Neutral Citation Number: [2025] EWCA Civ 1108

Case Nos: CA-2025-001485
CA-2025-001525

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)
David Mohyuddin KC (sitting as a Deputy High Court Judge)
[2025] EWHC 1435 (Ch)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 15/08/2025

Before:

LORD JUSTICE MOYLAN
LORD JUSTICE NEWEY
and
LORD JUSTICE MALES

- -

Between:

YODEL DELIVERY NETWORK LIMITED	**Claimant/ Respondent**
- and -	
(1) JACOB CORLETT **(2) YDLGP LIMITED**	**Defendants**
(3) SHIFT GLOBAL HOLDINGS LIMITED	**Defendant/ Appellant**
(4) GREGORY CRANE LIMITED **(a company incorporated under the laws of the Isle of Man)**	**Defendant**
- and –	
MICHAEL JOHN HANCOX	**Third Party**
- and –	
CORJA HOLDINGS LIMITED **(a company incorporated under the laws of the Isle of Man)**	**Fourth Party/ Appellant**
- and –	
JUDGE LOGISTICS LIMITED	**Fifth Party**

- -
- -

Jack Rivett (instructed by **Richard Slade & Partners LLP and Wordley Partnership**) for the **Appellants**
Andrew Thompson KC and Ben Griffiths (instructed by **Herbert Smith Freehills Kramer LLP**) for the **Respondent**

Hearing date: 31 July 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 15 August 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Lord Justice Newey:

1. This appeal arises out of a dispute relating to the ownership of the claimant, Yodel Delivery Network Limited ("Yodel"). The third defendant and fourth party, respectively Shift Global Holdings Limited ("Shift") and Corja Holdings Limited ("Corja"), claim to be entitled to have large numbers of shares in Yodel allotted to them as a result of their exercise of options granted by a warrant instrument dated 19 June 2024 ("the Warrant Instrument"). However, Yodel, whose shareholder is at present the fifth party, Judge Logistics Limited ("JLL"), denies the claims. It disputes the authenticity of the Warrant Instrument and maintains that, even if it was executed as claimed, the warrants for which it provided were never enforceable and anyway would have lapsed before they were exercised.

2. By application notices dated 9 May 2025, Shift and Corja applied for injunctive relief to restrain Yodel from carrying out a planned reorganisation. The applications came before Mr David Mohyuddin KC ("the Judge"), sitting as a Deputy High Court Judge, on 5 June 2025. In a judgment dated 11 June ("the Judgment"), the Judge concluded that no injunction should be granted. Shift and Corja appealed against that decision.

3. At the conclusion of the hearing before us on 31 July 2025, we announced that the appeals would be dismissed. This judgment contains my reasons for joining in that decision.

Basic facts

4. Yodel is a home delivery and logistics company. Its ultimate owners were formerly Sir Frederick and Sir David Barclay, but on 13 February 2024 the second defendant, YDLGP Limited ("YDLGP"), bought Yodel's issued share capital for £1. Yodel had been incurring large losses. Its audited accounts report losses of more than £48 million in 2023 and in excess of £171 million in 2022. The accounts also state that, as at 31 December 2023, Yodel had net liabilities of some £258 million and net current liabilities of some £120 million.

5. YDLGP had been incorporated shortly before its purchase of Yodel with the first defendant, Mr Jacob Corlett, as its sole shareholder and director. Mr Corlett is also the founder of the group of companies to which Shift belongs. Mr Corlett has explained that the group has developed a platform known as the "Shift Platform" which assists with the logistics of managing deliveries.

6. It appears that, when YDLGP acquired Yodel, Mr Corlett was intending to merge the two companies' businesses. In the event, however, Yodel's issued shares were transferred to JLL, again for £1, pursuant to a sale and purchase agreement which Mr Corlett signed on YDLGP's behalf on 21 June 2024. The third party, Mr Michael Hancox, was the only shareholder and director of JLL, which was newly incorporated.

7. As I have said, Yodel disputes the authenticity of the Warrant Instrument. Assuming, however, that it is genuine, it was executed shortly before the sale to JLL was concluded. Warrant certificates issued in accordance with the Warrant Instrument record that Shift is entitled to subscribe for up to 1,469,795,088 ordinary shares of £0.0001 each in Yodel at a price of £0.0001 per share and that Corja has the right to

subscribe for 341,813,276 such shares on the same basis. Corja is another company wholly owned by Mr Corlett.

8. During the remainder of 2024, with Mr Hancox as Yodel's chief executive officer, the company obtained financial support from the InPost group ("InPost"). InPost is headquartered in Poland, but its ultimate parent, InPost SA, is listed on the Amsterdam Stock Exchange. It provides logistics and parcel delivery services, focusing particularly on automated parcel lockers. According to its 2024 annual report, it had net assets of more than PLN 2.45 billion (or €576 million) at the end of 2024.

