# Greensill Capital and the Use of the Administration Process in UK Company Law: An Incomplete Case Study*

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**Abstract**

This paper examines the Greensill collapse, with a central focus on the UK company administration procedure under the Insolvency Act 1986, exploring its broader implications for international corporate finance regulation. It analyses the events leading to Greensill's collapse and the challenges encountered during the administration process, shedding light on stakeholder rights and the delicate balance between national and international legal frameworks. This case illustrates the intricacies of contemporary administration practices, demonstrating how administration can serve as both a rescue mechanism and as a tool for a more efficient liquidation, aimed at maximising asset value to provide better dividends for creditors. Ultimately, the paper underscores the risks inherent in financial innovation, offering lessons for the ongoing evolution as regards to the usage of administration. As the Greensill saga continues, the paper anticipates future developments, emphasising the need for systematic understanding and vigilance in complex financial scenarios.

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**Keywords**

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## Introduction

In this paper, covering aspects of the Greensill affair, the central focus which we will adopt is primarily directed to the use of the UK company administration procedure as operated under the provisions of the Insolvency Act 1986 (IA 1986), as amended, in the particular case of a distressed financial undertaking. But, in so doing, we do not close our eyes to the wider ramifications of the Greensill episode for the better regulation of international corporate finance. Those implications go well beyond the technicalities of this local UK corporate insolvency process and, indeed, in many respects, they transcend the boundaries of English Law. The dramatic collapse of the Greensill business is truly a matter of global concern for those lawyers and allied practitioners having an interest in the workings of international finance and the regulation of multinational firms. We note also that there are political undertones of the Greensill case,[1] but we will make no effort to engage with them in this paper.

In the next section the chain of events that led to Greensill's financial collapse as well as the ramifications of supply chain finance are discussed. In the subsequent sections, the paper navigates through the legal framework, shedding light on the challenges faced during the administration process in this incomplete case. The analysis will also unveil the finer threads of Greensill's financial unravelling, explore the rights of creditors, employees and shareholders, potential complications in multinational collapses, and the intricate balance between national and international legal frameworks.

[1] There was a Treasury Committee parliamentary enquiry into alleged improper political lobbying to secure UK state support for the Greensill companies when their difficulties emerged. This alleged lobbying was unsuccessful. For further details of the conclusions of this parliamentary committee see 'Lessons from Greensill Capital', 20 July 2021, Treasury Committee. Note also the independent review conducted by Nigel Boardman, 'A Review into the Development and Use of Supply Chain Finance in Government' Cabinet Office, 22 July 2021.

**Background on Greensill's failure and the supply chain finance fallout**

There are various local UK key players to highlight in this story of dramatic financial collapse. Greensill Capital (UK) Ltd (GCUK) was the main UK company within the Greensill Group. We then also have to take note of the role of Greensill Capital Management Co (UK) Ltd (GCMC). It relied on GCUK for meeting its operating costs, particularly the payment of employees' wages. Both are private companies which were set up by Lex Greensill, the eponymous founder, in 2012. Both companies are currently undergoing administration. There was another subsidiary of interest within the UK part of the group, namely Earnd UK Ltd - this company entered administration on 21 March 2021 and then proceeded to liquidation on 24 March 2021.[2] The parent company of the whole group was Greensill Capital Pty Ltd, which was incorporated in the state of Queensland in Australia and then went into liquidation on 22 April 2021 in Australia.[3] There were several other Greensill subsidiaries located in a number of other jurisdictions, including Germany.[4]

The Greensill business was a pioneer in "invoice financing", sometimes called "supply chain finance".[5] This involved Greensill providing corporate finance for trading/purchasing

[2] The Greensill administrators of GCUK are expecting to receive a small distribution as a creditor from the liquidation of Earnd UK.

[3] It had earlier on 9 March 2021 entered voluntary administration in Australia. Read the following article for details for the Australian liquidation that also includes a video of the story: Jamie Smith, 'Greensill parent enters liquidation', Financial Times, 22 April 2021<https://www.ft.com/content/0a256a37-d8e4-4655-91cc-678e38685628> accessed 26 January 2024. It is expected that the Australian liquidation will run on into 2024. Jenny Wiggins, 'Greensill Capital liquidation to drag on until 2024', Australian Financial Review, 22 June 2022 <https://www.afr.com/companies/financial-services/greensill-capital-liquidation-to-drag-on-until-2024-20220607-p5arnn> accessed 26 January 2024.

[4] Such as Greensill Bank AG. This German bank fell into insolvency as part of the general group collapse. The administrator handling the German insolvency procedure secured recognition in English Law under the Cross Border Insolvency Regulations 2006 from ICC Judge Prentis in the High Court in March 2021 – see the record of this recognition application reported in *Greensill Bank AG* [2021] EWHC 966 (Ch). Greensill Bank AG has secured similar recognition both in Australia and the USA. For the former recognition proceedings in Australia see *Frege v Greensill Bank AG* [2021] FCA 330 and [2021] FCA 510.

