



Shareholder Protection from Unfair Prejudice: Case and Statute Citator 2019

compiled by Andrew Marsden, Barrister

"He has great charisma and sets clients at ease, even in very tense circumstances. He is calm, always well prepared, very persuasive and extremely intelligent. He has a very useful knack of coming up with innovative solutions to seemingly intractable problems."

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Expertise

- Commercial Dispute Resolution
- Company Law (particularly shareholder disputes)
- Partnership Law

- Agency (including Commercial Agents)
- Mediation

Introduction

Part 30 of the Companies Act 2006 enables a shareholder in a company who is being treated in an 'unfairly prejudicial' way to seek relief from the court. Typically, these cases involve companies with relatively small numbers of shareholders. Those shareholders are usually also directors and may be the only directors of the company.

The shareholders / directors will generally have fallen out with each other. The unfairly prejudicial conduct often takes the form of an exclusion of one shareholder / director by another from the affairs of the company. On other occasions, it arises because of the misappropriation by one shareholder / director of property or funds belonging to the company or of a business opportunity that might have been enjoyed by the company. In other cases it might take the form of wrongful dealings with shares, improper dividends, salary or other payments or other improper conduct of the company's affairs.

This legislation gives the court very wide powers to control the conduct of the affairs of the company and its shareholders / directors. Such proceedings regularly result in the court ordering that one shareholder / director should purchase the shares of another at a value determined by the court to be fair in the circumstances.

This citator reflects the law as at 1 January 2019.

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Statutory Basis

Member's statutory right to petition for relief from unfair prejudice

Section 994 Companies Act 2006

Secretary of State's statutory right to petition for relief from unfair prejudice

Section 995 Companies Act 2006

Court has unlimited power to make such order as it sees fit for giving relief in respect of unfair prejudice

Section 996 Companies Act 2006

A petition presented under section 459 Companies Act 1985 will be treated as continued under section 994 Companies Act 2006 where it continues after 1 October 2007

Hawkes v Cuddy & others [2007] EWHC 2999

The right to petition under section 994 Companies Act 2006 is probably not an inalienable statutory right. Rather, it can probably be limited or removed by contractual agreement (e.g. by articles or LLP agreement) or otherwise

Re Vocam Europe [1998] BCC 396

Exeter City FC Ltd v The Football Conference Ltd [2005] 1 BCLC 238

Fulham Football Club (1987) Ltd v Richards [2011] EWCA Civ 855

Flanagan v Liontrust Investment Partners LLP [2015] EWHC 2171

Applies to UK companies and limited partnerships

Section 1 Companies Act 2006

Limited Liability Partnerships (Application of Companies Act 2006) Regulation 2009 (SI 2009)

Flanagan v Liontrust Investment Partners LLP [2015] EWHC 2171

<p>Definition of 'member'</p>	<p><i>Section 112 Companies Act 2006</i></p> <p><i>Re Nuneaton Borough AFC Ltd [1989] 5 BCC 377</i></p> <p><i>Re a Company (No 007828 of 1985) [1986] 2 BCC 98,951</i></p> <p><i>Re a Company (No 003160 of 1986) [1986] BCC 99,276</i></p> <p><i>Re Quickdome Ltd [1988] BCLC 370</i></p> <p><i>Jaber v Science & Info Tech Ltd [1992] BCLC 764</i></p> <p><i>Re a Company (No: 00506 of 1995) (unreported) 29 June 1995</i></p> <p><i>Atlasview Ltd v Brightview Ltd [2004] EWHC 1056</i></p> <p><i>Baker v Potter [2005] BCC 855</i></p> <p><i>Re McCarthy Surfacing Ltd [2006] EWHC 832</i></p> <p><i>Kaneria v Kaneria LTL 10 August 2015</i></p> <p><i>Re FSC Andrews Ltd [2015] EWHC 4042</i></p>
<p>A person not yet registered as a member but to whom shares have been transferred or transmitted by operation of law may petition</p>	<p><i>Section 112 Companies Act 2006</i></p> <p><i>Section 994(2) Companies Act 2006</i></p> <p><i>Re Quickdome Ltd [1988] BCLC 370</i></p> <p><i>Harris v Jones [2011] EWHC 1518</i></p> <p><i>(1) Hamilton and (2) Dowers v (1) Brown and (2) C & MB Holdings Ltd [2016] EWHC 191</i></p>
<p>Query whether a majority shareholder can complain of unfair prejudice</p>	<p><i>Re Baltic Real Estate Ltd [1992] BCC 629</i></p> <p><i>Re Baltic Real Estate Ltd (No.2) [1993] BCLC 503</i></p> <p><i>Re Legal Costs Negotiators Ltd [1999] BCC 547</i></p> <p><i>Parkinson v Eurofinance Group Ltd [2001] 1BCLC 720</i></p> <p><i>Re Ravenhart Service (Holdings) Ltd [2004] 2 BCLC 376</i></p>
<p>In case of limited partnerships, provision of section 994 Companies Act 2006 can be excluded by unanimous agreement of members</p>	<p><i>Limited Liability Partnerships (Application of Companies Act 2006) Regulation 2009 (SI 2009/1804) Reg 48</i></p>
<p>No power to order that a co-respondent (who is not also a petitioner) should have his shares purchased by fellow respondents guilty of unfairly prejudicial conduct</p>	<p><i>Gray v Braid Group (Holdings) Ltd [2015] CSOH 146</i></p>

<p>Procedure</p> <p>Separate petition for each company in respect of which unfair prejudice is alleged</p>	<p><i>Re a Company [1984] BCLC 307</i></p>
<p>Form of petition</p>	<p><i>Rule 3 and the Schedule to The Companies (Unfair Prejudice Applications) Proceedings Rules 2009 (SI 2009 No: 2469)</i></p> <p><i>Civil Procedure Rules Practice Direction 49A</i></p>
<p>Failure to proceed by petition cannot be remedied under CPR and will be struck out</p>	<p><i>Cooke v Cooke [1997] 2 BCLC 28</i></p>
<p>Who should be joined in the petition?</p>	<p><i>Re a Company (No: 007281 of 1986) [1987] 3 BCC 375</i></p> <p><i>Re a Company (No: 005287 of 1985) [1986] 1 WLR 281</i></p> <p><i>Re BSB Holdings Ltd [1992] BCC 915</i></p> <p><i>Re Baltic Real Estate Ltd [1992] BCC 629</i></p> <p><i>Re Saul D Harrison & Sons Plc [1995] BCLC 14</i></p> <p><i>Supreme Travels Ltd v Little Olympian Each-Ways Ltd [1994] BCC 947</i></p> <p><i>Lowe v Fahey [1996] 1 BCLC 262</i></p> <p><i>Re Ravenhart Service (Holdings) Ltd [2004] 2 BCLC 696</i></p> <p><i>Apex Global Management Ltd v FI Call Ltd [2013] EWHC 1652</i></p>
<p>Parties cases are defined by the petition and, in turn, any points of claim and points of defence ordered</p>	<p><i>Re Luddite Brothers Ltd [1965] 1 WLR 1051</i></p> <p><i>Re Fildes Brothers Ltd [1970] 1 WLR 592</i></p> <p><i>Re Tecnion Investments Ltd [1985] BCLC 434</i></p> <p><i>Re Coroin [2012] EWHC 2343</i></p> <p><i>Re Pedersen (Thameside) Ltd [2017] EWHC 3406</i></p>
<p>A respondent may have the petition struck out as against him if no relief will be granted against him and he will not be affected by an order</p>	<p><i>Supreme Travels Ltd v Little Olympian Each-Ways Ltd [1994] BCC 947</i></p> <p><i>Re a Company (No: 004415 of 1996) [1997] 1 BCLC 479</i></p>

