



# Shareholder Protection from Unfair Prejudice: Case and Statute Citator 2024

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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## Introduction

Part 30 of the Companies Act 2006 enables a shareholder in a company whose affairs are being conducted in a manner "unfairly prejudicial" to his interests as a shareholder in that company 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 December 2023**

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<b>Statutory Basis</b>	
Member's statutory right to petition for relief from unfair prejudice	<i>Section 994 Companies Act 2006</i>
Secretary of State's statutory right to petition for relief from unfair prejudice	<i>Section 995 Companies Act 2006</i>
Court has unlimited power to make such order as it sees fit for giving relief in respect of unfair prejudice	<i>Section 996 Companies Act 2006</i>
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	<i>Hawkes v Cuddy &amp; others [2007] EWHC 2999</i>
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	<p><i>Re Vocam Europe [1998] BCC 396</i></p> <p><i>Exeter City FC Ltd v The Football Conference Ltd [2005] 1 BCLC 238</i></p> <p><i>Fulham Football Club (1987) Ltd v Richards [2011] EWCA Civ 855</i></p> <p><i>Flanagan v Liontrust Investment Partners LLP [2015] EWHC 2171</i></p> <p><i>Heart of Midlothian Football Club Plc v Scottish Football League Ltd [2020] CSOH 68</i></p>
Applies to UK companies and limited liability partnerships (unless excluded from an LLP under terms of LLP agreement)	<p><i>Section 1 Companies Act 2006</i></p> <p><i>Limited Liability Partnerships (Application of Companies Act 2006) Regulation 2009 (SI 2009)</i></p> <p><i>Flanagan v Liontrust Investment Partners LLP [2015] EWHC 2171</i></p>

<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 &amp; 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><i>Re Motion Picture Capital Ltd [2021] EWHC 2504</i></p> <p><i>Grewal v Chackraborty [2021] WN 05346593</i></p> <p><i>Curran v B&amp;P Scaffolding Ltd [2023] SC EDIN 14</i></p>
<p>The jurisdiction under section 994 Companies Act 2006 appears to be open to a person who was a member of the relevant company at the time that the petition was issued even if that person does not continue to be a member thereafter</p>	<p><i>Re Motion Picture Capital Ltd [2021] EWHC 2504</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 Quickdrome 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 &amp; MB Holdings Ltd [2016] EWHC 191</i></p> <p><i>Curran v B&amp;P Scaffolding Ltd [2023] SC EDIN 14</i></p>

<p>Usually it is a minority shareholder who seeks relief but a majority shareholder can also in certain circumstances complain of unfair prejudice</p>	<p><i>Re Baltic Real Estate Ltd [1992] BCC 629</i>  <i>Re Baltic Real Estate Ltd (No.2) [1993] BCLC 503</i>  <i>Re Legal Costs Negotiators Ltd [1999] BCC 547</i>  <i>Parkinson v Eurofinance Group Ltd [2001] 1BCLC 720</i>  <i>Re Ravenhart Service (Holdings) Ltd [2004] 2 BCLC 376</i>  <i>McMonagle v Harvey [2021] EWHC 1374</i>  <i>Re Macom GmbH (UK) Ltd [2021] EWHC 1661</i></p>
<p>In case of limited liability 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><b>Procedure</b></p> <p>Separate petition for each company in respect of which unfair prejudice is alleged is usually (but not always) required</p>	<p><i>Re a Company [1984] BCLC 307</i>  <i>Davies v Pro-tect GRP Enclosures Limited 17 December 2019 (unreported)</i></p>
<p>Statutory provision as to form of proceeding, procedure for presentation of petition, service and return of petition</p>	<p><i>The Companies (Unfair Prejudice Applications) Proceedings Rules 2009</i></p>
<p>The statutory procedure is important and the court has no power to dispense with the requirement to comply with The Companies (Unfair Prejudice Applications) Proceedings Rules 2009</p>	<p><i>Re Osea Camp Sites Limited [2005] 1WLR 760</i>  <i>Evans v Eurokey Properties Limited [2020] EWHC 1047</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>  <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 &amp; 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>Allegations of unfair prejudice need to be pleaded with precision and should be restricted to allegations as to the conduct of the affairs of the company</p>	<p><i>Re Unisoft (3) [1994] 1 BCLC 609</i></p> <p><i>Re McKillen [2012] EWHC 521</i></p> <p><i>Re Tobian [2013] BCC 98</i></p> <p><i>Re Kings Solutions Limited [2021] EWCA Civ 1943</i></p> <p><i>Griffiths v Griffiths [2023] EWHC 175</i></p> <p><i>Re Integrated Health Partners Ltd [2023]10 WLUK 128</i></p>
<p>The petition and all statements of case must make it clear which limb of section 994 is being relied upon and must contain a concise statement of the facts relied upon to make out the case</p>	<p><i>Re Kings Solutions Limited [2021] EWCA Civ 1943</i></p> <p><i>Griffiths v Griffiths [2023] EWHC 175</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>It is permissible to plead the personal conduct of the respondents or third parties only if there is a causal connection between that conduct and some act or omission of the company or conduct of its affairs.</p>	<p><i>Re Kings Solutions Limited</i> [2021] EWCA Civ 1943</p> <p><i>Griffiths v Griffiths</i> [2023] EWHC 175</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)</i> [1997] 1 BCLC 479</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</i> [1987] AC 460</p> <p><i>Re Harrods (Buenos Aires) Ltd</i> [1991] BCC 249</p> <p><i>Re Baltic Real Estate Ltd</i> [1992] BCC 629</p> <p><i>Apex Global Management Ltd v FI Call Ltd</i> [2013] EWHC 1652</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)</i> [1997] 2 BCLC 1</p> <p><i>Re Rotadata Ltd</i> [2000] BCLC 122</p>
<p>The court may be persuaded to engage in early active case management (e.g. giving directions that deal early with principal issues which might serve to dispose of the case)</p>	<p><i>Re Rotadata Ltd</i> [2000] BCLC 122</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 Annacott Holdings Ltd</i> [2012] EWCA Civ 998</p> <p><i>In the matter of LCM Wealth Management Ltd</i> LTL 22/1/2013</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</i> [2012] EWCA Civ 998</p>



Generally proceedings are in public	<i>Re FI Call Ltd [2013] EWHC 223</i>
Advice provided to the company itself will not be subject to privilege and will therefore be disclosable to all shareholders	<i>Re Hydosan Ltd [1991] BCC 19</i>
The courts encourage early expert valuation on a joint basis to promote the chances of settlement and the avoidance of costs and in practice may order early disclosure on the issue of valuation to promote the prospects of early settlement	<i>Re Company (No. 006834 of 1988) (1989) 5 BCC 218</i> <i>North Holdings Ltd v Southern Tropics Ltd [1999] 2 BC LC 625</i> <i>Re Clearsprings (Management) [2003] EWHC 2516</i>
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 &amp; G Care Homes Ltd [2016] BCC 615</i> <i>Re Bankside Hotels Ltd [2018] EWHC 1035</i>
The courts have shown a degree of enthusiasm for the arbitration of claims under section 994 Companies Act 2006 and a willingness to uphold the enforceability of arbitration clauses (even though the full range of reliefs might not be available in an arbitration (e.g. ordering a winding up))	<i>Fulham v Richards [2012] Ch 333</i>
The Disclosure Pilot provided for under PD51U CPR 1998 applies to claims for relief under section 994 Companies Act 2006 even if the petition was presented before the commencement of the Disclosure Pilot	<i>See Note from Chief Insolvency and Companies Court Judge February 2020</i>

	<i>UTB LLC v Sheffield United Limited [2019] EWHC (Ch) 914</i>
In practice it is often the case that Extended Disclosure under the Disclosure Pilot is ordered in accordance with Extended Disclosure Model D (often with “narrative documents”) and sometimes even Model E)	
Revised automatic directions tailored to deal with the requirements of the Disclosure Pilot Scheme have been issued in respect of petitions presented in the Business and Property Courts in London	
Where the relief sought by the petitioner might affect other shareholders in the company it is a matter of case management as to whether those others should actually be joined to the proceedings or simply given notice of the proceedings	<i>Re Hut Group Limited [2020] EWHC 5</i>
A claim alleging unfairly prejudicial conduct of a company’s affairs based on alleged breaches by a director of duties owed to the company which are alleged to have affected the petitioner’s interests as a shareholder will not necessarily (but may) be characterised as, in substance, a derivative action requiring the court’s permission to continue the claim. That is particularly likely where the claim is in substance a complaint about conduct affecting the petitioner shareholder’s interest in the company rather than the company itself. It is also particularly likely where the relief sought would not be available in a derivative claim	<i>Re Charley Davies Limited [No2] [1990] BCC 605</i> <i>Re Chime Corporation Ltd [2004] 2HKLRD 922</i> <i>Re Hut Group Limited [2020] EWHC 5</i> <i>Ntzegkoutanis v Kimionis [2022] EWHC 3178</i>
The new requirements imposed by Practice Direction 57AC relating to witness statements for use at trial apply to witness statements to be used at trial of unfair prejudice petitions where that witness statement was signed on or after 6 April 2021	<i>Para 1. Practice Direction 57AC</i>
Allegations of unfairly prejudicial conduct often extends to an examination of discussions, agreement and conduct that took place some time before its examination and witnesses recollection can be unreliable so that caution should be shown in placing too much weight on the oral testimony of witnesses and greater reliance should be placed on inferences to be drawn from documentary evidence, admitted and known facts	<i>Gestmin SGPS S.A. V Credit Susie Limited [2013] EWHC 3560 (Comm)</i> <i>Smith v Smith [2022] EWHC 1035</i>

