

JERSEY / JUDGMENT

Representation of Cochrane

Source: jerseylaw.je · Research copy typeset by Esheria. Not court-issued or certified.

Désastre - Viscount's power to refuse payment of legal fees for a bankrupt [2026]JRC036 Royal Court (Samedi) 29 January 2026 Before : M. J. Thompson, Esq., Commissioner, and Jurats Cornish and Berry. Between Dr Gail Cochrane Representor And The Viscount of the Royal Court of Jersey Respondent IN THE MATTER OF THE DÉSASTRE OF DR GAIL COCHRANE Advocate J. D. Garrood for the Representor. Advocate O. J. Passmore for the Respondent.

judgment

the COMMISSIONER:

Introduction

1. This judgment contains the Court's decision in respect of an application by the Representor seeking to quash the decision of the Respondent ("the Viscount") to refuse to provide the Representor with funds to assist with certain legal proceedings before the English High Court.

Background

2. This judgment is the latest in a series of judgments involving the Representor. The current round of judgments started with an application by the Representor to recall a declaration of désastre of the Representor's property and the property of Orb a.r.l ("Orb") made on 24 November 2016. This was summarised at paragraph 2 of Commissioner Thompson's judgment (sitting alone) in this matter dated 23 February 2024, reported at In the matter of the Desastre of Dr Gail Cochrane

[2024] JRC 043, which states as follows: "2. The declarations of désastre against the Representor and Orb were made on 24 November 2016. The Court set out its reasons for doing so in a judgment reported at Harbour v Orb [2017] JRC 007, which in turn referred to an earlier judgment, Representation of Harbour II LP [2016] JRC 171, for the background. It is not necessary for the purposes of this judgment to set out the background leading to the désastre orders being made, save to note that the background is complex. This is confirmed by subsequent judgments of the Royal Court dealing with applications for the Royal Court to issue letters of request Rep of Viscount re Cochrane and Orb ARL [2017] JRC 025 and to authorise the Viscount entering into settlement arrangements Viscount v Smith re: Cochrane and ORB A.R.L

- [2020] JRC 043. In the latter case, the Court noted the background of this matter as being "overwhelmingly complex" (see paragraph 2)." 3. The main purpose of the judgment dated 23 February 2024 was to address whether the Viscount should be convened as a respondent and the role the Viscount should play in relation to the application by the Representor for the declarations of *désastre* against her and Orb to be recalled. 4. The reasons for convening the Viscount were set out at paragraphs 9 to 13. At paragraph 15, the Commissioner also joined Harbour Fund II LP ("Harbour") as the First Respondent for the reasons set out in that paragraph. 5. The same judgment also observed at paragraph 14 that the role of the Viscount was not without limits. This led to the following conclusions at paragraphs 16 and 17 in relation to the Viscount's role: "16. The Viscount's role is therefore limited firstly to providing information on the balance sheet test to the Court and to the other parties which the Viscount has received as part of the *désastre* process and any conclusions the Viscount has already reached about the information received prior to the application for a recall being made.
17. Secondly, if the balance sheet exercise results in a positive outcome, the Court must also still decide how to exercise its discretion as to whether or not to recall the *désastre*. The Viscount should not be fettered in making submissions on the exercise of such a discretion again while taking care not to fight battles on behalf of creditors who are able to protect their own position." 6. The matter came back to Court on 4 February 2025 when the Commissioner (again sitting alone) granted a stay of the application to recall the Representor's *désastre* and that of Orb. The application for a stay was made by Harbour. The stay ordered was until the expiry of twenty-eight days after final resolution of an application by Harbour to the English High Court for certain declarations as to the status of the English High Court's judgment in *Serious Fraud Office and Others v Litigation Capital Limited and Others* [2021] EWHC 1272 (Comm) ("the English Judgment"). 7. The February 2025 Judgment (Representation of Cochrane [2025] JRC 035) explained the background at paragraphs 3 to 5 as follows: "3. The original applications for declarations of *désastre* were made on the application of Harbour in reliance on (1), a funding agreement governed by English law dated 10 July 2013 made between Harbour and various entities including Orb, ("the Harbour Funding Agreement") and (2), a contract of guarantee made between Harbour and the Representor whereby she guaranteed the obligations of Orb under the Harbour Funding Agreement ("the Harbour Guarantee").
4. As part of the application to recall her *désastre* and that of Orb, the Representor argued that the Harbour Funding Agreement was unenforceable by operation of Section 58AA of the UK Courts and Legal Services Act 1990 and the Damages Based Regulations (SI 2013/609). In particular, the Representor relied on the decision of *R (On the Application of PACCAR Inc v Competition Appeal Tribunal)* [2023] 1 WLR 2594, where the UK Supreme Court determined that a litigation funding agreement was unlawful and unenforceable on the basis that it was a damages based agreement which failed to comply with Section 58AA. It is the Representor's case that the Harbour Funding Agreement was caught by what was referred to in the documentation before me as the "PACCAR" judgment.

5. More detailed background leading to the Royal Court granting the declarations of *désastre* against the Representor and Orb was set out in the Royal Court’s judgment reported at *Harbour v Orb* [2017] JRC 007, which in turn referred to an earlier judgment, *Representation of Harbour II LP* [2016] JRC
171. It is not necessary for the purposes of this judgment to set out the background leading to the *désastre* orders being made, save to note that the background is complex. This complexity has been confirmed by subsequent judgments of the Royal Court dealing with applications for the Royal Court to issue letters of requests – see *Representation of Viscount re Cochrane and Orb ARL* [2017] JRC 25, and an application by the Viscount seeking authority to enter into settlement arrangements – see *Viscount v Smith v Cochrane and Orb ARL* [2020] JRC 043. In this latter case, the Court described the background of this matter as being “overwhelmingly complex.” 8. The same judgment also referred to a directions hearing that had taken place in June 2024. 9. The stay was granted for the reasons set out at paragraphs 87 to 95 which read as follows: “87. Firstly, the PACCAR decision is an English law judgment. Whether it applies to the Harbour Funding Agreement is therefore a question of English Law and not one that is straightforward or is easy to follow. In addition, as counsel accepted, the PACCAR judgment did not consider the application of the blue pencil test if the Harbour Funding Agreement otherwise fell foul of the PACCAR decision. I therefore concluded that the English Court was best placed to determine whether the Harbour Funding Agreement was caught by PACCAR and, if it was, whether it could be saved as contended for by Harbour. The alternative of determining these questions before the Royal Court would have required expert evidence which would add a layer of complexity and cost. While I accepted that the blue pencil test is one known to this Court, the context of applying it in relation to the PACCAR decision adds a further layer of complexity which the English Court will be much better placed to deal with than this Court.
88. Secondly, there are procedural arguments that Harbour wishes to raise about whether or not the issues now being raised by the Representor should or could have been raised in the proceedings leading to the English Judgment. Given the complexity of the English Judgment and the proceedings leading to it, the English Court, in particular the trial judge, Foxton J, who I understand is to preside over Harbour's application, is far better placed to conclude whether the arguments now raised should have been raised previously.
89. The English Court is also far better placed to determine whether the arguments the Representor wishes to raise are tactical given the observations previously made about the Representor referred to at paragraph 12 above.
90. The procedural issues raised will also require expert evidence given the complexity of this dispute, even though this Court may have applied similar principles.
91. The decision of the English Court will take less Court time to determine than an equivalent application in Jersey because of the need for expert evidence which would lead to a longer hearing in this jurisdiction.

