SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES, AND GALLOWAY AT HAMILTON

[2026] SC HAM 111

HAM-L69-25

JUDGMENT OF SHERIFF COLIN DUNIPACE

in the application by

BLAZEJ JAN KROL

Petitioner

for leave in terms of section 130(2) of the Insolvency Act 1986

in relation to

HASTON & KROL LIMITED (in liquidation)

Respondents

Petitioner: Personally present and lay representative
Respondents: MacEwan, noter

HAMILTON, 20 October 2026

Introduction

[1] This matter relates to an application in terms of section 130(2) of the Insolvency Act 1986 ("the 1986 Act") whereby the petitioner seeks the leave of the court to continue proceedings in the Employment Tribunal against Haston & Krol Limited, a company presently subject to winding-up proceedings and now in liquidation. This application is opposed by the Liquidator.

[2] By way of background the petitioner was a shareholder, a contributory, and a director of Haston & Krol Limited, a company incorporated under the Companies Act on 16 August 2021 and having its registered office at Langside Farm, Craigens Road,

Newhouse, Motherwell, ML1 5SX. This company was founded by and managed by the petitioner and a second individual Alan Purdie Haston around June 2021.

[3] Due to a breakdown in the relationship between the petitioner and Mr Alan Haston, the petitioner lodged an application in terms of section 122 of the Insolvency Act 1986, and seeking that Shona Joanne Campbell, insolvency practitioner of Henderson Loggie be appointed as interim Liquidator on 24 October 2025.

[4] On 21 November 2025, the court directed that the aforementioned company, Haston & Krol Limited be wound up in pursuance of the Insolvency Act 1986, and appointed Shona Joanne Campbell, insolvency practitioner, of Henderson Loggie, (hereinafter "the Liquidator") to be the interim Liquidator of the said company with the usual powers.

[5] The Liquidator acknowledged her appointment to the court and submitted her certificate of appointment (dated 6 January 2026) on 7 January 2026. A copy of the Liquidator's statement of account for the first 6-month period from 24 October 2025 to 23 April 2026 was submitted on 30 April 2026.

[6] On 6 March 2026, the petitioner instituted proceedings before the Employment Tribunal against the company (under case number 8000526/2026). In this application the petitioner sought remedies in relation to:

a. alleged unlawful deductions from wages and/or non-payment of sick pay during employment, including matters arising under the Employment Rights Act 1996;

b. alleged breach of contract arising from the reduction and later stopping of pay while the petitioner was medically signed off sick;

c. alleged breach of the implied term of mutual trust and confidence;

d. alleged harassment and/or discrimination related to race or nationality, the petitioner being Polish, including matters arising under the Equality Act 2010;

e. alleged disability discrimination and/or discrimination arising from disability, subject to the Employment Tribunal deciding whether the petitioner's health condition met the statutory test;

f. alleged failure to inform or consult the petitioner in relation to a transfer or continuation of the business while he remained employed and absent on sick leave, including matters said to arise under the Transfer of Undertakings (Protection of Employment) Regulations 2006;

g. post-employment matters, including failure to provide employment documentation such as a P45, insofar as the Employment Tribunal considers those matters competent and relevant; and

h. related employment losses and remedies which the Employment Tribunal considers competent and lawful.

[7] This application was opposed by the company in liquidation who sought that the claim should be struck out as having no reasonable prospect of success. The Liquidator stated that:

- The claimant had advanced a "claim for compensation in relation to work related stress" relying upon "bullying, disrespectful and dismissive behaviour" and complains of breaches of a duty of care, seemingly under reference to delictual duties and Health and Safety at Work Act 1974. The Employment Tribunal does not have jurisdiction over such matters.
- In any event, the Employment Tribunal does not have jurisdiction to hear the claim because the claim is time-barred as it has been presented outside the

relevant statutory time period. The last date of employment was 24 October 2025. The claim was received on 6 March 2026 outwith the 3-month limitation period. It was reasonably practicable to present it in time. It would not be just and equitable to extend the time.

- In any event, the Employment Tribunal does not have jurisdiction to hear the claim because the claimant has not obtained leave from the court to bring the Employment Tribunal proceedings under section 130(2) of the Insolvency Act 1986. Proceedings (which includes Employment Tribunal claims) against a company in liquidation cannot be brought without the permission of the court.

[8] The Employment Tribunal allowed an 8-week sist to enable the petitioner to seek permission of the court to continue with his proceedings before the Employment Tribunal.

