Neutral Citation Number: [2021] EWHC 1517 (Ch)

Case No: D30LS753

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN LEEDS
BUSINESS LIST (ChD)

Leeds Combined Court Centre,
1 Oxford Row, Leeds, LS1 3BG

Date: 8 June 2021
(Circulated in draft 1 June 2021)

Before :

HH JUDGE DAVIS-WHITE QC
(SITTING AS A JUDGE OF THE HIGH COURT)

- -

Between :

LA COTTE CONSULTING LIMITED

Claimant

- and -

(1) SOVEREIGN STEEL STOCKHOLDERS (a Firm)
(2) FREDDIE ROBINSON
(3) MRS JOSEPHINE ROBINSON & MR MARTIN SISSONS (as executors of the estate of Frederick William Robinson Deceased)
(4) JOSEPHINE ROBINSON
(5) RADICAL ASSOCIATES LIMITED
(6) DAVID EASTON

Defendants

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- -

Mr James Stuart and Mr Winston Jacob (instructed by way of **direct access**) **for the Claimant**
Mr David Lewis QC and Mr Jack Dillon (instructed by **Simons Muirhead & Burton LLP**) for the **1st to 5th Defendants**
The 6th Defendant did not appear and was not represented

Hearing dates: 8-9 (reading), 14-18, 21-22 December 2020, 11-14, 19 January 2021
The trial was conducted remotely through HMCTS Cloud Video Platform ("CVP")

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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HH JUDFGE DAVIS-WHITE QC (SITTING AS A JUDGE OIF THE HIGH COURT)

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HH Judge Davis-White QC :

1. For convenience the main headings in this judgment are as set out below:

Introduction

2. Underlying this case is a seismic breakdown in relations between two families involved in the scrap metal business. One family is the Hobson family. The other is the Robinson family.

3. The issues between them that I now have to resolve largely (but not entirely) turn on whether or not certain matters were, or were not, agreed between various individuals. Underlying the claims made by the Claimant are various allegations which include breach of contract, breach of fiduciary duty, fraud, dishonesty, conspiracy and inducing breach of contract. Leaving aside the substantive merits of the claims, there are also issues, raised by the Defendants, as to the identity of the corporate entity in which various claims, if they exist, were originally vested and/or whether or not claims have been validly assigned. Further, there are potential limitation issues. There is also a counterclaim that needs to be considered.

4. The Hobson family businesses have been conducted by different companies over time. There are issues as to whether specific Hobson companies entered into specific contracts as agent for another Hobson company in circumstances as to make that other company an undisclosed principal but party to the contract in question.

5. The Robinson family has, at all material times, carried on the Robinson family business through the 1st Defendant, a partnership, Sovereign Steel Stockholders ("Sovereign").

6. The background to most of the claims involves relations that Sovereign or Sovereign and Meadowbank have had with companies within the Firth Rixson group of companies (the "Firth Rixson Group") regarding scrap metal.

The parties and related persons and entities

(1) The Hobson Family

7. The Claimant is La Cotte Consulting Limited, a company incorporated in Jersey ("La Cotte" or the "Claimant"). It is owned and run by members of the Hobson family. It is one of many corporate vehicles that have played a part in the Hobson family scrap metal business (the "Hobson Business") over the years (the "Hobson Companies"). By these proceedings La Cotte has brought a raft of claims against the Defendants which it asserts in its own right (as undisclosed principal), alternatively as assignee, in some cases, as ultimate assignee, there being other alleged intermediary assignees.

8. The 1st to 5th Defendants challenge the cases both that La Cotte (and a predecessor Jersey company, said to play much the same role in the Hobson Business as La Cotte, Concept Metals Ltd) acted as undisclosed principal but contracting party in relevant respects and that there is a valid chain of assignments as asserted by the Claimant.

9. As regards the Hobson family itself, the founding member of the current family scrap metal business is Mr Andrew Alvin Hobson ("Mr Andrew Hobson"). He was born in April 1959 and is now 62 years of age. The scrap metal business that he founded has been geographically centred (in terms of operating premises and storage site) in the Rotherham area and, more particularly, for many years now, from premises at Meadowbank Industrial Estate, Harrison Street, Rotherham (the "Meadowbank Site"). For some years title to the Meadowbank Site has been vested in a BVI incorporated company, Listed Properties Limited. That company has then leased the premises to the relevant English registered operating company. A succession of Hobson Companies, registered in England, (the "English Hobson Companies") have operated from the Meadowbank Site over the years. Many have the word "Meadowbank" as part of their name. For the purposes of these proceedings, one of the most significant Meadowbank companies is Meadowbank Vac Alloys Limited ("MVA").

10. In many parts of the narrative, it is convenient to refer to the relevant registered Hobson Companies involved generically without, at that stage, seeking to identify precisely which Hobson company was involved or on what legal basis. Accordingly, when I refer to "Meadowbank" as an entity it is to the relevant Hobson company/ies (including the Jersey registered Hobson Companies) without further identification.

11. The Hobson Business, based in England, originally seems to have been a joint venture between Mr Andrew Hobson and Mr Neil Freeman. However, the latter effectively left the business in about 2005 and thereafter had no management role nor any equity stake in the Hobson Companies.

12. In about 1999-2000, Mr Andrew Hobson and his wife, Audrey Hobson ("Mrs Audrey Hobson"), decided to move to Jersey from their previous home in Sheffield. They currently live at La Cotte View House, Le Chemin de Creux, St Brelade, Jersey. That property is also owned by a BVI company, White Moon Properties Limited. As I understand it, La Cotte is a palaeolithic site of early habitation close to La Cotte View House. It appears to be part of the inspiration for the Claimant's name.

13. Mr Andrew Hobson retained much control over the Hobson Business, including the operations of the various English Hobson Companies over time from the Meadowbank Site. The precise amount of control is disputed. That English business remained part of the Hobson family operated business. As I shall explain, the Jersey registered Hobson Companies (the "Jersey Hobson Companies") were set up as a tax saving device. Outward trade with third parties was via the English Hobson Companies. The English Hobson Companies carried on such business, at least in later years, as "agent" of the relevant Jersey Hobson Company but in law, and at any one time, there was a trading relationship between the relevant English Hobson Company and the Jersey Hobson Company. As I shall explain, certain decisions taken by the relevant English Hobson Company had to be passed by Mr Andrew Hobson for his approval before they could be adopted, even though he was not technically a director or employee of the relevant English Company. Leaving aside any familial explanation for this, the legal

explanation lies, at least in part, in the fact that the relevant Jersey Hobson Company was, at all material times, the main investor in the Hobson English Companies and that, as mentioned, those latter companies were trading as "agents" for the Jersey Hobson Company which, at all material times, owned the majority of the Hobson Business scrap.

14. Apart from Mr Andrew Hobson himself, other family members involved in the Hobson Companies from time to time include his two sons, Mr Andrew John Hobson, ("Mr A J Hobson") (born in 1980 and now 41) and Mr Luke Hobson (born in 1991 and now approaching 30), and his niece Ms Sonia Greenhough ("Ms Greenhough") (born in 1968 and now approaching 53). Ms Alicia Smith, partner of Mr Luke Hobson, has also been involved. She was born in 1992 and is now approaching 29.

15. Mr A J Hobson started working in his father's business on leaving school, in the 1990s. He has worked in the scrap metal business ever since. He started playing an important role in the English Hobson Companies' businesses from about 2005, when Mr Neil Freeman left the businesses. From about 2008, he was a director of each of two of the relevant English Hobson Companies, MSSC (as defined and described below) and MVA. According to Mr A J Hobson, his father, Mr Andrew Hobson came to have more of a hands on role in the management of the English Hobson Companies from about 2007-8 and at that stage the internal rule was that he had to approve all major decisions.

16. Mr A J Hobson resigned as director of the relevant English Hobson Company, MVA, in June 2011 but remained an employee of that company. He left the English business in April 2012 to start his own business. At about this time, there was a breakdown in relations between his father and himself which lasted for some years.

17. The oral evidence of Mr Andrew Hobson and Mr A J Hobson was somewhat vague and internally inconsistent about when and how this breakdown occurred. As I understood Mr A J Hobson, his final position was that there had been an initial distrust and cooling of relations caused, as he understood it, by Mr Easton, the 6th Defendant then employed in a senior management position within the English Hobson Companies, reporting back on him to his father in unfavourable terms. That, and/or an inability to continue to work with Mr Easton caused him to resign as a director. Later, a specific dispute developed between himself and his father regarding certain money apparently remitted from Jersey to Mr A J Hobson and as regards the issue of whether or not it was a loan that he had to repay. That dispute eventually resulted in legal proceedings. Judgment was obtained against Mr A J Hobson and a charge was obtained over his property. Relations were not good between father and son for a period of about three possibly four years. The evidence is somewhat confused as to when the dispute between father and son over the Jersey money started.

18. Mr Luke Hobson is currently a director of the active English Hobson Company (NY Commodities Limited) which is assisting La Cotte in this litigation. Indeed, my impression is that Mr Luke Hobson on a day to day basis has been running the litigation, although with the assistance of others. He was not involved in most of the key events for the purposes of these proceedings but became involved at the tail end. At that stage he was a very young man.

19. At about the time that Mr A J Hobson ceased to be a director of the then key English Hobson Company, MVA, Mr Luke Hobson was appointed a director of it in June 2011. He was then in his early 20's. He had been working in the business, but in the warehouse. Notwithstanding his appointment as director, some months seemed to have passed before, in functional terms, Mr Luke Hobson moved from just acting as an employee in the warehouse to moving into the office and having more involvement in actual management. That process was described by him as being finally complete by about April/May 2012 and at the time when Mr A J Hobson ceased to be an employee and left to start his own business. A Mr Wormstone, a solicitor, also ceased to be a director of the relevant English Hobson Company at about this time.

20. Ms Greenhough worked in the accounts department of the English Hobson Companies. She has worked with the English Hobson Companies from before 2000. From 2008 she was working part-time, two days a week. In her witness statement she described her role as "accounts/office manager". In cross-examination when that description was put to her she corrected it to "accounts clerk". Also in the office for some time was one Tracey Dollman ("Tracey").

21. When Tracey left, a Faye Grace ("Faye") was appointed as her replacement in a full-time role. Ms Greenhough, in a part-time role, said that she trained Faye up to be a fully competent member of the team. Faye later left in December 2011 and went to work for Mr Easton in a company that he joined when he left employment with the then relevant Hobson English Company. Whilst Faye was working in the office, Ms Greenhough said that Faye was full-time, had a more active role than her and that they were "level pegging" though technically as a longer term employee who was older she (Ms Greenhough) may have been "more senior".

22. Ms Alicia Smith was brought into working for MVA sometime in 2012. She was working with, and being trained by, Ms Greenhough. She clearly became heavily involved in the "investigations" initially triggered by Ms Greenhough. In April 2015, she was appointed a director of MVA and Mr Luke Hobson resigned, apparently due to the pressures then upon him. As director, she was much involved in the placing of MVA into creditors' voluntary liquidation in November 2016.

23. As I have mentioned, Mr David Easton, the 6th Defendant, was involved in a key management role in the English Hobson Companies. I deal with him in more detail below.

24. Other individuals who feature in the relevant history of the Hobson Companies include the following.

25. Mr Wormstone was a solicitor who became a director of one of the English Hobson Companies, MVA, in June 2011. He resigned as such director in April 2012. He was apparently originally employed to assist on matters such as compliance with regulatory requirements, but his role expanded to assisting in claims asserted by or threatened against the English Hobson Companies. He was himself later a defendant in proceedings brought by MVA. The case of MVA in those proceedings brought against Mr Wormstone and others in the Manchester Mercantile Court in January 2013 (the "Manchester Proceedings") was that Mr Wormstone was engaged initially as a

consultant, principally to address Health and Safety and Environmental regulations, but with a wider role. His engagement was said to have been terminated in August 2012.

26. As part of Mr Andrew Hobson's move to Jersey, and no doubt for good tax planning reasons, the legal ownership and operation of the Hobson Business has changed over time. In substance, the outward facing business being carried on from the Meadowbank Site has been vested in a succession of English Hobson Companies, often with names that include the word "Meadowbank". I use the word "outward facing" in the sense that they have been the companies which have, on the face of things, traded with third parties in their own right. There is an issue as to whether on such trades they were acting as agents for other Jersey Hobson Companies, including the Claimant, and if so, in what sense. This is relevant because, as I have said, the Claimant asserts breach of contract claims based not only upon assignments (or chains of assignments) to it of such claims from English Hobson Companies but claims in its own right (and as assignee of another Jersey Hobson Company). The latter claims are put forward on the basis that the relevant Jersey companies were undisclosed principals and contracting parties to various contractual transactions with (inter alia) the 1st Defendant. Accordingly, it is said, La Cotte has the benefit of distinct causes of action to those also asserted by way of assignment from various English Hobson Companies.

27. In Jersey, Mr Andrew Hobson has established a succession of Jersey incorporated companies which have traded with the English Hobson Companies. In very broad terms, ownership of the majority of the Hobson Business stock was moved to the relevant Jersey Company. The Jersey Company would direct the English Hobson Company to make sales or purchases and the legal mechanism for this would be a series of back to back sales and purchases between the third party and the English Hobson Company and between the English Hobson Company and the Jersey Hobson Company.

28. The first such Jersey Hobson Company was Concept Metals Limited ("Concept") registered in 2002. It was known as Meadowbank Metals Limited between 2002 and August 2003. It was dissolved in October 2012. It is said by the Claimant that this followed a solvent liquidation, though the record of the Jersey Financial Services Commission does not record any liquidation and any contemporaneous records are sadly lacking from the trial bundle. Its business is said to have been transferred to Mr and Mrs Andrew Hobson and then, by them, to La Cotte.

29. La Cotte was incorporated in December 2010. It is owned as to one issued share by each of Mr and Mrs Andrew Hobson. In the Re-Amended Particulars of Claim (the "Particulars of Claim" or "PoC"), the Claimant asserts that it started relevant trading on 1 January 2011 and that on or about this date it acquired the business originally carried on by Concept Metals Limited. The evidence is that such acquisition was through Mr and Mrs Hobson personally, rather than directly from Concept. Mr and Mrs Hobson then transferred the business to La Cotte.

30. As regards the English Hobson Companies operating from the Meadowbank Site, there have been a number of successive companies operating the same, or parts of the same, business. In some cases, as I understand it, more than one English Hobson Company may have been trading from the Meadowbank Site at the same time, but usually in different lines or centres of business. The main English Hobson Companies for present purposes are as follows:

Meadowbank Alloys Limited

Meadowbank Special Steels Limited

Meadowbank Special Steels (Commodities) Ltd ("MSSC")

Meadowbank Vac Alloys Ltd ("MVA")

N.Y. Commodities Limited ("NYC")

31. For present purposes they, and their respective periods of trading, can be identified as follows from the documents which I shall refer to in more detail later in this judgment.

Company	Starting trading	Trading ceased	Company status changed
Meadowbank Alloys Ltd	Pre 2002	Pre Mar 2005	Restored to register and wound up Mar 2005
Meadowbank Special Steels Limited	Pre Dec 02	June 2005	Wound up Feb 2006
MSSC	Post Nov 2004	[Apr 2005?]	Wound up May 2014
MVA	Apr 2005	2016	Wound up Nov 2016
NYC	2016		

(2) The Robinson Family

32. The 1st Defendant is a firm in which the partners are, or were, directly or indirectly, members of the Robinson family. The members in question were Frederick William Robinson (now, sadly, deceased) ("Mr Robinson Senior"), born in 1935, his wife, Mrs Josephine Robinson, and his son, Freddie Robinson (born in 1958 and so now approaching 63) ("Mr Freddie Robinson"). Mr Freddie Robinson and his mother are respectively the 2nd and 4th Defendants.

33. Mr Robinson Senior can, for present purposes, be regarded as the founder of the Robinson business dealing in scrap metal (the "Robinson Business"). At all material times before his death at the times said to give rise to the causes of action that I have to adjudicate upon, day to day management and operation of the Robinson Business rested with his son, Mr Freddie Robinson. Mr Robinson Senior was by then in his 70's. At all relevant times that family business was operated through the partnership which is the 1st Defendant ("Sovereign" or the "1st Defendant").

34. The Robinson family business, carried on most recently as a partnership, was set up in the early 1970s by Mr Robinson Senior and a Mr Alan Knutton. The latter was killed in a car accident in about 1980 and thereafter the business remained that of the Robinson

family. Mr Freddie Robinson began to work for the family business in about the late 1970s, initially as a manual worker, but later also as a lorry driver. His brothers have also been involved in the business at various times, but not with any senior management responsibility. By about 1985, the business was being run by Mr Robinson Senior and Mr Freddie Robinson. In about 2005, Mr Robinson Senior took more of a back seat role in the day to day running of the business. However, he still carried out a consultancy function and looked after "his" contracts. In 2013 Mr Robinson Senior was diagnosed with cancer. He died in 2017.

35. Since about 1984, Sovereign has operated from Hawthorne Farm, Oughtibridge, Sheffield (the "Robinson Farm"). The Robinson Farm includes about 20 acres and two residential properties. Mr Freddie Robinson's immediate family lives in one and Mr Robinson Senior (until his death) and his wife in the other. In about 2002 as a result of requirements of the Environment Agency, skips containing substantial volumes of scrap had to be removed from the Robinson Farm. An arrangement was then made with Meadowbank to store material for Sovereign. In 2007, Sovereign acquired further premises at Stoke Street, just outside Sheffield City Centre.

36. At this point, it is probably convenient to explain that the strong relationship between the Hobson and Robinson families rested on the relationship between Mr Robinson Senior and Mr Andrew Hobson. Mr Robinson Senior and Mr Andrew Hobson's father met when carrying out national service in the British Army in the 1950s and remained in touch thereafter. Mr Andrew Hobson tended to refer to Mr Robinson Senior with affection as "the Old Man" and referred to him as being a father figure and "mentor" towards him.

37. As the proceedings were issued and served in December 2017, after Mr Robinson Senior's death, on 29 July 2017, his estate was joined as a Defendant. As issued, the claim form named the 3rd Defendant as being the "Personal Representatives" of Mr Robinson Senior. That is not surprising. No application was subsequently made, as it should have been, pursuant to CPR r19.8 to appoint someone to represent Mr Robinson's estate nor, prior to the trial, were the individuals who had been appointed personal representatives substituted as named Defendants. At the start of the trial, in effect by consent, I ordered that the individuals who are executors of Mr Robinson Senior's estate should be substituted as named Defendants in place of the generic description "personal representatives" of Mr Robinson Senior. The executors (now parties) are Mrs Josephine Robinson and Mr Martin Sissons.

38. The 5th Defendant, Radical Associates Limited ("Radical") was incorporated in October 2006. Its issued shares were held as to a third each by Mr Robinson Senior, Mrs Josephine Robinson and Mr Freddie Robinson. It too became a partner in the 1st Defendant, sometime between October 2006 and November 2007.

(3) Mr Easton, the 6th Defendant

39. The 6th Defendant, David Easton ("Mr Easton"), worked for some years as a senior manager of successive English Hobson Companies. From about June 2005, he was employed by MSSC. When the business of MSSC was transferred or taken over by MVA in April 2011, his role in the business continued with MVA. His employment with the Hobson Companies came to an end in about June 2012. Although not a

director of either company within the company law meaning his title was "commercial director". According to the Particulars of Claim in these proceedings, he was:

> "*employed as commercial manager to manage client and trading accounts and employed in a senior position of trust and given authority to negotiate contractual arrangements on behalf of La Cotte (and its predecessor Concept Metals Limited) and MSSC and Vac Alloys with third parties."*

40. From the evidence it is clear that, quite apart from any overall responsibility in certain areas, during most of the relevant time period Mr Easton was responsible for a number of particular customers/suppliers and Mr A J Hobson was responsible for others. One of the relationships that Mr Easton was responsible for was the Firth Rixson contracts, including relations with Sovereign in relation to that contract.

41. Separate proceedings were brought against Mr Easton by La Cotte in the Sheffield County Court which I deal with in more detail later in this judgment (the "Avalloy Proceedings"). Those proceedings alleged breach of duty in diverting (in effect stealing) stock that had been ordered from a Meadowbank company, but then returned, by a company in South Africa, AV Alloy Pty Limited ("Avalloy"). The proceedings were commenced in November 2017. Judgment against Mr Easton was delivered in July 2019. In the Avalloy Proceedings it was alleged by La Cotte that Mr Easton:

> "*…in his capacity as accounts manager, had day to day control over the management of the business of MVA and over MVA's operational affairs. By reason of his status as a trusted member of MVA's staff,* [he] *owed to MVA fiduciary duties of good faith (as particularised below).*"

42. I did not understand the description of Mr Easton set out in the Particulars of Claim in the Avalloy Proceedings or in these proceedings to be substantially challenged by the 1st to 5th Defendants, save that, as I shall explain, it emerged that most if not all decisions of Mr Easton with regard to specific sales and purchases had to be agreed by Mr Andrew Hobson and that his "authority" referred to in the Particulars of Claim was limited to that extent.

43. After Mr Easton left MVA he went to work for Absolute Metal Management Limited ("AMM"). He became a director of that company with a Mr Philip Lees. Mr Andrew Philip Cooke was a major shareholder. As I have said, Faye Grace later joined him there.

44. Mr Cooke and Mr Lees were also shareholders in, and directors of, a company called APC Industrial Services Limited ("APC") which operated from the same site as AMM. APC was dissolved in December 2015.

45. Mr Easton was made bankrupt on his own application by order of the Insolvency Service Adjudicator's Office dated 7 October 2019. The solicitors for the Trustee wrote to the Court on 21 February 2020 stating that the Trustee was aware of these proceedings and of the pre-trial review ("PTR") to be held on 25 February 2020 but that he did not intend to play any active role in the proceedings. Neither did the trustee apply for a stay. I concluded that the proceedings remained on foot and were not stayed but that Mr Easton had no locus to appear as a party before me (see *Heath v Tang* [1993] 1 W.L.R. 1421), and even though on discharge from bankruptcy he might not be discharged from

relevant fraud/fraudulent breach of trusts claims). The relevant causes of action were now ones to be pursued against his estate in bankruptcy, for these purposes represented by his trustee in bankruptcy. None of the remaining parties sought to call him to speak to the witness statement that he had filed and served earlier in the proceedings though, as I shall explain, the Claimant sought to rely upon it in part.

(4) Firth Rixson

46. A large part of the claims in this case relates to dealings by Meadowbank/Sovereign with companies within the Firth Rixson Group. There have been various companies within the Firth Rixson Group with which the Hobson Businesses and Sovereign have been involved. In some cases, such involvement commenced at a time before the relevant company was part of the Firth Rixson Group, being later taken into that Group. Unless otherwise necessary I shall not distinguish between these companies but simply refer to them generically as "Firth Rixson".

47. There appears to have been two separate divisions of Firth Rixson which are relevant for present purposes. One division was the Forgings division. The other was the Metals division. In the papers before me, whilst Mr Truelove appears to have spoken mainly on behalf of the Forgings division, Ms Stott seems to have had primary responsibility for the Metals Division. Meadowbank/Sovereign were, at various times, seeking to expand their provision of services to include sites which fell within the Firth Rixson Metals division, but on the whole found Ms Stott less empathetic than Mr Truelove. They had a view that Ms Stott preferred a competitor.

Representation in these Proceedings

48. The Claimant was represented by Mr James Stuart, leading Mr Winston Jacob. They were instructed under the direct access scheme.

49. During the course of these proceedings much has been made of the fact that the Claimant is a "litigant in person". That has been used as the reason for shifting most of the administrative work in getting ready for trial onto the 1st to 5th Defendants. It has also been prayed in aid as an excuse for failings to obey court orders or for failing to have acted as one might expect in the course of the litigation. In fact, on the face of things La Cotte is a wealthy company. Further it has at all material times had the benefit of the services of an "in house lawyer", Mr Chaudhury.

50. The 1st to 5th Defendants were represented by Mr David Lewis QC leading Mr Jack Dillon. They were instructed by Simons Muirhead & Burton LLP.

51. I am grateful to both Counsel teams for their helpful written and oral submissions, for their assistance in making the remote aspects of the hearing function and for their attempt to simplify their respective cases. I should also record my thanks to Simons Muirhead & Burton LLP for their impressive management of the paper and electronic bundles that were used during the trial, and documents as they appeared during the trial.

Background to the proceedings

52. As I have explained, the current proceedings involve disputes largely arising from dealings that Meadowbank and/or Sovereign had with companies within the Firth

Rixson Group. Historically, and to some extent, this relationship had grown from dealings that Sovereign had had not only with Firth Rixson companies but with predecessor companies or businesses that were later brought within the Firth Rixson fold.

53. A separate claim relates to what is said to have involved actions by Mr Easton contaminating material supplied by MVA to a different third party company, Erasteel, with a view to inducing a breach by Erasteel of the contract between MVA and Erasteel. Separately in this context, it is asserted that Mr Freddie Robinson took a photograph of a lawyers' letter on behalf of MVA to Erasteel, which is said to involve a breach of confidence on his part. Both these matters are said to evidence and form part of a conspiracy between (among others) Mr Easton and Mr Freddie Robinson to damage MVA by unlawful means. At this stage I need say no more about the Erasteel matter (the "Erasteel Claim") but I return to the background to the Firth Rixson elements of the claim.

54. At all material times, the Firth Rixson Group included companies which were (and are) generators of scrap metal (including turnings) from the engineering and manufacturing operations that they are engaged in. There are a number of sites in the geographic area centred on (but not limited to) Sheffield at which such Firth Rixson companies operate. However, there are also Firth Rixson companies operating in other areas of England, as well as in other countries, which also generate scrap metal. An example is China.

55. The scrap metal is of various kinds but for present purposes a distinction has to be made between what the parties before me referred to as the higher grade "specials" ("Specials" or "High Grade" scrap) and lower grade scrap metal material ("Low Grade" scrap"). In the case before me, Specials primarily comprise Nickel and Titanium based alloys whereas the Low Grade material primarily comprises ferrous steel and NCM alloys. The difference in value is notable. Per metric tonne the Low Grade material, at the relevant times that I am considering, had values in the order of £50 to £250. The High Grade material has had values per metric tonne in the order of US$8,000 (about £5,000) to $52,000 (about £32,500).

56. A further distinction is between "turnings", that is chips or slivers of metal generated in a manufacturing process, and "solids", that is solid pieces of metal, which have usually become redundant for one reason or another.

57. In general, scrap metal was collected, transported and stored in skips but some scrap was kept in drums. In the case of Sovereign, it tended to store re-usable bar ends, die steel and cast borings in drums. In addition, bins were used (for example in relation to the AMS when sited at Ickles, due to site area constraints).

58. For some years, Sovereign had had contractual relationships with Firth Rixson at one or more of its sites in the Sheffield area. That contractual relationship (involving a number of separate contracts) involved, in broad terms, two separate but connected matters. First, a waste management contract under which, for example, Sovereign would collect waste (not just scrap metal but also materials such as wood, paper and cardboard, general waste and office waste). Secondly, contractual obligations under which a relevant Firth Rixson company would sell the collected scrap metal to

Sovereign. There would then frequently be, at the least, an understanding that Firth Rixson might buy back some or all of that scrap as and when processed/segregated.

59. Meadowbank was later brought into various contracts with the Firth Rixson Group by Sovereign. The practical arrangement was that as regards scrap purchased from Firth Rixson, Sovereign would pay Firth Rixson for the same. Sovereign would then invoice Meadowbank for any part of such scrap acquired by Meadowbank. Meadowbank would then pay the invoice or issue credit notes in favour of Sovereign in respect of the scrap that it was acquiring. As regards the contractual position as between relevant Meadowbank companies, the position was that an English registered Hobson Company would initially buy the relevant Firth Rixson stock and then, by way of separate invoice with an added mark up, sell the relevant scrap to the relevant Jersey registered Hobson company, initially Concept Metals Limited, later La Cotte. Save for a short period therefore the scrap was ultimately acquired by La Cotte.

60. As regards onwards sale of scrap or processed scrap by Meadowbank, the contractual arrangement was that the English registered Hobson Company would arrange a sale to a third party. The relevant Jersey registered Hobson company would then sell the stock in question to the English registered Hobson Company at a discount to the sale price agreed with the third party. The English registered Hobson Company would then fulfil the order placed with it by the third party.

61. In effect, therefore, on every sale/purchase of scrap by Meadowbank, the stock would to all intents and purposes belong to the Jersey registered Hobson company. However, purchases of scrap from Firth Rixson or sales of scrap to third parties or Firth Rixson would be effected by an English registered Hobson company which would make a turn on the relevant transaction brought about by the manner in which sales (or purchases) were invoiced to (in the case of Meadowbank purchases from third parties) or were invoiced by (in the case of Meadowbank sales to third parties) the relevant Jersey registered Hobson Company.

62. The main claim brought by La Cotte relates to the Firth Rixson relationship. It focuses on what amounts to a claim that the court should carry out an accounting exercise to work out what the true state of account should be between Meadowbank and Sovereign. As that claim became increasingly refined (or parts of it dropped), its main thrust became a claim to a determination as to what was due as between Sovereign and Meadowbank regarding scrap purchased from Firth Rixson as originating from its Darley Dale site. However, as regards Sovereign, its case is that the relevant relationship between them regarding the accounts sought to be reconciled, was ultimately overtaken first by an agreed purchase by Sovereign of half of the Specials derived from the Firth Rixson Darley Dale site as part of an overall deal referred to as the "50:50 Agreement" and then, later, by a sale agreement whereby certain of that stock was later sold by Sovereign to Meadowbank.

The Claimant's case

63. Before turning to the detail, it is helpful to outline in more detail the main claims brought by the Claimant. These were much whittled down over time, including during the trial itself.

64. The Particulars of Claim assert a raft of claims against the Defendants. By the end of the trial many of these had been abandoned. Leaving aside certain claims that were really aspects of the main claim, three claims survived at the end of the trial.

65. It is necessary to examine with some care not only those claims which are persisted in but also those that have been abandoned and the circumstances in which they were abandoned. I set out below therefore the pleaded case of La Cotte, contained in its Particulars of Claim dated March 2020 and its Re-re-Amended Schedule of Loss as accompanying the Claimant's skeleton argument for trial ("SoL"). In the case of each claim, I then deal with the question of whether it remains in issue and is thus an issue for me to determine.

66. A number of the asserted claims allege in direct terms breach of a JVA (the "Joint Venture Agreement" or "JVA"). This JVA is said to have been made between Concept Metals Limited and La Cotte on the one hand, acting through MSSC and then MVA, and Sovereign on the other hand. The date of the JVA is said to be about April 2008. The question of whether there was such a JVA, and if so between which entities and on what terms are key issues before me, although various aspects of the JVA originally asserted are not persisted in.

67. At this stage, to understand the JVA and alleged breaches of it by Sovereign, it is necessary to explain briefly the Claimant's case about the subject matter of the JVA. In brief, the JVA is said to have governed the terms upon which relevant Hobson companies and Sovereign agreed to trade together and to supply waste recycling services to companies within the Firth Rixson Group and to purchase scrap metal from, and supply scrap metal (in at least some cases in processed form) to relevant Firth Rixson companies. It is common ground that various Firth Rixson sites were involved at different times and that, in addition, various sub-contractors of Firth Rixson were brought within the arrangements. References to sites below (other than the Meadowbank Site) are to Firth Rixson sites.

68. In broad terms, a key feature of the JVA is said to have been that, as regards Firth Rixson, Sovereign would pay the sums invoiced by Firth Rixson for scrap sold to Meadowbank/Sovereign from Firth Rixson sites and that there would then be an accounting between the JVA partners as to who was liable for what, Meadowbank re-imbursing or crediting Sovereign accordingly. One of the differences between the parties is whether (as alleged by the Claimant) Meadowbank was to acquire and pay for "Specials" and the remainder, Low Grade, was to be purchased by Sovereign, irrespective of the site that it came from, or whether (as alleged by Sovereign), one "partner" was to buy all the scrap metal from one or more particular sites and the other "partner" all the scrap metal from other sites even if, later, one partner might buy some of such stock from the other.

69. For present purposes I seek only to identify in broad terms the subject matter of the claims without identifying each and every cause of action that is raised. As a generality, there are various claims of conspiracy between Sovereign/Mr Freddie Robinson and Mr Easton, dishonest assistance by Sovereign and/or Mr Freddie Robinson of breaches of fiduciary duty owed by Mr Easton to Meadowbank and/or claims that Mr Easton induced or procured breaches by Sovereign of its contract with Meadowbank.

70. In the Particulars of Claim and the SoL, various causes of action are set forth.

71. Sovereign is alleged to have breached the JVA (or as supplemented by further agreements) in the following respects. As regards the measure of loss, in some cases this was said to be a current estimate and subject to further disclosure and/or an enquiry as to loss and/or an account of profits. The claims in the PoC are as follows.

72. The AMS Commission Claim: secret and unauthorised charging: From about May 2011, and in breach of the JVA agreement, Sovereign dishonestly overcharged Meadowbank for stock acquired by Meadowbank from Firth Rixson, sourced from the Firth Rixson Aerospace Machine Shop (the "AMS"). The AMS was originally sited at Ickles but was later moved to Meadowhall (but managed from the Darley Dale site).

73. Instead of simply passing on the price charged by Firth Rixson, in accordance with the JVA, it is asserted that Sovereign "secretly" added an extra 10% to the sums invoiced to Meadowbank (para 28 of the PoC). The relevant payments were said to have been made pursuant to a dishonest agreement between Mr Easton and Sovereign. In the SoL, the allegation was that the overcharging dated back to 2008. The sum then claimed from January 2008 to January 2012 was £92,930.45 (SoL Head I).

74. By the end of the trial this claim was no longer pursued.

75. Leaving aside issues of whether claims had been assigned to MVA and issues of limitation, I should however note that the evidence did not support the Claimant's pleaded case. I deal with the evidence later in this judgment. It is relevant to general credibility of the witnesses in this case.

76. Retention of scrap metal by Sovereign and payment by Meadowbank for stock that Sovereign should have paid for: This claim comprised three elements. The PoC do not clearly distinguish these three heads which are only clearly identified in the SoL. The PoC appear to refer to these claims generically at para 15b(i). The three claims are:

    (1) in breach of contract, not delivering (but for the avoidance of doubt, not charging Meadowbank for) Specials from Firth Rixson sites at Sheffield (but not Darley Dale), but instead retaining it and depriving Meadowbank of the profit on sales of such Specials (calculated at the start of the trial by the Claimant's expert as £14,189.24 (PoC para 29, SoL Head D));

    (2) causing Meadowbank to pay for Specials from the Firth Rixson Darley Dale site, but in breach of contract not delivering the same to Meadowbank, causing Meadowbank loss in the form of the cost paid by Meadowbank and a loss of profit on subsequent sales (calculated at the start of the trial as a combined sum of £97,933.79 (PoC paragraph 29; SoL Head B));

    (3) in breach of contract, causing Meadowbank to pay for Low Grade scrap from the Darley Dale site when such material should have been paid for by Sovereign. The value of such stock was said to be £11,316.30 (SoL Head C). It is said that this claim is pleaded at PoC paragraph 29, but it is not. That paragraph deals solely with Specials, although Head C in the SoL is relied upon in this paragraph of the PoC. This head of loss is referred to in paragraph 31 PoC as a head of overpayment by Meadowbank.

77. It will be noted that Heads D and C are dependent upon La Cotte being able to establish that the agreement between Meadowbank and Sovereign was that Meadowbank would take and pay for all Specials, whichever Firth Rixson site they originated from, and that Sovereign would take and pay for all Low Grade scrap, irrespective of the Firth Rixson site that the scrap originated from (the "Alleged High/Low Grade Split"). Sovereign's case was that, contrary to La Cotte's case, the agreement was by site rather than by type of scrap: e.g. that Meadowbank would manage the Darley Dale site and take and pay for all scrap from that site, whatever its grade, and that Sovereign would deal with other sites and take and pay for all scrap of whatever quality from those sites.

78. As regards Head B, there was assertion, but little by way of contemporaneous records. Despite the requirements for detailed stock records as required by the Scrap Metal Dealers Act 2013 (and its predecessors) the same were not available, apparently from either side, though why this was so was unclear to me.

79. By the end of the trial the claims under Heads B, C and D of the SoL were not pursued.

80. As regards Head B, the following explanation was given in the Claimant's closing submissions. The explanation was:

> "*The Claimant remains concerned that there are no records of these loads being received at the Claimant's site, but recognises that the Court will require positive evidence of non-delivery before granting the relief sought in the POC. There does not appear to be such positive evidence."*

81. As regards Heads C and D, in his oral closing submissions Mr Stuart accepted that his witnesses (for these purposes Mr Andrew Hobson and Mr A J Hobson) did not come up to proof in terms of the assertion in the PoC that, as between Sovereign and Meadowbank, Meadowbank would buy (and pay for) all Specials sourced from any Firth Rixson site and Sovereign would buy (and pay for) the Low Grade scrap. Instead, their evidence supported Sovereign's case that, as between Sovereign and Meadowbank, each had responsibility for particular Firth Rixson sites and each were to buy all the scrap from any site for which they had respective responsibility.

82. Although not pursued, I deal with the evidence about these matters so far as it affects my assessment of the credibility of witnesses. I also need formally to deal with the question of whether the relevant agreements between Meadowbank and Sovereign were based on an agreement that each would take (and pay for) scrap from relevant Firth Rixson sites on the basis of the type of scrap in question, so that in effect each site was potentially a shared source of scrap (as alleged by the Claimant) or (as alleged by Sovereign) the agreements were site based so that Sovereign or Meadowbank would take (and pay for) all relevant scrap taken from sites allocated to the entity in question, whatever its grade. This is because part of the claim for loss, said to arise from diversion of a contract in relation to sites that were Sovereign sites to the sole name of Sovereign rather than joint names, might be said by the Claimant to be the loss flowing from the loss of the profit on the High Grade scrap originating from such sites.

83. The background to this issue appears to be one where in practice and as a generality each site tended predominantly to produce scrap of one type (Specials or Low Grade scrap) rather than the other.

84. Sums overpaid pursuant to a false accounting and reconciliation agreement: This was the most substantial element of the claim valued as Head A in the SoL with a value of some £280,000. The claim is based upon an ex post facto reconciliation said to have been carried out of the trades involving Sovereign and Meadowbank, on the one hand, and Firth Rixson, on the other, with regard to the Darley Dale site. However, it is predicated on an agreement for sale of stock by Sovereign to Meadowbank contained in or evidenced by an agreement in writing dated 17 December 2011 (the "December 2011 Sale Document") as being in fact a reconciliation of the state of account between Meadowbank and Sovereign and, in addition, as being a "grossly false account of the state of account between the parties". Of course, the agreement does not pretend to be a reconciliation, but a sale. If this agreement is ignored, then it is said the payments made under it are such that Meadowbank has overpaid what it would be liable to pay on a proper reconciliation now carried out ex post facto. The agreement has variously been described by the Claimant as one that did not take place and/or a sham (PoC paras 30-31, SoL Head A). An important issue in this respect is what agreement was earlier reached between Meadowbank and Sovereign in about 2009, which has been described by both sides as the "50:50 Agreement" though they disagree fundamentally on many of its terms. On the other hand, Sovereign relies on the sale agreement evidenced by the December 2011 Sale Document and counterclaims for breach of it in that sums due under it have not been paid.

85. This is the main claim (and main part of the counterclaim) which remained live between the parties at the end of the trial (the "Reconciliation Claim"). It is what I have described as the main claim of the three claims that remained for determination at the end of the trial.

86. Duplicated invoice errors: As an aspect of bringing about a retrospective reconciliation of the account between Sovereign and Meadowbank, it is asserted that there are a number of duplicated invoices issued by Sovereign and that a sum of some £117,962.06 needs to be re-paid to Meadowbank as a result (SoL Head H). This claim essentially forms part of the reconciliation claim asserted by the Claimant and this aspect also remained live at the end of the trial. By the conclusion of the trial this claim had been reduced to a sum of just over £100,500.

87. Loss of and diversion of Firth Rixson Business: This involved two elements. First, Mr Easton was said, in breach of his duties to Meadowbank, to have caused the loss of a JV tender in respect of a renewal of the contract for the Darley Dale site (which at this stage also administered AMS which was treated as being part of the Darley Dale site for these purposes) by submitting an inappropriate tender bid (providing lower prices for purchases from Firth Rixson than those Meadowbank was in fact prepared and authorised by La Cotte/Mr Andrew Hobson to pay). Sovereign was said to have knowingly assisted or induced the relevant breach(es) of duty by Mr Easton, alternatively to have conspired with him to produce this result (the "Loss of Tender Claim"). Secondly, in breach of the JVA, Sovereign was said to have diverted the benefit of the contract resulting from the successful part of the tender (in respect of sites other than Darley Dale) from Meadowbank to Sovereign, by inducing or agreeing to a novation of the contract that was obtained so that Meadowbank ceased to be a contracting party (the "Diverted Contract Claim"). The claim was for an estimated loss of profit for one year in respect of all relevant Firth Rixson sites (i.e. encompassing both claims) of £100,000 (PoC paras 15(b)(iii), 15(g)(iv), 15(g)(v), 32-33; SoL Head E).

88. The first of these claims, relating to the loss of the Darley Dale site, was not pursued in the cross-examination of Mr Freddie Robinson. In response to a question from me, on the last day of factual evidence (being the 9th day of the trial, excluding pre-reading), Mr Stuart eventually conceded that La Cotte was not pursuing the Darley Dale element of the claim (namely that the tender for that site had been lost because of a dishonest conspiracy between Mr Easton and Mr Freddie Robinson, effected by altering prices in the tender to ensure that it was not awarded to Meadowbank/Sovereign). However, the claim in relation to the alleged diversion of the Firth Rixson contract which was won by tender remained in issue. This, the Diverted Contract Claim, is the second of the claims which remained for determination at the end of the trial.

89. Breach of confidence and unlawful interference in Claimant's contractual relations with Erasteel: Framed in conspiracy and other economic torts this claim relates to the alleged damaging of MVA's contractual relationship with a French company that I shall refer to as "Erasteel". It involved two factual allegations of wrongdoing. The first involved Mr Easton physically mixing low grade scrap at the Erasteel premises into high grade scrap provided by Meadowbank to make Erasteel believe that Meadowbank was dishonestly supplying Erasteel with low grade scrap instead of the agreed (and ordered) higher grade material. The second element was that Mr Freddie Robinson, whilst at Meadowbank's offices, secretly took a confidential photograph of a lawyers' letter of claim written on behalf of Meadowbank to Erasteel. The letter related to a dispute between the two parties over non-payment by Erasteel of orders it had placed with Meadowbank. Implicitly, the photograph was asserted to have been used in some way. These matters were asserted to have caused Erasteel to remove a substantial part of business from Meadowbank. The quantum of these claims was estimated at £30,000 (PoC paras 15(j), 36-38; SoL Head F).

90. This claim remained to be determined at the end of the trial (the "Erasteel Claims").

91. Darren Swift Wages Claim: This was a claim for breach of an oral contract said to have been reached between Mr Robinson Senior (as partner of Sovereign) and La Cotte/MVA (through Mr Andrew Hobson) whereby the Claimant would continue to pay the salary of Darren Swift (as compensation) for a two year period after termination of the Firth Rixson contract in relation to Darley Dale and Sovereign would re-imburse Meadowbank 50% of the same. Mr Swift had previously worked on behalf of Sovereign/Meadowbank at Darley Dale. The proposed payment to him was in effect compensation for his loss of job. The quantum of this claim was £25,000 (PoC paras 15(f), 39-40; SoL head Gii).

92. On the morning of the first day of the trial, Mr Stuart informed me that he had instructions that morning to withdraw the Darren Swift Wages Claim. That withdrawal was later formalised by service of a notice of discontinuance.

93. Equipment claim: The allegation was that, pursuant to the JVA, it was agreed that any equipment purchased to service the Darley Dale site would be shared equally and on termination of the JVA either sold (and the proceeds shared 50:50) or retained by one of the parties to the JVA on the basis that it accounted for 50% of the value to the other. Further, it was alleged that equipment at the Meadowhall and River Don sites was taken by Sovereign without accounting to Meadowbank, either as sole owner or as joint owner with Sovereign as part of the joint venture. The claim in respect of Darley Dale was

£14,914.86. The claim in respect of equipment at the other two sites ("to which the Claimant/MVA did not have access") was one for damages to be assessed (PoC paras 15(e), 41-42; SoL head Gi).

94. As with the Darren Swift claim, on the morning of the first day of the trial, Mr Stuart informed me that he had instructions that morning to withdraw the Equipment Claim That withdrawal was later formalised by service of a notice of discontinuance.

The Counterclaim

95. By the time of the trial, the Re-re-Amended Defence and Counterclaim (D&C) combined with an Amended Defendant's Schedule of Loss ("DSoL"), brought the following limited counterclaims. The counterclaims were brought by Mr Freddie Robinson as assignee of Sovereign, alternatively, if such assignment was successfully challenged, by Sovereign. I did not understand the assignment to be challenged.

96. First, the unpaid balance said to be due under the December 2011 Sale Document amounting to £423,904.74. Alternatively, if that agreement is not binding, then £166,477.23 as damages for conversion of the stock that Sovereign thought it had sold back to Meadowbank under the December 2011 Sale Document (after allowing for sums in fact paid under the December 2011 Sale Document) (DSoL para 1). This stock is part of the stock that Sovereign says it purchased under the 50:50 Agreement.

97. Secondly, £82,535.96 as damages for conversion of the remaining stock that Sovereign says that it purchased under the 50:50 Agreement and which was stored at Meadowbank (DSoL para 4a).