9. By the end of 2024, InPost had invested about £25 million in convertible loan notes in JLL. In the early months of this year, InPost provided further financing by way of such notes, with the result that by the end of March its total exposure to JLL exceeded £100 million. On 17 April, the notes were converted and, in consequence, InPost became the owner of 95.5% of JLL's issued shares.

10. By then, InPost had developed a "transformation plan" for Yodel. A Powerpoint summary of the plan, updated to 10 April 2025, showed that, on an "EBITDA" (i.e. earnings before interest, tax, depreciation and amortisation) basis, Yodel would continue to make large monthly losses up to and including June (by which stage losses since the beginning of 2025 would have amounted to £44.4 million), but that in the remainder of the year the company would break even or make a small profit each month. The improvement was to be achieved through "More volume", "Introduction of operational initiatives to improve [cost per parcel]", "Identification of synergies and efficiencies within Overheads" and "Closure of 5 Service Centres". As was explained in the Powerpoint slides, "synergies created through the combination of Yodel with InPost's other businesses" were central to the plan. It was anticipated that, by the end of 2025, exceptional costs in excess of £25 million would have been incurred. The closure of depots was expected to involve upfront costs of more than £5.5 million, and £2.5 million was budgeted for branding costs.

11. On 7 January 2025, however, Shift and Corja had sought to exercise the rights to subscribe for shares in Yodel which they say were granted to them by the Warrant Instrument. If the shares which they claim were issued to them, Shift and Corja would (acting together) become the majority shareholders in Yodel. As Mr Corlett has explained in a witness statement, "Shift's warrant on its own accounted for 59.5% [of Yodel's issued share capital]".

12. The present proceedings were initiated by Yodel on 5 December 2024. On 5 February 2025, however, Shift counterclaimed for specific performance of the warrant on which it relies. In March, Corja, too, asserted a counterclaim based on Yodel's failure to issue shares in accordance with the Warrant Instrument.

13. Following InPost's acquisition of control of JLL, Shift and Corja each applied, on 9 May 2025, for an injunction to restrain Yodel from proceeding with the "transformation plan". The draft order included the following:

> "Pursuant to section 37(1) of the Senior Courts Act 1981, until the sealing of an order following the trial of the Preliminary Issue, the Claimant [i.e. Yodel] shall not conduct its business

> otherwise than in the ordinary course and in particular shall not, without the consent of the Applicants:
>
> a. Incur a liability outside of the ordinary course of business of £50,000 or more;
>
> b. Dispose of any asset with a market value of £25,000 or more;
>
> c. Enter into any commitment (save in respect of employment) with a duration of six months or more;
>
> d. Terminate the employment of any employees of the Claimant save for gross misconduct;
>
> e. Register, approve or otherwise permit the transfer of any shares in the Claimant;
>
> f. Permit its business, or any material part of its business, to be transferred to InPost S.A., PayPoint or any company associated with Inpost S.A. or PayPoint;
>
> g. Permit or facilitate the transfer of any of its customers to, or the transfer to or recruitment of any of its employees by, InPost S.A., PayPoint or any company associated with Inpost S.A. or PayPoint;
>
> h. Alter the branding of Yodel or otherwise permit the business of Yodel to be used to advertise the business of InPost S.A., PayPoint or any company associated with Inpost S.A. or PayPoint;
>
> i. Merge or otherwise combine the business or any of its operations with those of InPost S.A., PayPoint or any company associated with Inpost S.A. or PayPoint."

14. Yodel gave undertakings over the period during which the applications were pending. These prevented it from, among other things, taking on new debt obligations outside the ordinary course of business, terminating employment contracts and making changes to the "Yodel" brand.

15. As I have mentioned, the Judge dismissed Shift's and Corja's applications for injunctions. However, he directed the trial on an expedited basis of the following preliminary issue:

> "whether the Claimant [i.e. Yodel] is obliged to allot and issue the following shares to Shift Global and Corja … , and what relief (if any) the court should order … :
>
> a. To Shift Global, 1,469,795,088 fully paid ordinary shares or 44% of the issued share capital in the

> Claimant on a fully diluted basis (whichever is the higher).
>
> b. To Corja, 341,813,276 fully paid ordinary shares or such number of shares as represents 10% of the issued share capital in the Claimant on a fully diluted basis (whichever is the higher)".

16. The trial of that issue is now listed to come on for hearing in a five-day window starting on 27 October 2025 with a time estimate of seven days.

The Judgment

17. Yodel argued before the Judge that there was no serious issue to be tried in respect of Shift's and Corja's claims to shares. It contended that, even assuming that the Warrant Instrument was "authentic", the warrants were issued without authority both because Mr Corlett was acting in breach of fiduciary duty and because the company's articles of association required a quorum of two directors and that was lacking. Yodel further maintained that the warrants would anyway have lapsed long before they were purportedly exercised.

