

Cross applications for Administration Order and Compulsory Winding Up Order in respect of a cash-flow insolvent company. Test for granting administration order considered. Test not fulfilled; company wound up.

[2025]GRC046

**IN THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)**

Civ 2641

**IN THE MATTER OF PENSION SUPERFUND CAPITAL HOLDINGS LIMITED
("the Company")**

**AND IN THE MATTER OF THE COMPANIES (GUERNSEY) LAW 2008 (as
amended)**

BEFORE

**Her Honour Hazel Marshall KC, Lieutenant-Bailiff, sitting with
Jurats Stephen Morris, Jillian Clark and Kay Parnwell**

**Date of hearing: 29th May 2025
Decision given: 29th May 2025
Reasons delivered: 9th June 2025**

**Advocate for the Company
Advocate for EJF Funding DAC
Advocate for CIC GmbH**

**Advocate M Newman
Advocate L Thibeault
Advocate A Lyall**

J U D G M E N T
with reasons

Introduction and history

1. There are two Applications before the Court relating to Pension Superfund Capital Holdings Limited ("**the Company**"), a non-cellular company incorporated in Guernsey.

2. The first in time is the Company's own Application of 25th March 2025 seeking an Administration Order in respect of the Company, pursuant to s 374 of the Companies (Guernsey) Law 2008 (as amended) ("**the 2008 Law**").
3. The second is the Application of EJV Funding DAC, ("**EJV**") a company incorporated in Ireland, issued on 24th April 2025 for a compulsory winding up of the Company pursuant to ss 406 (f), 407,408(1) and 412 of the 2008 Law on the grounds that the Company is insolvent and unable to pay its debts. That Application is based on the non-fulfilment of a statutory demand. EJV opposes the Company's Administration Application.
4. EJV is a creditor of the Company, having subscribed for Senior Secured Loan Notes issued by the Company in 2021, in the principal sum of £15,500,000. Accrued interest on those Notes went unpaid in October 2024. This triggered the right for EJV to demand repayment of the whole of its loans plus outstanding interest, which it did in January 2025. Both before and after this, the Company had issued proposals to restructure its financings, which EJV found unacceptable.
5. When EJV's loan and interest was not repaid by the deadline it had set of 10 March 2025, EJV issued a statutory demand on 11 March 2025 claiming the amount then owed to it for principal and accrued interest in the sum of £20,136,271. This demand gave 21 days for payment. It appears to have prompted the Company's administration Application, mentioned above. The statutory demand was not paid by its deadline of 1st April 2025.
6. Following agreed adjournments of the administration Application to enable discussions, the Company issued further restructuring proposals on 22nd April 2025, which were, again, not acceptable to EJV. EJV therefore issued their winding up Application on 24th April 2025. The Company opposes that Application. Both matters were adjourned by consent to be eventually heard by the Court on 29th May 2025. At that hearing, both the Company and EJV appeared by Counsel. Another creditor of the Company, CiC GmbH, also appeared at the hearing, but expressed neutrality as to the outcome of the matter.

About this judgment

7. When the hearing of the matter concluded, the Court adjourned briefly to consider whether it could give its decision at that time, or whether it needed to retire to consider the matter further, before arriving at a final decision. After a very brief conferral, it became apparent that the Court had effectively reached a decision, and that this could therefore be given to the parties immediately. The Court therefore did so, conveying its broad reasons in brief summary. It indicated that it would, if requested, provide more detailed set of reasons on paper at a later time. Such request was made.
8. This judgment therefore contains those reasons. It has been prepared in accordance Section 16 (5) of the Royal Court (Reform) (Guernsey) Law 2008.
9. Pursuant to Section 14 (2) of the 2008 Law, the Lt-Bailiff did not sum up to the Jurats in open court but instead retired with the Jurats. Lt-Bailiff gave the usual general directions to the Jurats, as regards the respective roles of herself and the Jurats, reminding them that whilst she was the sole judge of matters of law and procedure and they must follow her directions on such matters, they themselves were the sole judges of questions of fact. They should take into account all the evidence and submissions presented to the Court, and make their decisions in the light of all such materials, but their evaluation of such evidence was entirely a matter for them. If it appeared that the Lt-Bailiff herself were expressing any views on the facts, they should ignore this, and reach their own independent judgment.

10. Where this judgment sets out holdings of law and reasons therefor, they are the holdings and reasons of the Lt-Bailiff. Where it sets out findings of fact and reasons therefor, they are the unanimous findings and reasons of the Jurats.

