August 2015 at which the Prior Petition was dismissed. At this stage, the Debtor did not indicate that he had any mental health issues which should preclude HMRC from presenting a bankruptcy petition against him.

12. In January 2018, the Debtor submitted a complaint against the Adjudicator's decision to the Ombudsman (via his MP). Again, the Debtor has not produced any of the documentation relating to that complaint in his evidence in these proceedings. It is common ground that the complaint was ultimately rejected by the Ombudsman (although I do not have any evidence as to the date on which this occurred). The Debtor subsequently issued judicial review proceedings against the Ombudsman, but these

were settled by a consent order signed by the Debtor on 24 June 2019 and sealed on 15 July 2019 ("**the Consent Order**") which provided as follows:

> UPON [the Ombudsman] agreeing that, in the event a request is made by [the Debtor], he will consider whether to undertake a review of the challenged decision
>
> BUT without giving any assurance or indication of the outcome of that consideration
>
> AND upon the understanding that any such consideration and/or subsequent review is, in [the Ombudsman's] view, unlikely to give rise to a decision which is amenable to further Judicial Review proceedings:
>
> BY CONSENT it is ORDERED as follows:
>
> 1. The claim is withdrawn
>
> 2. There is no order as to costs.

13. To date, the Debtor has not made a request to the Ombudsman to review his decision. In paragraph 6 of his fifth witness statement in these proceedings, the Debtor gives the following explanation for this:

> "I am awaiting further details of what was communicated between HMRC and [the Ombudsman] in 2018. I do not have all the information I need. I have also not had an explanation of why Asplin J's judgment was not provided to [the Adjudicator] and [the Ombudsman] and I await this. This has a direct impact on my ADR as this judgment shows that ADR could have proceeded, which is relevant to [the Adjudicator's] and [the Ombudsman's] decisions. I need all of this information before applying for the review allowed via the Consent Order with [the Ombudsman]."

14. On 24 September 2018, Deputy ICC Judge Middleton dismissed the Debtor's application to set aside the Demand and authorised HMRC to present a bankruptcy petition against him after 15 October 2018.

15. On 15 October 2018, the Debtor filed an appeal against the dismissal of his application to set aside the Demand.

16. On 11 February 2019, Snowden J (as he then was) ordered the Debtor to file a witness statement by 22 February 2019 setting out the steps which he had taken to pursue a complaint to the Ombudsman. The Debtor duly complied with that order, but did not serve a copy of his witness statement on HMRC (not having been ordered to do so).

17. On 5 April 2019, HMRC presented the Petition. By r.10.7(2) IR 2016, as more than 4 months had elapsed between the service of the Demand and the presentation of the Petition, the Petition was required to explain the reasons for the delay. This was addressed in paragraph 6 of the Petition, which stated:

> "The petition is filed late due to the debtor filing an application to set-aside the statutory demand. The application was dismissed on 24 September 2018. The debtor has since filed an application for permission for a late appeal however, this has not been determined and directions have been issued which the debtor has not completed (sic) with."

18. As I address below, it is common ground that this statement is erroneous, in that: (i) the Debtor's application for permission to appeal was filed in time, albeit on the last day for doing so (see paragraph 15 above); and (ii) the Debtor did comply with Snowden J's direction (see paragraph 16 above).

19. On 9 May 2019, Ellie Anstead of HMRC wrote to the Debtor notifying him that HMRC had presented the Petition. Mrs Anstead's letter referred to an earlier letter from the Debtor dated 29 April 2019. Whilst the Debtor's letter is not in evidence before me, it is clear from Mrs Anstead's response that: (i) the Debtor's letter must have made reference to the circumstances giving rise to his mental health issues (as HMRC expressly referred to them); and (ii) this was not the first time that HMRC had been made aware of those circumstances (as Mrs Anstead stated: *"I continue to express my sympathies with regard to [those circumstances] and…I appreciate the difficulties and*

distress that this must continue to cause you"). Mrs Anstead's letter also indicates that the Debtor had, by his earlier letter, offered HMRC a charge over his share of equity in a jointly owned property. That offer was rejected by HMRC. The Debtor does not contend that that refusal was unreasonable so as to justify the dismissal of the Petition pursuant to s.271(3) of the Insolvency Act 1986 ("**IA 1986**").

20. On 20 May 2019, the Debtor asked HMRC for the following information and data: (i) details of HMRC's policy on reacting to and handling mental health issues being experienced by its customers; (ii) confirmation of when this policy was last reviewed and the outcome of that review including details of any change of practice or guidance; (iii) an explanation of how HMRC aligns its practice and conduct so as not to exacerbate any mental health issues being experienced by its customers; and (iv) an explanation of how HMRC's treatment of his mental health issues conformed to this policy or guidance.

21. On 29 May 2019, a Data Protection Act Liaison Officer replied to the Debtor stating that: (i) she had passed the Debtor's requests for information about HMRC's policy generally to HMRC's Freedom of Information Team; and (ii) his request for information about HMRC's treatment of his personal issues would be responded to by Mrs Anstead *"as a matter of course…under business as usual"*.

22. On 30 May 2019, HMRC sent the Debtor a Debt and Mental Health Evidence Form ("**the DMHEF**") for completion by his medical practitioner setting out details of his mental health issues. I will consider the significance of this form in more detail below.

