Neutral Citation Number: [2022] EWHC 3359 (Ch)

Case No: CR-2019-LDS-000669

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

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

Date: 23/12/2022

IN THE MATTER OF PORTBOND LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

Before :

HH JUDGE DAVIS-WHITE KC

- -

Between :

LISA PICKERING	**Petitioner**
- and -	
(1) JOHN ROBERT HUGHES	
(2) JAMES CHARLES HUGHES	
(3) CHARLES ARTHUR HUGHES	
(4) PORTBOND LIMITED	
(5) LONDON WIPER COMPANY LIMITED	**Respondents**

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Mr Richard Wormald KC and Mr Oliver Phillips (instructed by **Thomas Mansfield Solicitors Limited**) for the **Petitioner**
Mr Robert Mundy (instructed by **Geldards LLP**) for the **1st to 3rd Respondents**
The 4th and 5th Respondents did not appear and were not represented

Hearing dates: 10 June (reading), 13 June 2022, 27, 28 June 2022

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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.

.....

HH JUDGE DAVIS-WHITE KC (SITTING AS A JUDGE OF THE CHANCERY DIVISION)

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30am on 23 December 2023

HH Judge Davis-White KC :

Introduction

1. For convenience I set out some of the main headings in this judgment by way of index:

2. These proceedings address only one area of a number of bitter family disputes. They are but one of a number of sets of legal proceedings between members of the Hughes' family. Within these proceedings there have been many applications which should not have been necessary. In short, the parties are hunkered down in legal trench warfare. The case has been referred to as taking place against a backdrop of a story, literally, of "from rags to riches". These proceedings are part of the fight over the riches, or perceived riches.

3. The petition is presented by Lisa Pickering, the sister of the first respondent, John Hughes. She is also the daughter of the third respondent, Charles Hughes. The second respondent, James Hughes, is the son of the first respondent. I refer to the first to third respondents as the "Relevant Respondents". In considering allegations made against the Relevant Respondents I usually refer to the Relevant Respondents without differentiating between them and the expression should therefore be treated as including one or more of them as individuals.

4. One set of proceedings between family members, concerning the ownership of various properties, (the "Property Proceedings") was determined by Mr Andrew Lennon KC (sitting as a Judge of the Chancery Division). He handed down judgment on 18 June 2021 (*Pickering v Hughes* [2021] EWHC 1672 (Ch)).

5. Two further sets of proceedings involve another Hughes' family company, Caprina Trading Limited (and its subsidiary Caprina Limited). I expand briefly upon those two companies later in this judgment. The other proceedings that are ongoing are a petition presented by Lisa Pickering on 9 November 2021 pursuant to s994 of the Companies Act 2006, alleging unfairly prejudicial acts or omissions by Caprina Trading Limited or unfair prejudice in the conduct of its affairs. Separately, there are Part 7 proceedings issued by Lisa Pickering on the same date seeking to establish a beneficial right to 50% of the ordinary share capital in Caprina Trading Limited. She also holds certain "B" Shares in Caprina Trading Limited.

6. The current proceedings are brought pursuant to s994 of the Companies Act 2006 alleging unfair prejudice to the interests of the petitioner as a member of Portbond Limited ("Portbond"), the 4th respondent. The 5th respondent, London Wiper Company Limited ("LWC") is the wholly owned subsidiary of Portbond (together the "Companies"). It is alleged that the conduct of LWC's affairs formed part of the conduct of Portbond's affairs as parent company.

7. The petition was presented to the court on 7 June 2019. The petition was amended following each of the Companies having been placed into administration and a pre-pack sale by the administrators having taken place in October 2020. The relevant case of unfair prejudice said to arise in connection with these matters was originally set out in Points of Reply. A court order was made in effect requiring such a positive case to be set out in the Petition. As a result the Petition was amended to raise such a case.

8. In closing, the Petitioner sought further to re-amend the petition. For convenience and unless the context otherwise requires, I refer to the "Petition" as being the one in its amended form, after the amendments following from the raising of the case in relation to the administrations and pre-pack sale but without the re-amendments put before me.

9. Section 994 of the Companies Act 2006 ("CA 2006") enables the court to grant relief where a member of a company is able to establish that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or that an actual or proposed act or omission of the company is or would be so unfairly prejudicial. In this case, I am only concerned about past conduct of the affairs of Portbond or past acts or omissions of Portbond. For convenience, I refer in this judgment to unfair prejudice or matters amounting to unfair prejudice as short-hand for the precise formulation used in s994 CA 2006, namely conduct of the company's affairs or an act or omission of the company which is unfairly prejudicial to the interests of the members generally or some part of its members.

10. As I have said, Portbond and LWC are now in the insolvency process of administration. Their assets and businesses have been sold in a "pre-pack sale",

which I explain in more detail later in this judgment. These events took place after the Petition had been presented and the proceedings were well underway.

11. LWC was, in the main, the trading company. It traded in scrap metal under the trading name "Universal Recycling Company" or "URCO". It was primarily a waste metal processing business, specialising in the recycling of cables, and waste electrical and electronic equipment (WEEE) scrap (the "Business"). The Business operated from a seven-acre site in Mexborough, South Yorkshire. This site was leased. The freehold was (and is) owned by Hughes' family members, as I shall explain later in this judgment. It is registered at HM Land Registry under title number SYK95230 and I shall refer to it as the "Kilnhurst Site".

12. Although the main trading company, the two Companies' affairs and management were closely intertwined. When, in the years leading up to the administrations, Grant Thornton reported on the financial situation to the Companies' bankers (Barclays Bank plc) (the "Bank"), it treated the two Companies as one entity.

The Disputed Strip

13. There is a further strip of land which was referred to before me as the "ransom strip". It is registered with title SYK669453. That strip of land is a strip of land which borders (and fits between) the southern boundary of the Kilnhurst Site and the northern boundary of a housing development built by Ben Bailey Homes Limited. There is vehicular access road to the Kilnhurst Site over part of this strip, towards its eastern end. The access road runs through the housing development and crosses the strip to the Kilnhurst Site. The Kilnhurst Site has the benefit of a legal right of way over the access road. This provides the only access to the Kilnhurst Site. So far as the Kilnhurst Site is concerned therefore the strip is **not** a ransom strip in the usual sense of the word because of the legal right of way that exists. The strip also contains a 3-metre high earth bund and a 4-metre high acoustic fence, built pursuant to a planning condition by Ben Bailey Homes Limited.

14. There is a dispute between Lisa and the Relevant Respondents about ownership of this strip. Title to the strip was registered in the name of John pursuant to a transfer from Avant Homes Limited in February 2019. John then sold the strip as part of the arrangements entered into at the time of the pre-pack sale.

15. Beneficial ownership of the strip by either Company, at any time, is not asserted by anyone. Rather, the potential beneficial owners are members of the Hughes' family. Through her solicitors, Thomas Mansfield Solicitors Limited ("Thomas Mansfield"), Lisa, as executor of her mother's estate, sent a letter dated 16 December 2021 to Charles' and John's solicitors enclosing draft particulars of claim.

16. As I understand it the substance of Lisa's allegations is, in brief, as follows. Charles (her father) and Nora (her mother) were trustees of the Kilnhurst Site. They had agreed in principle to buy the strip. However, Charles, in breach of trust, wrongly diverted the opportunity to buy the land to John. John received such land as constructive trustee, knowing of the breach of trust and/or dishonestly assisting in it. John subsequently sold the strip to the same company as bought the relevant business and assets under the pre-pack sale, Remet Processing Limited. As such, John and Charles are liable to Nora's estate and John also holds traceable proceeds of the strip

on trust for the estate. Such proceeds include shares in Remet Processing Limited ("Remet Processing"), the purchaser under the pre-pack sale. I do not understand proceedings in relation to the strip to have been issued, at least at this time.

17. For completeness, I summarise John's case regarding the strip. He says that it was agreed (by way of a "gentleman's agreement") in about 2005 by Ben Bailey, of Ben Bailey Homes Ltd, that the strip would be transferred to LWC as part of a finder's fee for John having put Ben Bailey Homes Ltd in touch with someone selling a plot of land. Lisa did not want LWC to acquire the land, arguing that it would be another liability for LWC to take on (particularly by reference to the need to maintain the structures on the strip). Accordingly, Charles said that he would take the transfer of the strip and Lisa was content with that course. The transfer was not formally completed until title to the strip was transferred to John in 2019 by Avanti Homes Limited, with the agreement of Charles, Charles then being concerned that given the then disputes with Lisa and his age, it would be better to deal with the matter in that manner.