The law

11. The fact that the Company is insolvent and unable to pay its debts is not disputed. The issue between the Company and EJF, which is the apparent 86% (by value) creditor of the Company is whether the Company should be wound up forthwith, or whether, instead, it should be made subject to an administration order.

12. The Court's power to make an administration order is set out in s 374 of the 2008 Law. By s 374(1), it may make such an order if it

“(a) is satisfied that [the] company ... does not or is likely to become unable to satisfy the solvency test, and

(b) considers that the making of an order under this section may achieve one or more of the purposes set out in subsection (3).”

9. By s 374(2), such an Order will direct that during the period in which it is in force,

“the affairs business and property of the company ... shall be managed by a person (the “administrator”) appointed by the Court.”

10. By s 374 (3) the purposes for the achievement of which an administration order may be made are –

“(a) the survival of the company, and the whole or any part of its undertaking, as a going concern, or

(b) a more advantageous realisation of the company's... assets than would be effected on a winding up.”

The Court must specify the purpose for which the administration order has been made.

11. S 374(4) provides that an administration order supersedes any resolution for winding up, or any existing compulsory winding up, or application for this, and by ss 376 and 377, once an application for an administration order has been made, and whilst any such order is in force, no proceedings may be commenced or continued against the relevant company without the leave of the Court (except, by s 377 (2), the presentation of an application for compulsory winding up). This does not affect the pursuit of any means of enforcement outside court proceedings, such as applying a set off, nor does it affect security interests and rights to enforce these. The provision therefore imposes what is in effect a supervised moratorium on the pursuit or enforcement of ordinary unsecured liabilities.

12. With it being common ground that the Company fails the solvency test, - whilst it claims to be balance sheet solvent on paper, it is unable to pay its debts as they fall due and has, in any event, failed to comply with a valid statutory demand - the issue before the Court is therefore whether the Company can satisfy the Court, sufficiently, that one of the purposes specified in s. 374(3) “may” be achieved by the making of an administration order: see s 374 (1).

13. The first, and only, question of law is what is the threshold test by which the Court must make that judgment? There is no Guernsey authority on this point.

14. Advocate Newman, on behalf of the Company, submitted that there was significance in the use of the word “*may*” in the phrase in s 374 (1)(b) of the 2008 Law

“[the Court] *considers that the making of an order under this section may achieve* [the specified purpose]”

because it contrasts with the phraseology used in corresponding provisions in the equivalent English legislation. That uses the phraseology

“*if satisfied.... that the administration order is reasonably likely to achieve the purpose of the administration*”;

see para. 11 of Schedule B1 of the English Insolvency Act 1986. This, Advocate Newman submitted, was well known when Guernsey adopted similar procedures in 2008, and so the difference must be taken to have been deliberate.

15. He submitted that the word “*may*” connoted a lower, more generous, threshold than “*reasonably likely*”, but he also submitted that, whichever test was applied, on the evidence put forward by the Company, it was surmounted. He urged that the objective of the legislation was to “give administration a chance” if there were just some possibility of its achieving one of the statutory purposes.
16. In the judgment of the Lt-Bailiff there is really no difference between the two phrases, and the language of the Guernsey Law was probably adopted in order to avoid the disagreements and confused authority which had attended the phraseology of the original s 8 (1) (b) of the English Insolvency Act 1986: see the discussion by Lewison J in *Re AA Mutual International Insurance Co Ltd* 2004 WL2577110 (2004) paras [18] – [21].
17. The Lt-Bailiff accordingly directed the Jurats that the word “*may*” required some sensible and reasonably significant prospect of achieving the stated purpose, but it did not have to be as great as 50:50. In other words, the test did not require that they should consider it more likely than not that such purpose would be achieved. They should view the test as being whether they thought that there was a “real prospect” of achieving the statutory purpose, as contrasted with merely a “fanciful”, “insubstantial”, “speculative” or “wishful” such prospect. As this evaluation was an impressionistic one, she also directed the Jurats that, beyond the point that a “real” prospect did not have to be as high as 50:50, it was not helpful to try to think of it in terms of percentage likelihood. They should simply ask themselves whether the Company satisfied them that there was a sufficiently significant prospect of the relevant statutory purpose being achieved by an administration order, as contrasted with a winding up order, that the former should be ordered.
18. As to the statutory purpose, she also directed them that this could be either (or both) of the two limbs to s 374(3). The first was a “*survival*” of the Company’s undertaking or some part of it as a “*going concern*”: s 374(3) (a)). The second was a “*more advantageous realisation of the company's... assets than would be effected on a winding up*”. As to this, she reminded the Jurats that as the Company was, by common consent, insolvent, it was the interests of the Company’s creditors which were to be regarded as a priority, sometimes referred to as being “paramount”.
19. She further advised the Jurats that whilst the views and wishes of EJF, as by far the greatest (86% by value) of such creditors was a matter which they could and should take into account, and they could have regard to the likely effect of those views on the way going forward, those views were not necessarily determinative in themselves. It was for the Jurats to form their own objective assessment as to the likelihood of either of the statutory purposes being achieved if an administration order were made, in all the circumstances,