92. It also appears that Harbour's application can be heard in relatively short order in England because it is not a trial but a procedural application. While I understand that the length of time the Representor has been subject to the *désastre* regime is of concern to her, hearing Harbour's application in England will not delay matters unnecessarily or unfairly and it may be heard more quickly which is to the Representor's benefit. Harbour's application has to be determined in either England or Jersey before the Representor's recall application can progress. In that regard, the concession of Advocate Garrood that if Harbour were successful (which was rightly made), this would bring an end to the recall application, means that the issue for me was where that argument should be determined. The prejudice of the *désastre* remaining in place on the evidence before me was not altered by where the argument should take place.
93. In so far as questions of limitation arise, given that the Harbour Funding Agreement is an English law agreement, the English Court is also best placed to determine whether the claims it wishes to bring are out of time as a matter of English law. It would be unattractive for this Court by contrast to become involved in difficult questions of whether this Court should apply English limitation rules or its own limitation rules (which are different to England) which adds a layer of complexity to what is already a complex case.
94. The matters raised by the Representor are also going to be determined in England in any event. In my judgment, Mr Thomas is essentially raising the same arguments as those raised by the Representor. The fact that the Representor is not represented, in my judgment, does not prevent a stay being granted because the same arguments will be advanced by Mr Thomas. The Representor also has standing to appear before the English Court as Harbour conceded. She has also not filed any evidence indicating that she does not have access to any form of representation before the English Court.
95. Finally, it is a waste of court time and resources for two Courts to be determining the same issue especially when one is far more suited to do so. In addition, such a situation gives rise to the risk of potentially inconsistent decisions.”
10. Commissioner Thompson also stated the following at paragraph 97: “97. In reaching my conclusion, it was not relevant to the exercise of discretion that determination by the English Court in favour of Harbour would bring an end to the recall application because determination by the Royal Court of Harbour's standing, if made in its favour, would lead to the same result. It is therefore the much greater familiarity of the English Court with what happened and what led to the English Judgment and the issues of English law leading to the PACCAR judgment which led me to conclude that the threshold was met to grant a stay.” The English proceedings brought by Harbour and the request for funding
11. The current status of the proceedings brought by Harbour is that they are due to be heard in February 2026. At that hearing, Harbour has in summary raised two arguments: (i) That the Harbour Funding agreement (see paragraph 3 of the judgment dated 4 February

- 2025) was an enforceable agreement; and (ii) There were various procedural defences available to Harbour which prevented the Representor from challenging the Harbour Funding agreement.
12. In addition, there is a preliminary issue which was listed for hearing on 17 September 2025 concerning whether Mr Thomas (whom the Commissioner referred to in the February 2025 judgment) was prevented from taking part in the substantive hearing. The Court asked to be kept informed of the outcome of this application.
 13. In relation to the current proceedings in England, the Viscount's position is one of neutrality and that he did not object to the Representor making representations based on her own personal position, albeit the Viscount reserved the right to make representations if any matters raised by the Representor or any other party were factually incorrect.
 14. The Representor's position was that as litigant in person in relation to the English proceedings, she was not able to fully understand the technical and legal issues arising and would not be able to deal with the substantive defence or the technical defence at the hearing.
 15. The request for a variation was sent by a letter dated 27 February 2025 from JTC Law for the Representor in what was described as a claim letter.
 16. This letter firstly referred to an earlier email dated 28 May 2024 where the Representor had requested that the Viscount make funds available for the Representor to obtain advice from leading counsel and / or a forensic accountant.
 17. Paragraph 18 of the letter contained a request that the Viscount make sufficient and reasonable sums available to the Representor from the funds held by the Viscount as administrator of the Representor's bankrupt estate to allow her to be represented in the proceedings in England. At paragraph 19 the letter referred to a fee estimate from English solicitors, Eldwick Law, in the sum of £32,500. This was expressed to be a payment on account of reasonable legal expenses.
 18. The Viscount replied through Ogier by a letter dated 14 March 2025. The letter contained the following material paragraphs: "In the Viscount's first affidavit sworn on 8 August 2024 in connection with the ongoing recall proceedings, the Viscount attests that as at the date of that affidavit, assets with a total value of £159,695.28 had been realised in the course of administration of the désastre of your client's property. As at March 2025, reflecting further earnings from the Island Medical Centre and additional accrued interest, the assets realised amount to £159,866.02. This is as against claims filed in the désastre of your client's property totalling £319,465,251.50 Whilst the Viscount has identified other assets that may be capable of realisation during the currency of the désastre of your client's property (assuming that your client's recall application is unsuccessful), the Request seeks the release to your client of 20% of assets realised to date. As has previously been made clear to your client, it is not the Viscount's responsibility to provide funding to your client for significant legal fees and

there is no precedent for the Viscount to do so. Whilst Article 23 of the Bankruptcy (Désastre) (Jersey) Law 1990 (the Law) provides that "the Viscount may from time to time make such allowance of money as the Viscount thinks fit out of the property of the debtor for the support of the debtor and his or her dependants", the Viscount does not understand that provision to be intended to provide for significant legal fees of a bankrupt and generally where a bankrupt has wished to raise legal proceedings they have acted as a litigant in person. Whilst the Viscount has previously acceded to a request for the release of funds from assets realised in the désastre of your client's property for your client to obtain legal advice, this was for a modest sum (£3,675 in February 2019) in connection with her unsuccessful appeal of the declaration en désastre out of time. This does not set a precedent that subsequent request(s) will or may be acceded to, particularly where the request is for legal fees of such a significant sum and such a significant proportion of the value of the assets realised to date. The decision to decline the Request is reasonable on this basis alone. However, it is also correct that the Viscount is concerned that your client has or had access to other funds. This is supported by judicial findings and your client's own correspondence. By way of example, your client has: a. had the benefit of third party funding from Litigation Capital Limited, a company found to be beneficially owned by Anthony Smith, the brother of your client's ex-husband, Dr Smith. Prior findings have been made in litigation before the High Court of England & Wales about Anthony Smith funding the costs of Dr Smith's associates in other proceedings; and b. previously asserted in correspondence that "[she has] chosen to maintain [C'an Agata in Mallorca] (which is exposed to adverse weather) at very considerable cost in excess of the contracted rents. Your client's position then changed after questions were raised as to how such maintenance costs were being funded, when she indicated that they were "paid by the Orb Claimant's local agents with funds supplied to them from my extended family and friends". Whether this funding was in fact provided by your client or her extended family and friends, it indicates other source(s) of available funding. In all the circumstances, the Viscount does not consider that its decision not to accede to the Request is unreasonable."

