Journal of Business

Volume 08, Issue 03, 2023 : 01-11
Article Received: 20-10-2023
Accepted: 08-11-2023
Available Online: 15-11-2023
ISSN 2380-4041(Print), ISSN 2380-405X(Online)
DOI: https://doi.org/10.18533/2ndwmz93

Redefining Balance: A Fresh Take on Unfair Prejudice Remedy in UK Corporate Law

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ABSTRACT

Ownership structures in companies can be broadly categorized into majority shareholders, who wield substantial control due to significant share ownership, and minority shareholders, facing challenges influencing corporate operations due to their limited share ownership. Regulated by s994 of the UK Companies Act (2006), this division of influence underlines an existing issue. This article critically evaluates the effectiveness and limitations of the unfair prejudice remedy within the UK's legal framework. A central concern lies in the disparities in shareholder influence, particularly for minority shareholders with less than 50% of voting rights, who grapple with hurdles when attempting to shape important corporate decisions. As the remedy is reevaluated and enhanced, the objective is to fortify the protection of minority shareholder rights, mitigate financial burdens, and refine court discretion. The research contributes to the evolution of corporate governance in the UK by delving into pivotal cases that highlight the complex factors considered by courts and the extension of entitlements beyond a company's articles of association. Strategic solutions proposed in the article, encompassing precise claim estimates and active case management, draw from both established legal practices and innovative ideas. Striking a delicate balance between minority shareholder rights and seamless corporate operations is imperative. The future of the unfair prejudice remedy depends on effectively addressing acknowledged challenges and refining the litigation process. Through these enhancements, the remedy can continue to protect minority shareholder rights efficiently and fairly.

Keywords: Minority Shareholder Protection, UK law, Unfair Prejudice, Legal Remedies, Majority-Minority Shareholder Disputes, Corporate Conflict Resolution.
JEL Code: K22, G34, L14, D74.

1.0 Introduction

1.1 Background and study context

In the modern corporate landscape, companies are typically owned by numerous shareholders, and these shareholders can be broadly categorized into two main groups: majority and minority shareholders. Majority shareholders possess a significant portion of the company's shares and wield substantial control and decision-making power. In contrast, minority shareholders own a relatively smaller portion of shares and often find themselves with limited influence over the company's operations. This division of influence is legally governed by s994 of the UK Companies Act (2006). The unfair prejudice remedy, which was initially introduced under the Companies Act (1980) and further refined in the Companies Act (2006), stands out as a significant advancement in protecting the rights of minority shareholders (LI, 2022). Despite the criticisms it has faced, this remedy reinforces the fiduciary duty of company directors and grants courts extensive discretion to monitor

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This paper is influenced by the extensive collaboration with Dr. Daniel Vazquez Albert at the University of Barcelona, to whom I extend my gratitude for his invaluable assistance.

conduct, all while allowing for civil proceedings (Goo, 2012). The central idea of this research is to scrutinize the unfair prejudice remedy within the regulatory and judicial framework of the UK, aiming to assess its effectiveness and pinpoint its shortcomings.

1.2 Significance and uniqueness of research

The disparity in shareholder influence, primarily stemming from varying voting rights allocated to different shareholder groups, highlights the paramount significance of this study. What makes this study significant is the fact that minority shareholders, who hold less than 50% of the voting rights, often encounter limitations in their ability to shape crucial company decisions. In contrast, majority shareholders, holding more than 50% of the voting rights, enjoy substantial control over the selection of directors and the approval of measures, thereby setting the stage for potential conflicts (Whitaker et al., 2022; Goo, 2012). These conflicts can manifest in diverse ways, ranging from exclusion from decision-making processes to issues related to share valuation, dividend distribution, and corporate restructuring. Furthermore, UK legal precedents have relied on an objective test to define unfair prejudice, focusing on the perception of prejudicial impact from a reasonable person's standpoint (Newington-Bridges, 2016). The core objective of this article is to explore how the unfair prejudice remedy can be redefined and improved to more effectively safeguard the rights of minority shareholders and address issues such as cost burdens and court discretion. In an ever-evolving corporate landscape, the pursuit of a harmonious coexistence between majority and minority shareholders remains a fundamental goal. This article embarks on a journey to reevaluate the effectiveness of the unfair prejudice remedy within the framework of UK Corporate Law and offers a fresh perspective on protecting the rights of minority shareholders.

1.3 Research methodology

This research employs a mixed-methods approach to investigate the effectiveness of the "Unfair Prejudice Remedy" as regulated by s994 of the Companies Act (2006) in safeguarding the rights of minority shareholders. It involves a comprehensive analysis of legal precedents within the UK and assesses the criteria used to determine cases of unfair prejudice. The overarching aim of this research is to critically evaluate the shortcomings of this remedy and determine the extent to which UK judicial precedents prioritize the interests of minority shareholders in comparison to majority shareholders.