18. I shall refer to the strip of land as the "Disputed Strip" because the beneficial ownership of it is disputed. I have not use the term "ransom strip" because that seems to have been used as an emotive term to give the impression that ownership of the strip by the Companies or the Hughes' family was, at relevant times, crucial to ensure access to the Kilnhurst Site whereas in fact such access is secured by an existing and long standing registered legal easement.

19. By October 2020, in addition to the trading business, the Companies owned: a number of residential properties, 70 acres of farmland and seven acres of industrial space adjacent to its own operations that was, at all material times, and is, occupied by a third party. By October 2020, the Companies employed about 40 persons in the Business.

20. After the petition in this case had been presented on 7 June 2019, each of the Companies was placed into administration by its directors in October 2020. Each company is insolvent.

21. The scale of the insolvencies of the two companies is indicated by the relevant reports of the Administrator(s). The most recent reports, the last of which is dated 2 November 2022, and covers the 6 months ending on 6 October 2022, envisages an anticipated outcome in the insolvencies as follows:

    i) The Bank, a secured creditor of both Companies, will not receive a full return of its debts from the Companies but the shortfall will be made up by way of third-party security granted to the Bank.

    ii) As regards unsecured creditors, it is anticipated that unsecured creditors will receive a sum by way of a distribution of the "prescribed part", that is the sum which is set aside from the realised assets subject to a floating charge and made available to unsecured creditors of the company in question in accordance with s.176A of the Insolvency Act 1986. However, no further distributions to unsecured creditors are anticipated.

iii) Unsecured creditors of LWC are anticipated to receive a payment by way of dividend of 4p in the pound by way of a distribution of the prescribed part.

iv) Unsecured creditors of Portbond are anticipated to receive a payment by way of dividend of 46p in the pound by way of distribution of the prescribed part.

v) It is unlikely that there will be sufficient funds to make a distribution to unsecured creditors (other than by virtue of the prescribed part) and therefore it is intended to exit the administrations and move to dissolution.

vi) Unsecured claims that have been received by the Administrator amount to £113,497 in respect of Portbond and £5.6 million (including a claim by Portbond) in respect of LWC.

22. The Companies played no active role in the trial before me. As a result of the Companies entering administration all legal proceedings against them were automatically stayed (see Insolvency Act 1986, Schedule B1 paragraph 43). Disclosure orders were, however, made against the Companies.

23. At the commencement of the trial, I considered that the proceedings should continue against the Companies so that there was no question that they were bound by my findings. However, I considered that no relief should be sought against either Company without further permission of the court. Accordingly, I granted permission for the proceedings to continue against the Companies on those terms, such order being served on the remaining administrator. He of course had the right, on behalf of the Companies, to apply to set aside or discharge such order within 7 days of service of such order as it had been made of the court's own motion. No such application was made.

Representation before me

24. Mr Richard Wormald KC, leading Mr Oliver Phillips, appeared for the Petitioner. Mr Robert Mundy appeared for the first three respondents (the "Relevant Respondents"). As I have said, the fourth and fifth respondents were not represented and did not appear.

25. I am grateful to both Counsel teams for their helpful written and oral submissions, and the additional trial aid documents that they prepared during, and indeed after, the trial itself.

26. I should also record my thanks to Thomas Mansfield, for their management, I am sure in co-operation with Geldards LLP (solicitors for the Relevant Respondents), of the paper and electronic bundles that were used during the trial, and documents as they appeared during the trial. It was, however, unfortunate that the correspondence, in particular, was not arranged chronologically but was scattered across a number of the files and that although there was an apparent basic structure to the files, containing what I am told contain over 15,000 pages, it was not always easy to locate documents.

The direction for a split trial and the trial before me

27. The trial before me is in effect the hearing of the first part of a split trial. As formulated by a consent order containing agreed directions:

> *"7.1 The first trial shall determine all issues save for the valuation of the shareholding in the Fourth and Fifth Respondents. For the avoidance of doubt the issues to be determined at the first trial shall include all questions relevant to the basis on which any such valuation is to be conducted."*

28. In fact, that is not the basis upon which the trial before me was conducted. The agreed direction appeared to assume that, if unfair prejudice was found, then a share buy-out order would necessarily be the relief that the court would grant. Indeed, the consistent submissions of the petitioner seemed to be based upon this assumption. However, a share buy-out on the establishing of relevant unfair prejudice does not follow automatically, either as a matter of generality nor in relation to the facts of this case. A share buy-out is but one of the orders (even if the most common one) that court may make to grant appropriate relief.

29. It may well be that, in many cases, it is agreed, or fairly obvious, that, if established, unfair prejudice will result in a share buy-out order. An order that makes clear that valuation of a shareholding (if it arises) will be left over for a separate trial will be sensible in most circumstances. Questions may arise, however, as to what determinations the court may be able to make at a first trial about the parameters of such a valuation (for example, whether a shareholding should be valued as a minority holding or as a proportionate part of the value of the entire issued share capital or the date at which the valuation is to be taken) if the order for a split trial is drawn without care. In this case, however, even if unfair prejudice is established there is a very real question as to what the appropriate remedy should be.

30. In this particular case, there are features of the case which are, perhaps, slightly unusual.

31. First, this is not alleged by the petitioner to be a case where either Company was what is often referred to, for convenience, as a "quasi-partnership" company. That is one where the exercise of the legal rights of shareholders set out in the constitution of the company (as supplemented by general company law, both statutory and at common law) may be subjected to equitable considerations arising from the specific relationship between the parties, usually of a quasi-partnership nature. A breakdown in a "quasi-partnership" relationship in the context of unfair prejudice applications, may not solely be relevant to the question of (for example) the basis of any valuation of shares on a share buy-our order but may also to be significant in determining the appropriate relief and even whether or not unfair prejudice is established.

32. Secondly, in this case the Companies are in an insolvent administration regime. That immediately raises issues as to whether the petitioner, as a member, has any sufficient financial interest in the Companies so as to justify relief being granted, assuming she makes out a case of unfair prejudice. In general, in circumstances where a company is insolvent, a member alleging unfair prejudice under s994 Companies Act 2006 and an entitlement to relief, will have to show that her shares would have had a value but for the wrongdoing of the respondents (see *Re Tobian Properties Limited* [2012] EWCA (Civ) 998; [2013] 2 BCLC 567). Looked at another way, there may be a question whether any alleged unfair prejudice, assuming it is made out and is unfair, actually prejudices a member rather than the company's creditors.

33. Further, there are complications arising from the fact that the alleged unfair prejudice in this case falls into two main categories.

34. First, there are said to be acts or omissions of Portbond or the conduct of its affairs (and that of its subsidiary) which unfairly prejudice the petitioner's interests as a member which took place before those Companies entered into administration. These involve allegations (and the following list is not comprehensive) regarding the removal of herself as director and employee; the removal of her son as employee; the initiation of an investigation into her drawings from the Companies and the subsequent initiation of proceedings against her in respect of such drawings; the alleged stealing of stock (or the cash proceeds of sales of stock) from LWC by one or more of the Relevant Respondents; payment of items of personal expenditure of the Relevant Respondents; what is said to be excessive salaries in favour of the Relevant Respondents and/or their partners; and drawings by the first to third respondents on loan account when no drawings were made for, or dividends paid to or/for the petitioner's benefit.

35. Secondly, there is a raft of allegations of unfair prejudice arising from and in connection with the putting of the Companies into administration, which then resulted in a pre-pack sale by the administrators. These include an allegation that the Relevant Respondents conducted the process based solely in their own self-interests and with the aim of excluding Lisa from any benefits under the pre-pack sale and associated transactions which, it is said, they benefitted from.

36. In connection with the allegations that I have just outlined, I should make clear that some of them are not made in the Petition in the form that it stood at the opening of the trial. Effectively and in closing, the Petitioner sough to further re-amend her petition to bring in new allegations.

37. The parties before me accepted that the question of relief might well depend on which allegations of unfair prejudice are established, if any are, and that there may also be a need to consider the issue raised in *Re Tobian Properties* as to whether, assuming unfair prejudice is established, one or more further hearings are justified to deal in more detail with issues of quantification and/or of appropriate relief flowing from the fact of the apparent insolvency and therefore lack of value of the petitioner's shares.

