

ENGLAND AND WALES / JUDGMENT

Re Fulmar Contracting Ltd (in liquidation)

COURT

IN THE HIGH COURT OF JUSTICE

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IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES LIST (ChD)

Case No: CR-2023-004291

IN THE MATTER OF FULMAR CONTRACTING LTD

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

Royal Courts of Justice

Rolls Building

Fetter Lane

London EC4A 1NL

Date: 9 September 2026

Before : DEPUTY INSOLVENCY AND COMPANIES COURT JUDGE PARFITT

Between : (1) FULMAR CONTRACTING LTD (IN
LIQUIDATION)
(2) STEVEN ILLES
(3) NICHOLAS O'REILLY
(the 2nd and 3rd Applicants in their capacity as
liquidators of Fulmar Contracting Ltd)

- and -

(1) MARIA NINA WILLIAMS

(2) TATYANA VINER

Claimant/

Applicants

Respondents

John Colclough (instructed by FWJ Legal Limited trading as Francis Wilks & Jones)
appeared

for the Applicants

The Rt Hon Michael Tomlinson KC (instructed on a direct access basis) appeared for
the

Respondents

Hearing dates: 20-21 April 2026

JUDGMENT

This judgment was handed down remotely at 10am on 9 September 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives. High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) Deputy Insolvency and Companies Court Judge Parfitt: Introduction and outcome 1. Fulmar Contracting Ltd (the “Company”) was an umbrella company. It was involved in a tax fraud which involved a failure to deduct PAYE income tax and national insurance contributions (“PAYE” and “NICs”) from the emoluments of workers. It failed to pay very significant sums of tax to HMRC including, in addition to PAYE and NICs deductions it ought to have paid across, the VAT which it charged and received over the course of its relatively short trading life. It is in compulsory liquidation, following a petition presented by HMRC leading to a winding up order on 20 September 2023. 2. The Company’s original liquidators were Steven Illes and Nicholas O’Reilly (the “Liquidators”). The Company and the Liquidators were the claimants or applicants in these proceedings (together, the “Claimants”). Mr O’Reilly was replaced as liquidator of the Company by Andrew Duncan following a block transfer order on 3 November

2025. The Claimants applied on 26 February 2026 for an order substituting Mr Duncan as a Claimant in place of Mr O’Reilly, which was approved at the start of the trial. The terms the “Liquidators” and the “Claimants” are used in this judgment to refer to those with that status at the relevant time. 3. The respondents, Dr Williams and Dr Viner (together, the “Respondents”), are doctors who were paid by the Company prior to its entry into liquidation. They received payments from the Company on which PAYE and NICs had not been deducted by the Company. In Dr Williams’ case, some of the payments were made to a company under her control rather than to her. Page 2 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) 4. The two Respondents are not sued on a joint basis in respect of the same liability. Separate claims and applications were issued against each of them, but these separate claims and applications have been tried together, given the similar (but distinct) factual background and certain common underlying documents. 5. The proceedings involve two causes of action: (a) Claims brought by the Company (acting by its Liquidators) against the Respondents arising under a clause in what the Company alleges are the employment contracts between the Company and each of the Respondents, obliging each Respondent to repay to the Company any overpayments arising from the Company’s failure to deduct tax on payments made to that Respondent (the “Contractual Claim”); and (b) Claims brought by the Liquidators under section 238 of the Insolvency Act 1986 (“IA 1986”) in which the Liquidators allege that the Respondents were persons with whom the Company entered into transactions at an undervalue, with the undervalue element arising from the failure by the Company to deduct tax, with the result that the Company was issued with determinations by HMRC requiring it to pay that tax (the

“TUV Claim”). 6. The claims were tried over two days in April 2026. Given the seriousness of these proceedings for the Respondents, and the time it has taken to prepare this judgment, it will assist the parties to have a summary of the outcome at the start. I dismiss the claims, for the following outline reasons (more fully discussed below): (a) Each Contractual Claim fails because I am not satisfied that either Respondent entered into a contract with the Company on the terms on which the Company Page 3 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) relies. (b) Each TUV Claim fails because the Liquidators cannot prove that the payments to either Respondent were transactions at an undervalue. This is because I am satisfied that the Respondents have accounted to HMRC for the payments they received from the Company in their Self-Assessment Returns (“SA Returns”) on the basis that they were self-employed. In the absence of challenge by HMRC to those SA Returns, and with the tax revealed by the SA Returns having become a liability of the Respondents, it does not seem to me that HMRC can seek to tax the same income twice by proving for it in the Company’s liquidation. It follows that the Company cannot be liable for tax on what it paid the Respondents, and that means there was no undervalue. (c) If I am wrong in that analysis, and there were transactions at an undervalue, in the exercise of my discretion I would grant the Liquidators no remedy. The Respondents have declared the money they received from the Company to HMRC and the money has already been taxed. It does not seem to me that HMRC should be entitled to prove for the tax in the Company’s liquidation, or that the *pari passu* distribution of the Company’s assets has been offended by the payments to the Respondents. 7. One final preliminary observation is to remind readers of this judgment that judges decide cases, and each case turns on its own facts. There may be other individuals who received payments from the Company, or from similar umbrella companies, who could potentially be liable under one or both of the routes pursued against the Respondents. I am aware that the Respondents are part of a support group including a number of NHS nurses and workers in relation to the Company. The claims against the Respondents Page 4 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) represent only a relatively small amount of the shortfall to the Company’s creditors, so there may well be other claims yet to be pursued by the Claimants. Those claims will need to be decided on their own merits. I have not decided them. 8. By extension, and at the risk of stating the obvious, these proceedings do not form any sort of public enquiry into the use of umbrella companies or other forms of off-payroll working, particularly in the NHS. The plethora of reported cases concerning fraudulent (or allegedly fraudulent) umbrella companies cited to me by the Applicants shows that umbrella companies have been under intense scrutiny by HMRC. Their ostensible purpose is to insulate an employment agency from the need to deal with the payroll and tax consequences of placing temporary workers (typically medical professionals working in the NHS, but other forms of work are also involved). In recent years, tax policy has driven those workers to be treated and taxed as employees (with tax thus deducted by the employer at source) rather than allowing the workers to be paid gross on a self-employed basis or via personal service companies, with the workers or service companies left to account for the tax on that income to HMRC. Perhaps this policy change was intended to

promote the proper payment of tax liabilities, because the responsibility would fall on an appropriate organisation rather than an individual. One consequence is the creation of umbrella companies, which act as employers but in a relationship which is quite far removed from what would normally be understood as employment. 9. A further consequence, no doubt unintended, is that because umbrella companies can process vast amounts of money on behalf of their workers, there has been a lucrative possibility for fraud. Commonly, the fraud seems to have involved the worker receiving more than they would get if they were paid as an employee with PAYE and NICs Page 5 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) deducted; this draws in more workers and inflates the turnover for the fraud. The rest of the tax money goes to those behind the fraud. At its simplest, the umbrella company pays less to HMRC than it ought to, whether by way of PAYE, NICs or VAT (as in the case of Re Scenic International Limited [2024] EWHC 2791 (Ch)). Some umbrella companies were also promoters of tax avoidance schemes (as in Purkiss v Kennedy

[2024] EWHC 1081 (Ch) upheld on appeal at [2025] EWCA Civ 268, and HMRC v Purity Limited [2025] EWHC 3401 (Ch)). Some umbrella companies have argued that they were not liable to deduct PAYE and NICs because their workers were not their employees (as in HMRC v Payroll & Pension Services (PPS Umbrella Company) Ltd

[2024] EWHC 1861 (Ch) and Kaye v Vision Payroll Ltd [2025] EWHC 3034 (Ch)). 10. Each of these cases has been decided on its own facts. I appeared in some of them at one stage or another, as counsel on behalf of HMRC. I have put all of that to one side in deciding the case before me. A holistic review of the use of umbrella companies is not an appropriate exercise for a judgment in a claim between specific parties.

Background

The Company 11. The Company was incorporated on 3 March 2021. It operated as an umbrella company. The purpose of an umbrella company was described by James Morgan KC (sitting as a High Court Judge) in Scenic International Group Ltd (in provisional liquidation) v Adenaike & others [2024] EWHC 2791 (Ch) at [11]-[13]: “11. The Company has been described as an “umbrella company” by which it is meant that it acted as the employer of workers supplied by employment agencies Page 6 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) to end user customers. The end user customers were predominantly in the public sector, in particular in the health sector.

12. IR35 is legislation designed to stop so called “disguised employees” getting a tax advantage by working through a personal services company. In very broad terms, if a worker’s engagement was deemed to be “employment” then they would be within IR35 and a liability arose for PAYE / NIC. Conversely, if the worker could properly be recognised as an independent contractor then they would be outside IR35. Under IR35, liability for PAYE / NIC was originally on the worker but, since 2017 in the public sector and 2021 in the private sector, determinations have been the end user’s responsibility and unpaid tax can be

recovered from the fee payer, usually the employment agency.

13. Properly run umbrella companies are a solution to these issues. By joining an umbrella company, a worker becomes an employee and therefore placed outside the scope of IR35. As the employer, the umbrella company is responsible for deducting PAYE / NIC. In turn, this provides protection to the recruitment agency and to the end user against non-payment or under-payment of PAYE / NIC and the resultant financial or regulatory issues. In return, the umbrella company will generally be entitled to a fee. As discussed in more detail below, the employment agencies with which the Company dealt therefore sought (and obtained) contractual protection and other assurances from the Company that it was indeed employing the workers and deducting PAYE / NIC.” 12. This passage was adopted by Master Kaye (sitting as a High Court Judge) in *Kaye v Vision Payroll Ltd* [2025] EWHC 3034 (Ch) at [7]. She added, at [8]-[9]: Page 7 High Court Approved Judgment: *Re Fulmar Contracting Ltd* (in liquidation)
- [8] Consistent with the purpose of an umbrella company, the Company entered into contracts with recruitment agencies ("the agency" or "agencies") to administer payroll for the workers the agencies recruited and supplied to their clients in the healthcare and social care sector ("the worker(s)" and "the clients") as its (the Company's) employees. As in *Scenic* these contracts included other assurances such as warranties and guarantees and/or declarations that the workers were employees of the Company. The purpose of the agency contracts was therefore to pass liability for accounting for the workers' PAYE and NIC (and any associated VAT on the supply) to the Company to relieve the agencies of the obligation to pay PAYE and NIC (and any associated VAT). In return the Company was paid a fee calculated as 7% of the gross supply in respect of each worker. The agencies then entered into separate agreements with their clients.
- [9] The Company entered into its own separate direct agreements with each of the workers. If the Company had been complying with the terms of the agency contracts those workers would have been employees of the Company. However, Shams and Shahid insisted that (i) it was for them to determine separately with the workers (based on their own assessment) whether the workers were to be treated as employees or self-employed and (ii) the vast majority of the workers were self- employed independent contractors. Shahid and Shams considered that the Company's agreement with each worker took precedence over their contractual obligations to the agencies. There was no legal basis for that assumption, and it was wrong. As a consequence, neither the agencies nor the Company paid the tax for the workers the Company treated as self-employed.” Page 8 High Court Approved Judgment: *Re Fulmar Contracting Ltd* (in liquidation) 13. The Claimants contend that the Company operated (or ought to have been operated) on the standard umbrella company model: it employed its workers including in particular the Respondents, thereby becoming liable to account to HMRC for PAYE and NICs on the emoluments of the workers when those workers carried out assignments with end users (typically in the NHS) arranged by employment agencies with whom the Company had contractual arrangements for the supply of its

workers. 14. The particular employment agency involved in the present case was Fresh Recruitment Limited, trading as Fresh Medical (“Fresh Medical”). Fresh Medical received payments from end users for the work performed by the Respondents. The payments by the end users to Fresh Medical included VAT, and Fresh Medical’s payments to the Company included VAT. The Company then paid the Respondents without making deductions for PAYE and NICs, and – for good measure – failed to account to HMRC for the VAT it had received from Fresh Medical. 15. HMRC presented a winding up petition against the Company on 4 August 2023. It was wound up on 20 September 2023, just two and a half years after its incorporation. The Liquidators were appointed as the Company’s liquidators on 29 September 2023.