23. On 5 June 2019, HMRC's Freedom of Information Team replied to the Debtor's letter of 20 May 2019, providing details of its policies and guidance for dealing with people with mental health conditions (which I consider in further detail below). In response to

the Debtor's request for an explanation of how HMRC had applied those policies to his case, it was stated:

> "These are not within the scope of the Freedom of Information Act and will either need to be addressed by your Debt Management caseworker or by our Complaints department if you choose to make a complaint.
>
> We will always seek to carefully consider customer circumstances and support needs. I understand that your case worker has sent a further letter to you on 30 May 2019, setting out the process we have in place that may help you settle your affairs.
>
> I hope that this helps reassure you of our commitment to supporting customers with mental health conditions."

24. On 18 June 2019, the Debtor advised HMRC that: he had had an assessment appointment with a counselling service; this had resulted in the offer of a 12-week course of counselling, that he was taking up; and his GP had indicated that they could not meaningfully complete the DMHEF until the Debtor's counselling course had been completed.

25. On 25 June 2019, HMRC replied stating that without any firm information from the Debtor's GP, it did not have the medical facts to consider further.

26. On 1 July 2019, Snowden J refused the Debtor's application for permission to appeal against Deputy ICC Judge Middleton's dismissal of his application to set aside the Demand. His reasons for doing so were as follows:

> "The earlier decision of Registrar Briggs (as affirmed on appeal by Asplin J) to dismiss a bankruptcy petition whilst there was an extant review by the Adjudicator plainly did not decide that a second bankruptcy petition could not be presented if the application to the Adjudicator was rejected.
>
> In particular, and as noted by Asplin J in The Commissioners for HMRC v De Freitas [2016] EWHC 1433 (Ch) at [10], Registrar Briggs told Mr. de Freitas during the hearing that HMRC would be entitled to bring a fresh petition "at

> another time if you do not get on with the ADR". The position must have been *a fortiori* after the Adjudicator rejected the application.
>
> The Adjudicator's decision and Mr. De Freitas's subsequent decision to engage a manifestly different process of complaint to the Parliamentary and Health Service Ombudsman ("the Ombudsman") were in any event rightly regarded by the Deputy ICC Judge as a material change of circumstance which enabled him to consider whether to set aside the service of a new statutory demand as an abuse of process or otherwise.
>
> The Deputy ICC Judge's decision that the inadequate evidence which he had as to the status of the complaint to the Ombudsman did not establish that the statutory demand was an abuse of process was entirely justified, and well within the range of reasonable decisions available to him.
>
> The appeal therefore stands no realistic prospect of success and permission must be refused.
>
> As it transpires, given that the complaint was rejected by the Ombudsman shortly after the decision under appeal, there would be no prospect, were the matter now to be remitted to the Deputy ICC Judge for reconsideration, of the statutory demand being set aside.
>
> The fact that Mr. de Freitas has sought to challenge the Ombudsman's refusal to investigate his complaint by an application for judicial review cannot possibly be regarded as within the scope of the earlier decision of Registrar Briggs or as a ground to prevent HMRC from presenting a petition based upon the new statutory demand (although these are matters that the court might take into consideration when considering a fresh petition)."

27. On 10 September 2019, the Debtor sent HMRC a letter from a Specialist Cognitive Behavioural Psychotherapist summarising his symptoms and treatment options. HMRC accepts that that letter put it on notice of the Debtor's mental health issues and the potential consequences of his bankruptcy thereon.

28. It appears that Mrs Anstead replied to that letter on 24 September 2019, but her letter is not in evidence before me. On 8 October 2019, the Debtor responded to Mrs Anstead's letter stating that he would make a request to the Ombudsman to review his decision once he had *"discovered the extent of what HMRC has 'done behind my back'"* and asking her to address seven specific questions. On 14 October 2019, the

Debtor sent a copy of that letter to the Financial Secretary to the Treasury (Jesse Norman MP) and asked him to instruct HMRC to cease to pursue the Petition.

29. On 21 October 2019, Mrs Anstead replied to the Debtor's letter of 8 October 2019 stating that: until he asked for the Ombudsman's decision to be reviewed all avenues of complaint had been exhausted; any review would not have any bearing or impact on the petition debt; the Debtor had further unpaid tax for the tax years 2016/17 and 2017/18; as far as HMRC was concerned, the matter was finalised; and whilst she sympathised with the difficulties and distress which the Debtor's personal circumstances continued to cause him, highlighted by his *"current mental health issues"*, HMRC had a duty to collect tax that is due. Mrs Anstead did not address any of the seven questions raised by the Debtor in his letter of 8 October 2019.

30. On 11 November 2019, Mr Strange (a Complaints Investigation Manager) replied to the Debtor's letter of 14 October 2019 on behalf of HMRC's Chief Executive stating:

> "We are extremely mindful of your mental health issues, but disclosure of a mental health condition is not a bar to us taking legal proceedings, consideration of other factors including asset position, current working status, income and whether liabilities are accruing will also determine how we proceed. Consequently, I am satisfied we have meant our obligations under the Equality Act."