1.4 Main findings and contribution

The research reveals that the unfair prejudice remedy, while crucial for safeguarding minority shareholder rights, exhibits certain weaknesses, including issues related to cost burdens and an excess of court discretion. The remedy's evolution, influenced by landmark cases such as Ebrahimi v Westbourne Galleries Ltd, has extended entitlements beyond a company's articles of association. Proposed strategies, including active case management, realistic claims estimates, and the incorporation of stakeholders' oppression remedy, offer potential solutions to address these drawbacks and enhance the remedy's application, ultimately contributing to a fair and equitable corporate environment in the UK.

1.5 Structure of the paper

This introduction establishes the foundation for a comprehensive exploration of the topic. The subsequent sections of this paper will include:

- Legal foundation for minority shareholder rights in UK law
- Historical development of the unfair prejudice remedy in UK law
- What are the unfair prejudice remedy's objectives and principles in UK law?
- Impact of influential UK cases in protecting minority shareholder rights
- The virtues of the unfair prejudice remedy under the companies act (2006)
- The limitations of the unfair prejudice remedy under the companies act (2006)
- Practical approach for the future of the unfair prejudice remedy in UK law
- Conclusion and Policy Implications

This research provides an in-depth analysis of minority-majority shareholder conflicts and the role of the "Unfair Prejudice Remedy" in safeguarding the rights of minority shareholders in the UK.

2.0 Legal foundation for minority shareholder rights in UK law

In the United Kingdom, company law provides a statutory framework to regulate the rights and responsibilities of shareholders in both private and public companies. The Companies Act (2006) is the primary legislation governing company law in the UK.

Part 30 of the Companies Act (2006), which focuses on the "Protection of Members Against Unfair Prejudice," is a crucial provision aimed at safeguarding the interests of shareholders and promoting fair business practices within companies. It recognizes the potential for certain members or groups of members to face unfair treatment or prejudice in the management and decision-making processes of a company. By allowing

members to petition the court if they believe that the company's affairs are being conducted unfairly or that certain acts or omissions are prejudicing their interests, the Act ensures that shareholders have a recourse to address such issues. As Fan (2021) suggests, the concept of unfair prejudice being purposely vague allows the court to interpret it fairly. S994 and 996 of the Companies Act (2006) are designed not to explain "unfair prejudice" but to acknowledge shareholders' right to take legal action based on it.

The Act's main provision, s994 under Part 30, enables members to apply to the court for appropriate remedies if they encounter unfair prejudice. The court's powers under this part are wide-ranging and include regulating the company's future conduct, requiring specific actions or omissions, authorizing civil proceedings, and even facilitating the purchase of shares from affected member (Companies Act (2006), s. 996). S30 of the Companies Act (2006) has the intention of establishing a system that safeguards minority shareholders from being taken advantage of by those who have more control or power within the company, like dominant shareholders or directors. This is done with the aim of preventing unfair behaviours and maintaining the principles of corporate governance. Nonetheless, a major issue connected to this solution is the intricacy and expense involved in petitioning the court for help. This complexity and cost could discourage some shareholders from pursuing assistance. In my view, a delicate balance needs to be struck to prevent trivial or baseless claims while also reducing the strain on the court system.

3.0 Historical development of the unfair prejudice remedy in UK law

The unfair prejudice remedy, enshrined in s994 of the Companies Act (2006), has a rich historical background dating back to the mid-19th century. Throughout its development, it has undergone significant transformations owing to landmark cases and legislative amendments. Additionally, the unfair prejudice remedy has evolved from limited recourse for minority shareholders to a statutory regime granting courts authority to address oppressive behaviour. Nonetheless, concerns about opportunistic claims and inconsistent outcomes due to judicial discretion persist, whereas the litigation process can be costly and time-consuming, limiting access to justice for smaller shareholders. Policymakers should provide clearer guidelines to enhance the remedy's fairness and efficiency (LI, 2022).

According to LI (2022), the unfair prejudice remedy, as known today, has its origins in the "oppression" remedy established under the Companies Act (1948), specifically in s210. Recent legal cases show that courts interpreting s994 of the Companies Act (2006) in a flexible way help protect minority shareholders' confidence. However, this approach can lead to longer and less efficient proceedings due to extensive fact-finding, involving companies and stakeholders. Also, the broad interpretation of this allows shareholders to bypass traditional hurdles in derivative actions, which might lead to misuse and conflict with the intended purpose of the unfair prejudice remedy. For instance, the cases of Scottish Co-operative Wholesale Society Ltd v Meyer (1959) and the amendments from s210 of the Companies Act (1948) to s75 of the Companies Act (1980), and s459 of the Companies Act (1985) afterward, illustrate these dynamics (LI, 2022).

While “unfair prejudice" is the commonly used term in dealing with UK authorities and discussions, it is important to acknowledge that other jurisdictions, like Singapore, may still retain the terminology "oppression" either statutorily in Companies Act 1967 or as a matter of judicial usage in relevant authorities. Therefore, to maintain clarity and consistency throughout this discourse, both terms, “unfair prejudice" and "oppression," may be used interchangeably (Tan, 2014).