[9] On 9 June 2026, the petitioner submitted a note seeking that the court grant permission for continuance of the Employment Tribunal proceedings in terms of section 130(2) of the Insolvency Act 1986. By email of 23 June 2026 the Liquidator intimated opposition to this note, and on 26 June 2026 the court appointed the petitioner to intimate, forthwith, the note upon the Liquidator and allowed 7 days thereafter for answers to be lodged. 14 July 2026 was appointed as the date for hearing parties on said note and answers. On that date the court assigned a half-day hearing without evidence on the note and answers for the civil assize week commencing 17 August 2026.

[10] On 17 August 2026 the court on the petitioner's unopposed motion, allowed the petitioner’s application for a lay representative form to be received into process albeit late, and thereafter continued the matter to 21 September 2026 for an update to be provided in relation to investigations being made into the circumstances of the petitioner’s claim by the

Liquidator. The court thereafter heard submissions on behalf of the parties on 21 September 2026 and 23 September 2026.

Statutory framework

[11] Section 130(2) of the 1986 Act provides:

> "When a winding-up order has been made or a provisional liquidator has been appointed, no action or proceeding shall be proceeded with or commenced against the company or its property, except by leave of the court and subject to such terms as the court may impose."

Submissions

On behalf of the petitioner

[12] On behalf of the petitioner it was acknowledged that leave of court was required under section 130(2) of the Insolvency Act 1986 to enable his Employment Tribunal proceedings to continue against Haston & Krol Limited (in liquidation). It was submitted that he was not asking the court to decide whether his Employment Tribunal claim would succeed, nor was he asking the court to decide the amount of any compensation due if any. Further he was not seeking payment now, seeking priority over other creditors, or enforcement against the company or its property. Rather he only sought that the Employment Tribunal, as the specialist employment forum, be permitted to decide the disputed employment-law issues. If any monetary award were ultimately made, he accepted that this would then be dealt with through the normal liquidation process.

[13] The petitioner accepted that being granted leave to continue his Employment Tribunal proceedings under section 130(2) could be subject to conditions and in this regard, he intimated that he would accept the following conditions, namely that he would not enforce any monetary award against the company or its property without further leave of

the court or without following the proper liquidation process. This he submitted protected the liquidation estate and the general body of creditors, while still allowing the specialist tribunal to decide the disputed employment-law matters.

[14] The petitioner submitted that his employment claim did not simply concern a monetary debt, but rather encompassed a number of contested employment-law issues, including:

- unpaid wages;
- sick pay;
- breach of contract;
- discrimination;
- harassment;
- disability discrimination; and
- TUPE matters.

These were matters said to require adjudication by the Employment Tribunal as the specialist forum. He submitted that he had acted throughout in good faith throughout and was not simply attempting to circumvent the insolvency process.

[15] Whilst conceding that any compensation would ultimately fall to be dealt with in the liquidation, he distinguished between:

1. determination of employment rights by the Employment Tribunal; and
2. enforcement or payment of any award through the liquidation process.

[16] The petitioner submitted that the fact that the Liquidator's answers denied or at least failed to admit many of his detailed allegations, demonstrated that this was not a simple monetary claim. There remained significant unresolved factual disputes which should properly be determined by an independent, specialist tribunal, set up to deal with such

matters, rather than simply being dealt with by the Liquidator through the liquidation process.

[17] In response to the Liquidator's arguments regarding the cost of defending Employment Tribunal proceedings and the potential prejudice thereof to creditors, he submitted that simply granting limited leave would not necessarily prejudice the liquidation because enforcement would remain prohibited. Indeed in this regard he pointed out that by opposing his application that the Liquidator had generated additional legal costs while leaving the underlying employment-law disputes unresolved.

[18] The petitioner asserted that his application to the Employment Tribunal included discrimination and harassment allegations. Reference was made to section 124 of the Equality Act 2010, pointing out that the Employment Tribunal may make a declaration as to the rights of the complainant as well as awarding compensation or making recommendations. The petitioner was seeking *inter alia* that such a declaration be made in terms of section 124(2)(a), being a declaration which the Liquidator could not make, in addition to an award of compensation in terms of section 124(2)(b) of the aforementioned Act. A declaration that unlawful discrimination or harassment had occurred was not merely a proof of debt. Further the petitioner's claim included TUPE-related matters, discrimination and harassment allegations, disability-related treatment, unlawful deductions from wages, sick pay issues and questions of employment status and breach of contract. These were not straightforward matters which could not simply be dismissed as being part of a monetary claim. There were issues of fact to be determined, and potential declarations to be made which were not capable of being reduced to monetary terms. There was therefore a distinction between a determination of rights by the Employment Tribunal, which may or may not have a monetary value, and the enforcement/payment of such a

monetary claim through the liquidation process. Further the adjudication of a claim by a liquidator for dividend purposes was not equivalent to a judicial determination by the Employment Tribunal.