<p>In many cases a determination as to whether there has been unfairly prejudicial conduct will involve an evaluative decision by the judge at first instance and any appeal of that decision may be difficult as the appeal court will not seek to carry out the balancing task afresh but merely ask whether the trial judge's decision was wrong by reason of some identifiable flaw in his treatment of the issues to be decided</p>	<p><i>Re Sprintroom Ltd</i> [2019] EWCA Civ 932</p>
<p><b>Interim injunctions and applications and security for costs</b></p> <p>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</p>	<p><i>Re a Company (No: 00596 of 1986)</i> [1986] 2 BCC 99,063</p> <p><i>Re Posgate &amp; Denby (Agencies) Ltd</i> [1986] 2 BCC 99,352</p> <p><i>Re a Company (No: 004175 of 1986)</i> [1987] 3 BCC 41</p> <p><i>Re a Company (No: 004502 of 1988)</i> [1991] BCC 234</p> <p><i>Re Sticky Fingers Restaurant Ltd</i> [1991] BCC 754</p> <p><i>Re a Company (No 00330 of 1991)</i> [1991] BCLC 597</p> <p><i>Re Mountforest Ltd</i> [1993] BCC 565</p> <p><i>Re Tottenham Hotspur Plc</i> [1994] 1 BCLC 655</p> <p><i>Re a Company (No: 003061 of 1993)</i> [1994] BCC 883</p> <p><i>Re Whitchurch Insurance Consultants Ltd</i> [1994] BCC 51</p> <p><i>Re BML Group Ltd</i> [1994] BCC 502</p> <p><i>Lunn v All Starr Video Ltd</i> [1993] 137 SJ 108</p> <p><i>Wright, Petitioners</i> [1997] BCC 198</p> <p><i>Wilson-Davies v Kirk</i> [1997] BCC 770</p> <p><i>Corbett v Corbett</i> [1998] BCC 93</p> <p><i>Trident European Fund v Coats Holdings Ltd</i> [2003] EWHC 2471</p> <p><i>Re Premier Electronics (GB) Ltd</i> [2002] 2 BCLC 634</p> <p><i>Re Ravenhart Service (Holdings) Ltd</i> [2004] 2 BCLC 376</p> <p><i>Williams v Brinkmann</i> [2004] EWHC 601</p> <p><i>Re Canterbury Travel (London) Ltd</i> [2010] All ER (D) 133</p> <p><i>Wendy Palmer v Mr Loveland Starlight Diamond Setters Hatton Garden Jewellers</i> 2017 WL 04552554</p> <p><i>Homes of England Ltd v Horsham Holdings Ltd</i> [2019] EWHC 2429</p> <p><i>Loveridge v Loveridge</i> [2020] EWCA Civ 1104</p> <p><i>Re Solid Star Ltd</i> [2022] WL 02916556</p>

<p>Courts are reluctant to impose a director on a company by interim injunction</p>	<p><i>Pringle v collard</i> [2007] EWCA 1075  <i>Mission Capital plc v Sinclair</i> [2010] 1 BCLC 304</p>
<p>Interim injunctions ordinarily should not be imposed which have the effect of placing one member in control of the company or group pending trial even if that member has previously been the “driving force” behind the business particularly where that member is a minority shareholder</p>	<p><i>Loveridge v Loveridge</i> [2020] EWCA Civ 1104</p>
<p>Interim orders may be refused if sufficient undertakings are given as to the future conduct of the company</p>	<p><i>Pringle v Callard</i> [2007] EWCA Civ 1075</p>
<p>Security for costs may be ordered</p>	<p><i>CPR 25.12 and 25.13</i>  <i>Re Unisoft Group Ltd</i> [1992] BCC 494 and [1994] BCC 11  <i>Re Tottenham Hotspur Plc</i> (unreported) July 1993  <i>In the matter of Auger Investments Ltd</i> [2012] EWHC 94  <i>Re Tonstate Group Limited</i> [2020] EWHC 328</p>

<p>Not usually proper for respondents to use company funds to defend a petition</p>	<p><i>Re Sherborne Park</i> [1986] 2 BCC 99,528  <i>Re Kenyon Swansea</i> [1987] 3 BCC 259  <i>Re Crossmore Electrical and Civil Engineering Ltd</i> [1989] 5 BCC 37  <i>Re a Company (No 005685 of 1988)</i> [1989] 5 BCC 79  <i>Re Hydrosan Ltd</i> [1991] BCC 19  <i>Re Milgate Developments Ltd</i> [1991] BCC 24  <i>Re a Company (No: 004502 of 1988)</i> [1991] BCC 234  <i>Re a Company (No: 001126 of 1992)</i> [1993] BCC 325  <i>Corbett v Corbett</i> [1998] BCC 93  <i>Cas (Nominees) Ltd v Nottingham Forest Plc</i> [2002] BCC 145  <i>Arrow Trading &amp; Investments v Edwardian Group Ltd</i> [2003] EWHC 2863  <i>Pollard v Pollard and others</i> LTL 26/09/2007  <i>Apex Global Management Ltd v F1 Call Ltd</i> [2013] EWHC 1652  <i>Gott v Hague</i> [2020] EWHC 1473  <i>Koza Ltd Hamid Akin Ipek v Koza Altin</i> [2021] EWHC 786</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>  <i>Re a Company</i> [1997] 2 BCLC 1</p>
<p>Interim disclosure orders available against parties and non-parties</p>	<p><i>Re TPD Investments Ltd</i> LTL 22 January 2016</p>
<p>Court may order that an account should first be taken in respect of or in respect of consequences of alleged unfairly prejudicial conduct before there is a determination as to whether there has in fact been unfairly prejudicial conduct</p>	<p><i>Re GO DPO EU Compliance Ltd</i> [2021] EWHC 1765</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  
*Krishna Holdco Limited v Gowrie Holdings Limited and others* [2023] EWHC 1538

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

*Section 994(1) Companies Act 2006*  
*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  
*Hawks & Cuddy (No. 2)* [2007] EWHC 2999  
*Sikorski v Sikorski* [2012] EWHC 1613  
*Re Coroin* [2012] EWHC 2343  
*Graham v Every* [2015] 1 BCLC 41  
*Loveridge v Loveridge* [2020] EWCA Civ 1104  
*Re Kings Solutions Group Limited* [2021] EWCA Civ 1943  
*Re Cardiff City Football Club (Holdings) Ltd* [2022] EWHC 2023

An objective approach is to be applied in determining whether there has been unfairly prejudicial conduct of a companies affairs. The question to be asked is whether a reasonable bystander observing the consequence of the conduct complained of would regard that conduct as unfairly prejudicial to the petitioner's interests as a shareholder

*Re RA Noble & Sons (Clothing) Ltd* [1983] BCLC 273  
*Smith v Smith* [2022] EWHC 1035  
*Cooper v Dnata Catering Services Limited* [2022] EWHC 2216

<p>Actions taken by a shareholder or even by a third party may give rise to actionable unfair prejudice where they are combined with acts or omissions or other conduct on the part of the company but the clear link or causal connection between the actions of the shareholder/third party and the acts or omissions or other conduct on the part of the company should be pleaded in the petition</p>	<p><i>Blackmore v Richardson</i> (1 November 2004, Unreported)  <i>Graham v Every</i> [2015] 1 BCLC 41  <i>Li Guozhu v New Century Latral Management Lts</i> [2018] HKCFI 868  <i>Loveridge v Loveridge</i> [2020] EWCA Civ 1104</p>
<p>The affairs of a company may include the affairs of its subsidiaries</p>	<p><i>Nicholas v Soundcraft Electronics Ltd</i> [1993] BCLC 360  <i>Gross v Rackind</i> [2005] 1 WLR 3505  <i>Hawkes v Cuddy &amp; others</i> [2007] EWHC 2999 and [2009] EWCA Civ 291  <i>Oak Investment Partners xii Ltd Partnership v Martin Boughtwood and others</i> [2009] EWHC 176 and [2010] EWCA Civ 23</p>
<p>A failure to transfer shares in accordance with an alleged agreement may not involve the conduct of the affairs of the company</p>	<p><i>Kaneria v Kaneria</i> LTL 10 August 2015</p>
<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 &amp; Sons Plc</i> [1995] BCLC 14  <i>Albion Energy Limited v Energy Investments Global BRL</i> [2020] EWHC 301</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&amp;C Alternative Investments (Holdings) Ltd v Barthelemy &amp; 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 &amp; 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 &amp; 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  <i>Loveridge v Loveridge</i> [2020] EWCA Civ 1104  <i>Re Cintep Development Ltd</i> [2020] EWHC 3210  <i>Shehata v Mansfield Hotel Ltd</i> [2021] EWHC 630</p>
<p>The petitioner must still establish both "unfairness" and "prejudice" even if the respondent fails to file a defence or enters a non admission</p>	<p><i>Re Bird Precision Bellows Ltd</i> [1986] Ch 658  <i>Re a Company (No. 004175 of 1986)</i> [1987] BCLC 574  <i>Re Bankside Hotels Ltd</i> [2018] EWHC 1035  <i>Re Gallium Funds Solutions Group Ltd</i> [2021] EWHC 765</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>“Prejudice” is not to be too narrowly or technically construed but is to be considered in context and to be regarded as a flexible and open-textured concept</p>	<p><i>O’Neill v Phillips</i> [1999] 1 BCLC 1  <i>Re Tobian Properties Limited</i> [2012] 2 BCLC 567</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  <i>Gandesha v Gandesha</i> [2019] EWHC 1717</p>
<p>There is a causative requirement in that the unfair conduct complained of must have caused the prejudice suffered</p>	<p><i>Re BSB Holdings (No 2) Ltd</i> [1996] 1 BCLC 155  <i>Irvine v Irvine (No 1)</i> [2007] BCLC349  <i>Re Tobian Properties Limited</i> [2013] Bus LR 753  <i>Re Solid Star Ltd</i> [2023] EWHC 2277</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 &amp; 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  <i>Gandesha v Gandesha</i> [2019] EWHC 1717  <i>Loveridge v Loveridge</i> [2020] EWCA Civ 1104  <i>Birkenfeld v Denton and others</i> [2022] EWHC 436  <i>C.f. Re Cardiff City Football Club (Holdings) Ltd</i> [2022] EWHC 202</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, have exercised their powers for an illegitimate or ulterior purpose or have acted in breach of the duties owed by them as directors</p>	<p><i>Cobden Investments Ltd v RWM Langport Ltd</i> [2008] EWHC 2810</p> <p><i>Gandesha v Gandesha</i> [2019] EWHC 1717</p> <p><i>Re Audas Group Ltd</i> [2019] EWHC 2304</p> <p><i>Loveridge v Loveridge</i> [2020] EWCA Civ 1104</p> <p><i>Shehata v Mansfield Hotel Ltd</i> [2021] EWHC 630</p> <p><i>Faulkner and others v Vollin Holdings Limited and others</i> [2021] EWHC 787</p> <p><i>Kathryn Ma Wai Fong v Wong Kie Yik and others</i> [2022] UKPC 14</p> <p><i>Schichuang Xie v Qingheng Meng and others</i> [2022] EWHC 1819</p> <p><i>Durose v Tagco BV</i> [2022] EWHC 3000</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 &amp; Sons Plc</i> [1995] 1 BCLC 14</p> <p><i>O'Neill v Phillips</i> [1999] 1 WLR 1092</p> <p><i>In the matter of Coroin Ltd</i> [2013] EWCA Civ 781</p> <p><i>In the matter of LCM Wealth Management Ltd</i> [2013] 3957</p> <p><i>Arbuthnott v Bonnyman</i> [2015] EWCA Civ 536</p> <p><i>Gandesha v Gandesha</i> [2019] EWHC 1717</p> <p><i>Re Audas Group Ltd</i> [2019] EWHC 2304</p> <p><i>Loveridge v Loveridge</i> [2020] EWCA Civ 1104</p> <p><i>Re Cintep Development Ltd</i> [2020] EWHC 3210</p> <p><i>Shehata v Mansfield Hotel Ltd</i> [2021] EWHC 630</p> <p><i>Faulkner and others v Vollin Holdings Limited and others</i> [2021] EWHC 787</p> <p><i>Schichuang Xie v Qingheng Meng and others</i> [2022] EWHC 1819</p>
<p>In the absence of any quasi partnership, if a person acts in accordance with express agreements reached relating to the company, even if that conduct prejudicial, affects the interests of a shareholder, that conduct is unlikely to constitute unfairly prejudicial conduct of the affairs of the company contrary to that shareholder's interests as shareholder</p>	<p><i>Durose v Tagco BV</i> [2022] EWHC 3000</p>