18. The Judge, however, considered that there was a serious issue to be tried. He said in paragraph 65 of the Judgment that Shift and Corja had done enough to persuade him that there was a serious issue to be tried as regards each of the defences on which Yodel relied in opposition to the injunction applications.

19. However, the Judge concluded that damages would be an adequate remedy for Shift and Corja. He explained in paragraph 70 of the Judgment that he reached that conclusion for the following reasons:

> "70.1. As I was told by [counsel for Yodel], there is not going to be a dismantling of the Yodel business.
>
> 70.2. It will, albeit in likely substantially modified form, continue to exist.
>
> 70.3. If Shift and Corja succeed on the Warrant Claim, there will still be a company with a business in which they will be the majority shareholders.
>
> 70.4. If they have suffered loss by having to wait for the Warrant Claim to be vindicated, they can be compensated in damages."

20. The Judge went on to consider whether the injunction applications should fail for the additional reason that Yodel would not be adequately compensated under the cross-undertaking in damages which Shift and Corja offered. In that regard, the Judge noted in paragraph 73 of the Judgment that it was "conceded that Corja has no substantial assets" and, in paragraph 77, explained that he was "unable to conclude that there is any substance in the cross-undertaking offered by Shift". That being so, the Judge said in paragraph 77, "the Injunction Application would also fail because the cross-undertaking offered is inadequate".

21. The Judge went on in paragraph 78 of the Judgment:

> "There was some argument before me as to the need for fortification and whose burden it was to seek it and demonstrate the need for it. No fortification has been offered by Shift or Corja whose obligation it is, in my judgment, to offer it in support of what is otherwise a worthless cross-undertaking. Insofar as is necessary, I am satisfied that Yodel has shown a good arguable case for fortification and that its evidence, and particularly that of Mr McCourt, does satisfy the criteria relevant to the exercise of the Court's discretion to order fortification. Had I needed to do so, I would have ordered the provision of fortification of the cross-undertaking in damages which has been offered."

22. The Judge also considered that the balance of convenience came down against injunctive relief. He said in paragraph 80 of the Judgment:

> "[I]n case it becomes relevant, I consider that the balance of convenience tips in Yodel's favour and would have dismissed the Injunction Application on that basis. The injunction sought would require Yodel's directors to subordinate their decision-making power on those matters set out in the draft order to Shift and Corja. That would go beyond preserving the status quo. In addition, Yodel would continue to incur vast debt by way of parental support in order to survive when Shift and Corja accept that such debt will have to be repaid but have adduced no evidence at all as to how, in the event of their success, they will do so. The transformation plan already under way does, on the evidence, in my judgment, have a prospect of turning around Yodel's fortunes and it should not be restricted by the injunction sought by Shift and Corja. Even with an expedited trial of the Warrant Claim, that plan, on the evidence, needs to proceed very quickly if it is not to have to wait until 2026 before it can be progressed at all."

Legal principles

23. As is very well known, the House of Lords examined the principles to be applied in relation to the grant of interim (or "interlocutory") injunctions in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396 ("*American Cyanamid*"). Lord Diplock, with whom Viscount Dilhorne and Lords Cross, Salmon and Edmund-Davies agreed, said this about the function of such an injunction at 406:

> "The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been

> prevented from exercising his own legal rights for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The court must weigh one need against another and determine where 'the balance of convenience' lies."

24. Expanding on that at 408, Lord Diplock said:

> "[T]he governing principle is that the court should first consider whether, if the plaintiff were to succeed at the trial in establishing his right to a permanent injunction, he would be adequately compensated by an award of damages for the loss he would have sustained as a result of the defendant's continuing to do what was sought to be enjoined between the time of the application and the time of the trial. If damages in the measure recoverable at common law would be adequate remedy and the defendant would be in a financial position to pay them, no interlocutory injunction should normally be granted, however strong the plaintiff's claim appeared to be at that stage. If, on the other hand, damages would not provide an adequate remedy for the plaintiff in the event of his succeeding at the trial, the court should then consider whether, on the contrary hypothesis that the defendant were to succeed at the trial in establishing his right to do that which was sought to be enjoined, he would be adequately compensated under the plaintiff's undertaking as to damages for the loss he would have sustained by being prevented from doing so between the time of the application and the time of the trial. If damages in the measure recoverable under such an undertaking would be an adequate remedy and the plaintiff would be in a financial position to pay them, there would be no reason upon this ground to refuse an interlocutory injunction."

25. "It is where there is doubt as to the adequacy of the respective remedies available to either party or to both", Lord Diplock said at 408, "that the question of balance of convenience arises". "Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo", Lord Diplock commented at 408, going on to explain:

> "If the defendant is enjoined temporarily from doing something that he has not done before, the only effect of the interlocutory injunction in the event of his succeeding at the trial is to postpone the date at which he is able to embark upon a course of action which he has not previously found it necessary to undertake; whereas to interrupt him in the conduct of an established enterprise would cause much greater inconvenience to him since he would have to start again to establish it in the event of his succeeding at the trial."