<p>A prayer for a winding up should not be included where inappropriate</p>	<p><i>Civil Procedure Rules Practice Direction 49A in respect of applications under the Companies Act 1985 and the Insurance Companies Act 1982 para 9(1)</i></p> <p><i>Re a Company (No: 004415 of 1996) [1997] 1 BCLC 479</i></p>
<p>Civil Procedure Rules 1998 (as amended) apply save to the extent that they may be inconsistent with the Companies Act 2006 or the Companies (Unfair Prejudice Applications) Proceedings Rules 2009 (SI 2009 No: 2469)</p>	<p><i>Rule 2(2) of the Companies (Unfair Prejudice Applications) Proceedings Rules 2009 (SI 2009 No: 2469)</i></p> <p><i>Civil Procedure Rules Practice Direction 49A</i></p>
<p>Leave required to serve petition outside of jurisdiction</p>	<p><i>Spiliada Maritime Corp v Cansulex Ltd [1987] AC 460</i></p> <p><i>Re Harrods (Buenos Aires) Ltd [1991] BCC 249</i></p> <p><i>Re Baltic Real Estate Ltd [1992] BCC 629</i></p> <p><i>Apex Global Management Ltd v FI Call Ltd [2013] EWHC 1652</i></p>
<p>On return day the court will give directions for progress of petition (statements of case, preliminary issues, mediation, disclosure, witness statements, expert evidence, restrictions on advertising the petition, etc)</p>	<p><i>Re a Company (No: 002015 of 1996) [1997] 2 BCLC 1</i></p> <p><i>Re Rotadata Ltd [2000] BCLC 122</i></p>
<p>May be directions for split trial to determine whether there had been any unfair prejudice before costs of valuation are incurred</p>	<p><i>In the matter of LCM Wealth Management Ltd LTL 22/1/2013</i></p> <p><i>In the matter of Annacott Holdings Ltd [2012] EWCA Civ 998</i></p> <p><i>Maidment v Attwood [2012] EWCA Civ 998</i></p>
<p>If company is in insolvent liquidation the petitioner must first show that, but for the alleged wrongdoing, his shares would have had value</p>	<p><i>Maidment v Attwood [2012] EWCA Civ 998</i></p>
<p>Generally proceedings are in public</p>	<p><i>Re FI Call Ltd [2013] EWHC 223</i></p>
<p>The courts encourage early expert valuation on a joint basis to promote the chances of settlement and the avoidance of costs</p>	<p><i>North Holdings Ltd v Southern Tropics Ltd [1999] 2 BC LC 625</i></p>

Where parties agree to sale at a price to be determined by an expert the court will not generally interfere with that valuation if it is reached in accordance with his instructions	<i>Premier Telecom Communication Group Ltd v Webb [2014] EWCA Civ 994</i>
The court will not compel a victim of unfair prejudice to bring a claim for relief pursuant to section 994-996 Companies Act 2006 where the victim does not wish his shares to be acquired and wishes to pursue a derivative action	<i>Hook v Sumner LTL 27/11/2015</i>
Judgment in default under CPR Part 12 is not available as petitioner is not "entitled" to any particular relief	<i>Re Bankside Hotels Ltd [2018] EWHC 1035</i>
Summary judgment procedure of CPR Part 24 is available	<i>Re Bankside Hotels Ltd [2018] EWHC 1035</i>
Even if a respondent is debarred from defending the petitioner nevertheless still has to prove his case through evidence adduced to the court upon which the respondent may cross examine	<i>Re Full Cup International Trading Ltd [1995] BCC 682</i> <i>Re B & G Care Homes Ltd [2016] BCC 615</i> <i>Re Bankside Hotels Ltd [2018] EWHC 1035</i>

Interim injunctions and applications and security for costs

Interim relief not available under section 996 Companies Act 2006 before unfair prejudice is established but interim injunctions may be available under Supreme Court Act 1981 on American Cyanamid principles. The court may order interim injunctive relief both against those alleged as responsible for the unfairly prejudicial conduct, against the company concerned itself and against alleged recipients of that company's assets. The court may also appoint interim receivers in appropriate circumstances and give directions as to the holding of meetings of the company pending determination of the petition

Re a Company (No: 00596 of 1986) [1986] 2 BCC 99,063
Re Posgate & Denby (Agencies) Ltd [1986] 2 BCC 99,352
Re a Company (No: 004175 of 1986) [1987] 3 BCC 41
Re a Company (No: 004502 of 1988) [1991] BCC 234
Re Sticky Fingers Restaurant Ltd [1991] BCC 754
Re a Company (No 00330 of 1991) [1991] BCLC 597
Re Mountforest Ltd [1993] BCC 565
Re Tottenham Hotspur Plc [1994] 1 BCLC 655
Re a Company (No: 003061 of 1993) [1994] BCC 883
Re Whitchurch Insurance Consultants Ltd [1994] BCC 51
Re BML Group Ltd [1994] BCC 502
Lunn v All Starr Video Ltd [1993] 137 SJ 108
Wright, Petitioners [1997] BCC 198
Wilson-Davies v Kirk [1997] BCC 770
Corbett v Corbett [1998] BCC 93
Trident European Fund v Coats Holdings Ltd [2003] EWHC 2471
Re Premier Electronics (GB) Ltd [2002] 2 BCLC 634
Re Ravenhart Service (Holdings) Ltd [2004] 2 BCLC 376
Williams v Brinkmann [2004] EWHC 601
Re Canterbury Travel (London) Ltd [2010] All ER (D) 133
Wendy Palmer v Mr Loveland Starlight Diamond Setters Hatton Garden Jewellers 2017 WL 04552554

Courts are reluctant to impose a director on a company by interim injunction

Pringle v collard [2007] EWCA 1075
Mission Capital plc v Sinclair [2010] 1 BCLC 304

Interim orders may be refused if sufficient undertakings are given as to the future conduct of the company

Pringle v Callard [2007] EWCA Civ 1075

<p>Security for costs may be ordered</p>	<p><i>CPR 25.12 and 25.13</i></p> <p><i>Re Unisoft Group Ltd [1992] BCC 494 and [1994] BCC 11</i></p> <p><i>Re Tottenham Hotspur Plc (unreported) July 1993</i></p> <p><i>In the matter of Auger Investments Ltd [2012] EWHC 94</i></p>
<p>Not usually proper for respondents to use company funds to defend a petition</p>	<p><i>Re Sherborne Park [1986] 2 BCC 99,528</i></p> <p><i>Re Kenyon Swansea [1987] 3 BCC 259</i></p> <p><i>Re Crossmore Electrical and Civil Engineering Ltd [1989] 5 BCC 37</i></p> <p><i>Re a Company (No 005685 of 1988) [1989] 5 BCC 79</i></p> <p><i>Re Hydrosan Ltd [1991] BCC 19</i></p> <p><i>Re Milgate Developments Ltd [1991] BCC 24</i></p> <p><i>Re a Company (No: 004502 of 1988) [1991] BCC 234</i></p> <p><i>Re a Company (No: 001126 of 1992) [1993] BCC 325</i></p> <p><i>Corbett v Corbett [1998] BCC 93</i></p> <p><i>Cas (Nominees) Ltd v Nottingham Forest Plc [2002] BCC 145</i></p> <p><i>Arrow Trading & Investments v Edwardian Group Ltd [2003] EWHC 2863</i></p> <p><i>Pollard v Pollard and others LTL 26/09/2007</i></p> <p><i>Apex Global Management Ltd v F1 Call Ltd [2013] EWHC 1652</i></p>
<p>No advertising of petition without court's direction</p>	<p><i>Companies (Unfair Prejudice Applications) Proceedings Rules 2009 (SI 2009/2469 Rule 6)</i></p> <p><i>Re a Company [1997] 2 BCLC 1</i></p>
<p>Interim disclosure orders available against parties and non-parties</p>	<p><i>Re TPD Investments Ltd LTL 22 January 2016</i></p>

Nature of Unfair Prejudice

Unfair prejudice may consist of acts or omissions committed in the past, being currently committed or which are anticipated

Re Gorwyn Holdings Ltd [1985] 1 BCC 99,479
Re a Company [1987] BCLC 141
Re Kenyon Swansea Ltd [1987] 3 BCC 259
Re a Company (No: 00314 of 1989) [1990] BCC 221
Lloyd v Casey [2002] 1 BCLC 454

Unfair prejudice must comprise conduct of the company's affairs and be an act or omission of the company or an act or omission on its behalf

