Neutral Citation Number: [2023] EWHC 1553 (Ch)

BR 2020 000118

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF DEBRA ELIZABETH ADJEI
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 29/06/2023

Before :

ICC JUDGE BARBER

- -

Between :

DEBRA ELIZABETH ADJEI

Applicant

- and –

(1) THE OFFICIAL RECEIVER
(2) THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

- -

Frederick Farncombe (of LPC Law Ltd**)** for the Applicant
Ross Birkbeck (instructed by **Solicitors for HMRC**) for the Second Respondent
Sarah Clarke (instructed on a direct access basis) for the Joint Trustees in Bankruptcy

Hearing date: 21 April 2023

- -

Approved Judgment

This judgment was handed down remotely by email and MS Teams. It will also be sent to The National Archives for publication. The date and time for hand-down is 10 a.m. on 29 June 2023

ICC Judge Barber

1. On 22 March 2023, I ordered that a bankruptcy order made against the Applicant on 27 January 2021 on the petition of HMRC presented on 5 February 2020 ('the petition') be annulled pursuant to section 282(1)(a) of the Insolvency Act 1986. I also dismissed the petition. Due to lack of court time the issues of (a) who should bear the costs of the petition, the annulment application and the bankruptcy (the 'costs issues') and (b) the timing of the Trustees in Bankruptcy's release under rule 10.141(5) of the Insolvency Rules 2016 ('IR 2016') were adjourned to 21 April 2023.

2. In determining the costs issues on 21 April 2023, I ordered that:

   (1) The Applicant and HMRC shall bear their own costs of the petition;

   (2) The Applicant and HMRC shall bear their own costs of the annulment application;

   (3) HMRC shall pay the Official Receiver's costs and expenses of the bankruptcy in the sum of £2,029 by 4pm on 19 May 2023;

   (4) HMRC shall pay the Trustee's costs and expenses of the bankruptcy; and

   (5) The Trustees' remuneration shall be fixed on a time costs basis, the quantum to be determined by the Court if not agreed, with liberty to apply;

   with written reasons to follow. This judgment sets out my reasons for that decision.

Background

3. On 5 February 2020, following service of a statutory demand, HMRC presented a bankruptcy petition against the Applicant in the sum of £115,862.23.

4. Of this sum,

   (1) all but £2,064.65 related to sums said to be due on the basis that the Applicant was an employer and partner in relation to a medical practice run from Stroudley Walk Health Centre ('the Practice'), when she was not – in fact she was simply a PAYE employee of the Practice and dealt with PAYE on behalf of the Practice as part of her job; and

   (2) the remaining £2,064.65 was claimed in late filing penalties and interest, on the basis that the Applicant earned more than £50,000 from 2013 onwards and was liable to file self-assessment returns ('the Late Filing Charges'), when in reality the Applicant had at all material times earned considerably less than £50,000 per annum and was under no obligation to file self-assessment returns.

5. By emails dated 17 March 2020 and 20 November 2020, the Applicant informed HMRC that she was employed on PAYE, rather than self-employed, and explained that she was responsible for making payments for PAYE as part of her job.

6. The email dated 17 March 2020 was from the Applicant's work email address at the Stroudley Walk Health Centre. It was addressed to HMRC and cc'd to the court. It provided as follows:

> 'Dear Sir/Madam
>
> I am now unable to find the email that was sent previously but I have had to empty out my mailbox. Previously I sent the email after a phone call which was at least two months ago. I realised that I should have chased this but with the situation as it is I have been more concerned with getting the service viable again.
>
> I would like to ask for 3-6 months to pay the outstanding debt as I have been on a secondment for two years, I came back in December 2019 to project manage a move and noticed that [t]he Finance's [sic] were in a very bad way. I am fully responsible for the collection of invoices and have started to re-track some of the whereabouts of claims that needed to be claimed.
>
> I am not self-employed, I am employed on PAYE but I am responsible for making all the payments for PAYE as part of my job. I am afraid that the person who I left with this responsibility did not act in the way in which I thought they would and has left me in the position of debt.
>
> I would very much appreciate some time to get this debt paid and I can now make payments monthly as I have at least managed to make the service viable to make the monthly PAYE payments.
>
> The other issue is I am worried about coming on a train to the court as I am currently on Methotrexate and this causes me have a low immune system which is very concerning with the current coronavirus situation.
>
> My email address is the best contact for me at the moment'.

7. The Applicant's email to HMRC dated 20 November 2020 was also sent from the Applicant's work email address, referencing the Stroudley Walk Health Centre. This stated:

> 'Dear Sir/Madam
>
> I am very sorry that I have not been in contact, I last spoke with someone a few weeks ago but unfortunately I have not been at work properly since the 18th September 2020 as I fell and broke my wrist which has made things very difficult for me including writing and emailing.

> … I need to speak to someone about my status which HMRC are trying to claim as self-employed which I am not or have never been since I started work when I was 17 years old.
>
> I really need to get this sorted out as soon as possible as this is making it look as if I owe tax that I already pay via PAYE at work, how can I get this resolved as whoever I speak to cannot tell me how to get this sorted out. In fact 2 years ago I actually received a tax rebate because I had overpaid Tax.
>
> The PAYE that is owed to you is as I said because I was on a secondment and since Covid-19 I have not been able to resolve claims that [are] due to the practice because most people are working from home and it has been a very difficult year along with me falling and breaking my wrist.
>
> As I have suggested in the email I would be grateful if I could sent [sic] at least £6000 per month and I have paid this over today via bacs payment for the past 3 months and I will continue to make as many payments as I can over the coming months, happy to speak with someone as soon as possible if you could give me a person that will be dealing with this. Previously I have to keep speaking to different people and this caused long conversations that no one can help with.'

8. The attendance sheet for a hearing of the petition which took place on 25 November 2020 records that the Applicant had paid £21,000 in the last month and had been in touch with HMRC. It also records "she believes that her status has been misdescribed". With the benefit of hindsight, it is unfortunate that this was not treated by the court as an indication by a litigant acting in person that the petition was opposed and that directions were not given for the Applicant to file a witness statement explaining her position and exhibiting any relevant documents.

9. On 27 January 2021, at the fifth hearing of the petition, a bankruptcy order was made in the Applicant's absence. The Applicant's evidence, which in this regard I accept, is that she was not given the dial in details for the hearing, which was conducted remotely.

10. The Applicant made this annulment application on 25 April 2021, in addition seeking an order pursuant to rule 10.135 IR 2016 that there be a stay in the appointment of any trustee in bankruptcy other than the OR pending the outcome of the annulment application.