[19] The petitioner further submitted that the court has not been provided with sufficient current information regarding the current financial picture of the liquidation to substantiate assertions of creditor prejudice, particularly given information that the company was said to have been solvent at the time the petition was presented.

[20] The petitioner further confirmed that he did not seek to interfere with the *pari passu* distribution of assets and confirmed that he was not seeking enforcement of any award outside the insolvency process. He accepted that any award would remain subject to normal liquidation procedures.

[21] The petitioner referred to several Scottish Employment Tribunal decisions and examples of Scottish Sheriff Courts granting leave under section 130(2) to permit employment claims to proceed against companies in liquidation, although he accepted that these were examples of recognised practice rather than binding authorities.

[22] In summary the petitioner submitted that it would be fair and proportionate to allow the Employment Tribunal to determine the disputed employment-law issues, including making any appropriate declarations while preserving the liquidation process by prohibiting enforcement of any monetary award without further authority of the court. He accordingly sought limited leave under section 130(2) on those terms.

On behalf of the Liquidator

[23] On behalf of the Liquidator it was submitted that the court should refuse leave under section 130(2) of the Insolvency Act 1986 for the petitioner to proceed with Employment Tribunal proceedings.

[24] It was submitted that the intention of section 130(2) of the Insolvency Act 1986 was to impose a moratorium on legal proceedings against a company once a winding-up order has been made unless the court grants leave. In considering whether to grant leave the court should have regard to the extremely recent decision of the Court of Appeal in *Gumbrell* v *UPG Pembroke Studios Ltd*[1] wherein it was stated:

> "In the case of liquidation and bankruptcy, the purpose of these provisions is essentially twofold. First, given that the property of the company or individual stands under the statute to be realised and distributed, subject to any existing interests, among the creditors on a pari passu basis, the moratorium prevents any creditor from obtaining priority and thereby undermining the pari passu basis of distribution. Secondly, given that both a liquidation and bankruptcy contain provisions for the adjudication of claims by persons claiming to be creditors, the moratorium protects those procedures and prevents unnecessary and potentially expensive litigation."

[25] This case had confirmed that the purpose of a moratorium is:

- to protect the equal distribution of a company's assets among creditors; and
- to avoid unnecessary and costly litigation where claims could be resolved through the insolvency process in a cost-effective manner to the benefit of all those creditors to whom the Liquidator owed a duty.

[26] It therefore followed that leave should generally be refused where the issues could be dealt with through the liquidation claims process, given that this would be likely to be quicker and less expensive than separate court or tribunal proceedings. Reference was made

[1] EWCA Civ 44

to authorities including *AES Barry Ltd* v *TXU Europe Energy*[2] which was said to establish the principle that claims seeking only money are normally to be dealt with in the liquidation, and permission to pursue separate proceedings should only be granted in exceptional cases. Reference was particularly made to the comments of the court at paragraph 24 to the effect that:

> "It seems to me that it will only be in exceptional cases, and I do not rule out that there may be such cases, but it will be in exceptional cases that the court gives a creditor, whose claim is simply a monetary one, a right by the taking of proceedings to override and pre-empt that statutory machinery."

[27] In *Unite the Union* v *Nortel Networks UK Ltd*[3] leave was refused for Employment Tribunal claims including unfair dismissal, discrimination, breach of contract and employment expenses because these were monetary claims capable of being determined within the insolvency process. It was submitted that in the present case that the petitioner's proposed Employment Tribunal claims for breach of employment contract, discrimination and harassment were effectively monetary claims of the same nature.

[28] Given that these claims could still be pursued through the liquidation process and no exceptional circumstances had been identified, the court should refuse leave to commence or continue Employment Tribunal proceedings.