Re a Company (No: 001761 of 1986) [1987] BCLC 141
Re Kenyon Swansea Ltd [1987] 3 BCC 259
Re Piccadilly Radio Plc [1989] 5 BCC 692
Re a Company (No: 00314 of 1989) [1990] BCC 221
Re a Company (No: 002470 of 1988) [1992] BCC 895
Re Unisoft Group Ltd (No 3) [1994] 1 BCLC 609
Re Leeds United Holdings Plc [1997] BCC 131
Re a Company (No: 00709 of 1992) [1997] 2 BCLC 739
Sikorski v Sikorski [2012] EWHC 1613
Re Coroin [2012] EWHC 2343

The affairs of a company may include the affairs of its subsidiaries

Nicholas v Soundcraft Electronics Ltd [1993] BCLC 360
Gross v Rackind [2005] 1 WLR 3505
Hawkes v Cuddy & others [2007] EWHC 2999 and [2009] EWCA Civ 291
Oak Investment Partners xii Ltd Partnership v Martin Boughtwood and others [2009] EWHC 176 and [2010] EWCA Civ 23

A failure to transfer shares in accordance with an alleged agreement may not involve the conduct of the affairs of the company

Kaneria v Kaneria LTL 10 August 2015

<p>Conduct complained of is ordinarily that of controllers of the company</p>	<p><i>SCWS v Meyer</i> [1959] AC 324 <i>Re Bovey Hotel Ventures Ltd</i> (unreported), 31 July 1981 <i>Re R A Noble (Clothing) Ltd</i> [1983] BCLC 273 <i>Re a Company</i> (No: 05287 of 1985) [1986] 1 WLR 281 <i>Re Blue Arrow Plc</i> [1987] BCLC 585 <i>Re a Company</i> (No: 002470 of 1988) [1992] BCC 895 <i>Re Saul D Harrison & Sons Plc</i> [1995] BCLC 14</p>
<p>The affairs of the company may in practice be conducted by not only its directors or some of its directors but also by its senior management</p>	<p><i>Oak Investment Partners xii Ltd Partnership v Martin Boughtwood and others</i> [2009] EWHC 176 and [2010] EWCA Civ 23</p>
<p>The 'unfairly prejudicial' conduct of the affairs of the company need not necessarily be carried on by persons acting as agents of those against whom relief is sought. Rather, it is sufficient if the unfairly prejudicial conduct is sufficiently attributable to those against whom relief is sought that it is 'fair' that relief should be given against them</p>	<p><i>F&C Alternative Investments (Holdings) Ltd v Barthelemy & others</i> [2011] EWHC 1731</p>
<p>'Unfairness' to be judged by ordinary meaning of the word and does not require infringement of legal rights. Keeping promises and honouring agreements are the 'watchwords'</p>	<p><i>Re Saul D Harrison & Sons Plc</i> [1995] 1 BCLC 14 <i>Re BSB Holdings Ltd (No 2)</i> [1996] 1 BCLC 155 <i>Re Marchday Group</i> [1998] BCC 800 <i>O'Neill v Phillips</i> [1999] 1 WLR 1092</p>

<p>Both 'unfairness' and 'prejudice' need to be individually and objectively established</p>	<p><i>Re R A Noble (Clothing) Ltd</i> [1983] BCLC 273 <i>Re a Company (No: 008699 of 1985)</i> [1986] 2 BCC 99,024 <i>Re Ringtower Holdings Plc</i> [1989] 5 BCC 82 <i>Re a Company (No: 002470 of 1988)</i> [1992] BCC 895 <i>Re Saul D Harrison & Sons Plc</i> [1995] 1 BCLC 14 <i>Re Blackwood Lodge</i> [1997] BCC 434 <i>Re Guidezone Ltd</i> [2001] BCC 692 <i>Rock (Nominees) Ltd v RCO Holdings Plc (in liquidation)</i> [2004] BCC 466 <i>Re Baumler (UK) Ltd</i> [2005] 1 BCLC 92 <i>Hawks v Cuddy</i> [2007] EWHC 2999 and [2009] EWCA Civ 291 <i>Gray v Braid Group (Holdings) Ltd</i> [2015] CSOH 146 <i>Cusack v Holdsworth</i> [2016] EWHC 3084 <i>Re TPD Investments Limited</i> [2017] EWHC 657</p>
<p>Unfair Prejudice involves a visible departure from the standards of fair dealing and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely</p>	<p><i>Jenkins Committee's Report</i> <i>Saul D Harrison</i> [1995] 1 BCLC 14</p>
<p>Whether conduct is to be considered fair or unfair is to be determined judicially upon the application of rational principles</p>	<p><i>O'Neill v Phillips</i> [1999] 1 WLR 1092</p>
<p>The prejudice suffered must be substantial</p>	<p><i>Re Metropolis Motorcycles</i> [2005] 1 BCLC 520</p>
<p>The prejudice suffered can be either financial prejudice (e.g. prejudicial to the value of the petitioners shares or otherwise financially prejudicial to the petitioner) or otherwise prejudicial in character (e.g. disregarding of the rights of the shareholder)</p>	<p><i>Re Cronin Ltd</i> [2012] EWHC 2343</p>
<p>Petitioner's interests in his capacity as a member must be affected by the conduct complained of though a court may take a relatively wide view as to whether a person interests in his capacity as a member are affected (e.g. affecting interests as creditor in respect of a loan made at same time as investment in shares may suffice)</p>	<p><i>Re Saul D Harrison & Sons Plc</i> [1995] 1 BCLC 14 <i>Re Alchemea Ltd</i> [1998] BCC 964 <i>Re a Company (No: 00709 of 1992)</i> [1997] 2 BCLC 739 <i>Gamlestaden Fastigheter AB v Baltic Partners Ltd</i> [2007] 4 All ER 164, PC <i>Hawks v Cuddy</i> [2007] EWHC 2999 and [2009] EWCA Civ 291</p>

<p>If the company is insolvent the petitioner will generally have to establish that his shares would have had value but for the wrongdoing of the respondents (though if the petitioner was also a lender to the company at the time he acquired his shares prejudice to his ability to recover that debt might also suffice)</p>	<p><i>Maidment v Attwood</i> [2012] EWCA Civ 998 <i>Gamlestaden Fastigheter AB v Baltic Partners Ltd</i> [2007] 4 All ER 164, PC</p>
<p>Generally the petitioner will need to establish (a) breach of the terms on which he agreed that the affairs of the company should be conducted; (b) that equitable considerations (i.e. those referred to in <i>Ebrahimi v Westbourne Galleries Ltd</i> [1973] AC 360), arising either at the commencement of the relationship or subsequently, make it unfair for those conducting the affairs of the company to rely upon their strict legal rights; or (c) that the board of directors has exceeded the powers vested in them or have exercised their powers for an illegitimate or ulterior purpose</p>	<p><i>Cobden Investments Ltd v RWM Langport Ltd</i> [2008] EWHC 2810</p>
<p>Of primary importance in identifying rights and interests of members are the memorandum and articles of association, any shareholders' agreements and the duties imposed upon directors by law and pursuant to statute. Conduct in breach of those agreements or duties may well involve unfairly prejudicial conduct and vice versa</p>	<p><i>Re Saul D Harrison & Sons Plc</i> [1995] 1 BCLC 14 <i>O'Neill v Phillips</i> [1999] 1 WLR 1092 <i>In the matter of Coroin Ltd</i> [2013] EWCA Civ 781 <i>In the matter of LCM Wealth Management Ltd</i> [2013] 3957 <i>Arbuthnott v Bonnyman</i> [2015] EWCA Civ 536</p>

In certain cases unfair prejudice may arise despite the absence of any breach of a legal right or duty. Where a company is in the nature of a 'quasi partnership', unfair prejudice may be found where a shareholder, though not acting in breach of any legally enforceable agreement or duty, uses the rules in a manner which equity regards as contrary to good faith. In such 'quasi partnership' cases equitable considerations make it unfair for the majority to rely on their strict legal rights. In such 'quasi partnership' cases unfair prejudice may exist where there is a failure to fulfil a 'legitimate expectation' of a member arising from an understanding or non-legally binding agreement between members which would make it unjust, unfair or inequitable were the majority permitted to enforce their strict legal rights. Such a 'legitimate expectation' might be, for example, that the member should continue to be employed as a director or otherwise be allowed to participate in management of the company whilst he holds shares in the company