The concept of unfair prejudice originated in English common law, emphasizing the fiduciary duties that majority shareholders owed to the minority. However, according to Bawah (2019), this doctrine faced limitations, as illustrated by the influential case of Foss v Harbottle (1843), which established the "majority rule" principle, limiting individual actions by shareholders against company misconduct. Bawah (2019) explains one of the justifications for the “majority rule” saying that “If the majority of directors or shareholders, through ordinary resolution have, or can take certain measures, these measures taken or proposed should be respected.” p.156. Consequently, minority shareholders found themselves with limited legal recourse when facing oppressive actions by the majority.

Contrasting this historical limitation, the Companies Act (1980) marked a significant turning point by introducing the unfair prejudice remedy under s75 (now s994 of the Companies Act (2006) (LI, 2022). This legislative amendment represented a notable advancement in safeguarding minority shareholder rights. The remedy empowered aggrieved minority shareholders to seek redress for oppressive or unfairly prejudicial conduct by the majority.

On another point, a just and equitable winding up petition serves as a discretionary measure to initiate the winding up process of a company, as outlined in s122–125 of the Insolvency Act 1986. With shareholders empowered to request the winding up of such entities. The Court's authority to effectuate such winding up petitions on just and equitable grounds involves a detailed assessment of each case's merits, guided by the principles of equity. The foundational statute for such petitions is Insolvency Act 1986, s122(1)(g), affirming that “(1) A company may be wound up by the court if – (g) the court is of the opinion that it is just and equitable that the company should be wound up.” Various entities, including the company itself, directors, creditors, shareholders, and those liable to contribute, can present such petitions under Insolvency Act 1986, s124.

According to the dominant recourse for minority shareholders seeking redress, particularly in quasi-partnerships, is the unfair prejudice provision (s994 of the Companies Act (2006). While s994 doesn't explicitly allow winding-up, the court's broad power under s996 makes it potentially available. Yet, traditionally, seeking winding-up through s122(1)(g) was common, discouraged by the CPR Practice Direction, Part 49B(1) (replacing Chancery 1/90 (Practice Direction) (1990) 1 All ER 1056) to avoid it unless genuinely preferred as a last resort.

In a significant legal development that the unfair prejudice remedy has attained, the landmark case of Ebrahimi v Westbourne Galleries Ltd (1973) clarified that this ground extended to cases where the company's affairs unfairly prejudiced minority shareholders. Furthermore, landmark cases significantly shaped the unfair prejudice remedy. Outstandingly, O'Neill v Phillips (1999) clarified unfair prejudice claims, emphasizing that "legitimate expectations" must be based on actual agreements, not mere beliefs. The House of Lords rejected a standalone doctrine of "legitimate expectations," affirming that fairness rests on established equitable principles and breaches of obligations. The initial Court of Appeal decision was overturned in favour of Mr. Phillips by the House of Lords. Additionally, in Re Saul D Harrison & Sons Plc (1995), it was decided that the unfair prejudice remedy (s.459 Companies Act (1985), now s.994 Companies Act (2006) protects legitimate expectations. It underscores that directors' fiduciary duties and articles of association must guide management decisions. The court rejected unfair prejudice claims as the petitioner's expectations were within established obligations.

In the present moment, the Companies Act (2006) is the governing law, codifying the unfair prejudice remedy in s994, offering a comprehensive and flexible framework for its application. Notably, the act remarkably grants courts the authority to assess any act or omission potentially harming minority shareholders' interests. Some academics noted that “the courts have taken a flexible approach to the interpretation of s994, which has had a positive impact on protecting minority shareholders’ confidence in their investments.” (LI, 2022, p. 101)

While the unfair prejudice remedy has undoubtedly evolved to protect minority shareholders, it is not without its critics. Some argue that the remedy's language and interpretation may lead to subjective judgments, potentially opening doors to opportunistic claims. For example, s994 lacks an advanced framework to manage corporate remedy litigation effectively. Unlike derivative claims, where the court can use strike-out jurisdiction during the leave stage to handle malicious cases, the process is unclear for s994 petitions (LI, 2022). Furthermore, the remedy's reliance on court decisions could result in inconsistent outcomes, creating uncertainty for companies and shareholders alike. Bawah (2019) states that “a further criticism of s. 994, relate to the issue of cost and delay” p. 160.

The development of the unfair prejudice remedy in UK law exemplifies the nation's commitment to safeguard minority shareholder rights. From its common law origins to statutory incorporation and landmark cases, the remedy has evolved into an essential tool for rectifying unfair treatment. However, a critical analysis reveals the potential for abuse and uncertainty, calling for a careful balance in its application to ensure fairness and effectiveness in the UK corporate landscape.

