Directions under s.14(1) are only valid if the time and place of the proposed assembly are sufficiently certain; it is not clear whether an offence under the section can be committed before the public assembly has taken place.[15]

A direction given in relation to an assembly which is intended to be held must be given in writing.[16]

1–04 From the above it will be seen that the powers of the police in relation to the larger, open-air type of meeting are extensive although they are confined (under this section) to matters of venue, duration and number of participants. The Act does not in itself give the police any additional powers in relation to meetings in closed premises; if, however, an indoor meeting provokes a counter-demonstration outside the hall, this will itself be subject to the right of the police to impose controls under s.14.[17]

Further, it will be apparent from the reference to "serious disruption to the life of the community" in s.14(1)(a) that the powers of the police will operate in relation even to meetings which are peaceful in intent, but which may cause, for example, severe traffic congestion.[18]

The powers exist when the senior police officer "reasonably believes" that the conditions defined in subss.(a) or (b) may be present. A case decided before the passing of the Act suggests that the courts may be reluctant to challenge the judgment of a chief officer of police who has had to bear the burden of dealing with events as they unfolded, particularly in cases of potential disorder.[19]

During the G20 protests in 2009, the police prevented journalists from joining the protests for the purposes of reporting on what was happening, citing s.14 of the Act, whilst in the process of dispersing the protestors, and later apologised to journalists who were caught up inadvertently in the dispersal.

There must, however, be relevant evidence on which the chief of police forms his judgment:

> "The defendant was charged with knowingly failing to comply with a condition imposed on a public assembly. The senior officer who had imposed the condition gave evidence that he defined "intimidation" (within the meaning of s.14(1)(b)) as "putting people in fear or discomfort". Held, that the question was whether the demonstrators acted with a view to "compelling" visitors not to go into South Africa House or merely with the intention of making them feel uncomfortable; the latter was not intimidation. The officer had not claimed in evidence that he believed the organisers acted with a view to compelling. Accordingly, he had had no ground for imposing the condition and the case was dismissed".[20]

The Anti-social Behaviour Act 2003 gives improved powers to deal with public assemblies and aggravated trespass, in particular the powers to disperse groups of two or more in designated areas suffering persistent and serious anti-social behaviour (s.30).

[15] *DPP v Baillie*[1995] Crim.L.R. 426 DC.
[16] Public Order Act 1986 s.14(3). The distinction may be important in relation to the remedy of judicial review.
[17] See also para.2–02.
[18] See, for example, White Paper, para.5.9.
[19] *Kent v Metropolitan Police Commissioner, The Times*, May 15, 1981 CA. See also *Thomas and others v NUM (South Wales Area)* [1985] I.R.L.R. 136.
[20] *Police v Reid (Lorna)* [1987] Crim.L.R. 702.

Public Order Act 1986 s.14A (Prohibiting Trespassory Assemblies)

This section, and ss.14B and 14C, were inserted into the Public Order Act 1986 by ss.70 and 71 of the Criminal Justice and Public Order Act 1994. These latter sections are contained in Pt V of the 1994 Act, which includes provisions aimed at squatters, participants in raves and hunt saboteurs. 1–05

Section 14A(1) of the Act provides as follows:

> "(1) If at any time the chief officer of police reasonably believes that an assembly is intended to be held in any district on land to which the public has no right of access or only a limited right of access and that the assembly—
> (a) is likely to be held without the permission of the occupier of the land or to conduct itself in such a way as to exceed the limits of any permission of his or the limits of the public's right of access, and
> (b) may result—
> (i) in serious disruption to the life of the community, or
> (ii) where the land, or a building or monument on it, is of historical, archaeological or scientific importance, in significant damage to the land, building or monument,"

he may apply to the council of the district for an order prohibiting for a specified period the holding of all trespassory assemblies in the district or a part of it, as specified.

Again, some definitions should be noted. "Assembly" under this section means an assembly of twenty or more persons; "land" means land in the open air; "limited", in relation to a right of access by the public to land, means that their use of it is restricted to use for a particular purpose (as in the case of a highway or road) or is subject to other restrictions; "occupier" means the person entitled to possession of the land by virtue of an estate or interest held by him, and includes the person reasonably believed by the authority applying for or making the order to be the occupier; and "public" includes a section of the public.[21]

Section 14A(1) does not apply to the City of London or the metropolitan police district, but for these areas similar provisions are contained in s.14A(4).

An order prohibiting the holding of trespassory assemblies operates to prohibit any assembly which (a) is held on land to which the public has no right of access or only a limited right of access, and (b) takes place without the permission of the occupier of the land or so as to exceed the limits of any permission of his or the limits of the public's right of access.[22]

No order under the section shall prohibit the holding of assemblies for a period exceeding four days or in an area exceeding an area represented by a circle with a radius of five miles from a specified centre.[23]

The order may be made either in the terms of the application or in a modified form.[24]

[21] Public Order Act 1986 s.14A(9).
[22] Public Order Act 1986 s.14A(5).
[23] Public Order Act 1986 s.14A(6).
[24] Public Order Act 1986 s.14A(2).

> "It depends on all the circumstances, including the length of time the obstruction continues, the place where it occurs, the purpose for which it was done, and of course whether it does in fact cause an actual obstruction as opposed to a partial obstruction."[65]

This approach was re-affirmed in an animal rights case, where conviction was quashed because the trial court had failed to consider whether the protesters' use of the highway (in fact, a spacious pedestrian precinct) was reasonable or unreasonable.[66] This case is also authority for the proposition that one of the factors to be taken into account in determining reasonableness is the legitimate exercise of rights of assembly and demonstration.[67]

Public nuisance

1–15 In relation to conduct on a highway, the common law offence of public nuisance has been defined as:

> "... any wrongful act or omission upon or near a highway, whereby the public are prevented from freely, safely and conveniently passing along the highway."[68]

Prosecutions for this offence are rare; instances of obstruction are usually dealt with under the Highways Act. The offence is, however, available in reserve and might be used in cases of severe disruption.

6. PROVISIONS RELATING TO ELECTION MEETINGS

Parliamentary elections

1–16 The Representation of the People Act 1983 (as amended) confers a specific right to use certain schools and halls for meetings at parliamentary and local government elections.

Section 95 provides that a candidate at a parliamentary election shall be entitled, for the purpose of holding public meetings in furtherance of his candidature, to the use, free of charge, at reasonable times between the receipt of the writ for the election and the day preceding the date of the poll, of—

(a) a suitable room in the premises of a school to which the section applies; and
(b) any meeting room to which the section applies.

The section applies, in England and Wales, to county schools,[69] voluntary schools and grant-maintained schools, of which the premises are situated in the constituency or an adjoining constituency, but a candidate is not entitled to the use of a room in school premises outside the constituency if there is a suitable

[65] *Nagy v Weston* [1965] 1 W.L.R. 280, per Lord Parker C.J. at 284.
[66] *Hirst v Chief Constable of West Yorkshire Police* [1987] Crim.L.R. 330.
[67] *Hirst v Chief Constable of West Yorkshire Police* [1987] Crim.L.R. 330, per Otton J.
[68] *Jacobs v LCC* [1950] A.C. 361 at 375.
[69] Primary and secondary schools maintained by a local education authority (Education Act 1944 s.9(2)).

room in other school premises in the constituency which are reasonably accessible from the same parts of the constituency as those outside.

The section also applies to meeting rooms situated in the constituency, the expense of maintaining which is payable wholly or mainly out of public funds or out of any rate, or by a body whose expenses are so payable.

Where a room is used, under the provisions of the section, the person by whom, or on whose behalf the meeting is convened shall defray expenses incurred in preparing, warming, lighting and cleaning the room and providing attendance for the meeting and restoring it to its usual condition. He has also to pay the cost of any damage done to the room or the premises, or to the furniture, fittings or apparatus in the room or premises.

A candidate has to give reasonable notice if he wishes to take advantage of these rights. The section does not authorise any interference with the hours during which a room in school premises is used for educational purposes, or with the use of a meeting room either for the purposes of the person maintaining it or under a prior agreement for its letting.

The Fifth Schedule relates to the detailed arrangements which are mainly concerned with the preparation of lists of available rooms by local education authorities, district councils and London borough councils.

The expression "meeting room" means any room which it is the practice to let for public meetings; and "room" includes a hall, gallery or gymnasium. For the purposes of the section, the premises of a school shall not be taken to include a private dwelling house.

A local authority may not refuse the use of a room, even if the candidate's views are offensive to many.[70]

Local government elections

1–17 Section 96 of the Representation of the People Act 1983 provides that a candidate at a local government election shall be entitled, for the purpose of holding public meetings in furtherance of his candidature, to use free of charge, at reasonable times, any suitable room in the premises of a county,[71] voluntary or grant-maintained school situated in the electoral area for which he is a candidate, (or, if there is no such school in the area, in any such school in an adjacent electoral area), or in a parish or community in part comprised in that electoral area. The right extends to a meeting room situated in the electoral area for which the candidate is standing, or in a parish or community, as the case may be, in part comprised in that electoral area, the expense of maintaining which is payable wholly or mainly out of public funds or out of any rate, or by a body whose expenses are so payable. The right applies during the period between the last day on which the notice of the election may be published and the day preceding election day.

