

## FRAUDULENT TRADING

Who — realistically — is now at risk of a fraudulent trading claim following *Bilta*, and what will count and sway the court?

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## FRAUDULENT TRADING

### What, who, where and when?

Lessons from *Bilta (UK) Ltd (in liquidation) and others v Tradition Financial Services Ltd* [2025] UKSC 18  
(and *Bilta (UK) Ltd (in liquidation) and others v Nazir and others (No 2)* [2015] UKSC 23)

... and *THG Plc v Zedra Trust Company (Jersey) Ltd* [2026] UKSC 6 ?

## **What is “fraudulent trading”?**

### **Section 213 Insolvency Act 1986 (“IA 1986”):**

***“(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.***

***(2) The court, on the application of the liquidator may declare that any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned are to be liable to make such contributions (if any) to the company's assets as the court thinks proper.”***

## **What is “fraudulent trading”?**

### **Section 246ZA IA 1986:**

***“(1) If while a company is in administration it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.***

***(2) The court, on the application of the administrator may declare that any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned are to be liable to make such contributions (if any) to the company's assets as the court thinks proper.”***

## What is “fraudulent trading”?

### Section 213 IA 1986:

*“(1) If in the course of the winding up of a company it appears that **any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose**, the following has effect.*

*(2) The court, on the application of the liquidator may declare that any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned are to be liable to make such contributions (if any) to the company's assets as the court thinks proper.”*

## What:

s.213(1) = “**the gateway**”:

*“any business of the company ... carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose”*

Per Snowden J (*Bilta (UK) Ltd v Natwest* [2020] EWHC 546 (Ch) @ [176]):

*“it is necessary to show that there was either subjective intent to defraud, or a reckless indifference as to whether or not the creditors were defrauded.*

*Dishonesty is an essential ingredient of liability.”*

## What:

One or more transactions required?

*Bilta* [2025] at [25]:

*“the person to incur liability must be a party to the carrying on by the company of a fraudulent business and not merely involved in a one-off transaction, unless the fraud is sufficient evidence on its own of the carrying on of a fraudulent business: In re Murray-Watson Ltd (unreported) 6 April 1977, Oliver J; Morphitis v Bernasconi [2003] Ch 552, Chadwick LJ para 46.”*

46 For my part, I would accept that a business may be found to have been carried on with intent to defraud creditors notwithstanding that only one creditor is shown to have been defrauded, and by a single transaction. The *Cooper Chemicals* case is an example of such a case. But, if (which I doubt) Templeman J intended to suggest that, whenever a fraud on a creditor is perpetrated in the course of carrying on business, it must necessarily follow that the business is being carried on with intent to defraud creditors, I think he went too far. It is important to keep in mind that the precondition for the exercise of the court's powers under section 332(1) of the 1948 Act—as under section 213 of the 1986 Act—is that it should appear to the court “that any business of the company has been carried on with intent to defraud creditors of the company”. Parliament did not provide that the powers under those sections might be exercisable whenever it appeared to the court “that any creditor of the company has been defrauded in the course of carrying on the business of the company”. And, to my mind, there are good reasons why it did not enact the sections in those terms.

## What?

- (i) “...a business may be found to have been carried on with intent to defraud creditors notwithstanding that only one creditor is shown to have been defrauded, and by a single transaction. The *Cooper Chemicals* case is an example of such a case.”
- (ii) “But, if (which I doubt) Templeman J intended to suggest that, whenever a fraud on a creditor is perpetrated in the course of carrying on business, it must necessarily follow that the business is being carried on with intent to defraud creditors, I think he went too far....”

## What?

(iii) ... “It is important to keep in mind that the precondition for the exercise of the court's powers under section 332(1) of the 1948 Act—as under section 213 of the 1986 Act—is that it should appear to the court *“that any business of the company has been carried on with intent to defraud creditors of the company”*. Parliament did not provide that the powers under those sections might be exercisable whenever it appeared to the court *“that any creditor of the company has been defrauded in the course of carrying on the business of the company”*.”

## What?

*The Cooper Chemicals case... Re Gerald Cooper Chemicals Ltd* [1978] Ch 262:

Citing Oliver J in *Re Murray-Watson Ltd* - the second-hand car salesman that tells lies about the vehicles to its customers is not carrying on the business for a fraudulent purpose (albeit he is doing so in a fraudulent manner).

However, Mr Cooper (for the Cooper companies) sought from Harrisons an order for indigo on advance payment terms. When they accepted such payment knowing there was no reasonable prospect of supplying the indigo and no intention of returning the money, the transaction constituted the carrying on of the business of the Cooper companies with intend to defraud that creditor.