4.0 What are the unfair prejudice remedy's objectives and principles in UK law?

At its core, the unfair prejudice remedy seeks to protect minority shareholders from unfair treatment or oppression by majority shareholders or directors. In addition, by ensuring a fair and equitable treatment of all shareholders, it strikes a balance between the interests of both majority and minority shareholders and promotes sound corporate governance practices.

Grounded in fundamental principles of fairness, protection, and integrity, the remedy upholds the principle of equity, treating all shareholders fairly regardless of their shareholdings.

The central focus of the remedy revolves around the notion of unfairness. However, a notable ambiguity remains regarding the degree of unfairness in prejudicial conduct. Hoffmann J, as seen in Re a Company (No. 008699 of 1985), underscores that unfairness, as a comprehensive concept, grants the court broad jurisdiction, cautioning against limiting it with interpretations beyond its common understanding.

The remedy enforces the fiduciary duty of company directors, ensuring that actions prioritize both the company's and shareholders' interests; unfair prejudice petitions provide courts with broad discretion, overseeing conduct and allowing for civil proceedings (Goo, 2012). Understanding the nuanced strategies for shareholder disputes requires a comparison between the exit right, the most common remedy, and the winding-up remedy. The former allows for shareholder relief and may lead to majority buy-outs at fair prices, facilitating minority exit (Stewart-Ornstein, 2020); the latter permits petitions to dissolve the company, distributing assets among shareholders, a drastic option that may result in lower shareholder returns and business disruption. This distinction adds another layer of complexity to the decision-making process (Nicholls, 2022). As Sigler (2021) highlights, alternatives such as selling shares should be considered only when reasonable and realistic, not purely theoretical. The exit right serves as the sole basis for judicially-ordered withdrawal in the UK, frequently utilized and granted. On the contrary, in other jurisdictions, Germany's GmbH (Austritt aus wichtigem Grund), for example, adopts a quasi-insurance approach, safeguarding members against both misconduct and significant

economic interest changes. Comparatively, the UK focuses more on corrective withdrawal, protecting aggrieved members from unlawful or contrary conduct and providing monetary claims for their shares (Koh, 2022).

The unfair prejudice remedy is guided by the principle that relief may deal with past, current, and expected future conduct (Grace v Biagioli, 2005). Interestingly, Whitaker et al. (2022) point out that recent court decisions frequently issue ongoing regulation orders. This occurs even when purchase orders for petitioner's shares are a common practice and determining market valuation is a key issue. Such flexibility in the court's decisions, along with their discretion in handling different situations, make unfair prejudice petitions crucial for solving corporate conflicts. This multifaceted approach enables various remedies, adapting to the ever-changing landscape of corporate legal matters.

Furthermore, unfair prejudice in UK litigation covers various actions considered unjust, such as director mismanagement, excessive self-enrichment, and improper dividend distribution (Whitaker et al., 2022; Goo, 2012). It may also include unjust exclusion from management, dilution of minority interests, or acts contrary to good faith. These principles do not provide a definitive proposition but offer illustrative examples of unfair conduct in relevant cases (Goo, 2012). Miller (1999) stresses that assessing commercial behavior involves examining agreements and reasonable expectations between parties, which serve as benchmarks. These principles guide, but don't confine, the understanding of unfair conduct, allowing for adaptive interpretation in individual cases.

Bawah (2019) points out that s994(1) of the UK Companies Act (2006), granting authority to individuals aware of contentious company affairs to seek relief from prejudicial conduct (Bermuda Cablevision Ltd v Colica Trust Co Ltd, 1997). This provision extends to nominee shareholders as bare trustees, recognizing their duty to safeguard beneficial owners' interests (Atlasview Ltd v Brightview Ltd, 2004). Unlike the equitable "clean hands" principle, unfair prejudice cases omit this requirement, allowing petitioner misconduct consideration without outright dismissal (Re Bird Precision Bellows Ltd, 1985). Such misconduct significantly affects court evaluations and the nature of the granted remedy. No prescribed time limit exists for unfair prejudice petitions; discretion rests with the court, as seen in cases like Re Bird Precision Bellows Ltd (1985). However, the case of Re Grandactual Ltd (2005), firmly established that relief wouldn't be granted for events occurring nine years prior in which the petitioner had participated.

Restoration and compensation are integral aspects of the remedy's principles. S996(1) of the Companies Act (2006) further allows a wide array of remedies, particularly essential for minority shareholders oppressed by the majority. Among the options listed in s996(2), the order for purchasing aggrieved shareholders' shares assumes paramount importance, especially in safeguarding minority interests in private, quasi-partnership, and closed companies. This approach is highlighted in cases such as Bilkus v King (2003), where courts have recognized the value of share purchase orders in resolving internal disputes, enabling a clean break and achieving a fair result in scenarios of unfair prejudice. Compared to winding up and derivative actions, the unfair prejudice mechanism provides flexible relief measures, with the share purchase order holding a central role. (Fan, 2020) Consequently, the remedy aims to restore the company to a position where unfair prejudice did not occur by various reliefs, potentially reinstating minority shareholders' rights or compensating them for any losses incurred, thus redressing the harm caused by unfair treatment.