Similar arrangements as to expenses, the making good of damage, and the giving of notice, apply as in relation to the use of rooms for parliamentary elections.[72]

[70] See *Webster v Southwark LBC* [1983] 2 W.L.R. 217.
[71] See n.67, above.
[72] In relation to disturbances at election meetings, see para.2–17.

leave the meeting at any time, regardless of whether or not he has been guilty of misbehaviour. In practice, however, this right would not usually be exercised without good reason.[1]

Where payment has been made for admission, the participant is deemed to have entered into a contract for valuable consideration with the promoters. He is entitled to remain so long as he behaves himself and abides by the rules governing the meeting.[2]

In any situation where a person is asked, with legal justification, to leave a meeting and he refuses, he can be forcibly ejected, although only reasonable force should be applied.[3]

Expulsion should only be used as a last resort. If the conduct of a person is such that the business of the meeting is seriously interfered with, and if after repeated requests from the chair the offender still persists in his obstructive methods, it would be desirable for the chairman to warn him of the consequences of his actions. Should the interrupter continue in defiance of these warnings, he should be given an opportunity of leaving the meeting voluntarily, and if he refuses to leave of his own accord reasonable force should then be used to expel him. It would be desirable to secure the support of the majority of the meeting on this matter if this is at all practicable but, once decided upon, whether by the meeting or by the chairman on his own authority (or perhaps on the authority of standing orders), the expulsion should be effected expeditiously. The removal should be carried out by the stewards or by attendants employed by the owners of the meeting hall. Beware, too, of the risk of the person ejected bursting back into the meeting.[4]

An illustration of a case where ejection was justified is *Marshall v Tinnelly*:

> "At a meeting of a committee of an urban district council a member was asked to quit the council chamber owing to his disorderly conduct. The member refused to do so, whereupon he was removed. Upon his bringing an action for assault, it was held that when the chairman, acting in pursuance of a resolution carried by the committee and under power given in the standing orders, ordered the member to withdraw, upon his refusing to do so he became a trespasser. In these circumstances the chairman was entitled to order the member's ejection, and it was found as a fact that what had been done was done as gently as the circumstances permitted."[5]

If unnecessary force is used in effecting the expulsion, the person removed will have a cause of action for assault against the persons responsible; these may include the chairman and the stewards.[6] On the other hand, in *Lucas v Mason* the chairman escaped responsibility:

[1] The rule that a licence to attend for which no payment has been made can be revoked at any time rests on an old case which was not concerned with a meeting: *R. v Horndon-on-the-Hill Inhabitants* (1816) 4 M. & S. 562. There are remarks of the Court in *Hurst v Picture Theatres* (see n.2) which suggests that if a person attending a free public meeting were to be turned out, against his will, without good reason, the organisers could expect little sympathy from the Court.

[2] *Hurst v Picture Theatres* [1915] 1 K.B. 1.

[3] *Collins v Renison* (1754) 1 Sayer 138.

[4] *British Union for the Abolition of Vivisection, Re* [1995] 2 BCLC 1 (see para.12–16 below).

[5] (1937) 81 S.J. 902.

[6] *Doyle v Falconer* (1866) L.R. 1 P.C. 328; *Hawkins v Muff* (1911) 2 Glen's Local Government Case Law 151.

> "At a certain meeting there was considerable disturbance in the gallery and the chairman said: "I shall be obliged to bring those men to the front who are making the disturbance; bring those men to the front." A person was seized by the stewards and injured in the process of removal, although he was not the person actually making the disturbance. He took proceedings against the chairman for assault but failed on the ground that the words uttered by the chairman did not authorise the stewards to act upon their own judgment as to who were the persons making the disturbance."[7]

In addition, the aggrieved person may, if the ejection is wrongful, bring an action for breach of contract (although the damages awarded are unlikely to be more than nominal).[8]

In a recent example of ejection from a public meeting, everyone in the public gallery was ejected from a Cambridge City Council meeting in February 2011, due to disruption.

3. EXCLUSION

As stated above, where payment is made for admission, there will be a contract between the promoters and those members of the public who wish to attend. The contractual terms may limit the right of admission; although a right of exclusion as opposed to expulsion, directed against particular individuals, may be difficult to operate in practice. It would be necessary to display the terms of admission prominently near the kiosk or other place where the tickets were sold, or to have them printed on the back of the ticket in the case of advance sales. Refusal of admission would have to be carried through with a decisive show of authority and with a clear statement of the reasons. The organisers would be obliged to weigh the advantages to be gained against the possibility of disorder taking place before the meeting had even started. There is always the risk that the meeting might be rushed by a crowd of disgruntled ticketholders. 3–03

The above remarks are somewhat conjectural, since the topic has rarely come before the courts. One example (not, however, based on contract, but on administrative law) is *R. v Brent Health Authority Ex p. Francis*:

> "Meetings of the Brent Health Authority had been repeatedly disrupted by organised rowdy behaviour and stamping feet, accompanied by other acts of intimidation and even, in one instance, by an attempt to storm the tables where the authority members were seated. The authority decided that, as matters stood, it would not succeed in dealing with the business before it, and the authority's chairman accordingly decided to hold a meeting from which members of the public were excluded. The validity of the meeting was challenged in the courts. It was held that a public body had a common law power to prevent members of the public entering a meeting if the public body had reasonable grounds for believing that they would disrupt the meeting by disorderly conduct and make it impossible for the public body to conduct its business properly. Furthermore, such a power could in urgent cases be exercised by the chairman of the public body (not necessarily the

[7] (1875) 10 L.R. Ex. 251.

[8] *Wood v Leadbitter* (1845) 13 M & W 838. See also *Salmond Heuston on the Law of Torts* (21st edn), pp.76–80.

A motion should propose definite action, and not be framed in the negative (although the motion "that no action be taken" is, in practice, often accepted). If possible, "notice of motion" should be given to the secretary so that the motion can be included in the agenda sent out to members; such prior notice is obligatory in the case of local authority meetings, except for certain procedural motions. After such notice of motion has been given, it should not be amended except in minor details or with the consent of the meeting.

It often happens that a motion arises spontaneously out of discussion. If such a procedure is permitted by standing orders, the motion should be reduced to writing by the person proposing it so that there can be no doubt as to what precisely is being moved. Motions are often accepted on an oral basis by the chairman, but the secretary should record it, read it out so that it can be approved and then signed by the mover (and seconder if appropriate). In practice, the chairman of the meeting should, if he feels an inconsequential discussion is taking place, call for a motion to be put before the meeting, which can then be voted on.

It is customary for a motion or amendment to be accepted for discussion only after it has been moved and seconded, and if no seconder is found the motion or amendment will fail, although this rule is not adhered to strictly in small committee meetings. There is, in fact, no common law rule to require a motion to be seconded and if a chairman does allow discussion on, and put to the vote, a motion which is not seconded, there is no way of challenging his action in the courts unless it is in violation of the standing orders of the body concerned. "There is no law of the land which says that a motion cannot be put without a seconder, and the objection that the motion was not seconded cannot prevail."[2] It is commonly accepted that a motion put from the chair does not need a seconder. It is, however, the general practice at local authority meetings which follow model standing orders to require a seconder for a motion or amendment. Conversely, as absence of a seconder usually indicates lack of support, the chairman has it within his discretion to refuse to put a motion that is not seconded.

A motion can be withdrawn by the mover only with the unanimous consent of the members present and before the question has been put to the meeting for decision; if an amendment has been proposed to the motion, the consent of the proposer and seconder of the amendment to the withdrawal of the motion will first be required.

No motion may be moved which in effect is the same as a motion already passed or negatived.

If the motion is not of a contentious nature and there appears to be unanimity in the meeting, the chairman will put it to the vote and, if approved, will declare the motion carried. It then becomes the resolution of the meeting.

If there is not immediate unanimous agreement on the motion, debate will take place on it.

It is here that the role of the chairman is crucial. If the motion is one which has been placed on the agenda and is known to be contentious, it is good practice for

[2] *Horbury Bridge Coal Co, Re* (1879) 11 Ch.D. 109. The same applies to an amendment to a motion, but it is customary for the chairman to call for a seconder (see para.7–04).

the chairman to try to find out, before the beginning of the debate, who wishes to speak; he will try to call upon all the speakers, alternating various points of view so far as practicable.

All speakers should address the chair and preferably be asked by the chairman to stand. Everyone else should remain quiet. Everything said should be relevant to the issue. Observance of these rules is fundamental to the proper and prompt despatch of the business before the meeting. No member should be allowed to speak more than once on any motion until every other member has had an opportunity of speaking, and then only with the permission of the chair. On occasion the chairman will take note of informal signals by persons present that they wish to speak and will inform the meeting of the names of the next few speakers; the chairman may also indicate, if he feels the debate has run its course and other business presses, that he will limit the number of further speakers. If two or more speakers rise simultaneously the chairman may name the one to speak (being the one first noticed by him).

The mover and seconder of any motion are regarded as having spoken, unless in the seconder's case, he clearly reserves the right to speak later in the debate, when seconding.