[5] Sometimes called reverse factoring. Other companies have used this finance model of supply chain finance and have run into difficulties – Carillion (q.v.) for example. One consequence of the Greensill episode was the decision of International Accounting Standards Board in May 2023 to introduce increased disclosure requirements where this controversial method of financing is in use – see IAS 7 (Statement of Cash Flows) and IFRS 7 (Financial Instruments: Disclosure). These new requirements became in January 2024.

companies to facilitate the early payment of their suppliers by these purchasing companies thereby converting future anticipated trading receipts into immediate finance. It was apparently conceived as a private sector solution to the problem of late payment of debt in commerce.[6] Greensill acted as a middleman in this technique. It paid the suppliers directly, but with a discounted amount to reflect the fact that they were getting early payment. Greensill took the sellers' invoices from the purchasing companies. The purchasing companies, which would later settle up with Greensill, did not have to treat this arrangement in its accounts as a form of borrowing, thus protecting their creditworthiness.[7] Although it comes with challenges, an effective supply chain finance can enhance a company's financial performance and relationships with key counterparties, contingent on business nature, sector, and market practices.[8] Greensill then packaged the suppliers' invoices into an investment asset against which it raised funds from banks by issuing notes. Stripped of its complexity, it is simply a different form of receivables finance. But, as it can be very prospective and, in some cases, relied upon anticipated trading activity, the risk is greater for the finance provider. The financier has no recourse against the supplier in case the company cannot settle the invoice.[9] Insurance is therefore needed to protect against this risk. Major banks from across the world then put Greensill in funds to enable it to operate this particular business model, which, it has to be said, was not unique to Greensill. It must be noted that the UK branch of the Greensill

[6] 90-day credit is common in commercial practice, but purchasers often wait longer than 90 days to settle debts due to suppliers. In the UK legislation has been deployed in an attempt to tackle this problem – see Late Payment of Commercial Debts (Interest) Act 1998 (as revised). The supporting 2013 Regulations (SI 2013/395) reflect European policy input into this area of concern for business. But doubts remain as to the effectiveness of this legislation in practice.

[7] For a more detailed analysis of the supply chain finance methodology in Greensill see Sally Weller, 'Greensill Capital and the securitisation of supply chain financing' (2023) 8(4) Area Development and Policy 398–415; Read here the history behind supply chain finance and more on the Greensill business: Owen Walker 'Supply-chain finance: a new spin on a prehistoric idea' Financial Times, 5 April 2021 <https://www.ft.com/content/8ca7b05d-f1a8-4ddd-8fda-3383f11e5143> accessed 30 January 2024.

[8] Joe McHale, 'Supply chain finance: Financial restructuring implications' Norton Rose Fulbright, July 2019; Also read Robert Smith, 'Greensill and supply-chain finance: how a contentious funding tool works', Financial Times, 2 March 2021, <https://www.ft.com/content/1bbbe94c-9c3d-43d1-bcdd-8add6557c5a7> accessed 31 January 2024.

[9] Ibid.

group was not a bank in the commonly understood sense. This is important since as a result it falls outside the normal UK banking regulatory supervision.[10]

The UK components of the Greensill business empire ran into difficulties because of financial problems encountered in the wider group. As a consequence of the economic challenges imposed by the pandemic, some of the companies that received finance from Greensill faced financial instability, leading to uncertainties about their ability to meet their obligations.[11] Greensill's main creditor was Credit Suisse who froze its funds as a result. Credit Suisse's funds were shielded from the risk of default by specialised credit insurers. The Greensill group difficulties emanated from a failure to obtain renewal of insurance to cover debts becoming due to Greensill. Those financial problems were ultimately triggered by this lack of insurance cover. This led to a chain reaction, affecting Greensill's operations and contributing to its eventual collapse. In distressed company groups, where financial interconnection is the norm, the domino effect of financial distress took hold, resulting in contagion.[12]

The multinational nature of the Greensill group merely complicated matters. Attempts to negotiate a restructuring solution proved abortive. Greensill, however, does not symbolise the failure of supply chain finance. It is important to recognise the wider effects that supply chain finance can have on rescue and insolvency in general. Some companies overly rely on supply chain finance, creating a ripple effect when a failure like Greensill's occurs, affecting supplier companies directly paid by Greensill. In supply chain finance structures, instead of appearing on the balance sheet as debt, they are commonly recorded as trade payables or other payables. Although this practice enhances a company's creditworthiness, the lack of transparency can

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[10] This was commented upon in the HM Treasury Report of July 2021, which is noted above.
[11] The Economist, 'Why is supply-chain finance, as practised by Greensill Capital, risky? 18 March 2021 <https://www.economist.com/the-economist-explains/2021/03/18/why-is-supply-chain-finance-as-practised-by-greensill-capital-risky> 30 January 2024.
[12] This is the commercial reality, even though, legally, each group member is technically a distinct entity with its own rights and obligations. The use of cross guarantees between group members however often undermines the strict legal position by making group members liable for the debts of certain other group members.

trap investors by hiding the actual debt amount.[13] Consequently, investors may encounter difficulties in making informed decisions, potentially leading to the mispricing of credit risk and an overestimation of stock values.

**Entry in administration of the UK Greensill companies**

The legal rules relating to the administration of these particular UK companies in the Greensill group are essentially governed by numbered paragraphs in Schedule B1 of the IA 1986 (effective from 15 September 2003). The Greensill case was a standard instance of administration and not one using the various customised regimes[14] available for some companies operating in the finance sector.

After failed restructuring negotiations, both GCUK and GCMC went into administration on application to court under paras 10-12 of Schedule B1 made by the companies' directors on 8th March 2021. This application was not contested. The administration order was made by Green J.[15] The aim of the administration here was to produce a more effective realisation of assets than would be produced by a liquidation, a so called "better result" scenario, (see para 3(1)(b) of Schedule B1) and the proposals of the administrators designed to achieve this stated purpose were to be put to creditors in April 2021. The directors, prior to using administration tried without success to identify obtain further funding that would allow GCUK and GCMC to continue as going concern. Thus, the first objective of administration which is company rescue was viewed as not being possible. The creditors duly approved these proposals outlining the administrators' strategy in May 2021. Much of the information related in this article below is

[13] European Leveraged Finance Association, 'Reverse Factoring: A blind spot for investors' Issue 28, 16 March 2022 <https://elfainvestors.com/wp-content/uploads/2022/03/ELFA-Insights-28-Reverse-Factoring-a-blind-spot-for-investors-2.pdf> 30 January 2024.