## What?

Endorsed in *Bilta* [2025] at [47]:

“In *Morphitis v Bernasconi* [2003] Ch 552 , ... the Court of Appeal addressed the question of what amounts to “*the carrying on of a business with intent to defraud*” (ie the subject matter of section 213(1) ) rather than a question under section 213(2) about who would be a “party” to the carrying on of that business). ... Chadwick LJ delivered the leading judgment and at para 46 referred to the *Gerald Cooper Chemicals* case, accepting that a business may have been carried on with intent to defraud creditors notwithstanding that only one creditor is shown to have been defrauded and by a single transaction. He expressed the view that if (which he doubted) Templeman J had intended to suggest in that case that whenever a fraud on a creditor is perpetrated in the course of carrying on business, it must necessarily follow that the business is being carried on with intent to defraud creditors, he had gone too far. **The statutory precondition of liability in section 213(1) is that the business of the company is being carried on with intent to defraud creditors or for any fraudulent purpose.**”

## **Who** can be liable for “*fraudulent trading*”?

### **Section 213 Insolvency Act 1986 (“IA 1986”):**

**“(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.**

**(2) The court, on the application of the liquidator may declare that any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned are to be liable to make such contributions (if any) to the company's assets as the court thinks proper.”**

# Who?

S.213(2) – Persons “*knowingly parties to the carrying on of the business in the manner aforementioned*” (i.e. by the relevant company, with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose)

- “Insiders”.
- But requires **active participation** - does not include a failure to advise: *In re Maidstone Buildings Provisions Ltd* [1971] 1 WLR 1085 (endorsed: *Bilta* [2025] at [25])
- Outsiders?

# Who?

*Bilta* [2025] at [26]:

*“The natural meaning of the statutory words – “any persons who were knowingly parties to the carrying on of the business” of the company for any fraudulent purpose – is wide enough to cover not only such “insiders” but also persons who were dealing with the company if they knowingly were parties to the fraudulent business activities in which the company was engaged. Such persons could include those who transacted with the company in the knowledge that by those transactions the company was carrying on its business for a fraudulent purpose.”*

## Who?

*Bilta* [2025] at [58]:

*“...we are satisfied that the correct interpretation of section 213(2) of IA 1986 is that third parties/outsideers who participate in, facilitate or assist fraudulent transactions by a company when they know that the company's business is being carried on for any fraudulent purpose are within the ambit of that section.”*

How far might this extend?

- **insiders of outsiders?**

- > *Bilta (UK) Ltd and others v Nazir and others* [2015] UKSC 23 (endorsed in *Bilta* [2025] at [52] – [54])

- **Lenders?**

- > *Bilta* [2025] at [44]:

[Per Templeman J] ““a lender who presses for payment is not party to a fraud merely because he knows that no money will be available to pay him if the debtor remains honest. The honest debtor is free to be made bankrupt. But in my judgment a creditor is party to the carrying on of a business with intent to defraud creditors if he accepts money which he knows full well has in fact been procured by carrying on the business with intent to defraud creditors for the very purpose of making the payment.”

*There may be an argument that this formulation is too broad as mere awareness of the source of the funds may not amount to facilitating, assisting or participating in the fraudulent activity; but it is not necessary to decide that matter on this appeal.”*

- **Level of knowledge required to be ‘knowingly party’?**

“*blind-eye knowledge*” will (it seems) suffice

> *Bank of India v Morris* [2005] EWCA Civ 693 at [14], [84] –[85], [129] – [131].

Not in dispute, citing from Lord Scott in *Manifest Shipping Company Limited v Uni-Polaris Company Limited* [2023] 1 AC 469 @ [116]:

“*blind-eye knowledge requires ... a suspicion that the relevant facts do exist and a deliberate decision to avoid confirming that they exists. ... in order for there to be blind-eye knowledge, the suspicion must be firmly grounded and targeted on specific facts. The deliberate decision must be a decision to avoid obtaining confirmation of facts in whose existence the individual has good reason to believe. ”*

> *Bilta* [2025] at [11] – [15].

## Where?

- **Section 213 IA 1986 has extra-territorial effect: *Bilta (UK) Ltd and others v Nazir and others* [2015] UKSC 23 at [10], [53], [107] – [110], [213-214].**
- Jetivia SA was domiciled in Switzerland and its chief executive, Mr Brunschweiler, was domiciled in France. Application to strike out dismissed.
- Applies to any person who has been knowingly party to the carrying on of the business with intent to defraud wherever they may be located – not just to “any persons” in the UK.

## When?

Cause of action under s.213 arises from date of liquidation (contrast with corresponding criminal offence under s.993 Companies Act 2006).