16. Mr Illes filed five witness statements on behalf of the Claimants, and was cross-examined by leading counsel for the Respondents. As would be expected for an office-holder, Mr Illes had no personal experience of any of the factual matters relevant to the Claimants’ claims. His information came from documents. 17. One difficulty faced by the Liquidators has been that they have obtained no documents from the Company itself. Their only sources of information have been third parties, particularly the agencies with whom the Company had dealings, and the Company’s bank. In his second witness statement dated 22 December 2025 filed in support of the Page 9 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) claims, Mr Illes claimed that the Liquidators had “carried out a detailed review of the Company’s books and records”. This turns out to have been an overstatement. In cross-examination, Mr Illes confirmed that the Liquidators had no paperwork on the Company, and the key documents on which the Claimants were relying came from third parties. The Liquidators had “not been given access to [the Company’s] system”. This meant that documents which might have appeared to have been drawn from the Company’s own records – such as a number of payslips for the Respondents which the Claimants relied upon – actually came from Fresh Medical. 18. This reliance on Fresh Medical meant that the Liquidators were not able to fill in the gaps between the documents they had obtained. By way of example, the contracts of employment (which are described in more detail below) refer to pension entitlements. Mr Illes ventured an opinion during the course of cross-examination that he “would have expected some paperwork about it”, but a few moments later – when asked about this paperwork – explained that the Liquidators had no paperwork at all. Similarly, when asked about an email sent to him by Fresh Medical in which it was said that “Dr Viner’s employed status was changed to Umbrella” in April 2021, Mr Illes conceded that there ought to be some paperwork confirming the change in the Company’s records “in an ideal situation”, but there were no such records and no such paperwork available to him. This left him reliant on unverified second-hand information. 19. It is difficult, of course, for liquidators who are obliged to carry out their responsibilities as officers of the court without access to all the material they would like. Those responsible for managing companies like the Company, which have engaged in fraud, may well not comply with their obligations to provide information, books and records to a liquidator, and there may be no realistic way to obtain comprehensive information. Page 10 High Court Approved

Judgment: Re Fulmar Contracting Ltd (in liquidation) Liquidators are entitled to obtain information from third parties, as these Liquidators have done, and they are entitled to initiate proceedings based on what they consider to be a sufficient factual basis to establish the claims. 20. However, it would be better (in my judgment) for liquidators to make clear the limitations of the evidence they have available to them. Mr Illes' oral evidence was considerably less trenchant than the impression given in his witness statements. Orally, he readily conceded the absence of many documents, but in his witness statements he referred to the "extensive contemporaneous evidence" relied on by the Claimants in a way which suggested the picture was considerably more complete than it was. This was an unhelpful impression, and justified the need for Mr Illes' cross-examination so that he could draw back from it. Properly, he did so. I am satisfied that he was striving to assist the court when he answered the questions which were put to him. 21. There was no witness evidence from the directors of the Company. There was also no witness evidence from anyone at Fresh Medical who dealt with the Company or the Respondents. As noted briefly above and discussed in more detail below, Mr Illes exhibited various email communications he had had with individuals at Fresh Medical, but these emails were incapable of being properly tested because their authors were not called as witnesses. The Respondents 22. Dr Williams and Dr Viner are consultant medical doctors. 23. So far as is relevant to these proceedings, they were both supplied with locum work via Fresh Medical. Initially, this locum work was carried out without the Company's involvement. Subsequently, and adopting neutral language about the legal basis on Page 11 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) which the payments were made, each Respondent was paid for the assignments arranged by Fresh Medical via the Company. 24. Between 17 September 2021 and 12 May 2023, Dr Williams or a company under her control was paid £392,542.10 by the Company. This is the figure pleaded in the Claimants' Points of Claim, and the Claimants have confirmed that it is the figure they rely on even though approximately £14,000 of additional payments have since been identified. Dr Williams puts the junction between payments made to her personally by the Company and payments to the company under her control as 18 November 2022; payments before this date were paid to her personal bank account, and payments after this date were paid to her company. 25. Between 20 August 2021 and 8 July 2022 Dr Viner was paid £271,205.31 by the Company. 26. There is no evidence that PAYE or NICs were deducted by the Company in relation to the sums paid to either Respondent, although there was a period of time when Dr Williams' payments were being "shorted", as she described it, which might have involved deductions of some sort. In any event, the Company did not pass on any PAYE or NICs deductions to HMRC. The essence of the Claimants' claim is to work out how much of their total earnings each Respondent would have received net of appropriate payroll taxes, and to claim for the difference between what the Claimants consider ought to have been received and what was actually received by each Respondent. On the Claimants' calculations, Dr Williams was overpaid by £155,421.92, and Dr Viner was overpaid by £102,011.98. Subject to a concession in relation to tax actually paid by each Respondent, which is discussed below, this is how much the Claimants seek from each Respondent. Page 12 High Court Approved Judgment: Re Fulmar Contracting Ltd (in

liquidation) 27. Unusually, particularly given that the claims against them are distinct and not claims for which they are jointly liable, the Respondents filed a series of “joint witness statements” which they both signed and verified with statements of truth. The Respondents seem to have acted in person with only sporadic assistance from counsel during the course of this litigation, which might explain (if not excuse) this unusual approach. Nevertheless, it is possible to pick out from the joint documents the factual assertions made by each Respondent, separately, and Mr Colclough, who appeared for the Claimants, was able to navigate around the issue at trial, asking appropriate questions of each Respondent based on contemporaneous documents and the joint witness statements. 28. In the course of their cross-examination, I was satisfied that both Respondents were attempting to answer questions to the best of their knowledge and belief. There was one aspect of Dr Williams’ cross-examination where she attempted to put a slightly improbable gloss on a WhatsApp exchange she had had with Fresh Medical about changing to being paid on a self-employed basis, which I discuss below. Other than that part of her evidence, in which Dr Williams seemed to want to argue her case rather than accept what the documents appeared to say, Dr Williams and Dr Viner were candid and truthful witnesses. The Employment Contracts 29. Central to the Company’s Contractual Claim are two documents which are in materially identical terms: the “Employment Contracts”. 30. The Employment Contracts are headed with a Docusign Envelope ID, reflecting that the Company appears to have signed them by way of Docusign. The copies of the Employment Contracts relied on by the Claimants do not bear a Docusign mark in Page 13 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) relation to the application of the respective Respondents’ names. Rather, each Respondent’s name has been typed into the respective Contract of Employment in the same plain font at the top of the document where the parties to the Contract of Employment are set out, and at the bottom of the document in the space for a signature. Neither Respondent signed their Contract of Employment in ink. These uncontroversial observations were among the points relied on by the Respondents in their defence to the Contractual Claims, which are discussed separately below. 31. The Employment Contracts are each fifteen pages long. After the Docusign mark, they bear the Company’s name and logo, and the words “Contract of Employment”. Below that is the date: 13 September 2021 for Dr Williams, and 16 August 2021 for Dr Viner. The parties are then set out: the relevant Respondent, described as “The Worker”, and the Company. 32. The Employment Contracts appear to reflect a standard umbrella company business model in which the umbrella company employs its workers as employees, and arranges for the deployment of the employees on particular assignments for clients (i.e. employment agencies; in the Respondents’ case, Fresh Medical) and end users (i.e. hospitals, in the case of the Respondents). Thus, the recitals to the Employment Contracts provide as follows: “A: We are, amongst other things, in the business of entering into contracts to perform services as agents and/or supply the services of workers to Clients and End Users. B: In our capacity as agents, we wish to engage you as a Worker on assignments to provide services to Clients or End Users from time to time and you wish to be Page 14 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) engaged as a worker on assignments to provide

services to Clients or End Users from time to time on the terms set out herein. C: This Contract of Employment gives details of the terms and conditions on which you are employed. Additional contractual terms are contained in the Assignment Schedule. These documents constitute the entire Agreement between you and the Company and cancel and are in substitution for all previous verbal and written agreements relating to the subject matter of this Agreement between the Company and any of its officers and the Worker. In the event of any inconsistency between the Contract of Employment and the Assignment Schedule, the Contract of Employment shall prevail.” 33. As noted in this recital, there ought to have been an “Assignment Schedule” appended to each Contract of Employment. From the other terms of the Contract of Employment, it is apparent that the Assignment Schedule was supposed to set out where the worker was to go and what they were to do, when, and how. Mr Illes’ witness statement claimed that the Liquidators had received Assignment Schedules for each Respondent via Fresh Medical, but it appeared that he was mistaken. There were no Assignment Schedules among the papers for trial, and it does not seem that the Liquidators were in possession of them.

34. What the Liquidators had actually received were a handful of weekly timesheets – one for Dr Williams, and three for Dr Viner. Those weekly timesheets made no reference to the Company or the Employment Contracts, and did not refer to the basis on which the Respondent was supplied as a worker. The timesheets were prepared on a template bearing Fresh Medical’s name at the top. They have been filled in with wet ink, apparently by each Respondent, setting out the hours they each worked in a given week. Page 15 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) They were then signed by the Respondent, dated, and countersigned by the “Client”, that is, the end-user NHS hospital. The dates of the four timesheets covered periods when the Respondents were being paid by the Company and post-dated the date shown at the top of the Employment Contracts. Above the Respondents’ signatures is a box headed “Candidate Declaration” declaring that the information given in the form is correct and complete. The declaration also included a statement that the Respondent had “accepted the terms and conditions of the agency”. Dr Williams was asked about this in cross-examination, and did not think this declaration referred to any particular document. 35. The Liquidators had also received copies of a document headed “Candidate Confirmation”. These documents pre-date the incorporation of the Company (and, of course, the Employment Contracts) and are documents entered into by the Respondents and Fresh Medical directly. Dr Williams explained in cross-examination that these were documents generated each time a placement was taken on. The papers for trial included a Candidate Confirmation for Dr Viner dated 11 December 2019 and a Candidate Confirmation for Dr Williams dated 13 March 2020. The two documents are similar, but Dr Viner’s specifically refers to her being paid via PAYE. There was no information in Dr Williams’ Candidate Confirmation about whether she was to be paid via PAYE or was to be treated as self-employed. The Candidate Confirmations make no reference to the as-yet unincorporated Company as the employer of the Respondents. 36. The timesheets and the Candidate Confirmations do not provide the information which

would be expected to be in the Assignment Schedules for the Employment Contracts. 37. Returning to the Employment Contracts, there were a number of oddities in the document. The document refers at various points to capitalised “Services” which are to Page 16 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) be provided by the employee, and the term “Services” is listed in clause 1.1 which sets out various definitions, but there is no text setting out what this defined term means. It is left blank. The relevant text reads as follows: “Pay Rate” means a sum per hour equivalent to the minimum rate allowed by the National Minimum Wage Act 1998 and “Services” That is where the text stops, with no further punctuation and no definition. The same error appears in both Employment Contracts. 38. The definition of “Pay Rate” is also an oddity. Pursuant to the Employment Contracts, the Respondents were only entitled to be paid at the Pay Rate. As defined by the Employment Contracts, that rate was the same as the national minimum wage. Under clause 6.1 of the Employment Contracts, the Respondents were to be “paid on an hourly basis at the Pay Rate”. The Claimants did not assert that this was the Respondents’ entitlement. They were actually paid at a rate appropriate for their expertise as consultant doctors, far in excess of the minimum wage. The payment of employees at a minimum wage rate with a top-up via some other method was one of the aspects of the tax avoidance schemes promoted by the umbrella companies in *Purkiss v Kennedy* and *Purity*. There is no evidence that the Company was involved in such a scheme, but there is also no explanation for why the Pay Rate is defined as the minimum wage rate despite much higher rates being charged to end users and paid by the Company to the Respondents. 39. A critical clause of the Employment Contracts, on which the Claimants’ Contractual Claim depends, is clause 6.5. In their Points of Claim the Claimants underline the relevant parts of this clause, and I set it out with the Claimants’ underlining to show the parts on which they particularly rely: Page 17 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) “For the purposes of the Employment Rights Act 1996, Sections 13-27, you agree that the Company may deduct from your salary or any other payment or payments due from the Company to you any sums due from you to the Company including, without limitation, your pension contributions (if any), any overpayments, loans, prepayments or advances made to you by the Company and any sums owed by you to the Company as a consequence of your breach of contract. If, at the end of your employment with the Company, any such sums are owed, you are obliged to repay them within 14 (fourteen) days of Termination Date.” 40. The “Termination Date” is defined in the Employment Contracts as the date on which the employment terminates. 41. As noted above, the Liquidators have not received any documents from the Company itself. Their copies of the Employment Contracts were provided to them by Fresh Medical. Fresh Medical’s staff explained in an email to the Liquidators dated 9 January 2026 how Fresh Medical acquired these documents. Fresh Medical explained that each Employment Contracts was “requested as part of our internal compliance process and is standard practice for employment agencies”. They stated that “this contract is used for internal records only”. Fresh Medical confirmed, and I accept, that the Employment Contracts were documents received from the Company, for internal purposes only, as part of their compliance arrangements. They were not provided to the