38. Accordingly, I indicated that in this judgment I would focus primarily on the issue of whether unfair prejudice had been established and, if it had, I would then consider to what extent I could determine the issue of appropriate relief without further submissions tailored to the findings that I come to. As indicated in the Court of Appeal decision in *Re Tobian Properties,* particular circumstances may need the court to be flexible in deciding which issues are to be decided at which stage where there has been ordered to be a split trial.

The Hughes' family and an overview of some of the Hughes' businesses

39. For convenience, but with no disrespect intended, I use the first names of the family members as they were used before me. In this respect, I should explain that Charles Hughes is also sometimes referred to as "Charlie" but to distinguish him from Charlie Pickering and, as a convention adopted by Counsel, I have used "Charles" when referring to Charles Hughes and "Charlie" when referring to Charlie Pickering.

40. Certain portions of the narrative below are taken from a judgment of DJ Bond dated 23 March 2022 in the s994 Petition brought by Lisa in respect of Caprina Trading Limited (and also involving allegations concerning its subsidiary, Caprina Limited). I indicate such passages thus: "(DJB Judgment)".

41. I have set out in outline below details of certain other Hughes' family companies because they occasionally feature in connection with either the narrative of events or specific allegations.

42. The petitioner, Lisa Pickering ("Lisa") is the daughter of Nora Hughes ("Nora") and Charles Hughes ("Charles"), the third respondent. Nora was born in 1930. Charles in 1929. They married in 1982 and separated in the 1990s. Nora sadly died on 25 October 2017. This was in the midst of disputes about some of the matters before me.

43. After their separation, Nora and Charles remained on speaking terms. They continued to work together in, or in relation to, various family businesses and continued to own a number of properties together.

44. Nora and Charles had three children. John Hughes ("John"), the first respondent, is the oldest, born in 1958. Lisa is the middle child, born in 1961. David Hughes ("David") is the youngest child, born in 1969. He is not a party to these proceedings, but he gave evidence for Lisa before me.

45. John married Lorraine Hughes in 1979. Their eldest son, John, sadly died in 2005. Their daughter, Jodie, was born in 1985. Their third child, James Hughes ("James"), born in 1988, is the second respondent. Lorraine and John have lived apart since 2005 but remain on good terms.

46. Lisa married Peter Pickering in 1988. They had a son, Charlie Pickering ("Charlie"). Lisa and her husband separated in about 1994. Matrimonial proceedings were commenced but not concluded at the time of Peter's death.

47. Charlie gave evidence for Lisa before me. He was employed by LWC between about 2008 until he was dismissed in about May 2018. It is said that his dismissal involved relevant breaches of duty by the directors in that it was effected for an improper purpose: to hide the misconduct of the remaining directors and to prevent him from reporting on it to Lisa. His removal is said to have caused loss and damage to LWC in terms of the legal costs incurred and the settlement paid to Charlie.

48. Nora and Charles are, in effect, the founders of what was, for many years, the successful business run by LWC. Prior to establishing LWC, Nora and Charles had worked together in the rag trade in Bow in the East End of London before branching out into other businesses including (among others) wholesale rag and metal, scrap metal, property and haulage businesses.

49. "*In the 1960s Charles and Nora ran a business known as C & N Wholesale Rags. On 12 May 1964 they incorporated C.& N. Hughes (Wholesale Rags) Limited ('Wholesale Rags') and ran that company with their business partner*" (DJB Judgment).

50. In about 1968, Nora moved with the children to Doncaster to develop a scrap metal and rag yard business there. Initially, Charles remained working in London.

51. "*In the late 1970s Charles and Nora personally bought 455 Wick Lane, Bow in London's east end. Wholesale Rags used the Wick Lane property as its trading premises. In around 1979 Charles and Nora bought Tilts Hill Farm in Doncaster, a substantial part of which was given over to a caravan park*" (the "Caravan Park") (DJB Judgment).

52. The properties from which the Doncaster scrap metal business operated were the subject of a compulsory purchase order in 1973. Notice to treat was served in January 1976. Possession was obtained in November 1981. Until the local authority took possession the business continued to operate from the premises. There was then a legal dispute regarding the compensation payable which was eventually resolved by a decision of the House of Lords in December 1990 (see *Hughes v Doncaster Metropolitan Borough Council* [1991] AC 381). Once possession was taken, the Doncaster-based business was essentially terminated. However, what eventually became substantial compensation was paid for the loss of the premises and the business. The goodwill of the business and some of its assets were acquired by a successor family company, JLD Metals Limited. Nora became semi-retired from the family business on the sale pursuant to the compulsory purchase order.

53. JLD Metals Limited was incorporated in 1980. It operated as a scrap metal trading company. It later acquired the business and assets of a company called Brookside Metals in Newcastle Upon Tyne and operated from there, the premises coming to be owned by its holding company. The initial shareholders, Lisa says, were the three children, John, Lisa and David. John and Lisa were initially directors (David being too young at that stage). Lisa took up the role that she was to take in other family companies, namely being responsible for the accounts department while her brothers were involved in the day to day running of the business, John being the overall manager.

54. Charles and Nora, as I have said, were married in 1982.

55. "*Caprina [Limited] was incorporated on 21 July 1986 for the purpose of acquiring Charles and Nora's interest in Wholesale Rags following the death of their business partner. ….On 30 April 1987 Caprina* [Limited] *acquired the Wick Lane property from Charles and Nora."* (DJB Judgment).

56. "*In 1989 Caprina* [Limited] *sold the Wick Lane property. To mitigate what would otherwise have been a large capital gains tax liability two further transactions were entered into. First, Caprina* [Limited] *agreed to purchase the caravan park at Tilts Hill Farm from Charles and Nora…. The transfer completed on 1 April 1992, although it appears that the monetary consideration may never have been paid. Secondly, Charles and Nora acquired the assets of a third-party waste disposal business through a new company incorporated on 17 January 1991 called Preston Cable Granulation Limited ('PCGL'). Charles and Nora were directors of PCGL and each held one ordinary share in PCGL.*" (DJB Judgment).

57. JLD Metals Limited and its holding company were placed into administrative receivership in 1992, as I explain later in this judgment.

58. From about 1993/4, Caprina started using Preston Cable Granulation as a trading name.

59. Nora and Charles separated in the mid 1990's. Mr Lennon KC described the relationship between them as follows:

> "*17…..After raising their family, Nora and Charles married in 1982 and lived together until 1993 after which they lived apart although they remained on reasonably good terms until 2015.*
>
> *18. Nora's relationship with Charles was a strained one because of Charles's extra-marital affairs over the years. Charles described his relationship with Nora as follows*:
>
> > "*Whatever else happened we had a bond. But I did feel guilty about the affairs and it meant that I tended to over-compensate in some ways. I would let Nora make the final decision about things in order that I had a quiet life. If it was a business decision or involved a large sum of money we would discuss together. But anything relating to my daughter Lisa, Nora decided and I would usually back down if I disagreed. She was the apple of Nora's eye. Nora would always stick up for her whatever she did".*

60. "*In the late 1990s PCGL got into financial difficulties. As a result Caprina gave an unlimited guarantee in respect of PCGL's bank borrowings and in 2000 Caprina agreed to acquire PCGL's business in consideration for an allotment to PCGL of 600,000 new B ordinary shares in Caprina."* (DJB Judgment).

61. From about 2001, Lisa worked at LWC with much the same role that she had had at JLD, namely responsibility for the accounts department and working as bookkeeper. In a letter from her then solicitor, Mr John Partridge, dated 14 April 2016 and replying to a pre-action protocol letter from Ansons, it was said that Lisa had worked as "the financial manager" of LWC. At this time, the accountants of LWC were John S Ward & Co LLP, the main individual there dealing with LWC matters being David Butler.

62. "*In 2003 PCGL went into insolvent liquidation. On 27 April 2005 PCGL (presumably by its liquidators) transferred half of its B shares in Caprina to Charles and half to Nora."* (DJB Judgment)

63. David fell out with Charles and John in about 2005. At about this time, he ceased to be involved with the family businesses and went his own way.

64. In 2006 Nora and Charles acquired the Kilnhurst Site.

65. On 16 October 2007, Caprina Trading Limited was incorporated.

66. "*In 2009 it was considered desirable, for reasons which have not been gone into, for* [Caprina Trading Limited] *to acquire the caravan park at Tilts Hill Farm. This involved a corporate reorganisation to enable the transaction to benefit from share for share exchange relief….. Apparently to that end, on 2 March 2009 a share for*

share exchange was effected and Caprina Trading Limited became the holding company of Caprina Limited." (DJB Judgment)

67. On 1 April 2010, Nora and Charles entered into a written lease agreement with LWC regarding the Kilnhurst Site. The rental amount payable was later increased by agreement. On the whole, the payment of rent was dealt with over the coming years through credits (viewed from the directors' perspective) to director's loan accounts. An account in this respect was part of the relief granted by Mr Lenon KC.