[29] It was submitted that on 19 June 2026 that the Liquidator had written to the petitioner in the following terms:

> "Dear Blazej
>
> Thank you for your email.
>
> The compensation claim submitted in February was unfocussed and it was not apparent that it was a matter that should properly be dealt with as a claim in the liquidation. Your letter to the Employment Tribunal (undated but received by the

[2] [2004] EWHC 1757
[3] [2010] EWHC 826 (Ch)

liquidator's agents on 14 May 2026) clarifies the nature of your claims. Your claims are all monetary claims relating to debts or liabilities to which the company may have been liable at the date of liquidation. Matters of this nature ought to be dealt with as a claim in the liquidation process even where they include employment and discrimination issues.

The Liquidator would be willing to consider and adjudicate on your claim in the event there are net funds available for distribution to creditors, after the costs of the liquidation have been settled. If you are unhappy with the outcome of the adjudication, the liquidation process includes a route to challenge the Liquidator's decision.

You are therefore invited to drop your Employment Tribunal claim and any application to the Sheriff Court for leave to bring the Employment Tribunal proceedings. If you proceed with the application for leave, it will be opposed by the liquidator. The liquidator will also seek an award of expenses against you in the event that your application for leave is unsuccessful.

Kind regards

Liann."

[30] It was submitted that the petitioner had failed to properly vouch his claims, preventing the Liquidator from accurately assessing same.

[31] The Liquidator argued that the petitioner's employment-related claims were by their nature monetary claims which should be submitted and determined in the winding-up process rather than litigated in the Employment Tribunal and therefore leave under section 130(2) should not be granted.

The hearing

[32] The matter proceeded to hearings on 21 September 2026 and 23 September 2026, at which time a number of factual issues were identified. On the latter date an affidavit was lodged on behalf of the Liquidator which broadly stated that:

1. The petitioner's claim has not yet been sufficiently investigated, given that there was further information required from the petitioner but also from another individual, namely Mr Haston.
2. The Liquidator considered that the issues and factual matters raised already overlapped with existing liquidation investigations, and as such they should be dealt with together to avoid unnecessary duplication of work.
3. Involvement in tribunal proceedings would be expensive, and the costs of defending these could substantially reduce the funds available to creditors.
4. The Liquidator was concerned that other creditors may be prejudiced, given the size of the estate and existing costs. The costs involved in tribunal litigation could materially reduce or eliminate any dividend for unsecured creditors.
5. Accordingly the more cost-effective way forward would be for the petitioner to pursue his claim through the liquidation process.

[33] It was submitted at the hearing that the potential costs of defending tribunal proceedings could rise to around £30,000.

[34] It was accepted on behalf of the Liquidator that there had been some difficulties in fully investigating the outstanding claims, given that there remained an issue in relation to a transfer of assets by a relevant party, namely Mr Haston, who was to date refusing to co-operate with the Liquidator's investigations. It was however within the Liquidator's contemplation to invoke the terms of section 133(1) of the Insolvency Act 1986 to apply to the court for a public examination of this individual.

[35] It was further submitted that the Liquidator had 25 years of insolvency experience and had been accepting appointments as a Liquidator for around 8 years, dealing with approximately 50 such appointments per year. In this capacity the Liquidator had

experience of wrestling with issues of employment law, and if necessary, would seek legal advice on any appropriate matters. The petitioner had been asked to submit his claim and to answer certain issues in relation to specificity (see para [29]) and once he had done so, the Liquidator would adjudicate upon his claim.

[36] On behalf of the petitioner it was further submitted that he was seeking remedies which could not simply be reduced to monetary claims. He was also extremely concerned about the fact that the Liquidator had been taken an inordinate amount of time to obtain details from Mr Haston and given her dealings with him to date he had no confidence in the Liquidator getting Mr Haston to co-operate. Further the time being taken by the Liquidator to progress matters was causing him a great deal of stress. He maintained that the Employment Tribunal remained the appropriate forum to deal with his outstanding claims.

The authorities

[37] Both parties referred me to the recent decision of the Court of Appeal in *Gumbrell* v *UPG Pembroke Studios Ltd*,[4] wherein the Court of Appeal reaffirmed the principles identified in *Mortgage Debenture Ltd (in administration)* v *Chapman*[5] concerning the two principal purposes of insolvency moratoria, namely:

1. To preserve the *pari passu* principle, and to prevent individual creditors from obtaining procedural advantages resulting in preferential treatment.
2. To protect the insolvency process itself, enabling liquidators to administer insolvent estates efficiently and economically, and avoiding unnecessary

[4] [2026] EWCA Civ 44.[4]
[5] [2016] EWCA Civ 103

litigation which may consume estate resources and diminish returns to creditors.