98. Thirdly, £10,808.71 as damages for conversion of certain other stock said to have been stored by Meadowbank for Sovereign (DSoL para 4b). This stock is said to have been part of a consignment of stock purchased from Firth Rixson Glossop on 20 June 2008 and stored at the Meadowbank site. Half of this consignment is said then to have been purchased by Meadowbank from Sovereign in about July 2008. Some of the consignment was later sold back to Firth Rixson in August 2010. However, of the remaining stock from the consignment, A286 turnings of which Sovereign owned 50%, it remained at the Meadowbank Site and has not been returned (the "Glossop Scrap Counterclaim"). This counterclaim is admitted by La Cotte save that it is said that the true value of the relevant material is £7,211.87 (inc VAT) (see Claimant's counter schedule to amended 1st-5th Defendants Schedule of Loss and the witness statement of Mr Luke Hobson paragraphs 17 to 22).

Statements of case

99. Much criticism was made by Mr Lewis of the opacity of the Claimant's case as set out in its various statements of case. There is some force in his criticism.

100. For present purposes, I should simply refer to the well-known authorities on the point which have, after the trial in this case, been considered again by the Court of Appeal in *Satyam Enterprises Ltd v Burton* [2021] EWCA Civ 287. At paragraph [36], Nugee LJ (with whose judgment the other two Judges agreed) made the following point:

> "*[36] The present case however is ….. one where the parties addressed in their evidence and submissions the cases that had been pleaded, but the Judge decided the case on a basis that had neither been pleaded nor canvassed before him. In our system of civil litigation that is impermissible, and a misunderstanding of the judge's function which is to try the issues the parties have raised before him. The relevant principles were stated by this Court in Al-Medenni v Mars UK Ltd [2005] EWCA Civ 1041. There the trial judge had rejected the Claimant's pleaded allegation of how she had sustained an accident but nevertheless found the Defendant liable on the basis of his own theory of what had happened (referred to as the "third man theory"), which had never formed any part of either party's pleaded case. Dyson LJ (with whom Tuckey and Brooke LJJ agreed) said at [21]:*
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> > *"In my view the judge was not entitled to find for the Claimant on the basis of the third man theory. It is fundamental to our adversarial system of justice that the parties should clearly identify the issues that arise in the litigation, so that each has the opportunity of responding to the points made by the other. The function of the judge is to adjudicate on those issues alone. The parties may have their own reasons for limiting the issues or presenting them in a certain way. The judge can invite, and even encourage, the parties to recast or modify the issues. But if they refuse to do so, the judge must respect that decision. One consequence of this may be that the judge is compelled to reject a claim on the basis on which it is advanced, although he or she is of the opinion that it would have succeeded if it had been advanced on a different basis. Such an outcome may be unattractive, but any other approach leads to uncertainty and potentially real unfairness."*

101. Nugee LJ contrasted the case before the Court of Appeal, as set out above, with one where a party seeks at trial to depart from the case as pleaded in its statements of case:

> "*[35] This is not therefore a case, as sometimes happens, where one or other of the parties seeks to run a different case at trial from that pleaded. That itself is unsatisfactory and can cause difficulties, as has been said recently by this Court more than once: see UK Learning Academy Ltd v Secretary of State for Education [2020] EWCA Civ 370 at [47] per David Richards LJ where he said that statements of case play a critical role in civil litigation which should not be diminished, and Dhillon v Barclays Bank plc [2020] EWCA Civ 619 at [19] per Coulson LJ where he said that it was too often the case that the pleadings become forgotten as time goes on and the trial becomes something of a free-for-all. As both judges say, the reason why it is important for a party who wants to run a particular case to plead it is so that the parties can know the issues which need to be addressed in evidence and submissions, and the Court can know what issues it is being asked to decide. That is not to encourage the taking of purely technical pleading points, and a trial judge can always permit a departure from a pleaded case where it is just to do so (although even in such a case it is good practice for the pleading to be amended); in practice the other party often, sensibly, does not take the point, but in any case where such a departure might cause prejudice he is entitled to insist on a formal application to amend being made: Loveridge v Healey [2004] EWCA Civ 173 at [23] per Lord Phillips MR*".

102. In this case I made clear to all parties that I would hold them to their pleaded cases and that if they wished to depart from the same they would need to apply to amend. No such application was made.

The oral evidence and the court's approach to it

103. Although the position remains that the "gold standard" for the ascertainment of the truth of witness evidence is the confrontation of a witness in the witness box by way of cross examination, the manner in which the court assesses the result has, in recent years, been the subject of judicial comment and explanation based on scientific research. In particular, the court has, on a number of occasions, given guidance as to the exercise of evaluating oral evidence and the accuracy/reliability of memory.

104. A convenient summary is set out in the judgment of Warby J (as he then was) in *R (Dutta) v General Medical Council* [2020] EWHC 1974 (Admin) at paragraphs 39 to 41 where he said (with emphasis removed, and inserting sub-paragraph numbers for bullets in the extracts from the judgment in the *Kimathi* case, referred to below):

> *"[39] There is now a considerable body of authority setting out the lessons of experience and of science in relation to the judicial determination of facts. Recent first instance authorities include Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3650 (Comm) (Leggatt J, as he then was) and two decisions of Mostyn J: Lachaux v Lachaux [2017] EWHC 385 (Fam) [2017] 4 WLR 57 and Carmarthenshire County Council v Y [2017] EWFC 36 [2017] 4 WLR 136. Key aspects of this learning were distilled by Stewart J in Kimathi v Foreign and Commonwealth Office [2018] EWHC 2066 (QB) at [96]:*
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> *"i) Gestmin:*
>
> *(1) We believe memories to be more faithful than they are. Two common errors are to suppose (1) that the stronger and more vivid the recollection, the more likely it is to be accurate; (2) the more confident another person is in their recollection, the more likely it is to be accurate.*
>
> *(2) Memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is even true of "flash bulb" memories (a misleading term), i.e. memories of experiencing or learning of a particularly shocking or traumatic event.*
>
> *(3) Events can come to be recalled as memories which did not happen at all or which happened to somebody else.*
>
> *(4) The process of civil litigation itself subjects the memories of witnesses to powerful biases.*
>
> *(5) Considerable interference with memory is introduced in civil litigation by the procedure of preparing for trial. Statements are often taken a long time after relevant events and drafted by a lawyer who is conscious of the significance for the issues in the case of what the witness does or does not say.*

(6) The best approach from a judge is to base factual findings on inferences drawn from documentary evidence and known or probable facts. "This does not mean that oral testimony serves no useful purpose… But its value lies largely… in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth".

ii) Lachaux:

(7) Mostyn J cited extensively from Gestmin and referred to two passages in earlier authorities.[45] I extract from those citations, and from Mostyn J's judgment, the following:-

(8) "Witnesses, especially those who are emotional, who think they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases, that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason, a witness, however honest, rarely persuades a judge that his present recollection is preferable to that which was taken down in writing immediately after the incident occurred. Therefore, contemporary documents are always of the utmost importance…"

(9) "…I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective fact proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities…"

(10) Mostyn J said of the latter quotation, "these wise words are surely of general application and are not confined to fraud cases… it is certainly often difficult to tell whether a witness is telling the truth and I agree with the view of Bingham J that the demeanour of a witness is not a reliable pointer to his or her honesty.

iii) Carmarthenshire County Council:

(11) The general rule is that oral evidence given under cross-examination is the gold standard because it reflects the long-established common law consensus that the best way of assessing the reliability of evidence is by confronting the witness. However, oral evidence under cross-examination is far from the be all and end all of forensic proof. Referring to paragraph 22 of Gestmin, Mostyn J said: "…this approach applies equally to all fact-finding exercises, especially where the facts in issue are in the distant past. This approach does not dilute the importance that the law places on cross-examination as a vital component of due process, but it does place it in its correct context.

> [45] *The dissenting speech of Lord Pearce in Onassis and Calogeropoulos v Vergottis [1968] 2 Lloyd's Rep 403, 431; Robert Goff LJ in Armagas Ltd v Mundogas SA [1985] 1 Lloyd's Rep 1, 57."*
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> *[40] This is not all new thinking, as the dates of the cases cited in the footnote make clear. Armagas v Mundogas, otherwise known as The Ocean Frost, has been routinely cited over the past 35 years. Lord Bingham's paper on "The Judge as Juror" (Chapter 1 of The Business of Judging) is also familiar to many. Of the five methods of appraising a witness's evidence, he identified the primary method as analysing the consistency of the evidence with what is agreed or clearly shown by other evidence to have occurred. The witness's demeanour was listed last, and least of all.*
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> *[41] A recent illustration of these principles at work is the decision of the High Court of Australia in Pell v The Queen [2020] HCA 12. That was a criminal case in which, exceptionally, on appeal from a jury trial, the Supreme Court of Victoria viewed video recordings of the evidence given at trial, as well as reading transcripts and visiting the Cathedral where the offences were said to have been committed. Having done so, the Supreme Court assessed the complainant's credibility. As the High Court put it at [47], "their Honours' subjective assessment, that A was a compellingly truthful witness, drove their analysis of the consistency and cogency of his evidence …" The Supreme Court was however divided on the point, and the High Court observed that this "may be thought to underscore the highly subjective nature of demeanour-based judgments": [49]. The High Court allowed the appeal and quashed Cardinal Pell's convictions, on the basis that, assuming the witness's evidence to have been assessed by the jury as "thoroughly credible and reliable", nonetheless the objective facts "required the jury, acting rationally, to have entertained a doubt as to the applicant's guilt": [119]."*

105. The question of the significance of the demeanour of a witness has also been addressed by Leggatt LJ (as he then was) in *R (on the application of SS (Sri Lanka) v Secretary of State for the Home Department* [2018] EWCA Civ 1391:-

> *"[36] Generally speaking, it is no longer considered that inability to assess the demeanour of witnesses puts appellate judges "in a permanent position of disadvantage as against the trial judge". That is because it has increasingly been recognised that it is usually unreliable and often dangerous to draw a conclusion from a witness's demeanour as to the likelihood that the witness is telling the truth. The reasons for this were explained by MacKenna J in words which Lord Devlin later adopted in their entirety and Lord Bingham quoted with approval: "I question whether the respect given to our findings of fact based on the demeanour of the witnesses is always deserved. I doubt my own ability, and sometimes that of other judges, to discern from a witness's demeanour, or the tone of his voice, whether he is telling the truth. He speaks hesitantly. Is that the mark of a cautious man, whose statements are for that reason to be respected, or is he taking time to fabricate? Is the emphatic witness putting on an act to deceive me, or is he speaking from the fullness of his heart, knowing that he is right? Is he likely to be more truthful if he looks me straight in the face than if he casts his eyes on the ground perhaps from shyness or a natural timidity? For my part I rely on these*

considerations as little as I can help." "Discretion" (1973) 9 Irish Jurist (New Series) 1, 10, quoted in Devlin, The Judge (1979) p63 and Bingham, "The Judge as Juror: The Judicial Determination of Factual Issues" (1985) 38 Current Legal Problems 1 (reprinted in Bingham, The Business of Judging p9).

[37] The reasons for distrusting reliance on demeanour are magnified where the witness is of a different nationality from the judge and is either speaking English as a foreign language or is giving evidence through an interpreter. ...

[38] Ms Jegarajah emphasised that immigration judges acquire considerable experience of observing persons of different nationalities and ethnicities giving oral evidence and suggested that this makes those judges expert in evaluating the credibility of testimony given by such persons based on their demeanour. I have no doubt that immigration judges do learn much in the course of their work about different cultural attitudes and customs and that such knowledge can help to inform their decision-making in beneficial ways. But it would hubristic for any judge to suppose that because he or she has, for example, seen a number of individuals of Tamil origin giving oral evidence this gives him or her a privileged insight into whether a particular witness of that ethnicity is telling the truth. That would be to assume that there are typical characteristics shared by members of an ethnic group (or by human beings generally) which can be relied on to differentiate a person who is lying from someone who is telling what they believe to be the truth. I know of no evidence to suggest that any such characteristics exist or that demeanour provides any reliable indication of how likely it is that a witness is giving honest testimony.

[39] To the contrary, empirical studies confirm that the distinguished judges from whom I have quoted were right to distrust inferences based on demeanour. The consistent findings of psychological research have been summarised in an American law journal as follows: "Psychologists and other students of human communication have investigated many aspects of deceptive behavior and its detection. As part of this investigation, they have attempted to determine experimentally whether ordinary people can effectively use nonverbal indicia to determine whether another person is lying. In effect, social scientists have tested the legal premise concerning demeanor as a scientific hypothesis. With impressive consistency, the experimental results indicate that this legal premise is erroneous. According to the empirical evidence, ordinary people cannot make effective use of demeanor in deciding whether to believe a witness. On the contrary, there is some evidence that the observation of demeanor diminishes rather than enhances the accuracy of credibility judgments." OG Wellborn, "Demeanor" (1991) 76 Cornell LR 1075. See further Law Commission Report No 245 (1997) "Evidence in Criminal Proceedings", paras 3.9–3.12. While the studies mentioned involved ordinary people, there is no reason to suppose that judges have any extraordinary power of perception which other people lack in this respect.

[40] This is not to say that judges (or jurors) lack the ability to tell whether witnesses are lying. Still less does it follow that there is no value in oral evidence. But research confirms that people do not in fact generally rely on demeanour to detect deception but on the fact that liars are more likely to tell stories that are

> *illogical, implausible, internally inconsistent and contain fewer details than persons telling the truth: see Minzner, "Detecting Lies Using Demeanor, Bias and Context" (2008) 29 Cardozo LR 2557. One of the main potential benefits of cross-examination is that skilful questioning can expose inconsistencies in false stories.*
>
> *[41] No doubt it is impossible, and perhaps undesirable, to ignore altogether the impression created by the demeanour of a witness giving evidence. But to attach any significant weight to such impressions in assessing credibility risks making judgments which at best have no rational basis and at worst reflect conscious or unconscious biases and prejudices. One of the most important qualities expected of a judge is that they will strive to avoid being influenced by personal biases and prejudices in their decision-making. That requires eschewing judgments based on the appearance of a witness or on their tone, manner or other aspects of their behaviour in answering questions. Rather than attempting to assess whether testimony is truthful from the manner in which it is given, the only objective and reliable approach is to focus on the content of the testimony and to consider whether it is consistent with other evidence (including evidence of what the witness has said on other occasions) and with known or probable facts.*"

106. These more recent iterations of judicial experience and scientific learning provide much of the rationale underlying the new regime governing witness statements, and best practice in relation to their preparation, in the Business and Property Courts (as from 6 April 2021). As paragraph 1.3 of the Appendix to Practice Direction 57AC sets out:

> "*1.3 Witnesses of fact and those assisting them to provide a trial witness statement should understand that when assessing witness evidence the approach of the court is that human memory:*
>
> *(1) is not a simple mental record of a witnessed event that is fixed at the time of the experience and fades over time, but*
> *(2) is a fluid and malleable state of perception concerning an individual's past experiences, and therefore*
> *(3) is vulnerable to being altered by a range of influences, such that the individual may or may not be conscious of the alteration."*

107. In this case, the warnings about recollections being unreliable over time and constant revisiting have a particular resonance.

108. The above discussion is also relevant to separate questions arising from the fact that the trial in this case was conducted wholly remotely. That is whether the fact that the trial was conducted remotely was unfair or otherwise had an effect upon the court's job in assessing the evidence. I deal with these questions below under the heading "The remote trial in this case".

Lies or *Lucas* direction

109. As I shall go on to explain, Mr Freddie Robinson accepts that he has lied in the past regarding his actions in taking a photograph of a letter to Erasteel from MVA's then lawyers and passing it to Mr Easton. In addition, I do make certain findings that witnesses have been lying in certain respects.

110. In this context, I should make clear that I have given myself what is usually referred to as a lies or *Lucas* direction, named after the decision in *R v Lucas* [1981] 73 Cr App R 159, CA. A useful summary of that direction, as it applies in the criminal context and as given to juries, is contained in the Crown Court Compendium (December 2020), as follows (leaving out footnotes):

> "*A Defendant's lie, whether made before the trial or in the course of evidence or both, may be probative of guilt. A lie is only capable of supporting other evidence against D if the jury are sure that:*
>
> *(1) it is shown, by other evidence in the case, to be a deliberate untruth; i.e. it did not arise from confusion or mistake;*
>
> *(2) it relates to a significant issue;*
>
> *(3) it was not told for a reason advanced by or on behalf of D, or for some other reason arising from the evidence, which does not point to D's guilt."*

111. Connected with this point is the issue of the court's approach to bad character. Again, the points helpfully set out in the Crown Court Compendium regarding bad character are well known. For present purposes, and in the current context, the key point that I stress is the direction that "*just because someone has told lies in the past does not mean that he/she is telling lies now*".

The Parties' conduct of the litigation and other allegations

112. As a general matter, each of the Claimant and the 1st to 5th Defendants (the "Relevant Defendants") raised unnecessary issues as to the conduct of their respective cases by the other. Thus, Mr Andrew Hobson referred to the Defendants "*throughout this litigation sought to play tactical litigation games..to avoid a trial of the issues*". This is typical of the general approach adopted in the Claimant's evidence of levelling accusations without chapter and verse.

113. I do not find it necessary to trawl through all the history of these proceedings to reach a view as to the parties' conduct at any stage earlier than my involvement and/or save to the extent I do so in this judgment. Although I was provided with a long schedule by the 2nd to 5th Defendants of examples of what were said to be the Claimant having failed to comply with court orders or been late in doing so, it did not assist me in reaching conclusions on the issues now before me.

114. Similarly, what seemed like a myriad of other issues were raised which I also decline to rule on. Such matters are an unnecessary distraction from the issues actually before me. To take one example, Mr Andrew Hobson, in his 284 paragraph witness statement of 69 pages, asserted that the collapse of MVA was brought about not simply because of unsatisfied judgments against APC and AMM but also by

> "*Mr Wormstone's involvement with the Environment Agency and collusion/conspiracy through the actions of one Andrew Wormstone..as a director and legal adviser in breach of his duty of confidentiality.. I now know this was part of the joint conspiracy attempts by D6/Wormstone/Cooke and D2 to force the closure of MVA and ultimately La Cotte in order to establish themselves suppliers*

> *to clients such as Erasteel Firth Rixson , Doncasters group, Koyo, etc. in competition to LCC and MVA, using the same trade/material through APC and AMM. I refer to the theory and mechanics behind this plot below at paras 213-226 below. Although this is not directly part of the current claim, I ask the court to take particular note of this as the events and deceit and extremely important in relation to context and demonstrate the intricacy, depth and roles which each individual had to play in this conspiracy*." (emphasis supplied).

115. Indeed, it is somewhat unfortunate that rather than concentrate on the specific causes of action being advanced in this case, much time and ink has been spent by the Claimant on seeking to establish the wider conspiracy referred to in the passage that I have cited in the immediately preceding paragraph. The causes of action maintained in these proceedings have, in my judgment, largely been constructed by a process in which two and two have been added together to make five. There has been a starting point that there is an overall conspiracy and from that old documents have been raked through to attempt to find suspicious matters. Further, the Claimant's witnesses have persuaded themselves of the veracity of the claims advanced and become entrenched in their positions as time has gone on.

The witnesses

116. For the Claimant I heard oral evidence from the following witnesses of fact (and in the following order):

(1) Luke Hobson

(2) A J Hobson

(3) Sonia Greenhough

(4) Andrew Hobson

(5) Audrey Hobson

(6) Alicia Smith

117. To some extent, I will deal with my assessment of the Claimant's witnesses when considering specific issues. At this stage though I should mention that the litigation was largely being managed by the latest English incorporated Hobson company, NY Commodities Limited. As far as I can tell, the main individual concerned in that process is Mr Luke Hobson.

118. So far as Mr Luke Hobson is concerned, there is little directly relevant evidence that he could give because he was not involved in MSSC and MVA at the times when relevant agreements are said to have been reached. I deal with his evidence about events from 2012 later in this judgment.

119. As a generality, some of his most telling evidence was with regard to general assertions about Mr Easton. In my judgment, there is a great deal of hindsight in his evidence, coupled with a tendency to conclude that anything consistent with dishonesty is in fact proof of dishonesty. Indeed, his evidence seems to reach the point where he has leaped

to conclusions that are simply unsustainable. Thus, he claimed that to the "*middle back end of 2011*" he knew Mr Easton was stealing from MVA, this being a time when he, Mr Luke Hobson, was still working in the warehouse rather than in the office. Yet nothing seems to have been done about this. My conclusion is that at the time this may, at the most, have been a suspicion but it was no more. If Mr Luke Hobson knew definitely that Mr Easton was stealing in the latter part of 2011 it is difficult to understand why the matter was not investigated and Mr Easton confronted with it and steps taken to remove him.

120. Another example is the evidence in his witness statement to the effect that, following a search at Meadowbank's offices, various papers which had been in Mr Easton's office had come to light. He went on to say "*From the papers that I have seen it seems he [*Mr Easton] *was actively trading on behalf of SSS using SSS's letterhead during his employment with MVA".* In cross-examination he explained that the "*papers*" he was referring to were blank Sovereign headed letterhead paper. Mr Easton, on various occasions when acting for both Sovereign and Meadowbank with regard to Firth Rixson matters, signed himself off as if acting for Sovereign. This is explained by the facts that either the relevant contract that Firth Rixson had granted was one granted to Sovereign and which Sovereign sub-contracted to Meadowbank or one where the contract was granted jointly to Meadowbank and Sovereign but where the dealings with Firth Rixson were officially handled by Sovereign. He also handled the provision of outturn figures (that is figures identifying particular types of scrap, their weight and quality as collected from Firth Rixson sites) to Firth Rixson to enable it to invoice Sovereign (which in turn would on-invoice Meadowbank, at least as regards AMS and Darley Dale). Indeed, as I refer to later in this judgment, by letter dated 25 September 2006 on Sovereign letter headed paper he wrote to Firth Rixson regarding the then AMS contract which was then sub-contracted by Sovereign to Meadowbank. I am not in the least surprised that he had Sovereign headed notepaper and it is simply a leap too far to draw the conclusion from possession of the same that he was therefore (illicitly and improperly) actively trading on behalf of Sovereign whilst he was employed at Meadowbank.

121. I turn to Mr A J Hobson.

122. I should at this point mention some unsatisfactory evidence regarding the written evidence of Mr A J Hobson. He had originally made a trial witness statement of some 20 pages and 86 paragraphs on 13 November 2019. The statement of truth was on a page by itself, with a significant gap (about a third of a page) between the end of paragraph 86 and the statement of truth on the following page. That gives rise to concern that the maker of the statement simply signed a page by itself rather than signing a complete document containing the entire witness statement which should have been checked before being signed. That concern became a suspicion when the day before he gave evidence, on 15 December 2020, he signed a further witness statement. That "revised" witness statement largely repeated his November 2019 witness statement but with significant tranches simply deleted. There were also some minor additions by way of amendment. In oral evidence, Mr A J Hobson asserted that what he signed had somehow got:

> "*mixed up, because obviously [it] was not finalised. It has been drafted up from discussions that somehow with all the rushing…somehow it has got handed in*

> *with it not being gone through….there's spelling errors on it and there's things on it which I wouldn't like to agree on definitely. So that is why I took them out."*

123. He then asserted that he had in fact signed a complete witness statement in November 2019 and not just a stand alone statement of truth:

> "*To my recollection there was a document with it, but I assume it has been mixed up or lost somewhere on the paper trail. I don't know. But that's why I changed it, because I don't know how it has happened, but I wouldn't be happy….".*

124. He went on to say:

> "*There's bits in it which were from conversations which… a lot of it is conjecture or belief. But I wouldn't like to come in court and say, this is exactly what has happened, because a lot of it is opinionated and that is why I changed it at a later date*."

125. Later he said:

> "*What has happened: this is through conversations. And when conversations happen with the relevant people taking down the notes. I think sometimes they don't get construed 100% as was said…..some things get, you know, misunderstood."*

126. The assertion seemed to be that Mr A J Hobson had signed a complete witness statement but that it was not the document placed before the court. The danger of the statement of truth being on its own on a separate page was that it made it possible that the preceding pages had been tampered with and replaced or some how mixed up with an earlier draft.

127. I am not satisfied that Mr A J Hobson did not sign the original form of witness statement put before me. The explanation put forward by him that there must have been a "mix up" was, in my judgment, caused by a realisation that he could not justify a lot of what was in the witness statement as originally signed. Having heard him give evidence, I consider that he signed the original witness statement without taking due care in doing so and that that statement was largely drafted for him, reflecting the views and opinions of others. Be that as it may, what was more relevant was the answers that he gave as to why he had now deleted various passages for the purposes of creating an updated witness statement (and of course what he had deleted).

128. It was also suggested, by Mr Lewis for Sovereign, to Mr A J Hobson that his evidence was, at the least, coloured by a situation that had arisen between him and his father. In broad terms there had been a falling out between father and son. Mr A J Hobson was very imprecise and uncertain about the dates. As I understood the totality of his oral evidence (that is including his re-examination) there was an initial falling out which he feels was caused by Mr Easton reporting to his father unfavourably about his performance. The resulting situation was part of the background to his resigning as director (including, he said, his inability to work with Mr Easton). Later, the bad falling out with his father erupted into a dispute as to whether certain money paid from Jersey was a loan and money that he was obliged to repay or, in effect, a gift. That dispute eventuated in court proceedings. The company (as I understand it, rather than Mr

Andrew Hobson personally) bringing the claim was successful. A charging order was placed over Mr A J Hobson's house. It was suggested to him that he had at one point agreed to give evidence for the Defendants but had then agreed to give favourable evidence to the Claimant in these proceedings in return for the charging order being removed or a deal about it being done. I am not satisfied that his evidence was coloured or tainted by any such "deal" with his father. I am, however, satisfied that he agreed to give evidence because of the settlement of the dispute with his father and to assist relations with his father.

129. I should however note that Mr A J Hobson was much less definite in giving oral evidence than he was in his witness statement. On several occasions he pointed out that the events he was being asked about were some years ago and that in the meantime he had been running his own business since then for the best part of eight years. He was concerned not to give answers that he could not be confident in and so many of his answers were along the lines of him not remembering. Although I do not consider that his evidence suffers from the weakness of many others, who have been living and breathing the case over many years, I do consider that Mr A J Hobson, while seeking to do his best to assist the court, was seriously hampered by the passage of time since the events of which he was speaking to and by the fact that his written evidence had obviously been prepared for him and words had been put into his mouth which it was difficult for him, or the court, to be confident in.

130. I turn to Ms Sonia Greenhough. Ms Sonia Greenhough had clearly played a major role in investigating and putting together the case of La Cotte before me. Most of her evidence therefore emerged as not being her evidence of what had taken place at the time but rather "evidence" being her current view of some of the evidence, based on her reconstruction of events from the documents and discussions with other La Cotte witnesses which had resulted, as she would keep saying in "we" reaching one conclusion or another. She had made an earlier witness statement, which I regard as seriously inaccurate in asserting, in support of a then intended application for a freezing injunction, that a matter had "recently" come to light (clearly intending to justify the timing of the proposed application) when in fact the matter had come to light some 6 years earlier (see the part of this judgment below under the heading "The Diverted Contract Claim"). She also in a witness statement in March 2020 put forward new factual evidence about having signed and witnessed an assignment which I have found I cannot accept (see later in this judgment under the heading: "The Alleged Assignments between Hobson Companies").

131. Most of her so-called evidence therefore falls to be disregarded as such. It is also important to bear in mind the very limited role that she played at the relevant times.

132. As regards Mr Andrew Hobson, his written witness evidence displayed to the greatest extent the underlying concerns which have given rise to the recent Pilot practice direction on witness statements in the Business and Property Courts. His witness statement was put forward as the main witness statement for the Claimant setting out the facts and matters relied upon in extenso.

133. On many of the key topics, when cross-examined, Mr Andrew Hobson's reaction was, in far too many cases, one of saying that he could not "speculate" and that the question should be referred to a third party (which might or might not be a witness) to answer.

Further, this was true even in relation to matters that on the face of it he clearly did know about. As a generality, it was clear that the witness statement, in large part, had been drafted for him in the sense of its contents being provided to him rather than him first providing the detail to the person assisting him in the drafting of it. Thus, as regards evidence in relation to the Meadowbank companies, he confirmed that this was information provided by advisers and that he thought it was right in the sense that he had no reason to think that it was not but that it was not written in his kind of language at all.

134. He also had a tendency to go off on diatribes about the wickedness of several other persons including Mr Freddie Robinson and Mr Easton. Further, his evidence was on occasion inconsistent, even in the course of his giving oral evidence. An example of this is his ambulatory evidence as to whether commission for Sovereign had been agreed between Mr Neil Freeman and Sovereign when the AMS site was sub-contracted to Meadowbank in 2002. Another example is his position regarding the alleged agreement under which Sovereign was to take all Firth Rixson Low Grade scrap and Meadowbank all Firth Rixson High Grade scrap, irrespective of which Firth Rixson site was in question.

135. In addition, it was clear that most, if not all, of the key evidence set out in his witness statement was not evidence obtained from him but was evidence or spin placed on evidence from investigation by others. His witness statement failed to identify what was his evidence and what he had been told.

136. Unless clearly supported by contemporaneous documents or other material, I felt compelled to treat his evidence with great caution.

137. A useful example of the manner in which Mr Andrew Hobson gave evidence relates to the issue of the dispute between him and Mr A J Hobson that I have already touched upon. It is also significant that in oral evidence Mr Andrew Hobson sought to blame Mr Freddie Robinson for this break down in relations too. Prior to this he had not mentioned in his witness statement the family breakdown though his wife had referred in her witness statement, almost in passing and with no detail, to Mr Easton and Freddie Robinson having "*caused upset with our eldest son*". A relevant extract of cross examination of Mr Andrew Hobson is as follows:

> "*Q. Let me just move on to another topic, if I may. We have heard in the last few days about a court case you were involved in with your son, AJ. Let's find the parameters of that case, shall we? Can you tell me, was the claim by you personally against AJ or was it one of your companies?*
>
> *A. I cannot remember the detail of that, Mr Lewis, but you're quite right, there was an issue.*
>
> *Q. Just have a think. Surely you know whether you brought a claim in your own personal capacity or La Cotte brought the claim, for example. Have a think about that.*
>
> *A. I don't need to think about it. I have just answered that.*

Q. You can't remember?

A. I can't remember.

Q. What were you or a company that you are in control of suing AJ for?

A. I can't remember that either.

Q. Mr Hobson, yes, you can remember why you were suing your first son. Please answer the question.

A. I can't remember.

Q. Mr Hobson, I am putting it to you that you are lying. Now, tell me why you were suing AJ?

A. It was a dispute over a log cabin. I cannot remember the detail. There was a lot of -- for want of words --animosity, in fact it went a lot deeper than that, caused by yours truly, Mr Easton, accusing my son of thieving. I was absolutely-what is the word....mortified of the thought, he was mortified in essence afterwards that I thought he could. Crossed wires. Easton throwing more petrol on the fire along with his side kick

Q. Let's take this in stages. So now you remember, do you, so I can ask you some questions, is that right? Has your memory come back of this event?

A. Pardon?

Q. Has your memory returned as to why you were suing your son?
A. I never said it didn't. You asked me what company or personally. Are you following me, Mr Lewis?

Q. Yes, I was following you, Mr Hobson. Let's try this again, shall we? We know there was a case in which you or one of your companies sued your son. How often have you sued your sons in your lifetime?

A. My sons ... AJ, there was an issue and it got out of all context, and it should do because of other forces, and it was in hindsight crazy, really, because we love each other so much. So once, once.

Q. Was there an allegation of theft made by you against your son?

A. Perpetrated by Easton and Robinson, yes

.

Q. Listen to the question: did you allege against your son that he stole money?

A. Pardon?

Q. Did you or one of your companies allege against AJ that he stole money? Did y you allege that AJ stole from you?

A. Yes.

Q. Yes, thank you. And that resulted in a court case, didn't it?

A. No.

Q. But AJ told us a few days ago that it did, Mr Hobson, so think about your answer. Did it result in a court case?

A. What resulted in a court case was the issue got compounded and it ran away with itself, and ultimately we got wider and wider and wider, by people for their own agendas, and I am saying this with certainty. We have never ever had an issue until people got involved and created that. We now know it was perpetrated by your two truly. And therefore I went extreme, and so did AJ, and obviously the mushroom went up for a while. All families have it, it's in the tapestry of life, Mr Lewis. When you have kids, I hope you don't but you will, that is what happens. You learn from it and you move on and that is the end of it. I have three beautiful grandsons and it will never ever, ever happen again, any of this issue, because we have learned to keep away from the likes of Eastons and Robinsons.

Q. Okay. The fact remains that the issue did arise and you did sue your son and you obtained a judgment against him, is that right, Mr Hobson?

A. That is right.

Q. And then –

A. Yes.

Q. When did you obtain a judgment against your son?

A. I can't remember, Mr Lewis.

Q. Did you put a charge on his family property?

A. I think that is true, yes.

Q. You do still have that –

A. Mr Lewis, sorry, I beg your pardon. I didn't hear the question, sorry.

Q. Did you put charge or a caution -- some kind of restriction, let me put it neutrally -- on your son AJ's Sheffield property?

A. I cannot be 100% sure. I am not going to lie, I can't be 100% sure on that fact, if it is fact, sorry.

Q. In an effort to build bridges, have you asked AJ to help La Cotte in this case?

A. Can you be more specific there, Mr Lewis?

Q. Have you asked AJ to give a witness statement to help you in this case? Did you ask him personally?

A. The answer is AJ wanted to right the record for what he and we have suffered through the wickedness and evilness, and it goes beyond words I can even find, what these two did to put a wedge between our family, and it has never happened before. So therefore AJ was intent on coming forward to put the record straight, Mr Lewis, and that is a fact.

Q. I ask you this question: if AJ is innocent, why has he had to pay you back the 160,000 that he tells us he has had to pay you back?

A. Sorry?

Q. If –

A. You broke up.

Q. If AJ didn't do anything wrong, that is what you are telling us now, why has he had to pay you £160,000 in compensation?

A. There is a great old word in our industry and it is called "honourable".

Q. So help me with that: he has done nothing wrong but he is doing the honourable thing and paying back money. How does that work?

A. Because if you've had it would you pay yours back? If you've had some money off someone?

Q. So he has had money improperly, is that correct?

A. I wouldn't say improperly.

Q. Well, if it was given to him you wouldn't ask for it back, would you, Mr Hobson?

A. At the time there was a rift. Now everything is fine.

Q. Do you maintain that AJ took money improperly or not?

A. No, he didn't take it improperly."

138. I turn to Mrs Audrey Hobson. Her main evidence dealt with the meeting at Meadowbank when various members of the Hobson family "confronted" Mr Freddie Robinson with various allegations. I deal with that evidence later in this judgment. I also have to consider her evidence with regard to the circumstances in which the trial came to be conducted remotely.

139. I turn to Ms Alicia Smith. Her evidence was limited. She dealt with a meeting said to have taken place in about August 2013 at which members of the Hobson family confronted Mr Freddie Robinson and various confessions are said to have taken place. However, she did not suggest she was present at the key times rather than bringing a document into the meeting. She also dealt with the question of whether consideration had been paid for the assignments of causes of action from MVA to La Cotte. I found that that evidence suffered from the general deficiencies of oral evidence so clearly identified in the cases that I have already referred to and especially *Gestmin*. It was very definite but inconsistent with the contemporaneous documents and probabilities. I do not need to consider it further because, as I later explain, I do not consider that the question of whether there was contractual consideration for the assignment affects the fact that there was an assignment.

140. I also received into evidence witness statements from Nathan Smith and Philip Lees which were allowed into evidence by the 1st to 5th Defendants without cross-examination. The circumstances in which the witness statement of Mr Nathan Smith was deployed by La Cotte were unsatisfactory, as I go on to explain.

141. So far as Mr Lees is concerned, I have to take the evidence with caution as Mr Lees has clearly been in an acrimonious dispute with Mr Easton, not just about the latter's liability on a guarantee but also with regard to the whole AMM/APC situation.

142. The relevance of Mr Lees' evidence is as to the Erasteel matter which I deal with later in this judgment.

143. So far as Mr Lees' statement is concerned, it contained a large amount of material which, other than throwing mud at Mr Easton, was largely irrelevant or unparticularised and/or unconvincing.

144. As regards the key matter before me, namely the operation of the Firth Rixson contract or contracts, Mr Lees simply said that Mr Easton had numerous meetings with Mr Freddie Robinson when he, Mr Easton, was working at AMM. Mr Easton assisted Mr Robinson with some spreadsheets but he was unable to say anything more about the matter. Again, there is a question as to the extent that this material was in evidence in the case against Mr Easton. Even if it was, it did not really go anywhere. The Claimant relies upon such contact as demonstrating conspiracy. Of course, it may be consistent with conspiracy but it is also consistent with entirely innocent dealings between the two men.

145. However, there are also other assertions (for example, a hearsay report to Mr Lees that Mr Freddie Robinson had taken High Grade scrap from Firth Rixson but passed it off as being Low Grade scrap and fraudulently invoiced Firth Rixson accordingly). It seems to me that I should give no weight to unsubstantiated allegations of this sort raised by third parties especially when, in the case of this example, the maker of the statement to Mr Lees was Mr Mark Walker who was supposed to be giving evidence for the Claimant on this issue but who was eventually not called. I have also not been shown any hearsay notice in relation to this evidence of Mr Walker nor is there anything to support the truth of the statement in question.

146. Another example, is the implied allegation, which is little more than assertion, that Mr Easton and/or Mr Freddie Robinson are implicated in death threats said to have been made to Mr Lees regarding his giving evidence in the Sheffield Proceedings.

147. Finally, I should note that the format of Mr Lees' witness statement was unsatisfactory. The statement of truth and signature were at the top of a page by itself. The preceding page had two short paragraphs at the top but about three quarters of the page was then blank. Again, this gives rise to the very real possibility that Mr Less simply signed a one page statement of truth or that the document he did sign the statement of truth to has since been tampered with. Given the concession that the witness statement should be received into evidence I duly do so and do not take into account these possibilities. However, I do take into account the manner in which the witness statements appear to have been prepared and the attitude of Mr A J Hobson when asked to give evidence in line with the witness statement prepared for him and his insistence that he was not prepared to give important tranches of that evidence.

148. I turn to Mr Nathan Smith's evidence. Originally La Cotte served a witness summary of Mr Nathan Smith comprising 9 paragraphs. On 26 March 2020 Mr Smith signed a witness statement dated 26 March 2020 comprising 17 paragraphs. The latter witness statement was, however, only served on 1 December 2020 less than two weeks before the start of the trial. Mr Luke Hobson was unable to give a satisfactory explanation as to why the witness statement was not served more promptly. In his 6th witness statement, filed within a week of the commencement of the trial, the explanation that he gave was that late service was because of (a) lockdown caused by the Covid pandemic, then (b) in August and September the parties had been considering ADR and (c) there was only an opportunity to discuss the same with counsel at the end of November 2020.

149. In cross-examination he was not really able to substantiate these points when asked for detail. Instead, when asked whether actions could have been taken earlier, he chose to debate the meaning of "could" which he described as "a very ambiguous word". In the end he asserted that for "whatever reasons" the witness statement had not been provided to the other parties any earlier than a few weeks before the trial even though it had been provided to the Claimant some 8 months earlier. In my judgment, that was a matter of incompetence rather than deliberate tactical manoeuvring. However, the answers to cross-examination were less than frank and betrayed that Mr Luke Hobson's 6th witness statement, which sought to justify the position on a fairly simple basis, was really an ex post facto purported rationalisation rather than an honest statement of the reasons why the witness statement had not been served. Quite simply, as Mr Luke Hobson put it in oral evidence, "there was always something going on" and I suspect that this matter was simply forgotten about or given low priority until the trial loomed.

150. Mr Nathan Smith's witness statement gave evidence about the Avalloy matter underlying the Avalloy Proceedings. It added nothing to the judgment in that case that I could see. Back in 2014 he apparently said (though at the time of his witness statement he no longer remembered this), that he recalled the relevant stock, once returned from South Africa, as having been sitting in storage for about 6 months before being shipped to someone, whose identity he could not remember. Apparently in 2014 he also recalled the stock as being moved on a Sovereign Steels or Sovereign Transport vehicle. It is easy to understand why the 1st to 5th Defendants did not challenge this evidence. Mr Stuart in his written closing submissions underlined and bolded the sentence reciting

the fact that in 2014 Mr Smith had told his solicitor that the material was sent out on a Sovereign transport vehicle. However, that hardly demonstrates that Mr Freddie Robinson or Sovereign were aware that the stock belonged to Meadowbank or were on notice of Mr Easton's dishonest behaviour. As regards the case against Mr Easton, technically the statement was not, I think, in evidence as Mr Smith was not called. Nevertheless, whether or not it was in evidence it does not seem to me to add anything to the case against Mr Easton.

151. Before me in the trial bundles, initially, were the following witness documents the contents of which were sought to be adduced into evidence on behalf of the Claimant as and when the relevant witnesses were called:

(1) A witness statement from Neville Booth, site foreman employed by NY Commodities Limited and before that MVA and before that MSSC;

(2) An unsigned witness summary of Andrew Cooke;

(3) An unsigned witness summary of Mark Walker, a business manager at Doncaster FVC, dealing primarily with his time when working for Firth Rixson;

(4) An unsigned witness summary of Mr Lesroy Charlesworth Weekes, a former employee of APC and AMM, dealing with the Avalloy matter.

152. The Claimant did not in the end call these witnesses and I have accordingly ignored the matters set out in their evidence or witness summaries (as the case may be).

153. In the Particulars of Claim, La Cotte, under the heading "Evidence of the Defendants' Dishonesty" relies upon various statements said to have been made to individuals acting for it by Mr Cooke. Further reliance was placed on Mr Cooke by members of the Hobson family when giving either written or oral evidence. No hearsay notice has been produced to me in connection with the statements set out in the Particulars of Claim. Mr Cooke himself is asserted by the members of the Hobson family to have acted dishonestly towards them and to have lied and to have agreed to give the Hobsons information about Mr Freddie Robinson as part of the settlement of the Manchester Proceedings brought against him (and others). Without hearing from Mr Cooke, I am not prepared to accept such statements as being truthful and accurate and give them no weight. As Mr Luke Hobson accepted, Mr Cooke is dishonest, in order to get out of the Manchester Proceedings "cheap" he said he would provide evidence about Mr Freddie Robinson and he "says a lot of things" and it is for the listener to "weigh up the situation on what he is presenting to you". To put forward Mr Cooke as an independent source of reliable evidence, primarily alleging fraud against others, without calling him is, in my judgment, a hopeless endeavour.

154. In the same section of the Particulars of Claim, reliance is also placed on a statement from Mr Wormstone contained in an email dated 31 January 2014, in which Mr Wormstone is said to have said:

> "*I also witnessed Dave Easton Receiving Cash payments on a regular basis from Freddie Robinson, what this was for I can only presume dealings were being between them that was not beneficial to Meadowbank. I can confirm that All Firth Rixsons contract and paperwork was handled by Dave Easton, I also have*

> *knowledge that these figures were being manufactured and massaged in favour of Sovereign steels to generate large debt between Meadowbank and Sovereign…in my opinion both Dave Easton and Freddy Robinson benefitted to extent of Thousands of pounds….*"

155. Again, no hearsay notice has been produced to me in relation to such evidence. Mr Wormstone was the subject of criminal proceedings, apparently for money laundering in 2013/14 and received a prison sentence. Mr Andrew Hobson in his witness statement asserts that Mr Wormstone was "*later found to be competing with MVA and LC* [as I understand it, against Meadowbank] *and breaching his duty of confidentiality* [as I understand it owed to Meadowbank companies] *by advising Andrew Cooke and Mr Easton the claim against them*". As I understand it, there is no dispute that his credibility is, to put it mildly, very suspect. I am not prepared to accept the truth of such unparticularised statements and give them no weight.

156. One of the general points made by Mr Stuart was that although the evidence of Mr A J Hobson and Mr Andrew Hobson did not "expressly support" some aspects of La Cotte's pleaded case I should view that as being to their credit as witnesses. Although obviously it is to their credit that they did not persist in the relevant evidence when giving oral evidence, I reject this submission as an overall assessment of the position. First, it ignores the fact that the case put forward by La Cotte relied upon their evidence in material respects as originally put forward in writing. When they departed from that written evidence it was to their credit that they did not continue to assert matters but that does not get over the fact that originally they had put in their written evidence, supported by statements of truth, to contrary effect. Further, in the case of Mr Andrew Hobson, his witness statement was in effect the "lead" statement putting forward the Claimant's case and it was he who was the crucial witness in many respects.

157. For the 1st to 5th Defendants I heard oral evidence from Mr Freddie Robinson. I will deal with his evidence in more detail in the course of this judgment. I should mention however that his credibility as a witness is clearly compromised by his admission that he has previously lied (including in a witness statement to the police, made under sanction of contempt of court if found to be untrue) in denying that he took a photograph of a confidential lawyer's letter written to Erasteel. Although his now open admission of this position counts in his favour, I should also note that I did not accept his evidence that the reason why he took the photograph I have referred to was out of curiosity rather than because he was on the look out for information about Erasteel, on the request of Mr Easton. Accordingly, although as a generality I consider his evidence to be more reliable than most, if not all, of the witnesses for the Claimant, I have placed the greatest reliance on the contemporaneous documents and the overall probabilities. In general, his evidence has been far more consistent with these matters than in the case of the Claimant's witnesses.

158. I should also note that a certain amount of cross-examination of Mr Freddie Robinson was taken up with attempting to show him as being a very close friend of Mr Easton. As I understand it two points are submitted as ones that should be derived from this cross-examination. They are, first, that the closeness which existed was denied and therefore Mr Freddie Robinson's credibility is seriously in issue and secondly, that the closeness itself shows (or makes it more likely) that there was a conspiracy between the two men to damage Meadowbank. I accept neither of these submissions. Obviously,

Mr Freddie Robinson and Mr Easton had a close working relationship over many years. That would naturally give rise to use of language and imparting of personal information that, in the case of persons who do not know each other but who do business together, might not be used. However, I did not perceive Mr Freddie Robinson to deny the relationship that the letters clearly showed. He simply denied the closer and more sinister relationship that was constantly being put to him. Accordingly, I did not find his credibility damaged by the cross-examination in question. Further, although the relationship in terms of closeness was one which may have been consistent with conspiracy it was not, in my view, indicative of it.