68. In 2011, Smith Craven replaced John S Ward & Co LLP as auditors of LWC and Portbond. Prior to this John S Ward & Co LLP had been carrying out the audit work and Smith Craven had been involved in assisting with payroll matters and monthly management accounts. At the relevant times considered further below, Mr Kelvin Fitton and Mr Paul Gregory of Smith Craven were giving general accountancy and related advice. Mr Gregory was also largely preparing and commenting on monthly management accounts which would involve him coming over to LWC's premises for a day each month. However, the annual accounts and audit side was, when it transferred to Smith Craven, handled by a separate team headed by Mr Andrew Cribb as senior statutory auditor. In effect, that section of Smith Craven took over the work previously carried on by John S Ward & Co LLP.

69. In early 2013 Lisa was diagnosed with breast cancer. The initial prognosis was poor. The cancer was multifocal and spreading rapidly. An operation to remove a tumour from her breast in August 2013 was only partially successful. Between about September 2013 and February 2014 she underwent chemotherapy. During that six-month period, apart from treatment days, she continued to attend LWC's offices every day and helped looked after her mother outside office hours. In about May 2014 she had a mastectomy on the right side and then follow-up radiotherapy in August and September 2014. Further related operations took place, as I understand it, in October 2014 and May 2015.

70. Lisa was briefly appointed a director of each of the Companies. She held that position for about 22 months between February 2014 and December 2015. In 2015, as described by Mr Lennon KC:

> "*there was a dispute between members of the family which led to it splitting into two "camps". The two camps comprise, on the one hand, Lisa, Nora and David, and, on the other, John and his immediate family and Charles."*

71. The fact of the family rift in 2015 is common ground. The reasons for it, and the circumstances of it, are not. In short, (and I will need to go into this area in a greater amount of detail) the Relevant Respondents say that the break down was caused by the discovery that Lisa had taken sums totalling in the region of about £582,000 from the Companies without authorisation. Lisa says that the drawings were made with her parents' full knowledge and approval and was consistent with family practice at the time, which was that sums would be withdrawn from the Companies by members of the family as they needed them and that there would then be appropriate adjustments to relevant loan accounts with the company.

72. Lisa, says that the case put up and said to justify her removal was because, in 2015, she discovered that John was selling stock of LWC off the books and keeping the sale monies for himself. These alleged sales forms the basis of one of her allegations of unfair prejudice. She says that, in response to this discovery, John and Charles came up with a strategy to exclude her and her son from any involvement in the Companies' affairs and that that included removing her as a director of each of the Companies and falsely making the allegations about her having taken sums from the Companies without authority. This conduct is also relied upon as conduct unfairly prejudicing her as a shareholder.

73. In fact, the Companies issued proceedings against Lisa on 28 December 2017 in the Business and Property Courts in Leeds. In those proceedings they claimed (among other things) repayment of just over £582,000 said to have been taken by way of unauthorised drawings as well as damages in a sum of over £89,000 and various heads of relief (the "Recovery Proceedings").

74. The Recovery Proceedings were issued after the death of Nora on 25th of October 2017. Under Nora's last will, made on 2 June 2016, Lisa was appointed an executor and the residual beneficiary, provided she survived Nora. In the event that Lisa predeceased Nora, the residue of Nora's estate was to be held on trust for Lisa's son, Charlie. Probate was granted solely to Lisa, with power reserved to the other executor.

75. Following her removal as director, Lisa asserts that the Companies continued to be used as family "piggybanks" but now for the benefit of John and his family rather than the family as a whole. This conduct, and the various acts involved, again, are said to amount to conduct/acts unfairly prejudicial to her interests as a member.

76. As I explain later in this judgment, between 2016 and 2020, Grant Thornton ("GT") was engaged on various occasions to advise about the financial position and financial problems facing the Companies and possible solutions to those problems.

77. In April 2019, John was diagnosed with oesophageal cancer. He started chemotherapy in June 2019. He went into hospital for an operation in September 2019 and was discharged in mid-December 2019.

78. John has also been found to suffer from lung damage which has left him with a greatly reduced lung capacity. In February 2020, he underwent a course of radiotherapy. He remains on what he has described as a cocktail of drugs and is unable to function properly without painkillers.

79. In March 2020, the Covid-19 pandemic began to effect the UK. The UK was placed into "lock down". That and other restrictions brought about by the pandemic impacted on a number of businesses, not least those of the Companies. GT and other professionals were called into to give various opinions and advice during that year. A process known as an Accelerated Merger and Acquisition ("AMA") was pursued during that year as a means of salvaging the Companies, or at the least their Businesses, and to do the best for creditors. I deal with the detail of the AMA later in this judgment.

80. In October 2020, the directors appointed joint administrators from GT and a pre-pack sale was entered into whereby the Companies' business and assets were sold to a company called Remet Processing Limited ("Remet Processing").

81. Remet Processing was a company in which John eventually held 45% of the shares and there were agreements to employ him and James as directors. Lisa complains that Charles, John and James "*drove the Companies into the ground*" and then engineered the pre-pack sale while keeping secret their interest or potential interest in Remet Processing. The result, says Lisa, is that John has been left with a 45% interest in the company which has the benefit of the on-going assets and business of the Companies whilst she has nothing. This, submits Lisa,

> "*amounts to a comprehensive stripping of the Companies' value in favour of John and at the expense of Lisa: a classic example of unfairly prejudicial conduct giving rise to relief in the form of a share purchase order, which is what Lisa seeks*."

82. On 15 January 2021, the Recovery Proceedings against Lisa were dismissed. This followed a letter of the Administrators to Lisa dated January 13 January 2021 confirming that they did not intend to pursue the claims in question. However, the claims against Lisa brought by the Companies were then largely relied upon by way of amendments made to the points of defence on the petition before me.

Portbond and LWC: Directors, shareholders and entry into administration

83. LWC was incorporated on 30 September 1987.

84. From very early days, each of Nora and Charles was a 50% shareholder of LWC. They each held one of its two issued shares of £1 each.

85. For many years, up and including the accounts for the seven-month period ending 31 October 2002, LWC filed dormant company accounts, showing LWC as having £2 of issued share capital and assets of £2. As at 31 October 2002, Nora and Charles were the two directors of LWC. They had been the two directors of that company for some years.

86. In respect of the year ending 31 October 2003, LWC filed abbreviated accounts showing it to have traded, with significant transactions with a related family company, Caprina Limited. The abbreviated balance sheet shows net assets of just over £85,000, with Caprina Limited being a creditor for just over £222,000. Fixed assets of just under £58,000 are shown, having been acquired in that year (the value takes into account a small disposal and depreciation).

87. Although not a director, Lisa was employed by LWC between about June 2005 to 31 August 2010, when Portbond became its holding company.

88. In September/October 2006, John became a third director of LWC.

89. Portbond was incorporated on 9 March 2009. It was on "off the shelf" company. The two issued shares were transferred one each to Charles and one to Nora in that year and Charles and John were appointed directors in November 2009. According to

Companies House, Nora was also appointed a director in November 2009, but the relevant filing was not made until 20 December 2012. She did not appear as a director on the annual return filed for the period ending March 2010. It seems likely therefore that she was only formally appointed in December 2012 but purportedly with retrospective effect.

90. On 1 September 2010, Portbond became the holding company of LWC. Two further shares were issued in consideration of the transfer of the shares in LWC. Nora and Charles then became the indirect owners of LWC through their respective ownerships of 50% of the issued shares of Portbond, being two shares each.

91. At this point, Lisa became an employee of Portbond until she was initially suspended (in November 2015) and then removed. From February 2014 she was a director of each of the Companies, again until removed in December 2015.

92. Consolidated accounts for Portbond and LWC for the period ending 31 October 2010 show that Portbond did not act solely as holding company but also owned and hired out plant and machinery. The consolidated accounts show Portbond as having some over £154,000 of plant and machinery in its balance sheet as at 31 October 2010. The consolidated accounts show a combined turnover of over £11.4 million, with a gross profit of just over £1.2 million and a net profit of just over £195,000 after tax. The accounts also show, on a consolidated basis, fixed assets of over £5.2 million (after depreciation) of which the vast majority (£3 million) was plant and machinery and some £1.5 million represented freehold land and buildings and some £184,000 represented short leasehold property.