31. On 15 November 2019, the Petition was served on the Debtor by way of substituted service.

32. On 3 January 2020, the Debtor wrote to the Interim Chief Executive of HMRC to complain about its handling of his mental health issues. In that letter, the Debtor gave a full account of the tragic and regrettable personal circumstances which I have referred to above and asserted that HMRC had *"at least sufficient information to be aware of the possibility of Post Traumatic Stress Disorder"* but did not follow its own internal

guidance and make reasonable adjustments for this. He also complained about HMRC's *"persistent refusal to answer my points"* and asserted that he was unable to make a request to the Ombudsman to review his decision until HMRC let him know what exactly had been sent and said to the Adjudicator and the Ombudsman. He invited HMRC to agree to the dismissal of the Petition. Phil Waltham (a Complaint Investigation Manager) replied to that letter on 9 March 2020 stating that the Debtor had *"raised nothing new, and all matters were covered in Mr Strange's response to you dated 11 November 2019"*.

33. On 17 January 2020, the Debtor filed a notice setting out his grounds for opposing the Petition in accordance with r.10.18(1) IR. At this stage, the Debtor did not rely on any alleged breaches by HMRC of its duties under the EA 2010.

34. At the first substantive hearing of the Petition on 27 January 2020, ICC Judge Mullen gave directions for the filing and service of evidence and listed the matter for a non-attendance pre-trial review to consider whether the final hearing should be in private.

35. By the time of the non-attendance pre-trial review, on 24 July 2020, the Debtor asserted that the Petition was not ready for hearing because he (mistakenly) believed that HMRC would have carried out an equality impact assessment ("**EIA**") into his case before presenting the Petition, and he wished to see that document in order to consider running the additional argument that the Petition had been presented in breach of the public sector equality duty in s.149 EA 2010 ("**the PSED**"). HMRC has subsequently explained that an EIA is an analysis of a proposed organisation policy, or a change to an existing one, which assesses whether the policy has a disparate impact on persons with protected characteristics; it is not something which is prepared in individual cases.

36. At the second substantive hearing of the Petition on 23 February 2021, Deputy ICC Judge Lambert gave the Debtor permission to amend, re-file and re-serve his Grounds of Opposition to fully particularise any allegation he wished to advance that HMRC has breached the PSED, made consequential directions for the filing and service of further evidence and listed the Petition for a final hearing, which took place before me on 20 May 2022.

37. On 11 March 2021, the Debtor filed and served the Amended Grounds of Opposition.

38. On 27 April 2021, HMRC issued an application pursuant to r.10.16 IR 2016 for permission to amend paragraph 6 of the Petition to read:

> "The petition is filed late due to the debtor filing an application to set-aside the statutory demand. The application was dismissed on 24 September 2018. On 15 October 2018, the debtor filed an application to appeal the decision of Judge Middleton on 24 September 2018, the appeal was refused on 1 July 2019."

39. The application notice requested that that application be dealt with at the hearing of the Petition listed on 5 November 2021. In the event, it appears to have been granted by ICC Judge Jones without a hearing on 12 May 2021, as on 17 May 2021 the court sealed the draft amended petition exhibited to the witness statement of Billie-Jade Habgood in support of the application and endorsed it as follows:

> "Permission to amend granted by ICC Judge Jones 12/5/21 – The Petitioners are to re-verify and re-serve."

40. In fact, it does not appear that HMRC has re-verified and re-served the Petition in its amended form.

Ground One: Ongoing Complaint

41. In his skeleton argument, Mr Pavlovich summarises the Debtor's first ground for seeking the dismissal of the Petition in the following terms:

> *"There is an ongoing ADR process relating to the petition debt. A previous, similar petition was dismissed to allow ADR to continue."*

42. However, at the hearing, it was accepted that the reference to "ADR" was misplaced. In the context of tax disputes, "ADR" is a specific process involving an HMRC mediator which is only available to a taxpayer with HMRC's consent. In the present case, the Debtor sought to avail himself of this process, but HMRC deemed the dispute to be unsuitable for ADR on 30 January 2017.

43. In fact, the Debtor's first ground for seeking the dismissal of the Petition relates to the complaint which he made against HMRC.

44. As indicated in paragraph 8 above, complaints to HMRC potentially involve a four stage process:

    i) On receipt of a complaint (which may be made online, by post or by phone) HMRC will carry out an initial review of that complaint (referred to as a 'first tier' review) and notify the taxpayer of the outcome;

    ii) If the taxpayer disagrees with the outcome of the first tier review, they may ask HMRC to review the complaint for a second time (referred to as a 'second tier' review).

    iii) If the taxpayer is dissatisfied with the outcome of the second tier review, they may raise a complaint with the Adjudicator's Office within 6 months of the

second tier review and ask the Adjudicator to review the case. The Adjudicator is an independent and impartial adjudicator of complaints concerning the conduct and performance of HMRC. The types of complaints which the Adjudicator can investigate are set out in a Service Level Agreement. On completion of the review, the Adjudicator will issue a final report, conclusion and recommendations (which may include payment of compensation to the taxpayer) to the relevant HMRC Director, who will be responsible for ensuring the recommendations made by the Adjudicator are implemented and any compensation paid.

iv) If the taxpayer is dissatisfied with the Adjudicator's decision, they may seek to complain to the Ombudsman (in the Ombudsman's capacity as Parliamentary Commissioner for Administration). In order to do so, they will need to make a written complaint to an MP, who must then refer that complaint to the Ombudsman with a request to conduct an investigation thereon, and it is necessary for the taxpayer to demonstrate that they have sustained injustice in consequence of maladministration (see s.5(1) of the Parliamentary Commissioner Act 1967).