including the expressed views and attitude of EJV as the major immediate unsecured creditor. If, having taken account of all the evidence and the points made by counsel, they considered the prospect of achieving one of the statutory purposes by making an administration order to be sufficiently real, in the sense discussed, they would elect to make such an order. If they were not of such a view, then they would dismiss the Company's administration application and, instead, make a winding up order.

Evidence before the Court

20. The main substantive evidence before the Court on behalf of the Company consisted of the First Affidavit of Mr Edmund Truell, a director of the Company, sworn on 25th March 2025, made in support of its administration application, explaining the structure and business of the Group of which the Company was a part, together with exhibits. This included a report and plan for the proposed administration of the Company prepared by PwC CI LLP, three of whose specialist insolvency partners were proposed by the Company to be the prospective Administrators of the Company if an administration order were made. Further evidence on behalf of the Company was principally formal and procedural, providing lists of creditors, further background documentation, and dealing with matters such as service of documents and inter party correspondence.
21. The main substantive evidence before the Court on behalf of EJV consisted of three affidavits of Mr Neal Wilson, a director of companies in the EJV Group authorised to make his affidavits on behalf of EJV itself, dated respectively 29th March 2025, 28th April 2025 and 23rd May 2025, together with exhibits. The first was made in opposition to the administrative application and the second and third were in support of EJV's own winding up application. Within the exhibits was a report and plan for the proposed liquidation of the Company, prepared on behalf of Teneo Financial Advisory Limited, specialist insolvency practitioners, two of whose partners were proposed by EJV to be appointed as liquidators of the Company if a compulsory winding up order were made. Again, there was some further evidence dealing with procedural matters and inter party correspondence.
22. From the evidence the following background facts need to be noted for an appreciation of the Jurats' reasons.
23. The Company is part of a "Pension Superfund" Group with a complex structure. The business of the Group is financial, aimed at providing assets of interest for investment by pension schemes.
24. The Company itself is in essence a holding company. It holds 100% of the shares in Pension Superfund Capital GP II Limited. That company is the General Partner of PSF Capital Reserve LP, and manages the business of that entity, again concerned with securing finance and providing financial assets for pension funds, under contract. The Company also holds a 57.1% limited partnership interest in the assets of PSF Capital Reserve LLP, to whom it also lends funds. The remaining limited partnership interests are held by trusts of which the beneficiaries would appear to be Mr Truell and his family.
25. PSF Capital Reserve LP holds, directly and indirectly, shares in Long Term, Assets Limited, which is the company which holds the underlying investment portfolio. Thus, the ultimate underlying assets of the Company appear to be the assets of that subsidiary company.
26. Advocate Newman, as Counsel for the Company, told the Court that the reversal of the Company's fortunes, which occasioned its default in paying interest on EJV's loans, came

about because of refusals of approval to its activities/business model by the UK's financial service regulator, which had not been anticipated.

Jurats decision and reasons.