The extent of the obligations imposed by an express or implied duty of “good faith” depends upon the proper meaning to be applied to that express or implied duty of “good faith”. The meaning to be applied depends on the context in which the duty is imposed. Considerable caution is to be exercised before interpreting such a clause as inhibiting shareholders from changing the articles of association of a company or removing people from the board of directors of a company as those matters were not cast in stone at the time of incorporation of a company. Clauses imposing a duty of “good faith” are to be interpreted by deducing the shared aims of the parties which are to be objectively ascertained from the contract’s express and implied terms. Actual dishonesty was not generally a necessary requirement of a breach of a duty of “good faith”. A duty of “good faith” does not generally impose a particularly “demanding” obligation. A duty to act in “good faith” merely prohibits conduct that reasonable and honest people would regard as commercially unacceptable.

*Re Coroin Ltd (No 2) [2014] BCC 14*

*Unwin v Bond [2020] EWHC 1768*

*Faulkner v Vollin [2022] EWCA Civ 1371*

*Re Compound Photonics Group Ltd [2022] EWCA Civ 1371*

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A shareholders' agreement may often be properly categorized as a "relational contract" into which may be implied a duty requiring the parties to act in "good faith" towards each other

*Yam Seng v International Trade Corp* [2013] 1 CLC 662

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  
*Third v North East Ice & Cold Storage Co Ltd* [1998] BCC 242  
*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  
*Dashfield v Dashfield* [2009] 1 BCLC 220  
*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  
*Khoshkou v Cooper* [2014] EWHC 1087  
*Apex Global Management Ltd v F1 Call Ltd* [2015] EWHC 3269  
*Gray v Braid Group (Holdings) Ltd* [2015] CSOH 146  
*Re Migration Solutions Holdings Ltd* [2016] EWHC 523  
*Re TPD Investments Limited* [2017] EWHC 657  
*Waldron v Waldron* [2019] EWHC 115  
*Re Audas Group Ltd* [2019] EWHC 2304  
*Starling v The Climbing Gym Limited* [2020] EWHC 1833  
*Shehata v Mansfield Hotel Ltd* [2021] EWHC 630  
*Re Gallium Funds Solutions Group Ltd* [2021] EWHC 765  
*Faulkner and others v Vollin Holdings Limited and others* [2021] EWHC 787  
*McMonagle v Harvey* [2021] EWHC 1374  
*Smith v Smith* [2022] EWHC 1035  
*Kathryn Ma Wai Fong v Wong Kie Yik and others* [2022] UKPC 14

<p>It is unlikely that any such informal agreements or 'legitimate expectations' will exist in relation to listed public companies</p>	<p><i>Re Blue Arrow [1987] BCLC 585</i>  <i>Re Astec (BSR) Plc [1998] BCLC 556</i></p>
<p>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</p>	<p><i>Re a Company (No: 005134 of 1986) [1989] BCLC 383</i>  <i>Re McCarthy Surfacing Ltd [2008] EWHC 2279</i>  <i>Fowler v Gruber [2010] IBCLC 563</i>  <i>Croly v Good [2010] EWHC 1</i>  <i>Estera Trust (Jersey) Limited v Singh [2018] EWHC 1715</i></p>
<p>Where a company's affairs are conducted on a very informal basis (eg. lack of meetings, resolutions, minutes) that may indicate a common understanding on all sides that the articles of association do not represent the complete and exhaustive statement of how the relationship between the participants should be conducted and may therefore indicate circumstances where strict insistence upon enforcement of the terms of the articles and company law generally might still involve unfairly prejudicial conduct of the affairs of the company</p>	<p><i>Fisher v Cadman [2006] 1 BCLC 499</i></p>
<p>Such informal agreements or 'legitimate expectation' might seemingly possibly exist between some but not necessarily all shareholders</p>	<p><i>Waldron v Waldron [2019] EWHC 115</i></p>
<p>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</p>	<p><i>Wootliff v Ruston-Turner [2017] EWHC 3129</i></p>

<p>Of itself, an irretrievable breakdown in relations or a loss of trust and confidence may not constitute unfairly prejudicial conduct</p>	<p><i>(cf in context of true partnerships) Re Yenidje Tobacco Ltd [1916] 2 Ch 426 (particularly at 430)</i>  <i>Re Westbourne Galleries [1973] AC 360 (particularly at 379)</i></p> <p><i>Re a Company (No: 007623 of 1984) [1986] 2 BCC 99, 191</i></p> <p><i>Re a Company (No: 004377 of 1986) [1986] 1 WLR 102</i></p> <p><i>O'Neill v Phillips [1999] 1 WLR 1092</i></p> <p><i>Re Phoenix Office Supplies Ltd [2003] 1 BCLC 76</i></p> <p><i>McKee v O'Reilly [2003] EWHC 2008</i></p> <p><i>Re Jayflex Construction Ltd [2004] 2 BCLC 145</i></p> <p><i>Re Baumler (UK) Ltd [2005] 1 BCLC 92</i></p> <p><i>Grace v Biagioli [2005] EWCA Civ 1222</i></p> <p><i>Racking v Gross [2004] EWCA Civ 815</i></p> <p><i>Hawks v Cuddy [2007] EWHC 2999 and [2009] EWCA Civ 291</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><i>In the matter of Hart Investment Holdings Ltd [2013] EWHC 2067</i></p> <p><i>Apex Global Management v FI Call Ltd [2013] EWHC 1652 and [2015] EWHC 3269</i></p> <p><i>Re Lloyds Autobody Ringway Limited [2018] EWHC 2336</i></p> <p><i>Badyal v Badyal [2019] EWCA Civ 1644</i></p>
<p>Wrongful conduct by directors in a quasi partnership is unlikely to be considered “unfair” if the other quasi partners have behaved in the same way on the understanding that there will later be a process of accounting and equalisation</p>	<p><i>Re Jayflex Constructions Ltd [2003] EWHC 2008</i></p> <p><i>Shehata v Mansfield Hotel Ltd [2021] EWHC 630</i></p>
<p>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</p>	<p><i>O'Neill v Phillips [1999] 1 WLR 1092</i></p> <p><i>Evenstar [2006] 3 S.L.R.(R.) 827</i></p> <p><i>Ting Shwu Ping v Scanone Pte Ltd [2016] SGCA 65 (CA (Sing))</i></p> <p><i>Badyal v Badyal [2018] EWHC 68</i></p>
<p>In determining whether there has been any unfairly prejudicial conduct the cultural background to the company and its participants may be relevant</p>	<p><i>Rahman v Malik [2008] 2 BCLC 403</i></p>

<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&amp;C Alternative Investments (Holdings) Ltd v Barthelemy &amp; others</i> [2011] EWHC 1731  <i>Cooper v Dnata Catering Services Limited</i> [2022] EWHC 221</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 (e.g. conduct that involves a breach by the petitioner of the duties that he himself owes in his capacity as a director of the company) 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>Mears v R Mears &amp; Co (Holdings) Ltd</i> [2002] 2 BCLC 1  <i>Woolwich v Milne</i> [2003] EWHC 414  <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  <i>Re Flex Associates Ltd</i> [2009] EWHC 3690  (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  <i>Dinglis v Dinglis</i> [2019] EWHC 1664  <i>Badyal v Badyal</i> [2019] EWCA Civ 1644  <i>Starling v The Climbing Gym Limited</i> [2020] EWHC 1833</p>
<p>It is open to the Court to refuse relief of any kind to a Petitioner which has been involved in illegality or wrongdoing but, in order to act as a bar to relief, the illegality or wrongdoing must have had an immediate and necessary relationship to the unfairly prejudicial conduct complained of</p>	<p><i>Richardson v Blackmore</i> [2006] BCC 276  <i>Krishna Holdco Limited v Gowrie Holdings Limited and others</i> [2023] EWHC 1538</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 &amp; Sons (Clothing) Ltd</i> [1993] BCLC 273</p>
<p>It is unlikely that unfairly prejudicial conduct will be made out where one participant voluntarily chooses to cease to have involvement in the business and affairs of the company even if that is contrary to an agreement or understanding reached and which formed the basis of their participation</p>	<p><i>McMonagle v Harvey</i> [2021] EWHC 1374</p>
<p>If a majority shareholder excludes a minority shareholder from participation in the business and affairs of the company as a result of that minority shareholder's misconduct it is unlikely that the majority shareholder will be entitled to relief in the form of a purchase order as the exclusion will probably have resolved any continuing unfairly prejudicial conduct</p>	<p><i>Re Legal Costs Negotiators Ltd</i> [1999] BCC 547 <i>McMonagle v Harvey</i> [2021] EWHC 1374</p>
<p>Directors must act fairly as between different classes of shareholders</p>	<p><i>Re BSB Holdings Ltd (No 2)</i> [1996] 1 BCLC 155</p>
<p>Proceedings under s994 Companies Act 2006 are not subject to any particular limitation period but delay in bringing proceedings may be a bar to relief if the petitioner is aware of unfairly prejudicial conduct but delays in making complaint in respect of it</p>	<p><i>Re D.R. Chemicals Ltd</i> [1989] 5 BCC 39 <i>cf Price v Rawlings</i> (unreported) <i>Re Grandactual Ltd</i> [2006] BCC 73 <i>Re FSC Andrews Ltd</i> [2015] EWHC 4042 <i>Re Edwardian Group Limited</i> [2018] EWHC 1715 <i>Routledge v Skerritt</i> [2019] EWHC 573 <i>Evans v Eurokey Properties Limited</i> [2020] EWHC 1047 <i>Re Cherry Hill Skip Hire Limited</i> [2022] EWCA Civ 531</p>
<p>In the absence of evidence to the contrary a shareholder is entitled to assume that the affairs of the company are being managed properly by its directors in accordance with their duties and the memorandum and articles of association and the fact that he may not have issued proceedings is not to be taken as acquiescence</p>	<p><i>Re Cherry Hill Skip Hire Limited</i> [2022] EWCA Civ 531 <i>Curran v B&amp;P Scaffolding Ltd</i> [2023] SC EDIN 14</p>
<p>If member acquiesces in conduct that may deprive the conduct of 'unfairness'</p>	<p><i>Fisher v Cadman</i> [2005] EWHC 377 <i>Re Sunrise Radio</i> [2010] 1 BCLC 367 <i>Re K R Hardy Estates Limited</i> [2016] BCC 367 <i>Waldron v Waldron</i> [2019] EWHC 115 <i>Re AMT Coffee Ltd</i> [2019] EWHC 46</p>