45. In the present case, the Debtor's complaint has been considered and rejected at each of these four stages of the complaints process (see paragraphs 9 and 12 above). On that basis, HMRC submits that the Debtor's complaint is no longer "ongoing" and, in consequence, his first ground for seeking the dismissal of the Petition is bound to fail. In response, the Debtor asserts that he has not exhausted his rights in respect of the his complaint because, by virtue of the Consent Order, he is entitled to request that the Ombudsman consider undertaking a review of his decision. I note that the Debtor has

not in fact made such a request to the Ombudsman, notwithstanding that nearly 3 years have elapsed since the Consent Order was granted. The Debtor says that this is because he is awaiting further information from HMRC about their communications with the Ombudsman without which he is unable to proceed. I have considerable reservations about this, not least as the Debtor has not adduced any evidence in relation to his underlying complaint which would enable me to assess the significance of the allegedly missing information. Nevertheless, I am prepared to proceed on the basis that the Debtor's complaint cannot be regarded as having been finally determined.

46. There are essentially two bases on which the Debtor contends that, in the circumstances, the court should exercise its discretion to dismiss the Petition. First, he says that the court should follow the approach taken by Registrar Briggs when he dismissed the Prior Petition in order to await the outcome of the complaint to the Adjudicator. I am not persuaded that this would be appropriate for the following reasons:

i) whilst Asplin J held that Registrar Briggs' decision to dismiss the Prior Petition was within the "generous ambit" of his discretion, it could nevertheless be viewed as somewhat extreme and a different Judge may have been persuaded that it was more appropriate to adjourn the hearing of the Petition pending the outcome of the adjudication process;

ii) in any event, as Snowden J observed in his reasons for refusing the Debtor permission to appeal against the dismissal of the application to set aside the Demand, there has been a material change in circumstances since the hearing before Registrar Briggs, in that the Debtor's complaint has now been rejected by both the Adjudicator and the Ombudsman; and

iii) whilst it remains theoretically possible that the Ombudsman may subsequently review his decision, I cannot be satisfied that there is any real prospect of this happening given that the Debtor has not yet made a request for reconsideration, notwithstanding that nearly 3 years have elapsed since the making of the Consent Order.

47. Second, the Debtor says that unless and until the complaint process has been finally determined, it is impossible to determine whether any sum is due and owing to HMRC above the bankruptcy level. I consider that this amounts to a claim that the Petition is genuinely disputed on substantial grounds and/or that the Debtor has a genuine cross-claim against HMRC which equals or exceeds the petition debt. The difficulty for the Debtor in this regard is that he has not adduced any substantive evidence in relation to his complaint to HMRC so as to enable the court to be satisfied that: (i) the complaint has a real prospect of success (which, given that it has been rejected at every stage of the complaints process, is doubtful); and (ii) if the complaint is successful, the debt claimed in the Petition would be reduced below the bankruptcy level.

48. In the circumstances, I reject the Debtor's first ground for seeking the dismissal of the Petition.

Ground Two: Ability of the Debtor to pay his debts

49. Section 271(3) IA 1986 provides as follows:

> The court may dismiss the petition if it is satisfied that the debtor is able to pay all his debts or is satisfied—
>
> (a) that the debtor has made an offer to secure or compound for a debt in respect of which the petition is presented,
>
> (b) that the acceptance of that offer would have required the dismissal of the petition, and
>
> (c) that the offer has been unreasonably refused;
>
> and, in determining for the purposes of this subsection whether the debtor is able to pay all his debts, the court shall take into account his contingent and prospective liabilities.

50. As the editors of *Muir Hunter on Personal Insolvency* note (at 3-419), this provision telescopes into one text two entirely disparate situations. The first (which has its roots in s.5(3) of the Bankruptcy Act 1914) is where the court is satisfied by the debtor that he is able to pay all his debts, including his contingent and prospective liabilities. The second is where the debtor satisfies the court that the petitioner has unreasonably refused an offer to secure or compound for the petition debt.

51. The Debtor contends that the first of these situations applies in the present case (i.e. he is able to pay all his debts, including his contingent and prospective liabilities). In this regard:

i) in his second witness statement dated 6 April 2020, the Debtor stated that: (i) he had access to an equity release which would enable him to pay the petition debt; and (ii) he can pay his other debts as they fall due;

ii) in his fifth witness statement dated 12 May 2022, the Debtor asserted that he could raise at least £242,900 by way of an equity release, which would be sufficient to pay the petition debt and the outstanding balance of his existing mortgage.

52. Unhelpfully, notwithstanding that 35 years have elapsed since the enactment of the IA 1986, there does not appear to be any reported case which has considered the circumstances in which the first limb of s.271(3) will be engaged and counsel were unable to assist me as to whether the relevant test requires the debtor to demonstrate cashflow or balance sheet solvency.

53. In any event, even if I can be satisfied that the Debtor is *"able to pay all his debts"* within the meaning of s.271(3) IA 1986 on the basis of his assertions that: (i) the value of the available equity in his property exceeds the petition debt (and thus he is balance sheet solvent); and/or (ii) he will be able to realise that equity within a short period of time so as to enable him to pay the petition debt (and thus he is cashflow solvent), I do not consider that it would be appropriate to exercise my discretion to dismiss the Petition, as HMRC would have no comfort that the Debtor will actually pay the petition debt.

54. However, it may in those circumstances be appropriate to grant an adjournment of the Petition so as to enable the petition debt to be paid. I will return to this issue in due course.