27. The Jurats noted that it was common ground between the parties that the company was insolvent on a cash flow basis and the management accounts demonstrated that this was the case.
28. The Jurats noted that they must therefore move on to consider what process, liquidation or administration, they judged to be more appropriate in the circumstances, and that in considering the question of an administration order they must consider whether such an order was justified in accordance with the law as outlined to them by Counsel and the Lt-Bailiff. They noted that the law showed that an administration order could be justified, either on the grounds that a more favourable realisation of assets could result, or that the insolvency could be overcome such as to allow the Company to continue to trade. They therefore considered whether an administration order, rather than a liquidation order, might produce a more advantageous outcome for the creditors or might allow the company to continue its business.
29. To address this task the Jurats concluded that they needed to make a judgement on whether the outline of the proposed administration process presented to them by the Company convinced them that a more advantageous outcome could occur or that it might allow the Company to continue to trade, if that course were pursued rather than making an immediate winding up order.
30. Having considered the information provided in support of a proposed process of administration, the Jurats were very struck by the lack of detail produced by the Company. This was, in particular, with regard to the detail of the underlying assets of the Company. There was no detail of this in the evidence, except that these were described as "long term assets". The Jurats wished to know what those assets actually were, but this had necessitated counsel taking instructions. Counsel eventually told the Court, on instructions, that these assets comprised, first, land in a "valley in Switzerland" which was apparently a development project, being operated as hotels by other companies. Owing to the complexities of foreign ownership of Swiss real property, which necessitated the involvement and approval of authorities in the relevant Canton, this project had a projected two year time frame to come to fruition. The second such asset was said to be an interest in an undersea power cable project linking the United Kingdom and Iceland, which had a six year projected timescale to come to fruition. These were therefore described as being "long term assets".
31. Given the lack of detail readily volunteered to the Court about these assets, the Jurats were concerned as to the true value of the Company. The repeated references by made by the Company and its counsel, to 'complex structures' but with no explanation, as to what this meant, did not provide the Jurats with any assurance as to the substance of the Company's case.
32. The Jurats further noted that only management accounts (for the period ending 28th February 2025) had been presented to the Court, so there was no comfort from the financial evidence having been audited. The balance sheet presented to the Court showed a total asset value for the Company of circa £195 million whilst debts were shown to be circa £27 million. There was no indication of the basis of the asset valuation or what assumptions had been made.

33. The Company claimed to have a positive net asset value of £172,949,386 at the end of February 2025, but with a net liquidity deficit of £23,252,125 owing to there being only £21,692 cash at bank, with all other high value assets described as being “*Long term investments with limited cash and restrictions on distribution of cash*”, together with some smaller amounts, being either “*trade receivables due from related entities with limited liquidity – not able to call in today*”, or as reflecting “*management fees receivable via PSF Capital Reserve LP which has insufficient liquid resources to settle within the required time frame*”. These latter would seem to mean, in effect, bad debts.
34. In the circumstances of the apparently alleged huge positive asset value figure, the Jurats found it difficult to understand why the Company appeared to have done nothing to create the necessary liquidity by asset sales if necessary in the significant period, from at least October 2024, since the liquidity problem must have been observed. It appeared that only possible financial restructurings had been contemplated.
35. It was evident that EJF had been seeking information on the Company’s assets for some considerable time.
36. The lack of any detailed information about the nature of the underlying assets left the Jurats in significant difficulty in assessing the probability, or even possibility, of an administration order being successful in achieving either of the statutory purposes. Given that the persons promoting an administration order were the only parties capable of delivering this information, its absence was unhelpful to their position.
37. The Jurats noted that EJF, as the major creditor, had been presented with seven restructuring proposals since October 2024, none of which it found acceptable. The lack of detailed information was stated to have been a major factor in the creditor’s assessment. The Jurats further noted that the restructuring proposals presented to EJF appeared to have involved a substitution of one form of loan note for another without any cash return, and indeed, the subordination of EJF’s loans to further or other finance which might be obtained from other parties. The Jurats found that EJF’s objection, to such a proposal, which disregarded the rights which they had contracted for when making their loans, was very reasonable.
38. The Jurats noted that the evidence showed that the original business model for the Company and its Group had been frustrated by decisions of the UK pension regulator. Efforts had been made by the Company to restructure and refinance their borrowings, but these had been unsuccessful, leading to the liquidity challenges. However, the point was that the Company’s difficulties did not appear to be of a possibly temporary nature, but rather to go to the very underlying basis on which the Company had been anticipated to be able to operate
39. The Jurats further noted that the Company, in its own evidence, stated that they anticipated making this Company redundant in the wider re-structuring which it was trying to achieve. In fact, it seemed to be intending ultimately to give the Company away for charitable purposes. This evidence led the Jurats to question why the Company should wish to enter into an administration process.
40. The Jurats formed the clear view that adopting an administration process as contended for by the Company was likely to delay repayments to creditors, compared with what might be achieved with a liquidation. The Jurats were unpersuaded, on the evidence (which was very much framed as matters of aspiration and generality) that there was any reason to believe that any sufficiently improved quantum of payment could reasonably be expected to be achieved by an administration, as opposed to a liquidation, so as to enable a conclusion that this could fairly be regarded, objectively, as a “more advantageous realisation” of the Company’s assets even if there were such delay.