93. Lisa is recorded at Companies House as having become a fourth director of each of LWC and Portbond on 7 February 2014.

94. In July 2014, LWC purchased the site next to the Kilnhurst Site. That site was known as, and I shall refer to it as, the "Redirack Site". The purchase price was just over £1.1. million. A Regional Growth Fund grant was obtained, with the assistance of Smith Craven. However, ultimately the project was not completed due to objections raised by the Environmental Agency.

95. In December 2014, Mr Fitton of Smith Craven provided a proof of evidence for use at a planning inquiry relating to an Enforcement Notice served on LWC. In that proof of evidence he gave a convenient summary of the nature of LWC's business:

> *"The Company trades in recycled ferrous (steel) and non-ferrous (copper, aluminium, lead, nickel, brass, bronze, stainless steel and catalytic converters) metals, including recycled aluminium (including aluminium profiles), electronic waste (WEEE) and cable (lead, jelly and copper). The Company process* [sic] *all of the aforementioned recovered materials on site, converting them into high quality granulated products such as PVC and copper granules."*

96. Lisa is recorded at Companies House as having ceased to be a director of LWC on 2 November 2015 and of Portbond on 11 December 2015. Although the relevant forms refer to her having resigned it is common ground that she was in fact removed.

97. James is recorded at Companies House as having been appointed a director of each of Portbond and LWC on 11 December 2015.

98. Companies House records show that Charles transferred his 2 shares in Portbond to John on 8 March 2016. It is not disputed that this transfer was by way of gift.

99. GT was initially introduced to the Companies through the Bank (in its capacity as secured lender) in April 2016.

100. In 2016 the Redirack Site was rented out to Mouldings Solutions Limited on a five-year lease.

101. On 21 April 2016, GT was engaged by the Bank and the Companies to carry out reviews of the then current financial position of the Companies and management's medium-term financial forecasts with a view to recommending a more suitable funding structure from the Bank; to consider the impact of any proposed revised funding structure on the cash and working capital position of the Companies; and to prepare an estimated outcome statement for the Bank illustrating its position in the event of a failure of the Companies.

102. The context of this engagement was reported in the relevant SIP16 statement[1] later prepared by the Joint Administrators and dated 9 October 2020, ("the SIP 16 Report") as follows:

> "*The context for the requirement of the work was that the Bank was becoming concerned regarding the cash position of the Companies and ultimately their debt servicing capacity. Key drivers for this were a significant (over 50%) fall in turnover in the five years to 31 October 2015, the loss of key customers, an alleged fraud to the value of c£1 million by a former employee, and deteriorating metal commodity prices*."

103. The resulting report was delivered in June 2016 and focussed on the Companies' request for an additional £2 million of banking facilities, which the report supported.

104. In July 2016, the Bank borrowings were re-arranged as follows:

(1) Sterling Loan term agreement (£2,900,000) dated 20 July 2016;

(2) Property Investment Loan agreement (£900,000) dated 20 July 2016;

(3) Trade Cycle Loan Agreement (£1,102,500) dated 25 August 2016.

105. Nora, as I have said, sadly died on 25 October 2017.

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[1] Statement of Insolvency Practice 16 ("SIP 16") applies in circumstances where, on a company entering administration, a "pre-packaged sale" occurs. That is one where there is an "an arrangement under which the sale of all or part of a company's business or assets is negotiated with a purchaser prior to the appointment of an administrator and the administrator effects the sale immediately on, or shortly after, appointment." In such circumstances, SIP 16 requires the Administrators to make a "SIP 16 Statement or report to creditors. I shall refer to such a sale as a "Pre-Pack".

106. Lisa is recorded at Companies House as being a person with significant control of Portbond on 14 August 2018. This was as a result of Nora's shares in Portbond being transferred to her by way of transmission under Nora's will.

107. On 1 March 2019, Charles assigned his beneficial interest in the Kilnhurst Site to John.

108. On 15 November 2019, GT was the subject of a further engagement by the Bank and Portbond. As well as conducting, in effect, a business review by reporting on and analysing cash flow forecasts and trading and balance sheet forecasts, GT was also engaged to report key points in relation to the proposed disposal of assets to the Remet Company Limited ("Remet"), including by reference to the Letter of Intent from Remet dated 30 October 2019 and any subsequent revised offer that might be received.

109. The resulting GT report was dated 15 January 2020 (the "Jan 2020 GT Report").

110. The background to the GT report was explained as being that the Bank wished to exit its relationship with the Companies and that it had asked the Companies to explore options that would allow all amounts owed to the Bank to be settled by 31 January 2020. A potential sale of the trade and assets of the business was said currently to be being explored by management. At that point, Remet had made an offer that would result in the Bank being paid but would not satisfy other creditors in full. An offer from Sims plc was anticipated and a letter of intent had been received. Management was confident that this offer would be higher than the Remet offer. The immediate question was whether, as recommended by GT, the Bank would provide further funding after 31 January 2020 to enable the sale process to be completed.

111. According to the SIP 16 Report, a continued deteriorating financial position of the Companies, compounded by the Covid pandemic, resulted in the further engagement of GT on 30 March 2020:

> "*to consider the ongoing viability of the Companies and the options available to the Directors and the Bank. The scope of this work was as follows:*
>
> > *• assess the Companies' current financial position, short term cash flow forecast and ongoing viability*
> > *• conduct a high-level contingency planning exercise; and*
> > *• update the estimated outcome statements previously shared with the Bank"*

112. GT delivered a further report described as "Contingency Planning" (the "May GT Contingency Planning Report") which included a letter of delivery dated 5 May 2020. The headline message contained in the "Executive summary" was as follows:

> "*The Group is unable to meet its liabilities as and when they fall due and is technically cash flow insolvent. Given recent (pre-Covid-19) trading, it is unlikely that is* [sic] *will be able to trade out of this once restrictions are lifted. We estimate that assets are sufficient to repay the Bank in full, even on a breakup basis, albeit this is heavily dependent on achieving asset valuations, around which there is material uncertainty*".

113. The report considered the various options available. These included a solvent winding down and members' voluntary liquidation; a going concern sale; an AMA; an AMA combined with a pre-pack; a closure administration and a creditors voluntary liquidation.

114. The ultimate conclusion was that:

> "*the Group is insolvent on the cash flow basis with no prospect of trading out of or reversing the position. The Directors should be mindful of their position in this regard and seek independent advice as appropriate.*"

115. The recommendations for the Group were as follows:

> *"• The Directors must therefore take proactive steps to manage the current situation for the benefit of all creditors, which given the financial position of the Group is their primary responsibility*
>
> *• In terms of options available, given the current financial position we are of the view that there is insufficient time or desire from Remet to execute a going concern sale. However, the Director should pursue this in short order to bring matters to a conclusion*
>
> *• Assuming Remet do not wish to or cannot execute, then we recommend the following steps:*
>
> > *• The Directors should engage* [GT] *to undertake an AMA process, as set out on page 24 with the conclusion of the process by the end of May 2020*
> >
> > *• The Directors and/or Shareholders should work with* [GT] *to identify potentially interested parties who may wish to acquire the business and assets, either on a solvent or insolvent basis*
> >
> > *• All parties should plan for an administration appointment in early June 2020, followed either by a pre-pack sale or a planned managed wind down, the viability of which should be considered as a contingency option during the AMA phase."*

116. The Directors, says the SIP 16 Report,

> *"concluded that the optimal solution for the stakeholders would be to pursue a sale of the Companies on an accelerated basis, be that on a share sale or business and asset sale basis. Grant Thornton was subsequently engaged by the Directors on 3 June 2020 to commence an accelerated sale process (AMA) for LWC."*

117. Various documents were prepared with professional assistance, including that of GT. The Companies, their business and assets were marketed.

118. In June 2020, the proposed sale was given the name "Project Copper." I deal with the detail of the circumstances in which a pre-pack sale eventually came about in October 2020 in more detail later in this judgment. The immediately following paragraphs summarise the outcome.

119. Various offers were received but, says the SIP 16 Report, by September 2020 the directors of the Companies had determined that a solvent solution was not feasible and instructed GT on 2 September to assist in placing the Companies into administration.