159. Although Mr Easton had filed a witness statement, he was not called to give evidence and I accordingly leave it out of account, save to the extent it was put to a witness and agreed to by that witness. Mr Stuart invited me to take Mr Easton's witness statement into account as being, in certain respects, contradictory of Mr Freddie Robinson's version of events. I decline to do so. Mr Easton gave no oral evidence and his witness statement is not evidence in the case (save, as I have said, to the extent that a person who is a witness in the case agrees with or adopts it).

160. Finally I should note that I had forensic accountancy reports provided to me by Mr Howard Freeman of Shorts Accountants for the Claimant and Mr Robert Holland of James Cowper Kreston for the 1st to 5th Defendants. At the end of the day, their evidence was more an analysis or recitation of what contemporaneous accounting records and documents showed rather than expert evidence properly so called and the areas of dispute between them were at the end of the day limited. Each of them were called to give oral evidence but was the subject of limited cross-examination. In light of my legal findings on the limited remaining issues that remained between the parties to which their evidence related I need not deal with their evidence further.

The remote trial in this case

161. Not only must I deal with the remote trial as it took place in this case and any impact on the process of reaching my judgment, but I have to deal with the history regarding the manner in which the trial came to be conducted on a fully remote basis and the evidence given by witnesses for the Claimant in seeking to resist such a trial but instead a further adjournment until a fully face to face trial was possible. The reason for that is that the cross-examination of certain of the Claimant's witnesses was focussed on this area and is relied upon by the 1st to 5th Defendants as regards credit.

162. The trial had originally been set to be heard commencing on 1 April 2020. A PTR was held on 25 February 2020 and the precise terms of parts of the order then made determined on the papers on 2 March 2020. At that stage a traditional "face to face" trial was envisaged and provided for. However, covid infections rapidly escalated and an impending serious position was evident.

163. By email dated 18 March 2020, the Court wrote to the parties as follows:

> "*The Judge is concerned about the listing of the trial of this substantial case in the light of the current public health emergency and in light of the Lord Chief Justice's statement yesterday.*

> *Whilst ultimately the matter will have to be dealt with in the light of the fast moving situation and guidance that is being issued from time to time his current preliminary view is as follows.*
>
> *1. The trial is not going to be capable of being dealt with (at least in whole) by remote means such as by telephone or video hearing;*
>
> *2. It is likely to be inappropriate or not possible to hold a trial at the listed time given the large number of persons that would have to be brought together in close proximity over the trial. This is subject to the question of whether the parties feel it will be possible to (and do) agree a process whereby for example, the number of witnesses and extent of cross-examination requiring a live hearing are minimised and adjusted and other parts of the trial are conducted by say Skype. The Judges current impression is that given the issues this is unlikely to be possible but he does not rule it out.*
>
> *3. It is therefore likely or there is at the very least a very real prospect that, however regrettable, the trial will have to be adjourned.*
>
> *The Judge has asked this email to be sent so that the parties can formally consider the matter as between themselves (if they have not already done so). If the parties are agreed on the way ahead then the Judge would ask that that proposal is notified to the court as soon as possible so that the same can be considered by the court and, if it the proposal requires a court order, that a draft of the same is submitted as soon as possible.*
>
> *If agreement is not possible then there will have to be case management conference to be conducted by telephone which the Judge suggests should be listed early in the week of 23 March so the parties know where they stand in relation to the trial.*
>
> *Would the parties please revert to the court in writing by 12 noon on Friday 19 March so that the Court can consider the way ahead?"*

164. National "lockdown" as a result of the Covid epidemic was announced on 23 March 2020. At that point there was little time to put arrangements in place for a fully remote hearing. Further, the court's experience of fully remote trials (including trials where fraud allegations were made) was limited. Accordingly, with the consent of the Claimant and the 1st to 5th Defendants I adjourned the trial. On 1 April 2020 I conducted a remote case management hearing and the trial was re-listed to take place (as it did) from 14 December 2020 onwards. The hope at that stage was that, by that stage, the trial would be able to be conducted on a face to face basis.

165. By notice dated 4 November 2020 the court gave notice of a hearing of a further PTR on 25 November 2020. The reason for this was that the court had heard no further from any party about the forthcoming trial. As I have said, at this point it was the expectation that the trial would be conducted on a traditional basis, that is, fully "face to face" in a court room. However, I was concerned that there were no contingency measures in place in the event, for example, that a witness were to succumb to the covid virus and not be able to attend court. By email dated 2 November 2020 the parties were given notice of the following:

> "*HHJ Davis-White QC has directed for this case to be listed for a Pre Trial Review via CVP with a time estimate of 1 hour during week commencing 23rd November 2020 (preferably as early in the week as possible). The Judge has*

> *stated that in advance of the PTR the parties should give consideration to the practical arrangements for Trial, what will happen if a witness is unable to attend and what contingency plans need to be put in place.*
> *The Court would be grateful if by 4pm on 4th November the parties could confirm trial counsel's availability during the week commencing 23rd November 2020*"

166. In due course the PTR was listed for 25 November 2020.

167. By letter dated 5 November 2020, the 1st to 5th Defendants' solicitors, Simons Muirhead & Burton LLP ("SMB") wrote to La Cotte. As regards the conduct of the trial their main suggestion was as follows:

> "*We have considered with Leading Counsel today the arrangements for the trial. Our view is that the trial scheduled to commence on 14th December 2020, should proceed as normal with witnesses attending in person to give live evidence, with provision made for witnesses to give their evidence remotely should a COVID related reason arise."*

The letter went on to set out the need for a protocol and for electronic bundles.

168. The response of the Claimant by letter dated 9 November 2020 was as follows:

> "*On the basis of matters as they presently stand it is the Claimant's position that, with regret, this trial should not take place during December 2020 and January 2021 in Leeds or at all. We wish to make clear that, in normal circumstances, the Claimant is very keen indeed for this matter to be concluded as soon as reasonably possible. Equally the Claimant fully understands that some Court Hearings (even some trials) may still be conducted practicably during the present pandemic. But the Covid Pandemic, and the ever increasing Government restrictions and health risks arising at present make it impractical for* ***this particular trial to take place,*** *as currently arranged. In order to avoid late postponement, which might result in wasted costs and wasted court time, it would be more proportionate and reasonable (and meet the overriding objective) for the parties and the Court to take this difficult decision to postpone the trial now, rather than in mid-December."*

169. In summary, the reasons said to justify this stance were that almost all of the Claimant's witnesses were isolating and shielding for medical reasons and that they therefore could not be expected physically to attend the court at Leeds for a face to face trial. As regards remote attendance, it was said that:

(1) There were likely to be serious problems. Mr and Mrs Andrew Hobson in Jersey were not experienced in using computer technology. As they were isolating they could not get assistance and they did not have the necessary reliable broad band facilities (and could not have them installed). Six other witnesses (being the other key witnesses for the Claimant, including its expert) "do not have reliable

broadband connection at their homes". Similarly, the in-house lawyer would experience similar difficulties.

(2) Given the voluminous bundles and leaving aside the points in (1), Mr Andrew Hobson would need assistance when giving evidence and without it there would be at the least "excessive delay" in the trial process. This had proved to be the case with hard copy bundles in an actual trial. Electronic bundles would make the matter worse.

(3) Similar points to (2) applied to the other witnesses as regards electronic bundles.

If an adjournment was not agreed, an application would be made.

170. By letter dated 11 November 2020, SMB replied that they, their clients and Counsel considered that the trial could proceed safely and efficiently either on a hybrid or a fully virtual basis. They invited the Claimant to give detailed consideration to both options.

171. As I have said, an application notice was issued on 13 November 2020. The application sought what appeared then to be almost an indefinite adjournment until a date to be fixed "*once the serious effects of the current Covid-19 pandemic have receded*". In support there was a witness statement of Mr Andrew Hobson. The key points against a remote trial can be extracted as follows:

(1) The Claimant's trial counsel, Mr Stuart, had explained previously that he considered it impracticable to cross-examine Mr Robinson (on matters covering a huge volume of paperwork and complex and serious issues including dishonesty) by any form of video-link.

(2) Mr Hobson was suffering osteoarthritis and was experiencing significant pain. "*At the moment the pain is so severe that I am having difficulty concentrating on anything (like reading or business) and I really believe that I could not concentrate on giving evidence (even if I were to do so from my home by video).*"

(3) His wife and himself*: "simply do not have reliable internet connection, nor the relevant expertise or experience in handling matters by any form of computer video conferencing."*

(4) "*I must also point out that Audrey and I do not have the technology here at home which would be necessary for us to have all the trial bundles available electronically*."

(5) It was not possible to obtain adequate internet facilities: "*We cannot have anyone visit us at home at present to set up the equipment which would be necessary to conduct a proper trial of our evidence by videolink".*

172. Although the self-shielding status of a number of witnesses were dealt with, nothing was said about their ability to participate in the trial remotely.

173. A witness statement from a senior associate at SMB made a number of points. These included:

(1) The lateness of the application, especially given the asserted ill-health of each of Mr and Mrs Andrew Hobson which called into question whether they would have been able to attend the court in Leeds even without any problems caused by the

covid epidemic and that, accordingly these issues should have been raised much earlier.

(2) The Claimant's witnesses could, where appropriate, give their evidence remotely. Jersey, according to at least one expert commentator, ranks second in the world in terms of geographical coverage and availability of high broadband speed.

(3) An adjournment would be likely to put the trial off to August 2021 at the earliest.

(4) The 2nd to 5th Defendants were putting in place electronic bundles (the Claimant as litigant in person having eschewed the responsibility of preparing trial bundles).

174. As at 25 November 2020, I was not satisfied that the trial could not proceed fairly, either as a hybrid trial or fully remotely.

175. The question of Mr Andrew Hobson's inability to deal with electronic bundles might be capable of being dealt with either by hard copy bundles in his case and/or with assistance and/or by the solution eventually arrived upon, the electronic documents being managed by a provider who would select and flash up the relevant documents as and when they were referred to.

176. In the end, for trial, the transcript provider, Opus 2, was engaged to provide its EPE (Electronic Presentation of Evidence) service whereby its operative flashed up the relevant documents from the trial bundles (and transcripts) when referred to. I should pay credit to the efficacy of this system and its operation by Opus 2, who had to deal also with documents being added to the database during the trial. It certainly removed the difficulty that I was informed had bedevilled the Sheffield trial. I should also say that its use removed the other concern raised by Mr Stuart, that the documents were such that his cross-examination of Mr Freddie Robinson could not be conducted fairly (for the Claimant and possibly Mr Freddie Robinson) unless conducted on a face to face basis. Further, the concern that remote hearings take longer was also to a large part removed by the fact that the trial was not delayed, as conventional face to face trials using hard copy bundles often are, by the factor that witnesses themselves have to leaf through bundles to find relevant pages to which they are being referred.

177. I was also not satisfied as to the level of shielding that had been in place and observed by Mr and Mrs Hobson nor that it was not possible to put in place high speed WIFI in short order, by a dongle connected to the mobile network if all else failed.

178. I therefore reluctantly adjourned the question of whether the trial should proceed and if so on what basis, to enable further evidence to be filed.

179. The matter was adjourned to 2 December 2020. By this time West and South Yorkshire had just been placed within Tier three of the UK government's Covid Tiers and what was later to become the second wave of covid infections had begun.

180. The alleged (but unsatisfactorily evidenced) difficulties of Mr and Mrs Hobson of giving evidence from Jersey had caused me to adjourn the earlier hearing. I now received a witness statement from Mr Luke Hobson effectively throwing up every barrier there could be to a remote trial. As regards the Claimant and the individuals

acting for it, these included absence of IT equipment, absence of sufficient broadband, inability to receive or deal with electronic documents, and inability to communicate with counsel. In addition, further issues were raised about the witnesses based in England. As regards Mr and Mrs Hobson Mr Luke Hobson told me that medical evidence was being obtained and it was expected that it would advise that they should not leave their home. Evidence from one broadband service provider in Jersey was provided, obtained by Ms Greenhough, saying that it could not carry out the necessary site survey within the available timescale. A number of questions that I had asked orally at the hearing on 25 November 2020 had not been addressed.

181. For the reasons I gave at the time on 2 December 2020, and based also on the further information I was provided with at the hearing, I directed that the trial should proceed on a fully remote basis. In fact, the remote trial operated fairly smoothly as a remote hearing. I consider that the trial was an entirely fair one despite the fact that it was conducted remotely. As regards the Claimant's witnesses I do not consider that they were disadvantaged by giving their evidence remotely. As regards Mr Freddie Robinson's cross-examination, I did not detect any unfairness either to him or the Claimant by reason of the remote process used. I should also confirm that no issue was raised regarding concerns that any witness might, whilst giving evidence, be communicating with one or more others without the court knowing it.

182. Much is sometimes made of a perception that where fraud is involved (a) the witness accused of fraud (and perhaps the witness asserting fraud) is more likely to give truthful evidence if the witness is required to give evidence in a traditional court room setting where the formality and majesty of the law will operate on them to that end and (b) the court is better able to judge the witnesses' evidence if the evidence is given face to face without the barrier of a remote means of communication. In this case, at least, I do not consider that either of these factors operated.

183. As regards the witness giving best evidence in court rather than remotely, I will repeat what I have said recently in *British University in Dubai v Ebrahimi* [2021] EWHC 757 (Ch):

> *"*[*18] ….In terms of disadvantages, whilst it is true that a remote hearing places a barrier between the participants that is not present when everyone is present in court, such barrier should not be overemphasised. As the court has said in many cases such as R (Dutta) v General Medical Council [2020] EWHC 1974 (Admin) and R (on the application of SS (Sri Lanka) v Secretary of State for the Home Department [2018] EWCA Civ 1391, demeanour of a witness is an uncertain guide to the reliability of evidence, far more important is the substance of the evidence given, its internal consistency and its consistency with contemporaneous documents and the inherent probabilities. Further, as Lieven J identified in A Local Authority v Mother [2020] EWHC 1086 (Fam), there is no evidence as to whether the solemnity of being in a court room rather than giving evidence remotely is more conducive to the telling of the truth or the giving of better evidence and it may depend upon the individual in any event. In this case, of course, the fact that the evidence was given remotely was not such as to prevent Dr Pezouvanis feeling that he had to tell the truth orally. Indeed, it is possible, though I speculate, that it was easier for him to admit the truth in an environment where he was not being faced with the Defendant in the same courtroom. In any*

> *event, I did not find that the hearing being remote rather than face to face operated in a manner that made me consider that a face to face hearing would have been more helpful in me reaching my assessment of the evidence and the conclusions that I have reached*."

184. As regards the intermediacy of a video platform proving a barrier, the degree of the barrier is one that is highly dependent on the quality of the transmitted sound and image. In the case of this trial, the quality was generally very good, although inevitably there was the odd problem. I am satisfied that the barrier was not such as to make the trial unfair nor such as to materially hamper me in reaching my conclusions.

185. On this front I should record that Mr Stuart, at the end of the trial, confirmed to me that he did not assert that the trial had been unfair notwithstanding the earlier position taken by his clients in resisting such a form of trial.

186. The evidence given by Mr Andrew Hobson with regard to the application to adjourn the trial was explored with him in cross-examination. Having in his witness statement clearly given the impression that he and his wife were isolating at their home to avoid being infected by the coronavirus such that it was not possible to leave their home to give evidence from a covid secure office with appropriate IT equipment nor to permit outsiders to come into their home to install high speed broadband, it emerged that Mrs Audrey Hobson had been out shopping and Mr Andrew Hobson had been out playing golf and both had been out for dinners. He said that he didn't think he had to tell the court these things, so they were left out of the witness statement which was thereby rendered incomplete and misleading.

187. Secondly, he relied in his evidence upon a letter from a Dr Michael Richardson who asserted that the couple had been "shielding appropriately according to medical advice". Dr Richardson, he told me, is a respiratory expert whose expertise was primarily relevant to Mrs Audrey Hobson's condition. However, Mr Richardson went on to deal with Mr Andrew Hobson's osteoarthritis and the need for strong pain killers and their side effects. As far as I could tell Dr Richardson does not have medical responsibility for this condition of Mr Andrew Hobson, further he is a family friend. Neither his letter nor Mr Andrew Hobson's witness statement revealed that Mr Andrew Hobson had a medical appointment scheduled for pain relieving injections on 9 December 2020. I was told that the appointment letter had been overlooked by the Hobsons. I do not accept that evidence. Generally Mr Hobson was unable to explain how and why Dr Richardson had become involved and asserted he did not understand why these facts would be relevant and so had not included them in his evidence. I do not accept any of this. In my judgment, Mr Andrew Hobson was knowingly presenting the best picture that he could to obtain an adjournment, was not frank with the court and thereby sought to mislead it. I take this into account when assessing his evidence in this case. For these purposes I should make clear that I do not know to what extent the evidence was drafted for Mr Andrew Hobson but that does not matter for present purposes.

Other Earlier Proceedings

188. Certain proceedings brought before these are relied upon by the Claimant as being relevant to my assessment of the conduct and/or evidence of, in particular, Mr Freddie Robinson and/or Mr Easton.

189. In January 2013, the Manchester Proceedings (referred to earlier in connection with Mr Wormstone) were issued by MVA. Mr Easton was the 4th Defendant to the Manchester Proceedings. Other Defendants included Mr Cooke, APC, AMM and Mr Wormstone.

190. In brief, the Manchester Proceedings brought claims arising from a contract said to have been reached in October 2009 between Mr Andrew Hobson, as consultant to MVA, and Mr Cooke of APC under which it was agreed that MVA would sell and purchase product from third parties by selling and buying through APC. At least a major rationale of the relationship was that the envisaged third parties, certain competitors of MVA, would not know that MVA was involved. They would not normally deal with MVA because of its competitor position. Back to back sales and purchases were arranged between MVA and APC on the one hand and then APC and third parties on the other hand. In this process, APC would charge a "commission" to MVA. In broad terms, it was said that commission in excess of that agreed had been charged to MVA by APC, that in certain cases of sales of stock by MVA, the sale had not been invoiced or had been under invoiced by MVA and, as regards certain purchases by MVA, prices were wrongly inflated and/or goods not delivered in whole or in part.

191. The claim against Mr Easton was dismissed by order dated 13 May 2014, with judgment for Mr Easton on his counterclaim for an amount to be decided. He later discontinued that counterclaim by notice dated 9 September 2014.

192. Mr Cooke agreed to a Tomlin Order in October 2013. That was on the basis of representations that he had specific assets in value worth over £7,500, which were transferred under the scheduled Tomlin agreement.

193. AMM and APC were, respectively, the 2nd and 1st Defendants in the Manchester Proceedings. Following the striking out of AMM's defence and counterclaim as a result of a failure to comply with an order relating to disclosure, judgment was entered for just over £92,000 (inclusive of interest) and costs. MVA presented a creditor's winding up petition against AMM, based on the judgment debt, in August 2014 and a winding up Order was made in December 2014.

194. Mr Cooke was the 3rd Defendant in the Manchester Proceedings. Those proceedings were stayed against him by way of a Tomlin order agreed in October 2013. Such an order recorded the settlement reached in the schedule to the order and stayed the proceedings save that there was liberty to apply to enforce the terms of the agreement set out in the schedule. Apart from the transfer of a freehold property and some plant and machinery, the settlement required Mr Cooke to disclose documents that might be relevant or give rise to a line of enquiry in respect of matters raised in the proceedings, or related matters or matters concerning Mr Easton and Mr Wormstone.

195. Mr Wormstone seems to have ceased to play an active role in the proceedings at a fairly early stage but the papers before me from the proceedings do not explain why.

196. In about November 2014, Mr Lees commenced proceedings against Mr Easton to enforce a deed of indemnity said to have been made by the two of them under which Mr Easton was said to have indemnified Mr Lees against any liability arising from the latter having entered into a personal guarantee in favour of Barclays Bank plc and which guaranteed the liabilities of AMM to Barclays Bank plc (the "Lees Proceedings").

197. The Lees Proceedings were transferred to the Sheffield County Court. On 10 August 2017 the defence was struck out on Mr Easton's acknowledgement that the Claimant had paid £26,000 to Barclays Bank plc. Judgment was entered for Mr Lees in the sum of £21,000 plus interest and costs.

198. The Avalloy Proceedings, which I have referred to above, were commenced by MVA against Mr Easton. The background to these proceedings is as follows.

199. A sale by MVA of scrap metal to a company in South Africa, AV Alloy (Pty) Limited ("Avalloy") was agreed in about August 2011. Avalloy rejected that consignment because of delays. It said that an onward sale that it had intended to make had gone off, and, in effect, that Avalloy had difficulties paying for the consignment within the applicable period allowed for under the relevant terms and conditions.

200. The goods were returned to the UK by agreement. However, the goods were apparently diverted from MVA by Mr Easton and, in effect, sold by him on his own account (or the account of a company in which he had an interest) without accounting for the proceeds to MVA. This was established by the Avalloy Proceedings.

201. The Avalloy Proceedings were commenced by Claim Form dated 8 November 2017. In brief, the claim was brought by La Cotte both in its own right and as assignee of any relevant claims by MVA. It was said in the claim form that the relevant consignment, worth approximately £97,000, was dishonestly diverted by Mr Easton to the address of two parties, APC and AMM, away from MVA and that it was then sold for profit which Mr Easton dishonestly and unlawfully retained for himself. The claim was primarily damages for conversion of (La Cotte's or MVA's) goods and/or for breach of Mr Easton's duties as employee owed to MVA.

202. Judgment was delivered by Mr Recorder Withington on 26 July 2019 after a trial in which evidence was given over four days. He found that a contract was entered into by MVA with Avalloy under which Avalloy agreed to buy two types of revert at a total cost of US$139,783.29.

203. The Recorder went on to hold that Avalloy rejected the order, apparently on grounds of delay, and that Meadowbank sought compensation for rejection of what they said was a valid contractual delivery. Matters were eventually left on the basis that Avalloy would return the goods, that such return would be accepted by Meadowbank so that the goods would be returned to the Meadowbank Site and would then be available to be re-sold.

204. The Recorder went on to hold that Mr Easton arranged with Mr Cooke at APC for the stock returned from Avalloy to be provided to APC. Some of the stock was on-sold to Ross & Catherall. As regards other stock, the Recorder was unable to make a finding as to where it had gone but was satisfied that it had not been returned to the Meadowbank companies nor had any payment been made to the Meadowbank companies for it. He was satisfied that Mr Easton had caused the relevant goods to be diverted improperly and whilst he was unable to reach a conclusion as to whether Mr Easton personally benefitted at all, he considered that he was liable for having interfered with the goods. Damages were awarded in a sum of just under £90,000.

205. One of the issues that the Recorder was asked to determine was whether an assignment from MVA to La Cotte of the relevant cause of action had some form of limitation to it. The limitation apparently asserted by Mr Easton was that the value of the claim assigned was limited to the value of consideration paid by La Cotte for the assignment. The Recorder decided that there was no such limitation. However, that finding was obiter because he had found that the goods belonged to La Cotte. This was on the basis that:

> "*MVA was a shell company with no assets and was funded entirely through monies received from Jersey and in the course of clarification of closing remarks made by counsel for the Claimant yesterday when this point was specifically highlighted, Mr Easton confirmed to me that pursuant to an agency agreement between La Cotte and Meadowbank, all the stock was held 100% by La Cotte and I am satisfied that this fairly reflects the position*".

206. As regards the question of stock ownership and the contractual arrangements between La Cotte and MVA, I appear to have received a great deal more evidence than the Recorder. In my judgment, his conclusion in the case before him was probably correct in that the likelihood is that when it was agreed that Avalloy would return the stock and the sales to Avalloy would be reversed then also the related back to back sale to MVA by La Cotte was also agreed to be reversed. However, I do not consider that his finding in this respect binds me in these proceedings.

207. One of the issues before me is the extent to which the evidence of and in these three sets of proceedings (together, the "Earlier Proceedings") should be or are admissible in evidence before me.

208. A point raised by Mr Lewis QC on a number of occasions was the relevance of each of these sets of proceedings and their status as or as part of the evidence in the case. This was not an unreasonable position for him to take. The evidence relating to the three sets of earlier proceedings were added to the trial bundles as four arch lever files, files H1 to H4.

209. Mr Lewis' submission was that the onus was on the Claimant to plead the matter properly, to adduce such evidence and to make a properly based application to do so.

210. As the matter was one that the parties confirmed did not need to be resolved before the hearing of oral evidence, I left this issue over and allowed the relevant evidence to be referred to on a provisional basis. Although there was a certain amount of submission as to whether an application had to be made by the Claimant to admit the evidence or on the part of the Defendants to exclude it (primarily going to the issue of on whom the burden of proof lay), I can set out my conclusions briefly by dealing with the substance rather than the procedural wranglings. I should also add that I have had well in mind the required approach which is most helpfully set out in the case of *O'Brien v Chief Constable of South Wales Police* [2005] 2 AC 534 and subsequent cases, whereby the first issue is legal relevance of the evidence sought to be adduced and then secondly the discretion to exclude. In this case, the question of the exercise of the discretion to exclude on the grounds of proportionality and the risk of side-tracking the trial with collateral issues is particularly to the fore.

211. As regards the Lees Proceedings, all that I get out of them is that there has been a falling out between Mr Lees and Mr Easton. This is relevant when considering the evidence

of Mr Lees, namely that he does not give evidence as a wholly disinterested third party. However, I am not prepared to draw any other relevant inferences which are relevant to resolution of this case from the fact that Mr Easton was ultimately found liable on the deed of indemnity relied upon by Mr Lees.

212. As regards the Manchester Proceedings, I take the same into account as part of the background to this matter and in understanding the role of Mr Cooke as the provider of evidence in these proceedings (either as potential witness or from things that he is said to have told persons at the Hobson Companies in the past). However, other than that I get nothing out of the evidence about the Manchester Proceedings.

213. As regards the Avalloy Proceedings, which was the main battleground between the parties, I accept that the decision shows Mr Easton in a bad light in terms of the evidence that he gave in those proceedings, which was disbelieved and said to have been in part manufactured, and as regards his conduct whilst a senior employee of MVA. However, he has not given evidence before me so that the first point of his credibility as a witness does not arise. As regards his conduct as an employee, the evidence shows a willingness to profit improperly from his position as such employee. I do not however consider that the evidence goes so far as to show that his conduct which was the subject of the Avalloy proceedings was motivated by any desire to bring down or damage MVA (other than as necessarily followed from his improperly profiting). The timing of the conduct is also potentially significant.

214. It has also been the Hobson Companies' position that Mr Freddie Robinson was knowingly involved in the Avalloy diversion of stock. This is the sort of collateral issue that I would not have permitted to proceed in the trial before me but in any event am not satisfied that on the evidence before me it is made out. The Avalloy Proceedings therefore are solely relevant to the issue of Mr Easton's alleged misconduct in these proceedings as making it potentially more likely that he is guilty of misconduct as alleged in these proceedings. I therefore take it into account as a factor in that respect only and not as regards the 1st to 5th Defendants.

The Hobson Companies

215. The information that I have on each of the relevant Hobson Companies, taken from Companies House in the case of the English registered companies, is unfortunately incomplete and selective. It is necessary to consider each of the companies to some extent because of the submission of the 1st to 5th Defendants that the Hobson family traded through a succession of phoenix companies, leaving debts behind when it suited them, because it is relevant to the question of the assignments of various causes of actions relied upon by the Claimant and because it bears on the question of the relationship between the Hobson Jersey Companies and the Hobson English Companies.

216. Meadowbank Alloys Limited was apparently trading in 2002, in that an annual return was filed in June of that year. The company appears to have been jointly owned by Mr and Mrs Andrew Hobson and Mr and Mrs Neil Freeman (as to 50% by each family). At some point it was struck off the register but restored and wound up, on the petition of HM Customs and Excise by order of the court dated 15 March 2005.

217. Meadowbank Special Steels Limited ceased trading, according to its accounts for the period 21 November 2002 to 31 December 2003, in June 2005. In the period covered by those accounts the director was Mr Neil Freeman and the secretary Mrs S Greenhough. The cessation of trade in June 2005 apparently followed a judgment against it for over £18,000 in February 2005, which was said to be still under dispute as at 13 October 2005 (the date of signing the accounts) and a disputed claim against it for just under £130,000, which arose in March 2005. The company was then placed into creditors' voluntary liquidation by a resolution passed on 14 February 2006. The statement of affairs was made by Mr A J Hobson as company director.

218. Meadowbank Special Steels (Commodities) Limited ("MSSC") was incorporated in November 2004. In the same month Mr Neil Freeman was appointed a director and 999 A Ordinary Shares were allotted to him. Accounts for the period 26 November 2004 to 30 April 2006 show Mr A J Hobson as sole director and there being 1,000 Ordinary shares in issue. An annual return as at 26 November 2011 shows Mr A J Hobson as sole director and shareholder. This company was wound up by order of the court dated 13 May 2014 on the petition of a creditor presented on 3 January 2014. The Particulars of Claim assert that MSSC was placed into members' voluntary liquidation on 28 May 2014.

219. The company records therefore confirm the position that Mr Freeman seems to have left the Meadowbank companies in about 2005.

220. The annual progress report of the liquidator of MSSC dated 12 October 2015 sets out the claim of the petitioning creditor as being in a sum of just over £118,000. The liquidator's investigations support the report to him from the director that the company ceased trading on 5 April 2011. The report also records that the liquidator was advised by the director and the company's accountants that following cessation of business, the business and assets of the company were transferred to "MVA" at book value. The assets in question were, according to the final returns filed with HMRC, some £829,799 of which £143,854 comprised fixed tangible assets and £748,945 comprised debtors and cash at bank/cash in hand. The liquidator was also advised by the director and the accountants that MVA and an associated company registered in the Channel Islands which provided financial support to the company (and was itself owed just over £1 million of the listed creditors with a book value of just over £1.4 million) "became responsible for the liabilities of the company". Apparently it was also asserted to the liquidator that the debt owed to the petitioning creditor was actually due from MVA. Subsequent reports do not materially change the picture. They include statements that the tangible assets were said to have been transferred to MVA which "purportedly" then used the funds to discharge creditor liabilities owed to 5 April 2011. There was no record of any consideration being paid for the transfer to MVA. However, for various reasons proceedings were not considered appropriate.

221. That MVA took over the business of MSSC on 5 April 2011 and that the latter ceased trading on that day is also evidenced by emails between the relevant English accountants, PKN Parkins, and Faye Grace at Meadowbank at about that time. The suggested letter from the accountants to go to suppliers was to ask them to:

> "*note that Meadowbank Special Steels (Commodities) Ltd ceased trading on 5 April 2011. The business being taken over by Meadowbank Vac Alloys Ltd. Could*

> *you please amend your records accordingly. Invoices issued from 6 April 2011 should be invoiced to* [MVA]."

222. MVA was incorporated in September 2007. Mr A J Hobson was appointed as a director on 15 November 2007.

223. A certificate of registration from the Environment Agency under the Waste (England and Wales) Regulations 2011 supports the view that the company took over the business of Meadowbank Special Steels (Commodities) Limited in April 2011. This is also supported by the accounts of MVA. For the year ended 30 September 2010 the abbreviated balance sheet shows a net deficit of £2,202 with current assets of £11, 667 (debtors) and creditors of £13,869. For the period 1 October 2010 to 30 September 2011, management accounts show a balance sheet with net assets of nearly £319,000. Among the assets are trade debtors of £2.7 million.

224. Mr A J Hobson effectively ran the operations of MSSC then MVA until about June 2011, when he resigned as director of MVA but remained employed until about April/May 2012. According to him, Mr Andrew Hobson had less operational involvement in the period 2005/8 but became more involved again after that point.

225. Mr Wormstone and Mr Luke Hobson are each recorded as being appointed as directors on 7 June 2011, on which date Mr A J Hobson is recorded as resigning. Mr Wormstone is recorded in the company's accounts for the year ended 31 October 2012 as having resigned as director on 10 April 2012.

226. According to Mr Luke Hobson, prior to becoming a director he had been working in the warehouse dealing with materials. He did not become fully office-based until about April/May 2012 following the resignation of Mr Wormstone as director, though the latter remained an employee for some months until he left later in August/September 2012.

227. The accounts for MVA for the year ended 31 October 2012 record that the company's principal activity was:

> "*acting as agent for La Cotte Consulting Limited, incorporated under Jersey number 107221 for the purchase and/or processing and/or storage of metals, non-ferrous, ferrous, virgin and ferro-alloys all in form of solids, turnings, grindings and/or runnings*".

This description seems to be taken from a 2011 Brokerage and Agency Agreement between La Cotte and MVA which I refer to later.

228. Note 18 to those accounts deals with Related Party Transactions. It repeats the point about the company acting as agent for La Cotte. It then discloses sales to La Cotte of over £6.6 million (£5.2 million in 2011) and purchases from La Cotte of some £5.2 million (slightly higher than the year before).

229. As at the date to which the accounts are made up, Mr A J Hobson is described as ultimate controlling party as owner of 100% of the share capital. That capital appears to be one paid up share which Companies House records show was reported as transferred to Mr Luke Hobson on 28 July 2013.

230. The accounts for the year ended 31 October 2013 show a net deficit on the balance sheet of just over £14,000. During the year transactions with La Cotte are described as sales to La Cotte of just over £4.6 million and purchases from La Cotte of just over £4.8 million. Nothing is said to be outstanding in respect of such sales/purchases as at the year end. Outside normal trading transactions, La Cotte is said to have owed MVA some £548,873.

231. Mr Luke Hobson is shown as resigning as director on 11 May 2015 on which date Ms Alicia Smith is recorded as being appointed.

232. The last accounts in evidence are for the year ended 31 October 2014. They show balance sheet net assets of £8,519 (compared with a deficit of £25,357 the year before). Sales to La Cotte are recorded as being just under £4.8 million and purchases from La Cotte as being just under £4 million.

233. MVA is recorded as having been placed into creditors' voluntary liquidation on 8 November 2016. The Particulars of Claim assert that it was placed into members' voluntary liquidation. The statement of affairs made on 8 November 2016 shows a deficiency as regards creditors of some £776,403.73. La Cotte Consultancy is said to be owed some £300,000 in this respect.

234. The Liquidator's report to creditors dated 8 November 2017 and covering the period of liquidation from 8 November 2016 to 7 November 2017 records that at the outset of the liquidation the director agreed to contribute towards the costs of the liquidation up to a maximum sum of £4,000 and that such sum had been collected in full. The Liquidator's summary of receipts and payments shows the only asset realisation as being receipt of the sole sum of £4,000 described as "Directors Contribution to costs". From the Liquidator's report dated 27 July 2018 it appears that this sum of £4,000 was the sole sum realised during the liquidation. That report was part of the final report and account prior to dissolution. The claims received (but unpaid) amounted to just over some £3.5 million.

235. N.Y. Commodities Limited was incorporated on 28 October 2013. Until 5 February 2016 the director and shareholder was Mr Parkin of the firm of English accountants used by the Hobson English Companies, Parkins Accountants Ltd (T/A Parkins). The accounts show minimal net assets (2014: £96; 2015: (£13)). However in February 2016 Mr Parkin resigned as director and Ms Sonia Greenhough and Mr Greaves were appointed directors. The latter's appointment was terminated in October 2016.

236. Accounts for the year ended 31 October 2016 show a balance sheet net deficit of £184,726. The company was not considered insolvent because the "ultimate controlling party" was owed £196,409, which was not anticipated as being called in. A later note makes clear this is a reference to La Cotte. The accounts record sales to La Cotte of over £137,000 and purchases from La Cotte of £326,009.

237. Mr Luke Hobson is recorded as being appointed a director on 3 September 2019.

238. As a generality a certain amount of time was taken up in cross-examination of some of the Claimant's witnesses suggesting that the modus operandi of the Hobson business was to let companies go into liquidation, leaving behind certain debts and then to have a new phoenix company carrying on the business. I am wholly unsatisfied that relevant

valid criticisms can be made (especially on the limited evidence available) and therefore leave this suggestion out of account.

The Alleged assignments between Hobson Companies

239. The Particulars of Claim rely upon three assignments between Hobson Companies as follows:

(1) A Deed of Assignment dated 6 April 2011, a copy of which is said to be unavailable, but under which MSSC is said to have:

"*assigned to MVA all rights, title and interest held by* [MSSC] *in respect of its business (including the business of representing the Claimant) including the joint venture business relationship with* [Sovereign] *and the trading relationship between that joint venture and the Firth Rixson group of companies…*"

(2) A Deed of Assignment dated 20 September 2016, under which MVA assigned to La Cotte all rights, title and interest held by MVA in respect of any claims that MVA had against Sovereign arising from transactions and contracts between MVA, Sovereign and the Firth Rixson Group of companies. This Deed of Assignment is said to have perfected the equitable title of La Cotte in such claims on the basis that it was La Cotte and Concept which purchased scrap from the Firth Rixson Group.

(3) A Deed of Assignment dated 20 October 2016, under which MVA assigned to La Cotte all rights title and interest held by MVA in respect of any claim of MVA against Mr Easton for theft, negligence, breach of contract or otherwise arising out of Mr Easton's employment with MVA. Again, La Cotte is said to have already had an equitable interest in such claims by reason of it being La Cotte which had engaged in the joint venture business and purchased scrap from the Firth Rixson Group.

240. As became clearer during the trial, La Cotte also relied upon a chain of assignments/novations from Concept to Mr and Mrs Andrew Hobson to La Cotte. These do not appear to be pleaded, in part because the relevant pleading appeared to rely upon La Cotte as being an undisclosed principal on contracts that had been entered into before it was incorporated. According to Mr Andrew Hobson, Concept's assets and rights were initially transferred to him and his wife, Audrey, and then by them to La Cotte. No relevant documents were produced in this respect. I am not satisfied on the little evidence provided that there were such assignments from Concept to Mr and Mrs Andrew Hobson and then onto La Cotte. However, nothing really turns on this point. I am satisfied that neither Concept nor La Cotte were relevant contracting parties on any of the contracts that I have to consider. I am also satisfied that no relevant direct duties were owed by Mr Easton to any of the Jersey entities.

241. The key question is, so far as debts from trading between Sovereign/Meadowbank and Firth Rixson are concerned prior to MVA becoming the relevant performing Meadowbank company (from about April 2011), whether or not the same were validly transferred from MSSC to MVA.

242. Ms Greenhough's first trial witness statement was made on 11 November 2019. In that witness statement she said nothing about any assignments. She referred to everyone in the office being familiar with Concept as the Jersey side of the business and that she was aware of the various invoicing procedures between the various Hobson English and Jersey companies but that she did not know the details of why the procedure was required, it being a matter effectively dealt with by the accountants and advisers. She also said that she could not recall exactly when but she was aware that in early 2011 La Cotte had replaced and taken over Concept's business and that MVA had done likewise regarding MSSC and its business. This was all set up by the accountants and various other advisers and with the assistance of Mr Wormstone.

243. Her third witness statement was dated 13 March 2020. In it she said, as regards the transfer from MSSC to MVA, that she recalled the transfer. Mr A J Hobson had, she stated, asked her to witness him signing the document that had been drawn up by Mr Wormstone to transfer the whole of MSSC's business operations and its rights and assets over to MVA. Mr A J Hobson, she said, signed as director of the transferor and transferee companies and she witnessed his signature, signing the document as a witness. She then filed the document away as instructed by Mr A J Hobson but since then has been unable to find it. She also referred to a draft letter sent by the accountants to Faye in the following terms:

> "*Could you please note that* [MSSC] *ceased trading on the 5th April 2011/ The business being taken over by* [MVA]. *Could you pleased amend your records accordingly. Invoices issued from the 6th April, 2011 should be invoiced to* [MVA]".

244. In cross-examination, Mr Greenhough expanded upon her third witness statement to say that the document that she had witnessed was just a few sentences "*just transferring the assets, the book debts, the liability, I don't..was it the assets as well? Just transferring it from* [MSSC] to [MVA]*.....it was transferring the book debt, the liability/ I'm not sure about the assets, between…from* [MSSC] to [MVA]." She was asked when witnessing a signature why she remembered reading the document and said that she did not know but that she had.

245. This was against a background where:-

(1) The issue of whether an assignment had been made or not was a key part of La Cotte's pleaded case. Its existence (as a Deed that could not be located) had been positively asserted in a standalone paragraph in various iterations of its Particulars of Claim in 2018 and 2020 and the 9 March 2020 statement of truth was signed by Mr Andrew Hobson.

(2) It was recognised by those preparing the Claimant's witness evidence in 2019 that the existence of the assignment was key. Mr Andrew Hobson, in his witness statement signed on 8 November 2019, a matter of days before Ms Greenhough signed her first trial witness statement on 11 November 2019, and in which she had failed to mention any assignment from MSSC to MVA, contained the following passage at the end of paragraph 158:

> *"I am not sure if the assignment was done formally by deed as we cannot seem to find the paper work concerning it so it may have been in writing."*

(3) In her witness statement, Ms Greenhough was a part of the team who had investigated the claims put forward and, as was clear from other parts of her cross-examination, her evidence was largely based on a reconstruction of what she thought had happened from her investigations rather than arising from a recollection at the time of the events in question, indeed she had largely not been involved at the time that they happened. In those circumstances, and where no doubt she must have been asked to look for the relevant deed or written document, it is difficult to accept that in 2020 she had genuinely remembered something she did not even refer to in 2019. She was unable in cross-examination to say why she did not refer to the relevant matters in her earlier, 2019, statement.

246. Although I am sure that Ms Greenhough was sincere in giving her evidence and that she had persuaded herself that it was true, I consider this to be an example of a witness persuading themselves, by much thought over time, of what "must" have happened some years earlier and what therefore that witness eventually thinks that they "remember" did happen. In this connection, I note also that her oral evidence was that the accountants had written to her about the draft letter to go to customers but when shown the email she accepted that this was a mistake and that the correspondence had been between her and the accountants.

247. Mr A J Hobson's initial evidence in his 2019 witness statement on this point was that he was "aware of the Jersey transfers and UK company transfers" (in context and given the heading of the relevant paragraph he was speaking to the transfers of business) but "*the administrative and invoicing arrangements between the companies was left to the accountants and advisers and that includes the creation and execution of the assignments*". He recalled that the customers and suppliers were written to in order to inform them MVA had taken over the accounts. Tellingly he did not recall himself signing any assignment.

248. I conclude that there was no relevant assignment of debts or causes of action that MCCL may have owned by MCCL to MVA. No assignment has come to light. The contemporaneous documentation talks about the business being taken over not any assignment of debts and assets. The oral evidence is extremely shaky.

249. I turn to the assignments from MVA to La Cotte. I consider that the assignments by MVA to La Cotte are valid and effective. Various contractual points were taken by Mr Lewis as to the certainty of the consideration and whether or not it was actually paid. As regards the latter there is a very serious question as to whether the consideration under the assignment was ever paid. However, in my judgment this is to confuse the question of whether something is an enforceable contract from whether it is a property assignment. Unless and until set aside the assignment is valid as a property transaction and it does not seem to me that the question of whether consideration is received is relevant to its efficacy as such assignment (of course subject to it being set aside, for example, as a transaction at an undervalue).

The relationship between the Jersey Hobson Companies and the English Hobson Companies

250. It is necessary to consider the legal, as well as the practical/factual, relationships between the Hobson Jersey and Hobson English Companies, with some care. This is because the Particulars of Claim rely on causes of action being vested in the Claimant

(a) by way of the assignments referred to earlier in this judgment and (b) in its own right, or the right of its predecessor, Concept, on the basis that relevant English Companies contracted as agent for the relevant Jersey Hobson Company.

251. A "Brokerage and Agency Agreement" dated 5 April 2011 was entered into by La Cotte and MVA. The contract is governed by Jersey law but it was not suggested before me that there were any relevant differences to English law. Key elements can be summarised as follows:

    (1) Stock owned by La Cotte would be stored by MVA. The latter would act as agent of La Cotte in purchasing, storing, re-processing and onward selling relevant stock.

    (2) As regards purchases, MVA would be remunerated at a rate of 5% of the net purchase price plus third party haulage costs (as paid by MVA) for delivery of the products to the Meadowbank site. The net price was the sum paid for the products ex VAT and haulage costs (clause 6(1) and (3)).

    (3) As regards on-sales, MVA would purchase the products from La Cotte at 90% of the net-on sale price, less any third party haulage costs paid by MVA for delivery to the customer. Net price was the sum received for the goods ex VAT and excluding haulage, re-processing or packing costs.

252. It is fairly clear from the Agency and Brokerage agreement itself that the manner in which the agreement was to operate would be that there would be separate "back to back" purchases by La Cotte from MVA of products that it, MVA, purchased from third parties and "back to back sales" of relevant products from La Cotte to MVA and from MVA to third party customers. MVA did not simply charge La Cotte a commission but actually sold/purchased stock to/from La Cotte.

253. Any doubt in this respect is completely dispelled by an explanation from the accountants given to MVA by letter dated 24 June 2014. I surmise that this information was given in the context of claims against Mr Wormstone and/or Mr Easton which seems to follow from the "comment" made at the end of the letter to the effect that the arrangements described in that letter would not substantiate any agreement between MVA and Mr Easton and that Mr Wormstone would not have had any authority in relation to La Cotte which would have had to be the company with which Mr Easton had any agreement.