At 409, Lord Diplock observed that "[t]he extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of his succeeding at the trial is always a significant factor in assessing where the balance of convenience lies".

26. When assessing whether a successful defendant "would be adequately compensated under the [claimant's] undertaking as to damages", it is relevant to ask whether the claimant would be able to meet any liability which might arise under the undertaking. In *Morning Star Co-operative Society Ltd v Express Newspapers Ltd* [1979] FSR 113, Foster J said at 118, "where the damage cannot be quantified and it is clear that the plaintiff is unlikely to be able to pay any appreciable damages, no interlocutory relief should be given". In *National Commercial Bank Jamaica Ltd v Olint Corpn Ltd* [2009] UKPC 16, [2009] 1 WLR 1405 ("*Olint*"), Lord Hoffmann, delivering the opinion of the Privy Council, identified "the extent to which [the claimant or defendant] may be compensated by an award of damages or enforcement of the cross-undertaking" and "*the likelihood of either party being able to satisfy such an award*" (emphasis added) as amongst the matters which the Court may take into account when deciding whether to grant an interim injunction.

27. The fact that an applicant would not have the means to discharge an award on the cross-undertaking is not invariably fatal to an application for an interim injunction, however. In *Allen v Jambo Holdings Ltd* [1980] 1 WLR 1252, Lord Denning MR said at 1257:

> "I do not see why a poor plaintiff should be denied a Mareva injunction just because he is poor, whereas a rich plaintiff would get it. One has to look at these matters broadly."

In *Belize Alliance of Conservation Non-Governmental Organisations v Department of the Environment of Belize* [2003] UKPC 63, [2003] 1 WLR 2839, Lord Walker, delivering the judgment of the Privy Council, noted at paragraph 39 that the decision in *Allen v Jambo Holdings Ltd* had " had the result that in England a very large class of litigants (that is, legally assisted persons) are as a matter of course excepted from the need to give a cross-undertaking in damages" and explained that "their Lordships … do not think that it can be taken too far", but expressly did so "without casting any doubt on the practice initiated by that case". "The court is never exempted from the duty to do its best, on interlocutory applications with far-reaching financial implications, to minimise the risk of injustice", Lord Walker said. In *Olint*, Lord Hoffmann had pointed out in paragraph 17 that "[t]he basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other".

28. Where the enforceability of a cross-undertaking is open to doubt, the Court may require the applicant to fortify its undertaking by providing security. Calver J said this about such fortification in *PJSC National Trust Bank v Mints* [2021] EWHC 1089 (Comm):

> "26. It was common ground between the parties that it is a matter for the Court's discretion as to whether or not to order fortification of an undertaking given by a claimant as the price for it obtaining freezing injunctive relief. In exercising that

discretion, the Court will have regard to the principles set out in *Energy Venture Partners Ltd v Malabu Oil & Gas Ltd* [2015] 1 WLR 2309 (CA) at [52]-[54] ('*Malabu Oil*') as follows:

i. The applicant for fortification must show a good arguable case for it, and does not have to prove the need for fortification on a balance of probabilities (*Malabu Oil* at [52]-[53]).

ii. In considering whether to exercise its discretion to order fortification, the Court will take the three criteria – which are inextricably linked factors – into account (*Malabu Oil* at [53], applied in *Phoenix Group Foundation v Cochrane* [2018] EWHC 2179 (Comm) at [14] ('*Phoenix Group*')):

(a) Can the applicant show a sufficient level of risk of loss to require (further) fortification, which involves showing a good arguable case to that effect?

(b) Can the applicant show, to the standard of a good arguable case, that the loss has been or is likely to be caused by the granting of the injunction?

(c) Is there sufficient evidence to allow an intelligent estimate of the quantum of the losses to be made?

27. As for the correct approach in relation to the three criteria:

Can the applicant show a sufficient level of risk of loss?

i. In showing a sufficient level of risk of loss, the mere assertion of risk is insufficient. As *Gee on Commercial Injunctions* (7th Ed.) puts it, 'there must be some real evidence, which objectively establishes that risk' (paragraph 11-029), citing *JSC Mezhdunarodniy v Pugachev* [2015] EWCA Civ 139 at [98]-[99], to which I would add Popplewell J in *Phoenix Group* at [18] and Mr. Briggs QC in *Harley Street Capital Limited v Tchigirinski* [2005] EWHC 2471 (Ch) at [33] ('*Harley Street Capital*'). I consider that there does indeed have to be a solid, credible evidential foundation that the claimed loss has been or will be suffered, particularly where the loss is said to be that of a third party.

Is the loss caused by the grant of the injunction?

ii. In relation to the causation element:

(a) It is for the party seeking to enforce the undertaking to show that the damage he has sustained would not have been sustained but for the order/injunction ….