The mover (but not usually the seconder) will have a right of reply at the end of the debate, it is intended to give the mover the opportunity of rebutting matters raised in debate and in this he should therefore not introduce any new matter. If amendments have been moved, the mover of the original motion should be allowed his right of reply either at the close of the debate on the first amendment or after all the amendments have been moved. No person is permitted to address the meeting after the question has finally been put to the vote. The vote will then be taken.

After a motion has been passed by the requisite majority it becomes the resolution of the meeting, and the persons present can then take no step which has the effect of rescinding, negating or destroying it.[3]

Amendments

An amendment is a proposed alteration in the terms of a motion (or of an amendment already before the meeting) by those whose views would not be met by either the acceptance or rejection of the motion or amendment as moved. An amendment is a rewording of a motion so that its line of approach, but not its objective, is altered. An example might be the following motion "That the secretary be instructed to write to the management demanding that canteen facilities be provided for the workers in this factory"[4] amended to read "That the management be requested to receive a deputation in order to discuss the provision of canteen facilities for the workers in this factory." An amendment should take the form of omitting, substituting or inserting certain words in the original motion (or amendment). The alteration should not be such as to constitute a direct 7–04

[3] See para.7–34.

[4] From *A Handy Guide to Procedure at Meetings*, in the pocket diary of the Transport and General Workers' Union.

The principle has long been established that the will of a corporation or body can only be expressed by the whole or a majority of its members, and the act of a majority is regarded as the act of the whole.

> "Twelve persons were incorporated to elect a chaplain for a church, and by arrangement 3 of the 12 were permitted to make the choice subject to the consent of the major part of the inhabitants of the parish. At a meeting, two out of the three, with the assent of the major part of the inhabitants, agreed to a proposal but the third objected. In confirming the appointment, Lord Chancellor Hardwicke said: "It cannot be disputed, that whenever a certain number are incorporated, a major part of them may do any corporate act; so if all are summoned, and part appear, a major part of those that appear may do a corporate act, though nothing be mentioned in the charter of the major part."[29]

The above decision was followed in *Grindley v Barker*[30] where it was held that if a power of a public nature be committed to several people, who all meet for the purpose of executing it, the act of the majority will bind the minority.

It has been held that the same rule will not apply where no duty of a public nature is involved; thus, where articles of a company provided that "the governing directors" would have power to appoint additional directors, it was held that in the exercise of that power they could not act by majority vote.[31]

Similarly, in the case of other private associations such as clubs, because the rights of the members among themselves rest on an implied contract between all of them, there cannot be a majority vote, for example to change the rules, still less to alter the fundamental nature of the club.[32]

A majority vote binds the minority

7–31 Unless there is some provision to the contrary in the instrument by which a corporation is formed, the resolution of the majority, upon any question, is binding on the minority and the corporation, but the rules must be followed:

> "The rules of a trade union provided that "regular contributions of employed members shall be as per tables . . . and no alteration to same shall be made until a ballot vote of the members has been taken and two-thirds majority obtained." A delegate meeting of the union, without taking any ballot, passed a resolution increasing the amount of the contributions of employed members. The plaintiffs, two members of the union, obtained against the union a declaration that the alteration adopted at the delegate meeting was invalid."[33]

[29] *Att Gen v Davy* (1741) 2 Atk. 212.
[30] (1798) 1 Bos. & P. 229.
[31] *Perrott and Perrott Ltd v Stephenson* [1934] 1 Ch. 171.
[32] See 62 L.S. Gaz. 91; *Harington v Sendall* [1903] 1 Ch. 921 (see para.5–05 fn.12). Section 191 of the Licensing Act 1964 sets out a procedure for amending certain rules of clubs established before August 3, 1961. However, the unanimity principle has been doubted: see *Abbatt v Treasury Solicitor* [1969] 1 WS.L.R. 1575 (where club rules were changed by a majority vote to which no objection was made by any member) and *Reel v Holder* [1979] 3 All E.R. 1041 and [1981] 3 All E.R. 321 CA; and [1970] L.Q.R. 18.
[33] *Edwards v Halliwell* [1950] 2 All E.R. 1064.

In forming the majority, the vote of a person who is personally interested in the proposed contract may be counted, provided that he is not acting in a manner which is fraudulent or oppressive to the other members:

> "A contract for the purchase of a steamship, fair in its terms and within the powers of the company, had been entered into by the directors with one of their number who owned the vessel. It was held that the vendor, who controlled a majority of the shares, which had been acquired in a proper manner, was entitled to exercise his voting power as a shareholder in general meeting to ratify such contract; his doing so could not be deemed oppressive."[34]

Where, however, the majority propose to benefit themselves at the expense of the minority, the court will interfere to protect the minority.[35]

> "The owner of certain mines worth not more than £4,000 agreed with a partner to promote a company to purchase the mines at £7,000. The company was then formed in pursuance of a fraudulent prospectus. A majority of shareholders refused to take steps to get the contract set aside, but such majority was due to the votes of the owner in respect of shares allotted to him as consideration for the purchase. A decree was made cancelling the agreement, with a declaration that the company ought to be wound up."[36]

The courts will not, however, allow a minority to behave in such a way that the business for which the meeting is convened is impeded:

> "A chairman had closed a debate on a subject which, in the opinion of the meeting, had been sufficiently discussed. This was held not to be oppressive or an undue interference with the rights of the minority, as in this particular case the minority had had a fair opportunity of placing its case before the shareholders. Were there not some power to bring discussion to an end a minority would be able to hold up the business of the meeting by persisting to agitate indefinitely."[37]

It should be noted that, in relation to companies, the rights of minorities have been clearly defined and protected by statute.[38]

Special majorities

In cases where special majorities are prescribed, the provisions of the relevant statute or rules must be carefully observed. Thus, where under an old Act a motion was to be "determined by a majority consisting of two-thirds of the votes of the ratepayers present" at a meeting, and 37 were present, the votes of 20 ratepayers in favour of the motion (the remainder abstaining) were deemed to be insufficient to comply with the statute.[39] 7–32

> "Under the rules of a club, the committee had power to call upon a member to resign, and if he refused to resign the votes of two-thirds of those present at a

[34] *North-West Transportation Co v Beatty* (1887) 12 App. Cas. 589.
[35] *Menier v Hooper's Telegraph Works* (1874) 9 Ch. App. 350.
[36] *Atwool v Merryweather* (1867) 5 L.R. Eq. 464n.
[37] *Wall v London and Northern Assets Corp* [1898] 2 Ch. 469.
[38] See, e.g. Companies Act 2006 s.994.
[39] *Eynsham, Re* (1849) 18 L.J.Q.B. 210.

context.[38] Thus, the courts will not be too tightly regulated by precedent, or too slow to distinguish previous authorities, but will look carefully to the facts of each individual case.[39]

No person shall be judge in his own cause

10–06 Within this principle there are two distinct elements, or rules:

1. no member of the tribunal or other body concerned with the matter should have a pecuniary or other interest in the result; and
2. there should be an absence of bias.

Until relatively recently it remained a live issue as to whether or not the second rule, the rule against bias, applied to administrative as well as judicial and quasi-judicial decisions. That confusion has now been resolved. The rule against bias does apply to non-judicial and quasi-judicial decisions following decisions at High Court level[40] and in the Court of Appeal.[41]

The decision-maker must not have a pecuniary or other interest in the result

10–07 The first element, that no man should decide a matter affecting the interests of another where he himself has a direct stake in the result, is obvious and requires little explanation. For example:

> "Application was made to Hendon Rural District Council for permission to develop The Old Brewery Stables, Great Stanmore. Local residents objected. Councillor Cross, a member of the Planning and Highways Committee, was an estate agent and acting for the vendor in negotiations for a sale of the property; the sale being subject to council consent to the development. At the council meeting at which the application was considered, Councillor Cross took no part in the matter. Instead, the resolution was; (a) proposed and seconded (b) not spoken to by any member; and (c) carried unanimously. It was held that Councillor Cross had such an interest in the matter as to disqualify him from taking part or voting and the council decision was quashed."[42]

Where a person has a direct pecuniary interest his disqualification is automatic. This is treated as a rule and one that must be "held sacred",[43] even if

[38] *Russell v Duke of Norfolk* [1949] 1 All E.R. 109, per Tucker L.J. at 118.
[39] For an "application" case where procedural standards have been imposed, due to the impact on livelihood, see *R. (Cowan) v Huntingdon DC* [1984] 1 W.L.R. 501; applicant for entertainment licence to be given an opportunity to make representations in respect of objections.
[40] *R. (Kirkstall Valley Campaign) v Secretary of State for the Environment* [1996] 3 All E.R. 304; *R. (Cummins) v Camden LBC* [2001] EWHC 1116, Admin, Ouseley J.; *Bovis Homes Ltd v New Forest DC* [2002] EWHC 483, Admin, Ouseley J.
[41] *National Assembly for Wales v Condron* [2006] EWCA Civ 1573; *R (Lewis) v Redcar & Cleveland BC, Persimmon Homes Teeside Ltd* [2008] EWCA Civ 746.
[42] *R. v Hendon Rural DC, Ex p. Chorley* [1933] 2 K.B. 696. On the subject of conflict of interest in local authority matters, see paras 28–11—28–13.
[43] *Dimes v Grand Junction Canal Proprietors* (1852) 3 HL Cas 759, 793 per Lord Campbell; judge holding shares in company party to litigation.

the interest is small in amount.[44] Note, even if disqualification is not automatic the interest may still give rise to a real possibility of bias. A test that it has been suggested would have been better applied to the facts in the celebrated *Pinochet*[45] case, involving Lord Hoffman's interest in Amnesty International, an intervening party, through his position within Amnesty International Charity Ltd, where such an interest was held to be a further ground for automatic disqualification.[46] Perhaps fortunately, this part of the automatic disqualification "rule" appears to apply only to the judiciary.