11. The Applicant's first witness statement dated 22 April 2021, filed in support of the annulment application, set out her position that she was never a partner or employer at the Practice and was a PAYE employee, for whom PAYE was deducted at source in the usual way.

12. In his first witness statement in response, dated 14 June 2021, Mr Doyle, on behalf of HMRC, positively asserted that the Applicant was an employer, that no partnership

was in place, and that this was confirmed by HMRC records. No documentary evidence in support of these assertions has ever been put forward.

13. On 27 July 2021, the Applicant sent a letter dated 14 July 2021 to each of (1) the Self Assessment Unit at HMRC and (2) the Debt Management, Insolvency Claims Handling Unit at HMRC, seeking to appeal the sums claimed by the petition. The letter lists a number of enclosures, including:

    (1) a copy of a partnership deed dated 22nd May 2002, showing who the partners of the Practice were;

    (2) a copy of the Applicant's contract of employment dated 1 May 2002, showing her employment by the Practice; and

    (3) copies of the Applicant's P60s for each of the years 2015 to 2021.

    Proof of postage was retained by the Applicant.

14. On 15 October 2021, an adviser assisting the Applicant, Mr Dowland of Assured Capital Group, notified Ms Bokhari of HMRC that an appeal had been filed with HMRC in July 2021 and chased on several occasions. He requested an adjournment of the hearing on 28 October 2021.

15. In response, on 20 October 2021, Ms Bokhari requested evidence of the appeal. On 21 October 2021, Mr Arora of Assured Capital Group provided evidence of the appeal, in the form of a copy of the letter dated 14 July 2021 and the proof of posting receipt. Mr Arora made clear that the enclosures referred to in the letter dated 14 July 2021 were not enclosed with his letter dated 21 October 2021 due to their volume, but that any of the same could be provided if requested. I pause here to note that none were requested. Mr Arora also stated that HMRC had acknowledged receipt of the appeal but that it was still pending.

16. On 26 October 2021 Ms Bokhari acknowledged receipt of the letter of 21 October 2021 and its enclosures. She confirmed that the enclosures had been considered and went on to state (wrongly) that only the First Tier Tribunal (Tax Chamber) ('FTT') could consider the appeal.

17. The hearings listed on 28 October 2021 and 19 January 2022 were adjourned by consent.

18. On 8 December 2021, the joint trustees in bankruptcy were appointed following a meeting of creditors.

19. On 18 March 2022, Mr Dowland wrote to Ms Bokhari at HMRC informing her that the appeal had been returned by the FTT, despite HMRC having told the Applicant that it was for the FTT to deal with her appeal. His letter also noted that the appeal which had been sent to HMRC in July 2021 had still not been dealt with.

20. On 28 March 2022, Ms Andonova of HMRC (who by this stage had taken over from Ms Bokhari) wrote to Mr Dowland, stating that HMRC were unaware of any appeal to HMRC.

21. After further correspondence between the Applicant's agents, HMRC and the FTT, on 21 April 2022, the Applicant's agents wrote to HMRC debt management department requesting a copy of the original demands/decision letters relating to the sums set out in the petition. None were provided. On 26 April 2022, that request was also made to the solicitors' office at HMRC.

22. On 3 May 2022, the solicitors' office at HMRC replied that it was the Applicant's responsibility to obtain the demands/decision letters from the relevant departments at HMRC, not for the solicitors' office at HMRC to provide the same. This was unhelpful.

23. On 5 May 2022, the Applicant made a formal complaint to the HMRC debt management department regarding the lack of progress on her appeal. This went unanswered.

24. On 23 May 2022, the Applicant's agents wrote to the HMRC debt management unit requesting that the appeal be urgently attended to.

25. On 14 June 2022, on a non-attendance pre-trial review, the Court gave further directions, requiring the Applicant to file and serve a further witness statement addressing the status of any outstanding appeal as to the Applicant's liability for the tax debts claimed in the petition. The order of 14 June 2022 also required HMRC to file a witness statement in response to the application and directed that HMRC's witness statement

> 'must include an update for the Court on the status of any outstanding appeal as to the Applicant's liability for the tax debts that were the subject of the bankruptcy petition presented on 5 February 2020 and, if any such appeal has not yet been determined, an explanation as to why it has not yet been determined.'

26. On 23 June 2022, the Applicant's agents again corresponded with the HMRC debt management department, requesting that the appeal dated 14 July 2021 be attended to. On the same day, the Applicant lodged a further formal complaint with HMRC for the lack of progress with her appeal.

27. On 6 July 2022, HMRC wrote responding to the Applicant's appeal, but only in relation to the Late Filing Charges. It did not respond at all to her appeal in relation to the bulk of the petition debt, which related to unpaid PAYE, NICs and student loan deductions.

28. By her third witness statement dated 28 July 2022, the Applicant reiterated that she was not responsible for the liability claimed as she was and always had been an employee of the Practice; and that it was the partners of the Practice who were responsible for any tax liabilities that fell due, not the office manager. Exhibited to her third witness statement was a copy of her contract of employment dated 1 May 2002, confirming her employment by the Practice.

29. On 2 August 2022, Ms Andonova wrote to the Applicant, asserting that this was the first time that HMRC had been served with a copy of the contract of employment.

30. Shortly thereafter, Paul Doyle of HMRC filed a second witness statement dated 31 August 2022, accepting (at [24]) that the Applicant's appeal dated 14 July 2021 had been received by HMRC on 28 July 2021 but asserting (at [28]) that the first time that HMRC had received the contract of employment was on receipt of the Applicant's third witness statement on 29 July 2022.

31. Mr Doyle's second witness statement is muddled in parts (see by way of example paragraph 27), but at paragraph 32 he states that, having received the employment contract, HMRC was 'able to adjust' the petition debt. No documentation relating to any such 'adjustments' was exhibited to Mr Doyle's witness statement. From the text of paragraph 32 however it appears that the adjustments involved (1) an acceptance that the PAYE/NIC and student loan deductions listed in the petition were not due from the Applicant and (2) an attempt to introduce a new higher claim totalling £5393 said to relate to a liability for High Income Child benefit for the years 2014-17. This sum of £5393 comprised or included sums (i) not included in the statutory demand on which the petition was based (ii) not included in the petition itself (iii) not even mentioned in HMRC's first proof of debt lodged in the bankruptcy following the making of the bankruptcy order; which were in any event (iv) arithmetically untenable, for reasons addressed in correspondence in evidence and never satisfactorily answered by HMRC.