<p>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</p>	<p><i>Maidment v Attwood [2012] EWCA Civ 998</i></p>
<p>Although a petitioner must be a member when petition is presented, he may rely on events prior to his becoming a member</p>	<p><i>Lloyd v Casey [2002] 1 BCLC 454</i> <i>Krishna Holdco Limited v Gowrie Holdings Limited and others [2023] EWHC 1538</i></p>
<p>It is for the petitioner to prove the existence of unfairly prejudicial conduct of the affairs of the company</p>	<p><i>Fowler v Gruber [2010] 1 BCLC 210</i></p>

### Examples of unfairly prejudicial conduct

A director acting in breach of the duties that he owes to the company and thereby acting contrary to an express or implied agreement to conduct the affairs of the company in accordance with the duties owed as directors (e.g by exceeding the powers vested in him or by exercising those powers for an ulterior purpose or by exercising those powers otherwise than in the best interests of the company as a whole)

*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  
*Wootliff v Ruston-Turner* [2017] EWHC 3129  
*Re Last Lion Holdings Ltd* [2018] EWHC 2347  
*Shehata v Mansfield Hotel Ltd* [2021] EWHC 630  
*McMonagle v Harvey* [2021] EWHC 1374  
*Curran v B&P Scaffolding Ltd* [2023] SC EDIN 14  
*Alam v Alam* [2023] EWHC 1460

Failure to act in accordance with express agreement (whether contained in the memorandum or articles of association, a shareholders' agreement or otherwise) or with an implied agreement or informal understanding

*O'Neill v Phillips* [1999] 1 WLR 1092  
*Re Cintep Development Ltd* [2020] EWHC 3210  
*Shehata v Mansfield Hotel Ltd* [2021] EWHC 630  
*Alam v Alam* [2023] EWHC 1460

Failure to act in accordance with an express or even an implied provision in a shareholders' agreement requiring the parties to act in "good faith" towards one another

*Yam Seng v International Trade Corp* [2013] 1 CLC 662  
*Re Corbin Ltd (No 2)* [2014] BCC 14  
*Faulkner and others v Vollin Holdings Limited and others* [2022] EWCA Civ 1371  
*cf Unwin v Bond* [2020] EWHC 1768

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 (e.g. breaches by that person of duties that he owes as a director of the company)

*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  
*Corran v Butters* [2017] EWHC 2294  
*VB Football Assets v. Blackpool Football Club (Properties) Ltd* [2017] EWHC 2767  
*Badyal v Badyal* [2018] EWHC 68  
*Sudicka v Morgan* [2019] EWHC 311  
*Re Sprintroom Ltd* [2019] EWCA Civ 932  
*Re Audas Group Ltd* [2019] EWHC 2304  
*Starling v The Climbing Gym Limited* [2020] EWHC 1833  
*Shehata v Mansfield Hotel Ltd* [2021] EWHC 630  
*Re Gallium Funds Solutions Group Ltd* [2021] EWHC 765  
*cf. Faulkner and others v Vollin Holdings Limited and others* [2022] EWCA Civ 1371  
*Re GO DPO EU Compliance Ltd* [2021] EWHC 1765  
*Smith v Smith* [2022] EWHC 1035  
*Starling v The Climbing Gym Ltd* [2020] EWHC 1833  
*Shichuang Xie v Qingheng Meng and other*[2022] EWHC 1819  
*Re Greenfrost Limited* [2023] EWHC 5  
*Hashmi v Lorimer Wing* [2023] EWHC 1514

<p>Even where a shareholder is not involved in the day to day management of the business and affairs of the company if he is not informed of matters having a fundamental effect on the company that may amount to exclusion</p>	<p><i>Whitelock v Henderson</i> [2009] BCC 314  <i>Re Foundry Miniatures</i> [2017] 2 BCLC 489</p>
<p>An exclusion from the business and affairs of the company brought about as a result of a breakdown in trust and confidence resulting from the respondent's own conduct is unlikely to be justified and so may constitute unfairly prejudicial conduct</p>	<p><i>Re Via Services Ltd</i> [2014] EWHC 3069</p>
<p>Not all the elements identified in the Ebrahimi case as being characteristics of a "quasi partnership" are required to be present before a finding of "quasi partnership" is made</p>	<p><i>Chu v Lau</i> [2020] UKPC 24</p>
<p>In the absence of specific agreement between the shareholders that they should be entitled to continued employment with the company for so long as they hold shares in the company, dismissal of petitioner from a position as an employee of a company generally does not amount to unfairly prejudicial conduct of the affairs of a company unless the dismissal of the petitioner from their position as an employee is made in breach of a contractual duty of good faith, done for ulterior purposes or is done to promote the person dismissing's own sectional interests</p>	<p><i>Re Audas Group Ltd</i> [2019] EWHC 2304  <i>Starling v The Climbing Gym Limited</i> [2020] EWHC 1833</p>

<p>But if the company is not a “quasi partnership” and there is no such agreement or understanding exists then removal of a minority shareholder from his position as a director may not amount to unfairly prejudicial conduct</p>	<p><i>Third v North East Ice &amp; Cold Storage Co Ltd [1998] BCC 242</i>  <i>Michel v Michel [2019] EWHC 1378</i>  <i>Dinglis v Dinglis [2019] EWHC 1664</i>  <i>Starling v The Climbing Gym Limited [2020] EWHC 1833</i>  <i>Faulkner v Vollin Holdings Ltd EWCA Civ 1371</i></p>
<p>Any agreement as to participation in conduct or management of a company’s affairs might not enure for the benefit of successors/heirs</p>	<p><i>Kathryn Ma Wai Fong v Wong Kie Yik and others [2022] UKPC 14</i></p>
<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</i> [1986] 2 BCC 99,453 and [1986] BCLC 430</p> <p><i>Grace v Biagioli</i> [2005] EWCA Civ 1222</p> <p><i>Re Campbell Irvine (Holdings) Ltd</i> [2006] EWHC 406</p> <p><i>Re McCarthy Surfacing Ltd</i> [2008] EWHC 2279</p> <p><i>In the matter of Sunrise Radio Ltd</i> [2009] EWHC 2893</p> <p><i>Croly v Good</i> [2010] EWHC 1</p> <p><i>Maidment v Attwood</i> [2012] EWCA Civ 998</p> <p><i>Re Blue Index Ltd</i> [2014] EWHC 2680</p> <p><i>Re CF Booth Ltd</i> [2017] EWHC 457</p> <p><i>VB Football Assets v Blackpool Football Club (Properties) Ltd</i> [2017] EWHC 2767</p> <p><i>Rembert v Daniel</i> [2018] EWHC 388</p> <p><i>Re The Edwardian Group Ltd</i> [2018] EWHC 1715</p> <p><i>Re AMT Coffee Limited</i> [2019] EWHC 46</p> <p><i>Re Gallium Funds Solutions Group Ltd</i> [2021] EWHC 765</p>
<p>The issue as to what comprises reasonable remuneration in any particular circumstance is an issue suitable for expert evidence but expert evidence in this regard will only be admitted if it is robust, necessary, it is sufficiently relevant and its admission would be proportionate</p>	<p><i>British Airways plc v Spencer</i> [2015] EWHC 2477</p> <p><i>Re AMT Coffee Limited</i> [2019] EWHC 46</p>
<p>The court may be able to assess what is reasonable remuneration in any particular case as a matter of fact on the evidence before it and on the basis of material of which the court is able to take judicial notice and without any admissible expert evidence</p>	<p><i>Re AMT Coffee Limited</i> [2019] EWHC 46</p>

<p>Failure to hold meetings or holding "sham" meetings</p>	<p><i>McGuinness, Petitioners</i> [1988] 4 BCC 161  <i>Nuneaton Borough AFC Ltd</i> [1989] 5 BCC 792  <i>Re Ghyll Beck Driving Range Ltd</i> [1993] BCLC 1126  <i>Fowler v Gruyere</i> [2010] BCLC 563  <i>LCM Weath Management Ltd</i> [2013] EWHC 3957</p>
<p>Refusal to conduct business of company in accordance with agreement or agreed policy</p>	<p><i>Re Abbington 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>Failure to permit a shareholder involvement in decisions relating to matters reserved by terms of a shareholders' agreement to shareholders is likely to involve unfairly prejudicial conduct of the affairs of the company</p>	<p><i>Re Audas Group Ltd</i> [2019] EWHC 2304</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>



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Failure properly to pay dividends

*Re a Company (No. 00370 of 1987) ex p Glossop* [1988] 1 WLR 1068

*Re Sam Weller & Sons Ltd* [1989] 5 BCC 810

*Re Saul D Harrison & Sons Plc* [1995] 1 BCLC 14

*Re a Company (No: 004415 of 1996)* [1997] 1 BCLC 479

*Re Metropolis Motorcycles Ltd* [2006] EWHC 364

*In the matter of Gate of India (Tynemouth) Ltd* [2008] EWHC 959

*Re McCarthy Surfacing Ltd* [2008] EWHC 2279

*Croly v Good* [2010] EWHC 1

*J & S Insurance and Financial Consultants Ltd* [2014] EWHC 2206

*Re CF Booth Ltd* [2017] EWHC 457

*Corran v Butters* [2017] EWHC 2294

*VB Football Assets v Blackpool Football Club (Properties) Ltd* [2017] EWHC 2767

*Re AMT Coffee Limited* [2019] EWHC 46

*Rutledge v Skerritt* [2019] EWHC 573

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Misapplication of or misappropriation 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  
*Rembert v Daniel* [2018] EWHC 388  
*Badyal v Badyal* [2018] EWHC 68  
*Estera Trust (Jersey) Limited v Singh* [2018] EWHC 1715  
*Re The Edwardian Group Ltd* [2018] EWHC 1715  
*Sudicka v Morgan* [2019] EWHC 311  
*Williams Rhys Williams (Bangor) Limited* [2020] EWHC 2624  
*McMonagle v Harvey* [2021] EWHC 1374  
*Re GO DPO EU Compliance Ltd* [2021] EWHC 1765  
*Re International Automotive Engineering Projects LydLtd* [2022] EWHC 1751  
*Re Greenfrost Limited* [2023] EWHC 5