[14] Such as the customised regime under the Investment Bank Special Administration Regulations 2011 (SI 2011/245).

[15] *Greensill Capital Management Company (UK) Ltd v Credit Suisse Asset Management* [2021] EWHC 700 Ch.

drawn from the available annual progress reports by the administrators to the creditors. These are available to access via Companies House.[16]

Administration can be a relatively expensive insolvency process to operate as it requires considerable professional input from qualified insolvency practitioners and their staff. But that cost needs to be viewed against any financial recoveries made in difficult circumstances. The amounts of money pursued and recovered in the Greensill case are vast, running into tens of millions of pounds. Expertise provided by experienced professionals in this context deserves appropriate recompense. The law fully recognises this point and enables payment in an insolvency scenario. Detailed analysis of the administration expenses and fees related to the Greensill case is provided in a subsequent section of this paper.

## The administration process in the UK in general terms

Schedule B1 of the IA 1986 replaced the original administration order model enacted in Part II of the IA 1986 with effect from 15 September 2003.[17] The Insolvency (England and Wales) Rules 2016 (SI 2016/1024) provide valuable supporting regulation on the minutiae of the administration process (see Part 3 of the Rules in particular). The balance of academic and practitioner debate on the administration procedure usually views it as a corporate *rescue* procedure. But that predominant focus (some might even say "obsession") on the rehabilitation prospect is somewhat misleading. In many instances administration is used, not with a view to rescuing a distressed business, but more with the goal of winding the company and its business down more efficiently than can be achieved via liquidation.[18] In other words, this type of

[16] Any company documents can be accessed in https://www.gov.uk/get-information-about-a-company through the company's name or registration number.
[17] For commentary on the Schedule B1 administration procedure in the UK see Sealy and Milman, *Annotated Guide to Insolvency Legislation* (26th edn, Sweet and Maxwell 2023) 695-799.
[18] Administration does less damage to goodwill and the administrator enjoys protective powers that are not always at the disposal of liquidators.

administration is designed to achieve a “soft landing”.[19] That indeed was the case found here in the Greensill saga. That is a perfectly constructive outcome to pursue. It generates economic efficiencies.

According to the court order establishing the administration the three joint administrators were identified as the named partners in the firm of Grant Thornton, the firm who are running these Greensill administrations,[20] but we reiterate that the administrators are technically the named individuals who are the designated office holders. One of the original named administrators has since retired and a replacement has been approved by the court. The whole system of regulation of insolvency practice at present in the UK[21] places emphasis on *individual* office holders rather than on *collective* responsibility within the firm, even though any insolvency process involving a large business will inevitably be managed by the firm with its employees doing many of the mundane tasks. But the buck stops with the named individual administrators if things go awry. These joint administrators are required to be qualified insolvency practitioners,[22] and are empowered under various provisions of the IA 1986 to act as “office holders”.[23] They are also treated as “officers of the court”.[24] They therefore must act honourably,[25] but are protected from unjustified interference by third parties by the law of

[19] That desire might explain why the administration process was used rather than the more traumatic winding up regime. But in recent times liquidation has begun to be used in such cases – see Carillion (2018) and British Steel (2019) for examples of this emerging genre. British Steel has since been reincarnated as part of its business was bought out of liquidation. A lot depends upon the particular circumstances prevailing in each case as to which insolvency procedure is utilised; Kayode Akintola, Sofia Ellina and David Milman, ‘Should we rescue in Insolvency?’ UK Insolvency Service Publications (2022) <https://sites.google.com/view/forwardthinkingconference2021/home> accessed 26 January 2024.

[20] Grant Thornton is handling the liquidation of the Australian parent. This should facilitate cooperation between the various insolvency office holders, but the duty of insolvency practitioners is very much owed to the individual companies over which they are appointed to act.

[21] Other legal systems prefer a more pragmatic approach by focusing upon the firm rather than the individual. A perusal of ‘The Future of Insolvency Regulation: Government Response’ (Insolvency Service, 12 September 2023) with its proposals for reform of the insolvency profession in the UK may indicate a wind of change is blowing here.

[22] IA 1986, Sch B1, para 6.

[23] See for example IA 1986, s 234.

[24] Confirmed by IA 1986, Sch B1, para 5.

[25] This is a curious concept. It may rule out opportunistic behaviour that may be viewed as unethical, but at the same time it allows the administrators to act so as to promote the creditor interest by insisting on strict legal rights

contempt of court. The functions of the joint administrators can be performed individually to facilitate matters.[26] The administrators can seek directions from the court where some uncertainty exists that requires clarification.[27] This valuable facility has been exploited in this case under review. There is a creditors' committee[28] established for GCUK, but not (at present) for GCMC. Such a committee can be a useful check upon administrators, but more frequently it can support administrators who may wish to take soundings about possible future courses of action.

The role of administrators is to get in the company's assets as quickly as is reasonably possible[29] and then to distribute any proceeds of realisation amongst creditors according to the "waterfall" priority system.[30] They must put forward their proposals with regard to the future of the company to the creditors for approval.[31] These proposals were approved by creditors in this case on 14 May 2021. They must issue regular progress reports compliant with rules 18.2 and 18.6 of the Insolvency (England and Wales) Rules 2016 (SI 2016/1024). These progress reports are a valuable source of public information provides a sense of transparency. The administrators have broad statutory powers to achieve their stated goal.[32] The directors are *functus officio* on the commencement of administration as is made clear by para 64 of Schedule B1. They thus lose their right to manage the firm which is undergoing administration and can be removed from office. That is the norm unless the 'light touch' administration[33] process is

in hard cases – for the latest insights on this concept see *Lehman Brothers Australia v Macnamara* [2020] EWCA Civ 321.