Ground Three: Factual errors in the Petition

55. As I have indicated in paragraph 18 above, it is common ground that the Petition (as presented) contained factual errors, in that paragraph 6 wrongly indicated that: (i) the Debtor's appeal against the dismissal of his application to set aside the Demand was filed late; and (ii) the Debtor had failed to comply with Snowden J's Order of 11 February 2019.

56. The Debtor contends that this is a standalone ground for the dismissal of the Petition. In paragraph 35 of his skeleton argument, Mr Pavlovich asserts:

> *"HMRC is a regular user of this Court, and the Court often depends on the information provided by HMRC. It is submitted that there is no good reason for the errors described above and that, to deter similar conduct in future, an appropriate response would be to dismiss the petition as a matter of discretion."*

57. However, it is self-evident that ICC Judge Jones must have been satisfied that there was a good reason for the errors in the Petition (as presented) and/or that those errors did not cause any material prejudice to the Debtor, because he granted HMRC permission to amend the Petition to correct them. In the circumstances, were I now to dismiss the Petition on this ground, it would effectively render ICC Judge Jones's order otiose. I do not consider that this would be appropriate.

58. Moreover, I note that Mr Pavlovich did not seek to suggest that the errors caused any prejudice to the Debtor, given that they can have had no impact on the court's decision to issue the Petition. Rather, he invited me to dismiss the Petition *pour encourager les autres.* I do not consider that this would be a reasonable or proportionate order to make, particularly having regard to the fact that there would be nothing to prevent HMRC

from immediately presenting a fresh petition against the Debtor on the basis of the same debt.

59. In the circumstances, I reject the Debtor's third ground for seeking the dismissal of the Petition.

Ground Four: Breach of the EA 2010

60. The Debtor's fourth ground for seeking the dismissal of the Petition is set out in the Amended Grounds of Opposition in the following terms:

> The Court should dismiss the Petition as a matter of discretion because of the Respondent's precarious mental health resulting from the Petitioner's conduct and from these proceedings in particular:
>
> (1) The Petitioner owes a 'public sector equality duty' under the Equality Act 2010, which among other things requires it to have due regard to minimising the disadvantages suffered by disabled persons and to take steps to meet their needs (and the Respondent's mental ill-health is a form of disability in that respect). Further, the Petitioner owes a duty to make 'reasonable adjustments' in respect of disability under the same Act. The Petitioner has not complied with these duties in respect of the Respondent; and in any event its treatment of the Respondent warrants dismissal of the Petition. In particular, the Petitioner has taken no material steps to meet the Respondent's needs resulting from his mental ill-health and to minimise the resulting disadvantage he suffers in dealing with his tax affairs. This is despite the facts that the Petitioner has produced some internal guidance on the topic, and has received medical evidence from the Respondent…

A sub-ground (2) also appears in the Amended Grounds of Opposition. At the Debtor's request (which HMRC does not oppose), I have not reproduced the text of that sub-ground herein to avoid the unnecessary disclosure of relevant confidential information. Having considered the matter raised therein, I have concluded that it is not directly relevant to the present case. Accordingly, I will not address it further in this judgment.

61. The Debtor's reference to the 'public sector equality duty' is to the duty imposed by s.149 EA 2010, which (so far as relevant) provides as follows:

> **Public sector equality duty**
> (1) A public authority must, in the exercise of its functions, have due regard to the need to—
>
> > (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
> >
> > (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
> >
> > (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
>
> …
>
> (3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
>
> > (a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
> >
> > (b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
> >
> > (c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
>
> (4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.
>
> (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—
>
> > (a) tackle prejudice, and
> >
> > (b) promote understanding.

> (6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.
>
> (7) The relevant protected characteristics are—
>
> …
>
> disability
>
> …

62. In broad terms, where a public authority proposes in the exercise of its statutory functions to carry out an act which may affect persons who are known to have a disability, the PSED imposes an obligation on the public authority to carry out an "open-minded conscientious enquiry" of the potential impact of that act on those persons before so acting (see *Luton Community Housing Ltd v Durdana* [2020] EWCA Civ 445; [2020] HLR 27 at [16]-[19]).

63. However, where in breach of the PSED a public authority fails to carry out such enquiry before acting, it does not necessarily follow that its act will be unlawful or otherwise liable to be set aside. This is illustrated by the decision of the Court of Appeal in *Durdana* itself. In that case, a housing association issued possession proceedings against a tenant who suffered from PTSD and whose daughter suffered from cerebral palsy without first carrying out a proper PSED assessment of the impact of the proposed eviction on them. This was held to be a breach of the PSED and, in consequence, HHJ Bloom dismissed the possession claim. On appeal, it was held that she had been wrong to do so because she had failed to consider whether a proper PSED assessment would have led to a different decision. Patten LJ (with whom Moylan and Newey LJJ agreed) concluded that even if the housing authority had carried out a proper assessment, it was highly likely that it would still have decided to issue the possession claim. In

consequence, the Court allowed the housing association's appeal against the dismissal of the possession claim and remitted the claim back to HHJ Bloom to decide.

64. The Debtor's reference to the duty to make 'reasonable adjustments' in respect of disability ("**the Duty to Make Adjustments**") is to the duty set out in s.20 EA 2010 which, by s.29(7) and s.31(3) EA 2010, applies to persons exercising public functions and which, by ss.20(3) to (5) EA 2010, comprises the following three requirements:

i) Where a provision, criterion or practice of the person on whom the duty is imposed puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

ii) Where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

iii) Where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to provide the auxiliary aid.