May be difficult to establish a misappropriation of business opportunities if there is a finding of agreement to discontinue trading	<i>Ahmadifard v McCullough (Unreported July 2014)</i>
If a director places himself in a position where the interests of his company conflict or may conflict with his other interests that may involve him in breach of the duties he owes as a director and involve unfairly prejudicial conduct of the affairs of his company	<i>Re International Automotive Engineering Projects Ltd [2022] EWHC 1751</i>
Provision of loans on preferential terms (e.g interest free or unsecured)	<i>Re AMT Coffee Limited [2019] EWHC 46</i> <i>Dinglis v Dinglis [2019] EWHC 1664</i>
Wrongful use of company's trading name	<i>Maidment v Attwood [2012] EWCA Civ 998</i>
Unfair calls on shares	<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 &amp; 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>
Selective or otherwise improper share issues	<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 &amp; 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> <i>Ma Wai Fong v Kie Yik [2022] UKPC 14</i> <i>C.f. Re Cardiff City Football Club (Holdings) Ltd [2022] EWHC 202'</i> <i>Heywood v Freakley [2022] EWHC 2762</i> <i>Alan v Alan and (2) Alan Investments Limited [2023] EWHC 1460</i>

	<i>Freeborn and others v Emery House Property Limited [2023] EWHC 3009</i>
Wrongful variation of rights attaching to shares or particular classes of shares	<i>Note the potentially parallel jurisdiction under section 633 Companies Act 2006 Re Dnanudge Limited [2023] EWCA Civ 1142</i>
Potentially an alteration of voting rights attaching to shares but not if done legally permissible and done for proper commercial objective	<i>Kathryn Ma Wai Fong v Wong Kie Yik and others [2022] UKPC 14</i>
Failure to act in accordance with pre-emption provisions in articles of association or otherwise wrongfully diluting the petitioner's shareholding in the company	<i>Graham v Every [2014] EWCA Civ 191</i>
Preventing a sale of shares at highest value	<i>Re a Company (No: 8699 of 1985) [1986] BCLC 382</i>
Seriously diminishing or jeopardising the value of the petitioner's shares	<i>(1) Hamilton and (2) Dower v (1) Brown and (2) C &amp; MB Holdings Ltd [2016] EWHC 191 Re Last Lion Holdings Ltd [2018] EWHC 2347</i>
Wrongful refusal to register a transfer of shares	<i>Holman v Adams Securities Ltd [2010] EWHC 2421 Graham v Every [2014] EWCA Civ 191 Re Last Lion Holdings Ltd [2018] EWHC 2347 Curran v B&amp;P Scaffolding Ltd [2023] SC EDIN 14</i>
Transfers of shares or transfers of control of shares may not amount to unfairly prejudicial conduct unless specifically prohibited by agreement between the shareholders	<i>In the matter of Coroin Ltd [2013] EWCA Civ 781</i>

Failure by directors to disclose and obtain proper approval to matters involving potential or actual of conflicts of interest	<p><i>Re Allied Business and Financial Consultants Ltd [2009] EWCA Civ 751</i></p> <p><i>Re Gallium Funds Solutions Group Ltd [2021] EWHC 765</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 &amp; 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> <p><i>Rembert v Daniel [2018] EWHC 388</i></p> <p><i>Re Audas Group Ltd [2019] EWHC 2304</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 &amp; 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>

Failure to disclose conflicts of interest	<i>Ashdown v Griffiths [2015] EWHC 3131</i> <i>Estera Trust (Jersey ) Ltd v Singh [2018] EWHC 1715</i>
Denigration of one quasi partners by another such as to make their constructive continuation in the business unrealistic	<i>Re Fi Call [2015] EWHC 3269</i>
Permitting a bankrupt former director to continue in the management of the affairs of a company contrary to Company Directors Disqualification Act 1986 s11	<i>(1) Hamilton and (2) Dowers v (1) Brown and (2) C &amp; MB Holdings Ltd [2016] EWHC 191</i>
Committing criminal offences	<i>Bermuda Cablevision Ltd v Colica Trust Co Ltd [1997] BCC 982</i>
Physical violence	<i>In the matter of Home &amp; 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 committal for contempt of court or for perjury	<i>Interactive Technology Corp Ltd v Ferster [2016] EWHC 2896</i>
Unilaterally withdrawing or failing to provide agreed funding for the project for which the company was formed or in breach of the minority shareholder's reasonable expectations whether derived from formal or informal agreement or from the quasi partnership nature of the company and the joint venture that it was intended to pursue	<i>Re Cintep Development Ltd [2020] EWHC 3210</i>

<p><b>What relief will be ordered?</b></p> <p>No limit on types of order court may make to give relief in respect of matters complained of and orders for relief may include orders that: (a) regulate the conduct of the company's affairs in the future; (b) require the company (i) to refrain from doing or continuing an act complained of, or (ii) to do an act that the petitioner has complained it has omitted to do; (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct; (d) require the company not to make any, or any specified, alterations in its articles without the leave of the court; (e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.</p>	<p><i>Section 996 Companies Act 2006</i></p> <p><i>Re Bird Precision Bellows [1986] Ch 658</i></p> <p><i>Re Nuneaton Borough AFC Ltd (No.2) [1991] BCC 44</i></p> <p><i>Re J.E.Cade &amp; Son Ltd [1992] BCLC 213</i></p> <p><i>Supreme Travels Ltd v Little Olympian Each-Ways Ltd [1994] BCC 947</i></p> <p><i>cf Re Full Cup Int Trading Ltd [1998] BCC 58</i></p> <p><i>Grace v Biagioli [2005] EWCA Civ 1222</i></p> <p><i>Hawks v Cuddy [2009] EWCA Civ 291</i></p> <p><i>Sikorski v Sikorski [2012] EWHC 1613</i></p> <p><i>In the matter of Hart Investment Holdings Ltd [2013] EWHC 2067</i></p> <p><i>Thomas v Dawson [2015] EWCA Civ 706</i></p>
<p>The court only has jurisdiction to grant any relief if unfairly prejudicial conduct of the company's affairs is admitted or proved</p>	<p><i>Re Bird Precision Bellows [1986] Ch 658</i></p> <p><i>Re a Company (No: 004175 of 1986) [1987] BCLC 574</i></p> <p><i>Caldero Trading Ltd v Beppler &amp; Jacobson Ltd [2013] EWHC 2191</i></p>
<p>The court may make an order for relief in a form not sought by the petitioner</p>	<p><i>Hawkers v Cuddy [2008] BCC 390 and [2010] BCC 597</i></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>Re Bird Precision Bellows Ltd [1986] Ch 658</i></p> <p><i>Pro finance Trust SA v Gladstone [2002] 1 WLR 1024</i></p> <p><i>Grace v Biagioli [2005] EWCA Civ 1222</i></p> <p><i>Re Bankside Hotels Ltd [2018] EWHC 1035</i></p> <p><i>Re Prospect Place (Wimbledon) Management Company Limited [2022] EWHC 76</i></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 so can take account of conduct after the presentation of the petition but before the hearing</p>	<p><i>Re Hailley Group Ltd [1992] BCC 542</i></p> <p><i>Grace v Biagioli [2005] EWCA Civ 1222</i></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>  <i>Re Prospect Place (Wimbledon) Management Company Limited [2022] EWHC 76</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 realities and practicalities of the overall situation, past, present and future.</p>	<p><i>Grace v Biagioli [2006] BCC 85</i>  <i>Re Prospect Place (Wimbledon) Management Company Limited [2022] EWHC 76</i></p>
<p>Court will grant the minimum remedy to repair the misconduct and unfair prejudice suffered and prevent it happening in the future. So, in an appropriate case, the court might refuse a purchase order where sufficient relief can be provided through an alternative order</p>	<p><i>Re Bird Precision Bellows [1986] Ch 658</i>  <i>Fexuto Pty Ltd v Bosnjak Holdings Ltd (1998) 28 ACSR 688</i>  <i>Re Legal Costs Negotiators Ltd [1999] BCC 547</i>  <i>Rural v Lopmand (2003) 47 ACSR 514</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 question of what relief is appropriate should be addressed in light of all the facts as they exist as at the date of the order rather than those that pertained at the date of the presentation of the petition</p>	<p><i>Grace v Biagioli [2006] BCC 85</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>F &amp; C Alternative Investments (Holdings) Ltd v Barthelemy [2012] Ch 613</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>The court may refuse to grant any relief where relief has already been obtained in respect of the consequences of the unfairly prejudicial conduct suffered</p>	<p><i>Re Kenyan Swansea Ltd (1987) 3 BCC 259</i>  <i>Re Estate Acquisition &amp; Development Ltd [1995] BCC 338</i>  <i>Weatherley v Weatherley [2018] EWHC 3201</i></p>



<p>Court will only grant relief that is proportionate to the unfairly prejudicial conduct of which the petitioner complains and will not use the order to inflict punishment for bad behaviour</p>	<p><i>Re Phoenix Office Supplies Ltd [2003] BCC 11</i>  <i>Hawkers v Cuddy [2008] BCC 390</i>  <i>VB Football Assets v Blackpool Football Club (Properties) Ltd [2017] EWHC 2767</i>  <i>Re Gallium Funds Solutions Group Ltd [2021] EWHC 765</i></p>
<p>Relief may be granted against any current members of the company or persons involved in the conduct of the affairs of the company but particularly against those who bear responsibility for the unfair prejudice suffered</p>	<p><i>Re Baltic Estate (No. 1) [1993] BCLC 498</i>  <i>Re Little Olympian Each-Ways Ltd (No.3) [1995] 1BCLC 636</i>  <i>Croly v Good [2011] BCC 105</i>  <i>Shah v Shah [2011] WTLR 519</i></p>
<p>The court may order relief against persons who are not members of the company</p>	<p><i>Re BSB Holdings Ltd [1992] BCC 915</i>  <i>Apex Global Management Ltd v Fi Call Ltd [2014] BCC 286</i></p>
<p>In certain circumstances the court might even order relief against past members</p>	<p><i>Re Company (No. 005287 of 1985) [1986] BCLC 68</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>  <i>Interactive Technology Corp Ltd v Ferster [2016] EWHC 2896</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 considering the appropriate remedy the court will take account of the interests of all shareholders, creditors and even third parties (e.g. joint venturers with the company), customers and the public generally</p>	<p><i>Hawkers v Cuddy [2008] BCC 390</i>  <i>Re Asia Television [2015] 1 HKLRD 607</i></p>
<p>The court may take into account the hardship that a particular type of order would represent to the respondents but whether it will be prepared to do so is likely to depend on the degree of misconduct on the part of the respondent</p>	<p><i>Re a Company (No: 002612) [1986] 2 BCC</i>  <i>Re Scitec Group Ltd [2011] 1 BCLC 277</i></p>