The decision-maker shall not be biased

10–08 It is in relation to the second element, the need for an absence of bias, that this branch of natural justice becomes complex and potentially confusing. It extends not only to situations beyond a simple clash of interests but beyond actual bias itself, to appearances of bias, hence its complexity.

The notion that a person frankly and obviously biased on any objective view should not be party to a decision affecting another's rights is uncontroversial. No one should act as both prosecutor and judge, or have a personal relationship with any of the parties, or take any part in proceedings when he has previously expressed strong views on the matters in issue (subject to caveats that apply to politicians who must necessarily be expected to express strong views).[47] By way of example:

> "In a fair rent case under the Rent Act 1965, the decision of a rent assessment committee was quashed on the ground of bias because the chairman of the committee lived with his father who was a tenant of an associated company of the landlords, and had advised his father about the fair rent for his flat."[48]

Though predetermination or "closed minds" is a different thing from bias it is closely related to it, and the two will often arise together. Ordinarily bias may be said to have led to predetermination. Mr Justice Ouseley provided a helpful summary of predetermination in *Bovis Homes v New Forest DC*[49]:

> "a Council acts unlawfully where its decision-making body has predetermined the outcome of the consideration which it is obliged to give to a matter, whether by the delegation of its decision to another body, or by the adoption of an inflexible policy, or as in effect is alleged here, by the closing of its mind to the consideration and weighing of the relevant factors because of a decision already reached or because of a determination to reach a particular decision. It is seen in a corporate determination

[44] *Serjeant v Dale* (1877) 2 Q.B.D. 558 at 566–567, albeit now subject to a de minimis rule; *Weatherill v Lloyds TSB Bank plc* [2000] C.P.L.R. 584—judge's shareholding 570 out of a total of 5.5 billion issued.
[45] *R. (Pinochet Ugarte) v Bow Street Metropolitan Stipendiary Magistrate (No. 2)* [2000] 1 A.C. 119.
[46] *English Public Law* at p.815, para.15.77.
[47] *R(Lewis) v Redcar & Cleveland BC, Persimmon Homes Teeside Ltd* [2008] EWCA Civ 746. Note also that if cl.14 of the Localism Bill becomes law ("predetermination"), the protection afforded local politicians against allegations of bias based upon their expressed political views will be placed on a statutory footing.
[48] *Metropolitan Properties Co (F.G.C.) Ltd v Lannon* [1969] 1 Q.B. 577.
[49] *Bovis Homes v New Forest DC* [2002] EWHC 483 Admin at para.111.

5. CHAIRMAN

13–32 The appointment of the chairman is regulated by the articles which also usually provide for the appointment of a deputy, and for the position arising should neither the chairman nor his deputy arrive in time for the meeting.

The articles commonly provide that the chairman of the board of directors shall preside at general meetings of the company. Articles 42 and 43 of Table A and art.39 of the model articles[79] make such a provision.

In the absence of any provision in the articles, any member elected by the members present at a meeting may be chairman of it.[80]

A difficulty can arise where there are no directors and disputed entitlement to vote:

> "B's capital consisted of ordinary and preference shares. The ordinary and preference shareholders disputed each other's right to vote at an EGM. The company had no directors. It had an article similar to art.43 of Table A (see above). The first task of the members at the EGM was therefore to elect a chairman; without one, no business could be done. The solicitor for one of the parties declared that he would act as temporary chairman for the purpose only of supervising the election of a proper chairman. Each faction then put up a nominee; the solicitor ruled that only the preference shareholders were entitled to vote and he declared their nominee elected. The ordinary shareholders withdrew; in their absence, resolutions were passed which they subsequently challenged. The court held that the right way to construe B's articles was to hold that the election of a chairman should be entrusted to those members present, in person or by proxy, who were entitled to vote and that (notwithstanding an article similar to art.58 of Table) whatever may be the ruling of a self-appointed chairman at the time, that question is open to challenge, in later proceedings, within the limits within which the court will interfere with the internal affairs of companies. In such a case a mere proxy-holder can be chairman."[81]

6. QUORUM

13–33 A quorum must be present for the valid transaction of business at a general meeting. Usually, this will be prescribed by the company's articles, but in the absence of any provision two members personally present are a quorum.[82]

In the case of a single-member company, one person present in person or by proxy shall be a quorum whatever the articles may state.[83]

Table A (no longer the default articles for companies incorporated since October 1, 2009) provided:

> "40. No business shall be transacted at any meeting unless a quorum is present. Save in the case of a company with a single member, two persons entitled to vote upon the business to be transacted, each being a member or a proxy for a member or a duly authorised representative of a corporation, shall be a quorum.
>
> 41. If such a quorum is not present within half an hour from the time appointed for the meeting, or if during a meeting such quorum ceases to be present, the meeting shall stand adjourned to the same day in the next week at the same time and place or such time and place as the directors may determine."

[79] Companies (Model Articles) Regulations 2008 (SI 2008/3229).
[80] Companies Act 2006 s.319.
[81] *Re Bradford Investments* [1991] B.C.L.C. 224, 229.
[82] Companies Act 2006 s.318(2).
[83] Companies Act 2006 s.318(1).

The model articles merely state that no business other than the appointment of a chairman can be transacted without the constitution of a quorum.

The articles provide for an adjourned meeting (arts40 and 41 of Table A and art.41 of the model articles) at which the quorum again has to be two, but it is likely that words stating that if at the adjourned meeting a quorum is not present within half an hour from the appointed time the members[84] present shall be a quorum will remain part of the articles of a large number of companies since those words were in previous versions of Table A. The wording of art.41 of Table A can produce a rather rigid result: it seems clear that if a quorum is not present, or ceases to be present, at the first meeting then that meeting has to be adjourned to *the same day* in the next week. If no quorum is then present, the meeting fails. The directors thus have no discretion to choose a different day (or even a later time on the same day as the first meeting) for the adjourned meeting; this deprives them of the power either to adjourn the meeting for a longer interval than a week, giving them the chance to issue a fresh notice , or, at the other extreme, to adjourn the meeting for a few hours, relying on those members actually present to form a quorum (as they would have done under previous versions of Table A). The point is worth bearing in mind when articles are drafted.

The model articles are more flexible in allowing the chairman to set a time and place for the adjourned meeting either by reference to the directors or by reference to the persons who did turn up for the meeting.

To the extent that the articles do give the directors any discretion over the date, time and place of the adjourned meeting, they have to act reasonably.[85]

Where the articles provide for a quorum to be present "at the time when the meeting proceeds to business," the prescribed number must be present at the start of the meeting, but it is not necessary for this situation to be maintained throughout the proceedings. This constitutes an exception to the general rule, and was so decided by the court only with reluctance.[86]

13–34 If articles provide for a quorum of persons "present in person or by proxy," persons present by proxy can obviously be included. If, however, the quorum is to consist of persons present "in person" there must be a physical presence, either of the individual shareholder or of a company through its representative appointed under s.323 of the 2006 Act.

Three Scottish cases illustrate the above points:

1. One of two persons required to be present in person for a quorum was absent in America and was represented by her attorney. It was held that a quorum was not present (*Harris*).[87]
2. A company's articles provided that two or more members present in person or by proxy should form a quorum. One member was personally present

[84] Probably including a single member present in person or by proxy, provided that at least one other person is present by proxy: see *Daimler Co. Ltd v. Continental Tyre and Rubber Co. (Great Britain) Ltd* [1916] 2 A.C. 307, 325 and Palmer's Company Law para. 7.605.
[85] *Byng v. London Life Association Limited* [1989] 1 All E.R. 560, C.A.; and see para 6–16.
[86] *Re Hartley Baird* [1955] Ch. 143. See para 6–05 for the general rule.
[87] *Re Harris Ltd, Petitioners*, 1956 S.C. 207.

governs such a variation. As will be seen, this is an area where the courts have been granted specific powers to protect a dissentient minority.[4]

"Variation" will not, however, include a situation where the contractual rights of the class in question are being fulfilled and satisfied in accordance with the articles:

> "A company registered in Scotland passed a special resolution at an EGM attended by ordinary shareholders only, reducing its capital by paying off the whole preference capital. Certain preference shareholders objected, on the ground that the failure to hold a class meeting of preference shareholders was in breach of the articles, which required such a meeting wherever the special rights attached to a class of shares were "modified, commuted, affected or dealt with." The House of Lords found against this view; variation presupposed the existence to the right, the variation of the right and the continued existence of the right as varied. It was a different situation where a right was fulfilled and satisfied and thereafter ceased to exist."[5]

Where a variation, properly defined, of class rights is proposed, the class rights can be varied in the manner laid down by the articles, subject to and in accordance with s.630 of the 2006 Act. The section makes it clear that the variation, except where the context otherwise requires, is to include abrogation.