[26] IA 1986, Sch B1, para 100(2).

[27] IA 1986, Sch B1, para 63.

[28] See IA 1986, Sch B1, para 57 and Part 17 of the Insolvency Rules 2016.

[29] IA 1986, Sch B1, paras 4 and 67.

[30] See the explanation of the waterfall priority model offered by Lord Neuberger in *LB Intermediate Holdings v Lehman Brothers Europe* [2017] UKSC 38 at para [17].

[31] On this process see IA 1986, Sch B1, paras 49, 50 and 53.

[32] See for example IA 1986, Sch B1, paras 59, 60 and Sch 1 of the Act.

[33] Where this process is used the directors retain certain managerial powers but also remain subject to managerial duties. It was first firstly characterised as 'light touch' administration in *Davey v Money* [2018] EWHC 766 (Ch); [2018] Bus. L.R. 1903 at [260] (Snowden J); This has no formal statutory basis, but is a practice that is now recognised by the courts – see *Re System Building Services Group Ltd* [2020] EWHC 54 (Ch) and the account by John M. Wood, *The Interpretation and Value of Corporate Rescue* (Edward Elgar, 2023) 218; A further analysis

engaged by the administrators to save on costs. Also, we note that the administrators have an investigatory role and associated powers/responsibilities – for example, they have three months from the date of the administration to report to the authorities under the Company Directors Disqualification Act 1986 of any suspicions of unfitness on the part of any of the directors. On the 7th of March 2024, the Insolvency Service announced that disqualification proceedings had been commenced against Lex Greensill.[34] The announcement suggests that overseas conduct can be taken into account and that the application to disqualify was made in the public interest. Litigation may often be required to perform the statutory roles required of administrators. That litigation might involve the prosecution of civil actions to identify and then to claim assets,[35] to recover company property (by challenging certain acts such as transactions at an undervalue, including gifts, that have depleted the company's assets)[36] and/or to pursue directors for compensation for any alleged breach of duty[37] or for alleged wrongful trading.[38]

**Creditor rights**

A perusal of the available data from the administrators' progress reports in this case shows that GCUK has secured creditors, with Credit Suisse being a major secured creditor. The collateral

on the 'light touch' administration can be found in Eugenio Vaccari, 'Corporate insolvency reforms in England: rescuing a "broken bench"? A critical analysis of light touch administrations and new restructuring plans' (2020) 31(12) ICCLR 645-667.

[34] The Insolvency Service, 'Outcome of investigation into the directors of the collapsed Greensill group' 7th March 2024, <https://www.gov.uk/government/news/outcome-of-investigation-into-the-directors-of-the-collapsed-greensill-group> accessed 15 March 2024.

[35] The claim may be against another group member where ownership of an asset is unclear – see *Laverty v Greensill Bank AG* [2023] EWHC 2429 (Ch).

[36] See on the question of transactions at an undervalue the provisions of IA 1986, s 238.

[37] On the duties owed by directors of distressed companies to creditors see *BTI v Sequana* [2022] UKSC 25. For comment on this watershed authority see H.B. Brown, 'In the zone, on the verge, at the border – and the light at the end of the tunnel: long-awaited judicial commentary on directors' duties in *BTI 2014 LLC v Sequana SA*' [2022] 15(6) CRI 188; John Quinn, Philip Gavin, 'The creditor duty post *Sequana*: lessons for legislative reform' (2023) 23(1) Journal of Corporate Law Studies 271-296.

[38] IA 1986, s 214. Formerly, this form of proceeding was the exclusive prerogative of liquidators. But since the reforms introduced by the Small Business, Enterprise and Employment Act 2015 administrators can also institute such proceedings (see now IA 1986, s 246ZB).

enjoyed by the secured creditors consists of fixed and floating charges. Citibank who was the main fixed charge holder has been fully repaid. GCUK has paid the owed amount of $140m to Credit Suisse while it still owes the amount of $880,000. Peter Greensill Family Co Pty Limited (as trustee for the Peter Greensill Family Trust) is another floating charge holder who is owed $60m.

Considering that many companies are over-secured and operate with leased assets being used for essential business purposes nowadays, when the music stops there is little for unsecured creditors to have a claim against. This is because the realisable assets of the debtor company are few and they will be covered by security. As a result, it is more likely for unsecured creditors to be more exposed to risk in an administration. There is uncertainty though as to whether unsecured creditors would find themselves in a superior position in any procedure other than administration. The unsecured debt of GCUK is currently at $1.6 billion, while for GCMC is $14.5 million. The last report of Greensill states that the amount and time unsecured creditor distribution remains uncertain. It concurrently clarifies that it is expected that there will be sufficient funds for unsecured creditor distributions. The administrators are expecting to provide the dividends for unsecured creditors during the liquidation processes, which the administrations will be converted to. The administrators anticipate providing dividends to unsecured creditors during the liquidation proceedings, which will follow the administrations. However, they mentioned the possibility of seeking approval from the High Court to distribute funds to unsecured creditors while the Greensill companies are still under administration.

Since the Greensill estate is covered by floating charges there may therefore be a prescribed part for the benefit of unsecured creditors of GCUK pursuant to s 176A of the IA 1986.[39] There

[39] The prescribed part is a fund top-sliced out of the floating charge realisable assets and made available to exclusively to unsecured creditors. It cannot exceed £800,000 in total. The precise mathematics of its operation are mapped out in the IA 1986 (Prescribed Part) Order 2003 (SI 2003/2097) (as amended). This fund cannot operate where there are no realisable assets that are due to the floating charge holder. For accounts of the

are no floating charge over the assets of GCMC and therefore there can be no prescribed part. The existence of the prescribed part (which was first introduced in September 2003) has improved the position of unsecured creditors, but they still enjoy a rough deal on corporate insolvency, as it seems that it is rarely used and that the returns are low.[40] This lamentable state of affairs in English Law has persisted for over a century. Private companies in the UK are not required to have a minimum share capital, even if they operate a substantial turnover.