254. The letter explains that the "original" agreement was a 10% commission on the sale but that this was amended subsequently when Mr Wormstone was managing director. It is unclear to me if there was an earlier written agreement to that in 2011 that I have referred to or whether the matter was simply agreed orally. Mr A J Hobson suggested that there was an earlier written agreement to the one disclosed dating from 2011 but it has never been disclosed. Apparently a VAT enquiry pre 5 February 2011 is said to have determined that La Cotte owned the trading stock at the Meadowbank Site. An undated note, the provenance of which is unclear, is included within the trial bundle which describes the arrangements as a "new system" and as having been put into operation on 1 April 2011. Having heard from Mr A J Hobson however, I find that the legal basics of the arrangements between first Concept Metals and later La Cotte on the one hand and Sovereign/Firth Rixson on the other were at all material times the same, that is even

before 2011, (even if "commission" rates or pricing between the Jersey Hobson companies and the English Hobson companies varied over time).

255. The letter goes on to explain the operation of the agreement by way of a diagram and a worked example. The examples are as follows:

> "*(1) MVA buys stock from various suppliers and sells this to [La Cotte] + 5% of this cost value:-*
>
> *i.e. MVA purchase stock for £100,000 and sells stock to [La Cotte] for £105,000.*
>
> *(2) Sale of stock from [La Cotte] to MVA:*
>
> *As [La Cotte] owns all stock once MVA has a sale, [La Cotte] sells the required stock to MVA at the price of MVA's selling price less 5%:-*
>
> *i.e. LC sells to MVA for £95,000. MVA sells for £100,000.*
>
> *Profit per £100,000 of MVA sales = 5%."*

256. The general structuring of the transactions between MVA and La Cotte as involving back to back sales and purchases is also confirmed by the accounts of MVA that I have referred to earlier. It is also confirmed by a series of invoices that I have been taken to. Finally, it was confirmed clearly by Mr A J Hobson who was responsible during the relevant period first for MSSC and then later for MVA. For what it is worth, it was also confirmed by Ms Sonia Greenhough.

257. In addition, MVA and La Cotte entered a consultancy agreement dated 5 April 2011 whereby La Cotte provided consultancy services to MVA apparently at a rate of £600 per day and an hourly rate of £100.

258. It follows that whilst I accept that in a sense the relevant English registered Meadowbank company, which was dealing with purchases and sales of stock from third parties, did so under an agency relationship with the relevant Jersey registered Hobson company, the individual sales and purchases were not as undisclosed agent for the Jersey company such that the Jersey company was contracting party to such third party contracts and itself buying and selling stock to the third parties. Such a legal relationship is inconsistent with the position that was put in place, namely that the English registered Meadowbank company contracted with the third party to buy or sell and then in turn contracted, on a back to back basis with the Jersey registered Hobson company. By way of loose analogy, the legal relationship was one similar to that where there is a distribution agency agreement but where the company granting the distribution rights does not itself directly enter into contracts as undisclosed principal with the distribution agents' contracting counter-parties.

259. In addition, although the position may not have been formally reduced to writing before 2011, I find that the manner of trading, as a matter of legal analysis, between the relevant English registered Hobson Company and the Jersey Registered Hobson Company was the same prior to 2011.

260. Mr Andrew Hobson's evidence in this area was typical of the manner in which he frequently tended to give evidence: refusing to "speculate", referring the question to third persons (witnesses or not) and refusing to commit himself. As an example, I therefore set out an extract from the relevant passage of cross examination:

> "*A. I am not going to speculate at all, Mr Lewis. I haven't got a clue, my friend. I haven't got a clue.*
>
> *Q. Right. we see at the bottom of page there are three types of relationships referred to, there are accounts to MVA, and there is a trading relationship and a consultancy agreement. As I understand the position between La Cotte and MVA, it worked as follows: MVA or -- I am going to come back to the other companies in a minute, but MVA was La Cotte's UK agent, is that right?*
>
> *A. I would assume so at the time, yes.*
>
> *Q. MVA bought stock in its own right?*
>
> *A. This is an area I just wish not to speculate. Mr Lewis, you have -- if you just give me one minute, please. You have Luke in the back and he is prepared to come and explain all this to you because he has a lot to talk about on these subjects. Would you bring Luke in, Mr Lewis?*
>
> *Q. I am afraid not, Mr Hobson. Luke has been in and out. And I am talking particularly about La Cotte which is a company you control, is that right?*
>
> *A. Yes, yes, yes.*
>
> *Q. So I want to understand the relationship between La Cotte and MVA, are you telling me –*
>
> *A. This is what I am trying to avoid. I am trying to avoid not being helpful, and Luke would be more helpful to you. That is why I made that statement*
>
> *Q. Is it your evidence -- I'm not going to criticise you, but is it your evidence you can't help us with the trading relationship between MVA and La Cotte?*
>
> *A. I am going to have to say I can't speculate to this degree, so therefore I am going to have to say what you have just said, I am not going to help you, unfortunately. Because I am not qualified enough, sir.*
>
> *Q. It is your company, La Cotte. Let me put it this way, you are a director of La Cotte, aren't you?*
>
> *A. I pay experts and I have done nothing wrong, everything is above board. I just get on with doing trading and that is my focus and my lateral thinking. The experts do this, so it's someone else you need to be speaking to in depth on*

matters that, if you need information that suits you, there are people there who can explain. I ain't one of those.

Q. See if you can help on a very basic level. Was the relationship between MVA and La Cotte such that the intention would be for MVA to earn as little profit as possible in the UK, is that correct?

A. What am I reading?

Q.. I am asking you a question. If you want to look at the document on page 405, the second paragraph down says:"MVA will have the same turnover ..." as La Cotte." but will show a trading profit around £600,000. Commission rates have been reduced on many contracts to prevent excessive profits in the UK." The intention I am asking you of the set-up was to ensure the UK trading entity earned as little profit as possible for the purposes of tax, is that right or is that wrong?

A. Once again I ain't qualified to do all this information, and it is certainly not my -- because I don't even know how to type on this kind of format, so ...

Q. I am putting to you, Mr Hobson, as a director of La Cotte, and as someone I think you will accept who is very involved in MVA, would you accept that?

A. I do give advice obviously to my son at MVA, yes.

Q. You must know how the business relationship works between the two companies?

A. That is a vague question. I do know that Jersey own the stock, and my son is an agent for one of the companies there, and the rest is done by the experts.

Q. I will pursue this in a slightly different way then. Let's begin with Concept Metals, you are aware of the name of the company, are you? You are aware of that company?

A.Yes.

Q. Was that a company that you were a director of?

A. I am not going to speculate but I would imagine so, yes.

Q. I think either you need to know or you need to not know. I don't want you to speculate. Do you know whether you are a director of Concept Metals, yes or no?

A. I can't admit to something I am not sure of, but the name -- I would say yes, but without having anything in front of me that says that, I am –"

261. The other area that I should deal with at this stage is what I have referred to as the practical/factual arrangements between the Jersey Hobson Company and the English Jersey Company (in each case as the relevant entity changed from time to time).

262. The evidence was very clear that Mr Andrew Hobson kept a close eye on matters. Within the English Hobson Companies, one individual would tend to have responsibility for a particular customer/supplier. In the case of Firth Rixson, for most of the relevant time that individual was Mr Easton. Nevertheless, although a lot of the detail might be left to the person delegated to deal with matters on a day to day basis and to negotiate a deal, the deal would only be capable of being finalised and entered into with the "say so" of Mr Andrew Hobson. Somewhat surprisingly, perhaps, much of this process is unrecorded in writing though there are more emails in 2011 showing Mr Andrew Hobson being asked for, and giving consent to, specific sales/purchases.

263. Thus, in the context of being asked about the Firth Rixson contamination claims that I deal with later in this judgment, Mr A J Hobson confirmed that a number of the emails (as they show on their face) had been passed onto his father, through his mother's email account, and that he would be involved in big things like that. As regards particular sales or purchases Mr A J Hobson said in answer to a question from me:

> "*A. He…. my father was the principal in Jersey. If Dave Easton had found a potential sale, he would speak to my father and ask him. If I found a potential sale, I would speak to my father and ask him*.
>
> *Q. I see. So it would be you directly ringing up on the deals you are doing to confirm with him that he was happy with it*
>
> *A. Yes*."

264. Ms Sonia Greenhough also gave evidence on this point which I accept as fitting in with the other evidence in the case. She said that an individual trader would have to obtain authority from Mr Andrew Hobson to do the trade. Once the trade was done then if it involved the English Hobson company paying money the matter would have to be put to Mr Andrew Hobson for his approval to the cheque in question, even if the trade itself had been previously authorised. Prior to the matter being put to Mr Andrew Hobson for his approval the individual trader would confirm to the accounts department that payment was indeed due. The only exception was if it was Mr A J Hobson himself writing the cheque then it would not need to go to Mr Andrew Hobson.

265. For completeness, I should say that I also find that Mr A J Hobson was also copied in to things concerning the Firth Rixson contracts from time to time, even if they were then the primary responsibility of Mr Easton. I am satisfied that, as a director and a key person in the Meadowbank business, Mr A J Hobson was broadly kept in the loop of important developments as they occurred (for example, though he said he was not involved, there is a record of him resisting a particular settlement of the Firth Rixson contamination claim, confirming that he did have some knowledge of this important matter and something to say about it at the time).

The Relevant History

(1) Up to 2008

266. Sovereign had had a long series of dealings with Firth Rixson prior to any involvement of the Hobson Business. Indeed, in a letter dated 16 July 2008 from Meadowbank to Firth Rixson there is mention of an earlier meeting some days earlier when, among other things, Freddie Robinson had "*explained his involvement in many aspects of his 25 year trading history with the group*." As I have mentioned, in this context many early dealings in the 1990s were with companies that, at the time, were not within the Firth Rixson Group but which later came to be.

267. The documentation for all Sovereign dealings with the Firth Rixson Group was not in the trial bundle and many agreements seem to have been made (or extensions agreed) orally. I set out below some of the agreements that were within the trial bundle.

268. By a "purchase and sale agreement" entered into by Firth Rixson and Sovereign on 1 June 2001, Firth Rixson agreed, for a seven month period until 31 December 2001, to sell to Sovereign ferrous scrap arising from its operations at five sites in Sheffield.

269. The agreement was later renewed by a further agreement dated 1 January 2002 for a further 12 month period. Thereafter, the agreements continued on an oral extension basis though some of the sites were closed.

270. The initial five sites the subject of the 2001 agreement were:

    (1) Meadowhall Road, Sheffield;

    (2) Milford Street, Sheffield;

    (3) Sheffield Road, Rotherham;

    (4) Faraday Road, Sheffield;

    (5) Livesey Street, Sheffield.

271. As I understand it, the 1 June 2001 written agreement in effect replaced or took forward matters that had previously been the subject of earlier successive oral agreements and that arrangements continued after 2003, but on an oral basis.

272. In May 2002, Sovereign entered into a three year contract with Firth Rixson regarding an Aerospace Machining Cell or Shop (referred to by me earlier and hereafter as "AMS") that Firth Rixson had established at its Ickles site in Rotherham. Under that agreement, Sovereign was to supply a "total waste management service" to the AMS at a service charge of £3,130 per calendar month. Among other things, Sovereign was to supply two operatives, various machinery, scales and skips and was to provide for removal of turnings from machinery, segregation, weighing and removal from site of the same, removal of dry waste and general cleaning and tidying. It was also to buy all scrap turnings under a pricing mechanism provided for by the agreement.

273. The AMS contract was one that Mr Freddie Robinson did not want Sovereign to undertake on its own. It represented a sizeable commitment including the provision of staff to work at the site in connection with the waste management service which extra

staff Sovereign did not have. However, Mr Freddie Robinson was anxious not to reject the opportunity when asked to take it on. This was because once another contractor took the job and had a "foot in the door" there was a concern that Sovereign might lose some or all of its Firth Rixson contracts to the new contractor-competitor.

274. Accordingly, Mr Freddie Robinson approached Mr Freeman at Meadowbank. An agreement was reached whereby Sovereign sub-contracted its AMS contract to Meadowbank (probably at that time, Meadowbank Alloys Limited) so far as regards the scrap and related matters. Sovereign retained responsibility for general rubbish removal and for the overall management of the contract vis a vis Firth Rixson.

275. The arrangement between Meadowbank and Sovereign was not formally reduced to writing. However, it was reached in discussion with Firth Rixson which was aware of and content with the sub-contracting arrangement. Under the arrangement Meadowbank was to collect and be entitled to all the scrap from the AMS. It was to provide the operatives at site as required by the contract. The number of such operatives varied over time. In broad terms, their role was to remove turnings from the relevant machines (and place them in the appropriate bin for collection by Meadowbank) and prepare the machine for the next part to be fixed in place and worked upon. Meadowbank also provided a forklift truck and some platform scales.

276. Meadowbank in turn appears to have sub-sub-contracted part of the contract. In September 2002, the relevant sub-sub-contractor, Active Cleaning Ltd, agreed to invoice Meadowbank instead of Sovereign.

277. I have referred to La Cotte's claim, made in the Particulars of Claim, that from 2008 Sovereign illicitly charged Meadowbank a secret commission.[1] As I have explained, that claim was not pursued by the end of the trial. However, as I explain later in this judgment, I am satisfied that the commission paid after 2008 simply followed on from the agreement to pay commission reached by Mr Freeman with Mr Freddie Robinson back in 2002 and that it was neither secret nor illicit.

278. Under the AMS arrangements in 2002, Sovereign was the contracting party with Firth Rixson. I find that, as Mr Freddie Robinson said in his witness statement, at that stage Meadowbank was content that it should not be a named contracting party. It also meant that Sovereign dealt with the financial situation with Firth Rixson. The procedure by which this was dealt with was as follows. Meadowbank would invoice Sovereign, which in turn would invoice Firth Rixson for the labourers by way of a service charge. As regards the scrap metal collected (and sold by Firth Rixson), Firth Rixson would invoice Sovereign and Sovereign would pay Firth Rixson. Sovereign would in turn invoice Meadowbank but at an uplifted figure to represent the agreed commission. In practice, the Firth Rixson invoices to Sovereign would be a hard copy invoice accompanied by a spreadsheet attached to each invoice as a backsheet with the breakdown of metals sold and their weight. The invoicing pattern varied and the intervals at which Firth Rixson invoiced Sovereign did not match the intervals at which Sovereign invoiced Meadowbank. Mr Freddie Robinson would usually hand deliver to the Meadowbank premises the Sovereign invoice(s) together with copies of the relevant supporting Firth Rixson invoices and backsheets. This is one of the reasons why the commission charged by Sovereign to Meadowbank was evident. Mr Easton was largely

[1] See paragraph 72 onwards above.

in charge of overseeing the relevant invoicing and notifying Firth Rixson of the figures that Firth Rixson should be invoicing for scrap collected by Meadowbank. Although Firth Rixson may have had the relevant figures available to it, as I understand it, it relied primarily on Meadowbank notifying it what types and how much scrap had been collected. In part this no doubt reflected the fact that Meadowbank operatives were employed at the AMS site specifically to segregate and weigh the relevant scrap. Mr Easton was I understand it largely relying on the outturn reports produced after the scrap material had arrived at the Meadowbank site.

279. According to Mr Freddie Robinson, but he was not challenged on the point, a dispute arose between Firth Rixson and Meadowbank within about a year of the start of the AMS contract. Apparently, Firth Rixson considered that Meadowbank was not recording the full amount of scrap that it was collecting. A deal was struck between Firth Rixson and Meadowbank, acting by Mr Freeman. A sum of approximately £60,000 was agreed to be paid by Meadowbank to Firth Rixson. The usual method of invoicing was followed with Firth Rixson invoicing Sovereign (which paid) and then Sovereign invoicing Meadowbank.

280. In 2005 when the formal AMS contract term came to an end the contract was, as I understand it, extended orally. Also in that year MSSC took over the sub-contracting role as the relevant Meadowbank company. Mr Freeman also left Meadowbank at about this time and thereafter Mr Easton and Mr A J Hobson took over management of MSSC.

281. In September 2006, on Sovereign Steel headed notepaper, describing the "Operational Address" as being at Meadowbank Industrial Estate with a contact of Mr Easton (whose email is given) and the "Business Address" being Sovereign's address, suggestions were put forward by "Mr Easton on behalf of Sovereign" by letter dated 25 September 2006, regarding an increase in the operatives to be supplied by Sovereign (as a matter of law, but in reality they would have been supplied by Meadowbank under the sub-contracting arrangements) to the AMS. This confirms the sub-contracting nature of the arrangement. It also provides an explanation as to why Mr Easton may have had Sovereign Steel headed notepaper in his office, despite Mr Luke Hobson's assertions that the mere possession of the same proved that Mr Easton was illicitly and wrongly trading on behalf of Sovereign whilst working from Meadowbank.

282. In June 2007, there was serious flooding in the Sheffield area. The AMS at Ickles was particularly affected. The AMS was, in consequence and in due course, moved from Ickles to Meadowhall though it seems that administratively it was treated as being under the management of, and a part of, the Darley Dale site.

283. In about the autumn of 2007, MSSC installed new metal processing plant and equipment to handle a greater supply of High grade metal that needed processing, especially as a result of the Darley Dale agreement. There was investment in washing and drying plant, a laboratory and laboratory equipment and at least one new building. There is a dispute about the precise sums spent, even in ballpark terms. The quantum spent is not highly material but in my estimation a figure of somewhere between £250,000 to £500,000 is realistic.

284. There is also a factual dispute as to whether this capital investment was made in anticipation of Meadowbank obtaining the benefit of the relevant contract as regards the

Darley Dale site (as La Cotte would have it) or whether (as Sovereign would have it), the investment was made first. I am not sure that I need to reach a conclusion on this but, if I do, I conclude that the investment came first and the benefit of the contract so far as it related to Darley Dale later. This appears to follow from the chronology as shown by the contemporaneous documents. I also note on this point that Mr Andrew Hobson was, in cross-examination, very firm that the plant had to be improved to enable Meadowbank to "keep at the top end" and in circumstances where he could not remember dates or the sequence of events.

(2) 2008: Alleged JVA, Darley Dale and sub-contractors, renewal of AMS contract and negotiations for general waste management contract covering all sites

285. At the end of 2007, Firth Rixson had notified a company called Easco, with whom it had a scrap metal collection and purchase agreement relating to its Darley Dale site, that there was to be a major reorganisation at Firth Rixson. Commercial product manufacture was to be moved from the Darley Dale site to a site in Hungary. This was anticipated as taking place from March 2008. The result would be that there would no longer be a requirement for a ferrous scrap collection at Darley Dale and the relatively small amount of non-ferrous scarp at Darley Dale did not justify a stand alone agreement. Accordingly, by email dated 14 January 2008, Firth Rixson gave notice of termination of its contract for Darley Dale with Easco. In an internal email of the same date (copied to Sovereign) it confirmed that the contract would get picked up by Sovereign.

286. An email from Mr Easton to Firth Rixson of 17 January 2008 makes clear that Meadowbank was envisaged as being involved on behalf of Sovereign as he enclosed waste carrier licences for Sovereign and Meadowbank.

287. The background to this was that also at about the end of 2007, Firth Rixson had approached Sovereign about taking on the Darley Dale site. Firth Rixson were looking to a similar level of service as had been provided by Sovereign (as contractor) and Meadowbank (as sub-contractor) at the AMS site. Again, Mr Freddie Robinson did not want Sovereign to take on the Darley Dale site, for similar reasons as with the AMS site. However, he also did not wish to lose the opportunity. He approached Meadowbank and a similar agreement was reached between Meadowbank and Sovereign as applied between them regarding AMS. In his witness statement, Mr Freddie Robinson referred to his thinking at the time was that the Darley Dale site was to be an "extension of the AMS arrangement". His evidence is that he intended, again, to agree some form of commission arrangement with Meadowbank once he had a better idea of the volumes of scrap that Darley Dale generated but that that matter was not taken forward until 2011.

288. Mr Freddie Robinson said that there was some overlap between Easco leaving and Sovereign/Meadowbank starting at Darley Dale. This is borne out by an email of Firth Rixson dated 16 January 2008, asking Sovereign/Meadowbank for collection of the full and part full Easco skips from Darley Dale and asking them to hold the same pending further instructions. In addition, an email from Mr Easton dated 20 November 2008 to Firth Rixson in the context of negotiating a written agreement covering a number of sites, including Darley Dale, speaks of Sovereign/Meadowbank having taken "*a proactive approach in managing a deteriorating situation with the previous* [contract]

holder from January". Although a formal written agreement was not in place, collections commenced from the Darley Dale site even before the Easco contract was due to end at the end of March 2008. The absence of a written contract after 1 April 2008, was later to be viewed with some surprise by Deborah Stott of Firth Rixson.

289. One main difference between the AMS contract and the Darley Dale contract was that the latter did not involve the provision of any operatives by Sovereign on site. Further, as between Meadowbank and Sovereign, Sovereign also sub-contracted waste collection to Meadowbank at the Darley Dale site whereas as between it and Meadowbank it was Sovereign that handled waste collection at the AMS Site.

290. According to Mr Freddie Robinson, the Darley Dale contract was another "one off" arrangement between Meadowbank and Sovereign. The arrangement, like that pertaining to the AMS, was, he said, that all the relevant scrap would be purchased by Meadowbank. That applied irrespective of the grade of the scrap. The invoicing process was analogous to that under the AMS agreement with Firth Rixson invoicing Sovereign, who in turn invoiced Meadowbank. Again, the Firth Rixson invoices would contain a backing sheet setting out (among other things) the type of scrap and the volumes concerned that had been collected over the period covered by the invoice. As with the AMS contract I accept Mr Freddie Robinson's evidence that the Sovereign invoices and the Firth Rixson invoices with backing sheets were provided by him to the Meadowbank accounts team. Again, there may have been occasions when this was not done but I am satisfied that had Meadowbank asked for the Firth Rixson side of the documentation it would have received it.

291. An email of 24 April 2008 from Sovereign to Firth Rixson (into which Meadowbank was <u>not</u> copied) details Sovereign skips then located at Firth Rixson sites at Meadowhall and River Don. I am not sure that the attachments have all been included in the Trial Bundle. The skips listed include skips for both Specials and Low Grade scrap (as well as for general waste such as wood, empty oil tins and general waste to mention some of them).

292. One significant difference in the Firth Rixson arrangements concerning Darley Dale as compared with the AMS shop was that there were various sub-contactors to Firth Rixson which carried out various finishing processes to the products produced at Darley Dale and which in turn generated scrap. In addition to the Darley Dale site itself, the arrangement evolved to involve Meadowbank in collecting scrap from these sub-contractors as part of the Darley Dale contract. As at August 2008, as evidenced by a schedule proposed by Mr Freddie Robinson to be added to a general waste management contract then under negotiation with Firth Rixson, there were some six of these sub-contractor sites within a 70 mile radius of Darley Dale. The management of the collection of scrap from these sites was handled by Meadowbank rather than Sovereign and it was Meadowbank that ultimately paid for the scrap. However, the same invoicing process, from Firth Rixson to Sovereign and then from Sovereign to Meadowbank was employed as with Darley Dale.

293. According to a document in evidence, during January 2008 Firth Rixson had promoted the idea of a general waste contract between Firth Rixson and Sovereign, bringing all sites under the umbrella of one agreement. That had however been put on hold whilst

the Darley Dale arrangements and the AMS arrangements had been sorted out. I now turn to the latter.

294. During the first part of 2008, negotiations were also ongoing regarding renewal of the AMS contract.

295. By agreement dated 1 May 2008, a new three year contract between Firth Rixson and Sovereign was entered into regarding the AMS. Meadowbank was not a party. Mr Easton was clearly involved in the negotiations as various contemporaneous emails show, just as he had been, for example, in September 2006, over the question of the number of operatives on site to be supplied under the earlier contract. In some communications he signed himself off as in effect MSSC, in others he signed himself off as Sovereign. This made perfect sense as Meadowbank was not a contracting party with Firth Rixson under the earlier contract for the AMS nor was it to become one under the 2008 agreement.

296. In broad terms the 2008 agreement followed the structure of the 2002 agreement. As explained in its opening paragraph:

> "*This contract is for the segregation of alloy turnings, collection in designated ford bins, provision of outside skips, utilising appropriate trained labour and capital plant."*

297. The contract also provided for:

> "*the weighing of all Ford Bins or skips for the AMS Machine Shop with the inclusion of waste transfer collection notes moving off site. A copy of the relevant Waste Transfer Note or Consignment Note must accompany each invoice*"

298. The contract also provided for a service charge to be paid by Firth Rixson for the provision of the operatives (whose job is set out as being to ensure that the swarf[2] generated within the AMS is segregated and placed in the appropriate ford bin or skip, but that they should not be used for general duties undertaken by labour employed by Firth Rixson) and the provision of an Avery scale and a forklift truck.

299. Finally, the contract provided the agreement of Sovereign to purchase all scrap turnings. As regards vacuum grade turnings the existing formula, based on metal bulletin averages taken from the previous month would apply. As regards steel turnings or solids the pricing was to be based on information taken within the actual month from negotiations with leading UK mills. The information was to be formulated and sent electronically to all parties by the relevant Group Purchasing Director at Firth Rixson.

300. I am satisfied that during the course of the contract, as the contract itself provided for, Meadowbank was responsible for and did give effect to a system where the scrap was identified and weighed before it left the Firth Rixson AMS site. I am also satisfied, from the evidence of Mr A J Hobson, that the scrap was also weighed on arrival at the Meadowbank Site and an "outturn report" then prepared by Meadowbank staff which also involved the scrap being checked for proper segregation and quality. There were therefore separate checks available to Meadowbank regarding the quantity and quality

[2] That is the small chips, shavings, filings or other particles of scrap metal resulting from the machining process.

of scrap that Firth Rixson was providing it with in addition to the invoice and backing sheet provided by Firth Rixson.

301. Also in May 2008 there were proposals for representatives from Sovereign and Meadowbank to fly to China with a view to a possible expansion of their business with Firth Rixson on an international basis. This seems to have eventuated in a joint contract made by Sovereign and Meadowbank with a relevant Firth Rixson Group company in Jiangsu in June 2009 under which Sovereign and Meadowbank agreed to buy revert from the relevant Firth Rixson company. It also envisaged Firth Rixson finding other potential suppliers of revert to Meadowbank and Sovereign.

302. The Claimant's case is that, prior to entry into the AMS Agreement in May 2008, there was an agreement entered into orally between Mr Andrew Hobson, on behalf of MSSC and/or Concept Metals and Mr Robinson Senior on behalf of Sovereign in April 2008. This is the alleged JVA that underpinned many of the claims brought in these proceedings.

303. According to the Claimant, the JVA was an agreement by which the parties agreed to conduct the business of providing scrap metal waste management services to the Firth Rixson group of companies, including the purchasing of all scrap ferrous metals and scrap "special" alloys collected from Firth Rixson at its sites at Darley Dale, Meadowhall Road (including Ecclesfield), River Don facility and nominated sub-contractor sites.

304. The Claimant says (among other things) that it was expressly agreed that:

(1) Meadowhall would collect scrap from Darley Dale and sub-contractors and that Sovereign would collect scrap from Meadowhall and River Don in each case on behalf of the joint venture.

(2) Of the scrap collected, Specials would be delivered to and purchased by Meadowhall and Lower Grade material would be delivered to and purchased by Sovereign.

(3) The invoicing process would be Firth Rixson to Sovereign and (in the case of Specials) then onward invoicing by Sovereign to Meadowhall. Sovereign would initially pay all invoices from Firth Rixson.

(4) Each party would contribute jointly to the cost of equipment or personnel provided by either of them in relation to the Firth Rixson sites and the equipment would be jointly owned.

(5) Any opportunities arising from the parties' interest in the Firth Rixson business would be developed and managed jointly together such that both parties would profit.

(6) Sovereign would report and account honestly and accurately to MSSC (acting as agent for Concept).

305. Implied fiduciary and contractual duties (on each party) are said to have included:

(1) The duty to act honestly in good faith and in the best interests of the joint venture;

(2) The duty to carry out tasks with reasonable skill and care;

(3) The duty to avoid conflicts of interests between the joint venture and the party's own self interest;

(4) The duty not to make secret or unauthorised profits;

(5) The duty not to use joint venture assets (including business opportunities) for the party's own benefit without the agreement of the other party;

(6) The duty to identify and record the property of the joint venture;

(7) The duty to account to the joint venture for all transactions involving the joint venture's money, assets or business.

306. In opening, Mr Stuart resiled from a reliance on implied fiduciary duties and instead pinned his colours to the mast of an implied contractual duty of good faith on the basis of the JVA being a long term "relational contract" (see *Yam Seng Pte Ltd v International Trade Corp* [2013] EWHC 111 per Leggatt LJ (as he then was).

307. The JVA is said to be evidenced by a series of agreements and events after April 2008 and I will therefore consider the issue of the JVA after considering the full history.

308. For present purposes, it suffices to record Sovereign's position as being that there was no global arrangement or contract by way of a JVA covering Firth Rixson and opportunities arising therefrom. Instead, a series of individual arrangements/agreements were made on a site by site basis. Further, and importantly, as regards the Firth Rixson sites at Darley Dale (including the Firth Rixson sub-contractors) and the AMS, the agreement continued to be (as it had been prior to April 2008) that Meadowbank would manage these sites (save for other waste collection at the AMS), provide any staff (as regards the AMS) and collect and buy all the scrap (irrespective of quality) and that Sovereign would be in a mirror image position regarding the other sites (which it had been servicing for many years).

309. From at the latest June 2008 to February 2009 there were protracted negotiations between Firth Rixson and Meadowbank/Sovereign regarding a new overall waste management agreement. An early draft appears to have been signed by Mr Freddie Robinson on behalf of Sovereign (as evidenced by an email from him to David Easton dated 25 June 2008 referring to the contract being for three years other than in the case of the Glossop site where the period was one year). The draft in the trial bundle document purports to be a Group Waste Management Contract entered into between Firth Rixson and Sovereign. It is probably not the draft signed because the draft is for a one year term only for all sites. Nevertheless it is fair to assume that the final version was otherwise not significantly different.

310. The agreement covered not just the collection of metal scrap but the collection of paper/cardboard, wood and general waste across five sites: Meadowhall Road (the "Meadowhall Site"), Milford Street Sheffield (the "River Don Site"), the Darley Dale site, the Glossop site and the Ecclesfield site. As I understand matters, Glossop was a

new site to Sovereign. Firth Rixson in the end was not prepared to sign the contract, when it had been passed to senior management to sign.

311. There appears to have been a split of responsibilities at Firth Rixson between Mr Perkins and Mr Truelove (with whom Meadowbank/Sovereign had been negotiating) and a Ms Deborah Stott (who represented Firth Rixson Metals) who seems to have arrived on the scene as a negative force (though she may have been at earlier meetings) as far as Meadowbank/Sovereign was concerned in about July 2008. She appeared to take a different approach and to be less favourable to the Meadowbank/Sovereign interest. According to Mr Freddie Robinson, and I accept his evidence on the point, at a meeting on or about 11 July 2008 involving himself, Mr Easton and Ms Stott, Ms Stott made clear that the Glossop site would not be awarded to Sovereign/Meadowbank. She indicated that she wished ELG to service the Glossop site and ultimately to take over the servicing of all high grade scrap produced at Firth Rixson sites. The general position as at July 2008 is well documented in a letter from Mr Easton, signed by him as "On behalf of the Contract Holder" to Mr Truelove at Firth Rixson dated 16 July 2008. That letter also reflects the exasperation that Meadowbank/Sovereign clearly felt at the time.

312. Although an agreement to service the Glossop site came to nothing, Firth Rixson did offer Sovereign a batch of A909 and A286 scrap from the Glossop site by an email dated 24 June 2008. Mr Freddie Robinson offered half of this scrap to Meadowbank via Mr A J Hobson (by email also dated 24 June 2008) who accepted. Pursuant to an invoice dated 27 June 2008, Sovereign paid Firth Rixson the purchase price (inc VAT) of just over £146,500. Sovereign then invoiced MSSC for half of this by invoice dated 31 July 2008 which sum was paid. Part of this scrap forms the subject matter of one of Sovereign's counterclaims for conversion (the "Glossop Scrap Counterclaim"). The scrap in question was stored at the Meadowbank site. Part was later sold in 2010.

313. Although at about the end of August 2008 Sovereign was gearing up to provide further information for Ms Stott, Mr Easton, by email dated 3 October 2008, was complaining to Mr Truelove that there was still no contract in place, even though Sovereign/Meadowbank had been "on site at both operations for six months".

314. By the end of October/early November a much more detailed draft waste management contract was in circulation but only dealing with the Firth Rixson sites at Darley Dale, River Don and Meadowhall (the sites at Glossop and Ecclesfield having been removed from the draft contract). There was clearly still an absence of agreement as to whether the contract would be for a one year or three year term. The draft contract, at this stage, was still in terms between Firth Rixson and Sovereign alone. Mr Easton was still signing off some emails as being "on behalf of the Contract Holder" and sometimes as Meadowbank.

315. By email dated 20 November 2008, Mr Easton set out the then position to Firth Rixson as he saw it. As well as putting forward certain changes to the then draft contract, with the relevant explanations, he added:

> "*On final note Sovereign have agreed to include the name "Meadowbank Group" has* [sic] *joint contract holder, based on the level of investment and commitment to the contract*".

This seems to be a reference to the capital plant identified in an earlier proposed Appendix to the overall waste management agreement set out by Mr Freddie Robinson involving a computerised weighbridge at Darley Dale at £18,000, a spectrograph gun for instant analysis of material at £25k, a skip loader vehicle (£30k) and 4 tonne flat back vehicle (£15k) ISO accreditation (£12k) and plant required in the processing of revert turnings suitable for vacuum melting (£450k). The use of spectrograph guns at no cost to Firth Rixson was later mentioned in an email from Mr Truelove dated 14 January 2009 as being part of the deal that he had agreed for an across site waste management agreement. Further, MSSC had ordered a Technowash filtration Plant Process Tank in February 2008 at a total cost of over £28,000 (plus VAT) confirming that capital commitments were entered into as part of the cost of servicing the Darley Dale site.

316. On 25 November 2008, Mr Freddie Robinson sent an email to Mr Hobson, Mr Easton and Mr Simpson about invoices attaching a spreadsheet "*detailing all invoices from Rixsons D/Dale and all invoices from Sov to M/Bank including all credits. SORT IT*". The attached schedule shows charges for scrap from April to December 2008 with a total Ex VAT price of over £155,000 He received back an email from Mr A J Hobson saying:

"*Eh?*

No comprende amigo!!!!!!!!!!!!!!!!!!!!!!!!

Manana, manana hombre"

(3) 2009: the Waste Management Agreement of 9 February 2009, the loan by Meadowbank to Firth Rixson April 2009, Darley Dale contamination claims

317. On 13 January 2009, agreement in principle was reached between Mr Easton and Mr Truelove regarding the waste management contract. As recorded in an email from Mr Truelove of Firth Rixson to others dated 14 January 2009, he had met with Mr Easton and agreed the framework for a three-year scrap contract. It had been agreed that Sovereign/Meadowbank would train Darley Dale personnel in segregation techniques and the use of handheld spectra guns at no cost to Firth Rixson. The managers at Darley Dale were told to feel free to contact Mr Freddie Robinson when they were ready to commence training and that he (Mr Freddie Robinson) would then liaise with Meadowbank.

318. This oral agreement resulted in a written agreement dated 9 February 2009 made between Firth Rixson on the one hand and Sovereign and Meadowbank on the other hand. This related to three sites: the Meadowhall facility at Meadowhall Road, Sheffield; the River Don Facility at Milford Street Sheffield, and the Darley Dale Facility at Darley Dale. In addition, and to a certain extent, the agreement covered like arrangements to be in place as between Sovereign/Meadowbank and certain Firth Rixson nominated contractors. The agreement was for three years. In broad terms Sovereign/Meadowbank were to provide revert/waste disposal at each of the sites. They were to pay Firth Rixson for revert and Firth Rixson was to pay Sovereign/Meadowbank for waste removal transactions. Firth Rixson also had a first

right of refusal to buy back processed revert at prevailing market prices. The agreement was signed by Mr Freddie Robinson on behalf of Sovereign and Mr A J Hobson on behalf of MSSC.

319. In March 2009 discussions were held by Mr Easton with Mr Peter Truelove of Firth Rixson whereby Meadowbank was to make a loan of £1.7m-£2 million to Firth Rixson for a period of about 10 days, with repayment of that sum at the end of the period. The "fee" for this loan proposed by Mr Truelove was 0.75% or, in round terms, £15,000. However, as Mr Andrew Smith, finance director to Firth Rixson, made clear in an email to Mr Truelove dated 20 March 2009, later copied to Mr Easton, he wanted the transaction to be dressed up as a sale and purchase: "*I want it to look like a sale and purchase of material rather than a loan*". This was confirmed in an email from Mr A J Hobson to a Sarah Bruce at Helm in Jersey (company administration agents in Jersey for the Hobson Jersey Company) where he said in terms:

> "*What FR are proposing is that the money should not be called a loan but payment for an invoice will be returned by way of reciprocal invoice a week later to ourselves*"

320. In an email of 16 March 2009, Mr Easton asked what interest the Firth Rixson "financial people" would be "prepared to accept for that period" but went on to indicate that Meadowbank and Sovereign:

> " *are interested in building a stronger relationship with your company rather than a short term gain.*
>
> *If we could include our services or have access to greater opportunity within FR metals or opportunities on US business, that would prove more beneficial*".

321. Mr Andrew Hobson confirmed that it was he who had authorised this transaction on the Meadowbank side. In his witness statement he said that he became aware that the loan may have been to help with increased directors' bonuses. When asked about this in cross-examination he sought to avoid answering the question in a style that was common throughout his cross-examination. It was put to him that the Firth Rixson directors' bonuses would be based on the purchases or sales they had made and this was why the transaction was structured as a back to back sale and purchase rather than a loan. He was not prepared to engage but asserted that it was not his area of expertise and that he did not go into the detail because "*If I help someone in business, that is the way business flows. You help me, I help you*." He then seemed to suggest that the arrangement was to help Firth Rixson's cash flow (rather than being to assist with the bonuses of Firth Rixson directors).

322. In his witness statement Mr Andrew Hobson said that he asked Ms Greenhough to "request confirmation of the purpose of the Loan in case I needed to cover ourselves" and that he was left speechless at their reply of 21 June 2013. On 19 June 2013, Ms Greenhough had written by email to Firth Rixson about the £1.7m "disguised loan" in connection with a current investigation by Meadowbank into Mr Easton's "fraudulent activities". She asserted that the stock in question had been purchased by Meadowbank but not thereafter purchased back by Firth Rixson, as agreed. The quid pro quo put forward was that Meadowbank had been told that it would be invited to tender for all sites including Glossop, due at the end of the Spring of 2012, but that 18 months down

the road nothing had been heard. The response of 21 June 2013 was that the purchase back by Firth Rixson had taken place, both transactions were recorded in the Firth Rixson books and "so far as we are concerned the matter is closed". This reply, Mr Andrew Hobson asserted in his witness statement, left him "speechless". It is however quite clear that the reply did not in any way give rise to any belief that the transactions were arranged to assist directors of Firth Rixson with their bonuses. That must have emerged at the time the "loan" was arranged. It is also clear that the email of Ms Greenhough was not to obtain confirmation of the purpose of the loan, rather it was asserting that a quid pro quo (in particular the Glossop contract) had not been offered. In short, what this evidence confirms, among other things, is Mr Andrew Hobson's knowing engagement in a scheme to falsely inflate bonuses of Firth Rixson directors in exchange for jobs being offered to his companies by means of a dressed up sale and loan transaction, not being prepared to admit to this in oral evidence but seeking to re-write the purpose of the transaction as being one of a loan to assist cash flow, and putting forward documents to support something that they clearly do not support (that is, that he was clarifying the purpose of the loan, to ensure, he implicitly says, that it was not to artificially boost sales by Firth Rixson to justify directors' bonuses when he knew that to be the case). This evidence bolsters my concerns about Mr Andrew Hobson's evidence generally. Interestingly it also seems to evidence an assertion that a transaction (the sale back to Firth Rixson) had not taken place when it had. On this aspect, I do not accept that Meadowbank would have allowed this "loan" to be outstanding for four years and I consider that the assertion by Firth Rixson in its email to be correct (that the stock had been re-purchased and the "loan" therefore paid back). The assertion made by Ms Greenhough that the stock had not been repurchased was not repeated before me.

323. At the end of March 2009, by email dated 26 March 2009, Ms Stott cancelled the contracts that Sovereign had for the Ecclesfield and Ickles sites with effect from 6 April 2009.

324. By April 2009, as evidenced by an email from Mr Easton to Mr Wingfield at Firth Rixson dated 23 April 2009, Meadowbank raised claims for cross-contamination at the Darley Dale site for the period June 2008 to September 2008 in a sum of some £48,385.23 (ex VAT) and intimated that claims for the period October 2008 to March 2009 would follow. That claim was eventually put forward in a sum of just under £83,500 (ex VAT). A further claim for April 2009 was made in a sum of just over £19,000 (ex VAT). By June 2009, as a meeting note confirms, Meadowbank's claim regarding Daley Dale for the period June 2008 to 1 May 2009 had been revised to £143,070. In terms of quantum, the same £143,070 was put forward in a detailed letter of claim from "Meadowbank Group" (the company number on the letter is that of MSSC) dated 7 September 2009.

325. On 22 June 2009, MVA and Sovereign entered into a revert purchase and sale agreement with Firth Rixson Aerospace Components (Suzhou) Co Limited operating in Jiangsu, China.

326. By letter dated 22 September 2009 Meadowbank notified Firth Rixson of a claim under the Chinese Agreement for some $95,435. The claim was asserted on the basis that revert that should have been made available to Meadowbank had in fact been made available to other parties.

327. Various settlement attempts were made in relation to the contamination claim raised by Meadowbank. However, by November 2009, Firth Rixson was clearly frustrated. In an email dated 12 November 2009 from Chris Gillott of Firth Rixson to other Firth Rixson personnel, the former said, among other things;

> "*I am becoming increasingly frustrated by the tactics of Meadowbank. [He then refers to various steps and procedures put in place by Firth Rixson to prevent contamination]. Despite all this, Meadowbank still come back and claim mixed swarf, with David Easton making the repeated statement ?ON further examination, increased contamination found, deemed high risk to process.? This is always after we have left!!!*
>
> *I am losing any hope of any ongoing business relationship with these people, and am certainly not willing to entertain their repeated request to have someone on-site, which will cost us even more money*."

(4) Summer 2009: the 50:50 Agreement

328. It is common ground that, in the summer of 2009, it was agreed between Meadowbank and Sovereign that, instead of Sovereign invoicing Meadowbank in respect of all the scrap that it (Meadowbank) collected from Darley Dale and which Firth Rixson invoiced Sovereign (and Sovereign paid), Sovereign would only invoice Meadowbank for 50% of certain of the scrap. This agreement has, for pleading and trial purposes, been referred to as the "50:50 Agreement" though that was not the terminology used at the time.

329. The background to the 50:50 Agreement was the financial pressure that the Meadowbank Group (or at least MSSC) was under. This apparently reflected a change in the metal market in terms of prices from 2008 onwards and Firth Rixson not exercising its right to buy back scrap that it had sold under the waste management agreement applying to Darley Dale.

330. Mr A J Hobson confirmed that due to the financial crash in Autumn 2008, metal prices plummeted. He confirmed that, by way of example, nickel commodity was at $30,000 in January 2008 but that it had almost halved to $16,000 by January 2009 (per metric tonne). Meadowbank was legally committed to purchasing scrap from Firth Rixson but Firth Rixson was not exercising its option to buy back scrap metal. In consequence Meadowbank was stockpiling a large amount of high grade and some low grade stock. That put pressure on Meadowbank's cash flow. As a result, Mr A J Hobson agreed that he approached Mr Freddie Robinson "*to help us out in the short term*".

331. Although Mr Andrew Hobson says that the 50:50 Agreement came about as a result of him having a discussion with Mr Robinson Senior and not from any direct contact between Mr A J Hobson and Mr Freddie Robinson, I consider that there probably was contact of the sort suggested by Mr Andrew Hobson between him and Mr Robinson Senior, at about the same time. Whether Mr A J Hobson's contact was first or whether it followed on from contact between the two fathers is not, in my judgment, an issue that needs to be resolved. However, the actual agreement struck was one that was struck, on the Meadowbank side, by Mr A J Hobson. This fits in with the evidence of both Mr A J Hobson and Mr Freddie Robinson. It also fits in with the evidence that Mr Andrew Hobson would tend to leave the detailed terms and conditions of agreements of

this nature to be dealt with at the operations level rather than conducting them himself. However, I am satisfied that Mr Andrew Hobson was kept in the loop and that nothing was agreed without his consent. As Mr A J Hobson said in response to a question from me, most of the contact between him and his father as regards the 50:50 Agreement was "*through verbal word of mouth but obviously he was involved in it, yes*".

332. According to Mr Freddie Robinson, he rejected Mr A J Hobson's proposal that half of all the scrap that had come from Darley Dale and would come out in the future, should be purchased from Meadowbank by Sovereign. Instead, he says, he agreed that Sovereign would buy half of the High Grade scrap only. I deal with the oral evidence on behalf of La Cotte when analysing the 50:50 Agreement as an issue.

333. There are significant differences between the parties as to the terms of the 50:50 Agreement.

334. According to Meadowbank (as pleaded in paragraph 25 PoC):

(1) 50% of the sum invoiced by Firth Rixson would be paid by Sovereign. (In this respect the PoC are unclear because the Claimant's case is that Meadowbank would only have to pay Sovereign 100% of the price for Specials that Firth Rixson invoiced, not 100% of the total Firth Rixson invoice insofar as it included sale of Low Grade scrap).

(2) The Agreement would run for an uncertain future time.

(3) At some time in the future there would be a reconciliation of the sums owed, by Meadowbank to Sovereign (and vice versa), and in such process Meadowbank would bring into account the 50% of the relevant Firth Rixson invoices that it had not paid. In other words, the 50% sum no longer to be paid by Meadowbank was in effect deferred so that in effect Sovereign was lending money to Meadowbank or extending the time (*indefinitely*) for payment by Meadowbank.