32. Mr Doyle stated in his second witness statement that HMRC would be prepared to agree to an annulment 'provided that all costs associated in these proceedings must be paid by the bankrupt' (paragraph 34). He also asked that the petition be re-listed for hearing to allow the Applicant an opportunity to pay the (recently introduced) sum of £5393.

33. By the time of exchange of skeleton arguments ahead of the hearing of 22 March 2023, HMRC's position had changed. By that stage, as confirmed by Mr Kwok at paragraph 2 of his skeleton argument, HMRC was neutral on the annulment application but took issue with who should bear the costs of the petition, the bankruptcy and the annulment application. It was also accepted by Mr Kwok's skeleton argument that whilst the final proof of debt of £5393 lodged by HMRC in respect of self-assessment liabilities and penalties slightly exceeded the bankruptcy threshold, the amount of that liability (even on HMRC's case) did not meet the £5000 bankruptcy threshold when the bankruptcy order was made.

34. On 22 March 2023, this Court annulled the bankruptcy order pursuant to section 282(1)(a) IA 1986, dismissed the petition and gave the directions summarised at paragraph [1] above.

Evidence

35. For the purposes of determining the costs issues, I have read the following witness statements and their respective exhibits:

(1) the first, third and fourth witness statements of the Applicant, dated 22 April 2021, 28 July 2022 and 17 March 2023 respectively;

(2) the first and second witness statements of Paul Doyle of HMRC, dated 14 June 2021 and 31 August 2022 respectively;

together with other documents included in a bundle agreed for use at the hearing, to which reference will be made where appropriate.

36. I have also had the benefit of hearing Mr Doyle in cross-examination. The main reason why, somewhat unusually, a direction was given for cross-examination of Mr Doyle was that, by his second witness statement, he had asserted (at paragraph 28) that the 'first time' that HMRC had received a copy of the Applicant's contract of employment was 'on 29 July 2022', when the Applicant's evidence was that she had posted this to two separate departments at HMRC, together with numerous other relevant documents, under cover of a letter dated 14 July 2021, and had retained proof of posting: see paragraph [13] above.

Mr Doyle

37. Mr Doyle's written evidence was disingenuous at times. At paragraph 7 of his first witness statement, for example, he summarised the Applicant's written communications to HMRC in the run-up to the hearing of 17 March 2020 as 'She advised she was getting the funds together', which was only partially true; she had also flagged the fact that she was a PAYE employee of the Practice and that it was part of her job to deal with PAYE *on behalf of the Practice*: see email dated 17 March 2020 at [6]. At paragraph 17 of his first witness statement, he summarised the hearing of 25 November 2020 (which he had not personally attended) without stating the source of his information about that hearing and focusing his summary on exchanges between the Applicant and the Court about payment of the petition debt, without also mentioning the concerns expressed by the Applicant that her status had been misdescribed: see [8] above. Statements to similar effect are also made in Mr Doyle's second witness statement.

38. Mr Doyle's written evidence also contained statements that were simply untrue. In his first witness statement, for example, he positively asserted that the Applicant owed the PAYE/NIC/Student Loan Deductions set out in the petition, that the Applicant was an employer and that, contrary to the Applicant's case, there was no partnership in place. All these assertions are untrue. No documentary evidence in support of any of these assertions has ever been put forward.

39. At paragraph 26 of his first witness statement, Mr Doyle stated that 'the bankrupt has never disputed the facts with HMRC that she was the employer before the bankruptcy order was made'. At paragraph 29 of his first witness statement, he asserted that 'At no time during the bankruptcy proceedings did the Bankrupt advise HMRC she was not the employer'. At paragraph 31 of his first witness statement, Mr Doyle states that the Applicant 'did not raise any issues with the Judge at both [sic] the hearings or to HMRC throughout the proceedings. It is only now the Bankrupt claims she is not liable for the debt'. These statements were untrue; see by way of example the emails dated 17 March 2020 and 20 November 2020 quoted at [6] and [7] above; and the matters recorded in the attendance sheet for the hearing of 25 November 2020 referred to at [8] above. Similar untrue statements were made in Mr Doyle's second witness statement: see by way of example paragraphs 8, 18, 26, 31, and 34.

40. Mr Doyle's first witness statement also maintained that the Applicant was indebted to HMRC in the sum of £115,862.23 'in respect of unpaid Self-Assessment penalties'. Even on HMRC's own case, as set out in its petition, this was untrue; self-assessment

penalties accounted for only approximately c£2,000 of the overall petition debt of £115,000 or so.

41. Overall, I have come to the conclusion that Mr Doyle's written evidence is unreliable. It is peppered with inaccuracies and has not been prepared with the candour and care required.

42. In oral testimony, Mr Doyle was a little defensive and argumentative at times. Whilst, overall, I am satisfied that he did his best to answer questions put to him honestly and to the best of his knowledge and ability, his knowledge was fairly limited; he did not know the factual basis upon which HMRC had (wrongly) concluded that the Applicant had ever earned over £50,000 per annum, for example: that, he said, would have been the responsibility of another department. Similarly, he could not satisfactorily explain why HMRC had ever (wrongly) concluded that the Applicant was personally responsible for the PAYE/NIC and Student Loan deductions set out in the petition; that was just how it showed 'on the system', he explained. In re-examination, Mr Doyle confirmed that he had nothing to do with the determination of any tax liabilities. It was clear that prior to preparing his evidence, Mr Doyle had not undertaken any (or any adequate) steps to investigate how HMRC had come to conclude that the Applicant was personally liable for the various sums set out in the petition. The figures had simply come from other departments. This was not satisfactory, given that Mr Doyle had positively asserted in both his first and second witness statement that the petition debt was due. Quite how he considered himself capable of giving evidence on this issue was entirely unclear.

43. In my judgment, such factors are relevant to the weight that can properly be attached to Mr Doyle's written testimony on other issues; including, importantly, the question of when the Applicant had first provided HMRC with a copy of her employment contract. The Applicant's evidence was that she enclosed a copy of the employment contract (and other documents) with her letter dated 14 July 2021 which had been posted to two separate departments at HMRC in relation to her appeal: see paragraph [13] above. Mr Doyle's second witness statement stated categorically that the first time that HMRC received a copy of the Applicant's contract of employment was on 29 July 2022.

44. By the close of his oral testimony, it was clear that Mr Doyle had based his assertion as to the date of receipt by HMRC of the documents in question on what he could see 'on the system' (ie on what documents he could see had been scanned onto HMRC's computer system) when he looked; he made no mention of making any active inquiries of the two departments to which the letter of 14 July 2021 was sent and on the evidence as a whole, I consider it legitimate to conclude that he made none.

45. Overall, I have come to the conclusion that what is written and said by Mr Doyle should be carefully considered against the documents and context.