The regime laid down by s. 630 of Companies Act 2006 applies to two categories of cases:

1. where rights or benefits contained in the company's articles are annexed to particular shares—classic examples of rights of this kind are dividend rights and rights to participate in surplus assets on winding up; and
2. where rights or benefits, although not attached to any particular shares, are none the less conferred on the beneficiary in the capacity of member or shareholder.[6]

The distinction between the instances where a right is a class right falling within s.630, and where it is a non-class right but it is capable of being altered by special resolution is an important one; if s.630 applies it may be difficult to obtain the consent of the class concerned, but if a special resolution is required, the entire body of shareholders will become the constituency:

The right of petitioning shareholder to be president of a company was not a class right but one personal to her and it could be altered by special resolution.[7]

This can have important implications for the company, the members of the class, and the rest of the members of the company. The ease or difficulty of altering the rights attaching to any class of shares depends on the varying interests of the members, the class members and the company.

[4] Companies Act 2006 s.633. See J.B.L. (1996) at 554 for a full, radical survey of the modern position.

[5] *House of Fraser plc v. ACGE Investments Ltd* [1987] A.C. 387. It is a different matter if the class rights, as defined in the articles, expressly include any reduction of capital: *Re Northern Engineering Industries plc* [1994] B.C.C. 618, C.A.

[6] *Cumbrian Newspapers Group Ltd v. Cumberland and Westmorland Herald Newspapers Printing Co. Ltd* [1986] BCLC 286.

[7] *Re Blue Arrow* [1987] BCLC 585.

A company cannot, by contract, deprive its members of their rights to alter the articles by special resolution.[8]

2. PROCEDURE

17–03 The procedure for varying class rights is considerably simpler under the 2006 Act than it was under the previous legislation. Where no provision is made in the constitution of the company with respect to the variation of class rights, the rights may be varied only if (i) the holders of three-quarters in nominal value of the issued shares of that class consent in writing, or (ii) with the sanction of a special resolution passed at a separate general meeting of the holders of that class; this is subject in both cases to complying with any additional requirement which may specifically attach to the rights.[9]

This chapter sets out the practical considerations for variation of class rights. However, a fuller discussion can be found in Principles of Modern Company Law.[10]

17–04 In relation to any class meetings required under this section, the provisions of Companies Act 2006 as to length of notice (s.307), meetings, resolutions and votes (ss281–286), the circulation of members' resolution (s.314) and the provisions of the articles relating to general meetings shall, so far as applicable, apply. Section 334 of the 2006 Act provides for the provisions of Companies Act 2006 relating to general meetings to apply to meeting of the holders of a class of shares.[11]

However, there are some exceptions. The power of members to require directors to call a general meeting and the power of the court to order a meeting do not apply to holders of a class of shares.[12] Section 318 in regard to a quorum and s.321 in regard to the right to demand a poll do not apply to meetings convened to vary the rights attached to a class of shares. The quorum at any meeting other than an adjourned meeting shall be two persons holding or representing by proxy at least one-third in nominal value of the issued shares of the class in question, and, at an adjourned meeting, one person holding shares of the class in question or his proxy. Any holder of shares of the class who is present in person or by proxy may demand a poll.[13] The additional requirements for traded companies contained in ss311, 311A, 319A, 327, 330 and 6333A do not apply either.

The persons present at a class meeting or represented by proxy must be members of that particular class, but the proxies need not be members either of the company or the class.[14] A class meeting may consist of one person:

> "Where a person signified his assent, in a document signed in the minute book, to an increase in the preference share capital of the company of which he was the sole

[8] *Punt v. Symons & Co. Ltd* [1903] 2 Ch. 506; and see *Cumbrian Newspapers Group Ltd v. Cumberland and Westmorland Herald Newspaper Printing Co. Ltd* [1986] BCLC 286, 305.

[9] Companies Act 2006 s.630(4).

[10] Principles of Company Law; Gower and Davies, p.665.

[11] Companies Act 2006 s.334(1) and s.334(2A).

[12] Companies Act 2006 s.334(2).

[13] Companies Act 2006 s.334(3)

[14] Companies Act 2006 s.324.

At the meeting: amendments to proposed resolutions

19–24 This topic has been dealt with elsewhere: see in particular paras 7–04 to 7–06 and 14–28.

In summary, the chairman should reject amendments which are:

1. negative (negate the substantive motion);
2. onerous (impose more of a burden than the main resolution);
3. outside the scope of the notice; or
4. redundant (re-open previously settled business).

Poll on an amendment

19–25 The questions to be put to members will require careful thought. In accordance with the principles described earlier,[36] the questions will be:

1. Does the meeting approve the amendment?
2. Does the meeting approve the resolution as amended?
3. Does the meeting approve the original resolution as unamended?

Depending on the result of question (1), either questions (2) or (3) will be irrelevant.

At the meeting: other points

19–26
1. *Motion to adjourn*: if a shareholder proposes the adjournment of the meeting, the chairman should resist the proposal as it is irrelevant to the meeting and the AGM is required to be held under the 1985 Act.
2. *Directions to the board*: a member may attempt to introduce a resolution which requires the board to act in a certain manner. Since matters of management have been delegated to the board, such a proposal would almost certainly require a special resolution.[37] This in turn would require prior notice. The company's articles may also cover the point.
3. *Vote of no confidence*: if such a vote is proposed, the chairman should state that it would, in practice, amount to no more than a call upon the board to do better—and the board's efforts are (it will have been said) already being redoubled. If the point is pressed, the chairman could indicate that an alternative would be to vote against the adoption of the accounts.
4. *Points of order*: the chairman should be quick to reject any bogus points of order (i.e. those which deal with substantive and not procedural matters).[38] On genuine points he should give an immediate ruling and indicate that it is final. He may be able to point to an article on the lines of Extra Article A.
5. *Disturbances*: the atmosphere and tone of the proceedings may do much to discourage unruly elements.[39] If, in spite of the evident good humour and reasonableness of the chairman and the care which has been taken over the choice of venue and layout of the hall, bad behaviour breaks out, the chairman will have to take one or more of the following steps:

   Rule the shareholder out of order and ask him to desist so that the meeting can proceed; the request should, if necessary, be repeated. Only if that fails should the chairman ask the shareholder to leave the meeting. If the shareholder does not leave, the chairman should direct the stewards and/or security staff to remove the person from the meeting; only reasonable force may be used.

   In cases of more serious disturbance, for example where protesters storm the directors' table, they can be ejected summarily and without warning.[40]
6. *Adjourn the meeting*: this is a more drastic step and may be appropriate where there is a body of demonstrators and attempts to encourage them to put their points of view through a spokesperson have failed and disorder persists. The adjournment can be for a short period while, for example, the chairman has discussions with the demonstrators to see whether a basis for progress can be made—perhaps by offering them separate discussions outside the meeting. In desperate cases, the meeting could be adjourned for a longer period—perhaps a week or so.[41] At the adjourned meeting it will be possible to exclude those who have been identified as disruptive troublemakers; although, with good fortune, the second event is likely to be conducted in a calmer atmosphere.
7. *Defamation*: if the chairman thinks a member is making defamatory remarks, he should call him to order at once.[42]

[36] See Ch.7.
[37] See paras 20–01 and 20–02.
[38] For a discussion of other procedural points, see Ch.7.
[39] An established procedure is good practice: ICSA 2.24.

Appointing an additional or substitute director

19–27 If the company thinks that an attempt will be made to appoint a director in addition to or in substitution for those named in the notice it will be necessary to take early legal advice. The member who wishes to appoint such a director (the "proposing member") may give prior notice to the company, thus meeting the requirements of articles such as Extra Article F, in particular the Table A, art.76 type of provision. He may, alternatively, have acted under s.168.[43] It will then be for the company to take such steps as are appropriate, depending on the nature and contents of the notice received, the company's articles, Stock Exchange requirements and the time available before the meeting.

If the proposing member waits until the meeting, whether he will succeed in his proposal depends on:

1. *The articles*: if they contain provision on the lines of art.76 of Table A, the proposal will fail. It will also fail if the proposing member moves the appointment of an additional director, and the number of board members is already at the maximum permitted.
2. *The form of notice*: as mentioned,[44] the most restrictive form of notice will be: "To re-elect Mr X as a director". Then the chairman would be in order

[40] ICSA 2.24; and see para.3–02.
[41] See para.3–04.
[42] See Ch.30. Equally, the chairman should be careful in attributing base motives to a questioner.
[43] See paras 21–11—21–13.
[44] See paras 5–05—19–21.

The subscribers to the memorandum may also execute a document nominating the first directors; if this method is used, all subscribers should sign.[3] The document could read as follows:

We, the undersigned, being the subscribers of the memorandum of association of the above company hereby in pursuance of article ..... of the company's articles of association appoint ..... of ....., ... of ..... and ..... of ..... to be the first directors of the company.

Dated ..... 20 ..... [Signature]

Subsequent directors

21–03 Directors other than first directors will be appointed at general meetings except when appointed by the board to fill a casual vacancy. In that case the directors may decide to appoint a director.