**Funding an administration**

What is important to grasp is that administrators are not miracle workers; without sufficient finances, there is not much that they can do. State funding, in general, is not available to support the process. Accessing private sources of finance and professional creativity in exploiting such resources are, therefore, to the fore. The problem of funding the administration can be acute, particularly if a rescue is attempted or where litigation is required to pursue the stated purpose of the administration.[41]

While the availability of financial support is valuable, it is essential to understand that it alone may not provide a complete solution for rescue. The company's troubled state, alongside macroeconomic and internal factors, will all play a role in determining the feasibility of any rescue proposal or package. Some argue that if the company has real prospects of survival, it will not encounter problems with funding its own rescue.[42] This is not always true since the

prescribed part see Kayode Akintola, 'The prescribed part for unsecured creditors: a pithy review' (2017) 30 Insolvency Intelligence 55-58.

[40] Kayode Akintola, 'The prescribed part for unsecured creditors: a further review' (2019) 32 Insolvency Intelligence 67-70.

[41] Litigation finance is quite common in the UK though uncertainty as to its usage has been generated by the Supreme Court ruling in *R (on the application of Paccar Inc) v The Competition Appeal Tribunal)* [2023] UKSC 28. For explanation see R Williams, 'Lower Returns for Creditors Loom as Funding Options Shrink' [2023] (Winter) Recovery 21.

[42] The Insolvency Service, A Review of the Corporate Insolvency Framework: A consultation on options for reform the Corporate Insolvency Framework response form (25 May 2016); The Insolvency Service, Summary of Responses: A Review of the Corporate Insolvency Framework, (September 2016) 11.

cash-flow insolvency[43] tends to have different impact from balance sheet insolvency.[44] Even if the balance sheet shows profit, it does not mean that the company will have the cash-flow to trade in administration, which necessitates a cash injection. Raising funds would be particularly valuable in trading administrations. GCUK to date has received a funding of $84.2 million from investors, with the purpose of facilitating the day-to-day management of administration. The Greensill administrators' report indicates that they 'are working with investors to recover costs incurred in the administration where GCUK recovers assets for the benefit of investors'. While GCUK managed to retrieve funding, it is sometimes not an easy task as creditors need to have sufficient incentives to provide the funding. Without the funding from those investors, the GCUK administration would not have been possible.

As administration is not always used to save the company/business, but also for improving the position of creditors, financing is essential even if rescue does not occur. This seems to be the case for GCUK, as for such a massive company, the affairs concerning the realisation of assets and the subsequent distribution to creditors are extensive. Although GCUK is a trading administration the purpose is not to rescue the company or its business which seems to be apparent from the fact that the administrators are intending to exit administration with a Company Voluntary Liquidation (CVL) or if there are no distributional assets for unsecured creditors to go straight into dissolution. In GCUK, it seems that the administration is indeed a disguised liquidation that occurs for the administrator to swell the assets for the benefit of the whole body of creditors. In other words, an administration can result in maximised returns for creditors, distributions that may not be achievable through liquidation.[45] However, this outcome is also subject to associated expenses.

[43] IA 1986, s 123(1)(e).
[44] IA 1986, s 123(2).
[45] *Re Logitext UK Ltd* [2005] 1 BCLC 326 indicated that administration can be more beneficial for creditors than liquidation.

Financially distressed companies may not have any unencumbered assets for prospective lenders that could support a rescue, thus securitisation might not be an option. The administration management is facilitated by the administrator's ability to dispose of free assets and assets secured by a floating charge without requiring approval from any creditors or the court.[46] However, fixed charge assets can only be used with the consent of those creditors or a court order.[47] Since GCUK's assets are covered by floating charges with the main holder being Credit Suisse, the administrator has full access to those assets.

The above is relevant as per the IA 1986, Sch B1, para 99(3), which clarifies that any contract entered into by the administrator would be considered part of the administration expenses and be paid out of the floating charge assets under the administrator's control. The contracts entered by the administrator include rescue finance given that the administrator has the 'power to raise or borrow money and grant security therefor over the property of the company'.[48] *Bibby Trade Finance Ltd v McKay*,[49] through interpreting the IR 2016, r 3.51 (the then Insolvency Rule 1986, r 2.67) and the IA 1986, Sch B1, para 99, suggested that a creditor who is advancing new funds to the company would be part of the administration expenses and thus be prioritised over floating charge holders and pre-administration creditors. In other words, according to the statutory priorities deriving from IR 2016, r 3.51 and from the judiciary explanation of the waterfall of priorities in *Lehman*, since 'rescue finance' is part of the administration expenses, it would rank below fixed charge holders but above floating charge holders. That said, there is a version of a rescue finance regime in place. Yet, it must be noted though that legislation lacks a clear and detailed explanation of rescue finance, and its application in court has not undergone comprehensive testing, and it is therefore, still subject to further interpretations.

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[46] IA 1986, Sch B1, para 70.
[47] IA 1986, Sch B1, para 71.
[48] IA 1986, Sch 1, para 3.
[49] [2006] EWHC 2836 (Ch) para [22].