<p>The courts have emphasised that in many cases there is much to be said for a “clean break” between the parties</p>	<p><i>Re Elgindata Ltd (No 1)</i> [1991] BCLC 959  <i>Re Clearspring Management Ltd</i> [2003] EWHC 2516</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)</i> [1986] BCLC 68  <i>Re Little Olympian Each-Ways Ltd</i> [1994] 2 BCLC 420, 429  <i>F&amp;C Alternative Investments (Holdings) Ltd v Barthelemy &amp; others</i> [2011] EWHC 1731  <i>Apex Global Management Ltd v FI Call Ltd</i> [2013] EWHC 1652  <i>Re TPD Investments Limited</i> [2017] EWHC 657</p>
<p>Relief may take the form of an order reinstating shareholdings or requiring the rectification of registers (e.g. as to shareholdings)</p>	<p><i>Lantsbury v Hauser</i> [2010] EWHC 390  <i>Dnanudge Ltd v Ventura Capital GP Ltd</i> [2023] EWCA Civ 1042</p>
<p>Relief may be ordered in the form of suitable injunctive orders being made</p>	<p><i>Re Last Lion Holdings Ltd</i> [2018] EWHC 2347</p>
<p>The court may make an order regulating the future conduct of the company’s affairs (e.g. as to the calling of meetings)</p>	<p><i>Re Harmer</i> [1959] 1 WLR 62  <i>McGuinness v Bremner Plc</i> (1988) 4 BCC 161  <i>Re Macom GmbH</i> [2021] EWHC 1661</p>

<p>In a suitable case relief may take the form of an order requiring the perpetrators to pay the company damages in respect of losses suffered but it is unclear whether the court can order the perpetrator to pay the victim damages directly</p>	<p><i>The Brightview</i> 2004] BCC 542  <i>Re Chime Corp Ltd</i> [2004] HKFCA 8  <i>Re Lehman Brown Ltd</i> [2013] HKEC 357  <i>Re Last Lion Holdings Ltd</i> [2018] EWHC 2347</p>
<p>It is doubtful whether the court has power to order a winding up of the company under section 994 Companies Act 2006</p>	<p><i>Re Full Cup International Trading Ltd</i> [1995] BCC 682  <i>Hawkers v Cuddy</i> [2008] BCC 390 &amp; [2010] BCC 597</p>
<p>Court even has power to order a division of the company's assets though such an order may involve significant issues in practice (e.g. as regards creditors and third parties)</p>	<p><i>Bhullar v Bhullar</i> (unreported 10 May 2002)</p>
<p>Court may order an account of profits including and account as against a third party joined to the proceedings for this purpose</p>	<p><i>Clark v Cutland</i> [2004] 1 WLR 783  <i>Anderson v Hogg</i> [ 2002] S.C. 190  <i>Bhullar v Bhullar</i> (unreported) 10 May 2002  <i>Gamlestaden v Baltic Partners</i> [2007] Bus LR 1521</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</i> [1986] Ch 658  <i>Re London School Of Economics Ltd</i> [1986] Ch 211  <i>Re D.R. Chemicals Ltd</i> [1989] 5 BCC 39  <i>Re Nuneaton Borough AFC Ltd</i> [1989] 5 BCC 792  <i>Re Nuneaton Borough AFC Ltd (No.2)</i> [1991] BCC 44  <i>Re Elgindata</i> [1991] BCLC 959  <i>Re Regional Airpots Ltd</i> [1999] 2 BCLC 30  <i>Grace v Biagioli</i> [2005] EWCA Civ 1222  <i>Sethi v Patel</i> [2010] EWHC 1830  <i>Shah v Shah</i> [2011] EWHC 1902  <i>Kohli v Lit</i> [2013] EWCA Civ 667  <i>Re Sunrise Radio</i> [2014] 1 BCLC 427  <i>CF Booth Ltd</i> [2017] EWHC 457  <i>Re TPD Investments Limited</i> [2017] EWHC 657  <i>Ashdown v Griffin</i> [2017] EWHC 2601  <i>VB Football Assets v Blackpool Football Club (Properties) Limited</i> [2017] EWHC 2767  <i>Re Edwardian Group Ltd</i> [2018] EWHC 1715  <i>Re Gallium Funds Solutions Group Ltd</i> [2021] EWHC 765  <i>Re ICamera Ltd</i> [2021] EWHC 1762  <i>Overman v Collins</i> [2021] EWHC 2298  <i>Smith v Smith</i> [2022] EWHC 1035</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</i> [2017] EWHC 2767</p>
<p>Where a purchase order is made and the petitioner is also owed money by the company then usually the company is also ordered to repay the debt owed</p>	<p><i>Re a Company (No: 00789)</i> [1991] BCLC 267  <i>Re Ghyll Beck Driving Range</i> [1993] BCLC 1126  <i>R &amp; H Electric Ltd v Hayden Bill Electrical Ltd</i> [1995] BCC 958  <i>Gamlestaden v Baltic Partners</i> [2007] BCC 272</p>
<p>Reliable expert evidence as to value provided by a single 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 but the court will not be bound by the determination by an expert or single expert</p>	<p><i>Coopers Payen Limited v Southampton Container Terminal Ltd</i> [2004] 1 Lloyds Rep 331  <i>Ashdown v Griffin</i> [2017] EWHC 2601  <i>Re Integrated Control Solutions (Eastern) Ltd</i> [2023] EWHC 2406</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</i> [2009] EWHC 176 and [2010] EWCA Civ 23</p> <p><i>Lantsbury v Hauser</i> [2010] EWHC 390</p> <p><i>Thomas v Dawson</i> [2015] EWCA Civ 706</p> <p><i>Godchild v Taylor</i> [2018] EWHC 2946</p>
<p>Ordinarily a court is unlikely to order a majority shareholder to cede control to a minority shareholder but there is no universal rule preventing the court from making an order that permits a minority shareholder from purchasing a majority shareholder's interest if that is fair and appropriate on the facts of the particular case</p>	<p><i>Re Bird Precision Bellows</i> [1986] Ch 658</p> <p><i>Re a Company (No: 003843 of 1986)</i> [1987] 3 BCC 624</p> <p><i>Re a Company (No: 006834 of 1988)</i> [1989] 5 BCC 218</p> <p><i>Re Ringtower Holdings</i> (1989) 5 BCC 82</p> <p><i>Re Company (No. 00789 of 1987)</i> [1990] BCLC 384</p> <p><i>Re Baltic Real Estate (No.1)</i> [1993] BCLC 498</p> <p><i>Re A Company (No. 00836 of 1995)</i> [1996] BCC 432</p> <p><i>Re Brenfield Squash Rackets Club Ltd</i> [1996] 2 BCLC 184</p> <p><i>Nuneaton Borough AFC Ltd</i> [1989] 5 BCC 792</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><i>Apex Global Management Ltd v FI Call Ltd</i> [2013] EWHC 1652</p> <p><i>Gray v Braid Group Holdings Ltd</i> [2017] SC 409</p> <p><i>Goodchild v Taylor</i> [2018] EWHC 2946</p> <p><i>McMonagle v Harvey</i> [2021] EWHC 1374</p>
<p>In an appropriate case the court may also order a non-party's shares to be purchased</p>	<p><i>Re Abbingdon Hotel Ltd</i> [2011] EWHC 635</p>
<p>In considering whether to make a purchase order and the terms of the order itself the court might be prepared to consider the hardship that such an order might cause to a respondent</p>	<p><i>Re Company (No. 002612 of 1984)</i> [1986] 2 BCC</p>
<p>But impecuniosity of the proposed purchaser may be considered irrelevant</p>	<p><i>Re Company (No. 002612 of 1984)</i> [1986] 2 BCC</p> <p><i>Re Cumana Ltd</i> [1986] BCLC 430</p> <p><i>Sethi v Patel</i> [2010] EWHC 1830</p> <p><i>Re TPD Investments Limited</i> [2017] EWHC 657</p>

<p>An interim payment or payment on account can be ordered</p>	<p><i>Ferguson v Maclellan Salmon Co Ltd</i> [1990] BCC 702  <i>Re Clearspring Management</i> [2003] EWHC 2516  <i>Dalby v Bodilly</i> [2004] EWCA 3078  <i>In the matter of Annacott Holdings Ltd</i> [2011] EWHC 3180</p>
<p>Buyout price to be 'fair'</p>	<p><i>Re Bird Precision Bellows Ltd</i> [1984] 1 Ch 419, [1986] Ch 658  <i>Eurofinance v Parkinson</i> [2001] BCC 551  <i>Re Sunrise Radio Ltd</i> [2009] EWHC 2893  <i>Sethi v Patel</i> [2010] EWHC 1830  <i>In the matter of Annacott Holdings Ltd</i> LTL 23/5/12  <i>Chilukuri v RP Explorer Master Fund</i> [2013] EWCA Civ 1307  <i>Re Blue Index Ltd</i> [2014] EWHC 2680  <i>Re Addbins Ltd</i> [2015] EWHC 3161  <i>Birdi v (1) Specsavers Optical Group Ltd; (2) Singh; (3) Dartford Visionplus and (4) Dartford Specsavers Ltd</i> [2015] EWHC 2870  <i>Re C F Booth</i> [2017] EWCA 457  <i>Wann v Birkinshaw</i> [2017] EWCA Civ 84  <i>Re TPD Investments Limited</i> [2017] EWHC 657  <i>Edgar v Munro</i> [2017] EWHC 1814  <i>Estera Trust (Jersey) Limited v Singh</i> [2018] EWHC 1715  <i>Re AMT Coffee Ltd</i> [2019] EWHC 46  <i>Re Gallium Funds Solutions Group Ltd</i> [2021] EWHC 765  <i>Smith v Smith</i> [2022] EWHC 1035  <i>Isaac v Tan</i> [2022] EWHC 2023</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  <i>Re Gallium Funds Solutions Group Ltd</i> [2021] EWHC 765</p>
<p>"Market value" comprises price that would be agreed assuming a hypothetical willing (but not anxious of forced) seller and buyer</p>	<p><i>Holt v Holt</i> [1990] 1 WLR 1250  <i>Re Gallium Funds Solutions Group Ltd</i> [2021] EWHC 765</p>