19. It was this letter that contained the Viscount's decision and therefore it was this decision that JTC Law sought to challenge.
20. Before issuing a Representation on behalf of the Representor, JTC Law replied to Ogier's letter of 14 March 2025 by a letter dated 29 March 2025. This letter clarified that the Representor would act as a litigant in person and was therefore seeking legal advice to assist in preparation for that hearing. The same letter informed Ogier for the Viscount that the Representor had obtained a fee estimate in the sum of £19,500 for an opinion from English counsel.
21. The letter then made certain submissions about the Representor's application. We set out later in this judgment the submissions made on her behalf. In relation to the question of alternative funding referred to in the Viscount's letter of 14 March, JTC Law replied as follows: "11. Your assertions in respect of alternative funding are entirely irrelevant to the

position now faced by our client. You have persistently asserted that our client has access to other funds, but neither you nor your client has provided any evidence to support those assertions.

12. You do not explain why or how: (i) references to funding of actions by Mr Thomas or Mr Taylor in *SMA Investment Holdings Ltd v. Harbour Fund N LP* [2023] EWHC 428 relate to our client or her request for funding in 2025; or (ii) references in correspondence in 2023 to maintenance costs relate to our client or her request for funding in 2025.
13. It seems that you are relying on speculation and misplaced inferences from historical documents. This is not an appropriate reason to deny our client access to funds in 2025 to assist in her application to recall the *désastre* and the Viscount's appointment."
22. The letter then made further submissions as to the legal basis for the application.
23. On 10 June 2025, the Representor issued a Representation seeking to quash the decision contained in the letter of 14 March 2025 and substitute it with a direction that the Viscount make available the sum of £19,500 to obtain counsel's opinion. The Representation was supported by the first affidavit of the Representor sworn on the same date.
24. Following a directions hearing, the Viscount filed an affidavit dated 1 August 2025. The Representor responded to this affidavit by filing a second affidavit dated 29 August 2025.
25. During the course of the hearing, we were also referred to what was described as the third affidavit of the Representor sworn on 11 March 2024 and the Viscount's affidavit dated 8 August 2024. These were filed in the context of the application by the Representor to recall the declarations of *désastre* made against her and Orb, rather than directly in relation to the proceedings commenced by the Representation filed in June 2025, although there is clearly an overlap between the two sets of proceedings. Assets held by the Viscount and the Viscount's affidavit
26. In his affidavit sworn on 1 August 2025, having set out the background to the proceedings which was of assistance to the Court, in particular the Jurats who had not previously been involved in this matter, the Viscount, at paragraphs 2.22 to 2.25 firstly explained the challenges that the successful parties to the English Judgment (explained at paragraph 2.19) had faced to enforce the findings of the English High Court.
27. At paragraph 2.23, the Viscount noted the following: "2.23 However, as noted by Mr Justice Foxton in *SMA Investment Holdings Ltd v Harbour Fund II LP & Ors* [2023] EWHC 428 (Comm) [MH1, p637-669], efforts to realise assets have to date been hampered by steps taken and/or challenges brought by Dr Smith or by parties connected to Dr Smith, including the Representor. In particular, at paragraph [103] [MH1, p669] of his judgment Mr Justice Foxton noted that: " ... there is a real risk in this case that individuals who are bound by, but unhappy with, the outcome of the Directed Trial have been and are continuing to instigate proceedings and applications in these proceedings and elsewhere to challenge the outcome of the Directed Trial or by way of collateral attack on its conclusions. The scale of these

activities and the legal costs and court time they are consuming, mean that considerable vigilance will be required on the court's part to ensure that its judgments are respected and its processes are not abused."

28. Paragraph 2.24 states as follows: "2.24 In relation to the Representor, these challenges have included:
- (a) An application brought by the Representor dated 10 January 2024 by which she sought an order correcting an alleged error in the Consequentials Order relating to Mr Justice Foxton's findings that Orb and LCL are "Non-Arena Companies" and as such are held by their legal owners as nominees for Dr Smith [MH1, p670-675]. This application was dismissed by Mr Justice Foxton in an order dated 22 January 2024 [MH1, p676-677] on the basis that:
 - (i) the Representor's interests in the English Proceedings are represented by the Viscount and she accordingly had no standing to bring the application; (ii) the application was brought very late, namely two and a half years after the date of the Consequentials Order of 11 June 2021; (iii) and the application was without merit on the facts. The position is clear from the procedural background summarised at paragraphs [117]-[119] and [121] of the Directed Trial Judgment and the substantive conclusions at paragraphs [606] and [609]-[610].
 - (b) A request for arbitration brought by the Representor together with Dr Smith against one of the parties to the English Proceedings, Mr Franek Sodzwiczny, in relation to an arbitral award (Request for Arbitration). In a judgment dated 7 February 2024 [MH1, p678-708], Mr Justice Foxton inter alia granted an "anti-arbitration" injunction against the Representor and found that she had acted solely at Dr Smith's direction and for his purposes in lending her name to the proceedings (see paragraph [103] of the judgment at [MH1, p706-707]).
 - (c) Contesting proceedings pursued by the Enforcement Receivers in Mallorca to obtain possession of a property owned by the Representor known as C'an Agata. In response, the Enforcement Receivers sought and obtained a ruling from Mr Justice Foxton that the undertakings given by the Representor pursuant to the terms of the LCL Settlement Agreement remain in force. In a ruling dated 18 April 2024 [MH1, p709-710], Mr Justice Foxton ordered that: " ... nothing in my Directed Trial Judgment released Dr Cochrane from the undertaking she freely gave the court, and she remains bound by it and the settlement agreement which led to Dr Cochrane offering those undertakings ... I made it clear that my order was intended to ensure assets reached individuals answerable to the court (viz the receivers) to hold to the court's order ... the terms of the undertakings which Dr Cochrane gave, and which remain binding on her, are quite clear".
29. Section 3 of the Viscount's affidavit then set out the current position of the désastre. By reference to the details set out in that affidavit, at present the Viscount has taken control or possession of realisable assets of the Representor with a total value of £240,677.02.

