Cains' Judgment Journal: *Comment from Cains on Isle of Man Judgments*

Companies Winding Up Rules – Definition of Creditor – Creditors' Meetings

Cains' Comment

This judgment confirms that creditor status is strictly defined and that the Court's intervention in liquidations is limited to powers granted by legislation.

Nectrus Limited v Gerber and Tucker as Joint Liquidators of UCP Plc (in Liquidation), Civil Division, Chancery Procedure, 13 January 2026

UCP Plc ("**UCP**") went into liquidation on 14 October 2024, triggering the liquidators' duty under s232 Companies Act 1931 to call annual meetings of creditors where the winding-up takes more than a year.

Nectrus applied to the Court for an order to restrain the creditors of UCP from holding that meeting until the final determination of their appeal, which challenged the liquidators' rejection of its proof of debt.

The key question was whether Nectrus had the standing to make the application in the first place. Under s240(1) Companies Act 1931, only "the liquidator or any contributory or creditor" may apply to the Court. The Court therefore had to determine whether someone whose proof of debt has been rejected, but is under appeal, counts as a "creditor".

The key points of the case included:

1. A claimant whose proof has been rejected is not (yet) a creditor

Drawing on the principle that Courts must be clear about who is entitled to make applications in insolvency matters, outlined in *Kean v Lucas* [2017] BCC 311 at [19], Deemster Corlett[1] held that Nectrus did not qualify as a creditor.

The Court stated:

> *The fact that an entity claiming to be a creditor has filed an appeal against the rejection of its proof of debt does not make that entity a "creditor".*

Because Nectrus was not recognised as a creditor unless and until its appeal succeeded, it lacked the "sufficiency of interest" needed to invoke the Court's powers.

2. The Court could not pre-judge whether Nectrus was a creditor

The question of Nectrus' creditor status was complex. The liquidators had considered relevant Court judgments and other arguments in reaching their decision. The Deemster found it inappropriate to express any view on the merits before the Rule 85 appeal hearing. Therefore, Nectrus was not a creditor and did not have the necessary standing to apply to the Court.

3. Even if Nectrus *had* standing, the meeting should still proceed

The Deemster went on to say that, even if he were wrong on the issue of standing, he would not have postponed the meeting because:

- It is beneficial for the winding-up that the meeting takes place.
- Ordinary creditors have a right to information and to ask questions.
- The liquidators are professional, regulated individuals capable of managing the meeting and explaining Nectrus' position.
- Two companies connected with Nectrus were already entitled to attend in their own right.
- If Nectrus later succeeded in its Rule 85 appeal, it could still challenge fees under s240 Companies Act 1931.

Crucially, there was no prejudice to Nectrus if the meeting went ahead, but there would be significant detriment to other creditors if it were delayed.

4. No broad supervisory jurisdiction

The Court emphasised that it does not have a general supervisory role over liquidations, especially voluntary liquidations. Its authority exists only where granted under statutes

such as the Companies Act 1931, not under wider powers like s42 High Court Act 1991 **except** in very limited circumstances.

Outcome

The Court refused Nectrus' application. It held:

- Nectrus was not currently a creditor and therefore had no standing under s240.
- Even if it did have standing, postponing the meeting would not be just, convenient, or beneficial to the winding-up.
- The creditors' meeting should proceed as scheduled.

The full judgment can be found at:
https://www.judgments.im/content/Judgment%20130126%20extempore.pdf

Application to Set Aside Consent Order – Permission to Withdraw and Admission – Delay

Cains' Comment

It is clear from this case that the Court will only amend a final consent order or allow the withdrawal of admissions in the *rarest* circumstances and that new expert evidence, or a change of litigation strategy is not enough to reopen settled findings of liability.

R (A Minor by her Mother and Litigation Friend) – Civil Division, Ordinary Procedure, 30 January 2026

In this case, the Court dismissed an application by the Department of Health and Social Care (DHSC) to withdraw long-standing admissions of liability and causation in a wrongful birth case concerning a child, R, born in 2016 with severe disabilities.

R's mother brought a claim in 2019, alleging negligent antenatal care. She said abnormalities visible on scans were not investigated, and that proper referral and diagnosis would have led her to give consideration to terminating the pregnancy.

After both sides obtained expert evidence, the DHSC admitted breach of duty and causation in May 2021. A consent order recording judgment on liability was approved on 7 October 2021, leaving quantum the only issue to be determined. Interim damages were later resolved by consent in 2022.

In 2025, the DHSC obtained a new expert opinion suggesting a termination would not lawfully have been offered under Manx abortion law at the relevant time, as the abnormalities known would not have met the criteria for lawful termination. The DHSC sought to amend its defence, withdraw its admissions under Rule 6.19(5), and set aside the consent order under Rule 7.2(7).

The Claimant opposed the application, stating that none of the special circumstances in *Ladd v Marshall* [1954] 1 WLR 1489 applied, and stressing that the consent order had been final for four years.

Key Findings

The Court applied *Old Mutual International Isle of Man Ltd v Caddick* [2017] MLR 360, emphasising the strong public policy in favour of finality. A party cannot reopen a final judgment simply because it later obtains new or more favourable expert evidence - particularly where it had consciously chosen its litigation strategy.

English cases *Terry v BCS Corporate Acceptances Ltd* [2018] EWCA Civ 2422 and *Vodafone v Ipcom* [2023] EWCA Civ 113 confirmed that varying a final order is only possible where there has been a material change of circumstances since the order was made and in very rare circumstances, given the important of finality.

The Court held this was not like *Northern Rock v Chancellors* [2011] EWHC 3229, where an admission was accidental. Instead, the DHSC had knowingly made a full admission after legal advice and expert evidence.

The Court dismissed the DHSC's application for the following reasons:

- The admissions could not be withdrawn under Rule 6.19(5).
- The 2021 consent order could not be set aside under Rule 7.2(7).
- The liability judgment remains final.

The Court also revoked the earlier substitution order, restoring R's mother as the Claimant.

The full judgment can be found at:
https://www.judgments.im/content/Judgment%20delivered%2030.01.26.pdf

Please note that this note does not constitute legal advice but is provided as non-reliance guidance only. For more information on Isle of Man Litigation Law, please contact: Robert Colquitt or Tara Cubbon-Wood.

Reference

[1] The term used to refer to judges in the Isle of Man judiciary.

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