65. It is clear from the decision of HHJ Pelling QC in *HMRC v Cartmel* [2011] EWHC 36 (Ch) that a failure by a creditor to comply with the Duty to Make Adjustments may be a reason to dismiss a bankruptcy petition, but this will depend on the facts of the particular case. In *Cartmel*, an individual who had been adjudged bankrupt on the petition of HMRC applied to annul or rescind her bankruptcy on the basis that either: (i) she had lacked relevant capacity on the date of service of the statutory demand and/or

during the period between the service of the bankruptcy petition and the hearing of the petition; or (ii) in serving the statutory demand and/or bankruptcy petition and/or seeking a bankruptcy order at the final hearing, HMRC acted in unlawful breach of the duties owed to her under the Disability Discrimination Act 1995 (a statutory predecessor to the EA 2010). HHJ Pelling QC concluded that the bankrupt had lacked capacity at all times from the service of the statutory demand and he annulled the bankruptcy order on that basis. He went on to consider the allegation that HMRC had acted in breach of the Disability Discrimination Act 1995 and concluded that it had. As this finding was strictly *obiter*, it was unnecessary to consider whether this would have been a separate and distinct basis for annulling the bankruptcy order. He nevertheless noted (at [102]) that:

> "It is conceivable that a different discretionary outcome would result where a breach of duty had been established but incapacity had not, particularly if the making of a bankruptcy order was in any event at least probable."

66. As I have indicated in paragraph 1 above, for the purposes of these proceedings, it is common ground that the Debtor has a disability within the meaning of s.6(1) EA 2010 and, accordingly, that the PSED and the Duty to Make Adjustments are engaged in respect of him. Insofar as HMRC's knowledge of the Debtor's disability is relevant to the scope of those duties, in my judgment, it is clear from the contemporaneous documentary evidence that HMRC was aware of the circumstances giving rise to the Debtor's disability at or around the time when it presented the Petition (as evidenced by Mrs Anstead's letter dated 9 May 2019 referred to in paragraph 19 above); and, in any event, it is common ground that HMRC was aware that the Debtor suffers from a disability by 10 September 2019, prior to serving the Petition on the Debtor (see paragraph 27 above).

67. In summary, Mr Pavlovich contends that by pursuing the Petition, HMRC has breached both the PSED and the Duty to Make Adjustments because, in light of the Debtor's disability, it should have co-operated with him to enable him to request a review of the Ombudsman' decision (in effect, by providing him with the information which he requested in his letter of 8 October 2019) and should only have instigated bankruptcy proceedings against him if this proved to be unsuccessful. This, says Mr Pavlovich, would have been consistent with HMRC's own internal guidance (which I consider in paragraph 71 below). Mr Pavlovich accepted that there was a large degree of overlap between this fourth ground and the Debtor's first ground of opposition, but nevertheless maintained that it was a separate and distinct reason why the court should exercise its discretion to dismiss the Petition.

68. In asserting that HMRC has breached both the PSED and the Duty to Make Adjustments, Mr Pavlovich proceeds on the basis that there is no material distinction between those duties insofar as the obligations of HMRC to the Debtor are concerned. I respectfully disagree with that analysis. It seems to me that the PSED required HMRC to carry out an assessment as to the impact which bankruptcy proceedings would potentially have on the Debtor's mental health in deciding whether to proceed with the Petition, whereas the Duty to Make Adjustments required HMRC to take such steps (if any) as were reasonable to ensure that if it pursued the Petition, the Debtor would not be disadvantaged as a result of his disability. In my view, it is possible to envisage a case where a public authority breaches the PSED (because it fails to carry out a proper assessment of the impact which a proposed action will have on a disabled person before taking that action) but not the Duty to Make Adjustments (because there are in fact no reasonable adjustments which need to be made) and it is equally possible to envisage a case where a public authority complies with the PSED (because it carries out a proper

assessment before acting) but nevertheless breaches the Duty to Make Adjustments (because it fails to make all reasonable adjustments). I will therefore proceed on the basis that the PSED and the Duty to Make Adjustments are separate and distinct duties which need to be considered in turn.

69. HMRC denies that it has breached the PSED and the Duty to Make Adjustments. So far as the former is concerned, Mr Arumugam places considerable weight on Mr Strange's letter dated 11 November 2019 (referred to in paragraph 30 above), in which he stated that HMRC was *"extremely mindful"* of the Debtor's mental health issues but, having considered a number of other factors, was satisfied that it had met its obligations under the EA 2010. So far as the latter is concerned, Mr Arumugam relies heavily on the fact that the Debtor did not complete the DMHEF sent to him by HMRC on 30 May 2019 (see paragraphs 22 and 24 above), asserting that this has prevented HMRC from understanding what specific adjustments could be made for the Debtor either generally or in the present proceedings.

70. Alternatively, Mr Arumugam submits that even if HMRC has breached the PSED or the Duty to Make Adjustments, this is not a reason to dismiss the Petition because this has made no substantial difference to the outcome of this case.