30. This represents monies primarily derived from the personal earnings of the Representor through her employment as a GP at a local medical practice. These earnings were paid into a ringfenced account from which the Representor's monthly rent, utilities and other expenses are paid, together with a weekly allowance to meet the Representor's reasonable living expenses.
31. Any other assets which had been owned by the Representor were yet to be realised because they remain subject to a saisie obtained by the Attorney General and therefore those assets had not currently vested in the Viscount and accordingly were not available for realisation and distribution to creditors.
32. The Viscount also set out that he had incurred costs and expenses. During the course of the hearing, Advocate Passmore confirmed that these costs ran to seven figures. Unless therefore any proceeds of saisie were released to the Viscount, the assets currently held by the Viscount would be put towards the legal fees incurred by the Viscount. There would therefore be no recovery for creditors.
33. The affidavit of the Viscount also set out what creditors' claims had been filed in the *désastre* of the Representor which totalled £319,465,251. Harbour's share of this claim is £33,945,052, plus accrued interest. A number of these claims were disputed by the Representor which was why we were referred to her third affidavit sworn in March 2024 and the Viscount's affidavit sworn in August 2024. It is not necessary however for the purposes of this judgment for these differences to be resolved today. Rather, they are relevant to the application to recall the *désastre* and therefore resolution of this disagreement is for another day.
34. Section 5 of the Viscount's affidavit also referred to previous requests for funds. This was in the context of the Viscount's general approach to request for funds from a person en *désastre* set out at paragraphs 5.2 to 5.3. The affidavit then explained that Advocate Miller, when she was Viscount, did accede to one request for a limited sum within the context of an application for leave to appeal against the declaration of *désastre*. That request ultimately led to the payment of £3,500 to the advocate in question in February 2019.
35. However, the Representor later sought new legal representation. It appeared however from the judgment of the Court of Appeal reported at *Cochrane v Harbour Fund II LLP and the Viscount* [2020] JCA 168 in refusing leave to appeal that the Representor was able to obtain funding from a litigation funder known as Litigation Capital Limited (see paragraph 51(viii) and (ix)). Litigation Capital was a litigation funder. At the time of the Court of Appeal judgment, the Court of Appeal referred to this as apparently being owned by Dr Smith's brother. However, the English Court in the English Judgment ruled that Litigation Capital was held for the benefit of Dr Smith (see paragraph 610).
36. The affidavit of the Viscount then set out previous requests for funds made in June 2020, August 2022 and May 2023.

37. On 31 July 2023, the Representor wrote to the Viscount requesting the release of all her earnings for her sole use to enable her to instruct Jersey advocates to bring an application before the Royal Court for the discharge / annulment / set aside of the *désastre* following the PACCAR decision (paragraph 5.13 of the affidavit of the Viscount). This request was refused, as was a further request made in October 2023.
38. A further request was made in May 2024 and 27 November 2024.
39. We have referred to these previous requests which were expressly addressed in some detail in the Viscount's affidavit because they were alluded to in the reply from Ogier dated 14 March 2025.

Submissions

40. Advocate Garrood, in his written and oral submissions, supported by the two affidavits of the Representor to which we have referred, emphasised the following.
41. Firstly, his client's challenge was not about the history of the *désastre* and so much of the Viscount's affidavit was irrelevant. Advocate Garrood therefore submitted that fundamentally his client's application was about the request made on 27 February 2025 and Ogier's reply of 14 March 2025 on behalf of the Viscount.
42. In relation to the applicable legal test, Advocate Garrood contended that the proper test was that based on modern administrative law jurisprudence. He cited a formulation of the test set out in *R (Law Society) v The Lord Chancellor*

[2019] 1 WLR 1649 at paragraph 98: "98. The second ground on which the Lord Chancellor's Decision is challenged encompasses a number of arguments falling under the general head of "irrationality" or, as it is more accurately described, unreasonableness. This legal basis for judicial review has two aspects. The first is concerned with whether the decision under review is capable of being justified or whether in the classic *Wednesbury* formulation it is "so unreasonable that no reasonable authority could ever have come to it"; see *Associated Provincial Picture Houses Ltd v Wednesbury Corp*n

(1948) 1 KB 223 , 233-234. Another, simpler formulation of the test which avoids tautology is whether the decision is outside the range of reasonable decisions open to the decision-maker: see e g *Boddington v British Transport Police* [1999] 2 AC 143 , 175, per Lord Steyn. The second aspect of irrationality/unreasonableness is concerned with the process by which the decision was reached. A decision may be challenged on the basis that there is a demonstrable flaw in the reasoning which led to it – for example, that significant reliance was placed on an irrelevant consideration, or that there was no evidence to support an important step in the reasoning, or that the reasoning involved a serious logical or methodological error. Factual error, although it has been recognised as a separate principle, can also be regarded as an example of flawed reasoning – the test being whether a mistake as to a fact which was uncontested and objectively verifiable played a material

part in the decision-maker's reasoning: see *E v Secretary of State for the Home Department* [2004] QB 1044.”

43. In relation to this quote, Advocate Garrood fairly accepted that what was required was a serious flaw, not any minor mistake.
44. Advocate Garrood contended that the Viscount had erred because he had not made any decision based on the request made but rather had made the decision based on history. The Viscount had not therefore made a decision based on relevant facts now. Those facts were that funding was not available in England. The Court was informed that the Representor had looked at the English legal aid website which required an English address and they had not therefore applied for legal aid. Secondly, the sort of issues she was facing did not appear to be within the scope of legal aid.
45. The Representor contended that a decision of the Viscount was outside the range of reasonable responses open to him to make if it was illegal, irrational or otherwise in breach of the rules of natural justice. What Advocate Garrood meant by natural justice was a question of fairness. If something was unfair, then the Royal Court could interfere.
46. This question of fairness led to the submission that the Viscount, by refusing assistance, was inadvertently supporting the position of Harbour in the English litigation. This was because the lack of funding meant that the Representor was hamstrung in her opposition to Harbour's application. Advocate Garrood could not assist, both because the legal aid funding provided to him did not extend to advice in English proceedings; and in any event, he did not have the knowledge or skills to advise on the points in issue in what was complex litigation.
47. He also argued that the position of Mr Thomas was not identical to that of his client because Mr Thomas was not a party to the LCL settlement agreement (see paragraph 2.18 of the Viscount's affidavit and the reference in paragraph 22.4(c) quoted at paragraph 28 above). The settlement agreement referred to in paragraph 2.18 is the LCL settlement agreement.
48. Advocate Garrood also argued that the effect of the Viscount's decision was to refuse to listen which the Viscount was not permitted to do (see *British Oxygen Co Limited v The Minister of Technology* [1971] AC 610).
49. He also referred to the authority of *R v Westminster City Council Ex Parte Ermakov* [1996] 2 All England 302, in support of the submission that it was not open to an authority which was party to review proceedings to cure the flaws in their decision process by making a subsequent affidavit. At best, the affidavit of the Viscount should only be permitted to the extent it explained or amplified reasons but the Court should exercise caution before doing so.