Respondents by Fresh Medical; as the email explained, the arrangements between an umbrella company and a worker were thought by Fresh Medical to be matters between those parties, and any communication about the payroll arrangements “would have taken place directly between [each Respondent] and the payroll provider of her choice”. Although the individual at Fresh Medical who wrote this email was not called as a witness by the Page 18 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) Claimants, it seems to me that Fresh Medical’s position is consistent with the documents themselves and, indeed, with the Respondents’ evidence that they were not provided with these documents by Fresh Medical or by the Company.

42. Whether the Respondents entered into the Employment Contracts with the Company, or were employed on contracts on analogous terms, is the central issue in the Contractual Claim. It is addressed below. The Liquidators’ concession 43. As noted above, the Liquidators are not seeking an order that the Respondents repay the full amount of the notional tax due on the payments they received from the Company. The Liquidators have made a concession that the Respondents are entitled to credit for any tax the Respondents have paid to HMRC on the sums they received. This concession was pleaded out in paragraph 16 of the Points of Claim (for each Respondent): “16. The Liquidators are aware that the Defendant may contend that she is liable, or may become liable, to HMRC directly in respect of income tax and national insurance that ought to have been deducted. The Liquidators have therefore written to the Defendant asking her to confirm whether she has paid HMRC directly. The Liquidators confirmed that if HMRC had been paid directly, this claim would not be issued against the Defendant. The Liquidators intend to take the same approach with all workers who were overpaid by the Company.” 44. During the Claimants’ submissions, it was clarified that the concession related only to tax actually paid by the Respondents, and abated the claims pound for pound by reference to sums paid by each Respondent to HMRC. Importantly, the Claimants were Page 19 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) not prepared to make a concession that if the Respondents had accounted to HMRC for the payments they had received, and made themselves liable by their self-assessments for the tax arising from those payments, that the payment from the Company so accounted for would fall outside the present proceedings. The importance of this distinction is best seen in a generalised example. A company pays a worker £100 and, if the worker is an employee, a percentage of the £100 is payable as PAYE and NICs depending on the worker’s tax code (reflecting the worker’s other earnings and tax credits in the relevant tax year). The company ought only to make a net payment to the worker. If the worker is self-employed, however, the worker will receive the full £100 from the company, and will account for that income to HMRC in their SA Return. But the amount of tax which is payable by the worker will depend on other items in the SA Return reflecting (among other things) the costs and expenses which can be deducted from that income, any available capital allowances, pension contributions, and so on. It is possible, and indeed likely, for a self-employed person properly to pay a different amount of tax as a percentage of their earnings than would be the case if their only earnings came

from employment.

45. Where the Respondents had accounted to HMRC for all the money they were paid by the Company, but had paid less tax than they would have paid had they received that money as employees of the Company, the Claimants' position is that the Respondents should have to pay the difference to them. The Claimants' concession thus makes no allowance for HMRC having accepted the figures in the Respondents' SA Returns and HMRC having not challenged the deductions the Respondents made before calculating the tax due on what they received from the Company. The Claimants' position also makes no allowance for any other aspect of the Respondents' tax affairs, such as pension contributions and tax credits, which would reduce the overall incidence of tax Page 20 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) whether the Respondents were employed or self-employed. It also takes no account of the Respondents having ordered their affairs on the basis that they were self-employed rather than employees, for example by incurring costs and expenses which could properly be set off against their earnings before the calculation of the tax due. 46. As I indicated at the start of this judgment, and as analysed below, I consider that the Contractual Claim fails because I am not satisfied that there was a contract of employment between the Company and each Respondent which included the relevant clause giving the Company an entitlement to be repaid. The extent of the Claimants' concession accordingly has no relevance in relation to that claim, which fails in any event. 47. It is in relation to the TUV Claim that the concession is important, and in particular the limits of the concession. I will explain below in my analysis of the TUV Claim why I consider that the limits placed on the concession by the Claimants are wrong, and that the Claimants ought to have offered a wider concession. The wider concession they ought to have offered is that to the extent the Respondents have accounted to HMRC for payments they have received from the Company in their SA Returns, those payments should fall outside this claim entirely. That is money which has been declared to HMRC, and on which the Respondents have accounted for and made themselves liable to pay the appropriate tax. The Respondents have assessed themselves for tax and, in the absence of a challenge by HMRC, the Respondents have made themselves liable to pay the right amount of tax on the monies received from the Company. It is not open to HMRC to prove in the Company's liquidation for the tax due on payments which have already been properly accounted for, and it would amount to an unjustified windfall inconsistent with the regime for the self-assessment of tax for HMRC to seek Page 21 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) to recover additional tax via the Company from the Respondents. This would also contravene the purpose of section 238 IA 1986 in circumstances where HMRC's claims against the Company should be fully abated in relation to the Respondents. 48. The concession as originally pleaded was not clearly in the narrow form advanced by the Claimants at trial. The Respondents each responded to the concession in essentially the same terms in their Points of Defence. Dr Williams' Points of Defence noted the concession, and went on to plead that: "...The Defendant has accounted for the monies she received in her D Tax Assessments. The Defendant has also made payments to HMRC directly. The

Defendant is willing to provide documentary evidence to prove this on the basis that the Claimants undertake to discontinue this claim forthwith upon satisfactory provision of the same.” 49. Dr Viner’s Points of Defence was in similar terms, albeit it did not refer to the monies having been accounted for in “her D Tax Assessments”, a term defined in Dr Williams’ Points of Defence as Dr Williams’ SA Returns for the tax years ending 5 April 2022 and 5 April 2023. 50. Despite this apparent willingness to provide documentary support for having accounted to HMRC for the payments received from the Company, and tax payments having been made directly, for much of the course of this litigation the Respondents were extremely reluctant to provide details of their tax affairs to the Claimants. Dr Williams accepted in cross-examination that she had made a conscious decision not to provide information. She justified her position on the basis that she “thought it was a scam”, and that she “greatly distrusted” the Company and, by extension, the Liquidators. She said she viewed this litigation as a “shake-down” in which the Liquidators had an “insatiable” Page 22 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) appetite and were acting in an “insidious” fashion. She said she felt she would have been “crazy” to provide her tax information to the Claimants. Dr Viner also described her position in cross-examination as not giving personal information to “scammers” and she did not draw a distinction between the Company’s fraud and the actions of the Liquidators. 51. Consistently with these answers in cross-examination, in a letter dated 6 November 2025, the Respondents (then acting in person) stated: “To address this issue once and for all and to move forward without wasting more of our resources and the court’s time, we were pushed to show you our personal information such as tax returns. However, you have now made multiple requests which you are not legally justified to make. You are requesting personal documents that are privileged from disclosure and not relevant to this case. Your clients have no right to demand to scrutinise our personal affairs: it is intrusive, disruptive to our busy professional lives and infringes on our human rights. As solicitors, you should know that access to personal records shall be allowed only when such is legally authorised or required by law; instead, you repeatedly ignore this, and you and your clients are demanding our personal information, resulting in mental and physical distress, negatively affecting our personal and work lives and causing us serious financial strain.” 52. This was a regrettable attitude to take. The Liquidators are officers of the court, with serious professional responsibilities and accountability. If a company is fraudulent – as the Company was agreed to be – that does not mean that its liquidators are continuing the fraud. Quite the opposite: their role involves investigating the company’s affairs, Page 23 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) getting in its assets, and distributing the proceeds to creditors who, in many cases, will be victims of the company’s fraud. In the Company’s case, the primary victim was HMRC. HMRC was an involuntary creditor of the Company, and the Liquidators’ investigations and recovery actions should go some way towards remedying the harm suffered by the general body of honest taxpayers at the hands of fraudulent actors such as the Company. The Liquidators ought to have been provided with assistance by the Respondents. Instead, there has been hostility between the Liquidators and the Respondents throughout these proceedings and an

adversarial and unco-operative attitude has prevailed. 53. Although it may have been intrusive for the Respondents to disclose their tax affairs to the Liquidators, openness on this key issue – on which the Respondents’ pleaded case depended – would have been as much for the Respondents’ benefit as the Claimants’ benefit. This litigation might well have taken a different course if the Respondents had dealt constructively with the Liquidators’ document requests and, in future cases involving umbrella companies, there are lessons which ought to be learned from what has happened in this case. 54. Belatedly, however, the Respondents provided information about their tax affairs to the Liquidators. This appears to have been prompted by comments made by ICC Judge Mullen, who heard and dismissed an application made by the Respondents for summary judgment against the Claimants. The Respondents’ application was issued on 1 January 2026 and was dismissed after an oral hearing on 29 January 2026. By paragraph 4 of the order of that date, ICC Judge Mullen extended the time for the Respondents to provide disclosure “including, to the extent relevant, disclosure of any documents that evidence whether, as is alleged in the Respondents’ defences, they have personally Page 24 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) accounted for all tax on the payments received from [the Company]”. Dr Williams was cross-examined about whether ICC Judge Mullen had told her that the Respondents ought to disclose all the information that they had sent to their accountants when their SA Returns were prepared; she said she did not remember that specific suggestion, but did remember the Judge mentioning the need for tax returns to be disclosed. It seems to me that ICC Judge Mullen identified the critical point on which this case would turn. 55. Thereafter, the Respondents provided their SA Returns for the relevant years. The tax documents provided were each Respondent’s SA Returns for the tax years ended 5 April 2022 and 5 April 2023 including the pages relevant to their self-employment and their tax calculations. 56. Dr Williams’ SA Returns for the relevant periods had been amended in November

2025. She explained that these were routine amendments and resulted in a minor additional tax payment becoming due. 57. Dr Williams also disclosed an accounting period overview for the limited company which received some of the payments from the Company. This was not particularly detailed, but set out what corporation tax that company had paid in its accounting period ending 31 August 2023 (i.e. covering the relevant period when payments were being made by the Company). 58. The Claimants wanted to cross-examine the Respondents on the details of their tax returns, challenging them to justify (for example) their entitlement to claim for various allowances or expenses as shown in the SA Returns. I did not permit the Claimants to pursue this line of cross-examination. It seemed to me to be incapable of proving anything of relevance to the determination of these proceedings. What the SA Returns Page 25 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) show is that in the relevant years the Respondents disclosed substantial income from self-employment to HMRC. They show how the self-assessed tax has been calculated. There was no suggestion that HMRC had rejected anything in the Respondents’ SA Returns, and it was fanciful to suppose that the court could make findings as to whether

the Respondents' SA Returns were correctly prepared as a result of unheralded questions in cross-examination. 59. Perhaps this line of questioning was an attempt to resolve the difficulties caused by the mismatch between the payment dates and the ends of the relevant tax years, which meant that it was difficult to reconcile the figures in the SA Returns (and Dr Williams' company's accounting overview) with what had left the Company's bank account. This was something Mr Illes attempted to resolve (or, perhaps, demonstrate) in his fourth witness statement, where he divided up and apportioned percentages of the Respondents' declared income against the partially overlapping periods shown in the Company's records. This was an extremely rough and ready approach, as noted by Dr Viner in her cross-examination: it assumed that income would be smoothed across a tax year, regardless of what was really happening. But even if a complete forensic analysis had been possible in an attempt to understand why the figures did not line up, it would have been a fruitless task for this court to undertake and of no relevance to the determination of these proceedings. This is because on the Claimants' limited concession, this line of questioning was unnecessary: the Respondents would only be given credit for tax they actually paid, and any expenses they claimed which reduced the tax paid would make no difference to the claim at all. On the wider concession which, in my judgment, the Claimants ought to have made, the details contained in the tax returns are also irrelevant. What matters is whether the payments from the Company have been accounted for by the Respondents. What happens thereafter is between the Page 26 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) Respondents and HMRC, and it makes no difference to the Claimants' claims in these proceedings.