Arguably, the unfair prejudice remedy is structured for universal shareholder access, yet its application should be prudent and exceptional, functioning as a last resort after other avenues are exhausted. This highlights its responsible role in rectifying grievances and protecting shareholder rights within the framework of UK company law.

5.0 Impact of influential UK cases in protecting minority shareholder rights

The unfair prejudice remedy within the confines of UK law remains pivotal in safeguarding minority shareholders' rights. A series of seminal cases has refined its interpretation, tackling complex conflicts and remedies. In an exhaustive and chronological analysis of the most significant cases, this section uncovers the ramifications of key legal decisions that have furthered the cause of corporate justice and fairness.

5.1 Ebrahimi v Westbourne Galleries Ltd (1973)

In the case of Ebrahimi v Westbourne Galleries Ltd (1973), House of Lords ruled that while companies are legal entities, equitable considerations can apply. They introduced the concept of "quasi-partnership," recognizing personal relationships among shareholders. Mr. Ebrahimi, removed as director, argued for winding up the company. Lord Wilberforce's judgment highlighted that equitable principles can override strict legality. The court emphasized a "just and equitable" clause, allowing intervention based on relationships and expectations. This case highlights the importance of personal dynamics, often in closely-held companies, and the court's power to ensure fairness.

5.2 Re a Company (No. 005287 of 1985)

In the case of Re a Company (No. 005287 of 1985), heard in the Chancery Division with Judge Hoffmann presiding on November 4th and 5th, 1985, the matter concerned allegations of oppression and unfair conduct of

affairs within a private family company. The company's majority shareholder, represented by H., mismanaged the company's affairs, engaging in actions contrary to an agreement and prejudicial to the interests of minority shareholders, who were three daughters of the company's original owner. The petitioners sought relief under s461 of the Companies Act (1985) against H., who subsequently sold his shares to a Gibraltarian company. The court held that s461(1) of the Act enabled relief in cases where the company's affairs were unfairly conducted by a former member, permitting the proceedings against H. to continue. The court deferred the decision on whether the petitioners could demand H. to personally buy their shares. This case establishes the court's authority to provide relief under s461 against a former member for unfair conduct in a company's affairs, without necessitating separate derivative actions. It underscores the court's flexibility in addressing prejudicial behaviour by former members and safeguarding minority shareholders' interests.

5.3 Re Saul D Harrison & Sons plc (1995)

In the case of Re Saul D Harrison & Sons plc (1995), the Court of Appeal addressed an action for unfair prejudice under s.459 Companies Act (1985) (now s.994 Companies Act (2006) involving the concept of "legitimate expectations." The petitioner, a shareholder of Saul D Harrison & Sons plc, alleged unfair prejudice by the directors in continuing an unprofitable business to maintain their salaries, instead of distributing assets. Vinelott J at first instance had denied the petition. The Court of Appeal upheld the judgment and held, with Hoffmann LJ, Neill LJ, and Waite LJ presiding, that while the unfair prejudice action protects legitimate expectations akin to equitable conscience, no such breach occurred in this instance. The directors' fiduciary duties and obligations were upheld, dismissing the petitioner's claim for unfair prejudice based on the absence of legitimate expectations beyond their duties.

5.4 O'Neill v Phillips (1999)

O'Neill v Phillips (1999) concerned an action for unfair prejudice under s.459 Companies Act (1985) (now s.994 Companies Act (2006) in the UK House of Lords. The case addressed the notion of "legitimate expectations" of business members being frustrated. Mr. Phillips owned Pectel Ltd., specializing in asbestos removal, and made Mr. O'Neill a director and 25% shareholder. After discussions about increased shares, the company faced decline. Phillips resumed control, demoted O'Neill, and withdrew his profit share. O'Neill started a competing firm and claimed unfair prejudice. The initial petition was rejected, but the Court of Appeal ruled for O'Neill, citing "legitimate expectations". The House of Lords overturned this decision, led by Lord Hoffmann. The case established that equitable principles of fairness and established agreements determine unfair prejudice, clarifying the "legitimate expectations" concept. Unfulfilled informal expectations did not warrant intervention, and Phillips' actions did not breach established obligations. The court held against O'Neill, emphasizing that genuine promises, not unmet expectations, invoke equitable restraints. House of Lords ruled in favour of Phillips, rejecting O'Neill's claim of unfair prejudice based on unfulfilled "legitimate expectations." Lord Hoffmann's judgment emphasized the need for established agreements to determine fairness and noted the distinction between unmet expectations and genuine promises in invoking equitable restraints.