[38] Reference was also made to *AES Barry Ltd* v *TXU Europe Energy Trading Ltd*[6] wherein it was observed that claims amounting simply to monetary claims would ordinarily fall to be addressed through the insolvency process rather than by separate proceedings.

[39] Further reference was made to *Unite the Union* v *Nortel Networks UK Ltd*[7] as above stated where leave to pursue certain Employment Tribunal proceedings was refused.

[40] Reference was also made by the petitioner to a number of first instance decisions, which I have considered, although I observe that these were individual decisions reached according to the individual facts and circumstances and merits of those cases, and as such were of limited value in determining this matter.

[41] Whilst I accept that each of the foregoing authorities correctly states the relevant principles and sets out the test to be applied in considering these applications, I have approached them as not establishing any absolute rule that leave must invariably be refused whenever some monetary remedy is sought. I accept that the statutory language is discretionary in its nature, and each application requires to be considered upon its own facts, particularly where there are other elements to a claim which are not monetary in nature.

Decision

[42] In the present application the petitioner seeks the leave of the court in terms of section 130(2) of the Insolvency Act 1986 to enable him to continue with his application to

[6] [2004] EWHC 1757 (Ch)
[7] [2010] EWHC 826 (Ch)

the Employment Tribunal (case number 8000526/2026) in respect of a number of employment related matters. At present these proceedings are sisted to await the outcome of the court's decision in relation to whether leave to continue with these proceedings is granted in terms of the aforementioned provision. As matters presently stand the Liquidator is resisting these proceedings.

[43] The Employment Tribunal proceedings as presently raised concern a number of allegations relating to harassment, discrimination, and breaches of contractual and statutory employment rights. As well as monetary awards the petitioner seeks declarators in terms of section 124(2)(a) of the Equality Act 2010. In my view this is a significant factor, given that it extends the petitioner's application beyond a simple monetary claim, and deals with a matter which could not be dealt with by a liquidator.

[44] It is important to recognise that the present application is not concerned with the merits of those allegations. The court is not presently tasked with determining whether the claims will ultimately succeed. Rather, the issue is whether the petitioner should seek to pursue his remedies within the existing liquidation or, alternatively, by seeking determination by the Employment Tribunal.

[45] As indicated above, whilst proceedings may or may not ultimately result in a monetary award, the Employment Tribunal proceedings are not merely concerned with debt collection, given that the petitioner seeks judicial determination of alleged infringements of statutory employment rights.

[46] Further, as matters presently stand, the petitioner's application is disputed, although the extent to which it is disputed was not made clear and my impression was that this had not been considered in detail by the Liquidator. Accordingly questions of fact appear likely

to arise, and as such witness credibility and reliability are likely to require assessment. There is likely to be an issue with at least one reluctant witness.

[47] Issues concerning the credibility and reliability of witnesses are matters which may best be addressed by employment judges rather than a liquidator, even where that liquidator has the benefit of legal advice. Such matters are routinely dealt with by employment judges sitting within a statutory jurisdiction established for that purpose, particularly given the specialist nature of such tribunal proceedings. Employment Tribunals are a specialist jurisdiction dealing with a myriad of employment disputes, and as such they have extensive experience in determining allegations, such as those advanced by the petitioner involving discrimination, harassment, and other workplace grievances.

[48] Whilst a liquidator clearly has statutory powers to adjudicate on matters, their principal role is to ingather and realise assets and distribute funds according to law. Whilst insolvency practitioners clearly possess considerable experience and expertise in evaluating creditor claims, they are not specialist tribunals for the determination of contested discrimination disputes. It is important that the petitioner's claims are given a full and fair hearing.

[49] If the petitioner's position is correct, then a number of his significant statutory and employment rights may have been infringed, and determination of those allegations ought, in the ordinary course, to occur before the forum specifically created for that purpose, particularly in light of the fact that the claims appear not to be straightforward. It is difficult to see that they might have any particular monetary value at this stage without detailed consideration of the factual and evidential position underpinning these claims. As matters stand there is likely to be a requirement for oral evidence to be led, particularly in light of the fact that at least one of the witnesses who would be likely to be called is proving to be at

best reluctant, and at worst hostile. It is significant that this witness has been refusing to co-operate with the Liquidator to date and is likely to require to be compelled to give evidence, either in the context of Employment Tribunal proceedings, or by being compelled to give evidence in a public examination in terms of section 133(1) of the Insolvency Act 1986. I am accordingly satisfied that the present case involves features which take it beyond a straightforward monetary claim, in particular, the petitioner's seeking of declaratory remedies under section 124 of the Equality Act 2010 and raising allegations of discrimination and harassment that fall squarely within the specialist jurisdiction of the Employment Tribunal.