Principles

46. The costs issues to be resolved at the hearing on 21 April 2023 fell into four categories namely:

(1) the costs of the petition;

(2) the costs of the annulment application;

(3) The OR's costs and expenses of the bankruptcy;

(4) The Trustee in Bankruptcy's costs and expenses of the bankruptcy.

47. It was common ground that pursuant to Rules 12.1and 12.41 IR 2016, (1) and (2) were governed by CPR.

48. Rule 12.1(1) IR 2016 provides:

> 'The provisions of the CPR (including any related Practice Directions) apply for the purposes of proceedings under Parts 1 to 11 of the Act with any necessary modifications, except insofar as displayed by or inconsistent with these Rules.'

49. Accordingly, the general rule under CPR 44.2(2) applies, namely:

> '(2) If the court decides to make an order about costs –
>
> (a) the general is that the unsuccessful party will be ordered to pay the costs of the successful parties; but
>
> (b) the court may make a different order'.

50. In deciding what (if any) order to make about costs, the court will have regard to all the circumstances including the conduct of all the parties: CPR 44.2(4)(a).

51. As noted in Redbridge LBC v Mustafa [2010] EWHC 1105 (Ch) (a case involving a bankruptcy order based on three council tax liability orders) per Morritt C at [25]:

> 'No doubt the detailed application of those parts of the CPR to insolvency proceedings requires some moulding to make them fit the different nature of insolvency proceedings. For example, it may not always be obvious who is the successful and unsuccessful party for the purposes of CPR r.44.3(2) [the equivalent rule at the time]. In annulment proceedings under s282, conduct may assume a greater importance than may normally be the case'.

52. Mustafa was a case decided under the 1986 rules rather than the 2016 rules, but the relevant provisions are in all materials respects the same.

53. In relation to (3) and (4), the discretion of the court is 'unfettered and not regulated by the provisions of the CPR concerning costs in insolvency proceedings although the principles they enshrine are likely to be equally applicable': Mustafa at [26] to [27].

54. Where an annulment is granted under s.282(1)(a), the observations of Neuberger J in Butterworth v Souter 2000 BPIR 582 at 586 that 'there must normally be a strong argument to say that the petitioning creditor should pay the trustee's costs if the annulment is made under s.282(1)(a), and a strong argument for saying that the

bankrupt should pay the trustee's costs if the order is made under s.282(1)(b)' should not be treated as laying down any legal presumption: Mustafa at per Morritt C at [33].

55. As reasoned by Morritt C at [33]:

> 'a bankruptcy order may be annulled under s.282(1)(a) on the basis of, "Grounds existing at the time it was made,", notwithstanding that when made it was properly made. Thus, in this case the unsatisfied liability order justified the service of the statutory demand. The unsatisfied statutory demand justified the presentation of the petition under s.267 and the bankruptcy order was properly made under s.272. In view of the information later produced by Ms Mustafa, the application for annulment was conceded. I see no reason why in such a case there should be any starting point or presumption that the petitioning creditor should pay the costs. It is quite different where, as in other cases, either there never had been a debt or the order was the result of an abuse of the court procedure. Accordingly, in my judgment it is not a question of whether a presumption has or has not been rebutted. The issue before the District Judge was how to exercise his discretion and the issue before me is whether there are grounds to interfere with the exercise of the discretion by the District Judge and, if so, how I should now exercise that discretion.'

56. In Mustafa, Morritt C concluded that the District Judge had erred in proceeding on the basis of a rebuttable presumption or primary position. The learned judge reasoned at [35]:

> 'Though the case for annulment under s.282(1)(a) had been conceded, this did not absolve the District Judge from considering why the bankruptcy order had been made in the first place. As I have pointed out, the debt on which the statutory demand and the petition was founded was a legal liability'.

57. Morritt C also (at [36]) took into account the fact that Ms Mustafa 'took no steps, notwithstanding the advice given to her on many occasions, to seek annulment of the bankruptcy order for some 18 months'.

58. Morritt C was also critical of the District Judge for having failed to consider the events leading up to the making of the bankruptcy order or the events following the end of the week after it was made.

59. For these and other reasons, Morritt C concluded that he was entitled to and should set aside the order of the District Judge and determine the matter afresh. He went on to conclude that he should exercise the court's discretion rather than remit the matter for re-hearing. He continued at [42]:

> 'I start from the position that the original bankruptcy order was properly made. The Magistrates had made three liability orders.

> None of them had been challenged. The statutory demand had been properly issued and served in accordance with the court's order. No application to set it aside had been made. Accordingly, the petition was properly presented…. Council tax payers who do not pay, do not resist liability orders and do not seek to set aside statutory demands when they have the opportunity to do so, can hardly complain when the officers of the local authority are unable to see them, without prior appointment, on the eve of the hearing of the bankruptcy petition. Even if liable to be annulled, the order was properly made when it was made. For these reasons I consider that the costs of the petition should be paid by Ms Mustafa in any event. The London Borough of Redbridge was the successful party and there was nothing in its conduct sufficient to warrant depriving it of its costs. Similarly, the costs of the Official Receiver, which effectively followed the making of the bankruptcy order largely as a matter of course, should be paid by Ms Mustafa also.'

60. Morritt C further concluded (at [43]) that the trustee in bankruptcy's costs were incurred in the amounts claimed 'because of Ms Mustafa's failure to follow the advice she had been given at the earliest time she might have done.' In those circumstances, the learned judge concluded that, as between Ms Mustafa and the London Borough of Redbridge, those costs should be borne by Ms Mustafa.

61. In relation to the costs of the annulment application, Morritt C concluded at [44]:

> 'The annulment application, when eventually made, was conceded by the London Borough of Redbridge. … To that extent Ms Mustafa was the successful party, the need for the application was due to her original neglect to deal with the liability orders or the statutory demand was not due to any action of the London Borough of Redbridge, nor were the costs increased by any action of the London Borough of Redbridge. In those circumstances, I cannot see any grounds for requiring the London Borough of Redbridge to pay the costs of the annulment application. The representation of the London Borough of Redbridge was necessary to deal with the costs consequences. In that respect the London Borough has been successful. It may be argued that in those circumstances Ms Mustafa should pay the costs of the London Borough of Redbridge of and incidental to the annulment application, but I consider that that would be going too far in the opposite direction. In all the circumstances I consider that the appropriate order in relation to the application for annulment is that each side should bear its own costs. The costs, if any, of the Trustee in Bankruptcy in relation to the annulment application will be added to her other costs and expenses to be paid by Ms Mustafa.'