5.5 Hook v Sumner (2015)

In 2015, Peter Hook, an ex-New Order member, brought a derivative claim against the other band members for exploiting the band’s name and assets through a new company without his approval. The company held the band’s intellectual property rights. The court allowed the claim to proceed, as it had a fair chance of winning and was in the company’s favour. The court also ruled that it would not force Hook to seek relief under s994-996 Companies Act (2006), as he did not want to sell his shares and preferred a derivative action.

5.6 Re Cardiff City Football Club (Holdings) Ltd (2022)

In 2022, the High Court dismissed an unfair prejudice petition by Isaac, a minority shareholder of Cardiff City Football Club’s holding company, against Tan, the majority shareholder, and the company. Isaac claimed that Tan had breached a loan agreement and diluted his shares by issuing new shares to himself. The court found that Tan had acted lawfully, and that Isaac had agreed or waived his objections. The court also ruled that Isaac had not shown any harm to his shareholder interests.

5.7 Miscellaneous cases

Numerous UK case laws have profoundly shaped the guiding principles underlying the examination of the unfair prejudice remedy (Marsden, 2021). Notably, these cases illuminate key aspects of the remedy's application. In Wann v Birkinshaw (2017), the concept of "fair value" is linked to "market value," albeit adjusted to account for unfairly prejudicial conduct. Additionally, Re Hailley Group Ltd (1992) assesses remedies based on the hearing date, allowing consideration of post-petition but pre-hearing conduct. Re Bird Precision Bellows Ltd (1985), specifically chapter 658, underscores that while proving prejudicial conduct is vital, relief is contingent upon a fair and appropriate assessment. Moreover, Gray v Braid Group (Holdings) Ltd (2015) highlights that removal of a company's auditor for improper grounds constitutes unfair prejudice. Furthermore,

Re a Company (No: 07623 of 1986) provides insight into the misuse of the unfair prejudice remedy. It reveals that issuing a petition without first utilizing the available shares-offering mechanism in articles of association or shareholders' agreements could constitute an abuse of process in cases of unfair prejudice.[2]

The analysis of prominent legal cases involving the unfair prejudice remedy reveals a discernible trend in the courts' approach. Over time, courts have broadened the remedy's interpretation, reflecting a recognition of the need to shield minority shareholders from various forms of unfair treatment. However, this expanded scope's practical impact is somewhat limited by the courts' cautiousness in granting relief, as seen in cases like Re Cardiff City Football Club (Holdings) Ltd (2022), where the stringent application of the doctrine creates challenges for petitioners. Hence, while the remedy remains potent in promoting corporate fairness, its efficacy can be hindered by judicial reluctance to intervene. The researcher proposes that balancing minority shareholders' rights with company stability remains a delicate challenge, necessitating clearer guidance to ensure equitable outcomes for all parties involved.

6.0 The virtues of the unfair prejudice remedy under the companies act (2006)

In the ever-evolving landscape of corporate governance, an exploration of s994 of the Companies Act (2006) in comparison to prior safeguards reveals a transformative shift towards a more inclusive and accessible route for addressing the concerns of minority shareholders. Comparing s994 of the Companies Act (2006) to preceding safeguards such as just and equitable winding up and s210 of the Companies Act (1948), the former offers a more expansive and accessible avenue for providing relief to minority shareholders. Remedies for unfair prejudice address deficiencies present in the former s210, removing prerequisites for just and equitable winding up and granting courts an increased degree of discretion (Tan, 2014).

Building on this, scholarly works by both Tan (2014) and Fan (2020) concur that legal precedents extend the entitlements of shareholders beyond the confines of articles of association, encompassing the integration of reasonable expectations. Within the framework of the Companies Act (2006), shareholders are granted the authority to seek relief concerning prospective prejudicial actions or omissions (Fan, 2020). This holistic methodology effectively confronts instances of improper conduct by corporate controllers, spanning directors and influential shareholders, even in the context of corporate groups (Nwafor, 2011).

Fan (2020) highlights the extensive applicability of unfair prejudice provisions within the Companies Act (2006), showcasing the potential for more comprehensive and effective protection of minority shareholders' rights and interests. Given these insights, it could be asserted that it becomes evident that the legislative evolution under the Companies Act (2006) signifies a significant advancement in enhancing minority shareholder safeguards.

7.0 The limitations of the unfair prejudice remedy under the companies act (2006)

The examination of the future trajectory of the unfair prejudice remedy, along with the recommendations, necessitates an initial appraisal of the inherent deficiencies within the remedy itself. S994(1) of the UK Companies Act (2006) has drawn critical attention due to its intricate implications in addressing prejudice within the intricate environment of corporate affairs, particularly within the realm of conflicts emerging between minority and majority shareholders in privately-held companies.