[50] It is also significant that the petitioner has given an undertaking and would accept a condition on the grant of leave under section 130(2) that any award made to him would not interfere with the *pari passu* principle. Accordingly granting leave would not elevate him above other creditors, nor would it confer him with any preferential entitlement to payment. Any award ultimately obtained from the Employment Tribunal would remain subject to the statutory insolvency regime, and it would remain necessary for him to participate in the liquidation process in accordance with the legislation governing insolvency distributions. Accordingly the practical effect of continuing with the existing Employment Tribunal proceedings would simply be to determine liability and quantification rather than priority, thereby protecting the *pari passu* principle in terms of one of the criteria set down in the case of *Gumbrell*.[8]

[51] An important and understandable thrust of the submissions on behalf of the Liquidator was in relation to the costs of defending proceedings in the Employment

[8] supra

Tribunal, with an estimate of these costs provided as being in the region of £30,000. Given the duties incumbent upon the Liquidator to act in the interest of all of the creditors of the company, this concern is clearly a legitimate one, and the courts should be cautious before exposing an insolvent estate to substantial litigation in the interest of the creditors.

[52] However the mere prospect of litigation expense cannot be determinative, and in the present case I was not advised of the nature of the defence to the petitioner's claim and indeed whether it would ultimately be disputed in all of its elements. I was not therefore satisfied that the likely extent of the defence, and therefore the likely costs exposure, had been sufficiently quantified. It further appeared that no detailed analysis had yet been presented to the court identifying which aspects of the petitioner's claim were accepted, disputed, or incapable of admission pending further investigation. Accordingly the extent of any costs involved in defending the action at this stage is, to an extent, speculative.

[53] It is also the case that any disputed claims would require adjudication somewhere in some forum, and that even in the context of liquidation proceedings this is likely to involve costs. This was particularly the case given that I was advised that the Liquidator had been experiencing difficulties in progressing matters due to the non-engagement of an essential witness, Mr Haston. As matters stood at present, I was advised that ensuring the co-operation of this witness may involve further court procedure, and again this would be likely to incur significant costs, although again I was not provided with any detailed information in relation to these potential costs. Given that I had not been provided with details of costs in this regard, I considered that I was unable to accurately compare the relative costs of the proceedings in the Employment Tribunal as against the costs of contested adjudication by the Liquidator. On balance I was prepared to accept that the latter costs were likely to be lower, although in the absence of being provided with even a likely

comparative differential, I was unable to definitively conclude that this was a decisive factor. In summary, the cost differential between the respective proceedings, whilst potentially significant, was not sufficiently established and could not therefore in my view be determinative in the present case. Accordingly I did not consider that the criteria of cost and avoiding litigation as set out in *Gumbrell*,[9] had been engaged, particularly in light of the fact that the Liquidator had conceded that further litigation was envisaged, or was at least in contemplation, to deal with the recalcitrant witness. Whilst I accepted that there would probably be greater cost in tribunal litigation, on the evidence before me, I could not conclude that any such additional costs outweighed the justice of permitting determination in the specialist forum.

[54] I also considered the question of whether the necessary adjudication of the petitioner's employment claims was more appropriately undertaken within the insolvency process itself or by another specialist tribunal. The matters presently in dispute concerned employment law issues which are clearly within the tribunal's scope of expertise. Refusal of leave would ultimately require alternative mechanisms to be adopted for their determination, and in my view, there would be a real risk that attempting to resolve allegations of discrimination and harassment solely through the insolvency process may produce greater complexity rather than less, particularly given that the insolvency process is not designed as a substitute Employment Tribunal.