60. Mr Colclough submitted in closing that the curtailment of this line of cross-examination gave rise to procedural unfairness, and it was not open to me to allow the Respondents to deduct the expenses shown in their SA Returns from the Claimants' claims without the Claimants having been able to ask questions about those expenses. For the reasons set out above, I do not accept this submission. There is no procedural unfairness in restricting the oral evidence to matters relevant to the determination of these proceedings. 61. Dr Viner's SA Returns for the relevant years show that she declared income to HMRC comfortably in excess of the amounts she received from the Company. Money being fungible, it seems to me that Dr Viner must be treated as having declared the entirety of the money she received from the Company to HMRC, which is what she says occurred in her part of the joint witness statement. 62. Dr Williams' SA Return for the tax year ended 5 April 2022 showed that she declared income to HMRC in excess of the amounts she received from the Company in that period. In her SA Returns for the tax years ending 5 April 2023 and 5 April 2024, Dr Williams declared income below the amount the Claimants contend she received from the Company (in 2023, her SA Return declared income of about 63% of what the Company paid out; in 2024, her SA Return declared income of about half what the Company paid out). However, as noted above, from 18 November 2022 (about halfway through the tax year ending 5 April 2023) the Company paid a company under Dr Williams' control rather than Dr Williams, with the result that Dr Williams' SA Returns would not be expected to include the entirety of

the payments made by the Company. Page 27 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) The Claimants' calculations did not distinguish between payments made to Dr Williams and payments to her company. Dr Williams' paragraphs in the joint witness statement explained that the payments which were not in her SA Return were paid to the company and a corporation tax return was filed with HMRC. Dr Williams was candid in providing these details and although it might have been better had she provided full calculations for the corporation tax liability, I do not consider that there is any reason to doubt the premise of her evidence which is that all the money paid out by the Company was accounted for by her or her company to HMRC. The Contractual Claim The Company's case 63. The Company's case is that clause 6.5 of the Employment Contracts entitles the Company to recover from each Respondent the overpayments they have received if, as the Company contends, the Respondents were employees, and thus liable to have PAYE and NICs deducted from their earnings. By paying gross, the Company provided "overpayments" and clause 6.5 of the Employment Contract obliges each Respondent to repay any such sums within 14 days of the end of their employment. That time has come. The Respondents' defence 64. The Respondents' defence is that they were not employees of the Company and, moreover, they did not enter into the Employment Contracts with the Company. They claim that their names were applied to the Employment Contracts without their knowledge or consent.

Analysis

Page 28 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) 65. I start with whether the Company and the Respondents entered into the Employment Contracts. I have little hesitation in finding that the Company and the Respondents did not enter into these Employment Contracts. The more compelling reasons for this conclusion are these: (a) Prior to the date of the Employment Contracts, the Respondents were treated as self-employed and were not employees. (b) Dr Viner was initially treated by Fresh Medical as being subject to PAYE, as shown in her "Candidate Confirmation" document dated 10 December 2019 (noted above). However, shortly thereafter she was sent a letter dated 19 February 2020 from Fresh Medical confirming her request to be paid as self-employed. The letter noted that "In accordance with HMRC guidelines, Fresh Medical can pay Consultant level doctors or GP's [sic] on a self-employed basis." The letter confirmed Dr Viner's entitlement to be paid gross without deduction of PAYE and NICs. A payslip for Dr Viner for the week ending 7 January 2022 appears to tally with this approach: she is shown as having been paid gross, without any deductions for PAYE or NICs: her "gross pay" and her "net pay" are the same. (c) Dr Williams also carried out work via Fresh Medical from at least 16 March 2020 (the date of her "Candidate Confirmation" referred to above). Unlike Dr Viner's initial Candidate Confirmation, there is no reference in Dr Williams' Candidate Confirmation that she would be paid by PAYE, and there is no suggestion that she was an employee of Fresh Medical. (d) Despite having previously been paid gross on the basis that they were self-employed, something changed in the second half of 2021 when the Company Page 29 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) became involved as a

link in the payment chain. Mr Illes' fourth witness statement noted was that there were changes in the rules for off-payroll working in April 2021, which is what would have led to the change in the Respondents' arrangements. (e) According to the email from Fresh Medical to the Liquidators dated 9 January 2026, "Candidates would have been spoken to individually to confirm any change where applicable", and the Respondents' "status was changed to umbrella". Fresh Medical meant that the Respondents became employees of the Company, under the standard umbrella model. Fresh Medical's view was that any communications would have taken place directly between the Company and the Respondents. Presumably, if Fresh Medical's staff had any record at all of the communications at the start of the supposed employment contract, they would have provided different answers to the Liquidators' enquiries. Instead, their answers were based on hypotheses and assume what ought to have happened for onboarding with a compliant umbrella company. The Company was not a compliant umbrella company. It was carrying out a fraud on HMRC. The Respondents' evidence was that they were not spoken to individually, and there is nothing which leads me to prefer Fresh Medical's supposition about what ought to have happened over the Respondents' candid evidence about what actually happened. (f) The Respondents' evidence is that they were not provided with any documents by the Company at this time and, indeed, Dr Williams was not even aware of the existence of the Company until November 2021. When a person becomes an employee, it would be expected that they would receive a large number of documents including the Employment Contract (or an employment contract), information about their pension arrangements, perhaps an employee handbook and so on. The Respondents' evidence, which I accept, was that they received none of these things. (g) I accept the Respondents' evidence that they did not sign the Employment Contracts, or authorise anybody to sign the Employment Contracts on their behalf, and that they were not sent the documents before their apparent date. Their names appear on the documents in the same font on the front page as in the signature blocks. There is no evidence that the Respondents were ever sent the Employment Contracts. Fresh Medical confirmed that the only reason Fresh Medical itself received the Employment Contracts is that they needed them for their own internal compliance purposes and there is no evidence that these documents were ever provided to the Respondents by anyone. (h) The Employment Contracts are standard-form documents riddled with errors and oddities. There is no definition of the "Services" to be provided; there is apparently an agreement to accept payment at national minimum wage rates; and there are extensive passages attributing to the Company all intellectual property rights in any inventions created by the employee in the course of their employment. These clauses had nothing to do with the employment relationship between an umbrella company and a worker, still less with these particular doctors. (i) Although Mr Illes' position is that he had "no reason to doubt the authenticity" of the Employment Contracts, the real question is whether any reliance at all could be placed on a document which emanated from a fraudulent operator like Page 31 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) the Company. Having reviewed all the evidence and heard from the Respondents, I agree with Mr Tomlinson KC's assessment that Mr Illes should have had every reason to doubt the authenticity of these documents. 66. For these reasons, I am unable to accept that the Company and the Respondents entered into the Employment Contracts. 67. The

Claimants had an alternative position, which was that the Respondents entered into contracts of employment with the Company by conduct, the terms of which would have included something like clause 6.5 of the Employment Contracts. I also reject this case, for two reasons. 68. First, while it is possible for parties to enter into a relationship of employment by their conduct, the terms of any contract formed in this way would be simple and generic to the extent that the parties' conduct did not otherwise make them clear. The conduct of the parties in this case does not allow me to find that something like clause 6.5 of the Employment Contracts formed part of their agreement. In the absence of a written document passing between the parties setting out the specific terms of clause 6.5 of the Employment Contracts, it does not seem to me that this particular clause can be treated as forming part of any bargain between the parties. 69. Second, and more fundamentally, I am not satisfied that there was a contract of employment on any terms between these particular Respondents and the Company. 70. Dr Viner, for her part, had previously had it confirmed by Fresh Medical that she was entitled to be paid on a self-employed basis, and that was how she was paid prior to the Company entering the payment chain. She was clear that Fresh Medical's belief that she "would have been spoken to" when becoming an employee of the Company was Page 32 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) incorrect. Indeed, other than the Contract of Employment with her name on it, there is no document or other evidence connecting Dr Viner with the status of being an employee of the Company at all. She confirmed that there was no correspondence between her, Fresh Medical and the Company; she said that the first email she ever received from about the Company was in February 2024, after it was in liquidation. The whole premise of the present proceedings is that the Company paid her gross without making the deductions which should have been made had she been an employee. But there is no evidence that she ever entered into a relationship of employment with the Company. From her point of view, nothing changed when her payments started to come from the Company rather than from Fresh Medical. 71. For Dr Williams, the position is not quite so straightforward. She stated that she was aware of the Company in November 2021, which would have been shortly after she began to receive payments from it. In March 2022 she had a WhatsApp exchange with Scott of Fresh Medical which was as follows: "01/03/2022 07:33 [Dr Williams:] Good morning Scott. I'd like to switch to self employed. Is there anything I need to submit?... 01/03/2022 08:37 [Scott:] I'm meeting one of the guys for lunch today so will speak with them but should be pretty straightforward. ... 03/03/2022 15:31 [Dr Williams:] Hi Scott. I wanted to discuss moving to self employment. I haven't passed on my TS [timesheet] yet because I wanted to discuss the process and have it official. Page 33 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) 07/03/2022 18:50 [Dr Williams:] Good evening Scott. I trust your week if off to a good start. Who do I speak with to make the transition to self employed? Thanks, Nina. 08/03/2022 09:18 [Scott:] I'll get you a call out this morning. 08/03/2022 09:29 [Scott:] The guy just messaged me and said they will switch you over. No need to call." 72. Shortly after this, by email dated 18 March 2022, Dr Williams asked the Company to provide her with her three most recent payslips. The Company provided them later that day. Dr Williams replied, stating "...My last payment should have been as self employed; it does not appear so. Can you clarify why please?". Later in the thread, Dr Williams reiterated that the payment made on 11 March 2022 "was supposed to be paid as self employed". The Company

responded as follows: “Apologies for this there was a slight error but this has been rectified and the difference has been paid to you. Rest assured this is the last time this error is [sic] occurred.”