71. In addressing the questions of whether HMRC has complied with the PSED and the Duty to Make Adjustments, both counsel drew my attention to two internal guidance notes from section DMBM585000 of HMRC's Debt Management and Banking Manual (*"Pre-enforcement: consider the defaulter"*). The first, DMBM585180 concerns *"vulnerable customers"*. Having carefully considered its contents, I do not consider that it is of direct relevance to the present case. The second, DMBM585185 concerns *"customers with health issues"* and is plainly of much greater relevance to the present

case (although I note that it does not address the specific issue of pursuing bankruptcy proceedings). In this regard, I note the following:

i) Under the heading *"Disclosure of a health condition"*, it is stated:

> *"Customers may be reluctant to disclose a health condition. However, it is important for HMRC to hold such personal data on our files. To do this the law requires us to ask for the 'explicit consent' of the individual first. If you are told about a condition you may find the TEXAS technique useful."*

ii) Under the heading *"Asking the customer for evidence of their health condition"*, it is stated:

> *"In some cases we may require the customer to provide evidence of their health condition to help us decide on the appropriate action to take. Generally, we will not require the customer to submit evidence unless we are considering remission...*
>
> *Evidence of a customer's health condition can come from a number of sources. Acceptable sources include:*
>
> - *a doctor*
> - *any health professional*
> - *a social care professional*
> - *a voluntary sector organisation, such as Citizen's Advice / TaxAid / TaxHelp for Older People (TOPS) - providing that they have satisfied themselves, from one of the sources above, that the health condition is genuine."*

iii) Under the heading *"Cases involving mental health and the evidence form"* it is stated:

> *"Evidence can come in a variety of written forms, but in order to make sure that we have the information you should send a completed copy of the Debt and Mental Health Evidence Form (DMHEF), also accompanied by the DMHEF consent form, both of which are found on the Money Advice Trust website.*

> *The DMHEF should only be used where the customer has mental health issues that affect their ability to manage their finances. As some health professionals may charge for completing the DMHEF we cannot insist on it. As an alternative, written evidence from any of the sources mentioned above would be acceptable, but it would need to include, as a minimum, information describing the nature of the illness and how that illness affects the person's ability to carry out their normal day-to-day activities, particularly in relation to their ability to manage their finances."*

iv) Under the heading *"Decision-making"*, it is stated:

> *"When deciding how to deal with and progress cases involving health conditions your focus should be on how the condition affects the customer's ability to deal with their finances and not on the fact that a condition may exist. Depending upon the circumstances likely actions will include:*
>
> - *considering / accepting a time to pay arrangement*
> - *deferring collection for an agreed amount of time*
> - *taking legal proceedings*
> - *remission."*

v) Under the heading *"Remission cases"*, it is stated:

> *"Just because a customer has a health condition it does not mean that remission is automatically appropriate nor that legal proceedings are out of the question. Other factors such as the asset position, current working status and income and whether liabilities are accruing will also be important considerations."*.

72. Having carefully considered the contemporaneous documentary evidence, I am satisfied that HMRC has complied with the PSED in the present case. It is clear from Mr Stange's letter dated 15 November 2019 that HMRC did give consideration to the impact which bankruptcy proceedings would have on the Debtor's mental health before serving the Petition on him and, having taken into account other relevant factors, concluded that it was nevertheless reasonable and proportionate to proceed with the Petition. As Patten LJ indicated in *Durdana* at [22] (by reference to the earlier decision of the Court of Appeal in *R (Hurley) v Secretary of State for Business, Innovation and*

Skills [2012] EWHC 201 (Admin)), the weight to be given to the competing considerations was a matter for HMRC and the court cannot interfere with its decision simply because it would have given greater weight to the equality implications of the decision.

73. However, that is not an end of the matter because I need to consider whether in deciding to proceed with the Petition HMRC has made all reasonable adjustments. As noted in paragraph 67 above, the essential thrust of the Debtor's argument in this regard is that: (i) because bankruptcy proceedings would have a detrimental impact on his existing mental health issues, HMRC should have waited for him to pursue a review against the Ombudsman's decision before pursuing such proceedings; and (ii) he is unable to pursue such review unless and until HMRC provides him with the further information about their communications with the Ombudsman which he requested in his letter dated 8 October 2019.

74. As I have already indicated in the context of considering the Debtor's first ground of opposition to the Petition, the Debtor has not adduced any evidence in relation to his underlying complaint. Accordingly, in circumstances where I have already concluded that: (i) I am unable to assess the significance of the information which the Debtor alleges HMRC has failed to provide (see paragraph 45 above); and (ii) I cannot be satisfied that the Debtor's complaint (a) has a real prospect of success and (b) would reduce the debt claimed in the Petition below the bankruptcy level (see paragraph 47 above), it must necessarily follow that I cannot be satisfied that a delay by HMRC in pursuing bankruptcy proceedings would have served any useful purpose, such that HMRC's decision to proceed with the Petition amounts to a breach of the Duty to Make

Adjustments or that it would be an appropriate exercise of my discretion to dismiss the Petition to await the outcome of a further review by the Ombudsman.