There are some challenges to the current 'regime' though as not all companies have free assets or floating charge assets, creating difficulties for the administrator to collect the necessary funds to broker a rescue and produce a better outcome for creditors. The situation becomes difficult for the administrator when the assets are mainly covered by a fixed charge and/or an invoice and factoring agreement that retains the ownership of receivables. Receivables (or book debts) are sums of money owed to the company from customers/clients as the result of the sale of its goods or services: that is considered as a crucial company asset.[50] In *Re Spectrum Plus Ltd (Spectrum)*[51] it was held that the receivables were a floating charge and that would depend on who is controlling the assets, while Worthington highlighted that even before *Spectrum*, receivables were usually the subject of floating charges.[52] The differentiation between fixed and floating charges was skewed even further with *Re Avanti Communications Ltd*[53] it may have broadened the scope of assets classified as fixed charges, this could result in a reduced pool of assets covered by floating charges.[54] That said, repaying insolvency expenses and satisfying creditors with lower priority would become even more challenging. There is not such challenge for the administrators in GCUK as most assets are covered by floating charges. However, as it is observed in the next section it seems that there are no floating charge assets in GCMC which might be the reason that none of the administrators' costs have been paid so far.

Although this has not been an issue for the Greensill administrations, it is interesting to note that companies in an attempt to keep the costs to a minimum, enter a pre-packaged

[50] Richard Calnan, *Taking Security: Law and Practice* (3rd edn, Jordan Publishing 2013) 116 and 137.
[51] [2005] UKHL 41.
[52] Sarah Worthington, 'An 'Unsatisfactory Area of the Law' — Fixed and Floating Charges Yet Again' (2004) 1 International Corporate Rescue 175, 182.
[53] [2023] EWHC 940 (Ch).
[54] For critical view of this issue see Sarah Worthington, Fixed and floating charges: still favouring absolutism over multi-factored nuance (2023) 9 JIBFL 583; Paul Fradley, 'The spectre of *Spectrum*: after *Avanti* and the sliding scale of floating to fixed charges' (2023) 8 JIBFL 517; The concerns were apparent prior to *Avanti*: Louise Gullifer, Jennifer Payne, *Corporate Finance Law: Principles and Policy* (3rd edn, Hart Publishing, 2020) 313.

administration (pre-pack), which is a pre-arrangement where the company finds a buyer for the business relatively quickly before the company officially enters administration.[55] Identifying rescue finance for pre-packs is relatively easier since it requires the support of floating charge holders who would fund the process under those circumstances.

Although on many occasions, a company/business rescue is not feasible, retrieving rescue finance is still crucial since it can positively impact creditors, which is what is happening in the Greensill administration. Rescue financiers would potentially be more encouraged to provide finance, if they received priority over all insolvency expenses, as even though they are in the highest category of insolvency expenses, they receive an equal distribution with anyone who is included in it.[56] However, achieving this would necessitate legislative precision in defining the term 'rescue financier'. There have been arguments against any changes in the priority of rescue financiers suggesting that they already rank high through the insolvency expenses.[57] Therefore, this is an area that calls for a delicate equilibrium between the existing and new creditors that could act as rescue financiers.[58] This is in line with collectivity that targets the balance of the interests of company stakeholders.[59] As such, in order to balance the interests of creditors, existing creditors should be asked first whether they would like to provide the funding, and only if they refuse new creditors would be approached.[60] It is important to note, that fixed charge holders would always take priority in the above recommendations, otherwise there would be a statutory and jurisprudential conflict.

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[55] Andrew Keay, Peter Walton, *Insolvency Law: Corporate and Personal* (5th edn, Jordan Publishing, 2020) 137.
[56] Rescue financiers are included in IR 2016, r 3.51(2)(a): 'expenses properly incurred by the administrator in performing the administrator's function'.
[57] Department for Business, Energy & Industrial Strategy, Insolvency and Corporate Governance – Government Response (26 August 2018), paras 5.179 and 5.180.
[58] Jennifer Payne, Janis Sarra, 'Tripping the Light Fantastic: A comparative analysis of the European Commission's proposals for new and interim financing of insolvent businesses ' (2018) International Insolvency Review 178, 179.
[59] *Re Smith, Knight & Co; ex p. Ashbury* (1868) LR 5 Eq 233.
[60] Recommended by Kayode Akintola and David Milman in Sarah Paterson, 'The Insolvency Consequences of the Abolition of the Fixed/Floating Charge Distinction' (January 2017) Secured Transactions Law Reform Project Discussion series, 15.

**Administration costs and expenses**

The payment of the administration costs ranks highly in any insolvency priority system. The administrator's costs are paid as an "insolvency expense" and as such ranks high in the waterfall of priorities after the administration terminates. However, as per the IR 2016, r 3.51 the administrator's remuneration ranks lower than other expenses that would include 'rescue financiers'. The administration costs are comprised of the administrators' remuneration and expenses, sums that are also paid out of the floating charge assets.[61] The fixed charge holders sometimes give their permission to use their assets to make such payments.[62] The intention is to exercise greater control over the administration process.[63]

Details of the cost of the administration are clearly set out in the Greensill administrators' progress report. After the Kempson Report, administration costs were carefully evaluated to reduce any disproportionate administrators' expenditures and excessive fees.[64] This was eventually addressed through the initiation of the fee estimates. These costs are transparent and must comply with the requirements of the law and Statement of Insolvency Practice 9 (SIP 9), professionally imposed standard. SIP 9 highlights that any estimate should clearly outline the anticipated activities associated with the estimated fee. The fee estimates of the administrators should be based on the information that they have at the current time, refraining from including alternative scenarios and/or providing a range of the costs.[65] When the administrators report to the creditors, the actual hours and average rate of costs incurred for each component needs to be disclosed.[66] As a result of this transparency, it is therefore possible to check on how expenses