120. On 3 September 2020, an offer, subject to contract, was received from Remet Processing. A number of subsequent letters were received revising or stating the terms of the offer in more detail. On 15 September 2020, GT provided an analysis, including by way of estimated outcome statements, of the various options then considered to be realistic and which was provided to the Bank. GT backed the option of a pre-pack sale to Remet. Remet's offer involved an immediate cash offer encompassing the Companies' assets and business and the Kilnhurst Site.

121. On 7 October 2020, the directors of LWC and the directors of Portbond appointed Christopher Petts and James Bulloss of GT as joint administrators of respectively, LWC and Portbond (the "Joint Administrators").

122. On the appointment of joint administrators, a pre-pack sale (the "Pre-Pack Sale") was entered into under which the Administrators sold the Business and the assets of the two Companies to Remet Processing Limited ("Remet Purchasing"). In their proposals to creditors the Administrators, having set out the statutory hierarchy of the purposes of administration and having explained why they could not pursue the objective of rescuing either company as a going concern given the inability to find a purchaser for the shares in the Companies, go on to say:

> "*6.3 The administrators have pursued and achieved the objective of achieving a better result for the Companies' creditors as a whole than would be likely if the Companies were wound up. We concluded that the best way of achieving the objective of the administrations was to implement the sale of the Companies' business and assets via a pre-packaged sale…*"

123. The purchase price for the Company Assets was £5,783,000 apportioned as set out in clause 4 of the sale agreement. The items apportioned more than a nominal £1 value were the Properties (as defined) (£3.6 million), the Plant (£2 million) and Vehicles (£128,000).

124. On the same date, Charles and Nora, Mr Petts and Mr Bulloss (as receivers of the relevant property, appointed by the Bank), Remet Processing and Remet entered into an agreement for the sale to Remet of the Kilnhurst Site for £800,000. In total therefore, the cash offer for the Company assets and the Kilnhurst Site from which it operated from the perspective of Remet was about £6.5 million.

125. Also on 7 October 2020, each of James and John entered into service agreements with Remet Processing at annual initial salaries of £80,000 (James) and £100,000 (John). They also entered into settlement agreements with LWC waiving employee claims.

126. Further, by a Subscription and Shareholders' Agreement dated 7 October 2020 between Remet Processing, Philip Reid and John Hughes:

(1) John agreed to subscribe for 450 shares and Remet Processing to allot and issue, fully paid, 450 Ordinary Shares of £1 each in Remet Processing;

(2) The aggregate consideration for the share allotment is stated as being, (a) John entering a Deed of Assignment referred to below relating to the transfer of any interest in the balance of the proceeds of sale of the Kilnhurst Site after discharge from those proceeds of any debt owed to the Bank. (A Deed of assignment was duly entered into on 7 October 2020); (b) the transfer by John of the "Consideration Assets" being assets owned by John and used in the Companies' Business, including those set out in Schedule 2; and (c) the transfer of the Disputed Strip.

(3) It was acknowledged that Remet had lent Remet Processing sums (secured by a debenture) to enable it to acquire the business from the Administrators and to provide ongoing working capital requirements. (In fact a £6.4 million loan facility was put in place by Remet to Remet Processing to enable the payment of the purchase price under the Pre-Pack Sale agreement and a further loan facility up to £5 million for working capital was provided for.)

(4) The directors of Remet Processing were initially to be Philip Reid, Walter Reid and Shraga Cohen (all from Remet) but with a right in John and James to be appointed directors on completion. Further, there was provision for James and John, providing they retained at least 45% of the share capital of Remet Processing, to appoint up to two directors between them.

(5) As is normal on a sale by administrators, the Administrators gave no warranties on their sale of the Companies' business. However, under the Subscription and Shareholders' Agreement, John gave warranties to Remet Processing that the business warranties set out in Schedule 5, except as disclosed, were "true accurate and not misleading" at the date of the Deed (clause 9.2). This was subject to the limits of clause 10. Clause 10.2 capped John's liability under these warranties to a maximum aggregate liability of £6.4 million. In addition, one of the remedies for breach provided for by clause 11 was a clawback of the shares provided to John and James under the agreement. The warranties in schedule 5 were wide ranging warranties in the form that would normally be expected of a company selling a business of the nature and size of that of the Companies. In connection with these warranties, a disclosure letter, as is usual, was also provided to Remet Processing.

(6) The dividend policy was set out as being (among other things) that no dividends would be declared paid or made until the loan from Remet had been repaid in full.

127. Also dated 7 October 2020, is a share certificate in favour of John in respect of 450 Ordinary Shares of £1 each shares in the capital of Remet Processing. This amounted to a 45% shareholding.

128. By a Deed of Assignment and Subrogation entered into between Charles and John in favour of Remet Processing and in consideration of shares being issued to John

pursuant to the Shareholders' Deed, the Subrogated Claim (as defined) was assigned to Remet Processing. The Subrogated Claim was the entitlement of John/Charles to a half share of the balance of the proceeds of the sale of the Kilnhurst Site (if any) after discharge of the Bank's charge over the same.

129. On 26 January 2021, each of James and John are recorded at Companies House as having been appointed a director of Remet Processing.

130. Mr James Bulloss resigned as an administrator on 19 March 2021. I refer to the "Administrators" or the "Administrator" accordingly.

The alleged acts of, or conduct of the Companies' affairs, said to amount to unfair prejudice: summary

131. To some extent, the cases of the parties developed or were "explained" during the course of the trial. At the start of the trial, I was presented with proposed re-amendments to the Petition relating to sums said to have been wrongly expended on or for the Relevant Respondents and/or their spouses. After evidence had closed, and in closing, Lisa sought to further re-amend the Petition to bring in further substantive grounds of unfair prejudice.

132. The original amendments to the Petition were made pursuant to an Order dated 7 May 2021 and primarily raise a case in relation to the entry into administration of the Companies. The amendments were made primarily to remove allegations of unfair prejudice from the points of reply into the original petition.

133. In brief the allegations of unfair prejudice in the Petition can be summarised as flowing from the following alleged breaches of duty:

(1) Over a period prior to and including the removal of Lisa and Charlie, John, Charles and James misappropriated the proceeds of cash sales of stock belonging to LWC.

(2) John and Charles wrongly and in breach of duty caused the dismissal of Lisa from her employment by the Company and her removal as a director of each of the Companies.

(3) John and Charles caused the Companies to commission an "investigation" by the auditors targeted at Lisa only. The manner of the instruction was in breach of their duties to the Companies as they supplied false information to "set up Lisa" and they failed to cause the auditors to investigate their own conduct to hide the same. Further, in breach of their duties they did not report their own alleged breaches to Lisa and Nora who would then have ensured that it was investigated by the auditors.

(4) Charles, John and James caused the Companies to bring the Recovery Proceedings against Lisa. The claims were false and known to be false by Charles and John. Further, they were brought not in the best interests of the Companies but in John's own interests to cause harm to Lisa. Part of the reason underlying the commencement and prosecution of the Recovery Proceedings was to bring

improper pressure on Lisa to obtain her shares. The other directors are also in breach of duty in acquiescing in such conduct.

(5) In May 2018, the employment of Charlie Pickering by LWC was terminated. This termination involved one or more breaches of duty by the directors as the dismissal was not decided upon bona fide in the best interests of the company and/or was for a collateral purpose of concealing on-going breaches of duty from Lisa.

(6) Charles, John and James, in breach of their duties as directors, improperly took benefits from the Companies by way of causing LWC:

(a) to discharge their personal expenses and liabilities;

(b) to spend sums on their personal hobbies;

(c) to provide John with more than one luxury car at a time.

By way of proposed re-amendment, the matters already being set out within the points of reply, the following matters, some of which overlap with or repeat in more detail the matters referred to in (a) to (c) above are also relied upon:

(d) causing John's wife, Lorraine, to receive excessive remuneration, not justified by any work that she carried out;

(e) providing two luxury cars at a time for John's use;

(f) providing the benefit of racehorses, show jumpers and associated grooms, vet bills, horsebox services, race sponsorship, stabling, livery and training costs and other expenses;

(g) the employment of grooms, with such expenditure being wrongly accounted for as "research and development";

(h) payment of child support agency payments in respect of one or more of John's children;

(i) payments by LWC to James for investment in his property business (especially by way of 4 cheques between October 2016 and January 2017).

The above matters pre-date and post-date the rift in 2015. In an Agreed Case Summary for Trial, it is said that, as regards John, the relevant benefits also amount to a disguised dividend or unlawful return of capital.