73. Dr Williams was asked about the WhatsApp exchange in cross-examination. It was suggested to her that her reference to “switching” to self-employed meant she knew that she was an employee. Dr Williams’ response was that she was always self-employed, but noticed that her payments were being “shorted”, as she put it. She said that when she said in the WhatsApp messages that she wanted to “swich” to self-employed, she meant that she wanted to “stay” being self-employed. She said she had formerly been self-employed, and had been paid gross, but now noticed that she was being “shorted” and wanted it corrected. She suggested that some of the context might Page 34 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) be missing from this bare exchange of messages. She explained that she had “quite an informal relationship” with Scott at Fresh Medical, which might explain the inapt language she had used. All she wanted, she said, was for the short payments she was receiving to be put right. She said that once she started receiving the full gross amount again, which happened as soon as she requested it to change, she did not attempt to recoup the “shorted” payments. 74. I consider there was an element of reconstruction and self-justification in the answers given by Dr Williams in relation to this WhatsApp exchange. I find that her messages mean what they say, and her explanations were largely correct, but her answers about these messages in cross-examination were coloured by an attempt to argue her case. I accept that Dr Williams used to be paid gross – this is what happened when she was first working with Fresh Medical in early 2020. At some point in the autumn of 2021 the Company became involved in the payment chain, and the money she received went down. Dr Williams noticed the problem in March 2022 and asked for it to be corrected, which would require her to be changed back to self-employment, as had been the case before. She contacted Fresh Medical, and it was confirmed that the change had been effected; she contacted the Company and complained when the next payment continued to show deductions from her gross pay. Thereafter she was paid gross and believed that the previous position in which she was self-employed had been restored. I do not accept that she used the word “switch” without meaning any change should take place in the way she was being paid. However, I do not consider that this assessment of what she meant leads to a conclusion that Dr Williams was willing to be an employee of the Company in the period prior to March 2022. Page 35 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) 75. I note, in passing, that the March 2022 exchanges demonstrate that Dr Williams was being paid less than she expected, and not on a self-employed basis. Presumably that means she was being paid as if she were an employee, net of PAYE and NICs, for a period of time prior to March 2022. Perhaps the net payments were being made from the start, until this point. Presumably the Company did not account to HMRC for the deductions from Dr Williams’ earnings. But if there were such deductions, then Dr Williams was not being paid gross in this period and neither the Contractual Claim nor the TUV Claim would apply to payments she received prior to March 2022. If Dr Williams included the reduced payments as gross earnings in her SA Return, the effect would be that she has been taxed twice on this part of her earnings. However, this point of detail is not significant given that I have found that both claims fail on other grounds. 76. That is my assessment of the evidence of the two Respondents and the contemporaneous documents. I am

not persuaded that either Respondent agreed to enter into a contract of employment with the Company. 77. There is also a legal question about whether the Respondents were in fact subject to the supervision, direction of control of any person when they carried out their work. This is a paraphrase of the common law test for assessing whether a person is employed, and has been carried across into the tax statutes which deem certain agency workers to be employees in certain circumstances. As explained below, this deeming does not create an employment relationship, but results in tax obligations for the deemed employer as if the worker was an employee. This means it has no relevance to the Contractual Claim, which depends on there being an actual contract of employment including a clause like clause 6.5 of the Employment Contracts. What matters for the Contractual Claim is Page 36 High Court Approved Judgment: *Re Fulmar Contracting Ltd (in liquidation)* whether the Respondents were subject to the supervision, direction or control in such a way that the Company was their employer. There was no evidence at all from the Claimants or from the Respondents about how their work was carried out, and to what extent they were subject to supervision, direction and control or not. It follows that I am unable to conclude that the circumstances of the Respondents' work is such that they were employed as a matter of common law, and it follows that I need not go on to enquire what the terms of any contract of employment might have been. 78. For these two reasons, I am satisfied that the two Respondents were not subject to an employment relationship with the Company which included a term analogous to clause 6.5 in the Employment Contracts. 79. It follows that the Contractual Claims fail. The TUV Claim

Introduction

80. Section 238 IA 1986 allows a liquidator or administrator of a company to apply to court for an order in relation to a transaction at an undervalue entered into by the company at a relevant time. Subsections (2)-(4) provide as follows: “(2) Where the company has at a relevant time (defined in section 240) entered into a transaction with any person at an undervalue, the office-holder may apply to the court for an order under this section.
- (3) Subject as follows, the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction. Page 37 High Court Approved Judgment: *Re Fulmar Contracting Ltd (in liquidation)*
- (4) For the purposes of this section and section 241, a company enters into a transaction with a person at an undervalue if—
- (a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration, or
- (b) the company enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the company.” 81. Section 240 IA 1986 defines the “relevant time” during which the transaction at an undervalue has to have taken place in

order to fall within the scope of section 238. So far as relevant to the present case, it has two relevant components: a) The “Lookback Period” (section 240(1)(a) IA 1986): a two- year time limit by reference to the onset of insolvency (which, in this case, means the date on which HMRC presented the winding up petition on which the Company was wound up – 4 August 2023). The Lookback Period means that transactions entered into by the Company from 4 August 2021 are within the scope of these proceedings. b) The “Insolvency Test” (section 240(2) IA 1986): a time within the Lookback Period is not a relevant time unless the company is at that time unable to pay its debts within the meaning of section 123 IA 1986 or becomes unable to pay its debts in consequence of the transaction. Page 38 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) 82. There is no dispute in the present case that all of the payments which fall into the TUV Claims were made at a “relevant time”: they all occurred within the Lookback Period, and the Company’s fraud on HMRC meant that it was unable to pay its debts – its real debts – from the time it first started to trade. 83. If the court finds that there has been a transaction at an undervalue, it has a discretion as to the appropriate remedy. The court’s discretionary power is described in section 238(3) IA 1986 by reference to its essential function, which is to “make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction”. The need for restoration of the position reflects the statutory purpose of section 238 IA 1986, which is “to uphold the pari passu distribution of the assets of an insolvent company between its creditors” as it was described by the Court of Appeal in *TAQA Bratani Ltd v Fujairah Oil and Gas UK LLC* [2025] EWCA Civ 1669 at [33] (“TAQA CA”). 84. Examples of the orders the court can make in the exercise of its discretion are set out non-exhaustively in section 241 IA 1986. The court must fashion an appropriate remedy in light of the words of the statute and the statutory purpose of section 238 IA 1986, by allowing value lost to the insolvent estate to be recouped and subjected to pari passu distribution (discussed in *Ramlort v Reid* [2004] EWHC Civ 800, which I address below in my discussion of remedies). The range of possible orders is accordingly very broad. At its most extreme, if the court is satisfied that the position would have been worse if a company had not entered into a transaction at an undervalue, the court can make no order despite finding that there was a transaction at an undervalue: *Re MDA Investment Managed Ltd* [2004] 1 BCLC 217. Page 39 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation)

85. When assessing whether there has been a transaction at an undervalue within the meaning of section 238 IA 1986, there is no requirement to show that the Company was intending to defraud its creditors or that the transaction was dishonest or otherwise worthy of moral condemnation. Those were aspects of the law prior to the introduction of what is now section 238 IA 1986 on the recommendation of the Cork Committee, and are preserved in what is now section 423 IA 1986. That section also applies to transactions at an undervalue, but only where the transaction was entered into by a person for the purpose of putting assets beyond the reach of a person who is or may make a claim against him, or of otherwise prejudicing the interests of such a person in relation to the claim which is he making or may make. The Cork Committee recommended the introduction of the new provision which is

now section 238 IA 1986 specifically to avoid the need for officeholders to prove that the person entering into the transaction did so for the proscribed purpose, but limited the application of the new provision to cases of insolvency. For section 238 IA 1986 what matters is a comparison of the value of what the company receives in money or money's worth, and the value of what the company parts with as part of the transaction in money or money's worth. The values must be measured from the company's point of view: *Re M C Bacon Ltd*

[1990] BCLC 324 at 340. 86. *TAQA CA* was a case in which the appeal turned on the proper identification of the "transaction". The Court of Appeal held that the relevant transaction was the payment by the company of a dividend, and did not include a separate share sale transaction taking place at parent company level. By limiting the scope of the transaction, the Court of Appeal limited what could be taken into account in applying the statutory defence set out in section 238(5) IA 1986, which provides a defence if the company entered into the transaction in good faith and for the purpose of carrying on its business, and that at Page 40 High Court Approved Judgment: *Re Fulmar Contracting Ltd (in liquidation)* the time it did so, there were reasonable grounds for believing that the transaction would benefit the company. The narrower the transaction, the narrower the factors which can be taken into account in applying the defence. The defence has no relevance in the present case, but *TAQA CA* is an important decision on the meaning of "transaction" on which the TUV Claims turn and I have considered it carefully. 87. In *Re Ethos Solutions Limited, Purkiss v Kennedy* [2024] EWHC 1861 (Ch), upheld on appeal at [2025] EWCA Civ 1081, it was held that a company which made gross payments to its employees without deducting PAYE and NICs, and thereby made itself liable for assessments by HMRC in relation to the deductions which ought to have been made, had entered into transactions at an undervalue with the employees who receive the gross payments. This was a case under section 423 IA 1986, rather than section 238 IA 1986, but both sections require there to have been a transaction at an undervalue and use essentially the same language to describe what a transaction at an undervalue is. Although broadly similar, the policy behind the two sections differs because section 238 IA 1986 is designed to reverse gratuitous depletions of an insolvent company's assets to the detriment of its creditors interested in a subsequent *pari passu* distribution of those assets, whereas section 423 IA 1986 is designed to reverse transactions with the proscribed purpose, whether or not insolvency is in prospect. Even so, cases under both sections are potentially relevant in assessing whether a particular transaction falls within the scope of a particular section, and at paragraph 38 of *TAQA CA* the Court of Appeal approved the observation of Lady Rose and Lord Richards in *Invest Bank PSC v El-Husseiny* [2025] UKSC 4 that "the concept of a transaction at an undervalue should be construed consistently, reflecting the common purpose to provide redress where transactions at an undervalue have prejudiced creditors." Page 41 High Court Approved Judgment: *Re Fulmar Contracting Ltd (in liquidation)* 88. As well as being under a different statutory provision, it is also important to note that *Purkiss v Kennedy* was a case with different facts to the present one. The company involved was an umbrella company. The workers who received payments from it

were its employees. The company's particular vice was the promotion of a tax avoidance scheme which involved the employees receiving payment at the national minimum wage rate, but the bulk of the employees' emoluments were routed via an offshore employee benefit trust which provided loans to the employees. It was hoped that in this way PAYE and NICs would not become due on these sums. HMRC disagreed. It assessed the company for PAYE and NICs and the company entered creditors' voluntary liquidation without making any payment or seeking to appeal the assessments.

89. Mr Justice Rajah held that the arrangements which the company promoted and entered into were not for the proscribed purpose, and this was upheld on appeal. The claims therefore failed on their facts. 90. However, Mr Justice Rajah was satisfied that the arrangements were transactions at an undervalue. His analysis is set out in paragraphs 33 to 36 of the first instance judgment, the relevant parts of which are as follows: "[33] HMRC raised assessments on the Company on the basis that it was liable to (but did not): (i) deduct income tax and NIC from the monies which it received from the end user and paid to the Trust; and (ii) pay those monies to HMRC in accordance with regs.21 and 68 of the Income Tax (Pay As You Earn) Regulations 2003 and para.3(1) of Schedule 1 to the Social Security Contributions and Benefits Act 1992. The Applicant says that in light of the decision in *Rangers*, HMRC's assessments were clearly correct. Whilst in their original defence the Respondents Page 42 High Court Approved Judgment: *Re Fulmar Contracting Ltd (in liquidation)* denied this, they removed that line of defence from their amended defence which no longer maintains any such denial. No positive case is raised that the Company was not in fact liable to HMRC for PAYE and NIC, and for the purposes of this Application as it affects the Respondents, I accept that the Company was so liable.
- [34] This tax liability affects the question of whether the incoming value to the Company was worth less than the outgoing value. The main incoming value to the Company from the transaction was the "administration fee" of on average 13.4% and from which various bills needed to be paid (introducer's commission, 2% trust fees, PAYE and NIC on payroll element of Respondents' benefits). The consideration the Company provided was the operation of the scheme, thereby becoming liable for PAYE and NIC. The outgoing value was therefore significantly greater, than the incoming value in money or money's worth. This is why the Company is insolvent.
- [35] Mr Kamal ran a series of arguments against this conclusion which did not persuade me. ...
- [36] In the premises, I am satisfied that s.423(1)(c) is made out and each Transaction was at an undervalue: the Company was in a worse position as a result of entering into each Transaction than it would have been in had it not entered into that Transaction in the first place." 91. As requested by the Claimants in closing, I have considered the six arguments which I have omitted from the quotation above. None of them has any relevance to the facts of Page 43 High Court Approved Judgment: *Re Fulmar Contracting Ltd (in liquidation)* the present case.