Ebrahimi v Westbourne Galleries Ltd [1973] AC 360
Re a Company (No: 00477 of 1986) [1989] 5 BCC 82
Re J.E. Cade & Son Ltd [1992] BCLC 213
Re Saul D Harrison & Sons Plc [1995] 1 BCLC 14
Re R&H Electric Ltd v Haden Bill Electrical Ltd [1995] 2 BCLC 280
Re Leeds United Holdings Plc [1997] BCC 131
Quinland v Essex Hinge Co Ltd [1997] BCC 53
Re a Company (No: 00709 of 1992) [1997] 2 BCLC 739
Re Astec (BSR) Plc [1998] BCLC 556
O'Neill v Phillips [1999] 1 WLR 1092
Mears v R Mears & Co (Holdings) Ltd [2002] 2 BCLC 1
Grace v Biagioli [2006] 2 BCLC 70
In the matter of Gate of India (Tynemouth) Ltd [2008] EWHC 959
Oak Investment Partners xii Ltd Partnership v Martin Boughtwood and others [2009] EWHC 176 and [2010] EWCA Civ 23
Croly v Good [2010] EWHC 1
Apex Global Management Ltd v F1 Call Ltd [2015] EWHC 3269
Gray v Braid Group (Holdings) Ltd [2015] CSOH 146
Re TPD Investments Limited [2017] EWHC 657

It is unlikely that any such informal agreements or 'legitimate expectations' will exist in relation to listed public companies

Re Blue Arrow [1987] BCLC 585
Re Astec (BSR) Plc [1998] BCLC 556

A company may start out as a quasi partnership but later cease to operate as such (e.g. following the admission of new participants) and vice versa

Re a Company (No: 005134 of 1986) [1989] BCLC 383
Re McCarthy Surfacing Ltd [2008] EWHC 2279
Fowler v Gruber [2010] IBCLC 563
Croly v Good [2010] EWHC 1

Relations between the participants in a company that is to be considered in the nature of a quasi partnership must be sufficiently personal rather than purely professional

Woolliff v Ruston-Turner [2017] EWHC 3129

Of itself, an irretrievable breakdown in relations may not constitute unfairly prejudicial conduct

Re a Company (No: 007623 of 1984) [1986] 2 BCC 99,191
Re a Company (No: 004377 of 1986) [1986] 1 WLR 102
O'Neill v Phillips [1999] 1 WLR 1092
Re Phoenix Office Supplies Ltd [2003] 1 BCLC 76
McKee v O'Reilly [2003] EWHC 2008
Re Jayflex Construction Ltd [2004] 2 BCLC 145
Re Baumler (UK) Ltd [2005] 1 BCLC 92
Grace v Biagiolli [2005] EWCA Civ 1222
Racking v Gross [2004] EWCA Civ 815
Hawks v Cuddy [2007] EWHC 2999 and [2009] EWCA Civ 291
Oak Investment Partners xii Ltd Partnership v Martin Boughtwood and others [2009] EWHC 176 and [2010] EWCA Civ 23
In the matter of Hart Investment Holdings Ltd [2013] EWHC 2067
Apex Global Management v FI Call Ltd [2013] EWHC 1652 and [2015] EWHC 3269
Badyal v Badyal [2018] EWHC 68

The jurisdiction does not afford the court the power to make a purchase order in the absence of unfairly prejudicial conduct. It does not afford a “no fault divorce” jurisdiction. In other jurisdictions there is a move towards extending the court’s jurisdiction to permit a court to make a purchase order as an alternative to an order for the winding up of the company where it is “just and equitable” to do so

O'Neill v Phillips [1999] 1 WLR 1092
Evenstar [2006] 3 S.L.R.(R.) 827
Ting Shwu Ping v Scanone Pte Ltd [2016] SGCA 65 (CA (Sing))
Badyal v Badyal [2018] EWHC 68

In determining whether there has been any unfairly prejudicial conduct the cultural background to the company and its participants may be relevant

Rahman v Malik [2008] 2 BCLC 403

<p>Generally mere mismanagement will not constitute unfair prejudice though it might in extreme cases</p>	<p><i>Re Elgindata Ltd</i> [1991] BCLC 959 <i>Re a Company (No: 002470 of 1988)</i> [1992] BCC 895 <i>Re Macro (Ipswich) Ltd</i> [1994] BCC 781 <i>Fisher v Cadman</i> [2006] 1 BCLC 499 <i>Oak Investment Partners xii Ltd Partnership v Martin Boughtwood and others</i> [2009] EWHC 176 and [2010] EWCA Civ 23 <i>F&C Alternative Investments (Holdings) Ltd v Barthelemy & others</i> [2011] EWHC 1731</p>
<p>The existence of a 'deadlock' situation within the company is, on its own, unlikely to amount to unfair prejudice</p>	<p><i>Hawks v Cuddy</i> [2009] 2 BCLC 427</p>
<p>The petitioner's own conduct may result in 'prejudicial' conduct not being 'unfair'</p>	<p><i>Re London School of Electronics Ltd</i> [1986] Ch 211 <i>Re Ringtower Holdings plc</i> [1989] 5 BCC 82 <i>Baker v Potter</i> [2005] BCC 855 <i>Blackmore v Richardson</i> [2005] EWCA Civ 1356 <i>Grace v Biagioli</i> [2006] BCC 85 <i>Kelly v Hussain</i> [2008] EWHC 1117 (c.f. <i>Shah v Shah</i> [2010] EWHC 313) <i>Interactive Technology Corp Ltd v Ferster</i> [2016] EWHC 2896 <i>Corran v Butters</i> [2017] EWHC 2294</p>
<p>The conduct need not result in a reduction in the value of the petitioner's shares</p>	<p><i>McGuinness, Petitioners</i> [1988] 4 BCC 161 <i>R A Noble & Sons (Clothing) Ltd</i> [1993] BCLC 273</p>

If directors exceed the powers vested in them or exercise those powers for an ulterior purpose or otherwise than in the best interests of the company as a whole or otherwise breach the duties owed to the company, a member may generally complain of unfair prejudice in the conduct of the company

Re D. R. Chemicals Ltd [1989] 5 BCC 39
Re Saul D Harrison & Sons plc [1995] 1 BCLC 14
Re BSB Holdings (No. 2) [1996] 1 BCLC 155
CAS (Nominees) Ltd v Nottingham Forest plc
[2002] BCC 145
Re McCarthy Surfacing Ltd [2008] EWHC 2279
In the matter of Southern Counties Fresh Food Ltd [2008] EWHC 2810
Oak Investment Partners XII Ltd Partnership v Martin Broughtwood and others [2009] EWHC 176 & [2010] EWCA Civ 23
Re Tobian Properties [2012] EWCA Civ 998
Re Addbins Ltd [2015] EWHC 3161
Gray v Braid Group (Holdings) Ltd [2015] CSOH 146
Ferster v Ferster [2016] EWCA Civ 717
Woolliff v Ruston-Turner [2017] EWHC 3129
Re Last Lion Holdings Ltd [2018] EWHC 2347

Exclusion from participation in management of a company that is in the nature of a 'quasi partnership' or where there is an agreement, understanding or legitimate expectation that the petitioner should be entitled to participate in the company is likely to amount to unfairly prejudicial conduct in absence of sufficient reasons justifying exclusion

Ebrahimi v Westbourne Galleries Ltd [1973] AC 360
Re Flex Associates Ltd [2009] EWHC 3690
Croly v Good [2010] EWHC 1
Shah v Shah [2010] EWHC 313
Lantsbury v Hauser [2010] EWHC 390
Amin v Amin [2010] EWHC 827
Fowler v Grubar [2010] 1 BCLC 563
Shepherd v Williamson [2010] EWHC 2375
Williams v Williams & others LTL 12/10/11
Harris v Jones [2011] EWHC 1518
Re Abbingdon Hotel Ltd [2011] EWHC 635
Williams v Williams LTL 12/10/11
In the matter of I Fit Global Ltd [2013] EWHC 2090
In the matter of Insurance & Finance Consultants Ltd
[2014] EWHC 2206
Flanagan v Liontrust Investment Partners LLP [2015] EWHC 2171
Re TPD Investments Limited [2017] EWHC 657
VB Football Assets v. Blackpool Football Club (Properties) Ltd [2017] EWHC 2767
Badyal v Badyal [2018] EWHC 68