50. The discretion in issue was Article 23 of the Bankruptcy (Désastre) (Jersey) Law 1990 (“the 1990 Law”) which provides: “The Viscount may from time to time make such an allowance of money as the Viscount thinks just out of the property of the debtor for the support of the debtor and his or her dependants.”
51. He further contended that the 1990 Law did not displace the customary law of Jersey and therefore concepts of good faith and fairness which were the hallmark of the customary law of Jersey still applied.
52. He contended that “support” in Article 23 included legal fees and the Viscount had erred by limiting this to “unexpected domestic needs”. This was a reference to the Viscount’s explanation of his general approach to requests for funds contained at paragraphs 5.2 and 5.3 of his affidavit.
53. When it was put to Advocate Garrood that this request for funding was to enable the Representor ultimately to challenge the Viscount’s decision to extend the désastre and to have it recalled instead, this led to the submission that the Viscount was in a position of conflict and therefore ought not to have made the decision at all but instead should have referred it to the Royal Court.
54. Advocate Garrood also suggested that because the Representor would act for herself in the English proceedings, that this was a one-off request and that she did not have any intention to come back for further funds.
55. In relation to Ogier’s letter of 14 March 2025, this was Ogier in effect saying that Article 23 means that the Viscount would never pay legal fees.
56. In relation to the suggestion in the letter that the Representor had access to other funds, he contended that it was difficult for her to prove a negative. He further contended that Litigation Capital would only fund cases where there was a financial outcome. In addition, the Representor’s second affidavit at paragraph 18, that she continued to have no access to funds from friends or family sufficient to meet the costs of an opinion, was clear. If the Viscount had wanted more detail he should have asked for it. If the Court wanted more detail, then the present application should be adjourned and the Representor could provide that detail. Alternatively, the Viscount could have cross-examined the Representor on her affidavit but had not elected to do so.
57. Advocate Garrood also emphasised that on a previous occasion, Advocate Miller, when she was Viscount, had granted a request for funding. The present Viscount was therefore wrong to refuse to provide legal funding at all. This was why the Viscount’s decision was illegal.
58. Insofar as the Viscount was indicating that the request amounted to a significant proportion of the funds, this was not a relevant consideration. This was not a reasonable or principled approach. In addition, a request for less than 10% of the funds held by the Viscount was not disproportionate.

59. Advocate Garrood, at paragraph 21 of his Skeleton, contended that the Viscount had applied a policy to his decision making process where the policy considerations appeared to be: "(i) there must be an "unexpected domestic need"; (ii) there must be a precedent for an expenditure of the nature and degree requested; (iii) the request for funding must be reasonable and proportionate; and (iv) previous requests for funding must not have been refused."
60. He was therefore critical on the reliance for a precedent and therefore contended that the Viscount's approach was arbitrary and that he refused to listen.
61. Advocate Garrood then expanded on the question of conflict. He contended that if the position of the Representor was successful in England and the *désastre* was later recalled, the Viscount would be left without assets and would have to rely on its indemnity from Harbour which was a Cayman limited partnership. This was why the Viscount was in a position of conflict because preserving the *désastre* meant that the Viscount did not have to grapple with this issue. This was not addressed in the Viscount's affidavit. What the Viscount should have done was apply to Court for a blessing because of this conflict.
62. This led to the further submission that the current decision should be quashed, be remitted to the Viscount for the Viscount to then decide whether to accede to the request or to make a further application to Court.
63. Advocate Passmore, for the Viscount, filed an extensive Skeleton which we have considered carefully. In his oral submissions, he focused on the following points.
64. Firstly, the Viscount has a discretion. The sum requested for was a significant sum of money compared to the sort of requests that the Viscount usually acceded to, which had been set out by the Viscount in his affidavit in relation to the Representor. As the final sentence at paragraph 5.3 explained, each of the examples given related "to an unforeseen event and the amounts requested were relatively limited and generally for a specific one time purpose".
65. Mr Passmore fairly accepted that the Representor was not asking for a significant sum compared to the total fees that the Viscount had incurred since the commencement of the litigation.
66. What the Representor had not done was explain why the Viscount's decision was perverse or irrational. The Representor was trying to raise technical points without addressing the substance of the decision.
67. In relation to the applicable legal test, this was set out in the Court of Appeal's judgment in *Booth v The Viscount*
- [2022] JCA 200 at paragraph 56 (the "Booth 2022 Decision").
68. It was not right however to equate this test with the general test applicable on administrative law applications. In *Re Edenote Limited* [1996] B.C.C. 718 (CA) at page 722, the English Court of Appeal stated the following: "I sympathise with Mr Rayner James's submissions to

the extent that it is unnecessary, rather it may be confusing, to introduce into the court's control of the acts and decisions of liquidators the language of its control of administrative action. In the latter case the court is usually concerned with the supervision of public servants performing statutory functions; in the former with the supervision of persons who must, in most of what they do, act as prudent businessmen. In general there seems to be something unrealistic in judging the propriety of the acts and decisions of a businessman by asking whether he took into account something he ought not to have taken into account or failed to take into account something he ought to have taken into account."

69. Advocate Passmore referred to this extract because the Court of Appeal in *Eves v Viscount* [1998] JLR Note 2B applied Edennote.
70. The test applicable was therefore a higher bar than that applicable for administrative law actions generally.
71. In relation to the question of conflict, there was no conflict. The Viscount did not have any personal interest in the outcome of the English proceedings and was playing a neutral role. He was not supporting any of the applications before the English High Court. There was therefore no need to address any question of conflict.
72. The Representor's Skeleton about potential difficulties of the Viscount having to rely on any indemnity from Harbour was a matter for the Viscount should such a situation arise.
73. The Viscount therefore reached a decision pursuant to Article 23 by reference to the view he had formed on how to exercise his discretion. He did not have any regard to any possible outcome in the English proceedings.
74. The outcome of English Application was not necessarily determinative of the recall application. Pursuant to Article 7 of the Désastre Law, the Court had to be satisfied that the property of the debtor vested in the Viscount at the time of the application was sufficient to pay in full claims filed with the Viscount.
75. The Viscount's decisions were always subject to review as the Booth litigation made clear.
76. If the Court set aside the Viscount's decision, the Court's supervisory jurisdiction meant that it could direct the Viscount to release funds. It was not necessary to remit matters back to the Viscount.
77. In relation to the meaning of Article 23, the Viscount has to have a view on the meaning of Article 23. The starting point was that all of a debtor's property vested in the Viscount in a désastre, that the Viscount retains a discretion to recognise that certain categories of assets can be exempted. The example of access to necessary clothing and tools was given.
78. The Viscount further referred to the decision in *Re O'Brien* [2003] JLR 1. While this case concerned a request by a defendant within the context of a saisie judiciaire for the release of funds for the purpose of paying for legal advice, the Royal Court commented as follows at paragraph 25: "... if the true analogy is with a declaration en désastre, it is not the practice of

the Viscount to make available a living allowance to a bankrupt debtor. He is expected to maintain himself, although the Viscount exercises his discretion to release particular assets, for example a car, to enable the debtor to continue in gainful employment".