92. Mr Justice Rajah's analysis of the transaction at an undervalue question was the subject of a respondent's notice in *Purkiss v Kennedy*, but the Court of Appeal held that it was unnecessary to consider it given that the appeal failed. The Court of Appeal made no comment on the analysis and it is not apparent from the reported decision what the line of argument was. 93. Another point of distinction between the present case and *Purkiss v Kennedy* is that in the latter case, the employees circuitously received gross payments without deductions for PAYE and NICs and did not account to HMRC for what they had received. Indeed, the company assured the employees when it promoted its tax avoidance scheme that there was no need for the employees to tell HMRC that they had entered into the arrangements at all. HMRC assessed the company for the tax which ought to have been deducted on the money routed via the employee benefit trust. This money had never been reported to HMRC at all and nobody had declared and paid any tax on it. With the failure of the s.423 IA 1986 claim, the defendant employees in *Purkiss v Kennedy* were able to keep their gross payments and HMRC was left substantially out of pocket. 94. That is very different from the present case. Although the Employment Contract has the curiously mis-stated national minimum wage Pay Rate, it does not seem that this reflected a division of the workers' emoluments in a tax avoidance scheme, and there is no reference in the evidence to any tax avoidance scheme being promoted by the Company. The Company was carrying out a simple fraud by not paying HMRC the PAYE or NICs which it ought to have deducted from its employees' earnings, and not accounting for the VAT it charged and received. In contrast to the defendants in *Purkiss v Kennedy*, the Respondents have declared the income they received from the Company Page 44 High Court Approved Judgment: *Re Fulmar Contracting Ltd (in liquidation)* to HMRC in their SA Returns (or, in *Dr Williams'* case, via the company under her control) and have paid or are liable to pay the tax which those returns showed was due and payable. This makes a difference, in my judgment, although the analysis is somewhat complicated and I set it out below. In simple terms, the effect of what the Respondents did with their SA Returns was to provide value to the Company by eliminating HMRC's entitlement to recover PAYE and NICs from the Company in relation to the gross payments made to the Respondents. This is not a defence based on change of position or a discretionary reduction in the remedy for a transaction at an undervalue (although, as I explain below, I consider that if I am wrong about the primary undervalue analysis it would be appropriate to exercise my discretion and make no order against the Respondents). It seems to me that the proper analysis of the effect of what the Respondents did in their SA Returns was to remove the undervalue element altogether. The Liquidators' case 95. The Liquidators' case, relying on *Purkiss v Kennedy*, is that gross payments made to a worker which led to the Company becoming liable to be assessed by HMRC for the PAYE and NICs deductions which ought to have been made are transactions at an undervalue. The undervalue element is the tax liability which falls on the Company as a result of making gross payments. Workers provide no consideration for the Company assuming this liability, a liability which flows from the gross payment made to the worker so as to form part of the overall transaction between the Company and the worker. 96. The Liquidators' case is that the amount of PAYE and NICs which should have been deducted from gross payments made

to the Respondents, and for which the Company Page 45 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) has since been assessed by HMRC, represents a transaction at an undervalue for which the Respondents provided no consideration.

97. Mr Colclough submitted that it was undisputed that the Company became indebted to HMRC as result of the payments. Mr Illes' evidence, to which he referred me in support of this submission, was that "the Company remains liable to HMRC for the PAYE/NIC that should have been deducted from both [Respondents]' earnings. That liability in turn gives rise to the overpayment claims advanced by the Joint Liquidators". As matters stand, therefore, HMRC is seeking to recover the whole of the PAYE and NICs payable on the gross payments made by the Company to the Respondents. This was tempered, to some extent, by the Liquidators' limited concession (set out above, and discussed further below) that any tax actually paid by the Respondents on their gross receipts from the Company should be deducted from the Respondents' liabilities under the TUV Claim. 98. There is an aspect of the TUV Claim which was not pleaded, which arises if the tax liability for the gross payments falls on Fresh Medical rather than on the Company (contrary to Mr Illes' view and HMRC's current determinations). Mr Colclough informed me that the Company had given an indemnity to Fresh Medical the effect of which would be to make the Company liable to Fresh Medical if Fresh Medical is found to be liable to pay HMRC the payroll taxes arising from the gross payments to the Respondents. In this way, there could be an undervalue element made up of a liability to Fresh Medical if HMRC's claim operates via this indirect route rather than directly with the Company. I discuss this unpleaded variation of the TUV Claim below. The Liquidators did not seek permission to amend their Points of Claim to introduce it. Their position was that matters started and finished with HMRC's determinations. Page 46 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) The Respondents' defence 99. The focus of the Respondents' defence at trial was that they had declared the payments they received from the Company to HMRC in their SA Returns (or, in Dr Williams' case, via her company's corporation tax returns) and been taxed on them. They denied, therefore, that there had been an overpayment to them. 100. The Respondents' essentially identical Points of Defence do not specify whether this defence is a substantive one (i.e. the declaration of the earnings in the SA Returns means there was no transaction at an undervalue) or one which was relevant to remedy (i.e. despite there being a transaction at an undervalue, the court should take what the Respondents had done with the money into account in fashioning an appropriate remedy). 101. It has been difficult for the Liquidators to pin down the mechanism by which the pleaded defence works. In closing, Mr Colclough took me to the second bullet point in paragraph 21 of the Respondents' joint witness statement dated 27 February 2026, which reads: "Transaction at an undervalue does not rescue the claim. Payment for services rendered it not a transaction at an undervalue merely because the payer later incurs tax liabilities through its own wrongdoing."

102. Mr Colclough noted that this was a different point from what was set out in the Points of Defence, which I accept; and I do not think this paragraph of the witness statement reflects the essence of the Respondents' defence. He also noted that the Points of Defence ran a defence based on the Company acting as agent for the employment agency, a defence which was also not advanced at trial. Page 47 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) 103. The burden of establishing that there has been a transaction at an undervalue lies on the Liquidators. In order to decide whether that burden has been discharged, it is necessary to examine how the transaction at an undervalue operates in a case like this. In turn, that involves looking at the tax background to the use of umbrella companies. In assessing whether there has been a transaction at an undervalue, I will consider whether the Respondents' broad defence that they had accounted for their earnings to HMRC in their SA Returns is an answer to the TUV Claims. Umbrella companies and IR35 104. The basis of HMRC's assessment of the Company must have been that the Company was the employer of the Respondents, whether in fact (e.g. because the Employment Contracts were valid, or the Respondents were otherwise actually the Company's employees) or in law, under the deeming provisions in the applicable tax legislation. 105. For the reasons set out above, I do not consider that the Employment Contracts were agreements entered into by the Company and the Respondents, and I have not been persuaded on the evidence presented at this trial that that the Respondents were otherwise actually employed by the Company within the common law definition of employment. In these circumstances, it seems to me that HMRC's assessment, which I have not seen, must depend on the Company being deemed to be the Respondents' employer for tax purposes.
106. As noted by James Morgan KC in the passage of his judgment in Scenic quoted above, umbrella companies were supposed to cure a problem created by tax changes designed to cut down on off-payroll working. The rules, sometimes known as "IR35", are meant to prevent a worker who would be treated as an employee of an end user from using an intermediary between themselves and the end user in order to pay less tax than if they Page 48 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) had simply been employed by the end user. The rules put the burden on the intermediary to prove that the worker would not be treated as an employee and, if the burden cannot be discharged, the intermediary is deemed to be the worker's employer and liable to account for payroll taxes. An employment agency, such as Fresh Medical in the present case, would carry this risk. One way to mitigate the risk is by the employment agency being satisfied that the worker is undertaking the work while employed by someone else. This is where umbrella companies come in. They act as employers of workers, allowing the employment agencies to rely on the exemption for workers employed by someone else, and thus no longer needing to discharge the burden of showing that the worker would not be treated as an employee when undertaking an assignment for the end user. 107. The underlying tax legislation in force during the period of the Company's operation overlapped with that which applied in the case of PPS [2024] EWHC 1861 (Ch). I will explain how the legislation worked by reference to the

analysis of the Deputy Judge in that case. I was instructed for HMRC in PPS, and remain instructed in relation to consequential matters, but there is nothing in my judgment in the present case which goes outside the scope of the reported decision in the PPS case which was cited to me by the parties. 108. PPS involved a winding up petition presented by HMRC against an umbrella company which had not made deductions from the emoluments of its workers. HMRC's primary case was that PPS was actually the employer of the workers, which was supported by contemporaneous documentary evidence obtained via a number of employment agencies. These included bank statements and payslips which appeared to show that deductions were being made, but HMRC had no record of having received the tax Page 49 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) supposedly deducted. The company's defence was that it was not in fact the employer of the workers; that although all of the workers had initially been taken on as employees, 98% of them almost immediately chose to be self-employed; and the documents which showed payroll deductions were fake documents created by the company to allow the employment agencies to pass their internal audits (a scheme in which the company claimed the agencies were knowing participants). The court determined "with no great satisfaction" that there was a bona fide dispute about whether the company was indeed the employer, even though "there appears to have been a fraud of some sort in which the [c]ompany is involved" (at [33]).

109. HMRC's alternative case in PPS was that the company was deemed to be the employer of the workers. PPS was a case about NICs rather than PAYE, but there are similar but not identical provisions in the tax legislation for NICs and PAYE. The NICs regime was described in paragraphs 39-45 of the judgment. HMRC relied on Regulation 5 and Schedule 3 of the Social Security (Categorisation of Earners) Regulations 1978, SI 1978/1689 (the "Regulations"), which contained a series of deeming provisions treating certain persons as the employers of workers. 110. The relevant passage of the judgment is as follows: "41. Reg 5(1) states: "For the purposes of section 4 of the Act (Class 1 contributions), in relation to any payment of earnings to or for the benefit of an employed earner in any employment described in any paragraph in column (A) of Schedule 3 to these regulations, the person specified in the corresponding paragraph in column (B) of that Schedule shall be treated as the secondary Class 1 contributor in relation to that employed earner." Page 50 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation)
42. Column (A) of Sched 5 provides, so far as relevant, as follows: "2. Employment (not being an employment described in paragraph 2 of column (B) of Schedule 1 to these regulations ...) where—
- (a) the worker personally provides services to the end client;
 - (b) there is a contract between the end client and a UK agency under or in consequence of which
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- (i) the services are provided, or (ii) the end client pays, or otherwise provides consideration for the services, and
 - (c) remuneration is receivable by the worker (from any person) in consequence of providing the services."
43. The words in parentheses refer to para 2 of Column (B) of Sched 1. This provides that a worker is not to be treated as an employee (inter alia): "c) where it is shown that the manner in which the worker provides the services is not subject to (or to the right of) supervision, direction or control by any person". This broadly replicates the common-law test for employment. The effect is to reverse the burden of proof, so that it is up to the Agency (or the Company, as the case may be) to prove that the Worker was not self-employed. However, as Mr Elliott observed, in relation to the Petition the burden of proof is on HMRC to show that there is no bona fide dispute in this regard. Page 51 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation)
44. Column (B) of Sched 5 provides, so far as relevant, as follows: "2. The UK agency who is a party to the contract with the end client; or ...
- (b) where, at any time, a person (other the end client) who is resident in Great Britain and who has a contractual relationship with the UK agency provides to the UK agency fraudulent documents in connection with the purported deduction or payment of contributions in connection with the employed person, the person who provides the fraudulent documents." (I shall refer to this as the " Fraud Exception ".)
45. The effect of these provisions is that a Worker who provides services to an NHS Trust via an Agency is deemed to be an employee of the Agency if all the conditions in para 2 of Columns (A) and (B) of Sched 5 are satisfied, unless the Fraud Exception applies."
111. Under these provisions, and restricting the analysis to the paragraphs of the Regulations which were the subject of the PPS decision, the employment agency would be deemed to be the employer of a worker if it could not prove that the worker was not subject to (or to the right of) supervision, direction or control of any person when undertaking their services. One way out of this was by showing that the worker was employed by someone else. Another way out was if the agency had been provided with fraudulent documents in connection with the purported deduction of payroll taxes, in which case the deemed employer would be the provider of the fraudulent documents. HMRC's case was that PPS fell into this category, having admittedly provided false documents such as bank statements and payslips to the agencies. The Judge rejected this argument on procedural and substantive grounds on the facts of PPS. Page 52 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) 112. In the present case, the Liquidators included sections 44-47 and 61K-61Z2 of the Income Tax (Earnings and Pensions) Act 2003 ("ITEPA") in the authorities bundle, which set out the income tax equivalent of the NICs provisions which were in issue in PPS. As with the Regulations, section 44(2) of ITEPA provides the same two escape routes for an agency which would otherwise be deemed to be the employer of a worker: "(2) But this section does