(4) The alleged intended future reconciliation is pleaded (inconsistently in the same paragraph) as being a reconciliation of the relevant 50% of the Darley Dale Firth Rixson invoices *"(*<u>*including*</u> *any other dealings or transactions between* [Sovereign] *and the Claimant or its predecessor*/[MSSC]/MVA))" (emphasis supplied) and, separately, as being a reconciliation "*in respect only of the Darley Dale site business (including the sub-contractor sites)"*.

(5) The deferment of payment is said to have continued until April 2011. Between August 2009 and April 2011 the 50% sum that Meadowbank is said to have owed in respect of the Darley Dale site is asserted to be £600,386. This sum however includes a deduction of 10% for commission apparently charged by Sovereign to Meadowbank which the POC assert was not owed. Recovery of such commission is one of the matters not pursued.

335. The case of the 1st to 5th Defendants set out in their Re-re-Amended defence and the counterclaim of the 1st and 2nd Defendants (the "D&CC") regarding the 50:50 Agreement is as follows:

(1) The 50:50 agreement was an oral agreement made on or about 27 July 2009 between Mr Easton and Mr A J Hobson (acting for MSSC) and Mr Freddie Robinson, acting for Sovereign.

(2) The arrangement between the parties regarding Darley Dale was varied. The variation was to take effect from August/September. As Darley Dale was closed in August, the first collections of scrap that it applied to were those collected in September.

(3) Sovereign agreed to purchase half of the High Grade scrap collected from the Darley Dale site from April 2008 (when the relevant Firth Rixson agreement formally applied from) to the date of the agreement.

(4) From the date of the agreement, as before, Firth Rixson would continue to invoice Sovereign (which would pay for) all of the scrap metal collected from the Darley Dale site.

(5) Sovereign would invoice MSSC for 50% of the High Grade and all of Low Grade scrap collected from Darley Dale from the date of the agreement. MSSC would pay that 50%.

(6) After the date of the agreement, MSSC would buy only half of the High Grade scrap and all of the low grade scrap from Darley Dale. Sovereign would retain ownership of the other 50% of the High Grade scrap.

(7) The agreement was one regarding ownership (and payment for) the scrap and was not a deferred payment scheme.

336. There is no contemporaneous written evidence in the trial bundles of the 50:50 Agreement until December 2009 and I refer to that evidence shortly. Before I do so I should note that in his witness statement Mr Freddie Robinson referred to an email of 29 July 2009 as being about the purchase price that Sovereign was to pay for 50% of the High Grade Darley Dale stock acquired from April 2008 to August 2009. However, that email which is about average prices for only two of the High Grade metals concerned was not relevant to a purchase price based on historic cost. Having been taken to a number of documents in cross examination Mr Freddie Robinson agreed that the letter was about the then on-going negotiations with Firth Rixson. I am satisfied that this is the case. I need not decide whether this arose in connection with the contamination issue or was a completely separate matter relating to setting the price for such materials with Firth Rixson. I note however that average prices over time for certain High Grade scrap was part of the consideration when it came to the purchase back by Meadowbank of such stock. In my judgment, Mr Freddie Robinson was mistaken about the July 2009 email but it was an honest mistake resulting from after the event reconstruction of memory from the documents.

337. A delivery note confirms that Sovereign took 3 pallets of Titanium from Meadowbank on 11 November 2009. Mr Freddie Robinson says that this was him taking back some of the stock that he had purchased from Meadowbank under the 50:50 Agreement.

338. The first contemporaneous written evidence in the trial bundles concerning the 50:50 Agreement appears to be an email dated 8 December 2009 from Mr Freddie Robinson

to Faye Grace at Meadowbank, referring to some attached spreadsheets. Three numbered points are raised. The first is about steel turnings delivered in November 2009 to the Meadowbank yard, asking for the position to be checked so that Sovereign could raise an invoice. Items 2 and 3 are:

> "*2. Raise invoice to Sov for waste collected from Darley Dale 2008/2009.*
>
> *3. Sov to raise invoice to MB for scrap collected from DD August* [figure], September [figure] *and October* [figure]. [From the context the relevant year for the August to October figures referred to is 2009].
>
> *I have deducted steel & C/Irons then halved the invoice*".

339. The schedules attached cover, on a page for each month, January 2009 through to October 2009. On each of the pages for the months January 2009 to July 2009 there is a separate column for the different types of scrap, showing weights, price per tonne and value of the weight shown. Other than Turnings and steel, each column shows a total weight for each type of revert. There is then a line labelled "Sov Stock". In each case that line represents half the overall weight of the revert in question. At the bottom of each sheet there is a column showing the total value, a deduction for a combined figure representing the sum of the values of "Turnings", "Steel", "535 Tngs" and "Jet Tngs" and then the resulting figure is halved and shown with the description "Half". A similar picture is shown for September and October 2009, showing in effect that Meadowbank was to be invoiced for half the value of the relevant stock. The other half of the relevant stock being labelled "Sov".

340. There is also a one page schedule headed "Sov Stock Total Stock" showing types of metal and cost covering the period 2008 to October 2009. Although there are weights for January to March the cost is written as being "0" in the case of each of the High Grade scrap metals. The schedule also shows a return of Titanium solids which matches the delivery note from Meadowbank to Sovereign of 11 November 2009 that I have referred to earlier. There is also a return shown as against Ti Turnings.

341. Faye Grace replied by email with regard to the price per metric tonne for the turnings apparently falling within item 1 of the email of 8 December 2009 from Mr Freddie Robinson, referred to above. She went on to say that she would "have to check through the rest after lunch."

342. Later that day, Sovereign sent a further email to Faye Grace with figures for waste invoices (not scrap but waste such as paper, plastics etc) regarding Firth Rixson Darley Dale as follows:

> "*April 08-September 08 £25, 688.40*
>
> *October 08 – March 09 £ 6,842.45*
>
> *April 09-June 09 £ 3,117.10*
>
> *July 09-Septembert 09 £ 3,625.80*
>
> *Plus VAT.*

Can you date as at November 09.".

343. About 15 minutes later, Mr Freddie Robinson sent a further email to Faye Grace attaching figures on "*FRDD* [Firth Rixson Darley Dale] *waste*".

344. The figures in the attached schedules substantiated the figures contained in the earlier email. It is clear that the waste collected covered items such as "wood", "oily scale" and "dust". It also seems clears that relevant invoices relating to these matters had been raised by Sovereign to Firth Rixson some time before. An email from Mr David Easton dated 4 February 2010 to Firth Rixson about the claim brought by Meadowbank against Firth Rixson also set out various invoices for waste during the periods set out above which had apparently been issued as follows:

"Waste April-June 09 *20.07.09*

Waste July-September 09 *10.11.09"*

345. By email later again that same day, Mr Freddie Robinson sent some further schedules to Faye Grace by way of attachment. Of these he said:

"*One is all the steel & C/Irons from Darley 08 and 09 The other is breakdown of invoices from darley 2008.*

A rough figure for half of the specials April 2008 to August 2009 is around £367,646.16 plus vat.

Please raise invoice for £200,000.00 plus vat dated 30 November. Then raise invoice for £167,646.16 a week later dated December."

346. Sheets for each month from April 2008 to December 2008 follow the same general layout as those for 2009 that I have mentioned earlier. Under most of the categories of revert, there is a column, with a line giving a total weight for that month, then a line showing half that weight with the label "Sov Stock" . At the bottom of the sheet there is then a calculation showing the sum apparently charged by Firth Rixson, a deduction of (where present) the sum of the value/price of "Turnings, Steel, 535 tngs and Jet tngs" (the "Non Specials"), the sum after such deduction and then a figure for half of that sum with the description "half". In addition, in slightly different format, is a summary for Jan-Mar 2008 giving various weights for various revert (but excluding the Non-Specials).

347. A schedule headed "Sov Stock Total Stock" shows figures for 2008 to 2009, based on the schedules that I have mentioned, both those for 2008 and those sent separately for 2009. Although Jan/Mar 2008 appears on this Schedule the cost of High Grade materials is set at zero in each case. The total shown is a sum of £419,188.89 which, with a reduction of £51,542.73 for Sept/Oct shows a value (ex VAT) of £367,646.16 attributable to "Sov Stock", in effect covering the April 2008 to August 2009 period that Mr Freddie Robinson was asking to be invoiced for by Meadowbank. The schedule also shows a return of Titanium solids which matches the delivery note from

Meadowbank to Sovereign of 11 November 2009 that I have referred to earlier. There is also a return shown as against Ti Turnings.

348. On their face, the documents (especially the email from Mr Freddie Robinson asking Faye Grace to invoice for £200,000 then £167,000 or so) confirm a contract by Sovereign with Meadowbank to buy half the in-stock Darley Dale specials held by Meadowbank and an on-going arrangement whereby Sovereign would continue to buy half of such Specials from the Darley Dale site (whether directly from Firth Rixson or from Meadowbank does not matter for present purposes).

349. When these documents were put to him, Mr A J Hobson was not able to offer any credible explanation as to what else the documents showed. He suggested that maybe the payment apparently for existing stock was to help out cash flow but of course La Cotte's case was that there was no agreement at all regarding stock purchased previously to the date of the 50:50 Agreement (whether a purchase or a loan or something else).

(5) 2010: Darley Dale contamination claims and relationship between Sovereign/Meadowbank

350. By email dated 29 January 2010 Mr A J Hobson forwarded to Faye Grace an email received by him the day before from Sovereign with a subject matter of "Darley Dale stock" and an attached schedule headed "Sov Stock Total Stock". This is apparently an updated version of the schedule that I have referred to earlier with the same heading. The November 2009 figures have been added in. The calculation at the bottom shows a sum of £367,642.95 (rather than £367,636.16). It is reached after deducting sums for September and October and also November. I note that weights of certain revert shown as being "returned" vary as between the two schedules.

351. In the trial bundle are relevant monthly schedules for January 2010 to March 2010, April to June 2010, July and August 2010, following the same general layout as those monthly schedules that I have referred to above in paragraphs 339 and 346 above. In particular they show the relevant line "halving" the value of relevant revert. Most of the schedules do not in terms label the relevant line as "Sov Stock". Those sent by Mr Freddie Robinson to Faye Grace by email dated 2 September 2010 are referred to in the body of the email as "Jan-June stock sheet for Sov".

352. Also in evidence are a number of emails from Sovereign to Meadowbank (often individually Mr Easton, Ms Faye Grace and Mr A J Hobson) showing Sovereign sending on monthly invoices from Firth Rixson to Sovereign for sale of scrap to Sovereign and including a detailed schedule of the breakdown of the various types of scrap concerned.

353. On 3 February 2010, Sovereign collected some pallets and drums of Waspalloy solids as shown by a delivery note of that date.

354. By email of 4 February 2010, Mr Easton intimated a claim for contamination to Ms Stott for the period June 2008 to May 2009 in a sum of just under £149,000. As had been made clear in earlier discussions, part of Meadowbank's tactics were to secure an extension of the Darley Dale (and other contracts) due to end in 2011.

355. By email dated 8 February 2010, Firth Rixson made various proposals to settle the contamination claim raised by Meadowbank regarding the Darley Dale site. One option was to terminate the Darley Dale site contract, but to leave the contract in place for Meadowhall and River Don, with Firth Rixson paying compensation of some £120,000 in full and final settlement. A second option was continuation of the Darley Dale contract but with only an £80,000 compensation figure and the offer of technical support to enable Meadowbank to become an approved supplier at Glossop.

356. By email dated 11 February 2010, Firth Rixson asked Mr Easton for a "full update on available stocks". Mr Easton forwarded the same to Sovereign and asked "*Can we combine <u>your</u> stock*" (emphasis supplied) to which the answer, by later email, was "*yes*". Mr Easton further replied that Meadowbank's response to the claim needed to be got out that day "now we have some momentum *50% stakeholder*" (emphasis supplied).

357. In cross-examination, Mr A J Hobson was unable convincingly to explain away this email to Sovereign and its obvious meaning that Sovereign held stock of Meadowbank and the stock in question was part of Sovereign's role as 50% stakeholder in (or owner of) the Darley Dale High Grade stock. His suggestion was that Sovereign might have held stock at Meadowbank as it had done from time to time.

358. A Meadowbank counter offer to the offer of 8 February 2010 to settle the Darley Dale contamination claim followed by email dated 12 February 2010.

359. By a series of invoices dated 26 February 2010, Meadowbank charged Sovereign half of a number of haulage charges from a number of contractors (Torlane and ACME) for 2008 and 2009. A similar position applied in respect of the period January to June 2010 as evidenced by invoices dated 30 June 2010. From Mr A J Hobson's answers in cross examination about some of these invoices (and the principle apparently underlying them) I am satisfied that these invoices are consistent with Sovereign buying half of the relevant High Grade stock and being charged for half of the haulage accordingly. The only explanation that Mr A J Hobson could offer was that maybe there was a one-off sale of material but that does not fit with the time periods covered by the invoices in question.

360. Despite Firth Rixson's expressed hope that the contamination dispute should be sorted out by the end of February, a further long letter from Meadowbank Group (i.e. MSSC) on the topic dated 16 March 2010 followed a meeting earlier that month.

361. In August 2009, the A909 which had been acquired from the Firth Rixson Glossop site was sold back to Firth Rixson by Mr Easton. Sovereign invoiced MSSC for its half share which was paid for. The remaining A286 from the original purchase remained at the Meadowbank site.

362. By email dated 2 September 2010, Mr Freddie Robinson sent Faye Grace a Darley Dale Sovereign stock sheet for January to June 2010, as well as monthly breakdowns showing a charge to Meadowbank of the relevant 50% of the overall High Grade collected from Darley Dale.

363. By email dated 8 September 2010, Firth Rixson intimated a claim in respect of materials said to have been collected from Firth Rixson's sub-contractors for the period July 2008 to June 2010 which had, it was said, been collected but not paid for. The claim was in

the sum of £518,487. It followed emails earlier in the year from Firth Rixson apparently attempting to find out what had been going on with sub-contractors and complaining that dealings appeared to have been direct between sub-contractors and Meadowbank without the involvement of Firth Rixson. A reply from Mr Easton of 9 September 2010 vigorously denied this claim.

364. Correspondence demanding and providing backing documents regarding the sub-contractors' claim of Firth Rixson continued thereafter. At one point Mr Wormstone (then of Velocity Legal) had intervened on behalf of Meadowbank and appeared to continue to be involved.

365. By email dated 29 September 2010 Mr Freddie Robinson sent further details to Faye Grace regarding the Darley Dale figures for July and the Sovereign August breakdown. In effect, this contained the previous information updated (that is, an updated one sheet Sovereign stock schedule showing Sovereign stock month by month and sheets for each month showing the one-half of High Grade metals being charged to Meadowbank).

366. Meanwhile, the Firth Rixson dispute regarding sub-contractors resulted in various meetings. It was still unresolved as at 29 October 2010. By an email of that date Firth Rixson, through the sender, Andy Smith, made clear that the suggestions he made in that email regarding the cesser of collection of certain Specials by Meadowbank did not impact upon collections of other metals from Darley Dale, nor indeed collections from other sites.

367. A letter dated 23 November 2010 from Mr Andrew Hobson was sent to Firth Rixson under cover of an email from Mr Easton dated 25 November 2010. The letter is written by Mr Andrew Hobson as "principal investor" in Meadowbank with regard to the contamination issue. Interestingly the fourth paragraph of the letter is as follows:

> "*Reviewing the financial data it is clear from the current contract that other materials collected actually provide a loss to Meadowbank (and as a result) and it is only the position in relation to Waspalloy and 718 that allows the contract to derive any potential profit. As you will no doubt be aware from market analysis there is currently no market for Waspalloy and as a result through my investment Meadowbank are simply stock piling the materials on site. Up to date I have been prepared to continue my investment on that basis*."

368. Also of note is the suggestion that a fresh contract be entered into between "*all three parties, namely Meadowbank, myself as investor and Firth Rixson*." That suggests that (a) Sovereign was not seen by Meadowbank as an essential party to the Darley Dale part of the overall contract and (b) that the contracting Meadowbank party up to now was MSSC and not the Jersey Hobson Company.

369. By November 2010, the Jiangsu Firth Rixson contract had apparently been ended by agreement. A later email from Mr Easton to Mr Freddie Robinson dated 7 June 2011, referred to "China" as being something that he could use as a counter argument in settlement negotiations with Mr Andrew Hobson, China being something "*which you had no benefit from*".

370. Accounts for Sovereign for the year ending 30 November 2010 were signed off on 9 March 2011. Those accounts show comparable figures for the 2009 year end. The

figures given in the balance sheet for stocks, under current assets, are £56,500 (2009) and £296,000 (2010). On the face of things these figures do not include the stock that Mr Freddie Robinson asserts had been purchased by Sovereign under the 50:50 Agreement.

371. By email dated 15 December 2010, Mr Andy Smith (finance director of Firth Rixson) put forward a proposal to settle the dispute between Meadowbank and Firth Rixson but asked whether he was just wasting his time putting this forward and whether they should go to Plan B "*of jointly agreeing to terminate the DD part of the contract*".

(6) 2011: Collections by Sovereign from Meadowbank, Continued contamination claim against Firth Rixson, Reconciliation/sale agreement.

372. Mr Freddie Robinson says that during 2011 he collected from Meadowbank the following stock which formed part of the stock that Sovereign had purchased under the 50:50 Agreement. As with two earlier collections (in November 2009 and February 2010), Sovereign was not invoiced for it, nor did it pay for the same. The collections themselves are evidenced by Meadowbank delivery notes.

Date	Stock	Amount
18.01.11	Waspalloy Turnings	3,440 kg
18.02.11	Waspalloy Turnings	3,040 kg
18.03.11	Titanium Turnings	1.680 kg
10.05.11	Waspalloy Turnings	4,420 Kg
12.05.11	Waspalloy Turnings	3,480 Kg

373. The relevant stock is shown as being returned to Sovereign in the various schedules in evidence passing from Sovereign to Meadowbank (in accordance with the dates of the collections) and which schedules apparently showed Sovereign as owning half of the relevant High Grade scrap obtained from Darley Dale, less the stock collected as referred to above.

374. An email of 6 January 2011 from Mr Andrew Smith (Finance director) of Firth Rixson reacted to the then latest offer from Meadowbank (regarded as being £40,000 too low) regarding contamination at Darley Dale and also removal of scrap from sub-contractors. He asserted that it was in the best interests of both businesses to remove Darley Dale from the waste management agreement with immediate effect (subject to any transitional arrangements) but leaving the River Don and Meadowhall arrangements unaffected.

375. By email dated 31 January 2011, Mr Easton made a "*final proposal to Andy Smith of Firth Rixson regarding the cross claims against Firth Rixson regarding Darley Dale and the sub-contractors' scrap.*"

376. Mr Freddie Robinson says that in 2011 an agreement was reached that Meadowbank would purchase back from Sovereign the stock that it had purchased under the 50:50 Agreement sourced from Darley Dale.

377. According to him, the start of negotiations on this front were in about February 2011. Prices having recovered somewhat, Mr Freddie Robinson says he wanted to sell the £1million or so of accumulated stock that Sovereign had acquired under the 50:50 Agreement. Meadowbank indicated that it was interested in buying the same.

378. Mr Freddie Robinson says that the start of these negotiations is evidenced by an email dated 10 February 2011 under cover of which he sent Mr Easton a number of spreadsheets but referred him to "sheet 16" and set out his assessment as to the average price for waspalloy turnings as being £6,109.13 a tonne. Unfortunately the spreadsheets attached have been printed off on A4 and it is therefore possible that a spreadsheet has been printed off over more than one page. It is not possible clearly to identify which is sheet 16, though it seems to be the last A4 page in the trial bundle.

379. The enclosed schedules record on a monthly basis from April 2008 the stock acquired from Darley Dale and are in the same format as the earlier spreadsheets that I have referred to (e.g. those sent by Mr Freddie Robinson to Faye Grace in December 2009). They also contain a copy of the "Sov Stock Total Stock" document showing the position up to November 2009 but with a sum calculated to show the £367,642.95 figure for stock acquired from Darley Dale between April 2008 to August 2009. There is also a schedule of Specials for January and March 2008. Separately, there is a document headed "Sov 08/09/10 Stock Ex D/Dale" showing stock (weights only) apparently acquired by Sovereign between 2008 and 2010 but also allowing for returns in relation to three specifications of scrap (Ti solids, Wasp turnings and Waspalloy) (the "Total Sovereign Stock by Weight Sheet").

380. For current purposes there are also figures given in various schedules relating to (1) Ti turnings acquired in 2008/2009; (2) many if not all of the High Grade metals acquired over the period April 2008 to December 2010; (3) prices (unspecified) for the period April 2008 to December 2010 shown on a monthly basis and (4) a schedule headed:

> "*2008/2009*
>
> *Wasp Tngs".*

This document shows costs for 2008, 2009 and 2010 on a monthly basis and ends up with the average cost of £6,109.13.

381. By email dated 13 February 2011 sent by Mr Freddie Robinson to Les Davies of Haines Watts (Sovereign's accountants) he asked Mr Davies to reply to a letter from HMRC. He sets out a number of points in answer to questions apparently raised by the HMRC letter. Without the latter it is impossible to make much sense of the document. However, it suggests that VAT was being reclaimed regarding Firth Rixson stock. Attached to the email was a schedule of "Stock ex Firth Rixson Darley Dale 09/2010 with values

from December 2009 to November 2010 set out on a monthly basis and totalling £365,274.22. The figures for February to November 2010 match the figures set out in the penultimate page of the documents scheduled to the email of 10 February 2011. The figure for January 2010 is slightly different and the December 2009 figure matches that for November 2009 shown in the earlier schedule.

382. It appears that settlement with Firth Rixson regarding the Darley Dale contamination/sub-contractors claims was reached in early 2011. A Firth Rixson invoice in respect of "settlement agreement" was issued dated 22 February 2011 for £56,500 (plus VAT). Someone has written on in manuscript: 10 instalments. 2 x February = £13,560. 8 at £6,780 March to October inclusive. A series of emails dated 24 February 2011 refers to two instalments totalling £13,560 being paid at that time pursuant to the settlement agreement.

383. Mr Freddie Robinson says that it was about February that there had been a proposal that Meadowbank would buy back Sovereign's share of the High Grade material collected from Darley Dale. He says that from about this time Mr A J Hobson and Mr Easton were preparing schedules of material delivered to Meadowbank from Darley Dale (with the assistance of Faye Grace and Sonia Greenhough) with a view to finalising the terms upon which Meadowbank would purchase that part of the stock from Darley Dale that Sovereign had acquired.

384. By email dated 2 March 2011, Mr Easton asked Mr Freddie Robinson for the "invoice and back up sheet for the AMS M/C Shop" for January and every month thereafter:

> "*We will work on a master spread sheet for 2011. For 2010 OI recommend the same and agree a payment profile. For Jan we need agree FRDD [Darley Dale] + AMS + FRDD AGREEMENT (2 months) + Sovereign business*"

385. Thereafter, Sovereign sent a schedule to Meadowbank which showed a due date for a relevant month of scrap broken down into various components. The one sent on 30 March 2011 had figures said to be due at the end of February, March and April. The figures for due at the end of March were as follows:

"*Due end March*	*Jan 11 Scrap*
Darley Dale	*£ 66,001.46*
AMS	*£ 9,100.02 feb scrap*
Settlement	*£ 6,780*
Sub-contractors	*£ 35,610.94*
Sov Tngs Jan/Feb	*£ 27,192.84*
	*£**144,685.26**"*

386. In April 2011, Mr Freddie Robinson recalls being told by Faye Grace that Meadowbank would be using MVA in place of MSSC and asked for Sovereign invoices from then on

to be addressed to MVA. This fits in with the evidence about the letter to suppliers and customers of MSSC prepared by the accountants at the time.

387. According to Mr A J Hobson's revised witness statement, as part of the transfer exercise all debts owed by MSSC to its creditors had to be paid off. This was done over the ensuing months, either through MSSC or MVA. The general intention, he says, was to attain a "clean slate" for MVA's takeover of the business from MSSC. In cross-examination he was unable to explain, assuming his version of the 50:50 Agreement to be correct and that it was simply an arrangement deferring payment by Meadowbank, why it was that any reconciliation exercise did not include a reconciliation of the Darley Dale account and the payment (or a crediting) of the sum then due to Sovereign in respect of it.

388. It was at this time, 5 April 2011 that La Cotte entered into the written Brokerage and Agency Agreement and Consultancy Agreement, in each case with MVA, that I have referred to earlier in this judgment.

389. On 4 May 2011, Mr Freddie Robinson emailed Mr Easton regarding the invoice total for March for the AMS and referred in specific terms in the email to the invoice "Inc 2k sovereign commission".

390. By email dated 4 May 2011 Mr Freddie Robinson sent Mr Easton an email with the subject matter "*OWED!!!!!!!!*". As well as a "Stock" sheet, various schedules were attached apparently showing, in relation to Darley Dale, what had been charged by Sovereign to Meadowbank, of that sum, a credit due from Sovereign to Meadowbank and various deductions from the credit in respect of T1 turnings and solids.

391. By email dated 4 May 2011, Mr Freddie Robinson emailed Mr Easton a stock list. The document is headed "*Sov 08/09/10 Stock ex D/Dale plus Jan/Feb/March 2011*". It appears to be an updated version of the Total Sovereign Stock by Weight Sheet document sent under cover of the 10 February 2011 email that I have referred to earlier. That document shows various "returns" matching the weights by then collected by Sovereign from Meadowbank as referred to earlier.

392. Mr Easton's email reply of 4 May 2011 was to raise a further question:

> "*At what date in the contract was the bill split between both companies, before that Meadowbank must have paid the full value.*
>
> *That should constitute a credit to Meadowbank, have you an idea what that value is?"*

393. Later that afternoon Mr Easton sent to Mr Freddie Robinson by email with the subject matter "Review" a copy of a consolidation account between both companies "that Faye has completed". Leaving aside Titanium, it attached a number of schedules. The first in the trial bundle is headed "Account". It shows the full amount owed to Sovereign of £700,684.99, and various credits, totalling £471,192.94, in respect of the '08 to '10 accounts, a sum owed to Meadowbank of £117,974.78 and a total due to Sovereign of just over £111,500. Various schedules follow, some of them labelled "Stock" for a particular year (2008, 2009 and 2010 January to May) and showing part attributed to Meadowbank (all the Lowe Grade) and a halved amount attributed to Sovereign (of the

High Grade). Mr A J Hobson denied, in cross-examination, that these schedules showed Sovereign owning half of the relevant stock or that they suggested that. He simply said he did not know what they showed and said that he had never seen them before.

394. By email dated 5 May 2011 Mr Freddie Robinson sent an email to Mr Easton with the subject "re Darley Payments" and with an attachment. The email explained:

> *"From April 2008 MB paid invoice in full until Aug 2009.*
>
> *Sov owe MB £233,071.22 for 2008*
>
> *Sov owe MB £146,903.31 for 2009*
>
> *These figures are for scrap invoices only.*
>
> *We have a dif of £47,043.10 for 2008 and £20,490.58 for 2009/*
>
> *2010 £23,678.73?????*
>
> *These figures could be for haulage/rubbish Faye needs to look at this"*

The attached schedule sets out relevant figures on a monthly basis for 2008, 2009 and 2010. The £146,909.31 figure covers the period January to July 2009.

395. In his initial witness statement, Mr A J Hobson asserted that if there was a genuine attempt at working out the position regarding Darley Dale at this time then he was surprised that he was not copied in on the emails on 5 May 2011. In his amended witness statement he changed this to recording a surprise that his father had not been copied in. He was unable satisfactorily to explain how he had signed the earlier inaccurate witness statement.

396. By email dated 19 May 2011, Faye Grace wrote to Mr Freddie Robinson confirming that she needed invoices and back up material "for Andrew". This appears to have related to figures owed in respect of sums said to be due at the end of May in respect of 2011 trading regarding Firth Rixson earlier that year.

397. By email dated 26 May 2011, Mr Freddie Robinson sent Mr Easton a schedule under the heading "Total". The attached schedule apparently shows the total High Grade scrap held to the account of Sovereign from Darley Dale (after allowing for returns to Sovereign). The individual weights are then multiplied by an average price to get a cost figure. The total of this cost appears to be £907,053.26, although under this number is the figure "£975,198.00". A column headed "Total Sale" shows a total figure of just over £1.5 million (having multiplied the weights by certain prices there set out). A further column headed "profit ??" shows an overall profit of £584,688.67, being the difference between the "Av Cost" and the "Profit??" figures. Various schedules follow. The last two show monthly figures from April 2008 to March 2011. A total sum of £973,000 is shown with a figure underneath of "20% £194,600". The final sheet has manuscript amendments showing the total figure as £975,198 (rather than £973,000) and a 20% figure of £195,600. Also among the schedules are some dealing with Wasp Turnings, 718 Turnings and Ti Solids.

398. According to Mr Freddie Robinson, some time towards the end of May 2011 the process whereby Sovereign had collected stock which he says it owned, from Meadowbank's premises, came to an abrupt end. He was told that Mr Andrew Hobson was concerned that Sovereign's sales of such material could depress prices in the market generally. This was denied by Mr Andrew Hobson and Mr A J Hobson did not recall the incident. I find that Mr Robinson's evidence is to be preferred. It rings true. However, it seems that Mr Andrew Hobson then resiled from this position (see discussion about the 31 May 2011 email further below).

399. Towards the end of May 2011, apparently from his blackberry, Mr Andrew Hobson messaged Mr Freddie Robinson as follows: "*Your cheque has been here as promised. Asked Faye and she can't recall you asking for the cheque, I did instruct her to write it out. She will confirm as such . Maybe it's all your holidays Fred (maybe you should look at yourself). Cannot wait to see your old man, true friend, and as for your waspalloy and titanium you can take the lot*". A further email from Faye on the same date confirmed that the cheque was in her drawer and that "*Andrew instructed me to do it*.".

400. When asked about this document in cross-examination, it was put to Mr Andrew Hobson that the reference to "your" waspalloy and titanium was a reference to the 50% of such obtained from Darley Dale and now owned by Sovereign. It was also put to him, as was Mr Freddie Robinson's evidence, that the email came about because at about this time or earlier Mr Andrew Hobson had instructed Meadowbank to stop Mr Freddie Robinson from taking his (Sovereign's) part of the Darley Dale stock because of a concern that the market might be flooded. Mr Andrew Hobson said that he did not have a concern about flooding the market. When asked further about the use of the word "your" Mr Andrew Hobson sought to leave that out of account in explaining the document but ended up by saying that what he meant was "take our lot as well, take the whole lot" (emphasis supplied). He therefore admitted that this was a reference to the Sovereign part of the Darley Dale stock but sought to suggest it also covered Meadowbank's 50% too.

401. By email dated 7 June 2011, subject matter "meeting" Mr Easton wrote as follows:

> "*Freddie*
>
> *AH is here tomorrow, he wants to discuss Sovereign/[Firth Rixson Derby Dale] stock*
>
> *Have you had any more thoughts?*
>
> *We do not have clarity on the commodity markets going forward.*
>
> *The economic picture is still fragile and if we look forward to Q3 and Q4 average nickel may be between $18 and $20k, Co and Mo have already dropped.*
>
> *Unless you are prepared to accept lower prices or speculate the market will return, the opportunity to take a deal is now.*
>
> *What i have focused on waspaloy, 718 and 6-4Ti which by volume must constitute 90% of what we are discussing.*

A contentious issue will be start date to ascertain a deal, i have assumed in my figures April 2008, but i sure pressure will come to bear on August 2009

One further point, what price per kg do you put on storage, logistics, security, management of your stock at Meadowbank based on current sale of unprocessed stock?

Your counter argument will be before April 2008, proceeding 3 months and China which you have had no benefit from

Take a look at the figures and give a call

Hope you enjoyed the hols."

402. A document which I am told was attached to the email of 7 June 2011 is in the following key terms (the "Sovereign Sale Options document"). It sets out a number of tables regarding alloys (referred to in this paragraph as the "Alloys"). In each case the alloys are Waspalloy, 718 and 6-4 Titanium and in each case there are figures for solids and turnings :

"*Sovereign*

Commenced paying 50% of high value alloys in Aug 2009

all prices in black are inclusive of vat

Subject: Settlement against FRDD Contract

Period (1) Aug 2009 to March 2011

Period (2) April 2008 to March 2011

Material purchased at cost period 1 £ 595,218.3

Material purchased at cost period 2 £975,198.87 (minus a credit to MG of £379.980.53)

Average cost price paid for high value alloys over the term of the contract period 2
[A number of prices for each of the Alloys are then set out]

Total weight of high value alloys purchased in period 2 -weight removed by Sovereign

[On the face of it various returned weights of Alloys are then set out]

Value at cost on each high value alloy in period 2
[a number of prices per alloy are again set out]

Average cost price versus selling price unprocessed at average Ni 22 to 25k + Ti based on May

[A table of each Alloy, at cost and as unprocessed is then set out with a figure being a profit price per kilogramme, shown the difference between the two figures, and a percentage figure. The percentages vary between 27% and 229%.]

Total profit based on sale prices based on average Ni 22 to 20 5K and Ti based in May

[A table is then set out for each Alloy multiplying a given weight by the unprocessed prices from the table before.]

Total sale £1,346,799-Total cost £975,198, Profit £371,601 (38%)

Settlement

Based on period 2 April 08 to March 10

25% profit on £975,198 = £1,218,997
Commence July complete December 6 payments of £203,166 (£-63,330, see credit)
£139,836.00 per month

20% profit on £975,198 = £1,170,236

Commence July complete December 6 payments of £195,039 (-63, 330, see credit)

£131,709.00 per month".

403. According to Mr Freddie Robinson, the meeting between himself, Mr Easton, and Mr Andrew Hobson took place on 8 June 2011, as the email of the day before suggests. He says that Mr A J Hobson was present from time to time but that he was busy with other things and popped in and out of Mr Easton's office, where the meeting took place.

404. The meeting, he said, resulted in an agreement whereby Meadowbank agreed to buy from Sovereign, some, but not all, of the 50% of the Darley Dale sourced High-Grade material that Sovereign had purchased under the 50:50 Agreement. The stock agreed to be purchased was the six specific High Grade alloys being Waspalloy solids and turnings, 718 solids and turnings and 6-4 solids and turnings. He says the price for the material was agreed at £1,218,997 plus VAT. Against that sum, it was agreed that Sovereign would credit Meadowbank for half of the cost of the High-Grade material acquired from Darley Dale between April 2008 and August 2009. By the time of the June 2011 meeting, the agreed figure had been revised upwards to £379,980.53. The resulting sum due was therefore £839,016.47 plus VAT. Mr Freddie Robinson says that although the Sovereign Sale Options document suggested six equal monthly instalments of £139,836, whilst he was prepared to agree to instalment payments he did not want the instalments to commence in July. He said that he was anxious that payments due to Sovereign in respect of Darley Dale and AMS should be brought up-to-date both in terms of outstanding invoices and outstanding, or shortly to be

outstanding, issued invoices. It was, he says, therefore proposed by him, and agreed, that the first instalment would be delayed until December 2011.

405. Mr Freddie Robinson also says that at this meeting it was agreed that the 50:50 Agreement would come to an end in the sense that thereafter Meadowbank would resume paying for all of the scrap metal collected from Darley Dale. He says that Mr Easton and Mr Andrew Hobson also agreed that commission at 10% per month for Sovereign of the value of stock purchased from Firth Rixson Darley Dale should be paid by Meadowbank. During the period of the 50-50 Agreement, no commission agreement had been put in place and of course, according to Mr Freddie Robinson, Sovereign and Meadowbank were sharing in the High-Grade scrap by purchasing 50% each. With that agreement at an end, Mr Freddie Robinson says that the parties agreed a similar arrangement to the one that had been in place in relation to AMS since 2002. This reflected the fact that Sovereign had brought Meadowbank into the deal and that Sovereign was administering it. The expert forensic accountancy evidence is that between 1 April 2011 to 28 February 2012, invoices from Firth Rixson to Sovereign in respect of Darley Dale were recharged with a commission. The commission was 10% save for 4 instances where the commission appears to be calculated at 11% and on one occasion the commission appears to have been charged at 7%. This appears to be because the commission was part of the calculation of the overall re-charge to Meadowbank rather than being set out as a separate item on the invoice. As it happens the overall effect is that there was a £1,568.95 undercharge to Meadowbank.

406. According to Mr A J Hobson's amended witness statement he was not a director at this stage, he doubted that he was involved or that he had knowledge of the meeting and he said that he certainly did not recall it. However, he did say, at paragraph 66 of his witness statement, that he did recall Mr Freddie Robinson telling him it was six instalments but not the amount or when it would start. This seems to have been recollection of something that took place on about 8 June 2011 or shortly thereafter. This appears to follow from his later statement, at paragraph 79 of his witness statement, where he says:

> "*79. Between June 2011 (when I resigned as a director) and April 2012 (when I started my own firm). I cannot recall exactly whether Freddie told me that what he was owed on the settlement was about £1.2 M with split over six instalments. I recall some mention of something along these lines but I wasn't that interested as that was his matter with MVA and I was too concerned about my own future and making a fresh start."*

407. When the matter was put to him in cross examination he firmly confirmed that he had been told by Mr Freddie Robinson that a figure of £1.2 million had been agreed, payable by way of six instalments. He thought this conversation had taken place after 8 June 2011 but was unable to say how long after. I find that he was told about the agreement not long after 8 June 2011. There is every reason why he would be and no reason why he would only be told months later.

408. I also note that, in his revised witness statement he <u>deleted</u> a number of passages including the following from paragraph 66:

"He made no mention of any debts that were owed to him by MVA or any arrears in respect of general trading debts. I am now suspicious that he must, therefore, have been working with Easton to concoct this "liability" in this amount."

409. In cross-examination Mr A J Hobson accepted that Mr Freddie Robinson and Mr Andrew Hobson had indeed had a meeting on 8 June 2011. He says that he does not know what the purpose of the meeting was and, apparently an explanation for this, that the relationship between himself and his father at that time was very strained and that he "*didn't want to know because [he] focused on managing the customers instead which was ongoing business*". In addition, he had earlier said that Firth Rixson was primarily the responsibility of Mr Easton rather than him.

410. When asked about the 7 June 2011 email in cross examination, and in particular the reference to him attending a meeting to discuss "Sovereign stock" from Firth Rixson, Darley Dale, Mr Andrew Hobson simply said he didn't know about that. However, in my judgment, it is clear that Mr Andrew Hobson was at this time wishing to speak about Sovereign's ownership of the half of the stock sourced from Firth Rixson, Darley Dale.

411. Mr Andrew Hobson also denied any meeting took place or indeed that he would have spoken to Mr Freddie Robinson rather than Mr Robinson Senior. The latter point seems to me one that arises from all that has taken place since 2011 and Mr Andrew Hobson's conviction that Mr Freddie Robinson is such a disgrace that at the relevant time he would not have discussed anything at all. I do not accept that he is correct. In cross examination he put the matter as follows:

"*Q. Do you remember a meeting on 8 June at the Meadowbank premises attended by yourself, Mr Easton, Freddie and maybe AJ?*

A. 8 June. Is this – – no, I don't, Mr Lewis.. No, I don't. I would go back there and try and catch them red-handed and I would see them so cosy in Easton's office and I would say to Freddie "out", and I looked at him "seriously, get out". There would be three words we'd be explaining to each other, "good morning, good afternoon, David. Out Fred. Any seriousness, any issues that need covering, it's me and your old man do it. Get out" and I'd throw him out a few times. Not throw him out physically, I just order him out. Because it was not natural."

412. On the other hand, Mr Andrew Hobson, in his witness statement, asserted that a reconciliation after the 50:50 Agreement, under which, he said, Sovereign simply agreed a deferred payment, "*seems to have taken place in June 2011, with an alleged "sales contract*" *recording the alleged agreement being dated 17 December 2011. The date of June 2011, seems now to make sense because it is around the same time [MSSC's] role ended and [MVA] took over*." It seems therefore, that Mr Andrew Hobson seems to agree that some sort of agreement was reached in June 2011, but one that was reported to him rather than being agreed by him. However he says the agreement simply identified what sum Sovereign had agreed to defer payment of by Meadowbank. "*.. What I understood was that we were and should have been paying back the money advanced to us by* [Sovereign] *(under the 50/50 agreement) for the material we had collected from* [Firth Rixson] *in mid 2009-2011*".

413. As regards the content of any agreement, Mr Andrew Hobson, in his witness statement, stressed several times that he would never have entered into an agreement whereby stock would be sold by Meadowbank to Sovereign as alleged. However, when asked whether an agreement was reached along the lines of the Sovereign Sale Options document, the cross-examination proceeded as follows:

> "*Q. .... What this document shows, according to Sovereign, is the price that Meadowbank agreed to pay.... well it will be Meadowbank and La Cotte really, agreed to pay and buy from Sovereign its accumulated Darley Dale metal. That is what this document shows. Do you agree that there was an agreement made to that effect, Mr Hobson?*
>
> *A. I wouldn't give it the grace name and call it a document, so my answer is "no"..*
>
> *Q. No agreement. Right. What then happened to Sovereign's stock that was accumulated on the Meadowbank premises?*
>
> *A. We'd have arranged – – the old man and I would have arrange something, because he knows if we've got that much stock, and we trust each other, we would have found some common ground and resolved. It wouldn't have been a big deal really.*
>
> *Q. What happened to that stock, Sovereign stock, that was accumulated on the Meadowbank premises?*
>
> *A. What happened to it?*
>
> *Q. Yes. If you didn't buy it, did Sovereign take it off- site?*
>
> *A. From – – evidentially they took some, didn't they? And they took some value portion to that of other materials which were There is still-- I keep repeating myself. And I would imagine it may be even still there.*
>
> *Q. That is part of the [counter] claim. You're exactly right, part of the claim is-- some of it is still there, and there is a conversion claim. So would you accept that some of the stock is still on site?*
>
> *A. I will accept I would have concluded my – – and been honourable in my agreement.*
>
> *Q. What is your agreement, Mr Hobson?*
>
> *A. With the old man. Now it's all transpired it's all fraud, isn't it? So what am I going to agree after a fraud? It's moved a little, hasn't it, David?*
>
> *Q. I am sorry, I simply don't understand what you are saying to me. What is it that you are saying to me?*
>
> *A. I am saying it's all a fraud, it's all a scam, it's all sham. It's all a complete rip-off and it's all fabricated lies. So the position has changed extremely. So the*

stuff what's on the site was never purported to be, so it's all lies and fabricated by two conspirators, so thereafter it's all changed hasn't it?"

414. In re-examination, Mr Andrew Hobson was asked to clarify his reference to the Erasteel reference but I regret to say his answer was as confused as his earlier answer and made no sense to me.

415. More importantly, in re-examination, Mr Andrew Hobson was asked what he had meant in the above passage by "*we had arranged – – the old man and I would have arranged*". He confirmed that an agreement had been reached between him and Mr Robinson Senior. He was then asked what he meant by "*I will accept I would have concluded my – – and been honourable in my agreemen*t"

> "*Q. So my question to you is: can you clarify to the court what agreement are you there referring to?*
>
> *A. Everything was breached, wasn't it, by the dishonesty? It all changed after we discovered the dishonesty. I am sure, and I will get back to my point, I am sure there will be more to come out, as the killing fields are in Cambodia. They did that many bad things.*
>
> *So the original agreement with the old man was when – – it goes on, he pays 50/50, he keeps all his sites, and when we come to an agreed time we will buy it off him, I will give him the money, so it's ours, basically. It would just give us a bit of a loan, I would imagine, something to that effect."*

416. As I understood what Mr Hobson was saying it was that he was accepting that Sovereign did own the relevant 50% of stock taken from the Firth Rixson Darley Dale site and that the arrangement was it would be bought back from Sovereign at an agreed time so that the economic effect would be that, at the end of the day, Sovereign would be making a loan to Meadowbank. However, the fact that the economic effect was one of loan did not alter the legal effect which was that Sovereign owned the relevant stock, so that did not have to pay for it at that stage, and that Sovereign would later sell the stock to Meadowbank.

417. Having considered the evidence as to whether there was a meeting on 8 June 2011 and, if so, what was agreed at it, it is convenient to consider the evidence given on behalf of the Claimant with regard to the proposed terms set out in the Sovereign Sale Options document and the email of 7 June 2011 that I have referred to.

418. It was suggested, on behalf of La Cotte, that the email confirms that Mr Easton was improperly "in cahoots" with Mr Freddie Robinson and assisting him, against the interests of his employer MVA, in putting forward arguments to Mr Andrew Hobson. In the overall context, I do not read the email in this way. In my judgment, Mr Easton was attempting to set out the issues that were likely to arise at the anticipated meeting. There had clearly been discussion between Mr Easton and Mr Freddie Robinson as to the possible terms of a deal. Responsibility for agreeing a deal on behalf of Meadowbank would be the function of Mr Andrew Hobson. Setting out Mr Freddie Robinson's position was not, I find, Mr Easton trying to build a case against his own

employer but simply reducing Mr Freddie Robinson's existing position in writing. I accept that Mr Easton would no doubt have assisted on the figures themselves but I do not consider that the email shows what Mr Andrew Hobson described as "*the plotters… bang in the middle of their red hot streak in June*."

419. Turning to the substance of the Sovereign Sale Options document, as annexed to the 7 June 2011 email, it was attacked by La Cotte as showing that a wholly outrageous profit was being sought to be made. In his original witness statement Mr A J Hobson asserted at paragraph 64(c) that:

> "*The last section on the first page is an attempt by the author (who I understand may be Dave Easton) to produce the highest "profit margin" possible (some as high as 229%) by applying deliberately inaccurate and misleading basis for the category of material being dealt with as follows*".