[55] Whilst I accept that the Liquidator in the present case has indicated that she has some experience of dealing with employment disputes, and has also indicated that she can rely on legal advice if necessary, the fact remained that there were a number of potentially complex

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legal and factual issues to be determined and these appeared to be far from straightforward, particularly in light of the inability, or at least the difficulty of the Liquidator to date to engage with a recalcitrant essential witness. Given that further court proceedings are already in contemplation in relation to bringing that witness before the court for a public examination, it is clear that resolving the outstanding factual disputes is going to be far from straightforward irrespective of which forum was chosen. In such circumstances I again concluded that whilst not determinative, the fact that further court proceedings were in contemplation in the context of the liquidation process was a relevant factor in ascertaining the appropriate forum to resolve the petitioner's claims.

[56] In determining this matter, the court ultimately requires to balance competing interests. I entirely accept that the Liquidator has a duty to protect the legitimate interests of all creditors and to ensure that the estate assets are preserved and distributed efficiently. On the other hand, there also exists the petitioner's interest in obtaining determination of statutory employment claims before the specialist tribunal created by Parliament.

[57] The authorities make clear that neither interest enjoys automatic priority, and in ascertaining whether there are circumstances justifying leave, the exercise of the court's discretion is fact sensitive.

[58] In the present case I have considered that several matters are significant.

[59] Firstly, no question arises of enforcement against company assets without further process given the express undertaking of the petitioner to this effect, a position which can be protected by the imposition of an appropriate condition.

[60] Secondly, no prejudice to the ranking of creditors has been identified, and again the petitioner has indicated that he would accept a condition that any award at an Employment Tribunal would not interfere with the *pari passu* principle.

[61] Thirdly, the proposed claims involve issues extending beyond a straightforward proof for debt. I accept that having regard to claims of the petitioner, which include applications for declarators, that he is seeking remedies which would not be capable of being offered by the Liquidator. Further I am satisfied that the Employment Tribunal possesses specialist expertise directly relevant to the matters in dispute and would ordinarily be the forum best placed to adjudicate upon such claims.

[62] Fourthly, I have not received sufficient information to enable me to ascertain the disparity in costs to the estate between matters being resolved at an Employment Tribunal or within the liquidation process, particularly in light of the fact that further court proceedings are within contemplation due to the unco-operative witness. In addition I have not been advised what aspects of the petitioner's application to the Employment Tribunal are actually disputed, a matter of some relevance in ascertaining what any relative costs might be.

[63] Looking at matters cumulatively, I am satisfied that the balance falls decisively in favour of granting leave. In particular, I am satisfied that these factors, taken together with the undertaking that any award will remain subject to the insolvency process and the absence of identifiable prejudice to the *pari passu* principle, amount to circumstances justifying the grant of leave. Accordingly I am satisfied that, in the particular circumstances of this case, the court's discretion should be exercised in favour of granting leave.

[64] In passing, I note that a further reason provided by the Liquidator for opposing the petitioner's application to the Employment Tribunal was that they did not have jurisdiction to hear the claim because the claim was time-barred for determination in that forum, being outwith the relevant statutory time period for lodging such applications. Whether the claim has been presented within the applicable statutory time limits, and whether any extension falls to be granted, are matters which lie within the jurisdiction of the Employment Tribunal

given that in considering an application under section 130(2), the court is not required to determine whether the proposed proceedings are time-barred or otherwise incompetent, except insofar as that may bear upon the exercise of discretion. I therefore express no view upon them.

Disposal

[65] In the whole circumstances I conclude that this is an appropriate case in which the court's discretion under section 130(2) ought to be exercised in favour of the petitioner.

[66] I am satisfied that granting leave will not undermine the statutory objectives identified in the authorities, and I am equally satisfied that the interests of justice favour permitting the petitioner to pursue the proposed Employment Tribunal proceedings.

[67] Permission to proceed with proceedings before the Employment Tribunal in terms of section 130(2) will however be subject to the following condition, namely that any award obtained in favour of the petitioner will remain subject to the ordinary rules governing insolvency distributions.

[68] It should also be noted that nothing in this judgment should be understood as expressing any view regarding the merits or otherwise of the petitioner's claims.

Decision

[69] Accordingly, having considered the opposed application, I grant leave in terms of section 130(2) of the Insolvency Act 1986 to the petitioner to continue his Employment Tribunal proceedings against Haston & Krol Limited (in liquidation), subject to the

condition that any award obtained shall remain subject to the provisions of the Insolvency Act 1986 and the ordinary rules of distribution applicable in the liquidation.

[70] I was not addressed in respect of the expenses of this application. Accordingly I reserve all questions of expenses. Failing agreement, I appoint parties to be heard thereon at a date to be afterwards assigned.