(7) In respect of financial years after that ending 31 October 2015, the Relevant Respondents failed to cause Portbond to pay dividends (and so far as necessary LWC to pay dividends) whilst at the same time they continued to take benefits from the Companies.

134. As regards the administration and connected pre-pack sale, the allegation of unfair prejudice, so far as I understand it, was as follows:

(1) The administrations of the Companies were a "device" to ensure that the Petitioner would be excluded from receiving any benefit from the Companies' business and assets while the First and Second Respondents could continue to control and benefit from them. Put another way, the Relevant Respondents placed the Companies into administration in order to achieve a pre-pack sale to Remet Processing of the Companies' businesses and assets so that they can continue to benefit from the businesses while the Petitioner was excluded from the business entirely (see paragraphs 34B and 34J, 34K of the Amended Petition).

(2) Further, any financial difficulty that the Companies experienced was caused by the Relevant Respondents' misconduct and mismanagement (see paragraph 34D). It was not clear to me from the Petition whether this was asserted to be a separate free-standing ground of unfair prejudice, namely that misconduct and mismanagement had caused the insolvencies and administrations or whether it was said that misconduct and mismanagement had been effected with the purpose of bringing about the administrations so as to achieve the overall "aim" referred to in (1).

135. Further amendments were sought to be made to the Petition during the trial and at the time of closing submissions. The draft re-amended petition put before me at the time of closing submissions and which was then the subject of an oral application to re-amend involved the following.

136. First, various "tidying up" amendments. So far as concerns proposed amendments to paragraphs (I cite the paragraph numbers in the proposed re-amended petition) 5B, 27, 33B, 33E, 33H, 33H (including its sub-paragraphs), 33J, 33K and 33M, these are, in my assessment, tidying up matters. Amendments causes no prejudice to the Relevant Respondents and I give permission for them to be made.

137. Secondly, a series of proposed amendments which I will consider in connection with my consideration of the issues in question. They are:

(1) amendments to provide further examples of alleged misapplication of funds for the benefit of the Relevant Respondents and/or their partners: see paragraph 27A;

(2) an amendment to bring in an allegation that, at the time of the Companies entering administration, stock with a value of £1.54 million was removed from the Companies by or with the permission of the Relevant Respondents, without any proper accounting to the Companies and without the Companies receiving consideration for the same (paragraph 33F);

(3) an amendment to bring in an allegation that John had misappropriated plant and machinery belonging to the Companies in breach of duty and that he used the same as part consideration for shares in Remet Processing (paragraph 33I);

(4) an allegation that in breach of duty the Relevant Respondents did not consider in good faith that the appointment of administrators would be most likely to promote the success of the companies for the benefit of their members or that it was in the interests of creditors. Rather it was made to advance their personal ends of excluding the Petitioner from any enjoyment in the Companies' businesses and assets as thereafter owned by Remet Processing (paragraph 33L).

138. I deal with those proposed amendments later in this judgment.

139. It was common ground that the most important allegations (which I take it to mean are the most serious and significant if made out) are those which Lisa introduced in amending the petition, and particularly with regard to the administrations of the Companies.

The Law

(1) Unfair prejudice

140. I did not understand the applicable law regarding s994 Companies Act 2006 to be controversial and, other than as set out in the skeleton arguments, it was the subject of few submissions.

141. Under s.994 of the Companies Act 2006, a member of a company may petition the court for relief on the grounds:

> *"(a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or*
>
> *(b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial."*

142. As regards "the company's affairs", this may relate to the manner in which its subsidiary's affairs are conducted or acts or omissions of the subsidiary (see *Rackind v. Gross* [2004] EWCA Civ 815; [2005] 1 WLR 3505 at [26]–[33] and *Re Coroin Ltd (No. 2)* [2012] EWHC 2343 (Ch), [2013] BCLC 583 at [628], [629]). The court looks at the commercial realities rather than adopting a technical or legalistic approach to what constitutes the affairs of the company. In this particular case, although Portbond and LWC are parent and subsidiary they were largely viewed as being, or being part of, one business: "Universal Recycling Company". The directors were in reality common. This intertwining of affairs is shown not only by the history of family dealings over time but also by the various GT Reports. No point was taken by the Relevant Respondents that any relevant conduct of the affairs of, or act or omissions of, LWC that were relied upon by the Petitioner would not found a remedy under s994 for Lisa as a shareholder of Portbond (but not LWC), simply because of the separate legal personality of the two companies.

143. The requirement under s994 of the 2006 Act is that what must be caused must both amount to relevant "prejudice" and the prejudice must be "unfair".

144. As regards prejudice, the petitioner must usually prove "*harm in a commercial sense, not in a merely emotional sense*": *Re Unisoft Group Ltd (No.3)* [1994] BCLC 609. Prejudice "*will most often be established by reference to conduct having a depressive effect (actual or threatened) on the value of the petitioner's shareholding*": *Re Sunrise Radio Ltd* [2009] EWHC 2893 (Ch), [2010] 1 BCLC 367 at [4].

145. But a petitioner may suffer commercial prejudice in other ways, for example by being excluded from management in breach of agreements or understandings between the

shareholders. Further, there may be other cases where there is relevant prejudice even if the value of the petitioner's shares is not affected (see the example of the removal of the auditor and the associated provision under s994(1A) of the Companies Act 2006 considered by HH Judge Purle QC in the *Sunrise Radio* case at [9] and [10] and said by him to reflect the common law position).

146. As David Richards J (as he then was) helpfully summarised in the *Re Coroin* case at [630]-[631]:

> *" **[630]** Prejudice will certainly encompass damage to the financial position of a member. The prejudice may be damage to the value of his shares but may also extend to other financial damage which in the circumstances of the case is bound up with his position as a member. So, for example, removal from participation in the management of a company and the resulting loss of income or profits from the company in the form of remuneration will constitute prejudice in those cases where the members have rights recognised in equity, if not at law, to participate in that way. Similarly, damage to the financial position of a member in relation to a debt due to him from the company can in the appropriate circumstances amount to prejudice. The prejudice must be to the petitioner in his capacity as a member but this is not to be strictly confined to damage to the value of his shareholding. Moreover, prejudice need not be financial in character. A disregard of the rights of a member as such, without any financial consequences, may amount to prejudice falling within the section.*
>
> ***[631]** Where the acts complained of have no adverse financial consequence, it may be more difficult to establish relevant prejudice. This may particularly be the case where the acts or omissions are breaches of duty owed to the company rather than to shareholders individually. If it is said that the directors or some of them had been in breach of duty to the company but no loss to the company has resulted, the company would not have a claim against those directors. It may therefore be difficult for a shareholder to show that nonetheless as a member he has suffered prejudice…."*

147. There may be circumstances where the company has suffered loss by reason of the particular conduct or act or omission but there is no financial impact on the shareholder because the company is insolvent. In general the requirement to show "prejudice" to the member's interests will mean that "*the petitioner must show that his shares would have had a value but for the wrongdoing of the respondents*": *Re Tobian Properties Ltd* [2012] EWCA Civ 998, [2013] 2 BCLC 567 at [11]:

> " ***[11]** Shares in an insolvent company in liquidation are clearly valueless unless the value of any claims which the company has against the respondents to the petition will eliminate the deficiency and produce a surplus for members. Section 994 of the Companies Act 2006 requires the petitioner to show that the respondent's wrongful acts have caused him prejudice in his capacity as a member. If the company is insolvent, that means that – in general – the petitioner must show that his shares would have had a value but for the wrongdoing of the respondents.*
>
> ***[12]** There is a qualification to this requirement: the courts take a wide view of prejudice suffered by a shareholder. Where, for instance, the shares are*

> *worthless but the petitioner has suffered prejudice in some capacity connected with his shareholding, such as that of a lender under a loan made as part of the same investment as the acquisition of shares, unfair prejudice proceedings may be brought (Gamlestaden Fastigheter AB v Balti Partners Ltd* [2007] UKPC 26, [2008] 1 BCLC 468)."