(b) In order to show that the loss would not have been suffered 'but for' the injunction, the applicant must show that the freezing order and the undertakings were an effective cause of the third party's loss: [*SCF Tankers Ltd v Privalov* [2017] EWCA Civ 1877] at [42] ….

(c) It is only loss which is caused or would have been caused by the preventative or, as the case may be, coercive effect of the injunction that is recoverable under the cross-undertaking: *Harley Street Capital* at [22] ….

(d) If the loss would have been suffered regardless of the granting of the injunction, for example because of the bringing of the proceedings, then that is not covered by the undertaking ….

Is there sufficient evidence to allow an intelligent estimate of the quantum of the losses to be made?

iii. Again, in my judgment, there must be some solid, credible evidence of future losses (or of losses having been suffered). I would adopt the general approach to this issue of Popplewell J in *Phoenix Group* at [18]. The claim to have suffered loss ought ordinarily to be supported by some underlying material and ought not to be speculative. Without documentary evidence, a mere generalised assertion of loss will be scrutinised carefully by the Court and is unlikely to be sufficient."

29. Mr Andrew Thompson KC, who appeared for Yodel and JLL with Mr Ben Griffiths, observed that the applications for injunctions made by Shift and Corja are highly unusual. As he pointed out, Shift and Corja are seeking neither freezing orders nor injunctions to restrain allegedly wrongful conduct: their case is not that the "transformation plan" which Yodel wishes to pursue is itself unlawful in some way

but that they would want to take a different approach if they were given the shares to which (they say) they are entitled. However, Mr Jack Rivett, who appeared for Shift and Corja, argued that Morgan J granted injunctive relief in comparable circumstances in *Dilato Holdings Pty Ltd v Learning Possibilities Ltd* {2015] EWHC 592 (Ch), [2015] 2 BCLC 199 and that the decision of the Privy Council in *Convoy Collateral Ltd v Broad Idea International Ltd* [2021] UKPC 24, [2023] AC 389 confirms the breadth of the Court's jurisdiction to grant injunctions.

30. What matters for present purposes is that Mr Thompson did not go so far as to dispute that the Judge had jurisdiction to accede to Shift's and Corja's applications. Mr Thompson suggested that, given the unusual nature of what was being sought, the principles established in *American Cyanamid* were not directly applicable. However, he did not identify any specific respect in which a different approach should be (or should have been) adopted and accepted that the question whether the *American Cyanamid* principles are in point as such is unlikely to matter in this case.

31. It was common ground between the parties that the circumstances in which this Court will interfere with a decision by a judge, in the exercise of his discretion, to grant or refuse an interim injunction are limited. In that connection, Mr Rivett referred us to *A.E.I. Rediffusion Music Ltd v Phonographic Performance Ltd* [1999] 1 WLR 1507, where Lord Woolf MR said at 1523 that the "conventional approach" to challenges had been "conveniently summarised" by Stuart-Smith LJ in *Roache v News Group Newspapers Ltd* [1998] EMLR 161, at 172, in these terms:

> "Before the court can interfere it must be shown that the judge has either erred in principle in his approach, or has left out of account, or taken into account, some feature that he should, or should not, have considered, or that his decision is wholly wrong because the court is forced to the conclusion that he has not balanced the various factors fairly in the scale."

For his part, Mr Thompson cited *Hadmor Productions Ltd v Hamilton* [1983] 1 AC 191, where Lord Diplock, with whom Lords Fraser, Scarman, Bridge and Brandon agreed, said at 220:

> "An interlocutory injunction is a discretionary relief and the discretion whether or not to grant it is vested in the High Court judge by whom the application for it is heard. Upon an appeal from the judge's grant or refusal of an interlocutory injunction the function of an appellate court, whether it be the Court of Appeal or your Lordships' House, is not to exercise an independent discretion of its own. It must defer to the judge's exercise of his discretion and must not interfere with it merely upon the ground that the members of the appellate court would have exercised the discretion differently. The function of the appellate court is initially one of review only. It may set aside the judge's exercise of his discretion on the ground that it was based upon a misunderstanding of the law or of the evidence before him or upon an inference that particular facts existed or did not exist, which, although it was one that might legitimately have been drawn upon the evidence that was before the judge,

> can be demonstrated to be wrong by further evidence that has become available by the time of the appeal; or upon the ground that there has been a change of circumstances after the judge made his order that would have justified his acceding to an application to vary it. Since reasons given by judges for granting or refusing interlocutory injunctions may sometimes be sketchy, there may also be occasional cases where even though no erroneous assumption of law or fact can be identified the judge's decision to grant or refuse the injunction is so aberrant that it must be set aside upon the ground that no reasonable judge regardful of his duty to act judicially could have reached it. It is only if and after the appellate court has reached the conclusion that the judge's exercise of his discretion must be set aside for one or other of these reasons, that it becomes entitled to exercise an original discretion of its own."

The issues

32. The issues to which the appeal gives rise can be considered under the following headings:

    i) Adequacy of damages;

    ii) Cross-undertaking in damages; and

    iii) Balance of convenience.