<p>But if the petitioner resigns his directorship voluntarily there may be no obligation to reappoint</p>	<p><i>Re Flex Associates Ltd [2009] EWHC 3690</i> <i>Kaneria v Kaneria LTL 10 August 2015</i></p>
<p>Removal of a company's auditor from office on grounds of divergence of opinion on matters of accounting treatment or audit procedures or for any other improper grounds is deemed to involve unfair prejudice</p>	<p><i>Section 994(1A) Companies Act 2006</i> <i>Gray v Braid Group (Holdings) Ltd [2015] CSOH 146</i></p>
<p>Refusal to permit audit</p>	<p><i>Interactive Technology Corp Ltd v Ferster [2016] EWHC 2896</i></p>
<p>Excessive remuneration or drawings from the company</p>	<p><i>Re Cumana [1986] 2 BCC 99,453 and [1986] BCLC 430</i> <i>Grace v Biagioli [2005] EWCA Civ 1222</i> <i>Re Campbell Irvine (Holdings) Ltd [2006] EWHC 406</i> <i>Re McCarthy Surfacing Ltd [2008] EWHC 2279</i> <i>In the matter of Sunrise Radio Ltd [2009] EWHC 2893</i> <i>Croly v Good [2010] EWHC 1</i> <i>Maidment v Attwood [2012] EWCA Civ 998</i> <i>Re Blue Index Ltd [2014] EWHC 2680</i> <i>Re CF Booth Ltd [2017] EWHC 457</i> <i>VB Football Assets v Blackpool Football Club (Properties) Ltd [2017] EWHC 2767</i></p>
<p>Failure to hold meetings or holding "sham" meetings</p>	<p><i>McGuinness, Petitioners [1988] 4 BCC 161</i> <i>Nuneaton Borough AFC Ltd [1989] 5 BCC 792</i> <i>Re Ghyll Beck Driving Range Ltd [1993] BCLC 1126</i> <i>Fowler v Gruyere [2010] BCLC 563</i> <i>LCM Weath Management Ltd [2013] EWHC 3957</i></p>

<p>Refusal to conduct business of company in accordance with agreement or agreed policy</p>	<p><i>Re Abbingdon Hotel Ltd</i> [2011] EWHC 635 <i>Khoshkhou v Cooper</i> [2014] EWHC 1087 <i>Birdi v (1) Specsavers Optical Group Ltd; (2) Singh; (3) Dartford Visionplus Ltd and (4) Dartford Specsavers Ltd</i> [2015] EWHC 2870</p>
<p>Interference with agreed management structure and operational procedures</p>	<p><i>Oak Investment Partners xii Ltd Partnership v Martin Boughtwood and others</i> [2009] EWHC 176 and [2010] EWCA Civ 23</p>
<p>Failure properly to pay dividends</p>	<p><i>Re Sam Weller & Sons Ltd</i> [1989] 5 BCC 810 <i>Re Saul D Harrison & Sons Plc</i> [1995] 1 BCLC 14 <i>Re a Company (No: 004415 of 1996)</i> [1997] 1 BCLC 479 <i>Re Metropolis Motorcycles Ltd</i> [2006] EWHC 364 <i>In the matter of Gate of India (Tynemouth) Ltd</i> [2008] EWHC 959 <i>Re McCarthy Surfacing Ltd</i> [2008] EWHC 2279 <i>Croly v Good</i> [2010] EWHC 1 <i>J & S Insurance and Financial Consultants Ltd</i> [2014] EWHC 2206 <i>Re CF Booth Ltd</i> [2017] EWHC 457 <i>VB Football Assets v Blackpool Football Club (Properties) Ltd</i> [2017] EWHC 2767</p>

Misapplication of company funds, property or opportunities or 'expropriation of the minority'

Re Stewarts (Brixton) Ltd [1985] BCLC 4
Re London School of Electronics Ltd [1986] Ch 211
Re Cumana Ltd [1986] BCLC 430
Re Elgindata Ltd [1991] BCLC 959
Re Little Olympian Each-Ways Ltd (No 3) [1995] 1 BCLC 636
Re McCarthy Surfacing Ltd [2008] EWHC 2279
In the matter of Allied Business and Financial Consultants Ltd [2009] EWCA Civ 751
In the matter of Sunrise Radio Ltd [2009] EWHC 2893
Re Flex Associates Ltd [2009] EWHC 3690
Croly v Good [2010] EWHC 1
Sethi v Patel [2010] EWHC 1830
Lantsbury v Hauser [2010] EWHC 390
In the matter of Annacott Holdings Ltd [2013] EWCA Civ 119
In the matter of Hart Investment Holdings Ltd [2013] EWHC 2067
Thomas v Dawson [2015] EWCA Civ 706
In the matter of Husbands Bosworth Properties Ltd [2015] EWHC 1928
Hook v Sumner LTL 27/11/2015
Patel v Ferdinand (unreported) 14 July 2016
Interactive Technology Corp Ltd v Ferster [2016] EWHC 2896
Cusack v Holdsworth [2016] EWHC 3084
VB Football Assets v Blackpool Football Club (Properties) Ltd [2017] EWHC 2767
Badyal v Badyal [2018] EWHC 68

May be difficult to establish a misappropriation of business opportunities if there is a finding of agreement to discontinue trading

Ahmadifard v McCullough (Unreported July 2014)

Wrongful use of company's trading name

Maidment v Attwood [2012] EWCA Civ 998

<p>Unfair calls on shares</p>	<p><i>Re a Company (No: 008126 of 1989) [1992] BCC 542</i> <i>Re D.R. Chemicals Ltd [1989] 5 BCC 39</i> <i>Randall v S & F (Quarries) Ltd (unreported) 12 October 1994</i> <i>Re Regional Airports Ltd [1999] 2 BCLC 30</i> <i>Dalby v Bodilly [2004] EWCA 307</i></p>
<p>Selective or otherwise improper share issues</p>	<p><i>Re a Company (No: 007623 of 1984) [1986] 2 BCC 99,191</i> <i>Re a Company (No: 0026712 of 1984) [1985] BCLC 80</i> <i>Re D.R. Chemicals Ltd [1989] 5 BCC 39</i> <i>Randall v S & F (Quarries) Ltd (unreported) 12 October 1994</i> <i>Re Regional Airports Ltd [1999] 2 BCLC 30</i> <i>Dalby v Bodilly [2004] EWCA 307</i> <i>In the matter of Gate of India (Tynemouth) Ltd [2008] EWHC 959</i> <i>In the matter of Sunrise Radio Ltd [2009] EWHC 2893</i> <i>Lantsbury v Hauser [2010] EWHC 390</i> <i>In the matter of Zetnet Ltd [2011] EWHC 1518</i> <i>In the matter of I Fit Global Ltd [2013] EWHC 2090</i> <i>Re TPD Investments Limited [2017] EWHC 657</i></p>
<p>Preventing a sale of shares at highest value</p>	<p><i>Re a Company (No: 8699 of 1985) [1986] BCLC 382</i></p>
<p>Seriously diminishing or jeopardising the value of the petitioner's shares</p>	<p><i>(1) Hamilton and (2) Dower v (1) Brown and (2) C & MB Holdings Ltd [2016] EWHC 191</i> <i>Re Last Lion Holdings Ltd [2018] EWHC 2347</i></p>
<p>Wrongful refusal to register a transfer of shares</p>	<p><i>Holman v Adams Securities Ltd [2010] EWHC 2421</i> <i>Graham v Every [2014] EWCA Civ 191</i> <i>Re Last Lion Holdings Ltd [2018] EWHC 2347</i></p>
<p>Transfers of shares or transfers of control of shares may not amount to unfairly prejudicial conduct unless specifically prohibited by agreement between the shareholders</p>	<p><i>In the matter of Coroin Ltd [2013] EWCA Civ 781</i></p>