Generally and “earnings/income” basis of valuation is more appropriate where the business of the company comprises a going concern	<i>Re Bird Precision Bellows [1984] Ch 419</i> <i>Buckingham v Frances [1986] 2 All ER 738</i> <i>CVC v Demarco Almeida [2002] BCC 684</i>
Where an “earnings/income” basis of valuation is appropriate the value is likely to be assessed by the application of either an analysis of “future cash flows” (if available) and a notional required rate of return on capital invested or, more usually by forecasting “future annual maintainable profits” and applying an appropriate “multiple”	<i>Gillatt v Sky Television [2000] BCLC 103</i> <i>Re Sunrise Radio [2014] 1 BCLC 427</i> <i>Re Gallium Funds Solutions Group Ltd [2021] EWHC 765</i>
“Future annual maintainable profits” are to be assessed from the perspective of a hypothetical purchaser. Moreover, the relevant question is what would that hypothetical purchaser assess those “future annual maintainable profits” to be	<i>Re Sunrise Radio [2014] 1 BCLC 427</i>
The appropriate “multiplier” is likely to be identified following reliance on information published by accountancy firms on prices achieved on sales of comparable unquoted (or sometimes even quoted) companies	<i>Re Planet Organic [2000] BCC 610</i>
In an appropriate case allowance may be made by selecting the appropriate “multiplier” for the potential for growth or the risk of contraction of a market if that has not already been taken into account when determining “future annual maintainable profits”	<i>Re Bodaibo (1992) 10 ACLC 351</i>
Any property, assets or funds that are surplus to the requirements of the business of the company will be added back to any “market value” determined by reference to an “earnings/income” basis	<i>Re Scitec Group [2012] EWHC 661</i>
Allowance may also have to be made for any specific liabilities that would be paid off on completion of the hypothetical sale	<i>Wann v Birkinshaw [2017] EWCA Civ 84</i>
It the business of the company is intrinsically dependent on an individual who might possibly leave the company in the future that risk should also be reflected in the market valuation of the company whether in the form of a reduced “multiplier” or and increase in the “required rate of return”	<i>Re Eurofinance Group Ltd [2001] BCC 551</i> <i>Vadori v AAV Plumbing 77 ACSR 616</i> <i>Re Scitec Group [2012] EWHC 661</i>
An “asset” based approach to valuation may be more appropriate if the company is not trading, comprises an investment vehicle or has profits that do not represent an economic return on capital invested	<i>Dean v Price [1954] Ch 409</i> <i>Shah v Shah [2012] WTLR 165</i>

Where an “asset” based valuation is appropriate it still may not be appropriate to value the company on the basis of its ‘break up” value rather than its value as a whole	<i>Shah v Shah</i> [2012] WTLR 165
The court is expected to take a pro-active approach to the determination of share values and may, therefore, use its case management powers to give directions requiring early preparation of and/or exchange of expert evidence regarding value	<i>North Holdings v Southern Tropics</i> [1999] BCC 746 <i>Re Clearsprings (Management)</i> [2003] EWHC 2516
Valuation is very often the subject of expert evidence but experts will carry greater conviction if the expert has personal practical experience in buying and selling companies and is not just simply a professional expert witness	<i>Re Sunrise Radio Ltd</i> [2011] EWHC 3821
Court retains a wide power to disregard the views of expert valuers and to apply its own view of what is fair, reasonable and sensible in all the circumstances	<i>Re Bird Precision Bellows</i> [1986] Ch 658 <i>Re Planet Organic Ltd</i> [2000] BCC 610 <i>Re Integrated Control Solutions (Eastern) Ltd</i> [2023] EWHC 2406
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	<i>Profinance Trust SA v Gladstone</i> [2001] EWCA Civ 1031 <i>Re C F Booth Ltd</i> [2017] EWHC 457 <i>Estera Trust (Jersey) Limited v Singh</i> [2018] EWHC 1715 <i>Re AMT Coffee Ltd</i> [2019] EWHC 46 <i>Re Dinglis Properties Ltd</i> [2019] EWHC 3327 <i>McMonagle v Harvey</i> [2021] EWHC 1374
An earlier date for valuation may be considered appropriate if there is a significant deterioration in the fortunes of the company following or as a result of the purchaser’s conduct	<i>Re Cumana Ltd</i> [1986] BCLC 430
If the court determines that in a particular case the appropriate date for valuation of the petitioner’s shareholding should be a date earlier than the date of judgment it might possibly but not inevitably also order interest to be payable on that price from that earlier date depending on the cause of the delay in obtaining relief	<i>Section 25 Senior Courts Act 1981</i> <i>Pro finance Trust SA v Gladstone</i> [2002] 1 WLR 1024 <i>Re Clearsprings (Mangement)</i> [2003] EWHC 2516 <i>Re Southern Counties Fresh Foods Ltd</i> [2010] EWHC 3334 <i>Re Annacott Holdings Ltd</i> [2012] EWHC 1662 <i>Re Goldshine Development Ltd</i> [2013] 5 HKLRD 318 <i>Estera Trust (Jersey) Limited v Singh</i> [2018] EWHC 1715 and [2019] EWHC 873
Once a valuation date has been determined the court is unlikely to order any adjustment to be made to the value as at that date or the valuation date itself in light of supervening events (eg. Covid-19 pandemic)	<i>Joiner v George</i> [2003] BCC 298 <i>Re Blue Index</i> [2014] EWHC 2680 <i>Dinglis v Dinglis</i> [2020] EWHC 1363



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	<i>Eurofinance v Parkinson</i> [2001] BCC 551
If there is a "marriage value" in the combining of the shares of the vendor and the purchaser then the court may order that that "marriage Value" should be shared between the vendor and the purchaser	<i>Re Eurofinance Group Ltd</i> [2001] BCC 551 <i>Estera Trust (Jersey) Limited v Singh</i> [2018] EWHC 1715 and [2019] EWHC 873 <i>Re Gallium Funds Solutions Group Ltd</i> [2021] EWHC 765
Basis of valuation should be 'fair' to all parties	<i>CVC/Opportunity Equity Partners Ltd v Demario Almeida</i> [2011] 2 BCLC 108 <i>Re TPD Investments Limited</i> [2017] EWHC 657
Share valuation is an art not a science	<i>Joiner v George</i> [2003] BCC 298 <i>Re Gallium Funds Solutions Group Ltd</i> [2021] EWHC 765
Valuations based simply on the application of valuation theory rather than based on or supported by verifiable evidence in the form of, comparators is likely to carry less weight and conviction with the court	<i>Taylor v Cobham &amp; Lifemarque Ltd</i> [2009] EWHC 2650 <i>Re Sunrise Radio</i> [2011] EWHC 3821 <i>Wann v Birkinshaw</i> [2017] EWCA Civ 84
Once valuation has been attempted the court must always stand back and assess its view against the commercial reality and business common sense	<i>Chilukuri v RP Explorer Master Fund</i> [2013] EWCA Civ 1307
Buyout price to take account of reduction in share value as a consequence of unfairly prejudicial conduct	<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
Evidence of what transpired after the relevant date of valuation may be considered	<i>Edgar v Munro</i> [2017] EWHC 1814

<p>Once a “proportional” value has been identified a “discount” or, indeed, a “premium” may need to be applied to that “proportional” value in order to identify the “fair value”</p>	<p><i>CVC Demarco Almeida [2002] BCC 684</i></p>
<p>A “discount” to the “proportional” value may be appropriate where the shareholding was acquired purely as an investment particularly where the shareholding was initially acquired at a “discount” reflective of the minority status of the shareholding in question</p>	<p><i>Re Company (No. 007623 of 1984) [1986] BCLC 362</i>  <i>Re DR Chemicals Ltd (1989) 5 BCC 39</i>  <i>Re Macro (Ipswich) Ltd [1994] 2 BCLC 354</i>  <i>Re Planet Organic [2000] BCC 610</i></p>
<p>In order to identify the “fair value” an adjustment will generally be required to the “market value” to reflect the consequences of any unfairly prejudicial conduct that is established (unless the unfairly prejudicial conduct has no tangible effect of the value of the shareholding)</p>	<p><i>Scottish Wholesale Co-operative Society v Meyer [1959] AC 324</i>  <i>Lloyd v Casey [2002] 1 BCLC 454</i>  <i>Re Annacott Holdings Ltd [2012] EWCA Civ 998</i>  <i>(cf Re Home &amp; Office Fire Extinguishers Ltd [2012] EWHC 917</i></p>

Historically, in “quasi partnership” cases there was generally no discount applied to reflect the minority status of the petitioner’s shareholding whereas in non ‘quasi partnership’ cases there were conflicting authorities as to whether a discount should be applied. The more modern approach seems to be that in all cases the price ordered to be paid should be “fair”. In practice this seems generally to mean that no discount is applied whether the company is in the nature of a “quasi partnership” or not unless some specific feature of the case justifies application of a discount to determine the ‘fair value’ of the shareholding (e.g. where the minority shareholding was gifted/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  
*Re Company (No. 00789 of 1987)* [1990] BCLC 384  
*Verdi v Abbey Leisure* [1990] BCLC 342  
*Howie v Crawford* [1990] BCC 330  
*Re Elgindata Ltd* [1991] BCLC 959  
*Ex parte Holden* [1991] BCC 241  
*Re Ghyll Beck Driving Range* [1993] BCLC 1126  
*Quintana v Essex Hinge Co Ltd* [1997] BCC 53  
*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  
*Estera Trust (Jersey) Limited v Singh* [2018] EWHC 1715  
*Re Edwardian Group Ltd* [2018] EWHC 1715  
*Re Lloyds Autobody Ringway Ltd* [2018] EWHC 2336  
*Re AMT Coffee Ltd* [2019] EWHC 46  
*Re Sprintroom Ltd* [2019] EWCA Civ 93  
*Dinglis v Dinglis* [2019] EWHC1664  
*Re Scientific Management Associates* [2019] NSWSC 1643  
*Re Gallium Funds Solutions Group Ltd* [2021] EWHC 765  
*McMonagle v Harvey* [2021] EWHC 1374  
*Smith v Smith* [2022] EWHC 1035  
*Isaac v Tan* [2022] EWHC 2023