420. He then set out three numbered subparagraphs dealing with different forms of scrap. Two of them were contained in the third subparagraph. He then went on to say:

> "*these are such fundamental errors that any Metals merchant would be aware something was amiss and awry in the calculation and question the intention of the author and the integrity of the figures. The figures, if created by Dave Easton, are deliberately inflated to the apparent detriment of* [La Cotte]."

421. In his revised witness statement, Mr A J Hobson deleted the last two subparagraphs. The remaining subparagraph made the point that the costs of 6-4 Ti turnings was being compared against the sale price of special refined and processed material, Fe Ti (ferro-Titanium) yielding an "apparently massive" 60% margin. This was a reference to one of the items under the heading "*Average cost price versus selling price unprocessed at average Ni 22 to 25k + Ti based on May*". The item in question was the last bullet point item being:

> "*6-4 Ti Turnings cost 1.886, sold as Fe Ti 3.00, profit 1.114 per Kg (60%)*"

422. In cross-examination, Mr A J Hobson explained that his thinking had been that to process unprocessed Ti Turnings to create Ferro Titanium would cost a great deal of money. To treat unprocessed Ti Turnings as if they were a different processed product, at a 60% profit on cost price was completely unsustainable. However having been taken through the matter in cross examination he accepted that the proposed sale price giving rise to the 60% profit on cost was a sale price slightly less than that being charged by Firth Rixson in May 2011 for unprocessed Ti Turnings. The apparently large profit was therefore created by changes in the market comparing the historic cost price per tonne that Firth Rixson had charged in the past (averaged at £1,810) with a price (£3,000) slightly under that which Firth Rixson was charging for the same product in May 2011 (£3,181). The point being made by Mr A J Hobson in his witness statement therefore fell away. Mr A J Hobson fairly accepted this point and explained that at the time of the witness statement he had not been aware of the relevant market prices in May 2011.

423. That there were large pricing shifts over time regarding scrap was confirmed by Mr A J Hobson in cross-examination.

424. His remaining oral evidence regarding the Sovereign Sale Options document was that a 25% profit on what Sovereign was saying it had been buying since 2008 in a suppressed price market "seemed high", even though market prices had recovered by 2011. However, neither he nor anyone else on behalf of La Cotte developed this point any further by reference to concrete or particularised figures. In my judgment, what is telling, is that the document set out a number of detailed pricings which underlay the three potential profit figures and yet only three of those were initially challenged. Two of the challenges were dropped when Mr A J Hobson amended his witness statement and the third was demonstrated to be groundless.

425. In this context it was finally put to him that the apparent market prices would have given rise to a 38% profit in total but that the deal was struck at a figure giving rise to a 25% profit margin. The reduction reflected an apparent negotiation between the parties. It is possible the reduction from 38% represented goodwill, storage, negotiation or whatever but on the face of things, assuming a 25% profit on average cost figure, the parties appear to have settled at an overall price which was less than the then market price. Mr A J Hobson agreed.

426. There are a number of passages in his original witness statement which Mr A J Hobson deleted in his revised witness statement. In my judgement these deletions are significant. Thus, he removed the assertion that the sum of £1,218,997 shown as owing by MVA to Sovereign was "*a completely concocted figure, so far as I can see*." He also deleted in whole paragraph 65 of his original witness statement, dealing with the documents annexed to the email of 7 June 2011 and which said:

> "*65. This is the first time I have come across the sheets and, if they had been at all genuine, I am amazed Freddie did not mention these to me as I told them about Easton fiddling before and after I resigned as a director. I am now suspicious that Freddie must learn that Dave Easton was (presumably with Freddie's knowledge and consent) was* [sic] *inflating figures and concocting this calculation to benefit* [Sovereign*], and this is even more likely so far as I can see, given the background and events which we have subsequently discovered about Easton in 2012/2013*."

427. I am not satisfied, as asserted by La Cotte, that the proposed sale prices for the stock which Sovereign said it owned and which were set out in the Sovereign Sale Options document were in any way other than perfectly proper market led figures. It follows that I reject any suggestion that they were put forward in some form of conspiracy between Mr Easton and Mr Freddie Robinson to damage or use unlawful means to bring about some form of agreement with Meadowbank.

428. During the summer and late summer of 2011, Meadowbank sent certain large sums to Sovereign to clear or reduce its outstanding indebtedness to Sovereign. This of course was also consistent with seeking to clear the balance outstanding from MSSC following the transfer of business to MVA. Sums were paid on or about the dates set out below by cheque:

Date	Amount
01.07.11	£147,544.67
14.07.11	£200,000

04.08.11	£184,010.38
08.09.11	£119,422.90

429. From about 2011, the Avalloy matter was proceeding (see earlier section of this judgment under the heading "Other Earlier Proceedings").

430. Also from about August 2011, Mr Easton and Mr Freddie Robinson were clearly giving consideration to the fact that the overall waste management agreements with Firth Rixson in relation to Darley Dale, River Don and Meadowhall were coming to their end and how they would be replaced. A tender was sent out by Firth Rixson in September 2011. I deal with the separate history in relation to that tender process and its outcome under the later section of my judgment dealing with the "Diverted Contract Claim: February 2012".

431. In the period up to the end of October, there are a number of emails between Faye Grace and Mr Freddie Robinson trying to identify and reconcile the sums owing between Meadowbank and Sovereign (leaving aside anything due in respect of the June 2011 Agreement and/or the 50:50 Agreement). On 31 October 2011, Mr Freddie Robinson sent Mr Easton an email regarding outstanding sums. He sought a cheque for just over £106,000 in respect of August scrap relating to the AMS and Darley Dale. He asserted that just over a further £212,000 would be due at the end of November regarding the scrap from the AMS and from Darley Dale for September. These sums were said to be "part payment of £330,000 outstanding invoices for Sov year end". The Sovereign year end was 30 November. As regards the £330,000 the email suggested that "*you split between Oct/Nov/Dec to clear the decks ready for the settlement agreement that kicks in in January 2012*." This email supports Mr Freddie Robinson's case about the June 2011 Agreement.

432. Later manuscript notes, on an email dated 1 November 2011, suggest that the sum of just over £106,000 for August scrap was paid on 11 November 2011, that the sum of just over £212,000 in respect of September scrap was paid on 5 December 2012 and that the £330,000 was paid by two cheques on 9 January 2012 for £165,000 and 24 May 2012 for just over £166,671. A copy of the January cheque for £165,000 is in the trial bundle.

433. By email dated 22 December 2011, Mr Easton wrote to Mr Cooke of APC regarding an apparent supply of material from MVA to a company called Doncasters. Doncasters returned the stock when a claim was made to the stock by another company called Chard. Mr Easton explained that Chard would not accept the replacement stock that MVA had available. He asserted that there was "*no impropriety taking place, just expedience to supply an end user through your company*." The position had been explained to Chard and it had also been explained that APC had no prior knowledge. The relevant letter is in fact dated 20 December 2011. He apologised for the incident which he said should not have really happened. He concluded by saying: "*Don't let Ah no as this stock is for me*".

434. It was submitted that this is evidence of further impropriety on the part of Mr Easton. Even if it is, I do not find it assists me very much, if at all, on the substantive issues that I have to determine.

435. In December 2011, Faye left MVA. Apparently she went to work for APC and thus ultimately Mr Easton, at least from when he joined. Before she left, she had prepared various schedules setting out the inter company debt position as between Meadowbank and Sovereign. However, those schedules did not deal with the 50:50 Agreement or the June 2011 Agreement (which ever versions of these agreements put forward by the parties are taken as being the true ones).

436. Mr Freddie Robinson says, in his witness statement, that by the end of 2011 Mr Easton had told him that he was unhappy at Meadowbank. The implication is that it was a serious "unhappiness" and that at the least Mr Easton may have indicated, directly or indirectly that he was at the least considering his position at Meadowbank and whether he would remain there.

(7) 2012: The reconciliation/sale agreement between MVA and Sovereign

437. By email dated 3 January 2012, with the heading "Sale contract" Mr Freddie Robinson apparently sent Mr Easton a draft sale contract and asked him to "take a look at it" and to see if it covered everything. Unfortunately, the attachment is not in the trial bundle.

438. By email dated 4 January 2012 recorded as sent at 8:38am Mr Freddie Robinson sent an email to Mr Easton as follows:

> "*Sales Contract 17 December 2011*
>
> *Sovereign Steel agree to the sale of the following stock items to Meadowbank Alloys, all items are held at Meadowbank site.*
>
> *1. Waspalloy Solids and Turnings*
>
> *2. 718 Solids and Turnings.*
>
> *3. 6-4 Titanium Solids and Turnings.*
>
> *The Total amount of this sale is £839,016.00 plus vat.*
>
> *Meadowbank to pay in monthly instalments of £139,836.00*
>
> *Sovereign to produce an invoice for each monthly payment.*
>
> *Instalments to start 1st February 2012.*
>
> *Items not included in the sale and held at Meadowbank site, as listed below.*
>
> [There are then listed nine items of scrap with weights, including, as the 9th item, some 8286 Turnings (ex Glossop).]

All items are owned by and remain the property of and Steel until payments are made in full.

Signed…… ……	*Signed……..*
For and on behalf of	*For and on behalf of*
Sovereign Steel	*Meadowbank.*

439. This document accordingly suggests that an agreement had been reached that the Sovereign 50% share of the relevant identified stock sourced from Darley Dale would be sold to Meadowbank at a price which gave rise to a profit of some 25% on the averaged cost price, based on the Sovereign Sale Options document.

440. According to the trial bundle index, attached to the email recorded as sent at 8:38 am was a sales contract in identical terms to those set out in the email, except that the terms were set out on Sovereign headed notepaper, the retention of title clause was underlined and Mr Freddie Robinson's signature appears in manuscript, with his name in capitals in manuscript underneath where there is room for the signature for Sovereign.

441. Under cover of an email dated 4 January 2012 recorded as sent at 10:46 am, with the subject "Your Calculations", Mr Freddie Robinson sent what were apparently scans of the Sovereign Sale Options Document previously sent under cover of the 7 June 2011 email referred to earlier.

442. Mr Freddie Robinson, in his witness statement, said that he had picked the date of 17 December 2011 as the date for the agreement at random, other than he wanted it to fall within the first month of Sovereign's new financial year starting 1 December 2011. He says that the instalment dates were changed to start in February rather than December because by that stage no payment had been made and he hoped that the other outstanding debts owed by Meadowbank to Sovereign would have been paid by that time.

443. He said that shortly afterwards he took a copy of the contract to the Meadowbank offices where he met Mr Andrew Hobson who said that he was committed to pay for the material and reminded Mr Freddie Robinson of how highly he regarded his father, Mr Robinson Senior. He said that Mr Andrew Hobson said words to the effect "*how long have we known each other, we go back a long way, I don't think you need me to sign to know that I am going to pay*". The two cheques dated 9 January were then arranged by Mr Hobson.

444. It was put to Mr Freddie Robinson that Mr Andrew Hobson could not have been shown the draft contract as asserted because as a matter of generality he was in Jersey in Januarys. That was an apparent attempt to fill a hole in the Claimant's evidence. In cross examination Mr Andrew Hobson had said that he had "assumed" he wasn't at the Meadowbank site in January 2012 and that he had taken this for granted. No relevant flight details have been produced to prove the point even though Mr Andrew Hobson seemed to agree that it did exist. I find that Mr Andrew Hobson was in the UK at the relevant time and that he was shown the draft contract.

445. By email dated 9 January 2012 from Mr Easton to Mr Cook at APC, Mr Easton enquired whether a Mr Paul Barnett or any other client had a requirement for certain types of scrap requiring shot blasting. He ended:

> "*I can get this stock to you but don't let AH no. can you sell for me and pay me the money*."

446. As I read this email it is rather like the Avalloy situation, one where Mr Easton was using or proposing to use MVA stock and effectively stealing it to sell on his own account.

447. By two cheques dated 9 January 2012, MVA drew an order for payment in favour of Sovereign for the sums of £165,000 and £73,380.74.

448. By email dated 20 January 2012, which though sent to Ms Greenhough's email address was addressed to "Andrew/Audrey", Mr Wormstone set out the position in relation to Meadowbank and APC, saying that he had wanted to go through this face-to-face to show them the papers on which it was based but that he did not think it would wait that long now. In broad terms the email suggests that two sums, of respectively just under £600,000 and a sum of £410,000, was owed by APC in respect of trading from 1 January 2011 to date. However, having taken into account various other matters the conclusion was that at best, and taking into account other matters, APC owed just over £580,600. Looking at other matters there was even the possibility that MVA was net debtor to APC. This email seems to relate to the claims later brought in the Manchester proceedings. However of interest is Mr Wormstone's comments regarding "*Uninvoiced stock from 2010*":

> "*On this we have no records other than a computer printout from the system that purports to show stock going out. This was done by Faye. We have no tickets or records. All lost, even neville's book. Sonia and I went through them and found that a lot of them had been invoiced as the ticket numbers appeared on other invoices. On others when I challenged cookie on them he produced returns and other rejections etc. for most of them. What was embarrassing and humiliating was that he gave me a copy of our computer printout that I was working on. This was more up-to-date than ours as it showed rejected loads on it etc. Apparently Faye would go down every month to APC to go through them and update our records. How come he has a more up-to-date record of OUR SYSTEM then we do. Ours must have been changed later removing the info where loads were rejected and returned. Faye would agree the figures and he has copies for every month!!!! On top of that some of the material that went out and is on our list was his material that he bought and kept her. Apparently this was agreed with him and AJ but it shouldn't go on the list as was his."*

449. By email dated 5 February 2012 sent to Mrs Audrey Hobson's email address, Mr Easton, having explained how he was at the forefront of championing Meadowbank towards being a major supplier in the shot blasting sector, went on to say:

> "*However, I find myself being undermined in this process by a 19-year-old, who has no formal experience in commercial matters and does not understand quality control. This is not acceptable to me or the melters and undermines my position.*

I was recently challenged in front of Steve and Neville who both registered their disapproval afterwards with regard to the episode."

Having identified "*the latest episode which is the last straw*", he went on to complain that Mr Luke Hobson had been visiting AMM and undermining his position in front of Mr Walker, so much so that he asked Mr Luke Hobson if Mr Easton had left Meadowbank. Finally, he stated that his position was "*UNTENABLE*" and said that he felt he had no alternative but to tender his resignation. He ended by wishing both Mr and Mrs Andrew Hobson and their two sons "*all the best going forward*."

450. P45 HMRC forms regarding Mr Easton leaving employment with MVA show his leaving date as 29 June 2012. However emails from him to various persons at Firth Rixson of 4 July 2012 states that he resigned with immediate effect from Meadowbank the day before.

451. This is explained by an email from Mr Easton to Mr Luke Hobson dated 5 July 2012. Mr Easton says in that email that he had intended to leave MVA on the basis of a final working day of 29 June, followed by a period at home and then to work for the next two weeks terminating his employment on 13 July 2012. However, the email goes on, events overtook this plan when on 3 July he received threatening phone calls. He then went on to set out the hand over work that he proposed to carry out for an ex gratia payment in respect of holiday entitlement of £3k. (This was described by Mr Andrew Hobson as blackmail). By email dated 6 July 2012, Mr Luke Hobson referred to the meeting that Mr Easton had proposed in his email of 5 July as having taken place earlier that day and agreeing to pay the £3k covering Mr Easton continuing to assist on the accounts that he handled to allow a seamless transition, ending on 13 July 2012, confidentiality terms and the use but eventual handover of Mr Easton's work mobile phone.

452. On 12 July 2012, Meadowbank apparently made the first payment under the June 2011 Agreement (as evidenced by the draft agreement dated 17 December 2011). The cheque was for £167,803.20 which included VAT on the agreed instalment sum of £139, 836.

453. According to Mr Freddie Robinson, he went to collect this cheque from Meadowbank and met Mr Andrew Hobson there who told him that he thought the figure that Meadowbank had agreed to pay Sovereign under the June 2011 Agreement was "too high". He wanted the overall figure to be reduced by 2.5%. This, or at least the agreement to reduce the overall sale price, seems to have been agreed, as Mr Freddie Robinson asserts, because by email dated 16 July 2012 he emailed Sonia Greenhough attaching a document entitled "New Meadowbank monthly payments". This set out a reduction in the monthly payments from £139,836 plus VAT to £134,960.31 (plus VAT), totalling £161,952.37. The attachment was in the following terms:

"*22.5% on 975,198.00 = £1,194,617.55*		
Paid	*£ 203,166.00*	*£139,836.00 + credit £63,330.00*
Balance:	*£ 991,451.55*	
Balance divided by 5	*£ 198,290.31*	
Less Credit	*£ 63,330.00*	
5 monthly payments of	*£134,960.31."*	

454. Ms Greenhough suggests that she simply ignored this email and did not refer it to Mr Andrew Hobson as:

> "*A. I didn't understand it. I thought Freddie had got figures wrong. When I look at it now I look at it in a different way, but then, when Freddie had put 22.5% on 975, I thought he'd got his VAT wrong. I thought it should have been 20% so I didn't understand that.*
>
> *Paid 203,000, I looked – – there is no payment for that amount. Plus a credit 63, I have never got a credit of 63,000. I can see the balances divided by five, so did referred six payments, but I just thought it was a load of twaddle, really. It doesn't make sense……*
>
> *And he is asking me to agree when he specifically knows I can't agree on anything. So why was he asking me if I agreed? The figures didn't make sense, Mr Lewis.*
>
> *Q. did you write back to Freddie and say all of that or any of that?*
>
> *A. No I didn't.*
>
> *Q. No. So you thought it was a "load of twaddle", to use your wording, but you didn't respond to Freddie to say so?*
>
> *A. No.*
>
> *Q. Why not?*
>
> *A. I don't know. I just didn't respond to him.*"

455. She went on to say that she didn't remember mentioning it or discussing it with anyone else. She accepted that on the face of it she had received a statement suggesting that Meadowbank would be paying out, in the future, almost £1 million (by way of balance) but said that when it was time for her to ask Mr Andrew Hobson to pay she would have mentioned it to him. She also accepted, as she had to, that invoices for the instalments two and three were indeed paid by Meadowbank. I turn now to the invoices and payments.

456. As regards the instalments said to be due under the 2011 Agreement, the position is that invoices for each, addressed to MVA, were dated as below. The narrative description of each invoice was "Firth Rixson scrap" with a number indicating it was a number in a sequence e.g. "1/6", "2/6" etc.

Date of invoice	Paid
30.04.12	Yes
02.07.12	Yes (2 instalments: 03/8 and 03/10)
30.08.12	Yes (instalments: allocated from 04/12 and paid 22/12)
30.12.12	No (80k in 04/13)
16.04.18	No
16.04.18	No

457. As regards the above payments, Ms Sonia Greenhough confirmed that the first one was referred to Mr Andrew Hobson, with the information on it, and that it had been cleared by Mr Easton. She was unclear whether she had referred Mr Andrew Hobson to the instalment point but she said it was clear to her from the face of the invoices that they were each one of 6 instalment payments. Given what Ms Greenhough said about Mr Andrew Hobson asking her what the payments were for, I am sure that the instalment point would have been made by her to him.

458. Mr Easton had of course left by the time of the second and third invoices. Ms Greenhough accepted that she did not tell Mr Andrew Hobson that these specific invoices had been cleared by Mr Easton. She says that Mr Andrew Hobson "*probably tried to ask me more about it, what it was for….Andrew still okayed it, it was Freddies invoice, they were best mates or whatever so yes, paid it*." (emphasis supplied). The underlined passage undermines Mr Andrew Hobson's earlier evidence, which I have already said I judge to be a position reached with hindsight years later that at this time (and indeed much earlier) he did not trust Mr Freddie Robinson, would not deal with him but only his father and so on.

459. Ms Greenhough suggested that Mr Andrew Hobson was asking her (and his wife was asking) what these large payments were for. However, according to her, the accountants who were reconciling the internal MVA accounts did not ask where the significant amount of scrap was that MVA was apparently buying, and it was not queried by anyone else at MVA. Further, and as said, the payments in respect of invoices one to three were (eventually) paid or treated as paid in **full** on the part of MVA and part paid in respect of the fourth instalment. She also suggested that she began to become concerned about the liabilities between Sovereign and MVA but that that had nothing to do with the instalment payments but rather was to do with what she says was odd behaviour of Mr Freddie Robinson in asking to see ledgers and in his demeanour when attending the office, such demeanour being that he was jumpy, nervous and sweating. This apparently resulted in her starting an investigation which took many months but which was delayed to some extent because of the dispute with APC.

460. The evidence of Mr Luke Hobson was also somewhat surprising on this front. According to him, in late 2012/early 2013 he started looking into the payments being sought by and made to Sovereign by way of instalments the subject of the invoices referred to by me earlier. However, he only began to understand what the instalments were for towards the end of 2013 and the beginning of 2014. The request for him to investigate was made by his father, who apparently asked him to find out "*what this money is that we are paying Freddie*." In his witness statement, he asserted, under the heading "Evidence of collusion with Easton-First meeting (Board Room Meeting) 2012/13", that he had a then employee, Jordan Brunyee, with him as a "listening brief" but no record was taken of this meeting. According to Mr Luke Hobson,

> "*we were told it was for monies he had paid previously to Rixsons on our behalf. Because I had no prior dealings with Freddie or Rixsons I took him and what he said at face value and could not go further nor would I. It would have been inappropriate to ask for specific details of this figure as that would have implied we didn't trust him and in his turn his family."*

461. This evidence is not credible. The invoices made clear that they related to Firth Rixson. The explanation given added nothing to what was already clear from their face. It is hard to see why it would suggest a lack of trust to ask for more information: after all, Mr Luke Hobson was fairly new to the Company and Mr Easton who had handled Firth Rixson at the relevant time had left. The suggestion that it was "odd" that Mr Freddie Robinson did not volunteer information is on one view not strange, if (as Mr Luke Hobson asserts) he was not asked for it. As it was put to Mr Luke Hobson:

> "*Q. You go on to tell the court that it was a brief meeting and the intention was solely to establish what all this money that Freddie and sovereign were being paid for. In response to you was: it's money that is owed; and you took it at face value?*
> *A. Yes, that's true. I was told that it was money he paid to Rixson's for us, and yes, I took it at that.*
> *Q. Did you not ask any further detail? Because you have convened a meeting to find out what is going on, and Freddie says: well, you owe me money, and that seems to be the end of it?*
> *A. That's true, that's true. No, I didn't asked for no details. I mean, I wish I had.*
> *Q. That was the very purpose of the meeting wasn't it, Mr Hobson, on your evidence, to find out what the payments were for, the specifics?*
> *A. Yes, absolutely, and I was told.*
> *Q. You were not told the specifics, were you? You were told that it was for monies he had paid previously to Rixson's. Did you ask for any documentation?*
> *A. Unfortunately not, no.*
> *Q. Why not?*
> *A. Well, like I say my witness statement, Mr Robinson's extremely – – well, us Sovereign in general, are – – were extremely close friends my family. At me to get behind what Fred was saying, I didn't – – I just didn't feel I had it in me to question him, to question what he was saying to what these invoices were all, you know, "can I have specific details of the breakdown?" No, I didn't, Mr Lewis.*
> *Q. My point being, Mr Hobson, that you were charged by your father to go and find out what these payments were forl, but you didn't manage to do so. You asked one question and you are satisfied with the response; is that right?*
> *A. Essentially, yes.*
> *Q. Did you report back to your father?*
> *A. Yes I would have"*

462. I consider that at this stage no issues were raised by anyone at the La Cotte/MVA level as to what the instalment payments were for. If there had been, simple questions to Mr Freddie Robinson could have been asked which would have resulted in him explaining the June 2011 agreement and, if requested, producing emails. Some sort of investigation reconciling invoices and ledgers and not asking for proper detail about the £1 million or so being paid by instalments if the latter was simply an unknown makes no sense.

(8) 2013: Alleged confrontations of Mr Freddie Robinson and conspiracy with Mr Easton

463. Mr Luke Hobson alleges that in about March/May 2013 he had a meeting with Mr Freddie Robinson in the kitchen at the MVA premises (the "2013 Kitchen Meeting"). At that meeting he says that he asked Mr Freddie Robinson about what Mr Easton was doing at AMM. He says that Mr Freddie Robinson said he "*hadn't heard anything on him*". According to Mr Luke Hobson, Mr Freddie Robinson went on to say that Mr Easton had "*taken the Doncaster's site at Hillsborough off him*" and had even taken Sovereign's skips. Mr Luke Hobson says that he offered to get involved as Mr Easton should not be allowed to get away with it and that the skips were "our skips". He says that his offer is corroborated by text message he sent Mr Freddie Robinson on 21 March 2013, asking who the point of contact was at "*Doncaster down at Hisbrough*" .

464. Mr Luke Hobson says in fact Mr Freddie Robinson was lying and that Mr Easton did not "take" the site from Sovereign but that Sovereign "gave it" to AMM. He also says that, as emails between Mr Easton and Mr Freddie Robinson show, that the Sovereign skips were sold by Sovereign to Mr Easton (I assume AMM).

465. The explanation for these lies is given as being that Mr Freddie Robinson must have thought that Meadowbank knew or might have known that AMM had taken over the relevant Doncaster's site and that he might have thought that the question was a test. So he could not say that he had heard nothing of Mr Easton when asked. This explanation makes no sense to me but seems to be of the same ilk as the assertion also made by Mr Luke Hobson, which I have dealt with elsewhere, that because Mr Easton had Sovereign letterheaded paper he must have been trading on behalf of Sovereign illicitly whilst employed by Meadowbank.

466. It is difficult to see why Mr Freddie Robinson could not simply say, if that was the case, that AMM had taken over from Sovereign the relevant Doncaster site. The circumstances in which this happened are wholly unclear from the evidence but if he had been asked to explain further I am not prepared to assume that he would not have explained the position. Alternatively, if he had then lied about the circumstances, that would be a different matter but it does not follow that he would have lied for the reasons put forward. It is also unclear to me why he would have lied, unless he was concerned not to let La Cotte know that he was in a friendly relationship with Mr Easton. I also note that it is correct to say that the skips were taken by AMM though they seem to have been paid for. Much may turn on the use of the word at the time.

467. In short, I get nothing from this alleged incident, even if it took place. It certainly does not show some conspiracy between Mr Easton and Mr Freddie Robinson to undertake unlawful means to damage Meadowbank.

468. In about August 2013, La Cotte alleges that a meeting was set up with Mr Freddie Robinson at MVA's premises for him to collect a cheque. Instead he was ambushed and confronted by Mr Andrew Hobson in the board room whilst also present was Mr Luke Hobson. Mrs Audrey Hobson and other members of the Hobson family entered later. At that board meeting it is suggested that Mr Freddie Robinson made various damning admissions.

469. The background to this meeting is said by Mr Luke Hobson to be that Mr Andrew Cooke, as part of settling the Manchester Proceedings against him, was apparently enthusiastically pointing the finger at others and telling Meadowbank "*verbal information of what he knew people had been up to*" as well as bringing "*odd bits of paperwork*". He apparently "*mentioned Freddie Robinson*" on occasions.

470. The level of detail of this meeting varies between different witnesses.

471. According to Mr Freddie Robinson's witness statement, there was a meeting at the boardroom and the persons mentioned by the Hobson witnesses were present (for all or part of the time). He says that the main thrust of the meeting was that the Hobson family had found out that he had had dealings with Mr Easton in his new role at AMM/APC.

472. According to Mr Luke Hobson's witness statement, the meeting "sometime in 2013" involved his father, Mr Andrew Hobson raising three issues: first, that he had been working with Mr Easton, which he said Mr Freddie Robinson denied; secondly, taking photographs of documents which were on a desk at the Meadowbank site (which he says was also denied) and taking Meadowbank off of the Firth Rixson contract. The latter contract as originally signed with both MVA and Sovereign as parties was produced and according to Mr Luke Hobson, Mr Freddie Robinson broke down and said "I am sorry, I am sorry". Only after that did Mrs Audrey Hobson, Ms Greenhough and Denise Dawson enter the room, listen for a few moments and then Mrs Audrey Hobson accompanied Mr Freddie Robinson when he left.

473. Ms Greenhough did not mention the meeting in her witness statement.

474. According to Mr Andrew Hobson's witness statement, the meeting went ahead much as described by Mr Luke Hobson.

475. According to Mrs Audrey Hobson's witness statement, by the time she arrived Mr Freddie Robinson was apologising for what he had done so she did not see the confrontation between her husband and Mr Freddie Robinson.

476. According to Ms Alicia Smith, she entered only to hand over the contract, resulting from the tender process, with Firth Rixson, signed on behalf of Meadowbank and Sovereign.

477. As regards the board meeting I make the following findings. First, I accept Mr Freddie Robinson's account that the meeting was intimidatory and that Mr Andrew Hobson was aggressive and physically threatening. Secondly, I find that the main thrust of what he was confronted with was that he was working with Mr Easton after the latter's departure from the Hobson companies. Thirdly, I find that he was confronted with and did deny (or at least not admit) that he had taken a photograph of papers on the desk at Meadowbank (or at the least that he had "taken a document"). The reason that I make this third finding is because of Mr Freddie Robinson's s9 Statement, which is dealt with later in this judgment in connection with the Erasteel claim and which in terms referred to him having been accused of taking documents (though he at that time wrongly denied that he had in fact taken a photograph of a legal letter on the Meadowbank desk). Fourthly, I find that the initial contract signed, which resulted from the tender process, was produced to Mr Freddie Robinson. However, although his demeanour may have been taken as an admission that he had done something wrong in relation to this at the

time I place little weight on it and do not accept there was an explicit confession that he had done something wrong. I find that he did initially deny taking Meadowbank off the contract (probably because he did not realise Meadowbank had a copy of the contract signed in both the names of Sovereign and Meadowbank) and when that was shown to be false was unable to raise the point that it did not matter anyway, on the basis that the two sites "won" under the tender were not Meadowbank sites, in the sense of being sites in which they had an interest in tendering for as contrasted with Sovereign.

Various claims relating to the Firth Rixson contracts

(1) The AMS Commission Claim

478. The AMS Commission Claim is not pursued by the Claimant. Nevertheless I heard evidence about it and my assessment of that evidence feeds into my assessment of the witnesses who gave oral evidence before me. I therefore set out my conclusions as regards this matter.

479. Mr Freddie Robinson's evidence was that commission for Sovereign from Meadowbank on deals with Firth Rixson regarding the AMS site was agreed between him and Mr Freeman back in about 2002, and that carried on thereafter (subject to one point). The one point was that the quantum of the commission charged to MVA by Sovereign changed in about June 2011, in favour of Meadowbank. For present purposes, nothing turns on whether this was pursuant to an express agreement or a mistake (by Sovereign) and whether it is binding. As I understand it, it seems to have changed at about the time that Mr Freddie Robinson says, but La Cotte denies, that a 10% commission agreement was entered into in relation to Darley Dale. Sovereign does not seek to claim any difference between what was charged by way of commission from in about June 2011 and the earlier (higher) rate of commission which, if there was no agreement in 2011 or it is liable to be set aside, would have continued in place.

480. As the charging commenced prior to the arrival of Mr Easton at Meadowbank, it cannot be suggested that the payment of commission was in some way something that he wrongly agreed to.

481. The evidence is that commission was in fact charged and paid for by Meadowbank to Sovereign almost throughout the period of the claim in these proceedings, though there were gaps. There are also references to such commission in the contemporaneous papers (for example, an email of 4 May 2011 from Mr Freddie Robinson to Mr Easton setting out the sums owed by Meadowbank regarding the AMS site for March 2011, the stated total "Inc 2k sov commission.").

482. There was limited cross-examination of Mr Freddie Robinson on this area. In my judgment, that reflected the fact that the evidence on behalf of the Claimant was weak in this area. He was not challenged on the agreement that he said he reached with Neil Freeman in 2002.

483. The case that it had been agreed in 2011 that there would be no commission (when the quantum of the Sovereign commission was said by Mr Freddie Robinson to have been changed by agreement between him and Mr Andrew Hobson) was formally put to (and denied by) Mr Freddie Robinson. It was also suggested to him that he did not always provide the Firth Rixson invoice and backing schedule (containing details of the metals

and weight sold). However, I am satisfied that in general these matters were provided and if in individual cases they were not, then Meadowbank could have asked for them and, if asked, Sovereign would have provided them. I also reject the innuendo that these financial documents were handed to Mr Easton who managed to hide things secretly from others at Meadowbank. I accept the evidence of Mr Freddie Robinson that the documents were handed by him (at least usually) to Meadowbank's accounting staff which fits with the evidence of Mr A J Hobson that, at least while he was at Meadowbank, he would not be dealing with this sort of paperwork but it would go to the accounts department. Further, relevant payments would be passed through Mr Andrew Hobson before being made.

484. It was also suggested to Mr Freddie Robinson (but denied) that the 10% commission charged in later years (from a date in 2011 and to which he said Mr Andrew Hobson agreed, but which Mr Andrew Hobson denied agreeing) would not have been agreed because it would have made it uneconomic for Meadowbank to trade on that basis. This was also denied and given this point depended on assertion and little more I am not satisfied that the Claimant made the point good by other evidence. As regards the conflict of evidence as regards Darley Dale between Mr Andrew Hobson and Mr Freddie Robinson as to whether there was agreement setting a commission quantum in 2011, I prefer the evidence of Mr Freddie Robinson which is consistent with the contemporaneous documents as to what thereafter took place. As the schedule prepared by Mr Holland shows, commission was in fact charged and paid at the new rate over the period May 2011 to January 2012, when the AMS contract was lost on a re-tender.

485. In his witness statement Mr Andrew Hobson said in a number of places that the "principles" of relevant deals were agreed between him and Mr Robinson Senior and then left to others at the relevant Meadowbank company or Sovereign to thrash out the details. He was somewhat vague about whether commission had been agreed back in 2002, at times he said that Mr Freeman might have agreed it and at other times that there was no such agreement. He also stated in his witness statement that the details of deals would be left to Mr Freeman (at that time) but then sought to resile from that in cross-examination. He asserted that it was definitely not agreed as applying from about 2008 onwards, when it is said a joint venture between Meadowbank and Sovereign came into being.

486. In oral evidence, when asked about the arrangements entered into in 2009, he accepted that under the general waste management agreement covering River Don, Meadowhall and Darley Dale, Sovereign managed the first two sites and Meadowbank the Darley Dale site. When asked if the AMS contract remained a separate contract he said:

> "*I can't answer that. I was not privy to that. I'm not going to commit to that Mr Lewis*".

This does not suggest a great grasp of the position, not least given the documents which were shown to him.

487. Mr Andrew Hobson accepted that it might be the case that Mr Freeman had negotiated a commission in about 2002. Initially his response was that the question of commission in 2002 was "an AJ one, rather than me" (that is, that it was an area that Mr A J Hobson could give evidence on rather than him Mr Andrew Hobson). When it was pointed out

that Sovereign's case was that the agreement on commission had been reached with Mr Freeman he eventually said that the question would have to be directed to Mr Freeman. Although Mr Andrew Hobson's evidence varied, I am satisfied both that Mr Freeman did agree the commission back in 2002 and that he had authority to do so. Mr Andrew Hobson's written reasons as to why he did not agree a commission from 2011 did not hold up in cross examination. A glib comment that he does not pay Waitrose commission was not really to the point. Sovereign was managing the contract with Firth Rixson in terms of the invoicing and had initially brought Meadowbank into the contract.

488. His oral evidence veered between saying on the one hand that he had only agreed the large overall picture with Mr Robinson Senior and left the detail to the people on the ground at Meadowbank (implicitly including any commission arrangements) and on the other that he had not agreed any commission (implicitly asserting that commission would have been a key part of any deal that he would have had responsibility for). At the end of the day however the clear picture emerged that he was not denying that commission might have been agreed by Mr Freeman (and/or Mr A J Hobson and continued by him) and that if it had been it would have been within their competence to do so. He also appeared to accept that although the relevant contract with Firth Rixson regarding the AMS site was renewed on a regular cycle as between Meadowbank/Sovereign and Firth Rixson the overall deal as between Sovereign and Meadowbank did not alter over the relevant period and was not renegotiated afresh on each Firth Rixson renewal.

489. In his witness statement, Mr Andrew Hobson asserted that in any event it was clear that no commission was payable from 2008 when, he says, the JVA was reached. However, the JVA as pleaded in terms refers to the sites the subject of the agreement in February 2009 (that is not the AMS site). There is no pleaded allegation that as part of the terms of the JVA it was expressly agreed to alter the status quo regarding any commission arrangement then in place with regard to AMS.

490. When Mr A J Hobson gave oral evidence, he confirmed the procedure whereby Meadowbank would weigh incoming scrap from the AMS and would therefore know and have its own record of what it had obtained and what ultimately it should be charged for. (The relevant prices in respect of weights were regularly provided by Firth Rixson.) Further, the invoicing process was that Firth Rixson would invoice Sovereign and Sovereign would in turn invoice Meadowbank (with the commission added in) and the Firth Rixson invoice and annexed schedule of metals and weights purchased would be provided to Meadowbank. Any illicit or secret commission charged by Sovereign to Meadowbank would very quickly have come to light. He did not "have a clue" as to what Mr Freeman might have agreed in 2002. Although Mr A J Hobson was hazy on the detail he was very clear that there was no room for secret commissions to be charged without that fact coming to Meadowbank's attention. Given the close involvement of Mr Andrew Hobson in confirming that deals could go ahead and his control over the payment of cheques, it is unrealistic to think that the commission being charged did not come to his attention and that the binding agreement of Mr Neil Freeman was not in effect and at the least acquiesced in by him.

491. In the light of the evidence and for all these reasons, I hold that the AMS commission, as it has been called, was agreed to be paid by the relevant Meadowbank company in

2002. When subsequent Meadowbank companies took over the AMS contract then they took on the obligation to pay the commission.

(2) **The respective interests of Sovereign/Meadowbank: by site or by type of scrap metal?**

492. Another issue which originally gave rise to self standing claims, but which claims the Claimant had abandoned by the end of the trial, was that the JVA, said to have been reached in about April 2008 between Mr Robinson Senior and Mr Andrew Hobson, included a term that Sovereign would take (and pay for) all of the Low Grade scrap, irrespective of the Firth Rixson site from which it was sourced, and that Meadowbank would take (and pay for) all Specials or High Grade scrap from the Firth Rixson sites, again irrespective of the Firth Rixson site from which the scrap was sourced. Although specific claims arising out of this alleged agreement were, by the end of the trial, dropped by La Cotte, it remained relevant to the question of the detail of the 50:50 Agreement. Sovereign's position was consistently that where it had agreed to Meadowbank taking on specific Firth Rixson sites (AMS and Darley Dale (including in the latter case, sub-contractors)) then it was on the basis that all the scrap from the relevant site would be purchased by Meadowbank, not just the Specials or High Grade scrap. Similarly, Sovereign's case was that it retained the right to all the scrap sourced from the Firth Rixson sites which it retained responsibility for.

493. The Claimant's pleaded case is that this was a term of the overreaching JVA. I deal with the issue of whether there was an overreaching JVA as a separate matter and focus at this stage whether there was at any time an agreement regarding Specials/High Grade and low grade scrap as alleged (whether as part of a JVA or in relation to specific sites).

494. There was no pleading and, as far as I understood it, no suggestion that the AMS site was subject to such an agreement.

495. The key issue is therefore the waste management agreement regarding the three sites the subject of the combined waste management agreement in 2009. Mr A J Hobson's oral evidence was that as regards Darley Dale, the majority (90%) was Higher Grade or Specials. As regards the remaining 10% he thought that Meadowbank had it all but couldn't remember. So far as the sub-contractors to Darley Dale were concerned, "*All the subcontractor scrap went to Meadowbank*" to the best of his recollection.

496. As regards any rights of Meadowbank to Specials or Higher Grade scrap from the sites that Sovereign had served before Meadowbank had been brought in, Mr A J Hobson was clear that there was no right of Meadowbank to the Specials:

> "*Q: Sovereign did not agree with Meadowbank that the high grade material collected from Meadowhall and River Don would be sold on to Meadowbank, did it?*
>
> *A: No. No, but it would be assumed or it would be assumed that we would have a chance, but there wasn't really anything, as I remember, as I recall, anything significant enough coming out of there to warrant agreement. If there was, like there was at Darley Dale we would have an agreement."*

497. As I understood his evidence, the "chance" was a reference to the possibility that if there was significant high grade scrap then the expectation would have been that Meadowbank might have been offered it or could have asked to buy it from Sovereign but that there were no binding commitments regrading the same unless and until a specific deal was agreed.

498. Mr Andrew Hobson's evidence was, as it so often was, unclear and apparently self contradictory. When asked about the wate management agreement covering the Darley Dale site, he said as a generality that he left the contractual discussions or negotiations to Mr A J Hobson. The involvement with the contract that he could remember was the need for investment but when asked about the agreement between Meadowbank and Sovereign as to how between them they would run the contract he said that he was not aware of the agreement , that wasn't "[his] *area*" and that this was "*another one for AJ*".

499. As regards Darley Dale, he initially agreed that at the most at a high level between him and Mr Robinson Senior it was agreed that Meadowbank would take on Darley Dale and that the details of the contract were left to be agreed between Mr Freddie Robinson and Mr A J Hobson.

500. When asked in terms if Sovereign agreed to buy all the scrap from Darley Dale, his response was "*Its an AJ one again, Mr Lewis. As far as I am aware, yes. …yes, so far as I am aware we were going to take everything, but its an AJ one in depth to be honest*".

501. When asked if it was correct that there was no agreement that Sovereign would buy the low grade scrap from Darley Dale, Mr Andrew Hobson, having earlier said that Sovereign had no containers on site and that therefore logically all the scrap would be Meadowbank's (irrespective of whether high grade or low grade), said: "*I don't think so, I wasn't there doing this detail…it was on trust. We did …it was essential on trust with me and the old man*". This evidence was clear and consistent with Mr Freddie Robinson's evidence as to his understanding.

502. It was however totally inconsistent with Mr Andrew Hobson's witness statement. When the witness statement was put to him, Mr Andrew Hobson returned to the line taken in the witness statement that there had been an express agreement between him and Mr Robinson Senior that Meadowbank would take the High Grade scrap and Sovereign would take the low grade scrap from Darley Dale and Meadowhall and River Don.

503. Having been taken through the matter again, he then reverted to his original position in oral evidence that there was no agreement that Meadowbank would take and pay for the High Grade/Specials from each site and that Sovereign would take all the Low Grade scrap. At most there was an ill-defined understanding that if say Meadowbank wanted some High Grade/Specials from the sites managed by Sovereign then Sovereign would, in effect, be sympathetic to the request and the same was true in reverse for Sovereign as regards Low Grade scrap from the Darley Dale site. Although in oral evidence, Mr Andrew Hobson sought to suggest in effect that there was some form of legal option agreement if "significant" Low Grade/High Grade was made available I am satisfied that there was no such option agreement as a matter of law. This was really the expectation of "having a chance" that Mr A J Hobson had referred to earlier.

504. Finally in this context, I should add that although Low Grade scrap obviously required larger storage areas, it was not the case that Meadowbank dealt only in High Grade scrap. Mr A J Hobson specifically confirmed that in cross-examination.

505. It also appears, as set out in the expert report from Mr Holland, that from the Darley Dale site alone between 1 April 2008 and 28 February 2012, Meadowbank received lower grade scrap with a price of some £650,955.69. This is a significant sum of money and if it was supposed to be purchased by Sovereign it is difficult to understand why it was not.

(3) The JVA.

506. The existence or otherwise of the JVA is, in my judgment, something of a red herring. That is because, most of the complaints that were persisted in by the end of the trial could probably have been raised by asserting breaches of the individual agreements that were clearly entered into. For example, the diversion of contract claim could have been pleaded as a breach of the agreement between the parties on the basis of which the relevant tender had been put forward. Nevertheless, I have to deal with the issue of the alleged JVA.

507. I am satisfied that there was no overreaching JVA binding as a matter of contract between Sovereign and Meadowbank. There was a relationship between Mr Robinson Senior and Mr Andrew Hobson, there was a relationship on the ground between Mr Freeman, Mr A J Hobson and Mr Easton with Mr Freddie Robinson. When opportunities came up, whether it was Firth Rixson China or AMS or Darley Dale, then in particular circumstances then pertaining Sovereign might share the opportunity with Meadowbank or there might be a joint investigation. In practice, each of the opportunities where there was some sharing of or joint involvement resulted in agreements where either Meadowbank or Sovereign took a well defined and segregate benefit which the other did not share in. Even where there was a joint contract, as in the case of the Firth Rixson waste management contract in 2009, as between Sovereign and Meadowbank it was agreed that each would have benefit individually from a particular site, in terms of servicing the same and taking (in the sense of buying) the scrap from the same. Of course, this was subject to any specific agreement to the contrary.

508. The Claimant's evidence on this topic was dependent upon Mr Andrew Hobson. It is he who said that he agreed the JVA. In oral evidence it was clear that there was no real binding agreement at the level of himself and Mr Robinson Senior. A key component of the alleged JVA was alleged to be the split between Meadowbank and Sovereign of the high grade and low grade scrap (respectively) from all the Firth Rixson sites serviced by either of them and I have dealt with my dismissal of that case. That evidence demonstrates that it cannot be said that there was an overarching legally binding agreement between the parties. Even if I am wrong that there was no specific overarching "agreement" its terms were far too uncertain and unclear to give rise to legal obligations. There may have been an agreement between them in principle regarding particular matters but it was little more than a vague agreement of expectation in principle with binding terms that had to be fleshed out and agreed by those at the operational end as individual matters or contracts arose.

509. I should add that this is an area where the Claimant's case became difficult to follow. Mr Stuart resiled from reliance upon a JVA but then relied upon a relational agreement into which he said duties of good faith should be implied. However, it was not clear to me what this relational agreement was said to be.