79. It was therefore generally a matter for the debtor to manage his or her income to deal with legal expenses as appropriate. This was why the Viscount at paragraphs 5.2 and 5.3 of his affidavit explained his general practice, which was summarised in the phrase unexpected domestic need.
80. Funding for the purpose of obtaining legal advice was normally not considered such a need, although Advocate Passmore recognised this did not prevent the Viscount from exercising his discretion in favour of such a request where considered just, having regard to the amount sought and the wider circumstances of the request.
81. In relation to the letter of 14 March, this was not an unreasonable response. It was a consideration by the Viscount, through Ogier, of JTC Law's request on behalf of the Representor.
82. In relation to the reference in the letter of 14 May that the previous release of funds for legal advice to the Representor did not "set a precedent", this was the Viscount stating that the previous decisions did not set any kind of legal or factual precedent on which the Representor could rely. The Viscount was entitled to take such an approach. Advocate Passmore emphasised that in exercising his discretion, the Viscount was not interfering with a debtor's property, but was instead concerned with property that was vested in the Viscount or was otherwise held to the order of the Viscount for the benefit of the désastre and, by extension, the creditors of the debtor.
83. The Viscount was also concerned that while the sum requested had now reduced to £19,500, this was not a one off, and it was far from clear that the Representor would not seek further funds.
84. Insofar as the Representor was contending she did not have access to legal advice, Advocate Passmore pointed to the fact that she previously appeared before the Court of Appeal alone, as well as appearing before the English High Court. It was also not clear what other advice she had access to given that she previously had access to advice obtained by Mr Thomas on the PACCAR judgment.
85. In the letter of 14 March, in addition to the Viscount's decision being reasonable on the basis of his interpretation of Article 23, the Viscount was also concerned that the Representor has or had access to other funds. This had been raised by the Viscount or his predecessors in other requests for funds and had never been answered. There was nothing in the evidence about who the Representor had approached previously and why they were unable to assist in relation to this particular advice.

86. The Viscount was also entitled to refuse to release funds either to challenge a declaration of *désastre* or to seek a recall. If that was not the position, then there would be a precedent set which could lead to a whole series of challenges. Such requests could also lead to the Viscount having to seek directions or a blessing to make such requests available. The Court of Appeal in the Booth 2022 Decision were alive to this mischief (see paragraph 56).
87. Advocate Garrood in reply made the following points. The Viscount was wrong to try to use his affidavit to justify the approach taken and has reliance on a precedent for legal fees.
88. In relation to Mr Thomas, he was not a party to the LCL settlement agreement. Any advice he had obtained did not therefore extend to whether the Representor was bound by this agreement.
89. By reference to *Sealy on Bankruptcy*, and a commentary on Section 303 of the Insolvency Act 1986 which referred to the perversity test, the context for those observations were the powers vested in the trustee in bankruptcy in England and Wales which were very broad. By contrast, the Representor's present application was under a specific section of a statute, and that was why it was appropriate to apply general administrative law principles.
90. Advocate Garrood further sought to distinguish the Booth 2022 Decision because the present case interfered with the Representor's rights and her ability to seek to recall the *désastre*.
91. He sought to distinguish the O'Brien case because O'Brien was entitled to legal aid and therefore there was no prejudice in monies not being released for payment of legal fees.
92. In relation to Article 23, this was not limited to domestic needs and there was nothing in the wording of the statute that meant that legal funds could not be paid. The Viscount's approach was therefore a refusal to deal with the request. However, the Representor in the alternative was entitled to say that the Viscount had failed to take into account relevant matters and therefore the decision should be quashed. Discussion and decision
93. In relation to the applicable test, we consider this was set out by the Court of Appeal in the Booth 2022 Decision as Advocate Passmore contended. Having noted several features of the Viscount's role at paragraph 55, the Court stated the following at paragraphs 56: "56 With these features in mind, it would in our judgment be contrary to the public interest if a debtor (or any third party) were entitled to invoke the Royal Court's intervention simply on the basis that he happened to disagree with any evaluative judgment call made by the Viscount. That would serve only to encourage disputatious litigation which would drain the resources of the Viscount and clog the courts with arguments over issues that are ill-suited to resolution through legal proceedings. It would also be calculated to result in the Viscount becoming increasingly cautious, prompting him to make protective applications to the court for directions, rather than exercising his own judgment and discharging his own functions without undue recourse to court proceedings. Accordingly, a suitably exacting test must be met before the Royal Court intervenes in the exercise of the Viscount's functions on the application of a disaffected debtor."

94. This led to the following conclusions at paragraph 57: “57 Our attention has been drawn to a number of earlier decisions where the test has been described in slightly different language: *Eves v. Viscount* (2); *Booth (A.P.) v. Viscount* ([2016]JRC049, at paras. 14-19; noted at 2016 (1) JLR N [8]); *Booth (A.P.) v. Viscount* ([2016]JRC086, at para. 26; noted at 2016 (1) JLR N [20]); and the judgment below in this case ([2022]JRC062, at para. 35). We would suggest that the correct approach for the Royal Court can be derived from these earlier decisions, from first principles, and from a proper understanding of the context in which this supervisory jurisdiction falls to be exercised. That correct approach may be conveniently summarized as follows:
- (i) The court will intervene if the Viscount acts unlawfully, in the sense of exercising a power he does not have, or acting fraudulently or in bad faith, or violating the obligation which rests on the Viscount as a public authority under art. 7 of the Human Rights (Jersey) Law 2000 ("the 2000 Law"). (ii) The court will also intervene if the Viscount takes a decision that no reasonable decision-maker, properly taking into account materially relevant factors and ignoring materially irrelevant factors, could have reached. In the November 2016 judgment (2016
 - (2) JLR 473, at para. 8), this court suggested that the question could be captured by asking whether the Viscount's decision was "within the range of reasonable responses." We would not disagree, so long as that is correctly understood as a short-hand label for describing the test we have outlined in this sub-paragraph.” [emphasis added]
95. In paragraph 57(ii), the Court of Appeal also expressed reservations about the breadth of the conclusions reached by the Court of Appeal in its November 2016 Judgment (*Booth v Viscount* [2016] JCA 218) at paragraph 8 (the “Booth 2016 Decision”).
96. This concern continued in paragraph 58 and 59: “58 In the November 2016 judgment (*ibid.*, at para. 9) this court also suggested that "different grounds of review may require a more intrusive approach on the part of the Royal Court." We respectfully question whether that is so. In our judgment, the formulation outlined in para. 57 above fully captures the test, and we are not persuaded that either the terms of the 1990 Law, or the special position of the Viscount, or the case-law in this jurisdiction justify any more intrusive approach. True it is that, if the court is ever called upon to determine whether the Viscount has violated any Convention right in breach of art. 7 of the 2000 Law, then the relevant legal framework for answering that question (including the test of proportionality) will need to be applied. But that is merely a reflection of the fact that the Royal Court will intervene if the Viscount acts unlawfully (breach of art. 7 being a form of unlawfulness). It is not an example of any different or more intrusive approach. 59 In the November 2016 judgment (*ibid.*), this court also suggested that the Royal Court could intervene "on the basis of procedural impropriety." Whilst we would not necessarily exclude entirely such a possibility as a matter of principle, it is not easy to foresee when in practice such an issue is likely to arise. Questions of procedural fairness tend to arise where a decision-maker exercising an adjudicative function or is determining issues which impact on a person's rights and property, which is

not what the Viscount is doing when dealing with property vested in him under art. 8 of the 1990 Law.”