Failure to provide proper information as to company's affairs	<p><i>Re a Company (No 008699 of 1985) [1986] 2 BCC 99,024</i></p> <p><i>Re R A Noble (Clothing) Ltd [1983] BCLC 273</i></p> <p><i>Randall v S & F (Quarries) Ltd (unreported) 12 October 1994</i></p> <p><i>In the matter of Sunrise Radio Ltd [2009] EWHC 2893</i></p> <p><i>Gray v Braid Group (Holdings) Ltd [2015] CSOH 146</i></p> <p><i>VB Football Assets v Blackpool Football Club (Properties) Ltd [2017] EWHC 2767</i></p>
Improper accounting and record keeping or accounting deficiencies	<p><i>Fowler v Gruyere [2010] BCLC 563</i></p> <p><i>Apex Global Management Ltd v F1 Call Ltd [2015] EWHC 3269</i></p> <p><i>Gray v Braid Group (Holdings) Ltd [2015] CSOH 146</i></p>
Ignoring board decisions or allowing persons not appointed or disqualified from acting as directors to manage the affairs of the company	<p><i>Re H.R. Harmer Ltd [1959] 1 WLR 62</i></p> <p><i>(1) Hamilton and (2) Dower v (1) Brown and (2) C & MB Holdings Ltd [2016] EWHC 191</i></p>
Denigrating conduct particularly in the context of a "quasi partnership" such as to render it unrealistic to expect the participants to continue in business together	<p><i>Apex Global Management Ltd v F1 Call Ltd [2015] EWHC 3269</i></p>
Wrongful registration of new members	<p><i>Re Piccadilly Radio Plc [1989] 5 BCC 692</i></p>
Failure to permit proper financial management	<p><i>Thomas v Dawson [2015] EWCA Civ 706</i></p>
Failure to permit proper remuneration of management	<p><i>Thomas v Dawson [2015] EWCA Civ 706</i></p>
Permitting a bankrupt former director to continue in the management of the affairs of a company contrary to Company Directors Disqualification Act 1986 s11	<p><i>(1) Hamilton and (2) Dowers v (1) Brown and (2) C & MB Holdings Ltd [2016] EWHC 191</i></p>
Committing criminal offences	<p><i>Bermuda Cablevision Ltd v Colica Trust Co Ltd [1997] BCC 982</i></p>

Physical violence	<i>In the matter of Home & Office Fire Extinguishers Ltd [2012] EWHC 917</i>
Threats to wind up	<i>In the matter of TPL Holdings Ltd 25.3.14</i>
Unsubstantiated threats of applications for commit all for contempt of court or for perjury	<i>Interactive Technology Corp Ltd v Ferster [2016] EWHC 2896</i>
Removal of company's auditor on basis of divergence of opinion or on other improper grounds may amount to unfair prejudice	<i>Section 994(1A) Companies Act 2006</i>
Directors must act fairly as between different classes of shareholders	<i>Re BSB Holdings Ltd (No 2) [1996] 1 BCLC 155</i>
Delay in bringing proceedings may be a bar to relief	<i>Re D.R. Chemicals Ltd [1989] 5 BCC 39</i> <i>cf Price v Rawlings (unreported)</i> <i>Re Grandactual Ltd [2006] BCC 73</i> <i>Re FSC Andrews Ltd [2015] EWHC 4042</i>
If member acquiesces in conduct that may deprive the conduct of 'unfairness'	<i>Fisher v Cadman [2005] EWHC 377</i>
On the other hand, if a petitioner fails to object to matters disclosed in published accounts (e.g. excessive remuneration) that failure, on its own, is unlikely to prevent him asserting that that matter involves unfairly prejudicial conduct	<i>Maidment v Attwood [2012] EWCA Civ 998</i>
Although a petitioner must be a member when petition is presented, he may rely on events prior to his becoming a member	<i>Lloyd v Casey [2002] 1 BCLC 454</i>

When the petition may be struck out as an abuse of process

It may amount to an abuse of process for a person to issue a petition in circumstances where there has been unfair prejudice if the articles of association or shareholders' agreement contains a mechanism for offering his shares to the other shareholders at a fair price and for calculating the fair price unless that person has first utilised that procedure

Re a Company (No: 07623 of 1984) [1986] 2 BCC 99,191

Re a Company (No: 004377 of 1986) [1987] 1 WLR 102

Re Castleburn Ltd [1989] 5 BCC 652

Re Benfield Greig Group Plc [2002] BCC 256

Re Belfields Furnishings Ltd [2006] EWHC 183

No abuse if impropriety affects value or valuation

Re a Company (No: 006834 of 1988) [1989] 5 BCC 218

North Holdings Ltd v Southern Tropics Ltd [1999] BCC 746

cf Fuller v Syracuse Ltd [2001] BCC 806

Re C F Booth [2017] EWHC 457

No abuse if mechanism for fixing price is not fair

Re a Company (No: 004377 of 1986) [1986] 1 WLR 102

Re Abbey Leisure Ltd [1990] BCC 60

Re a Company (No: 00330 of 1991) [1991] BCC 241

Re Copeland & Craddock Ltd [1997] BCC 294

O'Neill v Phillips [1999] 1 WLR 1092

North Holdings Ltd v Southern Tropics Ltd [1999] BCC 746

Re C F Booth Ltd [2017] EWHC 457

No abuse if valuer is not independent

Re Boswell & Co (Steels) Ltd [1989] 5 BCC 145

Re Benfield Greg Group Plc [2002] BCC 256

<p>Issue of petition may amount to an abuse of process even though there has been unfair prejudice if it is clear that the petitioner will have to sell his shares to the respondent and the petitioner has unreasonably rejected a reasonable offer to purchase his shares at a fair price</p>	<p><i>Re a Company (No: 003843 of 1986)</i> [1987] 3 BCC 624</p> <p><i>Re a Company (No: 003096 of 1987)</i> [1988] 4 BCC 80</p> <p><i>O'Neill v Phillips</i> [1999] 1 WLR 1092</p> <p><i>North Holdings Ltd v Southern Tropics Ltd</i> [1999] BCC 746</p> <p><i>West v Blanchet</i> [2000] 1 BCLC 795</p> <p><i>Wyatt v Frank Wyatt & Son Ltd</i> [2003] EWHC 520</p> <p><i>Isaacs v Belfield Furnishings Ltd</i> [2006] All ER (D) 216</p> <p><i>Hawks v Cuddy</i> [2007] EWHC 2999 and [2009] EWHC Civ 291</p>
<p>But that may not be the case where there is uncertainty as to who should buy out whom, or the offer to purchase does not comprise one that provides all the advantages that the petitioner might reasonably expect to achieve from issuing a petition</p>	<p><i>Harbourne Nominees Ltd v Karvaski</i> [2011] EWHC 2214</p>
<p>Any 'fair offer' must be unconditional and capable of a binding acceptance</p>	<p><i>O'Neill v Phillips</i> [1999] 1 WLR 1092</p> <p><i>Re Flex Associates Ltd</i> [2009] EWHC 3690</p> <p><i>Shepherd v Williamson</i> [2010] EWHC 2375</p>
<p>What constitutes a "fair offer"</p>	<p><i>O'Neill v Phillips</i> [1999] 1 WLR 1092</p> <p><i>Harbourne Road Nominees Ltd v Karvaski</i> [2011] EWHC 2214</p>
<p>It may amount to an abuse of process if the actions complained of amount only to breaches of duties owed by directors such that the appropriate method of complaint would be by means of a derivative action rather than by an unfair prejudice petition</p>	<p><i>Re Chime Corp Ltd</i> [2004] 3 HKLR 922</p> <p><i>cf Re Brightview Ltd</i> [2004] BCC 542</p>
<p>Petition may be struck out where it relates to matters taking place after the petitioner has sold his beneficial interest in the company's shares</p>	<p><i>Re FSC Andrews Ltd</i> [2015] EWHC 4042</p>
<p>Petition may be struck out or dismissed summarily if no real prospect of success or it is plain and obvious that the relief claimed will not be granted</p>	<p><i>Civil Procedure Rules Part 3 and Part 24 apply</i></p> <p><i>Re Legal Costs Negotiators Ltd</i> [1999] BCLC 171</p>