62. The case of Amin v London Borough of Redbridge and another [2018] EWHC 3100 (Ch) was another case concerning liability orders. Mr Amin was made bankrupt on 10 June 2010 on the petition of the London Borough of Redbridge. The petition was based on a statutory demand following liability orders having been made against Mr Amin for unpaid council tax. Mr Amin ultimately succeeded in having the liability orders set aside by the valuation Tribunal on 12 September 2017. He then applied (variously) to annul or rescind the bankruptcy order. The rescission application was not opposed, but there was substantial argument about costs.

63. By an order dated 5 January 2018, DJ Dodsworth rescinded the bankruptcy order pursuant to s375 IA 1986 and dismissed the petition. He went on to order that the costs and expenses of the trustee in bankruptcy (the Second Respondent) be an expense in the bankruptcy and that the trustees should retain and might realise any part of Mr Amin's estate until the costs and expenses of the bankruptcy had been discharged. He further ordered that Mr Amin pay Redbridge's costs of the petition, summarily assessed and that Mr Amin pay Redbridge's costs of the annulment/rescission applications, summarily assessed. Finally, he ordered that Mr Amin pay the Official Receiver's costs and disbursements in a given sum.

64. Mr Amin appealed the overall award of these costs and expenses. Counsel for Mr Amin said that it was not her case that Mr Amin should pay nothing but that it was unfair that the entire impact of the bankruptcy should fall on him, it having now been established that he was under no liability to pay the council tax on which the bankruptcy was based. Permission to appeal was given by Norris J and the appeal was heard by Nugee J (as he then was).

65. In relation to the costs of the original petition, following the approach adopted in Mustafa, Nugee J concluded that the bankruptcy order was properly made, the reasoning being that it was based on liability orders, which created a statutory debt [39-41]. Reference was also made to Yang v Official Receiver 2017 EWCA Civ 1465, in which the Court of Appeal decided that when a bankruptcy order has been made on the basis of a liability order and it later transpires that the person against whom it was made was not in fact liable for council tax, the court should not annul the bankruptcy under s282(1)(a) but rather rescind it under s375(1). The position was explained by Gloster LJ at [55]:

> 'In my judgment, the only sensible interpretation of section 282(1)(a) of the IA86 is that contended for by the local authority: namely that regulation 49(1) of the CTR [ie the Council Tax (Administration and Enforcement) Regulations 1992] deemed the liability orders to constitute a legally enforceable debt, regardless of the underlying factual position relating to the relevant property, unless and until the liability order is set aside under the specific statutory procedure laid down for doing so'.

66. Having considered such reasoning, Nugee J in Amin concluded that the petition was well-founded. Redbridge was therefore to that extent the successful party and under the general rule laid down in CPR 44.2 could expect to recover its costs of the petition, notwithstanding that the liability orders were later set aside and the bankruptcy order rescinded. At first instance, DJ Dodsworth had held that there was

no basis for criticising Redbridge's conduct leading up to the making of the bankruptcy order and no criticism of such findings had been advanced. Nugee J concluded that no ground had been shown for reversing DJ Dodsworth's order that Mr Amin pay Redbridge's costs of the petition.

67. In relation to the costs of the OR, consistently with the approach adopted in Mustafa, Nugee J held that the costs of the OR followed the making of the bankruptcy order. He concluded that no reason had been shown why Redbridge should bear these costs, any more than the costs of the petition. No ground had been shown for disturbing that part of DJ Dodsworth's order either.

68. Turning next to the Trustee's costs, Nugee J noted Neuberger J's observation in Butterworth that 'normally, when a bankruptcy order has been properly made, subject to questions of reasonableness and subject to special facts, the trustee will be paid out of the estate'

69. The question was whether DJ Dodsworth should have gone further and required Redbridge to pay the trustee's costs, or at least part of them. Nugee J confirmed that there was no doubt that the court had inherent jurisdiction to make such an order.

70. On the evidence before him, Nugee J was not persuaded that DJ Dodsworth had erred in concluding that Redbridge should not be ordered to pay the trustee's costs. No specific criticism of Redbridge's conduct had been established. The judge below was entitled to take the view that the circumstances did not merit Redbridge being required to pay the trustee's costs or any part of them.

71. In relation to the costs of the rescission application, Nugee J was similarly not persuaded that Redbridge had acted unreasonably or that its conduct was open to criticism. On the evidence overall however, he considered that the judge below had paid insufficient regard to the fact that the Applicant had succeeded in his application. This warranted a reconsideration of his decision (para 70). In the circumstances of the case, Nugee J concluded that the appropriate order on the costs of the application was each side bear their own, rather than the Applicant paying Redbridge's costs. In reaching this conclusion Nugee J had regard to the fact that Redbridge had actively opposed the application, not only on procedural grounds (annulment versus rescission) but also on the underlying merits. He reasoned that the Applicant should not have to pay Redbridge for filing evidence asserting the opposite case to that found (para 73). On the other hand, Mr Amin's delay, the redundant points taken on service, and his insistence that Redbridge should pay all the costs, undoubtedly increased costs both sides. For these reasons there were grounds for departing from the general rule (paras 74 and 75). The appropriate order was no order as to costs on the rescission/annulment applications. He noted that in Mustafa, Morrit C had similarly concluded that each side should bear their own costs.

Applicant's submissions

72. In relation to the costs of the petition, Mr Farncombe argued on behalf of the Applicant that HMRC should not have pursued the petition and should bear its own costs for having done so on an 'erroneous basis'.

73. He pointed out that the Applicant had made it clear to HMRC in emails dated 17 March 2020 and 20 November 2020 that she had never been self-employed and had always been employed on a PAYE basis. This, he observed, would preclude the Applicant's liability for all but £2064.45 of the petition debt which, although itself also disputed, fell below the bankruptcy limit in any event and so was not relevant to the issue of costs.

74. In relation to the cost of the annulment application, Mr Farncombe submitted that the starting point was that the Applicant had been the successful party in the application and that, having regard to the general rule in CPR 44.2(2), she certainly should not be liable to pay the costs of HMRC, the unsuccessful party. On the facts of the case, he submitted that the appropriate order on costs was that there be no order as to costs.

75. Mr Farncombe contended there never had been a debt, as the basis upon which the Applicant had been considered liable for the petition debt was factually incorrect from the outset. He also observed that this was not a case where HMRC had simply abided the event. Mr Doyle's first witness statement had actively opposed the application on the merits; and had positively asserted (without adducing any documentary evidence in support of such assertion) that the Applicant was an employer and that there was no partnership in existence. He reminded me that in Amin, Nugee J considered the respondent's active opposition on the merits to be a relevant factor on the issue of the costs of the rescission application, concluding that it would not be fair or just to require the Applicant to pay the respondent's costs and that no order for costs should be made.