97. We have referred to this because the submissions of Advocate Garrood on behalf of the Representor appeared to us to be closer to the Booth 2016 Decision. However, we are bound by the observations of the Court of Appeal in the Booth 2022 Decision.
98. We add for the sake of completeness that a further appeal by Mr Booth was brought to the Court of Appeal to challenge another decision of the Viscount, leading to the Court of Appeal’s judgment of *Booth v The Viscount of the Royal Court of Jersey* [2025] JCA 126 (the “Booth 2025 Decision”). In the Booth 2025 Decision at paragraphs 77, the majority indicated they would be slow to depart without good reason from that decision on an issue which was expressly argued and decided. We note that Sir William Bailhache, at paragraph 169, suggested that the test was that identified at paragraphs 8 and 9 of the Booth 2016 Decision, contrary to the view of the majority.
99. We have referred to this because applying the Booth 2022 Decision, as we must, a procedural impropriety or unfairness is only a basis to set aside the Viscount’s decision (absent fraud or bad faith which is not alleged here) if the decision is one that falls within paragraph 57(ii) and the first sentence that we have emphasised in this judgment. We do not agree however that there is any separate concept of fairness or procedural impropriety alone unless it meets the test set out in paragraph 57(ii) and is a sufficient basis to interfere with the Viscount’s decision.
100. We next deal with the question of conflict. In relation to this issue, we agree with the submissions of Advocate Passmore. We do not consider that the Viscount was subject to any conflict of interest, whether actual or perceived. The Viscount is playing a neutral role in the English litigation and has no interest in its outcome. The Viscount is also simply an officer of the Court charged with particular responsibilities under the Désastre Law. The outcome of the English litigation is a matter for the English Court based on the submissions put before it, and we therefore do not accept that the Viscount by refusing legal advice is indirectly supporting Harbour in relation to the application Harbour has brought before the English High Court. The decision of the Viscount to take a neutral stance in relation to that litigation is entirely appropriate and therefore means that no question of conflict arises.
101. In relation to the argument that the Viscount failed to consider the Representor’s request at all, we agree as a matter of law that if the Viscount had refused to consider such a request, then that would be a basis for this Court to intervene by exercising its supervisory jurisdiction to require the Viscount to take such a decision. The nearest example is the case decision in *Want v Minister for Infrastructure* [2024] 1 JLR 165, where the Inspector of Motor Traffic took a decision based on Mr Want “failing” a DBS check in England. It was clear therefore that the Inspector in that case had not taken a decision at all but simply relied on a conclusion reached by a third party. If the Viscount were to purportedly take a decision based on a conclusion reached by a third party without an independent exercise of

discretion, that is the sort of situation therefore where the Viscount would have refused to have taken a decision, allowing this Court to intervene.

102. However, that is not how we have construed the request made by JTC Law on behalf of the Representor and responded to by Ogier on behalf of the Viscount, by Ogier's letter of 14 March 2025.
103. As a preliminary point, we do not consider anything turns on the fact that Ogier replied on behalf of the Viscount, to communicate the Viscount's decision when the request came from the Representor via JTC Law and Advocate Garrood. When a request has been made through lawyers, we do not consider it be outside the scope of the Viscount's discretion to reply through lawyers retained by the Viscount.
104. In relation to this exchange of letters, we do not regard this exchange of letters as the Viscount refusing to engage with the Representor's request. Rather, we construe the letters as amounting to a consideration by the Viscount of that request, with the Viscount then refusing to accede to it.
105. The question for the Court is therefore whether that refusal is a decision that no reasonable decision maker properly taking into account materially relevant factors and ignoring materially irrelevant factors could have reached.
106. This requires an evaluation of Article 23 which we have set out at paragraph 50 above. It is clear that Article 23 gives the Viscount a discretion to provide for the support of the debtor and his or her dependants.
107. The Viscount, in his affidavit at paragraphs 5.2 and 5.3, explained his normal approach to such requests as follows: "5.2 Article 23 of the Law provides that the Viscount may from time to time make such allowance of money as the Viscount thinks just out of the property of the debtor for the support of the debtor and his or her dependants. Such requests are typically received for unexpected domestic needs. That is, any expenses that are not already provided for under the arrangement reached between the Viscount and a debtor where the debtor receives a surplus income which is to be retained and made available to creditors (where possible). As explained at paragraph 3.2 above, in relation to the Representor an arrangement has been entered into with the Viscount pursuant to which the Representor's earnings are paid into a ring-fenced account controlled by the IMC from which monthly rent, utilities and other expenses (such as car and professional indemnity insurance), together with a weekly allowance, are paid. 5.3 Where requests are made pursuant to Article 23 of the Law, it is the general approach of the Viscount to accommodate requests as long as the amount sought for the stated domestic need is reasonable and proportionate. In the case of the Representor, examples of requests for funds which have been acceded to include the payment of vets bills [MH1, p768-775], the purchase of a new laptop [MH1, p776-778], the purchase of a new router and WiFi system [MH1, p779-781], travel expenses [MH1, p782-783] and printing cartridges [MH1, p784]. As can be seen from these examples, they each relate to an unforeseen event and the amounts requested were relatively limited and generally for

a specific one-time purpose.”

108. We regard paragraph 5.2 as simply an explanation as to the Viscount’s normal approach. We did not regard this explanation as creating any form of rule that the Viscount could only support unexpected domestic needs. Rather, this was simply a shorthand description for the Viscount’s general approach as explained in his affidavit.
109. To the extent this explanation was a policy in operation by the Viscount, we do not see anything that would allow us to interfere with such a policy as long as in each case where a request is made the Viscount considers whether to apply that policy. The danger with any form of policy is that it becomes a hard and fast rule leading to a decision maker not making a decision and considering the merits of an individual request because a decision falls outside a policy. However, we do not consider that the Viscount can be said to have taken such an approach in this case.
110. We have reached this conclusion by reference to Ogier’s letter of 14 March 2025. We have also had regard to the affidavit of the Viscount. This is because this affidavit simply provides greater detail and as noted above, helpful background to the request. The Viscount’s affidavit in relation to this application is very far removed from the approach in Ermakov where the affidavit filed explained that the true reasons for the decision were not those expressed in the decision letter but a different ground.
111. This led to the Court in Ermakov at the head note to conclude as follows: “(2) Although the court could and, in appropriate cases, would admit evidence to elucidate or, exceptionally, correct or add to the reasons given by a housing authority, it would be very cautious about doing so; the function of such evidence would generally be elucidation, not fundamental alteration, as for example where an error had been made in transcription or expression, or a word or words had been inadvertently omitted. However, in cases where the reasons stated in the decision letter had been shown to be manifestly flawed, it should only be in very exceptional cases that relief should be refused on the strength of reasons adduced in evidence after the commencement of proceedings, even where it was clear that on reconsideration by the authority the decision would be the same.”
112. That conclusion is not surprising. The affidavit of the Viscount in this case only amounts to elucidation and not any fundamental alteration.
113. In this case, we do not regard the response of the Viscount, that Article 23 is not intended to be a provision for significant legal fees, as being a response where we should interfere.
114. The Viscount quite properly noted that he had agreed to a previous request to meet legal fees and was entitled to set out that this did not set any form of precedent. It does not matter whether the Viscount was referring to a legal precedent or a factual precedent. In our view, the Viscount was entitled to reach the conclusion that he did. The Harbour application in England has fundamentally arisen because of the application to recall the *désastre* brought by the Representor and her reliance on the PACCAR Judgment. She did not have to take this

step; the position she faces, while we understand it may be challenging, is one that has arisen because of the arguments she has chosen to advance. Returning to the language of Article 23, this request is very far from requiring support for a debtor and/or dependants. The position of the Representor is that she wishes to use assets being held by the Viscount to bring an end to the *désastre* by advancing arguments that, in effect, the declaration should not have been granted at all in favour of Harbour because of the PACCAR Judgment and therefore should be recalled. This was quite different to an unexpected need where funds had been provided.