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[61] IA 1986, Sch B1, para 99(3).
[62] Kayode Akintola, *Creditor Treatment in Corporate Insolvency Law* (EE Publishing 2020) 72.
[63] Gullifer and Payne (n 54) 317.
[64] Elaine Kempson, 'Review of Insolvency Practitioners' Fees: Report to the Insolvency Service' (July 2013) <https://www.gov.uk/government/publications/insolvency-practitioner-fees-a-review> accessed 14 December 2023.
[65] Statement of Insolvency Practice 9 of England and Wales, 'Payments to Insolvency Office Holders and their Associates from an Estate' (effective from April 2021) para 25.
[66] Ibid para 24.

have been incurred and what the administrators are charging for their professional expertise. The basis for calculating remuneration is explained as being on a time-costs basis. The fee estimates cap to the costs can only be increased with the approval of the liquidation committee, the creditors' committee, the creditors or the courts.[67] Who will approve this would depend on who fixed the basis.[68]

Through comparing the administrator's reports of both GCUK and GCMC, we noticed that the estimates are always more than the actual incurred costs. At the same time, the administrators confirm that the fee estimates were authorised by the creditor committee. For the first year (08.03.2021-07.03.2022) of the GCUK administration the fee estimates were £20m but the actual incurred costs were £18.6 million. The fee estimates for the third year (08.03.2023-07.03.2024) of the GCUK administration were £10.6 million while the incurred costs reach £9 million. The fee estimates for the GCMC administration were also excessive in comparison to the incurred costs. For instance, the estimates for the first year were £851,206 but the incurred costs were £722,757. This also continued in the third year of the GCMC administration since the fee estimates were £104,291 while the incurred costs only reached £93,980.

One deduction is that the fee estimates are increased in comparison to the real costs firstly to keep the creditors content, giving them the illusion that they are costing them less money. Another conclusion is that it is difficult to provide an accurate estimate, on issues like trading costs, cost of asset realisation and litigation costs, especially if it is early on in an administration. We are now going to the fourth year of the Greensill administration, and the estimates tend to still be high. However, expenses and costs will often increase as unexpected matters arise. With higher estimates, administrators will not have to go into the process of

[67] IR 2016, r 18.16, r 18.30; Sealy and Milman (n 17) 1402. On the reforms regarding fee-estimates see Giles Maynard-Connor 'Officeholders' fees - the new reforms and their implications' (2015) 28(8) Insolvency Intelligence 113-114.
[68] Ibid.

revising the fees, which is probably saving them time and money. It is also difficult to convince creditors to revise the fee estimates, since they are sometimes reluctant to even approve the initial fee estimate.[69] Creditors may not find it advantageous to grant approval if the fees exceed the initial estimate, as this could diminish their returns. It thus makes sense to provide a higher estimate to avoid any future challenges with creditors.

Administration can be one of the most lucrative types of work for administrators. The administrators are usually paid after the procedure comes to an end. The administrator though has the right to receive an agreed-upon remuneration while the company is still in administration, as established in *Spring Valley Properties Ltd v Harris*.[70] Although this case is prior to the EA 2002, the same can be concluded through an interpretation of the IA 1986, Sch B1, para 99. For GCUK, £21 million have been paid to date from the estate for the incurred costs of the administration while the total costs are £37.1 million. The total costs for GCMC are £977,120 of which £700,000 has been recently paid from the estate.

**Employee rights**

Apparently GCUK had no employees when it entered administration. But GCMC had 569 employees; a small number of these have been retained to assist in the administration. GCMC employees were owed salary at the date of administration and this indebtedness would rank as a preferential claim ranking higher than the claim of the floating charge holder. Employees might also seek protection from the state guarantee redundancy fund. In modern times civilised legal systems make provision to protect employees in the event of sudden job loss caused by

[69] Gareth Limb, 'Upfront fee estimates in time-cost cases' Recovery (Summer 2015) 38; Chris Herron, 'The fees regime so far: the smaller firm perspective' Recovery (Summer 2017) 44.
[70] [2001] BCC 796; [2001] BPIR 709.

employer insolvency. The only UK litigation reported in the Greensill administration(s) so far concerns the failure of GCMC to consult on redundancies leading to a protective award being made for the maximum of 90 days salary (see Employment Tribunal decisions of 7 September 2022 and 22 December 2022).[71] This duty to consult imposed by s. 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 is seen as an important form of employee protection and failure to comply with it cannot be excused by corporate impecuniosity. The duty, insofar as it applies to administrators, is only enforced in civil law. The criminal sanctions applicable to company officers who do not properly consult on proposed redundancies do not apply to administrators, as the Supreme Court has recently confirmed in *R (on the application of Palmer) v North Derbyshire Magistrates Court*.[72] Administrators are not regarded as "officers" of the company for these purposes. This is a surprising conclusion.

**Shareholder rights**

Where a company enters administration, the shareholders are usually out of the money. They certainly enjoy the benefit of limited liability[73] for payment of the firm's debts, but they will still be out of pocket. They have no tangible economic interest in the assets because realisations of these assets are already over-committed to repay creditors. Shareholders come a poor third after secured and unsecured creditors have been satisfied. It is only in that rare instance where

[71] Respectively, *McKenzie et al v GCMC (UK) Ltd* and *Fu et alia v GCMC (UK) Ltd*, both decisions of Employment Judge Glennie.
[72] [2023] UKSC 38; For a further analysis on this case see John Wood, 'When is an administrator an 'officer' of the company? *R (on the application of Palmer) v Northern Derbyshire Magistrates' Court* [2023] UKSC 38' (2024) Legal Studies 1-6.
[73] If the shares are fully paid up "limited liability" becomes "no liability".

a company, which was thought to be insolvent, turns out to be solvent when the administration is completed, that shareholders will recover some of that investment. The Lehman saga (which is still ongoing in the courts) provides a rare example of that happening. It is the exception that proves the rule.