76. Mr Farncombe invited me to take HMRC's conduct into account, highlighting, in particular, the correspondence summarised in this judgment. He also invited me to find on a balance of probabilities that HMRC was first provided in July 2021 with the contract of employment and the other documents enclosed with the Applicant's letter dated 14 July 2021 and submitted that HMRC should have conceded the annulment application, at the very latest, by July 2021.

77. In relation to the OR's costs of the bankruptcy, Mr Farncombe submitted that HMRC should bear these costs. He argued that HMRC should not have pursued the bankruptcy petition at all; and that had it acted appropriately, the bankruptcy order would not have been made, the OR would not have taken office, and the costs of the OR would not have been incurred.

78. As a fallback position, Mr Farncombe argued that, even if the court considered that the Applicant should bear some of the costs of the bankruptcy, she should only be liable for the OR's costs up to 27 July 2021, and HMRC should be liable for the costs incurred thereafter.

79. In relation to the Trustees' costs and expenses of the bankruptcy, Mr Farncombe submitted that these should be borne by HMRC. He argued that HMRC should have conceded the annulment application by late July 2021 at the latest. Had it done so, the Trustees (who were appointed in December 2021) would not have been appointed and their costs and expenses of the bankruptcy would not have been incurred.

HMRC's submissions

80. On behalf of HMRC, Mr Birkbeck submitted that the Applicant should be ordered to pay its costs of the petition, of the annulment application and in addition should be ordered to pay the costs of the bankruptcy. In summary his grounds were that:

(1) HMRC was justified in bringing the petition and was successful in it;

(2) costs in the petition were not increased by any action of HMRC;

(3) whilst the Applicant was successful in the annulment application,

(a) the need for the application was due to the Applicant's failures, not to any action of HMRC; and

(b) costs were not increased by any action of HMRC.

81. Developing these points in turn, in relation to the costs of the petition, Mr Birkbeck went on to argue that:

(1) the petition was successful;

(2) the bankruptcy order was 'properly made' as the petition debt was 'due'. In this regard reference was made to Amin at [40]:

'the fact that the bankruptcy order was annulled does not mean it was not properly made in the first place'

(3) the actions of HMRC were at no point unreasonable and did not add unnecessarily to the costs of the bankruptcy proceedings; and that

(4) if anything, it was the actions of the Applicant, in not formally contesting the proceedings and asking for several adjournments, that delayed the proceedings and increased costs.

82. In relation to the costs of the OR, Mr Birkbeck relied upon Amin at [46], following Mustafa at [42]:

> 'The costs of the Official Receiver follow from the making of the Bankruptcy Order … In the light of my conclusion on the costs of the original petition, I see no reason why [the petitioner] should be liable to meet these costs any more than the costs of the petition, nor did [the Applicants] identify any such reason, or advance any separate argument in relation to the Official Receiver's costs'

83. Mr Birkbeck submitted that the same analysis applies in the present case.

84. In relation to the Trustees' costs, Mr Birkbeck referred me to Oraki v Dean and Dean [2013] EWCA Civ 1629, submitting that the starting point is that the costs of the Trustee are paid out of the bankrupt's estate, even where there is an annulment. He also referred me to Amin at [64], submitting that where no specific criticism of the

petitioner is made out, the trustee can usually expect to look to the assets of the estate for his costs and expenses. Mr Birkbeck contended that the Applicant could not point to any behaviour of HMRC that would merit an order that it pay the Trustees' costs.

85. In relation to the costs of the annulment application, Mr Birkbeck submitted that whilst the Applicant was the successful party, this was a case in which the court should exercise its discretion under CPR 44.2(2)(b) to make a different order to that of costs following the event. He reminded me that in Amin, where the conduct of the petitioner could not be criticised, Nugee J had ordered that each side bear their own costs. He further reminded me that a similar conclusion was reached in Mustafa.

86. He argued that the only reason that the application was necessary was because the Applicant had failed properly to engage with the petition and provide the relevant documents at the right time.

87. Mr Birkbeck contended that it 'was not due to any failing of HMRC, who were simply enforcing a tax liability that was unquestionably due'. He also argued that nothing HMRC did prolonged the application, asserting that it was the Applicant's fault that the application took so long, as she had failed to provide HMRC with documentary evidence confirming that she was an employee until 29 July 2022. He argued that once HMRC was aware of the employment contract, it withdrew its opposition to the application.

88. In all such circumstances, Mr Birkbeck argued, HMRC should have its costs of the annulment application.

Discussion and conclusions

(1) costs of the petition

89. In my judgment the appropriate order on the costs of the petition is that there should be no order as to costs.

90. As confirmed by Lord Keith in Woolwich Equitable Building Society v IRC 1993 AC 73 at 162A, it is a fundamental principle enshrined in Art 4 of the Bill of Rights (1688) (1 Will & Mary, sess 2, c.2) that taxes should not be levied without the authority of Parliament.

91. Leaving aside the small (disputed) sum of £2,064.45 (see [4] above), which is below the bankruptcy limit and is therefore irrelevant, the remainder of the sums set out in the petition (which *remainder* I shall, in the interests of brevity, hereafter refer to as 'the Petition Debt') were not 'due' from the Applicant at all, whether at the date of presentation of the petition, the date of the bankruptcy order, or at any other time.

92. It was only open to HMRC to seek payment of the PAYE/NIC and Student Loan Deductions set out in the petition if such sums were based on a return or an assessment (assessment in this context to be read as including any formal determination of liability for PAYE, NIC and Student Loan Deductions by HMRC pursuant to its statutory powers).

93. The Applicant has filed no returns in her own right which give rise to personal liability for the Petition Debt.

94. In many cases in which HMRC acts as petitioner, it is open to HMRC, in the absence of returns, to rely on assessments carried out pursuant to specific statutory provisions, such as Regulation 80 determinations (PAYE) or Section 8 decisions (NICs). These assessments render the sums claimed 'statutory debts' in the context of bankruptcy proceedings. In this case no assessments relating to the Petition Debt were referred to in the statutory demand or the petition itself and none were adduced in evidence. On the evidence as a whole, I consider it legitimate to conclude that none exist.