Adequacy of damages

33. Mr Rivett argued that, if Shift and Corja succeed at trial, it will become apparent that the "transformation plan" propounded by InPost should not have been adopted. In the absence of injunctive relief, however, Yodel can by then be expected to have incurred very substantial expenditure (and correspondingly large indebtedness to JLL), including substantial exceptional costs of £25 million, in pursuit of the plan and Yodel's business will have been changed beyond recognition. Shift and Corja will become the majority shareholders in a company dependent on, and owing large sums to, a minority shareholder. The objective of integrating Yodel's business with that of Shift will have been frustrated, Mr Rivett submitted.

34. The specific grounds of appeal advanced in this context are to the effect that, in concluding that damages would be an adequate remedy for Shift and Corja, the Judge failed to take account of Yodel's inability to satisfy an award of damages in their favour and, in any event, an order that Yodel pay damages to the entities which would by then be its majority shareholders could not constitute adequate compensation. With regard to the latter point, Mr Rivett submitted that any award of damages would prima facie prejudice the value of Shift's and Corja's shareholdings in Yodel. As for the former point, Mr Rivett argued that, on Yodel's own evidence, it would be unlikely to be in a position to pay any damages. Mr Rivett pointed out that Mr Neil Kuschel, the chief executive officer of Yodel, JLL and InPost UK Limited (the company responsible for InPost's United Kingdom and Irish businesses), referred to the

"transformation plan" in a witness statement dated 22 May 2025 as "ambitious", "not easy" and "involv[ing] risk", albeit that he also spoke of the plan being "achievable". Mr Rivett further relied on evidence from Mr Paul McCourt, the chief financial officer of Yodel, JLL and InPost UK Limited, in a witness statement dated 22 May 2025, that "Yodel's stand-alone balance sheet continues to show a substantial negative net asset position, with nearly £168 million owing to JLL (due to the substantial sums that InPost has injected into JLL which, in turn, have been lent to Yodel as intra-group debt)". Mr Rivett said that, even were the "transformation plan" to succeed, Yodel would be in a precarious financial state when the claims made by Shift and Corja came to be determined in their favour.

35. However, Yodel and JLL said in their skeleton argument for the appeals that InPost UK Limited would if needs be guarantee payment by Yodel of any damages awarded in favour of Shift and Corja additional to an order for specific performance with no right of recourse against Yodel. Further, in the course of the hearing before us Mr Thompson said that InPost SA was itself willing to give such a guarantee and we were provided with a draft. In the light of that, there can be no real doubt as to the ability of Shift and Corja to recover any damages to which they might be entitled. As I have mentioned, the evidence shows InPost to have very substantial net assets.

36. During his own submissions to us, Mr Rivett stressed that Shift and Corja are seeking specific performance rather than merely damages and that what they want is the business of Yodel as it has hitherto been constituted so that they can put their own plans for it into effect. Shift and Corja thus stand to suffer loss that cannot be quantified, Mr Rivett said.

37. As I read the grounds of appeal, they focus on the prospects of Shift and Corja receiving monetary compensation rather than alleging unquantifiable loss. Even supposing, however, that there is an appreciable chance of some such loss, the fact remains that there is now no good reason to doubt that Shift and Corja could recover proper compensation for any assessable loss. That must be of significance when considering where the balance of convenience lies.

Cross-undertaking in damages

38. As already mentioned, it was conceded before the Judge that Corja has no substantial assets. Further, Shift and Corja do not challenge the Judge's conclusion that no substance can be attributed to the cross-undertaking offered by Shift. There is thus no good reason to think that, were Yodel to succeed at trial, it could obtain compensation from Shift or Corja for any loss it might have suffered as a result of the grant of any injunctive relief.

39. Mr Rivett argued, however, that the Court must necessarily look at "the risk of serious and uncompensated detriment to the defendant" when considering what, if any, weight should be attached to the fact that a person applying for an injunction has limited, or no, assets. In that connection, Mr Rivett submitted, it is incumbent on a respondent to such an application to put forward evidence showing the loss it stands to suffer and, if there is concern about the applicant's ability to pay any damages awarded under the cross-undertaking, the respondent should apply for fortification. It being necessary to consider the kind and degree of loss which might be sustained both when assessing the adequacy of the cross-undertaking and when determining whether

fortification should be ordered, the principles governing fortification are, so Mr Rivett maintained, in point in either case: inadequacy and fortification are essentially two sides of the same coin. The Court must therefore ask itself whether the respondent has (a) shown to the standard of a good arguable case a sufficient level of risk of loss, (b) shown to the same standard that any loss would probably have been caused by the granting of the injunction and (c) supplied sufficient evidence to allow an intelligent estimate of the quantum of the losses to be made. The Court should consider an applicant's ability to meet an award under its cross-undertaking only if the respondent has discharged the burden on it in respect of these three matters, Mr Rivett said.