**Potential complications in cases of multinational collapse**

There may be a cross border insolvency angle in a transnational group insolvency case such as this where several legal jurisdictions are involved with the process of dealing with different debtors and creditors are based in a range of countries. So, in the Greensill instance, we know that there will be "foreign" legal disputes being litigated in Australia, Switzerland and Germany, to name but three jurisdictions. That is an inevitable complicating feature of the consequences of modern global commerce. But fortunately in recent decades most legal systems have begun to address this recurrent by-product of globalisation.[74] Assistance may thus be available in English Law to the Australian parent company liquidators via an application from an Australian court to the English court under IA 1986 s 426.[75] Common law assistance may also be sought by invoking the principle of comity between courts of friendly states, though the precise parameters of this jurisdiction are unclear at present.[76] The Cross Border Insolvency Regulations 2006 (SI 2006/1030), which represent Great Britain's

[74] Progress has not been smooth here with the difficulties posed by Brexit being significant for cross border insolvency cooperation in Europe – thus the Recast EU Regulation on Insolvency (2015/848) can no longer serve a useful purpose in English Law as a cross border insolvency resolution tool.
[75] This draws upon old colonial links with similar legal systems. The countries which are able to access this comity mechanism are colloquially termed "cricket countries". Such assistance was granted to the Australian courts in *McGrath v Riddell* (*Re HIH Insurance*) [2008] UKHL 21 to assist an Australian liquidator of a major insurance company. In recent months the Irish courts dealing with the restructuring of a distressed business have made a successful request to the English courts for assistance under s 426 in *Re Silverpail Dairy (Ireland) Ltd* [2023] EWHC 895 (Ch). Roth J granted said assistance.
[76] For a summary of the complexities here see the Court of Appeal ruling in *Kireeva v Bedzhamov* [2022] EWCA Civ 35.

adoption[77] of the 1997 UNCITRAL Model Law on Cross Border Insolvency, may also be utilised. This regime has the advantage of direct application by the requesting party without the need to filter the request through local courts. Some 59 states, with a total of 62 jurisdictions have at the last time of counting now signed up to this Model Law,[78] but it is important to record that the English courts can still assist in an insolvency matter even if that adoption has not happened. Reciprocity is not essential. The Greensill affair has an involvement from several European players based in countries such as Germany and Switzerland. The foreign representatives of insolvent companies incorporated in such countries caught up in the wider Greensill group collapse can apply to the English courts for assistance under the Cross Border Insolvency Regulations.[79] Equally, the UK administrators have used the UNCITRAL Model Law to secure recognition in Australia in July 2023. Australia had signed up to this Model Law in 2008 via the Cross Border Insolvency Act 2008 (Cth).

**Exit from administration**

Administration under is seen as a temporary transitional regime that is meant to last for a maximum of one year.[80] But there is a pragmatic facility for extensions granted either by the court or with creditor consent.[81] Such extensions are common in complex cases where issues of asset identification, property collection and liability determination will take considerable time to unravel. The cross-border dimension in a multinational collapse inevitably further prolongs the completion of the administration procedure. For example, see here the

[77] See Insolvency Act 2000, s 14. Northern Ireland has also adopted this Model Law.
[78] Status: UNCITRAL Model Law on Cross-Border Insolvency (1997) <https://uncitral.un.org/en/texts/insolvency/modellaw/cross-border_insolvency/status> accessed 30 January 2024.
[79] The German administrators of Greensill Bank AG have secured recognition of their standing in English Law from the High Court – see the report of the case in *Greensill Bank AG* [2021] EWHC 966 (Ch).
[80] IA 1986, Sch B1, para 76.
[81] IA 1986, Sch B1, paras 76 and 78.

administration of the Lehman companies where the period of administration has already lasted 15 years and may continue forward until 2025. The creditors in the Greensill cases under review agreed to extend the period of administration initially up to March 2023 and then the Central London County court extended it for a further 24 months up to 7 March 2025.

The most likely exit routes from an administration are either a CVL or possibly dissolution.[82] That choice in the Greensill administration(s) appears to be an exit via CVL, as a distribution to creditors is anticipated by the administrators.

**Conclusion**

The Greensill case provides a multifaceted perspective on the complexities and pitfalls inherent in financial innovation, corporate collapse, and the subsequent insolvency processes. It specifically illustrates how the UK administration procedure can be used to deliver the last rites to a struggling concern, whilst paying respect to the rights of affected stakeholders. Examining this contemporary administration case in the UK offers a meticulous insight into the intricacies of modern insolvency practices. The minutiae of the conduct of a modern administration case at work in the UK are described through the public documentation and occasional reported litigation.

While administration is often perceived as a corporate rescue procedure, in the Greensill case, the circumstances led to a pragmatic use of administration. The Greensill case underscores the dual nature of administration, wherein it can serve as a genuine rescue tool in certain scenarios but may also be pragmatically employed to facilitate a more efficient liquidation, where the interests of creditors are safeguarded as well. This shows how the administration process was

[82] See IA 1986, Sch B1, paras 83 and 84.

strategically adapted to the specific circumstances of Greensill. That said, this highlights the importance of having a nuanced understanding of insolvency tools, their intended purposes, and their practical applications in complex financial scenarios.

Beyond its procedural aspects, the Greensill episode serves as a cautionary tale, revealing the inherent risks tied to innovative corporate financing. This narrative unfolds as a pivotal chapter in the ongoing story of modern insolvency practices, particularly in the context of a multinational corporate entity facing challenges. As the outcomes are uncertain even though there have almost been three years into the process, we must await with interest any later chapters in this story.