<p>Solicitors who fail to advise of the need to make a fair offer to avoid a finding of unfairly prejudicial conduct may be held negligent</p>	<p><i>Magical Marketing Ltd v Ware & Kay</i> [2013] EWHC 59</p>
<p>Petition may also be struck out if it comprises an attempt to raise issues the same as or similar to those raised in an earlier petition which the petitioner has failed to prosecute</p>	<p><i>Treetop Investment LLC v Falmouth House Freehold Co Ltd</i> [2017] EWHC 674</p>
<p>Uncertain whether petition will be stayed in face of an agreement to arbitrate</p>	<p><i>Re Vocam Europe Plc</i> [1998] BCC 396 <i>Eurotunnel v Balfour Beatty</i> [1992] 2 Lloyd's Rep 7 <i>Sheldon v D F Keane</i> (unreported) 21 March 2003 <i>Exeter City AFC Ltd v Football Conference Ltd</i> [2005] 1 BCLC 238</p>
<p>What relief will be ordered?</p> <p>No limit on types of order court may make to give relief in respect of matters complained of. Petitioner must state relief he seeks</p>	<p><i>Section 996 Companies Act 2006</i> <i>Re Bird Precision Bellows</i> [1986] Ch 658 <i>Re Nuneaton Borough AFC Ltd (No.2)</i> [1991] BCC 44 <i>Re J.E.Cade & Son Ltd</i> [1992] BCLC 213 <i>Supreme Travels Ltd v Little Olympian Each-Ways Ltd</i> [1994] BCC 947 <i>cf Re Full Cup Int Trading Ltd</i> [1998] BCC 58 <i>Grace v Biagioli</i> [2005] EWCA Civ 1222 <i>Hawks v Cuddy</i> [2009] EWCA Civ 291 <i>Sikorski v Sikorski</i> [2012] EWHC 1613 <i>In the matter of Hart Investment Holdings Ltd</i> [2013] EWHC 2067 <i>Thomas v Dawson</i> [2015] EWCA Civ 706</p>
<p>Even if unfairly prejudicial conduct is established there is no entitlement to relief. Rather, relief will only be granted if it is considered fair and appropriate that relief should be granted</p>	<p><i>Grace v Biagioli</i> [2005] EWCA Civ 1222 <i>Re Bankside Hotels Ltd</i> [2018] EWHC 1035</p>
<p>The court assesses the appropriateness of any particular remedy as at the date of the hearing rather than at the date of the presentation of the petition and looks to the realities and practicalities of the overall situation past present and future</p>	<p><i>Grace v Biagioli</i> [2005] EWCA Civ 1222</p>

<p>The court will not grant relief where it will serve no substantially useful purpose</p>	<p><i>Re a Company (No: 008126 of 1989) [1992] BCC 542</i> <i>Re Full Cup Int. Trading Ltd [1998] BCC 58</i> <i>Re Hailey Group Ltd [1993] BCLC 459</i></p>
<p>The remedy is not limited merely to one reversing or putting right the immediate conduct which has justified the making of the order. Rather, the court is entitled to look at the reality and practicalities of the overall situation, past, present and future.</p>	<p><i>Grace v Biagioli [2006] BCC 85</i></p>
<p>Court will grant the minimum remedy to repair the misconduct and unfair prejudice suffered and prevent it happening in the future</p>	<p><i>Re Bird Precision Bellows [1986] Ch 658</i> <i>Re Legal Costs Negotiators Ltd [1999] BCC 547</i> <i>Grace v Biagioli [2006] BCC 85</i> <i>Re Metropolis Motorcycles Ltd [2006] 364</i> <i>Hawks v Cuddy [2007] EWHC 2999 and [2009] EWCA Civ 291</i> <i>Re TPD Investments Limited [2017] EWHC 657</i></p>
<p>The remedy ordered will be one that is "fair" and "appropriate" in the circumstances and will seek to avoid unjust enrichment to any of the parties</p>	<p><i>Re Regional Airports Ltd [1999] 2 BCLC 30</i> <i>Grace v Biagioli [2005] EWCA 1222</i> <i>Re Sunrise Radio Ltd [2009] EWHC 2893</i> <i>Re TPD Investments Limited [2017] EWHC 657</i> <i>VB Football Assets v Blackpool Football Club (Properties) Ltd [2017] EWHC 2767</i></p>
<p>Court will only grant relief that is proportionate to the unfairly prejudicial conduct of which the petitioner complains</p>	<p><i>VB Football Assets v Blackpool Football Club (Properties) Ltd [2017] EWHC 2767</i></p>
<p>Conduct of the petitioner may affect the relief which the court thinks fit to grant</p>	<p><i>Re London School of Electronics Ltd [1986] Ch 211</i> <i>Richardson v Blackmore [2006] BCC 276</i></p>
<p>Relief will only be granted in respect of matters complained of</p>	<p><i>Re Legal Costs Negotiators Ltd [1999] BCLC 171</i></p>
<p>Court may order relief in a form that the petitioner does not seek or desire</p>	<p><i>Hawks v Cuddy [2009] EWCA Civ 291</i></p>

<p>In appropriate cases relief may be provided by an order granting a remedy against non-members</p>	<p><i>Re a Company (No: 005287 of 1985) [1986] BCLC 68</i> <i>Re Little Olympian Each-Ways Ltd [1994] 2 BCLC 420, 429</i> <i>F&C Alternative Investments (Holdings) Ltd v Barthelemy & others [2011] EWHC 1731</i> <i>Apex Global Management Ltd v FI Call Ltd [2013] EWHC 1652</i> <i>Re TPD Investments Limited [2017] EWHC 657</i></p>
<p>Relief may take the form of an order requiring the rectification of registers (e.g. as to shareholdings)</p>	<p><i>Lantsbury v Hauser [2010] EWHC 390</i></p>
<p>Relief may be ordered in the form of suitable injunctive orders being made</p>	<p><i>Re Last Lion Holdings Ltd [2018] EWHC 2347</i></p>
<p>In a suitable case relief may take the form of an order requiring the perpetrators to pay the victim damages in respect of losses suffered</p>	<p><i>Re Last Lion Holdings Ltd [2018] EWHC 2347</i></p>

<p>Often relief given by ordering the respondent to buy out the petitioner at a 'fair value' with the price fixed by court in light of expert valuation evidence</p>	<p><i>Re Bird Precision Bellows Ltd [1986] Ch 658</i> <i>Re D.R. Chemicals Ltd [1989] 5 BCC 39</i> <i>Re Nuneaton Borough AFC Ltd [1989] 5 BCC 792</i> <i>Re Nuneaton Borough AFC Ltd (No.2) [1991] BCC 44</i> <i>Re Regional Airpots Ltd [1999] 2 BCLC 30</i> <i>Grace v Biagioli [2005] EWCA Civ 1222</i> <i>Sethi v Patel [2010] EWHC 1830</i> <i>Shah v Shah [2011] EWHC 1902</i> <i>Kohli v Lit [2013] EWCA Civ 667</i> <i>CF Booth Ltd [2017] EWHC 457</i> <i>Re TPD Investments Limited [2017] EWHC 657</i> <i>Ashdown v Griffin [2017] EWHC 2601</i> <i>VB Football Assets v Blackpool Football Club (Properties) Limited [2017] EWHC 2767</i></p>
<p>In cases of relatively modest unfair prejudice a buyout order may be considered disproportionate</p>	<p><i>VB Football Assets v Blackpool Football Club (Properties) Ltd [2017] EWHC 2767</i></p>
<p>Relief may take the form of an order requiring the respondent to sell his shareholding in the company at a fair value</p>	<p><i>Lantsbury v Hauser [2010] EWHC 390</i></p>
<p>Reliable expert evidence as to value provided by a jointly instructed expert or unchallenged reliable expert evidence provided by an expert instructed by only one party is likely to be accepted by the court</p>	<p><i>Coopers Payen Limited v Southampton Container Terminal Ltd [2004] 1 Lloyds Rep 331</i> <i>Ashdown v Griffin [2017] EWHC 2601</i></p>
<p>Occasionally, relief may also be given in the form of granting the victim of the unfairly prejudicial conduct an option to acquire the other shareholders' shares</p>	<p><i>Thomas v Dawson [2015] EWCA Civ 706</i></p>
<p>In an appropriate case the court may make an order permitting the petitioner to purchase the respondent's shareholding</p>	<p><i>Oak Investment Partners xii Ltd Partnership v Martin Boughtwood and others [2009] EWHC 176 and [2010] EWCA Civ 23</i></p>