95. In addition to noting HMRC's failure to adduce in evidence any assessments relating to the Petition Debt (of particular significance given the timing of Doyle (2), which *post-dated* the requests referred to in (3) below), I am fortified in this conclusion by

(1) the FTT's email to Mr Dowland dated 13 April 2022, which observes that the claim document from HMRC which Mr Dowland had sent to the FTT in connection with a proposed tax appeal 'refers in the main to payments in relation to 'Real Time Information/PAYE'. FTT suggested that in such circumstances the claim may be based 'simply' on 'failure to make payments';

(2) the FTT's earlier letter of 16 March 2022, which stated that the FTT had been unable to identify a decision or assessment regarding the Petition Debt which would carry a right of appeal to the Tribunal;

(3) HMRC's repeated failure to produce any decision letters/formal demands for the sums making up the Petition Debt notwithstanding requests made by the Applicant's representatives by letter dated 21 April 2022, email dated 26 April 2022, email dated 3 May 2022, letter dated 23 May 2022 and letter dated 23 June 2022;

(4) HMRC's failure to address the Applicant's appeal (by letter dated 14 July 2021) in respect of the sums making up the Petition Debt. The only part of her appeal addressed, somewhat late in the day, by HMRC's letter dated 6 July 2022 related to the Late Filing Charges (ie the sum of £2000 odd – see Doyle (2) at [29]). This again supports a conclusion that in relation to the Petition Debt (as defined) *there were no assessments to appeal*;

(5) HMRC's failure to issue any *revised* assessments, reducing her purported liability to *nil*, following its reconsideration of the Applicant's alleged liability for the sums making up the Petition Debt in August 2022.

96. Mr Birkbeck argued that no assessments relating to the Petition Debt had been adduced in evidence as 'no dispute' had been raised as to whether the sums making up the Petition Debt were ever formally 'due'. I reject that argument. The Applicant made repeated requests to HMRC for copies of any demands or assessments on which the Petition Debt was based but was not provided with any. The requests made pre-dated Mr Doyle's second witness statement. Had such assessments existed, he could easily have exhibited them to his witness statement.

97. Mr Birkbeck went on to argue that even in the absence of an assessment, the court should proceed on the footing that the Petition Debt was 'due' to HMRC from the

Applicant at all material times up to and including the making of the bankruptcy order. In this regard he relied upon s.25A Revenue & Customs Act 2005 and contended that the written evidence of Mr Doyle, by which he had stated that the Petition Debt was due from the Applicant, would suffice for these purposes.

98. I reject that submission. Section 25A of the 2005 Act provides that:

> '(1) A certificate of an officer of Revenue and Customs that, to the best of that officer's knowledge and belief, a relevant sum has not been paid is sufficient evidence that the sum mentioned in the certificate is unpaid.
>
> (2) In subsection (1) "relevant sum" means a sum payable to the Commissioners under or by virtue of an enactment or under a contract settlement (within the meaning of section 25).
>
> (3) Any document purporting to be such a certificate shall be treated as if it were such a certificate until the contrary is proved.
>
> (4) Subsection (1) has effect subject to any provision treating the certificate as conclusive evidence.'

99. Neither of Mr Doyle's witness statements on its face 'purports' to be a certificate under Section 25A of the 2005 Act. Moreover, from Mr Doyle's oral testimony, it was plain that he knew nothing about how the alleged debt had been calculated and had undertaken no investigations about it. In the light of his oral testimony, it is difficult to see on what legitimate basis the court could be invited to treat his written evidence as comprising or including a 'certificate' for the purposes of Section 25A. I would add that, even if Mr Doyle's witness statements could be treated as such, the focus of Section 25A is on evidence as to whether a given sum is *unpaid*; not whether a given sum is *due*. Mr Doyle's witness statements cannot create a liability where none exists. In this regard I repeat paragraphs [90] to [95] above. HMRC had no lawful basis for demanding from the Applicant the sums making up the Petition Debt; its demand for those sums by statutory demand was ultra vires and is therefore a nullity. This court will not proceed on a fiction.

100. For all these reasons, I reject Mr Birkbeck's submission that the Petition Debt was 'unquestionably due' from the Applicant, whether at the time of the statutory demand, at the time of presentation of the petition, at the time of the bankruptcy order, or at any other time. I further reject his submission that the bankruptcy order was 'properly made'.

101. In light of my conclusions at [94]-[95] above, HMRC cannot in this case argue that the Petition Debt is based on one or more 'statutory debts' and on that basis maintain that the petition was properly presented and the bankruptcy order properly made. In light of my conclusions at [98] to [99] above, it is not open to HMRC to rely on Section 25A of the 2005 Act either.

102. In my judgment, these factors distinguish this case from cases such as Mustafa and Amin. In each of those cases, the liability orders were statutory debts which stood

until set aside. In each case the liability orders were only set aside *after* the date of the bankruptcy order.

103. It is in this context that Morrit C said in Mustafa at [33]:

'It is quite different where, as in other cases, … there never had been a debt'

104. To adopt Nugee J's phrase in Amin, the petition in this case was *not* 'well-founded'. In my judgment it would not be appropriate in such circumstances to treat the petitioner, for the purposes of CPR 44.2, as the 'successful party'. Moreover, even if I am wrong in that conclusion, and the petitioner should be treated as the 'successful party' having (wrongly) obtained a bankruptcy order against the Applicant, I am satisfied that in the circumstances of this case, costs should not follow the event, and the court in the exercise of its discretion should make a different order.

105. HMRC sought to argue that the Applicant was at fault for not demonstrating at an earlier stage that she was *not* liable for the Petition Debt, pointing out that she did not apply to set aside the statutory demand and, in the context of the petition, did not file any evidence in opposition and indeed made some payments in reduction of the Petition Debt. HMRC also argued that this was not a case in which it could be said to have been at fault or to have acted unreasonably in pursuing the petition.

106. The suggestion that the Applicant should have done more earlier is in my judgment the wrong starting point. The starting point is that HMRC, even now, have put forward no legitimate or persuasive basis for ever concluding that the Applicant was personally liable for the Petition Debt. The statutory demand arose from a mistake entirely of HMRC's own making. In my judgment HMRC was at fault. It acted unreasonably and ultra vires in serving the statutory demand on the Applicant in respect of the Petition Debt and thereafter pursuing a bankruptcy order against her in respect of that debt.

107. Whilst I accept that the Applicant did not apply to set aside the statutory demand, she did raise with HMRC, by her emails of 17 March 2020 and 20 November 2020, ahead of the bankruptcy order being made, her status as a PAYE employee of the Practice and the fact that dealing with PAYE on behalf of the Practice was part of her job. I accept that the emails in question could have been expressed in clearer terms, but in my judgment their meaning was sufficiently clear and should have alerted HMRC to the possibility that there had been a mistake. Moreover, as is clear from the written evidence, the Applicant made repeated attempts in the run up to the making of the bankruptcy order to speak to someone at HMRC capable of discussing her status. HMRC failed to engage with the Applicant on the issue of her status at all, instead focussing its energies and telephone calls on whether and if so when the debt would be paid.