In a public company, appointments of directors at a general meeting must be voted on individually, unless the meeting has previously resolved without any dissenting vote that they be taken together.[4]

A director cannot become a director of a company merely by willing himself into that position.[5] However, a person may be a de facto director by virtue of behaving and acting like a director.[6]

Nominated directors

21–04 In some companies, the articles provide that directors may be appointed or removed from office by a notice in writing signed by the holders of a majority of the shares. This is useful for wholly-owned subsidiaries and avoids the necessity for a meeting. Equally, power may be reserved to shareholders of a particular category to appoint directors; for example, in a jointly-owned company the "A" shareholders and the "B" shareholders may each have the right to appoint directors. In a case where "governing directors" had the power to appoint additional directors, this power had to be exercised by all the governing directors and not just a majority of them.[7]

Casual vacancies: additional directors

21–05 Casual vacancies are those which occur through death, resignation, disqualification, or reasons other than those arising by rotation.

The directors are empowered by art.17 (set out above) of the model articles, in use for companies incorporated since October 1, 2009, to appoint a new director at a meeting. This represents a convenient way in which the board can add to its number or replace a director, subject, in effect, to ratification at the next AGM.

[3] *Re Great Northern Salt and Chemical Works* (1890) 44 Ch.D. 472.
[4] Companies Act 2006 s.160(1).
[5] *National Rivers Authority v Stockinger, The Times*, March 27, 1996.
[6] *Secretary of State for Trade and Industry v Tjolle* [1998] 1 B.C.L.C. 333 and *Secretary of State for Trade and Industry v Hall* [2006] EWHC 1995
[7] *Perrott and Perrott Ltd v Stephenson* [1934] 1 Ch. 171.

Many companies are still using articles based on Table A which had a similar provision. Article 79 (as amended following Companies Act 2006) and articles based on it are in very common use.

Any such appointment must be made at a valid meeting of the board.[8] In principle, where this power of addition is vested in the directors, the company cannot usurp it.[9] The company can act in general meeting, too, when the directors are unable or unwilling to act.[10]

In some cases, articles provide that a casual vacancy filled in this way only endures to the next AGM. Care should be taken to reappoint the director at that time or to appoint another director in case the company is left with no directors[11].

Where articles provide that vacancies in the board can be filled up by the company in general meeting, and that casual vacancies may be filled up by the directors, the power of the directors to fill such a vacancy continues even though a general meeting has intervened and the vacancy was not then filled up.

2. QUALIFICATION: AGE LIMIT

21–06 There are various disqualifications which attend the office of director, although they are not dealt with in detail in this work. For example, some articles provided that directors shall hold a minimum number of shares in the company and in general a person who failed to obtain this qualification had to vacate office[12]; similarly, disqualification orders may be made under the Company Directors Disqualification Act 1986. Additionally, the articles may themselves contain a disqualification provision as—for example, article 81 of Table A did, and although Table A is no longer in use there may be articles in use which were based on its provisions.

The only exception relates to the age limit for directors. There is a lower age limit of 16 but no upper limit.

21–07 An upper limit did exist under the 1985 Act. It was prescribed by s.293 of the 1985 Act that a company could not have a director older than 70 years of age. A company was subject to s.293 if it was a public company, or, being a private company, was a subsidiary of a public company.[13] However, the 2006 Act repealed this section of the 1985 Act, and no upper age limit now exists.

21–08 The only age requirement is that a director must be at least 16 years of age[14]. The Secretary of State may make regulations proposing exceptions to this rule but it has not do far been done[15].

[8] *POW Services Ltd v Clare* [1995] 2 B.C.L.C. 435
[9] *Blair Open Hearth Furnace v Reigart* (1913) 108 L.T. 665; but see *Worcester Corsetry Ltd v Witting* [1936] Ch.640.
[10] *Barron v Potter* [1914] 1 Ch. 895.
[11] *Tulsesense Ltd, Re* [2010] EWHC 244.
[12] Companies Act 1985 s.291 (now repealed).
[13] Companies Act 1985 s.293(1) now repealed.
[14] Companies Act 2006 s.157.
[15] Companies Act 2006 s.158.

A board meeting of the company will be held at The Whitethorns, High Point, West Midlands on December 1, 2012 at 11.30 am.

AGENDA

1. To table the certificate of incorporation of the company and a print of the constitution of the company, as registered.[2]
2. To table a copy of the statement delivered to the Registrar (Companies Form IN01) and naming Mr ..... and Mrs ..... as the first directors, and giving the intended situation of the registered office.
3. To produce the statutory books of the company.[3]
4. To elect a chairman of the board.
5. To appoint Messrs ..... Co as auditors of the company.
6. To appoint ..... Bank as the company's bankers, in accordance with the Bank's standard form of mandate, a copy of which is annexed hereto.
7. To confirm the situation of the company's registered office.
8. To adopt the common seal of the company.
9. To produce and read to the meeting notices given by the directors pursuant to s177/182) of the Companies Act 2006.[4]
10. To issue and allot shares in the company.
11. To fix an accounting reference date.
12. To arrange the dates of future board meetings.
13. Any other business.

Minutes of a board meeting of Springer Limited held at the Whitethorns, High Point, West Midlands on December 1, 2012.

MINUTES

Present:
Mr .....
Mrs .....

In attendance: Mr ..... (secretary)

1. There was tabled the certificate of incorporation of the company (No .....) dated ..... 2012 and a print of the memorandum and articles of association as registered.
2. It was confirmed that, in accordance with the statement delivered to the Companies Registrar with the constitution of the company, Mr ..... and Mrs ..... were the first directors of the company.
3. The statutory books of the company were produced to the meeting.

[2] If an "off-the-shelf" company is used, appropriate stock transfer forms should also be tabled, together with resignations of the first directors and secretary, notices of appointment of new directors and secretary, and a resolution relating to change of registered office. Minutes 2 and 7 will not be required.

[3] Initially these will usually comprise a register of members (s.113 Companies Act 2006) and a register of directors (s.303 Companies Act 2006).

[4] Directors' interests in existing and proposed contracts.

4. It was resolved that Mr ..... be and he is hereby appointed chairman of the board.
5. It was resolved that Messrs ..... and Co be and they are hereby appointed auditors of the company to hold office until the conclusion of the first general meeting at which accounts are laid before the company. Authority was given to the chairman to negotiate with the auditors in order to fix their fee.
6. It was resolved that a bank account for the company be opened with ..... Bank and that the Bank be authorised:
   (a) to honour and comply with all cheques, drafts, bills, promissory notes, acceptances, negotiable instruments and orders expressed to be drawn accepted, made or given on behalf of the company at any time or times whether the banking account of the company is overdrawn or in credit or otherwise; and
   (b) to honour and comply with all instructions to deliver or receive or dispose of any securities or documents or property held by the Bank or to be held by the Bank on behalf of the company:

   provided that any such cheques, drafts, bills, promissory notes, acceptances, negotiable instruments, orders or instructions are signed on behalf of the company by: [detailed signing instructions].
7. It was resolved that the registered office of the company be situated at The Whitethorns, High Point, West Midlands, which address had already been given in the statement on registration as the intended location of the registered office.
8. It was resolved that the seal, an impression of which is affixed to these minutes, be adopted as the common seal of the company.
9. There were produced and read to the meeting notices given by [names of directors] pursuant to s.177/182 of the Companies Act 2006.
10.
    (a) There were produced to the meeting forms of application for shares as follows, together with cheques in payment in full:

Date	Applicant [details]	Number of shares

    (b) It was accordingly resolved that shares of £ each in the capital of the company be and they are hereby allotted as follows:

Allottee	Number of shares [details]	Distinctive numbers

    (c) It was resolved that share certificates prepared in respect of the subscribers' shares and the allotment made pursuant to (b) above be approved and that the common seal of the company be affixed thereto.
11. It was resolved that the accounting reference date for the company should be .....
12. It was agreed that the next meeting of the directors would be held on January 10, 2012 at 11.30 a.m. at the registered office.

Culmination

24–14 If the administration succeeds, the company will be returned to its directors and shareholders. If it fails, because the administrator has no power to pay off creditors the exit routes are likely to be a compulsory winding-up, a company voluntary arrangement proposed by the administrator, or a scheme under s.895 of Companies Act 2006.

Creditors—points to note

24–15 The important meeting from a creditor's point of view will be the initial creditors meeting summoned by the administrator to consider his proposals. By this time, the administrator will have been in place for some weeks and a considerable amount of the company's money and time will have been used in bringing the application to the court and in preparing proposals to lay before creditors. However, the creditor should, as always, take care in filling in his proxy form. He should also lodge details of his debt by 12 noon on the day prior to the meeting. The meeting itself represents probably the only opportunity creditors will have to question the administrator in any depth, and to satisfy themselves that the company's affairs are being improved and not worsened by the administration process and that the administrator's stewardship down to the date of the meeting has been satisfactory. It would be a good plan to discuss the administrator's proposals with other creditors prior to the meeting. The proposals can be modified at the meeting.

It is important to form a creditors' committee and to give that committee power to sanction further action by the administrator (i.e. without having to convene another creditors' meeting, except for major items).