(4) The 50:50 Agreement

510. In cross examination, Mr A J Hobson did not agree with Mr Lewis that he had agreed with (or knew there was an agreement with Mr Freddie Robinson) that the form of "helping out" by Sovereign under the 50:50 Agreement would be that Sovereign would (a) continue to pay 100% of the Firth Rixson invoices regarding scrap received in the future from Darley Dale, but acquire ownership of 50% of the Higher Grade scrap (and not look to Meadowbank to reimburse that element of the Firth Rixson invoice but only 50% of it as well as for all the Low Grade scrap) and (b) buy from Meadowbank 50% of the accrued Special or High Grade stock from Darley Dale which Meadowbank had already purchased. Instead, his position supported La Cotte's case that the agreement was a simple monetary one.

511. According to Mr A J Hobson, Sovereign would simply not re-charge 50% of the relevant costs to MVA on an ongoing basis. That agreement would continue, and Sovereign would only get repaid this 50% "*when markets improved, orders were there and the nickel markets improved*" or "*once we sold the materials or the markets improved*". The only benefit to Sovereign would be that it would not lose "*its side of the contract*", River Don and Meadowhall. The latter point is doubtful: as will be seen, under the 2011/12 tender process, the Darley Dale site contract was lost but the River Don and Meadowhall contracts regained. Further, and as Mr Lewis submitted, this may have been a driver to agree to enter into the 50:50 Agreement but the one that Mr Freddie Robinson says he entered into rather than the one that La Cotte asserts was entered into.

512. However, when taken through the detail Mr A J Hobson also said (quite understandably):

> "*It is 12 years ago or 11—how long ago is it? Nine years ago, Can you remember a deal you did nine years ago? I am doing deals all day, every day*."

513. Although I am sure that Mr A J Hobson was doing his best to assist the Court I am not satisfied that his recollection, apart from the main point that Sovereign would assist by bearing 50% of relevant costs that would otherwise have fallen on Meadowbank is accurate. That view is confirmed by the other evidence in the case.

514. Mr A J Hobson effectively agreed that the schedules sent over time by Sovereign showed Sovereign acquiring 50% of the High Grade stock from Darley Dale going ahead and 50% of the historic high grade stock acquired from Darley Dale. He was not able to explain the documents apparently showing the acquisition of the historic 50%. As regards the 50% of the stock going ahead he suggested that maybe Mr Freddie Robinson was "*keeping a track of what he is paying 50% for*" but, unless Sovereign was acquiring the stock, that made little sense, as the cross-examination revealed.

515. Mr A J Hobson also agreed that if the 50:50 Agreement was simply a deferred payment scheme, then Meadowbank schedules would exist showing, for example, monthly reconciliations of what was due. He originally asserted that such documents existed but

then resiled from that position on the basis that he did not know. None have been produced. Nor does any reconciliation of any such alleged "loan" or "deferred payment" appear to have been created in connection with the handover from MSSC to MVA in about April 2011 and the clearing of the former's debts.

516. On the other hand, Mr Andrew Hobson in cross examination accepted that there was an agreement that Sovereign would pay for and acquire half the stock coming from Darley Dale. He did not distinguish between high grade stock and low grade stock and he did not in terms deal with the issue of whether the agreement covered stock that had already been acquired. Nevertheless, this admission fundamentally undermined the Claimant's case that the 50:50 Agreement did not involve Sovereign acquiring stock but, in effect, simply involved it in agreeing to charge Meadowbank for only 50% of the stock on the basis that Meadowbank would pay the remaining 50% of the cost at a later date.

517. Mr Andrew Hobson was not able to confirm the evidence of Mr A J Hobson that nickel prices fell from about $30,000 to $16,000 between January 2008 and January 2009. However, he accepted the crux of the point being put to him, which was that the prices of metal had dropped significantly and Firth Rixson was not exercising its right to buy back the scrap. The result was that stockpiles of high quality scrap was building up.

518. Mr Andrew Hobson says that he discussed the point with Mr Robinson Senior. In cross-examination, he said that:

> *"…I said to him this particular day "Fred, look at all this lot here." I said "it's coming out my ears, all this waspalloy, and they are not taking it back" so I said-- I think I said some words to the effect "I don't want to play this game anymore and it's not a good game for me anymore. We are taking stock which is not going to be bought back into group" which was the original agreement, "So I think I will be pulling up stumps" for want of words "and I'm out" kind of thing as they say now on…..*
>
> *So Fred said, "oh no, please, no, don't" for want of words. He wouldn't have said those words, a few expletives. And I said "Fred, it's not working. We are taking all the hits. It's not business commercially sound for us, never mind the environment." Anyway, there were many, many issues I put to him. He said "what can we do?" I said "Fred, you take it". He said "I've got nowhere to take it stop what, put it in my front room? I've got nowhere." I said "Fred, I've got to get out of this". I said "we don't need it. We don't need it"*

519. Having said that he wanted to, and talked about the need to, "*share the pain*". The cross-examination of Mr Andrew Hobson continued as follows:

> "*Q. So is it your evidence that Mr Robinson Senior agreed to take half of the stock that was coming in, at least in the interim, at least for the short-term?*
>
> *A. (Inaudible) for short-term the stock that is coming from then on, yes.*
>
> *Q, Sorry, you broke off on my screen. Is it your evidence there was an agreement that Freddie senior would take half the stock coming in at least for the short-term?*

A. He wasn't taking it off site, no.

Q. No, not taking it off. But buy it, pay for it and keep it on your site—

A. I think better words--- sorry I over spoke. I think better words would be "contribute half" to the metal that is coming from Darley Dale for that period going forward.

Q. Yes, so to buy half, at least in the interim, but keep it stockpiled on Meadowbank, is that fair?

A. I can't see any----I can't see any way that it can't be fair, what you have just said, Mr Lewis so I have to accept that, yes."

520. Later on, he was cross-examined about the meeting on 8 June 2011. I have dealt with that cross-examination earlier in this judgment. However, for present purposes the key point is that Mr Andrew Hobson again accepted that (a) stock had accumulated at the Meadowbank premises which belonged to Sovereign, (b) that it was still there and (c) that the matter would have been resolved between himself and Mr Robinson Senior.

521. As regards Sovereign taking stock from Meadowbank and not paying for it on the seven occasions I have identified earlier, Mr A J Hobson was only able to say that he did not know whether or not it was ever invoiced by Meadowbank. Sovereign's case is that it was taking the stock back, uninvoiced by Meadowbank or MVA, because it was part of its own stock. There is no evidence it ever was invoiced though, given the apparent incomplete trail of invoices as a matter of generality revealed by the experts' reports I accept that this point is not conclusive. However, the lack of invoicing, or even the suggestion that there would be invoicing, is a relevant factor.

522. Mr Andrew Hobson, with regard to the collected stock, was asked if he was aware that some of the Darley Dale stock that was owned by Sovereign was being taken off site by Sovereign and sold by them and answered "yes". He accepted that he had no issue with that.

523. Mr A J Hobson was also asked about the accounting records of MSSC/MVA.

524. As regards the switch of business in April 2011 from MSSC to MVA, Mr A J Hobson, a director of both, was unable to explain why a simple figure had not been generated at that stage showing precisely what MSSC owed Sovereign under the Claimant's version of the 50:50 Agreement. If the position was that Sovereign owned the relevant stock then there was no debt in respect of such stock and that would of course explain why there was no debt of Meadowbank owed to Sovereign which needed to be accounted for or reconciled.

525. My conclusions are as follows:

(1) The 50:50 Agreement was not an agreement that Sovereign would simply loan money to Meadowbank or permit Meadowbank to make deferred payment to it. Rather, it was an agreement that going ahead Sovereign would buy half the Specials from the Darley Dale site.

(2) Sovereign also agreed to purchase half of the accumulated Darley Dale Specials, previously purchased by Meadowbank, going back to April 2008.

(3) In each case, the purchase price was the cost charged by Firth Rixson at the relevant time.

526. The Claimant accepts that prospectively it was agreed that Sovereign would pay half the price charged by Firth Rixson for scrap from Darley Dale. It says that this was a loan or a deferred payment agreement. This makes no commercial sense. If correct, it means that Sovereign was committing for an uncertain future period to lend Meadowbank substantial sums by way of unsecured loan. As regards the Darley Dale site, Firth Rixson had by 31 August 2009 invoiced scrap to a value of over £1.2 million from the period 1 April 2008. By value, the vast majority of this price was attributable to Specials rather than Low Grade scrap. It can be seen that if the 50:50 Agreement remained in place for the remainder of the contract with Firth Rixson (until October 2011) Sovereign would have lent Sovereign more than £1 million in respect of the period September 2009 to October 2011.

527. Mr Andrew Hobson's oral evidence admits that the agreement was one of sale rather than loan. The sharing of the pain suggests also that Sovereign would share any gain: that is any rise in the value of the metal in the meantime. It is not the Claimant's case that there was anything other than a loan. If there was a sale there is no suggestion that the sale was on terms that Meadowbank had some form of option to purchase back the stock at the price that Sovereign had purchased it. Indeed, such an agreement would make little commercial sense because it would mean that Sovereign made a secured loan but with no return at all for the risk that it took.

528. The contemporaneous documents support (a) sale rather than loan, with the relevant half of the stock belonging to Sovereign; (b) that it was sale of half of the Specials, not all the Darley Dale scrap; and (c) that it included stock purchased historically going back to the inception of the agreement in 2008.

529. I accept that Meadowbank did not, as requested by Sovereign, invoice for the historic stock. Nevertheless it was requested to do so. Given the debt it owed Sovereign at the time it may be that had Meadowbank invoiced Sovereign as requested large sums under those invoices would have been set off rather than resulting in cash payments to Meadowbank.

530. There is no hint of any contemporaneous challenge by Meadowbank anywhere in the documents to the arrangements that I have found to be encompassed by the 50:50 Agreement and which are reflected in documents and emails sent to Meadowbank.

531. It is also true that the Sovereign accounts apparently do not show ownership of the half of the historic stock. Mr Freddie Robinson's answer was that the accounts were drawn up from the accounting records which only reflected stock that had been invoiced. Although this may be unsatisfactory from a company law point of view, it had a certain ring of truth about it.

532. Finally I should confirm that I have also taken into account certain of the evidence about the agreement said by Sovereign to have been reached in June 2011 and which bears upon the 50:50 Agreement (for example, Mr Andrew Hobson's apparent admission that

by the time of the June 2011 agreement Sovereign did own relevant Darley Dale stock stored at the Meadowbank site).

(5) **The reconciliation/sale agreement**

533. La Cotte's statement of claim is to the effect that the sales contract dated 17 December 2011 is a "*grossly false account of the true state of account in respect of the Darley Dale site invoices*", in that, it is said, MVA was only obliged to pay for the Specials from the site as charged by Firth Rixson (including those Specials which, during the period of the 50:50 Agreement and on La Cotte's version of the 50:50 Agreement, it did not have to pay for during a deferred period) and the agreement reached resulted in it paying far more. The difficulty is that if I find that there is a sales contract then it is difficult to see how it can be said to be a "reconciliation" of what was due but in the incorrect amount. Although Mr Stuart relied on misrepresentation, mistake and a number of other causes of action these were not pleaded as such. The actual pleading is to the effect that under the JVA there was an obligation on Sovereign (and Mr Easton) honestly and accurately to agree what was due to Sovereign on the basis of the agreement between them at the start of the Darley Dale contract and in effect ignoring the 50: 50 agreement. However, if that was not what the sales contract was purporting to do, the case effectively evaporates.

534. As I have held that the 50:50 Agreement was as put forward by Sovereign (and associated Defendants) it follows that as at June 2011 there was a very limited reconciliation to carry out. The main issue was what was to happen to the stock that I have held that Sovereign purchased under the 50:50 Agreement.

535. In light of the 50:50 Agreement, as I have found it to be, there was every reason why Meadowbank would wish to acquire some or all of such stock. It would enable Meadowbank to make a profit in an improved market and to control the manner in which the stock was released on the market. There was no reason why Sovereign would have agreed at that point to sell the stock at the price at which it had historically been acquired from Firth Rixson. As I have said, having shared the pain it would now want to take part in any gain. This largely disposes of Mr Stuart's submission that the agreement alleged by Sovereign makes no sense. His submission is based on the proposition that the profit made on original prices was way off the sort of return one would expect by way of interest for having lent money. The short answer is that this was not a loan of money. It was a purchase of goods under which Sovereign took the risk of them decreasing in value or the benefit if they increased in value.

536. One of Mr Stuart's other main points was the absence of contemporaneous record of the alleged agreement whether in accounting records or emails or other internal correspondence. As will be clear I very much rely on the documentation that there is. The fact that there is not more is no great surprise given the paucity of documentation disclosed by La Cotte and the evidence that, for example, Mr Hobson's consent to the doing of deals by traders at Meadowbank was required and to the payment of Meadowbank invoices but apparently this was almost entirely done orally. There are hardly any written contemporaneous records showing such consent (or even evidencing it) other than the fact the deals were done and the payments made.

537. The documents clearly show a sale by Meadowbank being put forward in May/June 2011 on the basis of detailed figures and limited to that part of the Sovereign Stock which was eventually the subject of the December 2011 written agreement. The 16 July 2013 email confirms that Mr Freddie Robinson had been asked to reduce the purchase price to bring his overall level of profit down and that can only have been done with Mr Andrew Hobson's consent (and initiative). I do not accept Ms Greenhough's explanation that she did nothing about this email, thought it was "twaddle" and believed that Mr Freddie Robinson had simply got his VAT wrong.

538. The averaging of the historic Firth Rixson prices gave Mr Freddie Robinson an idea of what sort of profit Sovereign would make. It would also enable him to assess the value of the Sovereign stock that had been returned to Sovereign from Meadowbank at various times and to place a rough value on what was left and what he had taken out. As he explained however, the bottom line was not his overall calculated profit on the original Firth Rixson prices, but the prices that he was proposing to charge Meadowbank and comparing those with then (June 2011) market prices.

539. The fact that there was an agreement for sale of the specific stock identified in the December 2011 agreement and that Mr Andrew Hobson had agreed to it is confirmed by the fact that instalment invoices under the agreement (with an evidenced adjustment to take into account the further reduction in sale price agreed in about July 2012) and which would not have been authorised without Mr Andrew Hobson's confirmation, were indeed paid. It is simply unthinkable that Mr Andrew Hobson agreed to pay the same without knowing what they were for and how they had come about.

540. It is also of note that by email dated 8 September 2014, Mr A J Hobson was writing to Mr Freddie Robinson about how to get payment under the Purchase Agreement and advised him that he (Mr A J Hobson) had been told by a bailiff that the best thing to do was to file a winding up petition against MVA or any Jersey beneficiary company as that would "*stop them wrapping things up and running into the sunset*".

541. Although Mr Freddie Robinson was (understandably) cross-examined long and hard about the alleged sale agreement in June 2011 and then its variation (regarding instalments) agreed in January 2012 (as set out in the 2011 draft Agreement) and further variation (in about July 2012), ultimately none of that cross-examination persuaded me that he was not telling the truth about these matters.

542. That leaves the separate issue of whether, as alleged by the relevant Defendants, the agreement was one that was made (and subsequently varied) between MVA and Sovereign or whether La Cotte is also liable on the contract as undisclosed principal. Mr Lewis submitted that as La Cotte alleged that it (or its predecessor, Concept) was liable under, and able to sue on, all other relevant contracts with Sovereign entered into by their respective English Hobson company agent, then it was "agreed" and not an issue that any contract of sale that I found by Sovereign would also be one on which La Cotte was liable as undisclosed principal. I disagree. There is no agreement that a contract for sale was entered into so, assuming I find a contract (as I have) it is for me to find if Sovereign has made out its case about the counterparty. I find that there was nothing to change the usual understanding and basis of negotiation as between Sovereign and relevant Hobson companies. In the case of the latter, as I have held, the relevant English Hobson company contracted in its own right with third parties

(including Sovereign). It may have been in an agency relationship with the Jersey Hobson Company and it may have required Jersey company consent to any sale or purchase (because the stock, ultimately, was either initially being sold by or was being bought by that Jersey company, whose stock it was or became), but that does not alter the legal liability under the chain of contracts. Accordingly, as regards any price outstanding under the agreement, that is a claim that Sovereign can only assert against MVA.

(6) The Darley Dale commission

543. On the separate question of whether the commission payable to Sovereign by Meadowbank with respect to the Darley Dale site was also agreed in June 2011. I find that it was. It made perfect sense that commission should be payable by Meadowbank as it had been in respect of the AMS site. The commission was in fact charged and paid. The invoicing was transparent as back sheets showing the subject matter of the Firth Rixson invoices were provided (or available) and would have revealed the commission charge. The main point put to Mr Freddie Robinson in cross examination, that the commission would have wiped out any profit of Meadowbank and therefore not been agreed, was not made out.

(7) **Sums due to MVA (now La Cotte)/Sovereign in respect of the Darley Dale site**

544. I was (understandably) not taken in detail to the effects of the compendious decision such as that that I have now made on the reconciliation of the Darley Dale account as carried out by the expert accountants. As I understand it, outside the questions of commission, the 50:50 Agreement and the subsequent sale of some of its stock by Sovereign to Meadowbank, there may be a question of payments made or due in respect of other stock sourced from Darley Dale.

545. As I understand matters, what was due from time to time between the parties was largely agreed between the experts and my decisions can now be applied to the product of their work. There were however a small number of matters that were referred to me for decision.

546. I do not consider that the parties owe each other any duty to account. The only thing that could now be undertaken would be to identify liabilities in debt each way (if any).

547. As regards any sums owed to or claims of MSSC arising from alleged double invoicing by Sovereign or alleged double payment by MSSC, I have found that there was no assignment of the same to MVA. It follows that any claims of MSSC cannot be relied upon by MVA or now, La Cotte.

548. In my judgment, any claim arising more than 6 years before the issue of the proceedings is subject to limitation (or laches). Any claims in relation to the small number of (disputed) overpayments/double invoicing asserted by the Claimant appear all to be statute barred.

549. Mr Stuart sought to argue that there was an extension to the limitation period by reason of fraud or mistake. I am not satisfied this is properly pleaded and in any event am not satisfied that the evidence demonstrates that the limitation defences that would otherwise apply are defeated. In particular, any errors, as it emerged during the trial,

would have arisen as a result of mistake not fraud or dishonesty and the mistakes are ones that should readily have been discoverable by Meadowbank shortly after they were made.

550. If it is felt that I need to address these matters in more detail I will consider the question of a supplemental judgment or the giving of directions for an enquiry.

(8) Mr Easton

551. In light of my decisions regarding the Darley Dale contract, the Claimant's case against Mr Easton regarding it also fails.

(9) The Conversion Counterclaims

552. It also follows that the claims in conversion regarding that part of the Darley Dale stock purchased by Sovereign under the 50:50 Agreement, as I have found it to be, which was not sold under the sale agreement in June 2011, as later varied, remains theoretically available. As all, or most of, the stock held at the Meadowbank site is apparently treated by Meadowbank as belonging to La Cotte and being held to its order, and given the evidence about the need for the Jersey company (through Mr Andrew Hobson) to agree any disposals (which I take to include physical disposals), it seems to me that La Cotte is liable in conversion.

553. There is a question as to the effect of the retention of title clause in the draft December 2011 contract which may need to be explored further and an inquiry should explore any issues in that respect too.

554. The conversion claim (subject to value) in respect of the remaining stock (A296) purchased by Sovereign as supplied from the Glossop site is not contested.

555. As regards each of these conversion claims I consider that an inquiry as to damages is appropriate, It is far from clear to me that the original purchase price of the stock in question is the appropriate yardstick (by itself) to measure the damage.

The Diverted Contract Claim: February 2012

(1) The case

556. As pleaded, La Cotte's case in its Particulars of Claim is that in breach of the obligations of good faith set out earlier, Sovereign and the Sixth Defendant deliberately and dishonestly caused La Cotte/MVA to lose the opportunity of participating in further scrap metal recycling contracts with Firth Rixson by deliberately and dishonestly:

(1) causing La Cotte's tender pricing to be set at knowingly inappropriate levels such as deliberately to fail in such tender for the Darley Dale site; and

(2) causing the Joint Venture's second Firth Rixson contract to be immediately cancelled and replaced by a contract for the benefit of Sovereign only, but in equivalent form, but dated 28th February 2012.

557. As I have already said, by the time of closings, La Cotte was not pursuing the first limb of the claim regarding the setting of tender prices for the Darley Dale site. This was not

surprising. There was simply no proper evidence as to the pricing that had actually gone into the tender regarding the Darley Dale site (or the scrap likely to be purchased from it), what the "proper" prices would have been and how it was said that the purchase prices by Meadowbank/Sovereign in the tender were deliberately set at too low a level.

558. The whole case on the loss of the Darley Dale tender appeared to have been based on supposition which as far as I can tell, went as follows: (1) Mr Easton and Mr Freddie Robinson were close friends; (2) they both wished to damage the Hobson Businesses and/or to benefit by taking what they could of those businesses; (3) e-mail correspondence in November 2011 (referred to later in this judgment) in the course of preparing the tender referred to prices having been adjusted (in fact some downwards and some upwards) (4) Mr Cooke suggested to Mr Andrew Hobson that the prices on the tender had been changed. Therefore the downwards adjustments were part of a dishonest conspiracy to ensure that the tender for the Darley Dale site was lost.

559. Apart from anything else, the third link in the chain does not of course fit with the theory because it reveals prices being increased. It was suggested in cross-examination of Mr Freddie Robinson that the two alloys where the prices were increased were metal scrap coming out in significant quantities from the sites managed by Sovereign and from which Sovereign was obtaining and buying the metal. Factually, and I accept his evidence, Mr Freddie Robinson denied that the increased prices were on metals coming to Sovereign from non-Darley Dale sites. I deal with this later in the judgment.

560. La Cotte's pleaded case as regards the change in the contractual position by way of novation in February 2012 (being the claim that La Cotte persists in), is summarised as being that Sovereign, in breach of the JVA, diverted the benefit of an established business opportunity from the joint venture to Sovereign alone (PoC: Overview of Claims: paragraph 15(b)(iii)).

561. As regards Mr Easton, La Cotte's case is summarised as being that in breach of his duties owed to the Claimant and MVA he (a) caused the Claimant (acting by MVA) to present a deliberately inappropriate tender bid (under-pricing the price at which the Claimant would purchase material from Firth Rixson) such that the Claimant/MVA (either as part of the Joint Venture or its own account) would inevitably lose such contract and suffer loss of business and profits. This relates to the loss of the tender; and (b) terminated or agreed to the termination of the contract between Firth Rixson and Sovereign/MVA and assisted Sovereign in obtaining that contract at the expense of the Claimant (PoC: Overview of Claims paragraph 15(g)(iv), (v)).

562. I now turn to the detail in the PoC.

563. I have dealt with the JVA earlier. It is said to have been a joint venture agreement agreed between Mr Robinson Senior on behalf of Sovereign and Mr Andrew Hobson, on behalf of MSSC/Concept, in about April 2008, under which various matters were agreed.

564. As regards the JVA said to have been breached by Sovereign in this case, it is said that:

    (1) Mr Robinson Senior on behalf of Sovereign and Mr Andrew Hobson on behalf of MSSC/La Cotte and Concept expressly agreed that "any opportunities arising from the parties' interest in the Firth Rixson business would be developed and

managed jointly and together such that both joint venture partners would make profits from the Firth Rixson business" (PoC paragraph 19(c)).

(2) Sovereign owed implied contractual and/or fiduciary duties to La Cotte and/or MVA as agent for La Cotte including the duty to act honestly in good faith and in the best interests of the joint venture (PoC paragraph 22(1)).

565. MSSC's interest in the JVA (as agent for La Cotte) is said to have been assigned to MVA (as agent of La Cotte). Alternatively, Sovereign is said to be estopped from denying that such interest had passed from MSSC to MVA.

566. As regards breach of duty, it is said that in breach of the duty of good faith owed by Sovereign, Mr Easton and Sovereign, acting together, caused La Cotte/MVA to lose the opportunity of participating in further scrap metal recycling contracts with Firth Rixson by deliberately and dishonestly causing the joint venture's 24 January 2012 Firth Rixson contract to be cancelled and replaced by a contract for the benefit of Sovereign only.

567. As regards loss, it is asserted that La Cotte has lost the anticipated profit that it would have made from trading under the January 2012 contract, which is estimated at £100,000 as set out in Schedule E. Damages and/or an account of profits/equitable damages is sought based on Sovereign's profits from trading (PoC paragraph 33). Schedule E confirms that this is an estimated loss of profit for one year arising from diversion of the business opportunity.

568. As regards Mr Easton, it is said that he owed La Cotte/MVA contractual and/or fiduciary duties of good faith. Such duties were said to arise from his role as commercial manager with day to day control over the management of parts of the business of La Cotte at MVA and as a trusted member of La Cotte/MVA's staff (PoC paragraph 43).

569. The fiduciary duties of fidelity and loyalty owed to, to act bona fide in the interests of, not to place himself where he was in a position of conflict between his self-interest and his duties to, La Cotte and MVA are then spelled out in paragraph 44 PoC.

570. A breach of these fiduciary duties and/or the express or implied terms of his contract of employment is said to have been involved in his causing the January 2012 contract to be cancelled and replaced by the 28 February 2012 contract (PoC paragraphs 32, 45).

571. Loss and damage is said to have been caused by such breaches of duty by Mr Easton and damages to be assessed are asked for (paragraph 46), though it appears that the loss (at least in part) is £100,000, being said to be the profit the Claimant would have made from trading with Firth Rixson in the year January 2012-13 as set out in Schedule E (PoC paragraph 33). Schedule E confirms that this is an estimated loss of profit for one year arising from diversion of the business opportunity.

572. Paragraph 47 and paragraph 48 PoC allege respectively that Sovereign and Mr Easton were aware or ought to have been aware of the other's fiduciary and/or implied obligations owed to La Cotte and MVA; that by acting as they did with regard to the tender they were aware that they and the other party were acting unlawfully and, in the premises, all business, monies and profits accruing to the Defendants by reason of the other's breaches of duty would accrue by reason of the other's breaches of duty.

573. Paragraph 49 PoC asserts against each of Mr Easton and Sovereign dishonest assistance in, procuring or inducing and/or conspiring in the other's "breaches of duty/breaches of contract/unlawful activities" which is said to have resulted in the unlawful enrichment of the Defendants at the expense of the Claimant/MVA. Damages to be assessed is the remedy sought.

574. Paragraph 50, in the alternative, seeks damages for unlawful conspiracy.

575. Alternatively, the Claimant seeks an account of profits said to have been made secretly and/or unlawfully (PoC paragraph 51).

576. The prayer for relief seeks, as against Sovereign, damages for breach of the JVA, and as against Mr Easton damages for breaches of duties and obligations owed to La Cotte/MVA. As against both of them, it seeks (a) damages for conspiracy and/or procuring breach of contract and/or unlawful interference and/or unlawful means conspiracy (as is said to be set out in paragraphs 47 to 50); (b) an order for an account of profits (as said to be set out in paragraph 51).

577. In the Claimant's Skeleton Argument for trial, great reliance was placed on evidence as to what Mr Cooke had told Mr Andrew Hobson, what Mr Truelove at Firth Rixson had told Mr Andrew Hobson and the result of the confrontation of Mr Freddie Robinson at the August 2013 Boardroom. I have already said that I do not place any weight on what Mr Cooke is said to have told people about the dishonesty of others.

578. In terms it is said in that Skeleton Argument that the £100,000 estimate of loss was an estimate of the profit that La Cotte would have made from the metal it should have acquired from Firth Rixson on the three sites tendered for, and not just the two sites successfully tendered for (the latter being what the pleadings asserted).

(2) The documents

579. The documentation before me regarding the tender process for the sites at Darley Dale (including the AMS), River Don and Meadowhall during the period mid-2011/early 2012 is far from complete.

580. From a series of emails between Mr Easton and Mr Freddie Robinson dated 1 August 2011, it is clear that they were beginning to gear up to the fact that the Firth Rixson waste management contracts for Darley Dale, River Don and Meadowhall were due to end at the end of October 2011. They had apparently discussed a direct approach being made in August based on a "*possible rebate system based on volume of work undertaken within the contractual period*".

581. In the last of the emails of 1 August 2011 which are in the trial bundle, Mr Easton informed Mr Freddie Robinson that he had talked with Mr Truelove and that it was Ms Stott that would be organising the tender process. He was unsure of the format and what sites will be included. He ended by saying "Not informed Spartacus".

582. By an email dated 16 August 2011, Mr Easton reported to Mr Freddie Robinson regarding the outcome of a Firth Rixson US tender. Mr Truelove was apparently to have a meeting with Ms Stott to review the tender or whatever format would be requested before it was sent out and was going to recommend a sealed tender to be

opened at Firth House and analysed. It was unclear if Firth Rixson Metals was to be included as, according to Ms Stott, that part of the Firth Rixson business was under contract to 2013. Mr Easton concluded with the comment:

> "*Warming up*
>
> *No body getting rich on steel prices, suggested Skeggy* [be] *would your limit on that business*".

583. An email dated 27 September 2011, from Deborah Stott at Firth Rixson to Mr Easton, enclosed a copy of the metal waste tender. In the covering email she made clear that she was the main point of contact at Firth Rixson regarding the tender. The email was forwarded by Mr Easton to Mr Freddie Robinson.

584. The tender document in question makes clear that it was to cover three Firth Rixson sites, those at Meadowhall, River Don and Darley Dale. The proposed contractual implementation date 1was 1 January 2012 which was the date that the current contractual arrangements between Firth Rixson and Meadowbank/Sovereign were due to expire. The tender document also confirms that a set of detailed evaluation criteria had been prepared for the valuation of each submission. Not surprisingly, these included not only matters such as competitive price but matters such as contractual compliance and service delivery experience. The document also set out the waste types and approximate annual volumes. These were grouped into three main types: ferrous alloy, titanium alloy and Nickel alloy. From Meadowhall the waste was Ferrous and Nickel alloy. From River Don, Ferrous Alloy (280 metric tonnes) and Titanium alloy (3.19 metric tonnes) and from Darley Dale, Titanium alloy (49 metric tonnes) and Ferrous and Nickel alloys (about 384 metric tonnes).

585. By email dated 29 September 2011, Mr Easton acknowledged receipt of the invitation to tender and made clear that the tender to be submitted in response would be a "*joint offer between*" Sovereign and MVA, offering "*the combined services supplied to Firth Rixson currently with Sovereign being the lead operator*."

586. Ms Stott's emailed response later that day on 29 September 2011 explained that the contract regarding Firth Rixson Metals was not then yet up for renewal. It was intended to go out to tender on that contract towards the end of Q1 2012. At that stage, if appropriate, Firth Rixson was minded to pull the two contracts together but Firth Rixson "*do not and have not guaranteed that the winner of the Forgings tender will automatically take over the Metals contract*". However, "*everyone participating in this tender will have the opportunity to bid for the FR Metals contract*".

587. By an email from Mr Easton to Mr Freddie Robinson dated 24 October 2011, Mr Easton referred to the pricing mechanism under the proposed tender document and referred to having "*increased the 718 and 625 and lowered the waspaloy*". Titanium was said to "*need looking at*" and steel needed "*duplex pricing and then amending*". This seems to have been the document on which the case that prices had been dishonestly reduced in the tender by Mr Easton and Mr Freddie Robinson was based. It is of course, on its face, consistent with proper adjusting of prices in a draft tender document and that is what I find it to have been.

588. In cross-examination Mr A J Hobson accepted, as I find, that the references to 718, 625, waspalloy and Titanium were all examples of High Grade materials which, within the tender process, Mr Easton was taking the lead on and that Mr Freddie Robinson was taking the lead on the Low Grade materials and further, that this email, on its face, shows that the two men were working collaboratively towards winning the tender.

589. The tender was sent to Firth Rixson under a covering letter from Mr Easton, as "Commercial Director, Joint Partners Sovereign and Meadowbank". It was dated 5 September 2011, although that date was agreed before me to be incorrect. The letter made clear that Sovereign and MVA were submitting a "joint tender for the services detailed in the tender" with Mr Easton as Bid Manager and Mr Freddie Robinson as his Deputy. Under the heading "Partners responsibility within the tender" the following was set out:

> "*Financial-Sovereign*
>
> *Operational Site*
>
> *Riverdon [sic] and Meadowhall-Sovereign*
>
> *Darley Dale-Meadowbank."*

590. In the following pages of the tender document (not all of which was in evidence before the court), it was made clear that the proposed "Service Operator" in respect of the various sites was as follows:

Site	Machine Shops	Site Operator
Darley Dale	Darley Dale and AMS Machine Shop	Meadowbank
Meadowhall & Enpar		Sovereign
River Don		Sovereign

591. By email dated 17 November 2011, Deborah Stott, Global Director of Commodities, Firth Rixson Ltd, wrote asking to arrange a time/day for those tendering to come in and present their proposal to the stakeholders within a window. It appears that the presentation took place on 30 November 2011.

592. By email dated 14 December 2011, Mr Easton wrote to Ms Stott saying that Meadowbank/Sovereign were surprised not to have heard further about the tender. He pointed out that the contract had in fact expired at the end of October 2011 but they had:

> "*continued through till the end of December, in the knowledge that the successful applicant would have been in a position to commence the contract from 4 January, this seems most unlikely based on the current timescales left in December*."

593. By emailed reply also dated 14 December 2011, Ms Stott asked for the contract renewal date to be pushed back to the end of January 2012.

594. By email dated 12 January 2012, Mr Easton was again complaining to Firth Rixson of the worst case of a long time of contaminated turnings, and turnings advised incorrectly. In fact, sporadic complaints of this nature are traceable in emails even after the settlement of the then contamination claim in early 2011.

595. Probably in early January 2012, Meadowbank was informed that, whilst the Meadowbank/Sovereign tender had been successful in respect of the Meadowhall and River Don sites, it had failed in respect of the Darley Dale site. As regards the latter the successful tenderer was a company called ELG Haniel Metals Limited ("ELG"). This was the ELG (or company within the ELG group) that Ms Stott had earlier indicated, in July 2008, as being her preferred partner for servicing the High Grade scrap needs of Firth Rixson, as I have mentioned earlier.

596. By about 11 January 2012, Meadowbank was expressing dissatisfaction with the fact that the tender had not been wholly successful. An agenda for a meeting with Mr Brian McKenzie of Firth Rixson was sent to him by Mr Wormstone by email dated 11 February 2012 and shared by Mr Easton with Mr Freddie Robinson under cover of an email dated 12 January 2012.

    (1) Item 1 on the agenda suggested that the length of the tender process and the intervention by an unnamed individual indicated that he personally had needed to address certain issues and asked for comment on this and whether it had a bearing on the final outcome.

    (2) Item 2 on the agenda asserted that the AMS located at Darley Dale was part of River Don and that therefore it would be managed by Meadowbank.

    (3) Item 3 on the agenda asked that, in the event that the successful tenderer, ELG, did not service the account to the standards required, would Firth Rixson offer the opportunity to Meadowbank/Sovereign to replace them?

    (4) Item 4 on the agenda in effect asked whether Meadowbank/Sovereign having come "second" in the tender process regarding Darley Dale was based on a financial decision or whether the "site having issues with Meadowbank" affected the outcome.

    (5) Item 5 on the agenda explained the pricing basis on which the Meadowbank/Sovereign tender had been, suggested that the tender by the successful tenderer, ELG, must have been at a greater price which would be uneconomic from that company's position.

    (6) Item 6 on the agenda sought confirmation that Meadowbank/Sovereign would be invited to tender on the Firth Rixson business in Q2.

597. By email dated 11 January 2012, sent to Mr Wormstone apparently just under an hour from receipt of the email enclosing the agenda, Mr McKenzie of Firth Rixson explained that he had agreed to have a meeting "out of respect and to continue to move the relationship forward". While considering the choice of topics in the agenda as not being "entirely constructive" he gave short answers to the points raised as follows:
"*1. Not relevant, the process took longer to make sure we had an accurate comparison.*

2. The AMS machine shop will not be part of your proposed contract.
3. Meadowbank/Sovereign produced very credible proposal and that is part of the reason why the contract was split. Assuming you maintain the same performance you would be a front runner for such an eventuality.
4. It was based on the bid.
5. The decision was made based on the bids
6. See question three."

598. The reference to the decision being based on the bid does not, in my judgment mean that the experience with Meadowbank, in terms of the disputes that had occurred in the past, did not enter into the equation.

599. Mr McKenzie's email of 11 January 2012 was, on the same day, sent on by Mr Wormstone to Mr Easton. Mr Easton in turn sent it on to Mr Freddie Robinson under cover of the following:

"*Your thoughts*

Keep from AH for now."

600. Much was made of this communication by Mr Stuart in terms of it showing, he said, a conspiracy to hide things from Mr Andrew Hobson (clearly referred to by the initials "AH"). However, it is implicit in the communication that Mr Andrew Hobson would be informed in due course. My impression from having heard the evidence is that he was regarded by at least some as being a difficult character. For this reason there are suggestions in the evidence that he was kept away from specific meetings or involvement in the detail of certain matters. I can understand why Mr Easton may have wished to consider the position and available options and strategy rather than reporting back immediately to Mr Andrew Hobson. Further, the email is only suspicious if there is an assumption that (a) delaying telling Mr Andrew Hobson would in some way be perceived as enabling things to be achieved behind his back and (b) that at this stage, there was in existence some form of conspiracy in place. In other words, the language is consistent with conspiracy or innocence but of itself does not show conspiracy.

601. On 17 January 2012, Ms Stott wrote to Mr Easton by email, copying in, among others, Mr Wormstone and Mr Freddie Robinson. Among other things she confirmed that Meadowbank/Sovereign were under contract at Darley Dale until the end of January. She explained that she aimed to have the contract and SLA for the contract at the Meadowhall and River Don sites ready to send during the course of that day.

602. By email dated 20 January 2012, Ms Stott sent an email to Mr Easton, copying in Mr Wormstone, attaching various documents including a draft 2012 metal waste contract and a draft 2012 metal waste service level agreement. She said that she would put the original documents in the post that day. The email with attachments was forwarded to Mr Freddie Robinson.

603. The waste management contract was entered into on the one hand by Firth Rixson and on the other hand by Sovereign and MVA. It was fairly short, and comprised a one-year contract, terminable on not less than one month's notice by Firth Rixson with an

option to renew for a further year being something to be negotiated at the end of the one-year contract. The contract was said to comprise for Sovereign and MVA to supply Firth Rixson with "a solution for Scrap/Metal Waste Collection and Disposal at each of the two sites outlined in an attached Service Level Agreement". The version in evidence is signed on behalf of Firth Rixson and, on 24 January 2012, by Mr Freddie Robinson on behalf of Sovereign and MVA.

604. The Service Level Agreement was dated 20 January 2012 and made between (1) Sovereign and MVA and (2) Firth Rixson. The sites identified as being covered are two addresses in Sheffield. Among other things, Sovereign and MVA were to provide a waste management service and to buy high alloy scrap on an agreed formula basis.

605. By email dated 14 February 2012, copied to Mrs Audrey Hobson's email, Mr Wormstone raised concerns regarding the failure of the Sovereign/MVA tender <u>for the Darley Dale site</u> (not for all three sites) It was said that various factors had come to "our" attention, which related to the manner in which it was said the relevant services were being provided by ELG, seeking verification of the same and demanding to know why there had not been an approach to re-tender. As regards the tender and subsequent events relating to the tender, Mr Wormstone is not alleged to be part of any conspiracy between Mr Easton and Mr Freddie Robinson. It is clear that he was aware at a comparatively early stage that the Darley Dale element of the tender had been lost. Given the manner in which the Meadowbank companies operated and given the copying in of Mrs Audrey Hobson on the relevant email, I find that Mr Wormstone was in contact with Mr Andrew Hobson about this matter and the chasing of Firth Rixson for an explanation as to why the Darley Dale aspect of the tender had been lost. I also find that the later amendment to the contract would have come to Mr Wormstone's attention and thus to the attention of Mr Andrew Hobson.

606. In cross-examination Mr Andrew Hobson did not remember seeing this email at the time. I find that the likelihood is that his wife would have passed it to him. What is surprising is that despite the fact that this email refers to ELG having submitted *" a new lower pricing structure*", which MVA was obviously aware of, Mr Andrew Hobson at the time did not immediately identify that the lower pricing structure either did or did not undercut the tender that he thought had been submitted by MVA/Sovereign.

607. On 5 February 2012 Mr Easton emailed Mrs Audrey Hobson complaining about being undermined by Mr Luke Hobson ("*a 19 year old, who has no formal experience on commercial matters and does not understand quality control*") and tendering his resignation.

608. On 15 February 2012, Ms Stott wrote to Mr Freddie Robinson, copying in Mr Easton, and referring to a meeting that afternoon as a result of which she was attaching an amended Contract and SLA. It appears from a later email of Mr Easton to Ms Stott dated 17 February 2012 that the meeting was also about the issue of sub-contractors' scrap. The new SLA was dated 20 January 2012 and now made between Sovereign and Firth Rixson. MVA was no longer a named party to the contract. The same change in contracting parties was made with regard to the waste management agreement. The Waste Management Contract was signed by Firth Rixson on behalf of both parties on 28 February 2012. Ms Stott signed for Firth Rixson and Mr Freddie Robinson signed on behalf of Sovereign.

609. Notwithstanding the fact that Meadowbank was no longer involved in the new waste management agreements, Mr Easton continued to assist in providing pricing assistance to Sovereign. After his resignation from Meadowbank, he confirmed in an email to Firth Rixson, that he would "*continue to provide pricing against the contract issued to Sovereign in the short term to assist Freddie Robinson*."

610. Part of La Cotte's case is that its removal from the contract regarding the Meadowhall and River Don sites was damaging to its ability to tender for other Firth Rixson work and to keep up its profile with Firth Rixson. However, in an exchange of emails between Mr Wormstone and Mr Brian McKenzie of Firth Rixson in February 2012 the latter confirmed that he would like to take up the opportunity offered to attend the Meadowbank site and to inspect the plant. In Mr Wormstone's email invitation dated 22 February 2012, he also referred to the fact that Meadowbank wished to be part of the tender process for Firth Rixson sites at Glossop and Ecclesfield and asked for the opportunity to carry out a site visit at both sites to enable a tender to start to be put together.

611. Further, by email dated 31 June 2013 from Mr McKenzie to Ms Greenhough, the former was dealing with an allegation by Ms Greenhough that the Firth Rixson disguised loan in March 2009 had been agreed to by MVA in exchange for being invited to tender for all sites, including Glossop, and which promise had been broken by Firth Rixson as no documents had been received some "18 months later". This allegation was set out in an email of 19 June 2013. Mr McKenzie's response was (in part) that when, in May 2011, a commercial settlement was reached it was agreed that MVA would be included in future tenders. The first tender was that in September 2011 which Sovereign/Meadowbank won regarding Meadowhall and River Don but lost regarding Darley Dale. A renewal was due in June 2013 and a tender encompassing Metals, River Don and Meadowhall was in the process of being put together and that MVA "*will of course have the opportunity to quote as part of this tender process.*"

612. Later on, by invitation dated 31 July 2013, Firth Rixson did invite MVA to tender for waste management solutions at six Firth Rixson sites including Meadowhall, River Don and Glossop (and three other Sheffield sites) and the Glossop site and one at Rotherham. The tender was due to be placed by MVA (acting through David Lloyd and James Bowers) at the end of August 2013 as evidenced by emails dated 29 August 2013 between those persons and Deborah Stott of Firth Rixson. The latter also offered to meet at Glossop to discuss matters on 30 August 2013.

613. Sovereign also put in a tender under a like invitation to tender but lost the same as evidenced by an email from Deborah Stott to Mr Freddie Robinson dated 19 November 2013.

614. During 2013, a number of emails were sent by MVA to Firth Rixson asking for explanations and documents relating to the tender process and the eventuating January 2012 contract for the River Don and Meadowhall site. Firth Rixson explained precisely what occurred, not least by an email dated 28 August 2013. Even then, MVA was unsatisfied.

615. By email dated 13 November 2013, a raft of questions was put by MVA to Deborah Stott including statements that "there is no signature for [MVA]" and such surprising

enquiries as to why there was no signature from a representative of Meadowbank. This in circumstances where the contract as drawn provided for one signature on behalf of both MVA and Sovereign, where Mr Freddie Robinson had signed for both parties (i.e. MVA and Sovereign) and where he was the deputy bid manager, Mr Easton was the bid manager and Mr Easton sent the executed contract to Firth Rixson.

616. The email also referred back to Deborah Stott's explanation in August 2013 that at a meeting on 15 February 2012, at Firth Rixson's Ecclesfield site, a request had been made "*to amend the* [joint MVA/Sovereign] *contract to* [Sovereign] *only as the contract only covered the River Don and Meadowhall sites which were predominantly steels*". The somewhat surprising question was raised "*Who made the mistake in the first contract*".

617. In my judgment this email is all part of the underlying bases upon which the claims in this case were brought: first an obsession to find some sort of case on any basis; secondly an inability to accept explanations given by third parties with no personal axe to grind and thirdly, an inability to go to the main players at MVA to discover their version of events but rather the creation of a case by persons uninvolved at the time, after the event from documents, into which too much was sometimes read, and the simple adoption of that case by the main players (primarily Mr Andrew Hobson and, until he changed his evidence, Mr A J Hobson).

618. Despite these explanations from Firth Rixson, by email dated on or about 11 December 2013 MVA asserted to Sovereign that "*the original agreement signed between Sovereign and MVA in January 2012 still stands. We have nothing in our records to say that our contract ended. If you have proof of changes then please forward to us*."