75. It is worth recording that in reaching that conclusion, I have taken into account the following matters:

i) There is considerable force in the Debtor's complaint that HMRC has failed properly to engage with the seven specific questions raised by him in his letter dated 8 October 2019. As demonstrated by Mrs Anstead's response dated 21 October 2019, HMRC has effectively adopted the position that there is no need to respond to those questions because the Debtor's complaint had been finally determined. I have already accepted the Debtor's submission that that is not entirely true because, by virtue of the Consent Order, he retains the right to request a review of the Ombudsman's decision (see paragraph 45 above). In the circumstances, and having regard to the Debtor's mental health issues, it would undoubtedly have been helpful for HMRC to have provided a substantive response to those questions. However, for the reasons which I have already given, I cannot be satisfied that there is any reasonable likelihood that this would have resulted in bankruptcy proceedings being avoided.

ii) I reject Mr Arumugam's submission that HMRC was unable to understand what specific adjustments needed to be made for the Debtor because he failed to complete the DMHEF. As Mr Pavlovich submitted, and as HMRC's own internal guidance makes clear, the DMHEF (which is an internal form prepared by HMRC) is simply one potential source of evidence as to a taxpayer's mental health condition and, in any event, is not something which HMRC can insist on. I am satisfied that by 10 September 2019 at the latest (when the Debtor sent

HMRC a letter from a Specialist Cognitive Behavioural Psychotherapist summarising his symptoms and treatment options), HMRC had sufficient details of the Debtor's mental health condition to enable it to assess what adjustments (if any) needed to be made.

76. In the circumstances, I reject the Debtor's fourth ground for seeking the dismissal of the Petition.

Adjournment

77. As I have indicated, if I am not prepared to dismiss the Petition (which, for the reasons set out above, I am not), the Debtor seeks a 42-day adjournment in order to enable him to pay the petition debt in full by obtaining an equity release from his matrimonial home; although that property is jointly owned by the Debtor's wife, Mr Pavlovich confirmed on instructions that she will consent to an equity release.

78. I may only grant such adjournment if I am satisfied that there is credible evidence that there is a reasonable prospect that the petition debt will be paid within a reasonable time (*Edginton v Sekhon* [2015] EWCA Civ 816; [2015] 1 WLR 4435).

79. In this regard, the Debtor had produced: (i) a printout from Right Move showing the sale value of other properties in his street (on the basis of which he estimates that his property has a value of £900,000); and (ii) a printout from Advise Wise Limited's online platform (which, he says, indicates that more2life Limited would be prepared to lend him the maximum lump sum of £312,300). He asserts that even if the property is only worth £700,000, this would raise £242,900, which would be sufficient to discharge the balance of the existing mortgage (£6,000) and pay the petition debt (£130,812.26) in full.

80. Mr Arumugam has raised a number of criticisms about the quality of this evidence. In particular, he notes that: (i) the Debtor has not produced any formal valuation evidence to support his estimate of the value of the Property; (ii) the printout from Advise Wise Limited is not a formal quotation; and (iii) the latter document purportedly relates to a 58-year old female rather than the Debtor.

81. So far as this last point is concerned, Mr Pavlovich explained on instructions that where a quotation is sought in respect of a jointly owned property, the age of the youngest co-owner (which, in this case, is the Debtor's wife) is taken. I am prepared to accept that explanation.

82. Whilst there is a considerable degree of force in Mr Arumugam's arguments about the lack of formal evidence to support the Debtor's assertions about the prospect of an equity release, I am nevertheless prepared to give the Debtor the benefit of the doubt and proceed on the basis that there is a reasonable prospect that he will be able to realise the funds to pay the petition debt in full within 42 days (which HMRC does not dispute is a reasonable time for such payment to be made).

83. For the sake of completeness, I should note that Mr Arumugam also sought to place weight on the fact that the Debtor raised the prospect of obtaining an equity release to pay his outstanding indebtedness to HMRC in July 2015 but did not follow through on this, but I am satisfied that this was rendered unnecessary by the subsequent dismissal of the Prior Petition.

Disposal

84. For the reasons set out above, I will adjourn the Petition to the first available date after 42 days. In so doing, I note that as a result of the delay between the hearing on 20 May 2022 and the handing down of this judgment, the Debtor has already had several weeks in which to take steps to secure the necessary equity release (as I encouraged him to do at the hearing). In the circumstances, it is very unlikely that the court will be prepared to grant any further adjournment at the next hearing of the Petition, which I will duly mark as final.

85. As I indicated in paragraphs 39 and 40 above, to date HMRC does not yet appear to have re-verified and re-served the Petition in its amended form in accordance with ICC Judge Jones's Order dated 12 May 2021. This should be done in good time before the next hearing.

Postscript

86. On 22 July 2022, a draft of this judgment was circulated to the parties in accordance with Practice Direction 40E. On 29 July 2022, the parties filed a composite list of suggested corrections, which I have incorporated into this judgment. On 1 August 2022, Billie-Jade Habgood of HMRC wrote to the court explaining that: (i) the Debtor has asked HMRC to agree to extend the adjournment of the Petition from 42 days to 90 days; (ii) this is supported by the Debtor's GP, who has indicated that the current 42-day deadline for the Debtor to obtain an equity release is causing a worsening of his mental health issues; and (iii) HMRC will not object to this if the court is satisfied that this is appropriate given the length of time that has already passed since the hearing on 20 May 2022.

87. Although I am somewhat concerned by the lack of evidence as to why the Debtor now considers that 42 days will be insufficient to enable him to obtain an equity release (contrary to the position taken by him at the hearing on 20 May 2022), having had regard to the Debtor's personal circumstances and the fact that HMRC does not oppose a longer adjournment, I am prepared to extend the adjournment of the Petition to 90 days. However, in doing so, I reiterate the warning in paragraph 84 above (i.e. that it is very unlikely that the court will be prepared to grant any further adjournments of the Petition), which applies *a fortiori* given that I am now granting a longer adjournment than first envisaged.