108. I accept that the Applicant did not file a notice of opposition or any evidence in answer to the petition. In this regard however I take into account the fact that the Applicant did not have the benefit of legal advice at this stage and acted as a litigant in person. She did raise with the Court in November 2020 her concerns that her status had been mis-described: see [8] above.

109. Taking all such matters into account, I reject Mr Birkbeck's submission that the Applicant should pay HMRC's costs of the petition. In my judgment the correct order in relation to the petition itself is that there should be no order as to costs. Each side must bear their own.

(2) Costs of the annulment application

110. In relation to the cost of the annulment application, the starting point is that the Applicant has been the successful party in the application. Both the Applicant and HMRC, however, invite me to make a different order to that of costs following the event. The Applicant seeks no order as to costs. HMRC seeks an order that the Applicant pay its costs.

111. I take into account my conclusions that, for reasons already explored, the bankruptcy order was not well-founded or properly made. HMRC was wrong to pursue it.

112. I also remind myself that this was not a case in which HMRC simply abided the event; Mr Doyle's first witness statement actively opposed the application on the merits and positively asserted (without adducing any documentary evidence in support of such assertion) that the Petition Debt was due from the Applicant, that the Applicant was an employer and that there was no partnership in existence.

113. I reject Mr Birkbeck's submission that HMRC did nothing to prolong the application. HMRC filed evidence positively opposing the application, on the merits, which undoubtedly prolonged it. It also failed to address any part of the Applicant's appeal dated 14 July 2021 for the best part of a year and wrongly referred the Applicant to the FTT in the meantime. Even when HMRC did belatedly address the appeal of 14 July 2021 on 6 July 2022, it only considered the Late Filing Penalties.

114. In relation to the contested issue of when HMRC was first provided with the Applicant's employment contract, on the evidence which I have heard and read, I am satisfied on a balance of probabilities that HMRC was first provided in July 2021 with the contract of employment and the other documents stated in the Applicant's letter dated 14 July 2021 to be enclosed with it. I so find. Whilst I do not suggest that Mr Doyle was lying when he gave evidence as to what he could see scanned onto 'the system', it was plain from the evidence overall that HMRC had failed properly to process or scan onto its system numerous documents relating to this case. The correspondence highlighted a number of occasions on which the Applicant's advisers had sent through repeat copies of documents which still did not show on 'the system'. Even Mr Doyle accepted at one point in cross-examination that the system was 'flawed'. Whilst he subsequently (and somewhat unconvincingly) sought to row back from that admission, it was clear from the evidence overall that the admission had been rightly made. HMRC's record-keeping in relation to this case was undoubtedly 'flawed'.

115. I also consider context. At the time that the Applicant's appeal dated 14 July 2021 was lodged, she was seeking to unravel a bankruptcy order wrongly based on a petition debt exceeding £100,000. In my judgment it is utterly implausible that she would have sent off her letter dated 14 July 2021 to two different departments at HMRC, painstakingly listing all the documents enclosed with the letter and retaining

proof of posting, without troubling to enclose with the letter the documents listed therein.

116. On a balance of probabilities, I consider it far more likely (and certainly more likely than not) that HMRC received all the documents stated to have been enclosed with the letter of 14 July 2021 at the time of receipt of that letter, but then failed properly to process those documents or scan them onto its 'system'. I so find.

117. Whilst HMRC's failure properly to process or act timeously on the Applicant's contract of employment received July 2021 is undoubtedly a factor to take into account, however, I also take into account the fact that the Applicant could have adduced in evidence in support of her annulment application a copy of her employment contract at an earlier stage; and that HMRC did belatedly withdraw its opposition to the annulment application following receipt of the Applicant's witness statement dated 28 July 2022, which exhibited a further copy of the employment contract.

118. Taking all such matters into account, in my judgment the appropriate order on the costs of the annulment application is that there be no order as to costs.

Costs of the Official Receiver

119. In relation to the OR's costs of the bankruptcy, in my judgment HMRC should bear these costs. For the reasons previously given, at no material time was the Petition Debt due from the Applicant. HMRC should not have pursued the bankruptcy petition at all, still less sought a bankruptcy order against the Applicant. Had HMRC acted appropriately, the bankruptcy order would not have been made, the OR would not have taken office, and the costs of the OR would not have been incurred. HMRC must bear the costs of its errors.

Costs of the Trustees

120. In relation to the Trustees' costs and expenses of the bankruptcy, I acknowledge the guidance given in Amin at [64]. I also accept Mr Birkbeck's submission that where no specific criticism of the petitioner is made out, the trustees can usually expect to look to the assets of the estate for their costs and expenses. I reject, however, Mr Birkbeck's submission that there was no evidence before the court of any behaviour on the part of HMRC that would merit an order that it pay the Trustees' costs. In reaching this conclusion I take into account all of the circumstances of this case and the following factors in particular.

121. First, for the reasons previously given, at no material time was the Petition Debt due from the Applicant. HMRC should not have pursued the bankruptcy petition at all, still less sought a bankruptcy order against the Applicant. The bankruptcy order was not properly made.

122. Second, HMRC prolonged the annulment proceedings by actively opposing the same and failing timeously to deal with the Applicant's appeal dated 14 July 2021.

123. Third, HMRC failed properly or at all to consider the impact of the Applicant's contract of employment when (as I have found) HMRC first received that document

in July 2021. Had it done so, it would (or certainly should) have conceded the annulment application by July/August 2021 at the latest.

124. Fourth, had HMRC conceded the annulment application by (at the very latest) July/August 2021 as it should have, the Trustees (who were appointed in December 2021) would not have been appointed and their costs and expenses of the bankruptcy would not have been incurred.

125. For all these reasons, HMRC shall be ordered to pay the Trustees' costs and expenses of the bankruptcy.

Summary

126. For the reasons which I have given, I conclude that:

(1) The Applicant and HMRC shall bear their own costs of the petition;

(2) The Applicant and HMRC shall bear their own costs of the annulment application;

(3) HMRC shall pay the Official Receiver's costs and expenses of the bankruptcy in the sum of £2,029 by 4pm on 19 May 2023;

(4) HMRC shall pay the Trustee's costs and expenses of the bankruptcy; and

(5) The Trustees' remuneration shall be fixed on a time costs basis, the quantum to be determined by the Court if not agreed, with liberty to apply.

127. I shall hear submissions on any consequential directions sought at the handing down of this judgment.

ICC Judge Barber