*“(1) If in the course of the winding up of a company it appears that any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose, the following has effect.*

*(2) The court, on the application of the liquidator may declare that any persons who were knowingly parties to the carrying on of the business in the manner above-mentioned are to be liable to make such contributions (if any) to the company's assets as the court thinks proper.”*

No prescribed look back period or ‘relevant time’ restriction.

## When does limitation expire?

- *Bilta* [2025] at [17]:

*“Because the application under section 213 can be made only by a liquidator in the course of the winding up of the company, the six-year limitation period under section 9 of the Limitation Act 1980 runs from the date of the winding up order or when the company goes into voluntary liquidation.”*

- Section 9(1) Limitation Act 1980:

“An action to recover **any sum recoverable by virtue of any enactment** shall not be brought after the expiration of six years from the date on which the cause of action accrued.”

## *THG Plc v Zedra Trust Company (Jersey) Ltd* [2026] UKSC 6 ?

- 25/2/2026: Lords Hodge and Richards, with whom Lords Lloyd-Jones and Briggs agreed – save where specific dissent indicated (Lord Burrows dissenting).
- UKSC Judgment in *Bilta* given by Lords Hodge and Briggs, with whom Lords Richards, Burrows and Hamblen agreed.
- **No limitation period applies to ss994-996 CA 2006. Reasoning:**
  - > S.8 LA 1980 - action upon a specialty shall not be brought 12 years+ from date cause of action accrues
  - > Mere existence of statutory cause of action not sufficient to bring s.8 of the LA 1980 into play. *“It is the essence of an action upon a specialty that it is an action to enforce an obligation created by a deed or statute.”* [115] Whereas ss.994-996 CA 2006 confer on the court a jurisdiction to grant relief in respect of a state of affairs and do not contain or enforce obligations.
  - > S.9 LA 1980 applies to claims under statute for ascertained/unascertained sums and to monetary claims that are subject to the exercise of the court’s discretion.

## *THG Plc v Zedra Trust Company (Jersey) Ltd [2026] UKSC 6 ?*

- [117]-[118]:

*“We are also satisfied that, insofar as as the parties in Priory Garage [re ss.238-241 IA 86] and the courts in Rahman [a claim to reopen a credit bargain under Consumer Credit Act 1974] and perhaps in Hill v Spread Trustee [section 423] relied on the wider Collin view, they were wrong to do so. However, we have not been invited to overrule those cases nor have we heard argument as to whether they can be justified on another basis.*

*...[Lord Hodge and Lord Richards] take the view that ... the Court of Appeal in Collin was wrong to apply section 8 of the 1980 Act to the claim for enfranchisement. Lord Lloyd-Jones and Lord Briggs take the view that the 12-year limitation period in section 8 applies to non-monetary obligations created by statute. ... it is not necessary to decide this point as it has no effect on the outcome of this appeal.”*

## *THG Plc v Zedra Trust Company (Jersey) Ltd* [2026] UKSC 6 ?

- The ‘look and see’ approach is no longer good law: [142]
- [155] *“We consider that claims under statutory provision which confer a wide discretion as to remedy are not claims to which section 9 applies. For these reasons also, we consider that Priory Garage, Hill v Spread Trustee and Rahman were wrongly decided as regards section 9 of the 1980 Act.”*
- However, no dissent from *Re Farmizer (Products) Ltd* [1997] 1 BCLC 589, which held s9. applied to wrongful trading claim under s214 IA 1986.
- And no mention of concession in *Bilta* [2025] at [17] (that 6-year period of limitation applies to s.213 pursuant to section 9 LA 1980) despite similar composition of the court.

## *THG Plc v Zedra Trust Company (Jersey) Ltd* [2026] UKSC 6 ?

- Thus, even though court must exercise its jurisdiction under s.213(2) to *declare* the person liable to make contributions to the company's assets, it seems likely is nevertheless a '*sum recoverable by virtue of an enactment*' to which s.9 LA 1980 applies.
- However, given that it seems likely the courts will consider no limitation period applies to TUV claims (under ss.238/423) – depending on the facts, potential for extended time to claim relief in respect of relevant fraudulent conduct.

## Key takeaways:

- **S.213(1)/246ZA IA 1986 gateway:** “*any business of the company has been carried on with intent to defraud creditors of the company or creditors of any other person, or for any fraudulent purpose*”
- **Might** encompass a one-off transaction – if the fraud is sufficient evidence on its own of the carrying on of a fraudulent business
- **Section 213(2) IA 1986** – ‘knowingly party to’ has a much broader reach than other provisions in Part IV, Chapter X, IA 1986: *insiders, outsiders, overseas*
- **6-year limitation period** under s.9 LA 1980
- **If out of time, consider Zedra effect:** any other IA 1986 claims

Thank you for listening!



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