not apply if-

- (a) it is shown that the manner in which the worker provides the services is not subject to (or to the right of) supervision, direction or control by any person, or
 - (b) remuneration receivable by the worker in consequence of providing the services constitutes employment income of the worker apart from this Chapter.”
113. As Mr Colclough put it, the focus of an agency would be s. 44(2)(b) of ITEPA, as that is how they defend themselves from HMRC. That certainly seems to apply in the present case. Fresh Medical seems to have used the Company in order to avoid having to prove that workers were not subject to the supervision, direction or control of any person when providing their services, and thus avoid being deemed to be the employer of the workers.
114. When the Liquidators made enquiries with Fresh Medical about the exchange of WhatsApp messages in March 2022 in which Scott (of Fresh Medical) appeared to assist with Dr Williams’ conversion to self-employment while continuing to be paid via the Company, Fresh Medical responded as follows: Page 53 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) a) In response to the Liquidators’ question about Scott’s authority to authorise a change from PAYE to self-employed, Fresh Medical said “We have no record of any changes to her employment status at this time”. b) When asked about what confirmation Dr Williams, the Company, and the end user that her employment status was being changed to self- employed, Fresh Medical said “As stated above we have no record of any changes of employment at this time...” c) When asked what Fresh Medical’s procedure was for changing a person from PAYE to self-employed, Fresh Medical responded: “We have no record of any changes to Dr Williams’ employment status at this time. The export [i.e. the WhatsApp messages] does not constitute any full and final agreement, and the terminology is at best casual and tentative, not formal confirmations of a contractual variation. They are lacking full context and appear as transcribed or screenshot-based excerpts without metadata (e.g. exact timestamps beyond dates, device info, read receipts, or export certificates from WhatsApp). There are no contracts or signed agreements provided to us that support that any changes were made following these informal discussions.”
115. My assessment of this material, bearing in mind that its author was not called as a witness in this case, is that in responding to the Liquidators’ questions, Fresh Medical was anxious to avoid being treated as the deemed employer of Dr Williams by losing its ability to claim that she was employed by the Company. This reflects the heavy burden imposed by the tax legislation on employment agencies like Fresh Medical Page 54 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) which need either to show such alternative employment (which is relatively straightforward) or that a worker was not subject to supervision, direction or control by any person (which would be much more difficult, given that the agencies had no day- to-day involvement in the carrying out of the assignments by the worker). If the agencies cannot do either of these things, they will be treated as the worker’s employer for tax purposes.

116. What Fresh Medical did not say is that there was no possibility that doctors like Dr Williams (and, presumably, Dr Viner) could have attained sufficient seniority that they could carry out assignments for end users without being subject to supervision, direction or control by any person and could thus safely be treated as self-employed without Fresh Medical running the risk of being deemed to be their employer and responsible for PAYE and NICs on their earnings. Indeed, Fresh Medical's confirmation letter to Dr Viner from February 2020 demonstrates that at the time Fresh Medical had a policy of accepting that consultants and GPs could properly operate on a self-employed basis in accordance with HMRC guidance. It is telling that Fresh Medical did not tell the Liquidators that it was impossible for Dr Williams to be treated as self-employed in the way Scott had suggested she could; the objections seemed to be more focused on the absence of Fresh Medical's own records of a change in status. The sensitivity about the absence of records shows the importance of record keeping for agencies which wish to avoid being deemed to be the worker's employer.
117. Looking at the statutory regime as a whole, the Company might become liable for payroll taxes in the following ways: (a) As the actual employer of its workers, whether under the Employment Contracts or some other arrangement giving rise to a relationship of employer and Page 55 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) employee; or (b) As the provider of a fraudulent document in relation to the deduction of payroll taxes; or (c) Indirectly, under an indemnity typically offered by umbrella companies to the employment agencies with whom they contract, in which the Company would have agreed to reimburse the agency if the agency were deemed to be the employer of the worker under the applicable tax legislation. As noted above, the Liquidators explained that there was such an indemnity in the present case, albeit that they had not pleaded that this route gave rise to the undervalue.
118. Since the Company has been issued with determinations by HMRC directly, its liability must arise under options (a) or (b) above. Although the Company may come under a liability under an indemnity offered to agencies if the agencies find themselves deemed to be the employers of the Company's workers, there is no evidence that this has actually occurred in the present case. This is not the basis on which the Liquidators plead there has been a transaction at an undervalue and, as was noted during the parties' closing arguments, this point would need to be introduced by way of an amendment to the Liquidators' Points of Claim. In any event, though, it seems to me that if this contingent liability had been pleaded in the alternative or introduced by amendment, the answer to it would have been the same as in relation to the pleaded direct obligations of the Company to HMRC, to which I now turn. In both cases, the issue is whether it is possible for the Liquidators to recover via a TUV claim money which the Respondents have declared to HMRC, whether the undervalue element arises directly from an assessment by HMRC against the Company or indirectly via the agencies' right of indemnity following an HMRC assessment against the agencies. Page 56 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) Analysis of the TUV Claim
119. The analysis must start with an assessment of what the relevant transaction was, and whether it was at an undervalue. On the Liquidators' case, the transaction was the payment of a gross sum to the Respondents in circumstances where payroll taxes ought to have been deducted; the undervalue arose

from the Company's liability to HMRC to pay the payroll taxes, which arose from the moment of each gross payment to the Respondents. The Company assumed these tax obligations for no consideration and the Respondents received an additional sum equivalent to the amount of this tax obligation for which they provided no consideration to the Company. 120. The "transaction" was a bilateral arrangement between the Company and each Respondent. The mismatch in the consideration requires the court to consider the contingent or prospective claim of HMRC against the Company (or, in a different factual scenario, an agency claiming under an indemnity). It is permissible for the court to have regard to consideration provided by (or, in this case, taken away by) a third party rather than the person with whom the company has entered into the transaction. This is what occurred in *Phillips v Brewin Dolphin* [2001] 1 WLR 143, where Lord Scott held (at [20]): "But if a company agrees to sell an asset to A on terms that B agrees to enter into some collateral agreement with the company, the consideration for the asset will, in my opinion, be the combination of the consideration, if any, expressed in the agreement with A and the value of the agreement with B." The reference to the agreement to sell an asset on terms that there be a collateral agreement can be readily extended to inevitable collateral consequences arising from the underlying bilateral transaction, including tax consequences. Page 57 High Court Approved Judgment: *Re Fulmar Contracting Ltd (in liquidation)* 121. It seems to me, therefore, that the Company's liability to HMRC (or to an agency) when it made a gross payment to a worker should properly form part of the analysis of whether there was a transaction at an undervalue, and I accept that the Liquidators' TUV Claim fits within the statutory framework in this way.

122. However, this analysis falls apart if the Respondents treat the money they have received properly and declare it to HMRC (in their SA Returns, or via Dr Williams' company's corporation tax return). In this situation, the Respondents do provide consideration to the Company and/or eliminate the undervalue in the consideration which would arise when HMRC or an agency's indemnity claim is taken into account. This consequence arises from the gross payments being brought into tax, and HMRC accepting the tax treatment shown in the Respondents' returns. By declaring the gross payments to HMRC, the Respondents eliminated HMRC's entitlement to tax these sums again on the basis that the Company or an agency ought to have deducted payroll taxes from them. HMRC cannot maintain an inconsistent position and seek double recovery and a TUV Claim should not lie to extract such a recovery from workers in the position of the Respondents. 123. It seems to me that it would be inconsistent with the policy lying behind section 238 IA 1986 to characterise such payments to the worker as a transaction at an undervalue. The policy is to prevent gratuitous alienations of property which prevent a *pari passu* distribution of the company's assets in a subsequent insolvency process. If the worker has declared the earnings and assessed themselves for the appropriate amount of tax, the tax on those earnings will not have been alienated from the company's estate at the expense of its creditors (particularly, of course, HMRC). Page 58 High Court Approved Judgment: *Re Fulmar Contracting Ltd (in liquidation)*

124. When determining what the scope of the transaction for the purpose of a claim under s. 238 IA 1986, it is important to take a “common sense view” (as it was put by Lord Justice Miles in the s. 423 IA 1986 case of *Credit Suisse v Softbank* [2025] EWHC 2631 (Ch) at [599]). The same common sense approach should apply to assessing whether a particular transaction is at an undervalue. If gross payments ought to have been taxed by a company on one basis, but are accounted for by the recipient on another basis which HMRC accepts, then on a common sense view HMRC cannot go behind what it has accepted and maintain that the gross payments remain taxable against the original paying company, particularly not when the liquidators of that original payer are seeking to ask the recipient who accounted to HMRC to account again via a claim under section 238 IA 1986. 125. The Liquidators recognised, in their limited concession, that seeking to recover the full PAYE and NICs liabilities from the Respondents would be inappropriate. They characterised this as a tempering of the remedy for the transaction at an undervalue, giving credit for tax actually paid by the Respondents. 126. The Liquidators stressed that this concession did not affect whether there was a transaction at an undervalue in the first place, and it did not reflect the acceptance of a change of position defence. 127. I disagree that the Liquidators’ concession is relevant only to remedy. It seems to me to go to the heart of whether there was a transaction at an undervalue at all. It does not seem to me that there can be any undervalue if HMRC, as the third party to whom the Company incurred a liability as a necessary consequence of the transaction, has accepted a return from the worker in which the same payment is characterised in a completely different way, and the appropriate tax is assessed on that characterisation. Page 59 High Court Approved Judgment: *Re Fulmar Contracting Ltd* (in liquidation)
128. As to the change of position defence, the Liquidators contended that there is no change of position defence in relation to claims under section 238 IA 1986, relying on the observations of Mr Justice Trower in the bankruptcy case of *Re Fowlds, Bucknall v Wilson* [2021] EWHC 2149 (Ch) where he held (at [93]-[94]): “93. Whatever the case may be under in a s.423 claim, it seems to me that, where a court is concerned with the appropriate relief to be granted in a preference or transaction at an undervalue claim, it will rarely be possible to give weight to a change of position by the preferee or the transferee, while at the same time honouring the policy which is reflected in the statute, the normal operation of the statutory insolvency scheme and the restorative nature of the relief (if any) it is required to grant. There will be the very occasional case (and *Claridge* is probably one) where that proves to be possible, but in my view such cases will be rare. For the reasons I have sought to explain, the position is not so clear cut in a section 423 claim, anyway where the transferor is not the subject of formal insolvency proceedings.
94. It follows that in my judgment, the right approach is as follows:
- i) Change of position does not operate as a defence under ss.339(2), 340(2) and 342. ii) There will be exceptional circumstances in which the facts that would establish a change of position defence (if it had been available) will weigh in the balance when the court is