40. In the present case, Mr Rivett submitted, the Judge did not even attempt to form a view as to the kind and degree of loss that Yodel might suffer if injunctive relief were wrongly granted. Had he done so, Mr Rivett said, he could only have concluded that the case on loss advanced on Yodel's behalf was seriously lacking in substance and credibility.

41. Mr Rivett referred in this context to a passage from Mr McCourt's witness statement of 22 May 2025 in which this was said:

> "Another way to look at it is to consider Yodel's actual EBITDA losses in March and April, since those reflect some of the improvements that Yodel's business had already achieved …. The average EBITDA loss for those two months was about £5.5 million per month. If Yodel could not make further improvements to its business, its 'burn rate' over the six-month period from June to November (inclusive) would be about £33 million."

"By contrast", Mr McCourt explained, "over the same period under the '2+10' [i.e. the "transformation plan" portrayed in the April 2025 summary] the EBITDA forecast for those months was a loss of just about £5 million".

42. Mr Rivett argued that Mr McCourt's expectations have already been falsified by events. While the April 2025 summary of the "transformation plan" predicted that Yodel would break even in July, it is apparent from a witness statement made by Mr McCourt on 14 July that Yodel was in fact still loss-making that month. Mr McCourt said in that statement:

> "In McCourt 1 [i.e. his statement dated 22 May 2025] (at paragraph 42.2), I estimated that (as at that time), if Yodel was unable to make further improvements to its business, its actual EBITDA losses would be c. £33m between June and November 2025 based on a 'burn rate' of £5.5m per month. While Yodel has progressed the integration since 11 June 2025, and this has helped to reduce that 'burn rate' (in July 2025 we estimate the EBITDA loss will be £3.3m), it remains significantly loss making and we will not be able to do anything about this if the integration is now paused (i.e. these losses will continue to accumulate)."

43. Mr Rivett further contended that, if Yodel incurred further losses while an injunction was in place, they would not be *caused* by the injunction.

44. For his part, Mr Thompson submitted that there was ample evidence that Yodel stood (and now stands) to suffer loss from the grant of injunctive relief. In the first place, by preventing Yodel from proceeding with the "transformation plan", an injunction would cause the company to continue to incur losses until the end of this year. Secondly, there is a prospect of Yodel losing customers if the "transformation plan" has to be paused. Thirdly, there is a risk that Yodel would have to go into administration and that its business would then have to be realised on a forced sale basis.

45. In my view, the evidence both as it was before the Judge and as it has since been supplemented fully supports the conclusion that Yodel stood, and stands, to incur losses were an injunction to be granted. True it is that, by 14 July 2025, the company was expected to make a loss of £3.3 million that month when in April it had been hoped that it would by then break even. As, however, Mr Thompson pointed out, the undertakings which Yodel gave in response to the applications for injunctions may explain some or all of the difference. In any event, it is apparent from the evidence that the "transformation plan" has been the subject of detailed and careful consideration, that InPost has had sufficient faith in it to invest very substantial sums and that InPost has previously succeeded in merging another logistics business, that of Menzies Distribution Limited, with its own. The evidence also indicates that, were an injunction granted, Yodel would be unable to complete the "transformation plan" in time for the peak period for deliveries in the run-up to Christmas. There is also good reason to think that Yodel might well lose significant customers as a result of an injunction. Mr Kuschel explained as follows in his 22 May witness statement:

> "[M]any customers were dissatisfied with Yodel, especially after the 2024 peak period. My team and I are already in the process of having a series of discussions with key customers, working hard to give them confidence about Yodel's capability to meet their needs during peak 2025. Major retailers generally plan for peak around this time (the second quarter of the year). If they form the view that there is material uncertainty around Yodel as a result of any injunction, many customers are likely to consider that they should move their volumes to competitors, rather than risk poor performance by Yodel in the peak period."

46. In all the circumstances, it seems to me that there is a very real prospect of an injunction causing Yodel to suffer sizable losses and, moreover, that it would be unable to recover compensation for such losses from Shift or Corja under their cross-undertakings. This is not, therefore, a case in which the respondent "would be adequately compensated under the [applicant's] undertaking as to damages for the loss he would have sustained by being prevented from doing [what was sought to be enjoined] between the time of the application and the time of the trial" (to adapt words of Lord Diplock in *American Cyanamid*). To the contrary, there is good reason to believe that the grant of injunctive relief would cause Yodel loss for which it would not be compensated.

47. I do not consider it either necessary or helpful to address the principles applied in relation to applications for fortification in this context. It is not surprising that, where an application is made for fortification, the applicant must demonstrate certain matters to the standard of a good arguable case and with sufficient evidence. What is at issue in the present case, however, is whether Shift and Corja should have been (or should be) granted relief for which *they* have applied. If a respondent to such an application fails to adduce evidence of likely loss, that will doubtless count against it, especially if it alone has the relevant information, but that does not mean that the respondent bears any legal burden of proof or, more specifically, that the Court must proceed on the footing that the respondent will not suffer any uncompensatable loss unless it can supply "sufficient evidence to allow an intelligent estimate of the quantum of the losses to be made". Such an approach does not seem to me to be supported by either authority or principle.