41. The Jurats further noted that they had been presented with evidence that the behaviours of the Directors of the Company had been challenged, in that it had been suggested by counsel for EJF that the proposals being made by the Company were not so much concerned with promoting the interests of the unsecured creditors, (which, in the circumstance that the Company was admittedly insolvent within the meaning of the 2008 Law, ought to have been regarded as paramount), but rather as seeking to gain the best possibility of advantage for the equity holders in the Company, ie the Truell family interests. They consider that this proposition had some force.
42. They also noted the submission of Advocate Thibeault that the objective of the Directors of the Company appeared to be to retain as much control as possible of the group enterprise for the Truell family interests, if necessary by the mechanism of the Company retiring from its position as General Partner (and therefore executive manager) of the business of PSF Capital Reserve LP, and substituting an entity which managed the Truell family's own interests. This was suggested to be what had already happened in relation to an associated entity within the Group, Pension Superfund CIP Limited. The Jurats again considered that this proposition had force. They did not accept the submission of Counsel for the Company that this control was not material, as it was the financial interests of the Company's Limited Partner shares in PSF Capital Reserve which were what gave it its value. The Jurats concluded that there was value, and certainly that the Truell family saw it as such, in having control over the operation of that subsidiary business as General Partner, and they concluded that this did provide motivation for the Company's attitude in seeking an administration order with administrators of its preference, rather than there being a liquidation.
43. Evidence from EJF, the main creditor indicated a real and persuasive need for cash in the short term. Whilst it was argued on behalf of the Company that the main creditor was itself in the process of winding down its business voluntarily, so that its immediate need for cash could be discounted, the Jurats did not agree. Neither the administration nor the liquidation process outlined provided sufficient detail to enable the Jurats to ascertain with any real confidence the probability of the creditors' short term need for cash being satisfied, given the lack of detail in both proposals. However, it seemed more probable to the Jurats that a liquidation process would deliver the short term cash returns desired by EJF as the admitted main creditor of the Company, and which should already have been provided if the terms of the original loan notes had been met
44. The Jurats' comment about the lack of detail in the reports of both PwC and Teneo above in no way reflects on the capabilities of the professionals involved in either the administration or liquidation proposals. It is recognised that they themselves could not make a detailed judgement of future plans or prospects, due to the lack of information provided by the Company, and the early nature of their proposals.
45. The above all goes to emphasise, in summary, the Jurats' impression that EJF is correct in its objections, strongly pressed by its Counsel, that the Company and its directors have simply been adopting the strategy of delaying and stalling EJF's attempts to recover its loan, in any way possible; in other words, to "play for time". There have already been seven unacceptable proposals to "restructure" the Company's borrowings. The only evidence produced in support of the proposition that there are currently proposals to obtain funding which could come to fruition was unconvincing; one such negotiation had fallen through by the time of the hearing, and the other was no more than an expression of interest (even if headed as a "highly interested letter"), in terms which showed it to be entirely preliminary.
46. The evidence in support of the administration process is full of positive statements of aspiration, but is entirely general. It contains no concrete proposal to suggest that anything

other than “more of the same” is likely to occur. The Jurats could see no evidence sufficient to suggest that allowing an administration to take place would either stand a real prospect of enabling any part of the Company to continue as a going concern, or would produce a more advantageous realisation of the Company’s assets than would a liquidation.

47. The Jurats noted that if liquidators were, indeed, to conclude that continuing the business of the company were a more beneficial way forward, they would actually have the power to take this course in any event. They also noted that liquidators had wider powers than would administrators as regards pursuing claims to recover Company assets or compensation for the benefit of creditors.
48. Taking into account all the circumstances described, the Jurats therefore formed the view that a liquidation process was the better solution. The Jurats concluded that it was more likely to deliver short term cash to meet the main creditors’ rights, it being common ground that the creditors were paramount and the Company having informed the Court that, in due course, the Company would become superfluous to the Group’s wider business aims in any event.
49. The Jurats accordingly did not consider that there was any sufficiently real prospect that an administration might achieve either of the statutory purposes set out in s. 374 (3) of the Companies Law.

Disposal

50. For the above reasons, therefore, the Court dismissed the Application of the Company dated 25th March 2025 and made the order sought by the Creditor, EJP Funding DAC, on its Application of 24th April 2025 that the Company should be wound up, and Messrs Alex Adam and Andrew Wood of Teneo Financial Advisory Limited should be (and they duly were) sworn in as the joint liquidators of Pension Superfund Capital Holdings Limited.

Her Hon Hazel Marshall KC, Lt Bailiff
Jurats Morris, Clark and Parnwell

9th June 2025