determining how to exercise its discretion as to the order it thinks fits for restoring the position to what it would have been if the transaction had not been entered into or the preference had not been given. Page 60 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) iii) In any event, change of position is not the strong factor which the judge considered it to be. To characterise it in that way is to give insufficient weight to the underlying policy considerations illustrated by Conway and the difficulty of balancing the interests of a class against the interests of an innocent transferee.” 129. I need not go further into the underlying academic controversy about whether change of position can or should operate as a defence to section 238 IA 1986 (discussed at length in the Fowlds judgment). It does not seem to me that the Liquidators’ concession, or the Respondents’ defence, is based on the doctrine of change of position. It is not the detriment to the Respondents which leads to the concession having to be made; it is that the Company and its creditors (particularly, of course, HMRC) are in a better position as a result of the Respondents’ accounting for the payments they received and would obtain double recovery if the Respondents were required to pay a second time. In this way, the Liquidators accept that the payment of tax by the Respondents is relevant to the exercise of the court’s discretion when fashioning an appropriate remedy for what they say are transactions at an undervalue. I agree. Indeed, I cannot see how it could possibly be a just result for the Respondents not to be given this credit. As noted above, however, I think the concession was too narrowly drawn and also, properly understood, it seems to me to take away the undervalue element of the Liquidators’ claim altogether. 130. In Mr Illes’ fourth witness statement, and in Mr Colclough’s skeleton argument, an attempt was made to reconcile the payments made by the Company to each Respondent, the PAYE and NICs which ought to have been deducted from those payments (on the one hand) against the income declared to HMRC in the Respondents’ SA Returns and the tax shown as being due on those returns (on the other hand). By way of example, it was contended that Dr Williams received payments from the Company between Page 61 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) September 2021 and April 2022, being 55% of the tax year. Dr Williams was offered credit by the Liquidators for 55% of the tax shown as due in her SA Return for that year. A similar calculation was ventured for the other tax years in which Dr Williams received sums from the Company, and for Dr Viner. The calculations do not take account of Dr Williams’ receipt of payments via the company under her control, or the deductions made by the Company prior to March 2022. The percentages were also liable to work injustice. However, I recognise that the Liquidators have been doing their best to give the Respondents proper credit in circumstances where the Respondents have provided limited, late information about how they have accounted to HMRC for the payments they received. If I had been persuaded that the Liquidators were right to confine their concession in the way they did, such that there was likely to be a transaction at an undervalue of some sort and prima facie an entitlement to relief, I would have considered whether a consequential hearing on remedy was required before adopting the broad-brush approach recommended by the Liquidators. 131. Instead, as described above, I am satisfied as a matter of fact that the Respondents have accounted to HMRC in their SA Returns (and, in Dr Williams’ case, the

corporation tax returns of her company) for the gross payments they received from the Company. They have assessed themselves for the appropriate amount of tax on those gross payments as part of the self-assessment process for the relevant year. That means there was no transaction at an undervalue, and the TUV Claims fail. Remedy for the TUV Claim 132. If I am wrong about the characterisation of the TUV Claim and, for some reason, the payments to the Respondents were transactions at an undervalue, the Liquidators will have established the components of the statutory cause of action and I would need to Page 62 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) consider the appropriate remedy. Although I do not need to consider it, I set out below the conclusion I would have reached had the Liquidators succeeded on the TUV Claim.

133. As noted above, in fashioning a remedy under section 238(3) IA 1986 the court has a broad discretion to exercise so as to restore the position to what it would have been if the company had not entered into that transaction. In TAQA CA, which was the only case touching on section 238(3) IA 1986 which was included in the parties' authorities bundle, Lady Justice Falk offered a brief summary of the principles on which the court proceeds (at [92]-[94]). The issue she had to consider was whether a pension write-off, which she had held was not part of the transaction or the consideration for it, could nevertheless be taken into account when fashioning a remedy: "92. However, it does not follow that the pension write-off is irrelevant to the application of s. 238. Under s.238(3) the court has a broad discretion to make "such order as it thinks fit for restoring the position to what it would have been if the company had not entered into [the] transaction".
93. Mr Venkatesan submitted that the same principles should apply to restoration under s.238(3) as apply in determining the consideration under s.238(4), so that the pension write-off was not relevant. I disagree.
94. Section 238(3) is in the nature of a "but for" test. The court must seek to restore the position to what it would have been but for the transaction at an undervalue. It is well-established that this provision confers a discretion. In exercising its discretion, the court will have regard to a wide variety of considerations with a view to achieving justice between the parties (see for example Reid v Ramlort
- [2004] EWCA Civ 800, [2005] 1 BCLC 331 at [125]-[126] in relation to the Page 63 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) bankruptcy equivalent of s.238). Brewin Dolphin HL provides an example of this in requiring account to be taken of the loan to meet the first rental payment, although it was not suggested that the loan was itself part of the consideration." 134. In those paragraphs of Reid v Ramlort, Lord Justice Jonathan Parker said this, about the equivalent bankruptcy provision: "125. I respectfully agree with the observation of Judge Havelock-Allan QC in Walker v. WA Personnel Ltd (in the passage from his judgment quoted in paragraph 96 above) to the effect that, as a matter of general approach, in deciding what is the appropriate remedy where there has been a transaction at an undervalue the court does not start with a presumption in favour of monetary compensation as opposed to setting the transaction aside and revesting the

asset transferred. Indeed, in my judgment, in considering what is the appropriate remedy on the facts of any particular case the court should not start from any a priori position. Each case will turn on its particular facts, and the task of the court in every case is to fashion the most appropriate remedy with a view to restoring, so far as it is practicable and just to do so, the position as it 'would have been if [the debtor] had not entered into the transaction'. In some cases that remedy may take the form of reversing the transaction; in others it may not. In some cases it may take the form of an order for monetary compensation; in others it may not.

126. Moreover, in deciding how to exercise the statutory discretion as to remedy the court must inevitably have regard to subsequent events, and to the facts as they are at the date of the order. The court cannot turn the clock back or rewrite history. In the instant case, therefore, in deciding what is the appropriate remedy the court must have regard to the fact that since the making of the Declaration of Trust Mr Page 64 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) Thoars has unfortunately died, with the consequence that the Policy is now represented by the sum assured, plus accrued interest. But it does not follow that by reason of Mr Thoars' death and the consequent conversion of the Policy into money the court cannot restore the parties to the position they would have been in as at the date of the order had the Declaration of Trust not been made. Had the Declaration of Trust not been made, Mr Thoars' insolvent estate (in effect, his creditors) would now have the benefit of the sum on deposit, and Ramlort would not have paid out a total of £3,000 (I will return below to the question of interest on that sum). There are, therefore, no obstacles to a straightforward reversal of the transaction. I accordingly reject Mr Moss's submission that, given Mr Thoars' death, it is now too late to set aside the Declaration of Trust. The question to be addressed, therefore, is whether (as Mr Reid claims) the Declaration of Trust should be set aside; or whether (as Ramlort contends) the most appropriate remedy is to allow Ramlort to retain the benefit of the Policy but to order it to pay compensation.” 135. In my judgment, if I had been required to determine the appropriate remedy for the TUV Claims in the present case, I would have ordered no relief for the following

reasons:

- (a) If the putative transactions at an undervalue (i.e. gross payments in breach of an obligation to deduct PAYE and NICs) had not happened, the Company would have made net payments to the Respondents and accounted to HMRC for the PAYE and NICs arising. The Respondents would have received only the net payments, but would not have been required to account for these payments to HMRC. Page 65 High Court Approved Judgment: Re Fulmar Contracting Ltd (in liquidation) (b) Instead, what has happened is the Respondents have accounted to HMRC for the gross payments, and made themselves (or, in Dr Williams' case, her company) liable for the tax due on the gross payments. (c) It seems to me that what has happened has put HMRC in substantially the same position as it would have been had the transactions at an undervalue not occurred. The gross payments have been accounted for

and have been taxed. This is very different from, say, *Purkiss v Kennedy*, where the purpose of the scheme was to avoid tax being paid and nobody had accounted for it to HMRC. (d) Although the amount of tax paid by the Respondents does not correspond exactly with the amount of tax which the Company would have been liable to pay had the transactions at an undervalue not occurred, there is no element of the gross payments which has not been brought into tax. This, it seems to me, is the critical aspect of the transactions at an undervalue which would have needed to be reversed by any order; and it is not engaged on the facts of this case. (e) For the reasons raised elsewhere in this judgment, I am not persuaded that the Liquidators' limited concession that the Respondents can only deduct the tax they have paid from the tax the Company should have paid represents a just outcome. The limited concession would require the same payments to be brought into tax in two entirely different ways, with the Respondents being made liable for the shortfall even though HMRC has taken no issue with the way the Respondents have accounted for the payments they received. (f) Because HMRC has already accepted the Respondents' accounting for the gross payments, it does not seem to me that HMRC can maintain its proof in the Page 66 High Court Approved Judgment: *Re Fulmar Contracting Ltd (in liquidation)* Company's liquidation in relation to liabilities arising from the payments made to the Respondents. It follows that the detriment suffered by HMRC (and thus by the general body of the Company's creditors) is abated in relation to the payments to the Respondents. This absence of detriment is a reason why there was no transaction at an undervalue at all; but in considering the appropriate remedy it must be assumed that I am wrong about that and the absence of detriment should be ignored in assessing whether there was a transaction at an undervalue. In fashioning the appropriate remedy, it is nevertheless permissible to have regard to wider matters which do not form part of the transaction or the consideration for it (as noted in the House of Lords decision in *Brewin Dolphin*, cited in *TAQA CA* at [94] and quoted above). It seems to me that the appropriate remedy must take into account that HMRC has accepted the Respondents' accounting for the payments they received, and cannot be said to have suffered a detriment. (g) Furthermore, the Company was operating a fraud in which it did not pay HMRC the taxes which it was supposed to, whether PAYE, NICs or VAT. If the Company had deducted payroll taxes from the Respondents' gross payments, there would have been nothing for the Respondents to account to HMRC for (and no payments by them to HMRC) and, in all likelihood, there would have been no payment to HMRC by the Company either. The Company's largest creditor, HMRC, would have received less than it actually did. Instead of honest doctors accounting for the payments they had received from the Company, HMRC would only have been able to claim in the liquidation of a fraudulent umbrella company. This would have been a worse outcome for the Company's estate. I do not give this factor very great weight, because it involves Page 67 High Court Approved Judgment: *Re Fulmar Contracting Ltd (in liquidation)* assumptions about how the Company's fraud would have played out; the nature of fraud is that such assumptions are speculative. But the position of honest taxpayers has been improved by what happened in this case. That improvement is reflected in an improvement in the position of HMRC as a creditor of the Company, and in the outcome for the Company's creditors in the *pari passu*

distribution which may yet take place. 136. For those reasons, I would have granted no relief against either Respondent had I otherwise found the TUV Claim to be made out.

Disposition

137. I dismiss the claims and the applications against each of the Respondents. 138. The parties have indicated that they will seek to agree a form of order consequential on this judgment. As requested by the solicitors for the Claimants, I will direct that the period for any party to seek permission to appeal shall run from the date on which that consequential order is made. To the extent necessary, given that I am not at this stage invited to make an order, the hearing at which my decision has been made shall stand adjourned until the making of that consequential order, so that permission to appeal may be sought from me until that point.

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