3. ADMINISTRATIVE RECEIVERSHIP

24–16 The changes under the Enterprise Act 2002 greatly restricted the process of administrative receivership. Previously, creditors able to appoint an administrative receiver under the provisions in a debenture enjoyed a considerable advantage over other creditors. An administrative receiver owes a rather limited duty of care to those other creditors; his first duty is to the person who appointed him.[52]

The Enterprise Act inserted new ss. 72A to 72H and a Sch. 2A into the 1986 Act. Section 72A places a prohibition on the appointment of administrative receivers by the holders of floating charges. Six exceptions are contained in ss.72B—72G, these are where the charge relates to:

(a) a capital market arrangement expected to be greater than £50 million;
(b) a public-private partnership project with step-in rights;
(c) a project company involved in a utility project which includes step-in rights;

[52] See *Re B. Johnson Co. (Builders) Limited* [1955] 1 Ch. 634 and *Downsview Nominees Limited v First City Corporation Limited* [1994] 1 BCLC 49, P.C.

(d) a project company involved in a financed project which includes step-in rights with an expected debt of at least £50 million;
(e) the financial market and is deemed to be a market charge,[53] system-charge[54] or collateral security charge[55]; and
(f) a registered social landlord.

The intention of the change is to make receivers rare exceptions rather than the common occurrence they had become. Administrative receivers pursue only the interests of the charge holder that appoints them and this is felt to encourage them to act against the interests of the company and other creditors. The amended legislation favours the appointment of administrators who are bound to act in the wider interest (see para.24–10). Therefore, administrative receivership is not as important a subject as it formally was.

The dominant position taken by an administrative receiver means that the influence of other creditors is somewhat limited, but the 1986 Act does require him to prepare and send to secured creditors a report on the events leading up to his appointment, the disposal of company property and the carrying on of its business, the amounts due to the debenture holders by whom he was appointed and to preferential creditors and the amount likely to be available for other creditors. This report has normally to be made within three months of his appointment. The receiver has to send a copy to unsecured creditors or publish the address from which copies can be obtained.[56] Unless the court otherwise directs, a copy of the report has to be laid before a meeting of unsecured creditors summoned for the purpose by not less than 14 days' notice.[57] In fixing the venue, the receiver must have regard to the creditors' convenience; the meeting must normally begin between 10.00 a.m. and 4.00 p.m. on a business day; at least 14 days' notice must be given; forms of proxy must be sent with the notice; the notice has to include a statement that secured creditors are not entitled to attend or be represented at the meeting; and the notice must explain the relevant voting rights.[58] The receiver or a person nominated by him takes the chair at the meeting.[59] The provisions of the Rules relating to lodgement of proxies, voting rights (with the exception that in a receivership votes are calculated in accordance with the creditor's debt as at the date of appointment of the receiver), secured creditors, unliquidated or unascertained debts and admission and rejection of claims are similar to those which appertain to creditors' meetings when an administration order is in force; but in a receivership a creditors' meeting shall not be adjourned, even if no quorum is present, unless the chairman decides that it is desirable, and in a receivership a creditors' resolution is passed when a majority (in value) of those present and voting in person or by proxy have voted in favour of it.

The meeting may appoint a creditors' committee to assist the receiver in discharging his functions; that committee may, on giving not less than seven

[53] Within the meaning of s.173 of the Companies Act 1989 (c.40).
[54] Within the meaning of the Financial Markets and Insolvency Regulations 1996 (SI 1996/1469).
[55] Within the meaning of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (SI 1999/2979).
[56] *Insolvency Act 1986* s.48.
[57] *Insolvency Act 1986* s.48(2), (3).
[58] r.3.9.
[59] .3.10.

The initiating resolution

25–10 As has been noted, a company may be wound up voluntarily if it resolves by special resolution that it be wound up voluntarily. A special resolution is the usual method adopted by the members, and this is followed by a creditors' meeting, as explained below.

Members' meeting

25–11 The directors, acting at a board meeting, would arrange for the convening of a general meeting in the usual way. The business at the meeting would be to consider the financial position of the company, to pass the necessary special resolution as to liquidation, and to nominate a liquidator. (The nomination by the creditors of a liquidator will, if different, normally prevail.)

The meeting would normally be timed to take place just before the creditors' meeting.

The liquidation commences from the date of the passing of the resolution by the members.[65]

Creditors: first meeting

25–12 The company must cause a meeting of creditors under s.98 of Insolvency Act 1986to be summoned for a day not later than the 14th day after the date of the members' meeting.[66] Notices must be sent to creditors not less than seven days before the meeting date and the meeting must be advertised in the *Gazette* and in any other way the directors see fit.[67] The notice must state the name and registered number of the company. It should also state the name and address of a qualified insolvency practitioner who will furnish creditors free of charge with such information about the company's affairs as they may reasonably require, or state a place in the relevant locality where, on the two business days falling next before the day of the meeting, a list of the company's creditors will be available for inspection free of charge.[68] Where there has been more than one principal places of business in the previous six months, requirements as to advertisement and inspection of lists must be met in relation to each of those places.[69] There is a default fine.[70]

The directors must prepare a statement of affairs of the company in the prescribed form; they must cause the statement to be laid before any creditors' meeting held pursuant to s.98 and appoint one of their number to preside at the meeting.[71] It is the duty of the person so appointed to attend and preside.[72]

[65] Insolvency Act 1986 s.86.
[66] Insolvency Act 1986 s.98(1A).
[67] Insolvency Act 1986 s.98(1A)(b), (c), (d).
[68] Insolvency Act 1986 s.98(2).
[69] Insolvency Act 1986 s.98(3).
[70] Insolvency Act 1986 s.98(6).
[71] Insolvency Act 1986 s.99(1).
[72] Insolvency Act 1986 *I*, s.99(1) and r.4.34. In the absence of the nominated director, it may be possible for the meeting to proceed under the chairmanship of, for example, the solicitor acting for the company: *Re Salcombe Hotel Development Co.* (1989) 5 B.C.C. 807.

Where the directors prepare the statement, they should deliver a copy to the liquidator following the creditors' meeting. The liquidator is obliged to deliver it to the registrar of companies within five days.[73]Where a liquidator is nominated by the company at a general meeting held on a day prior to the creditors' meeting, the directors shall as soon as possible after such nomination or the making of the statement of affairs, whichever is the later, deliver to him a copy of the statement of affairs.[74]

In relation to the formalities of the creditors' meeting, the following points apply:

(1) the notice must state the name and registered number of the company and specify a venue for the meeting and the time (not earlier than 12 noon on the business day before the day fixed for the meeting) by which and the place at which, any proofs and proxies necessary to entitle them to vote at the meeting must be lodged[75];
(2) only the appointment of a liquidator or liquidators and a liquidation committee and matters incidental thereto may be discussed except that the meeting may consider a resolution to adjourn for not more than 14 days and any resolution which the chairman thinks it right to allow for special reasons[76];
(3) any resolution passed at a creditors' meeting held before an adjourned members' meeting passes a resolution to wind up takes effect only from the passing of the winding-up resolution[77];
(4) the directors are required to update the statement of affairs if necessary[78];
(5) one of the directors of the company, appointed by the board prior to the meeting, takes the chair (but the prospective liquidator will be in attendance).[79]

If default is made by the company or the directors in meeting their respective obligations in relation to the creditors' meeting or the statement of affairs, the liquidator must apply to the court for directions; it is a criminal offence if he fails to do so.[80]

Creditors—points to note

25–13 The meeting of creditors convened by the company pursuant to s.98 of the Insolvency Act1986 will be crucial to the future course of the liquidation.

Before the meeting, a creditor should take steps to obtain further information about the company and its recent trading history. If the claim is large, it may be a good idea for the creditor to make contact with other substantial claimants; the

[73] r.4.34.
[74] r.34A.
[75] r.4.51.
[76] r.4.52
[77] r.4.53A.
[78] r.4.53B.
[79] Insolvency Act 1986 s.99(1). See Statement of Insolvency Practice 8 (Summoning and Holding Meetings of Creditors Convened Pursuant to s.98 of the Insolvency Act 1986) published by the Society of Practitioners of Insolvency.
[80] Insolvency Act 1986 s.166(5).

disqualification. Therefore, in cases near the borderline disclosure should be made so that the matter can be considered in advance of or at the time the decision is made.[83]

Where a member has a prejudicial interest in any matter, he must:

(a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he has obtained a dispensation from that authority's standards committee[84];

(b) (where relevant) not exercise executive functions in relation to that matter; and

(c) not seek improperly to influence a decision about that matter.[85]

Importantly, however, and reversing a decision which had substantially concerned local authorities,[86] the 2007 Code provides that a member with a prejudicial interest can attend a meeting for the purpose of making representations, answering questions or giving evidence relating to the business, providing that the public are also allowed to attend the meeting for the same purpose.[87] The member must then immediately withdraw after making the representations, answering questions or giving evidence.[88] However, a member of the council attending a council meeting could not divest himself of his official capacity as a councillor by declaring that he was attending in his private capacity; he was still to be regarded as conducting the business of his office for the purposes of the 2007 Code.[89]

The register of interests

28–13 Local authorities are required to establish and maintain a register of the interests of the members and co-opted members of the authority.[90] The register must be available for inspection by members of the public at an office of the authority at all reasonable hours.[91] Within 28 days of his election or appointment to office, the member must register his financial and other interests in the register by providing written notification to the authority's monitoring officer of the matters set down

[83] *R. (on the application of Morris) v Newport City Council* [2009] EWHC 3051 (Admin).