619. Of relevance also to the manner in which the Hobson companies bring claims and to the position of Mr Hobson regarding Meadowbank being a contracting party with Firth Rixson, is a letter from DLA Piper dated 17 January 2014, responding to a letter (apparently of claim, or possibly for disclosure, though I have been unable to find a copy of it in the trial bundle) sent by solicitors acting for MVA, relating in part to the tender process that I have referred to. The DLA Piper letter:

    (1) points out that the original contract was not amended (as apparently asserted on behalf of MVA) but that it expired and a tender process was thereafter entered into. Further the original contract was not with MVA but with MSSC;

    (2) under the tender process the Darley Dale site was awarded to a third party as Firth Rixson was entitled to do;

    (3) the February 2012 contract with Sovereign (only) regarding the other two sites was concluded with Sovereign:

> "*at your client's request due to the fact that the vast majority of the material to be collected* [from the two sites in question] *was in fact steel, with only very small volumes of the higher value alloys in which your client was interested. Indeed, in a letter dated 23 November 2010, your client's Andrew Hobson indicated that it did not make sense for Meadowbank to continue to contract with out client for the collection of scrap steel/waste only, with the exception of waspalloy and 718. The* [two sites] *each had*

limited quantities of Waspalloy and 718, particularly after our client had relocated its machining operations from Meadowhall to Darley Dale during late 2011."

(4) "*In any event, it is clear that David Easton was fully aware of the negotiation of the second contract and the proposed parties thereto."*

(5) Having referred to the dispute stemming from Firth Rixson's letter of claim to MSSC dated 8 September 2010 and the fact that there were weighbridge tickets, delivery notes or invoices which were relevant to the dispute because the allegation was that scrap had been collected without the appropriate paperwork/procedures being followed and that Firth Rixson was not prepared to undertake the extensive task of identifying and disclosing extensive documentation sought, the letter concluded by referring to MVA's position as a "*fishing expedition*".

(3) The witness evidence

620. Mr A J Hobson had resigned as a director of MVA in June 2011. He started his own firm in April 2012. Between June 2011 and April 2012, he had little involvement in management issues, rather his role had reduced to cover clerical and administration duties.

621. In his original 2019 witness statement, he asserted that he had initially been told by Mr Easton and Mr Freddie Robinson that the whole tender had been lost. He said he later saw a contract with Firth Rixson in the joint names of MVA and Sovereign. He was surprised because he thought the whole tender had been lost but said that Mr Freddie Robinson told him, in effect, that Meadowbank had lost the whole contract so far as it was concerned but that the bit that had been won was the bit that Sovereign had been doing for the last 30 years. Mr A J Hobson said that he was worried that the contract being in joint names meant that MVA might be held liable for Sovereign's actions and it was then explained to him that this was a clerical error taken from an earlier agreement and that this was going to be rectified. He said that he had been lied to by Mr Easton and Mr Freddie Robinson, that he would have expected Mr Freddie Robinson to have told Mr Andrew Hobson about the loss of the Darley Dale site and that neither of them had explained that the tender was joint and that they had not informed Mr Andrew Hobson that the Darley Dale site had been lost and that the "joint venture" had in fact retained two sites. He asserted that Mr Freddie Robinson did not tell him that Mr Easton was still doing the monthly pricing for Sovereign in its ongoing relationship with Firth Rixson. He asserted that he noticed a change in behaviour of Mr Freddie Robinson from a few months before he, Mr A J Hobson, resigned as director in June 2011 until he left in March 2012 including Mr Freddie Robinson spending "*inordinately long periods of time in Easton's room with the door closed, in secretive meetings*." And that "*at these meetings the two of them must have been hatching their plans which they began and were executing after Easton left*".

622. The revised witness statement of Mr A J Hobson dated 14 December 2020 told a rather different story. The suggestion that he had been told that the whole tender had been lost was removed and altered to one where he had been told that the Darley Dale site (including AMS) had been lost. He retained the point that he was concerned that MVA

might be liable on the on-going contract which was really the responsibility of Sovereign but the suggestion that he had been lied to and that he would have expected Mr Freddie Robinson to speak to his father, Mr Andrew Hobson, was removed as were the assertions that he was unaware that Mr Easton was continuing to carry out pricing for Sovereign on the ongoing Firth Rixson contract, that he observed a change in behaviour of Mr Freddie Robinson, that there were inordinate secret meetings and that in his, Mr A J Hobson's view, they were hatching their plans.

623. In cross-examination Mr A J Hobson was even clearer:

"*Q. We know as a matter of fact that once that contract was issued, Mr Easton and Mr Robinson, but at Mr Easton's request, for the Meadowhall company, Meadowbank Vac was removed from the contractual documentation. We know that, don't we?*

A. *Yes.*

Q. The reason why Meadowbank Vac was removed, says Mr Robinson, Freddie Robinson, is because from that moment onwards Meadowbank Vac was to have nothing to do with the contracts because it had lost its sites, being the Darley Dale site.

A. That is my understanding, yes.

Q. There is no -- as far as you are concerned, there is no issue with removing Meadowbank from a contract where Meadowbank is not going to perform any services under the contract?

A. That is exactly the reason why it should be removed, in my opinion.

Q. Thank you. I absolutely agree. But the allegation against my client is that by removing Meadowbank, that was some kind of fraud or unlawful interference with a contractual relationship. You would disagree with that contention, wouldn't you?

A. The tender documents what you have just shown me is the first time I ever saw it. If we were running with the same mechanism as we had previously, that is what I would have expected. If anything different was agreed after I have not been involved, I don't know. You might pull an email up to say that, I don't know. To the best of my knowledge, if we were still going through the same arrangements as we were originally, yes.

Q. If we were going through the arrangements as we were originally, yes, you accept it was right to remove [MVA] *from the contract, correct?*

A. *Yes, yes.*"

624. According to Ms Alicia Smith, the 2012 signed Firth Rixson contract had only come to light shortly before the confrontation meeting in about August 2013, this apparently followed the settlement with Andrew Cooke regarding the Manchester proceedings. This appears to be the position also of Mr Luke Hobson.

625. In his witness evidence, Mr Luke Hobson confirmed that although he was a director of MVA from 7 June 2011, he only became fully "*office-based*", as I understand it, carrying out director's duties, from about April/May 2012 when Mr Wormstone ceased to be a director. The only relevant evidence that he could give was regarding the confrontation meeting in 2013, which I have dealt with earlier in this judgment.

626. In her witness statement for trial, Ms Greenhough referred to the change in the contract with Firth Rixson solely in the context of it being an example of the dishonest and wrongful practices said to have been colluded in by Mr Easton and Mr Freddie Robinson and of which "we" had no idea of. In cross-examination she disagreed with Mr A J Hobson's assessment that it was reasonable for MVA to have been removed from the contract with Firth Rixson for the two successful tender sites, Meadowhall and River Don. When asked "why?" and why it was that she described the situation as "*deceitful and dishonest*" her explanations were far from convincing. She described her role at the time as "*Just general accounting and clerk duties, and making cups of tea for the men*" and having no role in the tender process. She thought that the companies, that is MVA and Sovereign, worked closely together, but did not know the detail and this belief alone seemed to be one of the bases for saying that the contract had been dishonestly and deceitfully diverted by Mr Easton and Mr Freddie Robinson acting in collusion. She thought that "we" (but not her personally) should have known at the time. This was the other basis for her description of the amending of the contract as a dishonest and deceitful diversion. Yet, she seemed unable to take on board that, even on his original witness evidence, Mr A J Hobson had accepted that he at least had known about the position at the time. All of this was a classic example of a position reached by witnesses acting as a group, based on discussion between them and where firm views had been reached, but the basis of the view of the individual witness could not properly be explained. As with so much, if not all of her evidence, she had no first hand knowledge but was, as she agreed when the question was put to her, piecing together a version of events from looking at the documents retrospectively.

627. Her enthusiasm for La Cotte's case and her inability to stand back and put matters in a fair manner is also demonstrated by what happened at an earlier stage in the current dispute between the parties. On 12 October 2018 Ms Greenhough signed a witness statement in support of an intended application by La Cotte for a freezing injunction against Mr Freddie Robinson. In it she asserted that she had known that "MSSC/MVA" and Sovereign tendered for another contract with Firth Rixson and that she had known at the time that Meadowbank had been unsuccessful but that it had "*only recently*" come to light "*through discovering additional information*" that she realised that Meadowbank had been successful on the tender. In cross-examination she confirmed that this statement was false: as at 2018, the matter had been known about, in her estimation, for about 6 years (and, I would add, at the outset five years) before then. Further, the statement was economical with the truth. By 2018, when she completed the witness statement, she knew that the tender had succeeded as regards Meadowhall and River Don and it was Darley Dale (and the AMS) that had been lost. At that time she also knew that Meadowhall and River Don had been exclusively serviced by Sovereign. However, her witness statement did not explain that. I regret to say that this incident merely confirms my assessment of Ms Greenhough as an unreliable witness whose views have been shaped over time and who, having reached certain conclusion based on a reconstruction of contemporaneous events, is unable to judge the situation fairly or objectively.

628. Mr Andrew Hobson's oral evidence again fell somewhat short of his written witness statement. First, though not now an issue, he had expressly set out in his witness statement that he had agreed certain figures with Mr Easton as being the figures that would go in the tender but that these had been changed behind his back by Mr Easton. In cross-examination he could not remember when he had found this out and he was not prepared to "commit" as to what the prices were changed from and to. He said that he later found out what prices had been put forward by ELG in its tender but had been unable to find out what prices had been put forward in the joint tender from Sovereign/MVA. When asked in re-examination if he knew what happened to the tender pricing that he had agreed with Mr Easton when Mr Easton actually put the tender in his answer was "*Absolutely not. No. Simple answer, Mr Stuart. No*."

629. Somewhat surprisingly, in his written closing submissions, Mr Stuart relied upon the very specific evidence contained in Mr Andrew Hobson's witness statement (which in re-examination, Mr Stuart had failed to get Mr Hobson to re-iterate as a "clarification" of his evidence in cross examination so as to adopt it, despite taking him to percentages and almost suggesting the answer), regarding the very precise manner in which prices had been allegedly altered. He totally failed to deal with the oral evidence given by Mr Andrew Hobson.

630. The gap between Mr Andrew Hobson's witness statement on this issue and his oral evidence is, in my view, a graphic example of carefully constructed evidence being put forward by those who had investigated and reached conclusions but which did not reflect the first hand evidence of the person in whose mouth the words were put.

631. My impression was that the main reason (which he majored on at some length in cross examination) that Mr Andrew Hobson reached his conclusion that the tender figures had been dishonestly changed by Mr Easton to ensure that the tender for Darley Dale and AMS would be lost, was that he was confident of winning the tender because the prices he had agreed as going in the tender were, in his view, very, very strong. ELG, he felt, could not beat the Meadowbank/Sovereign tender prices, given ELG's overheads, and therefore, if the tender was lost on price it must be because the Meadowbank/Sovereign tender prices had been dishonestly changed. That was really the main thrust of his evidence in cross-examination.

632. As regards the question of motivation, he said that Mr Freddie Robinson benefitted from the loss of the tender regarding Darley Dale (and the AMS) because although the tender was won by an unconnected party, ELG, somehow "*if he knew we were still in Rixsons his cover would have been blown*". This made little sense, to me at least.

633. In answer to the proposition that it was clear that Mr A J Hobson had known about the outcome of the tendering process and the resulting contractual position, Mr Andrew Hobson's response was, after a long peroration about how Mr A J Hobson and Mr Easton's relationship had broken down because Mr Easton did not keep Mr A J Hobson informed, that "*he just would not..even if AJ were there, they would have kept him out of it*", thus avoiding the question put and ignoring the point that the evidence was that Mr A J Hobson had known about it.

634. On the question of loss, Mr Andrew Hobson, in his witness statement, had referred to the "fantastic benefits" of having MVA's name on the contract and which were

removed by the alteration to the contract. These were that it could be relied on in other tenders, that MVA would have been at the forefront of Firth Rixson's mind and that there is constant contact with Firth Rixson staff during the course of the contract giving rise, as I understand it, to other opportunities.

635. The difficulty with all of this is that the sites in question on which the tender was won were sites where it was always intended, and known by Firth Rixson, that the operator would be Sovereign and not (unlike the lost tender regarding Darley Dale and the AMS) MVA. Any performance under that contract relied upon in the future would be known to be performance by Sovereign and not by Meadowbank. Furthermore, as was clear, Firth Rixson was well aware that the tender had been a joint one and had indicated that an opportunity would be given to re-tender in the event that the ELG contract, for whatever reason, came to an end.

636. Further, this "fantastic opportunity" was not one that had worried Mr Andrew Hobson in the past (or when he gave evidence) regarding the fact that under the original contractual arrangements with Firth Rixson it was Sovereign that held the contract and which in effect sub-contracted the relevant waste dealings at the site in question rather than requiring Meadowbank to be joined as a party to the contract. Indeed, as regards the position under the earlier arrangements he said in cross-examination that he had "*no issue with the contract being in the name of Sovereign*" with Sovereign being the contracting party with Firth Rixson and sub-contracting to Meadowbank. Meadowbank, he said, "*didn't need our name in bright lights*". It was unclear why the position was so different in 2011.

637. It is also clear from Mr Wormstone's email that I have referred to regarding tendering for the Firth Rixson Glossop and Ecclesfield sites and also Mr McKenzie's email of June 2013 that MVA would be specifically invited to tender. Finally, MVA was, in fact, invited to tender by Firth Rixson.

638. When I put it to Mr Stuart that the loss of opportunity to tender did not seem to be made out on the facts his reply was "*not in an absolute sense, no*" and that the opportunity did come around again in 2013. I am not clear what other "sense" the opportunity to tender in the future was lost because of removal of MVA's name from the relevant 2012 contracts but this is another example of what seems to me an ill-thought out cause of action asserted in the pleadings.

(4) Summary conclusions

639. I am satisfied that there was no breach of any legal obligation by either Sovereign, Mr Freddie Robinson or Mr Easton in the manner in which the contract with Firth Rixson was altered by the entry into a new contract excluding MVA as a party. This should not be taken as an acceptance by me that the relevant asserted legal duties were each owed by each of the persons concerned.

640. I do not consider that any direct duties were owed to La Cotte (as opposed to MVA) by either Sovereign or Mr Easton. I accept however that La Cotte has acquired any relevant causes of action from MVA under the relevant assignments.

641. As regards direct duties owed by Sovereign, I am prepared to accept that there was an implied duty of good faith (a fiduciary duty whether or not along the lines of that which

arose in *Pallant v Morgan* was disavowed by Mr Stuart, though the same result would, in my judgment, apply). However, whether viewed as a fiduciary duty or a duty of good faith, the duty has to be shaped by the overall agreement understanding or arrangement between the parties. Mr Stuart broadly accepted this proposition. In his written Closing Submissions he put thus:

> "*The content of the implied duty* [of good faith] *will depend upon the contractual and factual context and be assessed objectively*"

642. As regards any venture between Meadowbank/Sovereign, I am satisfied that it was always intended that Sovereign would (as against Meadowbank) have, and retain, the benefit of any contract regarding the Firth Rixson sites at Meadowhall and River Don. In other words, whether looking overall at the scope of any joint venture or the scope of the agreement to put in a joint tender, their bases were that these sites were sites in which Sovereign was interested and should reap the benefit of and ones which Meadowbank would not share the benefit of. I have separately dealt with and rejected the Claimant's case that Meadowbank had rights in relation to high grade scrap produced from sites managed by Sovereign. As I have held, there may have been an expectation that Sovereign might do individual deals on High Grade scrap obtained from Firth Rixson sites that it managed, but there was no right under the arrangements between Meadowbank and Sovereign that the former would acquire such scrap.

643. The removal of Meadowbank from a contract relating to Firth Rixson sites in which it had no involvement was, as Mr A J Hobson recognised, a sensible result from Meadowbank's position as it resulted in it being removed from a potential liability under a contract from which it had no direct benefit. As regards the alleged indirect benefit of having its name on the contract, I deal with that below in the context of loss but consider such "benefit" is non existent.

644. It follows, that there is no breach of contract by Sovereign and no parasitic liability (of procuring a breach) by Mr Easton.

645. Further there can be no unlawful means conspiracy because there is no unlawful act.

646. Finally, there can be no breach of any duty owed by Mr Easton to MVA. The allegation of conflict of duty and self-interest is simply not made out (whatever it is alleged to be, the pleading is unclear) and as Mr A J Hobson confirmed (and I agree) acting to remove MVA as a contracting party was in its best interests. Further the fiduciary duty to act in a company's best interests is primarily subjective rather than objective, unless (as to which there is no evidence in this case) the fiduciary gave no consideration to the matter.

647. Finally, Meadowbank (or more precisely MVA) did not suffer any loss as a result of the contract finally entered into with its name excluded. The absence of loss includes not only direct loss of profit from the contract flowing from the tender (because under the tender and the arrangement between the parties, Meadowbank was never intended to be involved in itself providing services, operating the sites or buying and re-selling the relevant scrap or any of it from the sites) but also an absence of the sort of incidental loss relied upon by Mr Andrew Hobson, said to be an absence of the benefits he identifies as flowing from having a Meadowbank company name on the 2012 contract with Firth Rixson. Indeed, for the reasons given by Mr A J Hobson, were Meadowbank to have been a party it would be exposed to a liability rather than reaping a benefit.

Further, the benefits of being asked to tender in the future were not, in fact, tied to being a named party on an existing contract and MVA was invited to tender in future tender processes. Indeed, Ms Stott's email of 29 September 2011 had made clear that everyone participating in the 2011 tender would have the opportunity to bid for the new tender in 2012 for the relevant Firth Rixson Metals sites.

648. My conclusion regarding Meadowbank's lack of interest (factual and legal) in a contract for the two sites in relation to which the tender succeeded, and my related conclusion as to loss, is supported by the letter from DLA Piper of 17 January 2014, referred to above.

The Erasteel Claim

(1) The pleaded case

649. Two factual matters are relied upon by the Claimant relating to the company Erasteel, one of its bases being at Commentry, France (about 100 km North of Clermont Ferrand). First, there is an allegation that on a visit to the premises of Erasteel by Mr Lees and Mr Easton, representing AMM, on 4 April 2013, Mr Easton placed some low grade material from drums originating from MVA into drums of material originating from MVA, apparently to make it appear that the latter was contaminated. The second allegation is that Mr Freddie Robinson, whilst visiting MVA's offices, took a photograph of a confidential letter from MVA's then lawyers to Erasteel complaining of non-payment of an invoice or invoices dated 27 February 2013 in a sum of just over 431,000 pounds (or dollars, the letter asserts each unit of currency in different places) for stock delivered in February and March 2013. That letter, it is said, was then provided by him to Mr Easton. A claim in damages for loss of business with Erasteel is then made pursuant to claims of conspiracy between Mr Easton and Mr Freddie Robinson to interfere in the contractual relations between the Claimant/MVA and Erasteel.

650. The Particulars of Claim are confusing and confused as to the precise causes of action pleaded and their constituent elements. To take one example, the two factual matters that I have referred to are said to amount to a breach by Mr Easton of his fiduciary and/or contractual duties owed to La Cotte/MVA as employee. Of course, he was never employed by La Cotte and his employment with MVA had ceased, on any view, in August 2012, at the latest. In opening, Mr Stuart confirmed that no claim for breach of fiduciary or contractual duties as employee were relied upon as against Mr Easton in respect of Erasteel, despite the pleading in the Particulars of Claim.

651. Doing the best that I can with the PoC it may be that they assert (1) breach of a duty of confidence (as regards the photograph) and/or theft of confidential information; (2) unlawful interference with a La Cotte/MVA contract with Erasteel; (3) (unlawful means?) conspiracy between, at the least, Mr Easton and Mr Freddie Robinson to interfere in contractual relations and/or to divert business to Mr Easton and/or APC.

652. Again there are various issues with some of these alleged causes of action: for example I am not satisfied that La Cotte (as opposed to MVA) had a contractual relationship with Erasteel. However, and as will become clear, I have come to the conclusion that I need not grapple with these issues in any great detail because there is a major problem: an absence of any evidence of causal loss.

653. As regards the loss claimed, that is asserted in the Schedule of Loss to be an estimated £30,000. How such figure is reached and on what basis is not explained in the pleadings. Paragraph 38 of the Particulars of Claim refers to a loss of the benefit of the profitable business trading with Erasteel or the opportunity of retaining such business and claims damages in a sum to be assessed and/or an account of profits/equitable damages in respect of such unlawful interference estimated to be in the sum of £30,000.

654. However, in a response to a request for further information signed by Mr Andrew Hobson and dated 5 December 2019, the allegation is that there was an unlawful interference with the Claimant's relationship with Erasteel. In the period November 2011 to April 2013:

> "*the Claimant sold approximately US$3,274,748 per annum material to Erasteel, at a profit of approximately 10% i.e. profit of approximately US$327,475 per annum Following the unlawful interference with the contractual relationship between the Claimant and Erasteel, Erasteel substantially reduced the amount of purchases from the Claimant so that in the subsequent 18 months (April 13-October 14) the Claimant sold approximately US$667,399 per annum producing estimated profit of $66,740 per annum. The Claimant, therefore, claims such loss of profit over the 18 month period currently estimated at $260,735."*

655. The Claimant asserted in its response to the request for further information that this was not a matter for expert evidence. A supplemental report of the Claimant's expert dated 13 November 2019 put forward a claim for loss in a sum of £255,734. That sum was calculated by taking a reduction in turnover of MVA with Erasteel in the 18 month period after April 2013 in comparison with the 18 month period prior to April 2013 and then assuming that the reduction was caused by the matters complained of and applying a 10% profit margin to the turnover and identifying that as the loss. However, by order dated 13 February 2020 I did not grant the Claimant permission to rely on this additional evidence contained in the supplemental report of the expert and it therefore was not in evidence. I should add that there is, in any case, an absence of evidence that the reduction in turnover was caused by either of the matters complained of.

656. Mr Stuart also complained that it had not been possible to show what profits Mr Easton and Mr Freddie Robinson should account for because I had refused (for reasons given at that time) to order that the Claimant's expert be allowed free-ranging access to the entirety of Sovereign's accounting records as sought at the commencement of the trial.

657. On this basis his submission was that there should be an enquiry as to damages and/or an account of profits ordered.

(2) The evidence

658. The evidence about the visit to the Erasteel premises in Commentry is contained in the unchallenged witness statement of Mr Lees. I have to view his evidence with caution, for reasons given earlier in this judgment but not least because it is clear that there was a major dispute between him and Mr Easton as to the running of AMM and APC and as to liability on the guarantee that resulted in the Lees Proceedings. Thus, by way of example, in an email to Mr Cooke dated 3 January 2014 he referred to Mr Easton as "*financially raping AMM for his personal gain*" and which included, by way of

example, an allegation that AMM company money had been used to buy Mr Easton's wife a £4,000 diamond ring. I am simply unable to go into all these allegations and to determine where the truth lies.

659. The Claimant's case is that Erasteel was a major customer of MVA and that Mr Easton and Mr Freddie Robinson were conspiring to steal it as a client. One of the issues is whether either use made of MVA lawyer's letter to Erasteel and/or the alleged mixing of materials in MVA sourced bins at the Erasteel plant caused MVA to lose either business with Erasteel or specific sums that would otherwise have been due on the orders in question. In the latter context it is of note that Erasteel had issued a number of non-conformity forms/requests for supplier corrective action (Fiche de non-conformité/Demande d'action(s) corrective(s)) dating back to 2012. I am not certain that all relevant ones are in the trial bundle (the allocated numbers of them suggests not) nor that I have identified all of those in the trial bundle but they include:

Date	No	Order & Delivery Lot
04.04.12	12/020	4500018082 307179
20.04.12	12/028	4500018082 307253
20.04.12	12/029	4500018817 307331
04.05.12	12/031	4500019283 307479
16.05.12	12/030	4500018817 307462
06.06.12	12/034	4500019283 307483
06.06.12	12/033	4500019283 307538
06.06.12	12/032	4500019283 307508
26.06.12	12/035	4500019893 307677

660. This table shows that there were ongoing issues between Erasteel and MVA as to the material that the latter was supplying.

661. Mr Easton contacted M. Thierry at Erasteel by email in August 2012 explaining that he had moved to AMM and that it and its sister company APC was looking to supply to Erasteel. The reply was that it was unlikely orders would be placed until January 2013 due to the forecast for Erasteel being bad for the end of year.

662. The meeting on 5 April 2013 at Commentry had its background to a situation in which Erasteel had placed orders with AMM earlier in 2013. By email dated 28 March 2013, Monsieur Bernet of Erasteel cancelled the April delivery and said Erasteel was now

checking the turnings and solids (supplied by AMM) remaining in stock and said that if they found anything wrong they would be calling the police and claiming damages. This followed on from the discovery that Specialist (and I assume High Grade) deliveries of M2 and M42 scrap from AMM had apparently had a layer of HSS scrap at the top and the rest had been iron scrap. According to an AMM report to North Derbyshire Police, prepared by Mr Easton, dated 9 April 2003, the goods had been sourced from APC which in turn had sourced it from third parties. Mr Lees says this report was not sent to the police though the matter was reported to the police.

663. Mr Lees' witness statement is in the imprecise and emotive language that much of the Claimant's witness statements are drafted in. Thus, he seems to imply that Mr Easton was knowingly responsible for the provision of Low Grade product by AMM dressed up to look as if it was High Grade scrap as had been ordered, but without saying so in express terms. He refers to "*the first couple of orders* [from Erasteel to AMM] *as being fine because Easton wanted to lull Erasteel into a false sense of confidence*" but does not in terms say that the orders later challenged by Erasteel were correctly challenged because Mr Easton thought he had now "*lulled Erasteel into a false sense of confidence*" and was knowingly cheating Erasteel by providing goods concealed to look like High Grade material. Further, he refers to the police report that I have referred to as being "fake" without explaining what he means by this and whether it is the contents that are fake or that the mere fact it wasn't sent to the police means that it is "fake." The idea that AMM was anxious to win Erasteel as a customer hardly sits with an allegation that AMM was trying from early days to commit fraud on Erasteel which was almost bound to come to light. In short, I cannot place any weight on this evidence regarding alleged wrongdoing by AMM/Mr Easton as regards orders Erasteel placed with AMM.

664. Similar points apply as regards his allegation that "*it was well known in the industry*" that Scott Hyams and Paul Holt of the Doncaster's group of companies (Doncaster Chard and Ross & Catherall) "*were being "bunged" by Easton"* and that, for example, this is confirmed by the fact that (a) they were invited by Mr John Easton (Mr Easton's son) to St Leger Races at Doncaster Racecourse in September 2012, as part of Mr Easton launching AMM (or his involvement with it); (b) they visited AMM, in Mr Lees' view, "*more than was strictly necessary"* which was "*unusual and odd*". Quite simply, this evidence is far from impressive and I dismiss it.

665. According to Mr Lees, whilst they were both at the Commentry premises, he and Mr Easton were inspecting drums of material at Commentry and recognised some drums with MVA's name and material in them. Whilst they were alone Mr Easton suggested that they swapped some low grade material with MVA's. Mr Lees refused but Mr Easton carried on regardless. When the manager of Erasteel came to ask if they had finished their inspection (regarding AMM's sourced material), they warned him to check the MVA drums as well. This seems to have been a "spur of the moment" action.

666. Thus, Mr Lees' evidence is that while refusing to mix scrap he was complicit in what he says was the underlying plan of upsetting the relations between Erasteel and MVA by warning the manager to check MVA's drums. In addition, he does not particularise how much scrap was involved, how long it took to move scrap, how much MVA material was affected in terms of drums or bags, where it was placed in e.g. the drum, that is on the top of buried underneath, nor why "we" (that is he too) warned Erasteel to

check MVA supplied material. In my judgment, if this took place it sounds a fairly feeble and amateur attempt to adulterate MVA supplied material.

667. The suggestion that Mr Lees may himself be tainted by involvement in matters is further raised by an email from Mr Easton dated 9 August 2013 apparently addressed to him and Mr Cooke asking whether Mr Cooke has a copy of the "French letter Freddie sent me re Meadowbank" which La Cotte asserts is a reference to the letter that Mr Freddie Robinson photographed. I now turn to that photograph.

668. The second element of the Erasteel claim relates to the taking of a photograph by Mr Freddie Robinson of a letter addressed to Erasteel by MVA's then lawyers whilst he was at MVA's premises.

669. The letter in question is a letter of claim dated 26 April 2013 and addressed to Mr Bernet of Erasteel at Commentry. It is written by Emma Digby of CLL solicitors. The letter claims a sum of just over $433,000 in respect of goods the subject of five delivery notes. The letter refers to an invoice on 23 February 2012, said to have been delivered once Erasteel's analyses had been considered and the prices agreed. A remittance advice is referred to as having been submitted by Erasteel confirming payment by 25 April 2013 but the payment had been cancelled and the monies had not been received. A retention of title situation is asserted and court proceedings threatened if payment is not received as promised. The letter goes on to say that it is understood that Erasteel wished to discuss a separate contractual delivery with MVA but that that is a separate contractual issue to be dealt with separately.

670. As regards the photograph of the letter, Mr Freddie Robinson accepted in his witness statement that he had been at the Meadowbank premises on 29 April 2013 for the purposes of collecting a cheque. Whilst waiting, he was alone in the office, saw the letter, read it, thought it was interesting and took a photograph of it on his I-phone. He said that he did not take the photograph with the intention of showing it to Mr Easton.

671. However, he said that he showed the photograph to his father and mother and that when he next spoke to Mr Easton he mentioned the letter. Mr Easton, he said, later told him that he (Mr Easton) knew about the dispute between MVA and Erasteel because he had gone to Erasteel and they had told him that Meadowbank had been selling them high grade scrap but that the delivered material had High Grade scrap at the top but hidden underneath Low Grade scrap metal. He said Erasteel had shown him the material in question. He asked if he could have a copy of the photograph and Mr Freddie Robinson said he later supplied it. In fact, he supplied it by printing it off and leaving it in an envelope for Mr Easton to collect from a Firth Rixson site.

672. In extensive cross-examination regarding Erasteel, Mr Freddie Robinson said:-

(1) He took the picture so that he could read the letter in detail later.

(2) That in taking the picture, he was just being "nosey".

(3) He did not take the picture to supply it to Mr Easton and he did not know that AMM was dealing with Erasteel. Mr Easton asked for a copy in a context where the subject *"came out in conversation*". Mr Freddie Robinson explained to Mr

Easton that he had a document showing that MVA had a problem on a claim with Erasteel and Mr Easton then asked for a copy.

(4) He had printed the photograph off and hand delivered it to avoid the sort of audit trail that would have existed had he (for example) simply emailed it to Mr Easton. He did this because he "*knew it was wrong, I knew what I had done was wrong. I was embarrassed. As I say, I am embarrassed by it, its out of character for me, and I knew I had done wrong."*

673. It appears that the Erasteel/AMM dispute was settled by a Memorandum of Agreement signed by the parties on 27 June 2013.

674. I have dealt earlier in this judgment with the meeting at which Mr Freddie Robinson was "confronted" with certain matters by members of the Hobson family in about August 2013.

675. There is an unsigned undated witness statement made by Mr Freddie Robinson pursuant to (inter alia) the Criminal Procedure Rules r27.2 and s9 Criminal Justice Act 1967 (the "s9 Statement"). I understand it to have been made in the context of what I apprehend to be a criminal investigation. That witness statement deals with the Avalloy matter but also generally the relationship Mr Freddie Robinson had with Mr Andrew Hobson and Meadowbank. In the trial bundle index (which I understand to be agreed) the given date for the document is July 2016. It is unclear to me whether the words are the words of the police officer drafting the same after interview or Mr Freddie Robinson's own words and whether or not he had an opportunity to (and did) correct it further. In cross-examination he thought that the unsigned version was the same as his signed statement save for a removal of a reference to Mr A J Hobson.

676. In the s9 Statement:-

(1) Mr Freddie Robinson refers to being accused by Mr Andrew Hobson of making a deal with Mr Easton and Mr Cooke, of having been seen at AMM and of stealing a document from Meadowbank and passing it to Mr Easton and Mr Cooke.

(2) He said he had no idea of what the document was supposed to be. In cross-examination, he accepted that this was simply not true and that his denial of having taken the document (by way of a photograph) was untrue.

(3) He also accepted that the statement that in May 2014 he received an email from Mr Easton that being "after a few years of no contact" was also untrue.

(3) Findings

677. I am satisfied that Mr Easton was seeking to win business for AMM/APC from Erasteel and that this included winning it from MVA. I am satisfied that Mr Freddie Robinson knew about this. He accepted that he knew he (or rather Sovereign) was providing material which went to Erasteel through Mr Easton's new company. I am not satisfied that there was a general conspiracy between Mr Freddie Robinson and Mr Easton to use unlawful means to damage MVA's relationship with Erasteel. Indeed, I find that Mr Easton's main drive was not to damage MVA but rather to further his own interests through APC and AMM.

678. I am also satisfied that Mr Easton moved some scrap into MVA sourced material at the Erasteel premises though I am unable to be satisfied that it was more than a few pieces or that it was significant. As regards this matter, I am satisfied that it was an attempt by Mr Easton create trouble for MVA with Erasteel and to induce a breach of contract by Erasteel of its contract with MVA. However, to establish this tort La Cotte has to establish that the actions in question did in fact induce a breach of contract by Erasteel. I will deal with that issue later in this section.

679. I am not satisfied that Mr Easton's moving of the scrap was anything to do with Mr Freddie Robinson or made pursuant to any agreement or combination with Mr Freddie Robinson or that Mr Freddie Robinson was, at least at that stage, in any form of combination with Mr Easton whereby it was understood that Mr Easton would be using unlawful means to damage the position of MVA. Accordingly, even if there is any liability of the Defendants in this case it will be that of Mr Easton alone and not that of Mr Freddie Robinson or Sovereign.

680. As regards the taking of the photograph of the legal letter, I am satisfied that this was done not just through nosiness but that it was effected because Mr Freddie Robinson was aware of Mr Easton's interest in the relationship between MVA and Erasteel and was eager to receive any relevant information that might assist him in in his (Mr Easton's) own dealings with Erasteel. Knowledge of relations between Erasteel and a main competitor of Mr Easton could be very helpful. The circumstances, in my judgment, point strongly to the photograph being taken at the time with a view to telling Mr Easton about it or providing it to him. I do not accept Mr Freddie Robinson's evidence that handing it to Mr Easton just arose later on, in a casual conversation, by chance and that as he happened to have the photograph he made it available to Mr Easton.

681. As I have explained in more detail when dealing with the issue of the meeting in about August 2013, I am also satisfied (again contrary to Mr Freddie Robinson's evidence) that the issue of the taking of the lawyer's letter (by means of taking a photograph) was raised at that meeting. It is consistent with his statement to the police (where he raised the point that there had been such a meeting and the point had been put to him at such meeting but where he denied in the s9 Statement that he knew what was being referred to and, implicitly, that he had taken the letter (by way of photograph)). The description given by other witnesses of the August 2013 meeting with Mr Freddie Robinson also supports my conclusion. Whether or not he apologised for this at the time is less material given he now accepts that he took the photograph. I do not consider that he did apologise for this as such. Had he done so, it would have been unlikely that he would have denied the matter so consistently thereafter.

682. I am also satisfied that the history of the photograph shows the relevant constituents of a breach of confidence as regards MVA, subject to the question of causal loss. However, leaving aside any difficulties about whether damages or equitable compensation is available for such a breach, as to which I was not addressed, it is clear that assuming damages/equitable compensation is recoverable in principle, there must be causal loss flowing from the breach of confidence in question. I deal with that later in this section.

683. As regards the photograph I am also satisfied that the elements of an actionable conspiracy between Mr Easton and Mr Freddie Robinson using unlawful means, subject to the question of causal loss, is also made out. In my judgment, it is likely that there was some form of agreement or understanding between Mr Freddie Robinson that he would keep a look out for and take any confidential information relating to Erasteel and MVA and provide it to Mr Easton for the latter to use, before he (Mr Freddie Robinson) took the photograph of the lawyers' letter.

684. I leave open the question of whether any liability would be of Mr Freddie Robinson alone or also that of Sovereign. I was not addressed by any party on that point.

685. I am also satisfied that any cause of action of MVA has become vested in the Claimant by assignment. I am not satisfied that La Cotte itself had its own cause of action separately from any assignment.

686. No limitation issue arises.

687. So, at the end of the day, the issue is whether the mixing of scrap or the taking and use of the photograph can be shown to have caused loss to MVA.

688. I am not satisfied that there was any loss (in terms of a downturn in business between Erasteel and MVA) as a result either of any use made of the illicitly obtained photograph or the alleged mixing of grades of material by Mr Easton. Even if there was a downturn in the volume of business I cannot be satisfied that that was due to the matters complained of rather than to price movements in the market and between suppliers and/or demand by Erasteel and/or Erasteel's dissatisfaction arising from earlier complaints regarding supplies by MVA.

689. As regards the photograph, Mr Stuart was open at the start of the proceedings and fairly accepted that he was unable to identify any causal loss flowing from what I have now held to be a breach of confidence (and/or pursuant to a conspiracy between Mr Easton and Mr Freddie Robinson). There is simply no evidence as to how the letter was used by Mr Easton and no reason to think that showing it to Erasteel, or Mr Easton otherwise referring to its contents, would in someway have damaged MVA's relations with Erasteel. The absence of causal loss also applies to the issue of the mixing of materials by Mr Easton.

690. In the first day of opening the case, Mr Stuart seemed to accept that causal loss flowing from the alleged mixing of metals and from the taking and use of the photograph was necessary to be proved and that it could not be made out:

> "*JUDGE DAVIS-WHITE: Can I just ask you, there's circumstantial evidence that he is up to no good, but there is no actual cause of action in damages that you can identify arising from it because you can't identify any causal loss, is that right?*
>
> *MR STUART: Not directly from the letter. We can show and plead that we lost some, well, a huge part of our business with Erasteel, our sales to Erasteel, but we can't show that the letter, we cannot show that the letter was -- we don't have evidence from a man at Erasteel who says, yes, he came along with this, with information about,you know, that he could only have known. And because of that*

-- we don't have that, no I accept, my Lord, that is accepted. We had to sort of concede that when we were before your Lordship back in January, I think it was.

JUDGE DAVIS-WHITE: Okay.

MR STUART: So on that, my Lord, can I put it this way: even if your Lordship doesn't find any provable financial loss arising from the interference involving Mr Robinson and Sovereign in our Erasteel business, it is still part of, we say, part of the context and the circumstances in which you should consider the other two elements, the first two that I have taken you to, ie was Mr Easton and Mr Robinson in cahoots over the false account, and were Mr Robinson and Mr Easton in cahoots over diverting our Firth Rixson contract? We say that even what they go on to do –

JUDGE DAVIS-WHITE: Do you identify anything at all in terms of causal loss flowing from any wrongdoing by Mr Robinson or his company or partnership or any of the Defendants, leaving aside for a minute David Easton, do you identify any loss flowing from that, from anything he has done in relation to Erasteel, which you say in these proceedings you are entitled to damages for?

MR STUART: The answer is, as I say, no. Our evidence on Erasteel is that we lost business with Erasteel, we lost it in part to AMM, in part, not entirely by any means. We don't know, we can't say precisely how and when --

JUDGE DAVIS-WHITE: I understand that, but it also follows --

MR STUART: -- we have real evidential difficulty in proving specific loss.

JUDGE DAVIS-WHITE: Please stop talking over me, Mr Stuart.

MR STUART: I am sorry.

JUDGE DAVIS-WHITE: My question is does that mean also, as regards Mr Easton, that there is no causal loss in relation to him attempting to mix the metal at the site of Erasteel? You can't show that that caused the contract to be diverted or for you to lose the contract?

MR STUART: No, again we can't, no -- I don't want to talk over your Lordship, but, no, we can't show the direct causal chain in what your Lordship has just described.

JUDGE DAVIS-WHITE: So there is no cause of action in relation to Erasteel against any Defendant that you are pursuing. You simply say it is circumstantial evidence showing that they are "crooks" and therefore I should take that into account when assessing their evidence and/or what it is said they did in relation to other matters?

MR STUART: My Lord, the answer to that question is yes. I hesitate only because I haven't yet got instructions to formally serve a notice of withdrawal of a claim in relation to Erasteel, ie the cause of action part of what you have just said, and I am certainly not going to ignore the rest of it, but I have not yet formally -- but I hear what you say, my Lord, and I may have those instructions by tomorrow.

JUDGE DAVIS-WHITE: I understand you are not formally withdrawing it, but at this time you can't positively put forward any case of a cause of action that your clients can bring sounding in damages because you can't identify any causal loss.

MR STUART: That is right, I can't identify the causation of specific financial loss arising from the things which we can prove happened, but we can't prove that intermediate link of showing those things that happened caused the financial loss."

691. On the second day of the trial, Mr Stuart announced that his client was not discontinuing the case regarding Erasteel but that he would clarify his position later that day. I made clear the approach that I was taking as set out below:

> "*JUDGE DAVIS-WHITE: ..... But I want to make absolutely clear, as I think I said yesterday and I am now in danger of using different language, but it is really what I said yesterday, which is that my understanding was that you were not able to advance a positive case that there was any causal loss at all and that is the basis, flowing from in relation to the matters alleged in relation to Erasteel, and therefore the tort cannot be made out. And in those circumstances, as a matter of case management, that is the basis on which Mr Lewis is cross-examining and proceeding at the moment. As and when you seek to either clarify change or modify your position, we will see what it is."*

692. As far as I am concerned matters were taken no further before the closing of La Cotte's case and Mr Andrew Hobson, who gives some evidence as to the alleged Erasteel loss, was not cross examined about it given Mr Stuart's stated position.

693. In his written closing submissions, Mr Stuart relied upon Mr Andrew Hobson's written evidence which he said was to the effect that MVA had to settle for less than it was due on the Erasteel order and that La Cotte claims damages to be assessed estimated at £30,000.

694. In his written closing Note, Mr Lewis dealt with Erasteel in two short paragraphs (out of 233) saying that the photograph "transpired to be a point to nothing" and inviting me to find (to the extent it was necessary to make any findings at all) that the photograph was taken out of misplaced curiosity and was later mentioned in passing to Mr Easton who asked for a copy. I have rejected that invitation.

695. On considering Mr Andrew Hobson's statement again, my initial impression was confirmed. I am not satisfied that any causal loss is made out. I also do not accept the submission of Mr Stuart (as I understood it) that I can find at least some nominal loss and either grant declaratory relief and/or award nominal damages.

696. As regards the alleged mixing of metal he asserts (without more) that this resulted in the refusal to pay which was the subject of the lawyers' letter of which Mr Freddie Robinson took an illicit photograph. Mr Andrew Hobson says that well over $1 million

was held back. In fact the lawyers' letter seems to refer to a complaint about a recent amount of stock being used as a reason for not paying for stock that was delivered much earlier. However, Mr Andrew Hobson goes on to say that, following a meeting with Erasteel and its English lawyers, a compromise was reached under which MVA was forced to settle for less than it was owed because of legal advice regarding "*Jurisdictional issues pertaining to the contract*". He said that he only compromised because of what he was advised were jurisdictional issues and otherwise he would not have settled for a £1 less than what he was owed because he managed to prove that the material met Erasteel's specification.

697. I am not satisfied that the dispute revealed by the lawyer's letter was indeed triggered by the alleged mixing by Mr Easton. But in any event and in the light of Mr Andrew Hobson's evidence about the compromise, I am not satisfied that there was any breach by Erasteel of contract nor that any loss that MVA suffered was a result of the mixing of material by Mr Easton. It is notable that the loss is estimated at £30,000 and that La Cotte has not even demonstrated (or put forward) the difference between the settlement figure and the sum that it says it was owed.

698. As I have already explained, I reject the submission that I should grant declaratory relief or order nominal damages. There is no point in having an inquiry as to damages on either head because at this stage no economic loss had been identified and there is no reason to think it might be.

699. The manner in which Mr Andrew Hobson puts the matter shows the passion of his feelings but also how the case put forward by La Cotte suffers from lack of focus. As regards the Erasteel alleged loss which I have just discussed he says:

> "*I only suffered this loss as a direct consequence of the present collusion by Easton and Freddie but which I regard as part of a larger historical and treacherous plot between the two of them that dates back to 2011, if not before."*

700. In a passage a little later, but still under the heading "Erasteel" he concludes:

> "*I feel utterly betrayed and sick to the stomach when I read about Freddie's actions in his disclosure, confirming he was conspiring against me/MVA and all parties that trusted him,. And I can only surmise on the basis of what I have seen, discovered myself, and told by 3rd parties, that he will have been playing the same dishonest and duplicitous game throughout our working relationship and afterwards*".

701. Unfortunately, this feeling has infected the entire La Cotte case and camp of witnesses such that they have been unable to take an objective view and to identify the need for concrete accurate evidence rather than surmise.

Hand down of Judgment

702. When circulating a draft of this judgment, I indicated that I intended to hand it down under the Covid protocol so that there need be no attendance. I allowed a week from circulation of this draft to the proposed hand down to enable the parties to consider the draft and to put forward corrections. A final form of order has not been capable of

agreement. In the light of correspondence from the parties, I shall adjourn the form of order and all other consequential matters (including permission to appeal) to a further hearing with a time estimate of half a day, to be held remotely through CVP. In the meantime I extend the time for filing a Notice of Appeal until 21 days after the making of an order on the further hearing. I also direct that not less than 7 clear days before such hearing each party shall serve and file a letter indicating whether it intends to appeal and, if it does, enclosing draft grounds of appeal.

703. I have not addressed each one of the myriad of issues which faced me at the start of the trial. In some cases I have rested on the principal facts found by me rather than exploring each one of the possible fall back arguments that the Defendants might have. However, if it is considered that there is some issue which I still need to decide I will consider further submissions on the point and, if necessary, consider delivering a supplemental judgment.

704. I apologise to the parties of the length of time it has taken me to produce this judgment and also for giving an earlier indication that I hoped to have this judgment available for circulation at an earlier date which, in the end, proved not to be possible. I can only explain (but not excuse) on the basis of the other commitments that I have.