<p>Rarely will a court order a majority shareholder to cede control to a minority shareholder</p>	<p><i>Re a Company (No: 003843 of 1986) [1987] 3 BCC 624</i></p> <p><i>Re a Company (No: 006834 of 1988) [1989] 5 BCC 218</i></p> <p><i>Re Brenfield Squash Rackets Club Ltd [1996] 2 BCLC 184</i></p> <p><i>Nuneaton Borough AFC Ltd [1989] 5 BCC 792</i></p> <p><i>Oak Investment Partners xii Ltd Partnership v Martin Boughtwood and others [2009] EWHC 176 and [2010] EWCA Civ 23</i></p>
<p>In an appropriate case the court may also order a non-party's shares to be purchased</p>	<p><i>Re Abbington Hotel Ltd [2011] EWHC 635</i></p>
<p>Impecuniosity of proposed purchaser irrelevant</p>	<p><i>Re Cumana Ltd [1986] BCLC 430</i></p> <p><i>Sethi v Patel [2010] EWHC 1830</i></p> <p><i>Re TPD Investments Limited [2017] EWHC 657</i></p>
<p>An interim payment or payment on account can be ordered</p>	<p><i>Ferguson v Maclellan Salmon Co Ltd [1990] BCC 702</i></p> <p><i>Dalby v Bodilly [2004] EWCA 3078</i></p> <p><i>In the matter of Annacott Holdings Ltd [2011] EWHC 3180</i></p>
<p>Buyout price to be 'fair'</p>	<p><i>Re Bird Precision Bellows Ltd [1984] 1 Ch 419, [1986] Ch 658</i></p> <p><i>Eurofinance v Parkinson [2001] BCC 551</i></p> <p><i>Re Sunrise Radio Ltd [2009] EWHC 2893</i></p> <p><i>Sethi v Patel [2010] EWHC 1830</i></p> <p><i>In the matter of Annacott Holdings Ltd LTL 23/5/12</i></p> <p><i>Chilukuri v RP Explorer Master Fund [2013] EWCA Civ 1307</i></p> <p><i>Re Blue Index Ltd [2014] EWHC 2680</i></p> <p><i>Re Addbins Ltd [2015] EWHC 3161</i></p> <p><i>Birdi v (1) Specsavers Optical Group Ltd; (2) Singh; (3) Dartford Visionplus and (4) Dartford Specsavers Ltd [2015] EWHC 2870</i></p> <p><i>Re C F Booth [2017] EWCA 457</i></p> <p><i>Wann v Birkinshaw [2017] EWCA Civ 84</i></p> <p><i>Re TPD Investments Limited [2017] EWHC 657</i></p> <p><i>Edgar v Munro [2017] EWHC 1814</i></p>

<p>"Fair value" is often measured by reference to "market value" subject to necessary adjustments to take account of unfairly prejudicial conduct</p>	<p><i>Wann v Birkinshaw</i> [2017] EWCA Civ 84 <i>Re TPD Investments Limited</i> [2017] EWHC 657</p>
<p>In the case of a going concern the "fair value" of the shares to be purchased should usually be valued on the date on which they are ordered to be purchased although the court has a discretion to order another date for valuation if "fairness" requires</p>	<p><i>Profinance Trust SA v Gladstone</i> [2001] EWCA Civ 1031 <i>Re C F Booth Ltd</i> [2017] EWHC 457</p>
<p>In absence of a market for the company's shares the buyout price is to reflect 'fair value' in the context of a sale between the actual participants</p>	<p><i>Eurofinance v Parkinson</i> [2001] BCC 551</p>
<p>Basis of valuation should be 'fair' to all parties</p>	<p><i>CVC/Opportunity Equity Partners Ltd v Demario Almeida</i> [2011] 2 BCLC 108 <i>Re TPD Investments Limited</i> [2017] EWHC 657</p>
<p>Buyout price to take account of reduction in share value as a consequence of unfairly prejudicial conduct</p>	<p><i>Re D.R. Chemicals Ltd</i> [1989] 5 BCC 39 <i>Sethi v Patel</i> [2010] EWHC 1830 <i>Kohl v Lit</i> [2013] EWCA Civ 667 <i>Re Blue Index Ltd</i> [2014] EWHC 2480 <i>Re C F Booth Ltd</i> [2017] EWHC 457</p>
<p>Evidence of what transpired after the relevant date of valuation may be considered</p>	<p><i>Edgar v Munro</i> [2017] EWHC 1814</p>

In 'quasi partnership' cases there is generally no discount applied to reflect the minority status of the petitioner's shareholding. In non 'quasi partnership' cases there are conflicting authorities. Whilst certain authorities suggest that a discount should generally be applied to reflect the minority status of the shareholding in such cases the better and most current view seems to be that there should generally not be any discount applied to reflect the minority status of the shareholding in such cases. Rather, such a discount ought only be applied in cases where some specific feature justifies application of such a discount to determine the 'fair value' of the shareholding (e.g. where the minority shareholding was acquired at a discount)

Ebrahimi v Westbourne Galleries Ltd [1973] AC 360
Re Bird Precision Bellows Ltd [1984] Ch 658
Re D.R. Chemicals Ltd [1989] 5 BCC 39
Re a Company (No: 005134 of 1986) [1989] BCLC 383
Howie v Crawford [1990] BCC 330
Re Elgindata Ltd [1991] BCLC 959
Re Planet Organic Ltd [2000] 1 BCLC 366
CVC Opportunity Equity Partners Ltd v Demarco Almeida [2002] 2 BCLC 108
Phoenix Office Supplies Ltd v Larvin [2002] EWCA Civ 1740
Re Jayflex Construction Ltd [2003] EWHC 2008
Strahan v Wilcock [2006] EWCA Civ 13
Re Campbell Irvine (Holdings) Ltd (No.2) [2006] EWHC 583
Irvine v Irvine (No.2) [2007] 1 BCLC 445
Re McCarthy Surfacing Ltd [2008] EWHC 2279
Re Sunrise Radio Ltd [2010] 1 BCLC 367
Croly v Good [2010] EWHC 1
In the matter of Home & Office Fire Extinguishers Ltd [2012] EWHC 9
Re Blue Index Ltd [2014] EWHC 2680
Re Addbins Ltd [2015] EWHC 3161

Occasionally, both in quasi-partnership and non-quasi-partnership cases, identification of the "fair" value may involve applying a premium to the proportionate value

Re Sunrise Radio [2009] EWHC 2893

The order may allow the purchaser a period of time (and even an opportunity to apply for an extension of that period if required) within which to purchase the petitioner's shareholding

Re TPD Investments Limited [2017] EWHC 657

If the evidence available to the court indicates that the petitioner's shares are worthless the court may direct that the only relief available to the petitioner is an order that he should be permitted but not obliged to transfer his shares to the respondent for a nil consideration

Ashdown v Griffin [2017] EWHC 2601

Generally, notional sale costs should be taken into account in determining the “fair value” of the shareholding

Atwood v Maidment [2013] EWCA Civ 119
Wann v Birkinshaw [2017] EWCA Civ 84
Re TPD Investments Limited [2017] EWHC 657

Ordinarily the court will not grant the petitioner an option to purchase the respondent’s shareholding in the event that the respondent fails to purchase the petitioner’s shareholding in accordance with the court’s order

Re TPD Investments Limited [2017] EWHC 657