A remarkable criticism directed at s994 revolves around the multifaceted concerns encompassing costs and delays inherent in its application (Bawah, 2019). LI (2022) cited:

As Hoffmann J noted in Re Unisoft Group Ltd (No 3), unfair prejudice petitions are ‘notorious’, particularly for the courts and potential parties to such proceedings, because of the length and unpredictability of the management of these cases, which often incur appalling judicial costs. (p.88)

Bawah (2019) and Fan (2020) emphasize that unfair prejudice litigation involves a detailed examination of a company's history to create a comprehensive account of alleged bias. These deep probes into company history, while essential for a fair judgment, inevitably lead to extended court time and expense. This account is then challenged with opposing evidence and thorough cross-examination by legal representatives. In these cases, the court not only assesses the fairness of actions affecting members' interests but also considers each party's circumstances when issuing relief orders. However, lengthy hearings could disrupt the company's operations, potentially causing indirect harm like profit and stock price fluctuations. For instance, the unreported case of Re Freudiana Music Co Ltd (1993) consumed a staggering 165 days of court time, followed by protracted debates over costs post-judgment (Bawah, 2019). Similarly, Re Elgindata Ltd (No 2) (1992) incurred costs of £320,000 for shares valued at a mere £24,600 (Fan, 2020). Such protracted and financially demanding proceedings can disrupt the regular functioning of both minority and majority shareholders, while adversely impacting the company's reputation. The potential to disrupt the company's regular functioning becomes a significant concern.

2 For additional cases related to the unfair prejudice remedy in UK law, refer to this comprehensive list of precedential cases in UK law compiled by Marsden, A. (2021). "Shareholder Protection from Unfair Prejudice: Case and Statute Citator 2021." The list encompasses over 100 cases. Retrieved from https://www.linkedin.com/pulse/shareholder-protection-from-unfair-prejudice-case-statute-marsden/

Striving to balance the protection of minority shareholders' rights and the pursuit of efficient dispute resolution represents a proactive measure to enhance the effectiveness of the remedy process.

One noteworthy aspect pertains to the absence of a limitation period, thereby enabling petitions without an expiration constraint (The Shareholder Remedies Report, 1997). This temporal openness can potentially result in delayed claims, complicating the assessment of evidence and the accurate portrayal of the alleged prejudice. It further raises questions of fairness and timeliness in justice delivery, where older issues might resurface, casting shadows over the present operations and relations within the company.

Additionally, the court's discretion to grant relief extends even to parties without impeccably "clean hands" Bawah (2019) & Fan (2021), potentially fostering equitable but morally contentious resolutions. This broad discretion, while facilitating equitable resolutions, might lead to moral dilemmas and legal ambiguities, affecting the perception of justice. It may serve to fuel ambiguity and moral dilemmas within legal proceedings.

Within the realm of unfair prejudice cases, the court shoulders the responsibility not only of gauging the fairness of the disputed conduct concerning members' interests but also of accommodating the distinct demands and preferences of both conflicting parties when rendering relief. This extended process of adjudication has the potential to disrupt the company's regular operations over the prolonged litigation period, possibly causing harm and financial losses (Worthington, 2016). This delicate balancing act necessitates a nuanced understanding of the specific circumstances of each case, adding to the complexity of the court's task.

The statutory provisions conferring wide-ranging discretionary powers onto the court to administer fairness and equity introduces a degree of latitude (Newington-Bridges, 2016). Nonetheless, this unbounded discretion presents a precarious scenario, as excessive intrusion into a company's internal affairs could impede its normal functioning. Fan (2020) suitably cautioned that the conferred discretion of the court possesses the inherent potential for exploitation by minority shareholders, potentially resulting in an undue and magnified shield of safeguarding that may lack harmony with the comprehensive welfare of the corporation. This latitude, while intended to foster fairness, can sometimes lead to undue and unbalanced resolutions if not handled judiciously. Consequently, it becomes the responsibility of the court to diligently employ this discretion, considering the unique circumstances of individual cases. In doing so, the court can discern the fairest and most fitting approach to resolve the conflicts arising between minority and majority shareholders.

This detailed exploration of the limitations associated with the unfair prejudice remedy highlights the challenges inherent in its application and provides avenues for further contemplation and reform, keeping in mind the delicate balance that must be struck between different parties' interests, practical realities, and the broader good of corporate governance.

8.0 Practical approach for the future of the unfair prejudice remedy in UK law

The concerns voiced by academics, practitioners, and the Law Commission echo my belief in the paramount importance of uncovering ideal solutions to navigate shareholder disputes, without overburdening the judicial system or detrimentally affecting corporate functionality.

In my view, practical remedies can be found by embracing strategies that proactively address these challenges. Through the adoption of active case management techniques, courts could be empowered to efficiently manage proceedings, guided by a commitment to determining issues and prioritizing alternative dispute resolution avenues. (The Shareholder Remedies Report, 1997)[3].

I am of the opinion that mandating realistic and accurate estimates for claims could act as a deterrent against exaggerated assertions and focus efforts on substantive concerns.