<p>It may be inappropriate to apply a “discount” to reflect the minority status of the relevant shareholding if the facts of the matter are such that that shareholder is likely to have been entitled to an order for the winding up of the company on the “just and equitable” basis</p>	<p><i>Dinglis v Dinglis</i> [2019] EWHC 1664</p>
<p>A “discount” may be appropriate in valuing a minority interest in a non-quasi partnership case if the vendor himself acquired his interest at a discount and vice versa</p>	<p><i>Re Blue Index</i> [2014] EWHC 2680</p>
<p>If it is determined that it is appropriate to apply a discount to the proportionate value of the petitioner’s shareholding to determine the fair value of the petitioner’s shareholding the court has a discretion to determine that that discount should be only a “partial discount” as compared to that which might be applied to reflect the minority status of the petitioner’s shareholding though the circumstances justifying the application of such a “partial discount” are likely to be rare</p>	<p><i>Lloyds Auto Body Ringway Ltd</i> [2018] EWHC 2336</p>
<p>Both in quasi-partnership and non-quasi-partnership cases, identification of the “fair” value may involve applying a premium to the proportionate value (e.g. where the purchaser acquires a 25%, 50% or 75% interest in the company)</p>	<p><i>Re Eurofinance Group Ltd</i> [2001] BCC 551  <i>Re Sunrise Radio</i> [2009] EWHC 2893  <i>Estera Trust (Jersey) Limited v Singh</i> [2018] EWHC 1715 and [2019] EWHC 873</p>
<p>The shares should be valued on the basis of the value of them to the person ordered to purchase them rather than their value to an independent third party</p>	<p><i>Cherry Tree Investments Ltd v Landmain</i> [2012] EWCA Civ 33  <i>Re Eurofinance Group Ltd</i> [2001] BCC 551  <i>Re Edwardian Group Ltd</i> [2018] EWHC 1715    <i>Re Dinglis Properties Ltd</i> [2019] 3327</p>
<p>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 (e.g. to raise required funding for the purchase, or in cases where real hardship might result)</p>	<p><i>Re TPD Investments Limited</i> [2017] EWHC 657  <i>Estera Trust (Jersey) Limited v Singh</i> [2019] EWHC 873    <i>Re Gallium Funds Solutions Group Ltd</i> [2021] EWHC 765</p>
<p>If payment for the shares is to be delayed then interest may be awarded on the price that is to be paid</p>	<p><i>Estera Trust (Jersey) Limited v Singh</i> [2019] EWHC 873</p>
<p>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</p>	<p><i>Ashdown v Griffin</i> [2017] EWHC 2601</p>

<p>Generally, notional sale costs should be taken into account in determining the “fair value” of the shareholding</p>	<p><i>Atwood v Maidment</i> [2013] EWCA Civ 119  <i>Wann v Birkinshaw</i> [2017] EWCA Civ 84  <i>Re TPD Investments Limited</i> [2017] EWHC 657</p>
<p>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</p>	<p><i>Re TPD Investments Limited</i> [2017] EWHC 657</p>
<p>If the articles of association or a relevant shareholders’ agreement provide a method of “fair” or “market” valuation for certain purposes (e.g. in the event of the shareholder ceasing to be employed by the company) then historically there was a tendency for the courts to apply that agreed methodology though more recently such agreed methodologies are not considered binding unless the precise circumstances contemplated by the articles or agreement actually pertain</p>	<p><i>Re Company (No. 004377 of 1986)</i> [1987] 1 WLR 102  <i>Virility v Abbey Leisure</i> [1990] BCLC 342  <i>Re Company (No. 00330 of 1991)</i> [1991] BCC 241  <i>(cf Isaacs v Belfield Furnishings Ltd</i> [2006] 2 BCLC 705  <i>Re LCM Wealth Management Ltd</i> [2013] EWHC 3957  <i>Gray v Braid Group (Holdings)</i> [2016] CSIH 68</p>
<p><b>When the petition may be struck out</b></p> <p>Petition may be struck out (ie under CPR Pt 3.4) or dismissed summarily (ie under CPR Pt 24) 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>  <i>Re Unisoft Ltd (No. 3)</i> [1994] 1 BCLC 609  <i>Re Legal Costs Negotiators Ltd</i> [1999] BCLC 171  <i>Evans v Eurokey Properties Ltd</i> [2020] EWHC 1047  <i>King v Kings Solutions Group Ltd</i> [2020] EWHC 2861  <i>Loveridge v Loveridge</i> [2021] EWCA Civ 1697  <i>Zedra Trust v The Hut Group</i> [2021] EWCA Civ 904 and [2023] EWHC 65</p>
<p>Before the trial of the matter the court should exercise careful control over the matters which a party can raise in an unfair prejudice petition</p>	<p><i>Re Unisoft Ltd (No. 3)</i> [1994] 1 BCLC 609  <i>King v Kings Solutions Group Ltd</i> [2020] EWHC 2861  <i>Re Coroin Ltd (No. 2)</i> [2013] EWCA Civ 781  <i>Graham v Every</i> [2015] 1 BCLC 41</p>
<p>It may amount to an abuse of process for a person to issue a petition in circumstance 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</p>	<p><i>Re a Company (No: 07623 of 1984)</i> [1986] 2 BCC 99,191  <i>Re a Company (No: 004377 of 1986)</i> [1987] 1 WLR 102  <i>Re Castleburn Ltd</i> [1989] 5 BCC 652  <i>Re Benfield Greig Group Plc</i> [2002] BCC 256  <i>Re Belfields Furnishings Ltd</i> [2006] EWHC 183</p>

<p>No abuse if impropriety affects value or valuation</p>	<p><i>Re a Company (No: 006834 of 1988) [1989] 5 BCC 218</i></p> <p><i>North Holdings Ltd v Southern Tropics Ltd [1999] BCC 746</i></p> <p><i>cf Fuller v Syracuse Ltd [2001] BCC 806</i></p> <p><i>Re C F Booth [2017] EWHC 457</i></p>
<p>No abuse if mechanism for fixing price is not fair</p>	<p><i>Re a Company (No: 004377 of 1986) [1986] 1 WLR 102</i></p> <p><i>Re Abbey Leisure Ltd [1990] BCC 60</i></p> <p><i>Re a Company (No: 00330 of 1991) [1991] BCC 241</i></p> <p><i>Re Copeland &amp; Craddock Ltd [1997] BCC 294</i></p> <p><i>O'Neill v Phillips [1999] 1 WLR 1092</i></p> <p><i>North Holdings Ltd v Southern Tropics Ltd [1999] BCC 746</i></p> <p><i>Re C F Booth Ltd [2017] EWHC 457</i></p>
<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) [1987] 3 BCC 624</i></p> <p><i>Re a Company (No: 003096 of 1987) [1988] 4 BCC 80</i></p> <p><i>O'Neill v Phillips [1999] 1 WLR 1092</i></p> <p><i>North Holdings Ltd v Southern Tropics Ltd [1999] BCC 746</i></p> <p><i>West v Blanchet [2000] 1 BCLC 795</i></p> <p><i>Apcar v Aftab [2001] EWCA Civ 859</i></p> <p><i>Wyatt v Frank Wyatt &amp; Son Ltd [2003] EWHC 520</i></p> <p><i>Isaacs v Belfield Furnishings Ltd [2006] All ER (D) 216</i></p> <p><i>Hawks v Cuddy [2007] EWHC 2999 and [2009] EWHC Civ 291</i></p> <p><i>Re Sprintroom Limited [2019] EWCA Civ 932</i></p> <p><i>Cheyne v Alfred Cheyne Engineering Limited [2021] CSOH 17</i></p>
<p>Strike out may be available where it is “clear and obvious” that relief will not be granted against the offering party beyond that which he has offered</p>	<p><i>Bankside Hotels [2018] BCC 617</i></p> <p><i>Re Sprintroom Limited [2019] EWCA Civ 932</i></p> <p><i>Cheyne v Alfred Cheyne Engineering Limited [2021] CSOH 17</i></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>Apcar v Aftab</i> [2001] EWCA Civ 859  <i>Harbourne Nominees Ltd v Karvaski</i> [2011] EWHC 2214  <i>Cheyne v Alfred Cheyne Engineering Limited</i> [2021] CSOH 17</p>
<p>There is conflicting authority as to whether to be a 'fair offer' it must be unconditional and capable of a binding acceptance</p>	<p><i>O'Neill v Phillips</i> [1999] 1 WLR 1092  <i>Re Flex Associates Ltd</i> [2009] EWHC 3690  <i>Shepherd v Williamson</i> [2010] EWHC 2375  (c.f. <i>Re Sprintroom Ltd</i> [2019] EWCA Civ 932)</p>
<p>What constitutes a "fair offer"</p>	<p><i>O'Neill v Phillips</i> [1999] 1 WLR 1092  <i>Apcar v Aftab</i> [2001] EWCA Civ 859  <i>Harbourne Road Nominees Ltd v Karvaski</i> [2011] EWHC 2214  <i>Cheyne v Alfred Cheyne Engineering Limited</i> [2021] CSOH 17</p>
<p>An offer will only be considered a "fair offer" if it provides for a fair date for the valuation to be made at</p>	<p><i>Re London School of Economics Ltd</i> [1986] Ch 211  <i>CVC Opportunity Equity Partners Ltd v Demarco</i> [2002] BCLC 108  <i>Re Annacott Holdings Limited</i> [2013] EWCA Civ 119  <i>Cheyne v Alfred Cheyne Engineering Limited</i> [2021] CSOH 17</p>
<p>Issues as to alleged wrongful conduct may be reserved to the court and dealt with as preliminary issues or exceptionally left to the independent valuer's determination</p>	<p><i>Re Clearsprings (Mangement) Ltd</i> [2003] EWHC 25</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  cf <i>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>No abuse if valuer is not independent</p>	<p><i>Re Boswell &amp; Co (Steels) Ltd</i> [1989] 5 BCC 145  <i>Re Benfield Greg Group Plc</i> [2002] BCC 256</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	<i>Magical Marketing Ltd v Ware &amp; Kay [2013] EWHC 59</i>
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	<i>Treetop Investment LLC v Falmouth House Freehold Co Ltd [2017] EWHC 674</i>
Uncertain whether petition will be stayed in face of an agreement to arbitrate	<i>Re Vocam Europe Plc [1998] BCC 396</i> <i>Eurotunnel v Balfour Beatty [1992] 2 Lloyd's Rep 7</i> <i>Sheldon v D F Keane (unreported) 21 March 2003</i> <i>Exeter City AFC Ltd v Football Conference Ltd [2005] 1 BCLC 238</i>