[84] The Relevant Authorities (Standards Committees) (Dispensations) Regulations 2002 (SI 2002/339), made under s.81(5) LGA 2000 set out the circumstances under which dispensations may be granted by the relevant standards committee. For Wales, the equivalent regulations are the Standards Committees (Grant of Dispensations) (Wales) Regulations 2001 (SI 2001/2279).

[85] para.12(1).

[86] *R. (Richardson) v North Yorkshire CC* [2004] 1 W.L.R. 1920, where the Court of Appeal found that a member of the council attending a council meeting who would otherwise be barred by reason of a prejudicial interest could not simply, by declaring that he was attending in his private capacity, thereby divest himself of his official capacity as a councillor (at 1949A–J, per Simon Brown L.J.). He was still to be regarded as conducting the business of his office, and it was only by resigning that he could shed the role. In the circumstances, the Court of Appeal concluded that the member in question had properly been excluded from the meeting.

[87] para.12(2).

[88] para.12(1)(a)(i).

[89] *R. (on the application of Richardson) v North Yorkshire CC* [2003] EWCA Civ 1860.

[90] LGA 2000 s.81(1). The register must be established and maintained by the monitoring officer for the authority.

[91] s.81(6).

in para.8(1)(a) of the Code (above).[92] The member must also provide written notification within 28 days of any change to the interests specified under para.8(1)(a) of the Code.[93]

It is worth noting that the Localism Bill (only at report stage in the House of Lords at the time of writing) may soon change the law in this area. One possibility is the creation of a criminal offence in relation to deliberate failures to disclose or register relevant interests.

Standards committees

Each relevant authority must establish a standards committee with the functions conferred upon it by or under Pt III LGA 2000.[94] Regulations have been made by the Secretary of State and the National Assembly for Wales amplifying the detail of such standards committees.[95] Statutory guidance has also been issued by the Standards Body for England as to the size and composition of standards committees of relevant authorities in England and police authorities in Wales.[96] 28–14

A standards committee's functions are to (a) advise the authority on the adoption or revision of a code of conduct[97]; (b) monitor the operation of that code of conduct[98]; and (c) advise, train or arrange to train members (including co-opted members) on matters relating to the code of conduct.[99] Regulations have been made by the Secretary of State in respect of the exercise of the functions of relevant authorities in England and police authorities in Wales[100]; the National Assembly for Wales has yet to do the same in respect of the standards committees of relevant authorities in Wales other than police authorities.

A standards committee can appoint one or more sub-committees to discharge any of its functions, whether or not to the exclusion of the committee.[101] By virtue of the amendments to the regime introduced by the 2007 Act, the intention is that standards committees will appoint a range of sub-committees to undertake

[92] para.13(1). This is subject to para.14, which provides an exemption in relation to sensitive information.

[93] para.13(2).

[94] LGA 2000 s.53(1). Note that parish and community councils are excluded from the requirements of s.53(1) by virtue of s.53(2). By s.55(1)–(2), parish councils are supervised by the standards committee of the relevant district council or (where relevant) unitary council. The district or unitary council may appoint a sub-committee to discharge its functions in respect of parish councils: s.55(3) LGA 2000. Similarly, community councils in Wales are supervised by the standards committee of the relevant county council: s.56(1) LGA 2000; similar provisions in respect of the operation of sub-committees are to be found at s.56(3).

[95] In respect of English authorities, the Relevant Authorities (Standards Committee) Regulations 2001 (SI 2001/2812) as amended (which also apply to Welsh police authorities), the Standards Committee (England) Regulations 2008 (SI 2008/1085) and the Standards Committee (Further Provisions) (England) Regulations 2009 (SI 2009/1255). In respect of Welsh local authorities, the Standards Committees (Wales) Regulations 2001 (SI 2001/2283), as amended.

[96] Pursuant to LGA 2000 s.53(7)(b).

[97] LGA 2000 s.54(2)(a).

[98] LGA 2000 s.54(2)(b).

[99] LGA 2000 s.54(2)(c).

[100] Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 (SI 2003/1483), as amended.

[101] LGA 2000 s.54A(1) (added by s.113(1) Local Government Act 2003). This section does not apply to functions in relation to parish or community councils: s.54A(2).

defamed where the words complained of reflect on the corporation and are proved damaging to its business (for example the conduct of its business or its solvency) and not just on its individual officers or members.[3] A corporation can also be guilty of defamation. A local authority[4] and a trade union (but not a political party) can sue for defamation. A meeting is not a corporation, however, and even a company meeting is not the company, but a gathering together of individuals whose deliberations control and determine the company's decisions. Although this is so, it is possible for a company or other corporation to become legally liable for statements made at a company meeting if those statements are made by a person who can be shown to have acted as its servant or agent.

When defamatory words are written or spoken of a class of persons, it is not open to a member of that class to say that the words were spoken of him unless there was something to show that the words about the class refer to him as an individual. In cases of this kind two questions must be asked: first, one of law, whether the words are capable of referring to the plaintiff; secondly, one of fact, whether reasonable people who know the plaintiff think the words refer to him.[5]

1. LIBEL AND SLANDER

30–02 It is necessary to distinguish between the two kinds of defamation, "libel" and "slander". Traditionally, and in broad terms, libel is written, and slander is spoken. The importance of the distinction is that while libel is actionable per se and will attract damages whether or not the plaintiff can show actual loss, slander, apart from certain exceptions to be mentioned later, is actionable only upon proof of special damage. This simple distinction between libel and slander has become blurred, however, and is likely to be more so because of the advance of technology, and this is important in considering the subject of defamation as affecting meetings.

Cisco Webex's terms of service for meetings held via the web contain the following, which specifically refers to defamatory statements —whether visible, audible or in written content relating to meetings:

> "You agree not to upload, post, email, transmit, distribute, or otherwise exploit or make available any Content that is unlawful, harmful, threatening, abusive, harassing, defamatory, vulgar, obscene, invasive of another's privacy, hateful, or racially, ethnically, or otherwise deemed objectionable by WebEx or its affiliates."[6]

Even before the 1952 Act, when the old distinction rested squarely on the question whether the words complained of were written or only spoken, a broadening of the definition of libel had been made in a celebrated case[7] so that it included words recorded on the sound track of a film. Nowadays, radio, television and video recordings will be treated as libel.

[3] *Multigroup Bulgaria Holding AD v Oxford Analytica Ltd* [2001] EMLR 28.
[4] See *Bognor Regis UDC v Campion* [1972] 2 All E.R. 61, and s.221 of the Local Government Act 1972.
[5] *Knupffer v London Express Newspaper Co Ltd* [1944] A.C. 116 HL.
[6] *http://www.webex.com/webinars/about/terms-of-service-content-sharing.*
[7] *Youssoupoff v Metro-Goldwyn-Mayer Pictures Ltd* (1934) 50 T.L.R. 581 CA.

To be actionable as libel or slander a statement must defame, and must therefore basically be untrue. If true, words cannot, in legal theory, destroy any reputation which a person complaining of them deserves to possess. It is important to recognise, however, that it is one thing to believe, or even to know, that words are true, and another to prove that they are true in the strict sense required for a defence of justification (see below). Therefore, if statements derogatory of any person are made at a meeting, the chairman or sponsor of the meeting must intervene and exercise control; otherwise the adverse consequences could be incalculable.

Slanders which are actionable without proof of special damage are those which:

(a) are calculated to disparage a person in any office, profession, calling, trade or business held or carried on by him at the time of the publication[8];
(b) impute that a person has committed any crime which is punishable by imprisonment;
(c) impute that a person is currently suffering from disease which would tend to exclude him from society; or
(d) impute unchastity or adultery to a woman or girl.[9]

Special damage means, in essence, that the plaintiff has suffered material or pecuniary loss.

2. MALICE

30–03 The plaintiff does not have to prove malice unless the defendant succeeds in showing that the words were published on a privileged occasion. The plaintiff may defeat a plea of qualified privilege, privileged report or fair comment (defences which are discussed below[10]) by proof of express or actual malice.

Malice, in this sense, means a wrong motive which dominated the defendant at the time of the publication. Knowledge of the falsity of a statement, or a reckless disregard of whether it be true or false, gives rise to a presumption that publication was malicious, but "irrationality, stupidity or obstinacy do not constitute malice, though in an extreme case they may be some evidence of it."[11] Where malice was proved against one of three partners who were signatories to a letter admitted to be defamatory, but qualified privilege applied, liability attached only to the partner guilty of malice.[12] Similarly, where a letter was written on an occasion of qualified privilege and the assistant secretary and three members of the committee were not actuated by malice, the malice of the other seven signatories did not defeat the plea of privilege of those not actuated by malice.[13]

Where there is no evidence of malice in the words themselves, evidence may be given of connected or surrounding circumstances to show the malicious state

[8] Defamation Act 1952 s.2.
[9] Slander of Women Act 1891.
[10] paras 30–06—30–12.
[11] *Turner v Metro-Goldwyn Mayer Pictures Ltd* [1950] 1 All E.R. 449, 463, per Lord Porter.
[12] *Meekins v Henson* [1964] 1 Q.B. 472.
[13] *Egger v Chelmsford (Viscount)* [1965] 1 Q.B. 248.