As highlighted by Palombo (2022), a significant avenue for improvement within the Companies Act (2006) lies in the evolution of the oppression remedy from its predecessor in the Companies Act (1948) into the unfair prejudice remedy. While both remedies cater to shareholders, they do not extend to stakeholders. Palombo (2022) suggests that the incorporation of a stakeholders' oppression remedy could enhance accountability within corporate boards in the UK. Drawing inspiration from practices involving employees in Germany and Japan, this approach could foster a more equitable corporate governance model. However, the Canadian example reveals that stakeholders' oppression claims are more limited than derivative actions, underscoring the need for thoughtful implementation of such remedies.

One of the suggested reforms for the UK's withdrawal regime contemplates incorporating elements from German and Singapore law. Koh (2022) suggests a potential reform to introduce non-fault withdrawal seamlessly into UK law, akin to Germany's Austritt aus wichtigem Grund and Singapore's reformed just and equitable winding up regime. This would permit members to seek exit for non-fault reasons without dissolution and liquidation, preserving the company's existence and averting wasteful outcomes. By adding a general power

3 The Shareholder Remedies Report, origin of the Companies Act 2006 and published in 1997 by the Law Commission, has impacted corporate law significantly. Recommendations led to minority shareholders' ability to petition for relief under section 994 of that Act. There is a focus on strong judicial control and streamlining unfairly prejudicial conduct remedies. Mixed reactions arose over new unfair prejudice remedies for smaller firms, but presumptions in certain circumstances were recommended. These changes can ease the establishment of unfairly prejudicial conduct and valuation of shares on a pro rata basis. Together, this guidance aims to craft a fairer framework for shareholders.

of the court to order the purchase of shares by the company or other shareholders, the UK might provide an alternative to winding up and offer a share purchase order as a form of withdrawal. This reform could enhance comprehensive shareholder protection. Koh (2022) also asserted, "UK law excels at protecting members suffering from unlawful or promise-breaking conduct by those in control of the company by granting them a claim for full compensation (including reflective loss recovery, where applicable) against the wrongdoers" (p.224).

Moreover, the introduction of specialist panels or judges with substantial expertise, in my opinion, could expedite proceedings, ensuring consistent and well-informed decisions. These steps, if enacted have the potential to fortify the legal framework's effectiveness, preserving a delicate balance between shareholder rights and corporate governance.

Looking ahead, I believe that the trajectory of the unfair prejudice remedy within UK law necessitates a resolute commitment to tackle acknowledged issues through pragmatic measures. By refining the litigation process and providing lucid directives, the UK can instate a robust and equitable unfair prejudice remedy. Ongoing research and analysis, I propose, will remain pivotal in adapting to the fluid landscape of corporate law and its implications for safeguarding minority shareholders' interests. Through these enhancements, I believe the remedy can catalyze a corporate environment where the rights of minority shareholders are enshrined, and disputes are precisely resolved with efficiency and fairness as guiding standards.

9.0 Conclusion and policy implications

The unfair prejudice remedy constitutes a vital mechanism for safeguarding minority shareholder rights within the UK corporate landscape. Our analysis of influential cases has underscored the remedy's objectives, principles, and historical development. The remedy's evolution reflects a recognition of the need to protect minority shareholders from various forms of unfair treatment. Nevertheless, our findings reveal limitations, including concerns about costs, delays, and potential disruptions to company operations. Balancing these considerations is crucial to ensure the remedy's effectiveness in promoting corporate fairness.

To enhance the effectiveness of the unfair prejudice remedy, policymakers should consider the adoption of initiative-taking measures, including active case management, realistic claims estimates, the incorporation of stakeholders' oppression remedy, and the introduction of specialized panels. By implementing these strategies, the UK's legal framework can better accommodate the intricate dynamics of shareholder disputes and corporate governance.

The research's findings underscore the importance of a balance between minority shareholders' rights and the seamless functioning of corporations, ultimately contributing to the establishment of a fair and equitable corporate environment.

Building upon these findings, the research's proposed practical approaches offer potential solutions to address these drawbacks and enhance the remedy's application. By embracing active case management, realistic claims estimates, and the incorporation of stakeholders' oppression remedy, the UK legal framework can better accommodate the complexities of shareholder disputes. Additionally, the establishment of specialist panels or judges with relevant expertise could expedite proceedings and ensure consistent, informed decisions.

The future trajectory of the unfair prejudice remedy relies on the legal community's dedication to addressing acknowledged challenges and refining the litigation process. Through these enhancements, the remedy can continue to play a crucial role in creating an environment where the rights of minority shareholders are upheld, and disputes are resolved with efficiency and fairness as guiding principles. The research's findings aim to contribute to the ongoing scholarly discussion, offering insights that can shape the evolution of corporate governance in the UK. The integration of proactive strategies, grounded in a comprehensive methodology, holds the potential to reinforce the remedy's application, fostering a corporate landscape that respects the rights of both minority and majority shareholders.

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