48. That said, the Judge said in paragraph 78 of the Judgment that he was "satisfied that Yodel has shown a good arguable case for fortification and that its evidence, and particularly that of Mr McCourt, does satisfy the criteria relevant to the exercise of the Court's discretion to order fortification" and that, had he needed to do so, he "would have ordered the provision of fortification of the cross-undertaking in damages which has been offered". In my view, those conclusions were open to the Judge.

Balance of convenience

49. The Judge was also, as it seems to me, plainly entitled to conclude, as he did, that "the balance of convenience tips in Yodel's favour".

50. It is true that it can potentially be "a counsel of prudence to take such measures as are calculated to preserve the status quo" (to quote Lord Diplock in *American Cyanamid*) and that, absent an injunction, Yodel intends to proceed with its "transformation plan" rather than to continue to trade as it has in the past. However, the "transformation plan" is already being implemented and so in a sense now represents the status quo. In fact, Mr McCourt has expressed the view in his recent witness statement that much of the work of integrating Yodel's business with InPost's is "effectively irreversible, in that the time, costs, legalities and/or practicalities of undoing the steps taken … would simply not be viable". Moreover, it is common ground that Yodel has been incurring large losses for a prolonged period and requires some form of reorganisation. Nor do I understand it to be disputed that the company needs to obtain funding from a third party, whether InPost or someone else, to cover any losses incurred before any restructuring restores it to profitability. Mr Rivett suggested that Yodel might be able to obtain such funding from someone other than InPost, but it is hard to see who else would be willing to provide it. In practical terms, therefore, the Judge was faced with a choice between, on the one hand, permitting Yodel to proceed with a "transformation plan" which was already underway, which appeared to have prospects of turning the company round and for which InPost was prepared to provide finance and, on the other, granting an injunction during the currency of which the company would continue to incur large losses which, on the face of it, could only be covered by InPost so that Shift and Corja would have the opportunity, if they won at trial, to pursue a plan of their own of which few details have been given and in respect of which, as the Judge said, Shift and Corja "have adduced no evidence at all as to how, in the event of their success, they will [repay the debt incurred through parental support]". Mr Rivett submitted that the question of how Shift and Corja proposed to

manage Yodel once they had been held to be the company's rightful (majority) owners was not a matter on which the Court could or should express any view, but I do not myself see why the apparent viability (or lack of it) of Shift and Corja's plans had to be disregarded. The injunction is avowedly being sought to allow Shift and Corja to implement their own plan. If it is not apparent that they will be able to do so even if granted injunctive relief, the purpose of such relief falls away.

51. The conclusions I have arrived at above as to the prospects of Shift and Corja, on the one hand, and Yodel, on the other, suffering uncompensatable loss are also of importance in this context. As Lord Diplock observed in *American Cyanamid*, "[t]he extent to which the disadvantages to each party would be incapable of being compensated in damages in the event of his succeeding at the trial is always a significant factor in assessing where the balance of convenience lies". In the present case, the guarantee from InPost SA means, as I have said, that there is no good reason to doubt that Shift and Corja could recover proper compensation for any assessable loss. In contrast, as I have also said, there is a very real prospect of an injunction causing Yodel to suffer sizable losses for which it would be unable to recover compensation from Shift or Corja under their cross-undertakings.

52. Mr Rivett suggested that the Judge had failed to take into account the fact that the proposed injunction would include a consent mechanism and liberty to apply to the Court. However, the proposed terms would have prohibited Yodel from "[i]ncur[ring] a liability outside of the ordinary course of business of £50,000 or more" notwithstanding that the company would have needed to borrow millions of pounds to cover its losses. In effect, therefore, the company could not have continued to trade without the consent of Shift and Corja. As the Judge said, the injunction would have "require[d] Yodel's directors to subordinate their decision-making power on those matters set out in the draft order to Shift and Corja".

53. In the course of his submissions to us, Mr Rivett submitted that the fact that one or more parts of the proposed order were thought unacceptable did not mean that there should be no order at all. However, it was not suggested in the grounds of appeal that a piecemeal approach should have been, or should be, adopted. To the contrary, the appellant's notices ask that an order be made in the form of the draft that was before the Judge. In any event, the decision for the Judge was essentially binary: whether or not to allow Yodel to proceed with its "transformation plan" as a whole.

Conclusion

54. In my view, the Judge was not only entitled, but correct, to decline to grant an injunction. It seems to me that that was the course which was "likely to cause the least irremediable prejudice to one party or the other" (to use the words of Lord Hoffmann in *Olint*).

Lord Justice Males:

55. I agree.

Lord Justice Moylan:

56. I also agree.