115. The present factual background is also very different to the O' Brien case and we therefore do not express any view on how far a debtor is obliged to maintain their own income in order to pay for legal advice. This decision was also not part of the Viscount's reasoning. The issue raised by it in the context of the current legal aid scheme (which is different from the scheme in place in

2003) is therefore for another day.

116. We appreciate that the Viscount's conclusion leaves the Representor without access to legal advice but the Viscount was well aware of that as an outcome. We cannot therefore say that he has failed to have regard to a significant factor. In addition, the Representor has previously appeared both in the English Court and the Jersey Court of Appeal as a litigant in person. Advocate Garrood also did not contend that the lack of access to advice amounted to a breach of Article 6 of the European Convention on Human Rights. In our judgment, he was right to do so. In addition as noted in the Commissioner's February 2025 Judgment, at paragraph 94 Mr Thomas is raising many of the same points that Dr Cochrane wishes to raise (apart from in relation to the LCL Settlement Agreement); at present he is not debarred from doing so.
117. In our view, the Viscount was also entitled to have regard to the fact that the Representor had received the benefit of third party funding from Litigation Capital Limited. Whilst Ogier's letter of 14 March referred to this being a company beneficially owned for Dr Smith's brother, as noted at paragraph 35 above, at paragraph 610 of the English Judgment, Litigation Capital was held for the benefit of Dr Smith. As the affidavit of the Viscount explained, the English High Court has been critical on a number of occasions of the close association between Dr Smith and the Representor, and had found that the Representor had acted solely at his direction and for his purposes in lending her name to proceedings (see paragraph 2.24(b) set out at paragraph 28 above and paragraph 103 of the English Judgment). While Advocate Garrood sought to contend that Litigation Capital would only provide funding for claims where a plaintiff sought to recover damages, this did not sit at all with the fact that Litigation Capital had provided funding to the Representor for her appeal to the Court of Appeal in 2016. Advocate Garrood quite rightly therefore did not pursue this point further.

118. The Viscount was also entitled to refer to previous correspondence from the Viscount where she had met the costs of a property in Mallorca when she had indicated that these payments were funds supplied from the Representor's extended family and friends (see Representor's letter of 6 September 2023). The Representor's affidavits were wholly lacking in detail in relation to why such extended friends and family could not provide support. Paragraph 18 of her second affidavit simply stated, "I continue to have no access to funds from friends or family which are sufficient to meet the costs of an opinion from a leading counsel". There was no evidence attached to this affidavit showing any requests made, when they were made and to whom they were made, and why the persons or entities requested could not provide support.
119. Although Mr Garrood sought an adjournment to provide such information, the conclusion the Commissioner reached was that it was far too late in the day to acceded to such a request. The question of third party funding was a point set out in Ogier's letter of 14 March. JTC Law's response in its letter of 29 May 2025 contained the extract we have set out at paragraph 21 above. This was a clear refusal on the part of the Representor to provide any further information. Instead, the Representor sought to contend that the onus was on the Viscount to show why such funds were not available. Such a position was hopeless because it was only the Representor who knew who the friends and family were and why they would not provide support. Having refused to provide that information and having had a further chance by her second affidavit in reply to do so, notwithstanding this earlier refusal, it would be wrong to have allowed the Representor a further opportunity to provide information.
120. While the decision letter itself did not refer to other requests for funding previously made by the Viscount expressly, in our view the Viscount was entitled to explain to the Court these requests and the responses of the Viscount or his predecessors or officers on his behalf to such requests to put the present application in context. By the Viscount (through Ogier) referring to having previously acceded to one request of funds, both the Representor and the Viscount were well aware of the context of this statement, namely that a number of other requests, which we have summarised above, had been made and refused. There is nothing in our view inappropriate or improper in the Viscount setting out that context for the benefit of the Court so that the Court was in the same position as the Viscount to understand the full background to the latest request.
121. In relation to the argument that the amount requested was not significant compared to the total assets held by the Viscount, in our view this argument misses the point. The requests made by the Representor to which the Viscount readily agreed were for small amounts, amounting to a few hundred pounds in respect of unforeseen events where the Representor clearly needed support. The amount requested for legal fees by contrast to these sums was significant and therefore again we see no reason to interfere in the Viscount's conclusions.
122. We also understand the concerns expressed to us by Advocate Passmore on behalf of the Viscount of why acceding to such a request would create a significant precedent in *désastre* matters generally if debtors could routinely have access to legal funds to pursue challenges

to the events that had led to a debtor's bankruptcy in the first place. In this case, we also understand why the Viscount was concerned that if he had acceded to this request, there could well be further requests for funding. We did not find Mr Garrood's answers on this point to be unequivocal that his client would never come back and ask for further funds, notwithstanding her present intention to represent herself before the English High Court. While these matters were not expressly referred to in the letter of 14 March or the Viscount's affidavit, they are additional concerns that arose during submissions which further underlined why there was no basis for this Court to interfere with or set aside the Viscount's decision. None of the points raised came near the threshold for us to accede to the Representor's application.

123. For all these reasons, the Representor's application is therefore dismissed. Authorities In the matter of the Desastre of Dr Gail Cochrane [2024] JRC 043. Serious Fraud Office and Others v Litigation Capital Limited and Others [2021] EWHC 1272 (Comm). Representation of Cochrane [2025] JRC 035. Cochrane v Harbour Fund II LLP and the Viscount [2020] JCA 168. R (Law Society) v The Lord Chancellor [2019] 1 WLR 1649. British Oxygen Co Limited v The Minister of Technology [1971] AC 610. R v Westminster City Council Ex Parte Ermakov [1996] 2 All ER 302. Bankruptcy (Désastre) (Jersey) Law 1990. Booth v The Viscount [2022] JCA 200. Re Edenote Limited [1996] B.C.C. 718 (CA). Eves v Viscount [1998] JLR Note 2B. In the matter of the Representation of O'Brien [2003] JLR 1. Sealy & Milman: Annotated Guide to the Insolvency Legislation. Insolvency Act 1986. Booth v The Viscount [2016] JCA 218. Booth v The Viscount of the Royal Court of Jersey [2025] JCA 126. Want v Minister for Infrastructure [2024] 1 JLR 165. European Convention on Human Rights.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.jerseylaw.je/judgments/unreported/Pages/%5B2026%5DJRC036.aspx>

CASE PAGE <https://chat.esheria.ai/case-law/jersey/representation-of-cochrane-2026>

Prepared on 23 October 2026 · Esheria