148. In the *Gamlestaden Fastigheter AB* case, the main relief sought was the payment of damages to the relevant (insolvent) company in respect of relevant breaches of duty by its directors. The payment of such damages would not restore the company to solvency. However, it would enable a dividend to be paid to creditors, including the member seeking relief under equivalent legislation to s994 Companies Act 2006 in Jersey and whose debt arose by virtue of loan capital that it had injected into the company pursuant to the relevant joint venture agreement on the basis of which the company had been established as a joint venture company. On this assumed basis the Privy Council reinstated the application which had been struck out by the Courts in Jersey. Although the relief sought would not financially benefit the applicant in its capacity as member, it would in its capacity as creditor. As I read the Opinion of the Privy Council, it is a recognition that the interests of the member in that case went beyond the member's financial interest as the holder of shares with a certain (in fact in that case, at the relevant time, zero) value, and encompassed its wider financial interests under the joint venture arrangements, including those affecting its position as a creditor in respect of the loan capital it had injected.

149. So far as "unfairness" is concerned, and leaving aside for the moment quasi-partnership companies, which Portbond is not alleged to have been, unfairness:

> "*most often connotes some breach of the articles, statute or general principles of company law*": *Sunrise Radio* at [4].

150. The court will be reluctant to hold that mismanagement amounts to unfair prejudice. There may be extreme cases where the conduct of the company's directors:

> "*whether by reason of malevolence, crass stupidity, or something in between, fall so far short of the standards to be expected of them as to lead to the conclusion that the petitioning shareholder cannot reasonably be expected to have the minimum of trust and confidence in the integrity or basic competence of the board that any shareholder is entitled ordinarily to expect*" (*Sunset Radio* paragraph [4])

151. In such circumstances, damage to the value of the shares may not be necessary to establish relevant prejudice but that is because the member's interests encompass wider interests than simply the monetary value of the relevant shareholding,

152. To amount to unfair prejudice, such management failures would have to be extreme. The court will not resolve differences of commercial judgement on an unfair prejudice petition: *Re Elgindata Ltd* [1991] BCLC 959, 994. There may be circumstances:

> *"where there is disagreement between petitioners and respondents as to whether a particular managerial decision was, as a matter of commercial judgment, the right one to make, or as to whether a particular proposal relating to the conduct of the company's business is commercially sound. In my view, it is not for the court to resolve such disagreements on a petition under s 459. Not only is a judge*

> *ill qualified to do so, but there can be no unfairness to the petitioners in those in control of the company's affairs taking a different view from theirs on such matters."*

153. Further:

> "*a shareholder acquires shares in a company knowing that their value will depend in some measure on the competence of the management. He takes the risk that that management may prove not to be of the highest quality. Short of a breach by a director of his duty of skill and care… there is prima facie no unfairness to a shareholder in the quality of the management turning out to be poor*." (*Elgindata,* supra)

154. The conduct of the petitioner may also be relevant. It may make the conduct/act or omission not "unfair" or may affect whether a remedy will be granted. This petitioner's conduct which may have that effect can be of various sorts. It might be misconduct by the petitioner or acquiescence in or agreement to the conduct/act or omission that might otherwise be unfairly prejudicial (see *Re London School of Electronics Ltd* [1986] Ch 211 at 222A–C and *Richardson v Blackmore* [2005] EWCA Civ 1356, [2006] BCC 276 at [53]

155. As regards acts/omissions or conduct that took place before the particular petitioning member became a member, such is capable of amounting to unfair prejudice affecting the interests of the member in question (*Lloyd v Casey* [2002] 1 BCLC 454). However, conduct of the former member may mean that the particular matters complained by the later member are not unfair or that no remedy should be granted (*Re Batesons Hotels Ltd* [2013] EWHC 2530 (Ch); [2014] 1 BCLC 507 at [59]).

156. As regards relief, the court has a wide discretion as to the form of any relief that it may grant. In this case, it is submitted by the Petitioner, that it would be appropriate to make a buy-out order. It is also submitted that the price of the shares should be fixed by reference to the value of the shares at an earlier date than now and that it should be at a time when the Companies were solvent (see generally *Profinance Trust SA v Gladstone* [2001] EWCA Civ 1031, [2002] 1 BCLC 141). I will deal further with this submission later in this judgment.

(2) Statements of case and amendment

157. First, I have well in mind the particular need for statements of case in s994 cases to be properly and fully pleaded. It is also important that substantive matters relied upon by way of unfair prejudice are set out in the Petition/points of claim rather than (for example) in Points of Reply, to which a defence will not respond. As regards the latter point, the amendments made to the Petition were permitted but on the basis that they were incorrectly raised in the points of reply.

158. The cases on this area are well known but include *In the Matter of Tecnion Investments Ltd* [1985] B.C.L.C. 434 CA (Civ Div) at 441; *McKillen v Barclay* [2012] EWHC 521 (Ch) at [12] and *Re G&G Properties Ltd* [2019] EWCA Civ 2046 at [35]–[39].

159. As regards amendment I was faced with some amendments being suggested in the course of the proceedings and then further amendments being put forward after the evidence was completed in the course of closing submissions.

160. The relevant law relating to late amendments is fairly clear from the authorities. First, in accordance with the overriding objective, the question is one of balancing the prejudice (if any) to the person against whom the amendment is sought against the injustice to the person seeking the amendment if it is not permitted. Secondly, all relevant circumstances are considered. These will include (among others) the stage at which the application is made, its prospects of success, the reasons given for the lateness of the proposed amendment, the other party(ies) ability to deal with (and the fairness of making them deal with) it, the effect of the proposed amendment on the overall procedural timetable and, in certain circumstances, such as where an adjournment becomes necessary, the interests of other court users, the court's limited resources and the encouragement of compliance with court rules and orders may be further factors coming into play. Costs will, of themselves, rarely be sufficient compensation so as to justify permitting the amendment.

161. As regards late amendments, of various varieties, I was referred to *Quah v Goldman Sachs International* [2015] EWHC 759 (Comm); *Singh v. Singh* [2014] EWHC 1060 (Ch); *Ahmed v Ahmed* [2016] EWCA Civ 686; *Nesbit Law Group LLP v. Acasta European Insurance Co. Ltd* [2018] EWCA Civ 268; and *Kensington Mortgage Co. Ltd v. Mallon* [2019] EWHC 2512 (Ch).

Approach to the Evidence

162. It is common in petitions presented under s994 of the Companies Act 2006 for the evidence to range widely. Such petitions are also likened to family divorce petitions and are sometimes referred to as "company divorce petitions". Especially where the dispute is a family one, the bitterness and history of the matter can result in allegations going back over many years. In this case I have attempted to focus on the relevant matters alleged before me and have not attempted to resolve allegations and counter allegations going back over many years which would have little relevance to the main allegations. Thus, by way of example, the causes of failure of earlier family companies and whether one or more members of the family were incompetent or not are not issues that I found helpful to resolve, not least given the limited materials before me. I am grateful to Counsel for limiting cross-examination without any prompting from me, in line with my general approach that I have just outlined.

163. In assessing the accuracy and truthfulness of witnesses, I am faced with the similar problems that faced Mr Andrew Lenon KC. It was submitted to me that Lisa substantially won the case that she had brought concerning the various family properties and which Mr Lenon dealt with in his judgment. This is undeniably true but it is important to have regard to what he said about the evidence of each of the witnesses. In this context he had particular things to say about the evidence from "family members".

164. In particular, it is clear that he did not simply find those members of the family who can be viewed as being in the "camp" of the first three defendants before me (including Charles himself) as being untruthful or inaccurate and that Lisa and those who gave evidence for her (including David) were truthful and accurate witnesses. I

deal with what he said about each witness when dealing with that witness. For present purposes however, I refer to what he said as a matter of generality when considering the family witnesses who gave evidence before him:

> "*The evidence of the family witnesses mainly addressed the informal agreements and understandings which it was alleged had been made concerning the disputed properties and chattels. Taking into account the inevitable fallibility of the witnesses in recalling past events, particularly events which took place many years ago, the motives of the witnesses in giving evidence concerning matters in which they had a direct financial interest, their ingrained sense of what they and other family members are entitled to and their strong personal feelings towards the other family members, I came to the conclusion that I should treat the evidence of the family witnesses with considerable caution. As noted by Robert Goff LJ in Armagas Ltd v Mundogas SA [1985] 1 Lloyd's Rep 1, 57:*
>
> > *"It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, references to the witness' motives and to the overall probabilities can be of very great assistance to a judge in ascertaining the truth."*

165. The matters that Mr Andrew Lenon KC articulates as the reasons for his conclusion that he should treat the evidence of family members with considerable caution are matters (also apparent in these proceedings) that I too take into account in reaching the same conclusion that he did.

166. The motives, engrained sense of entitlements and strong personal feelings about other members of the family, identified by Mr Lenon, also feed fire to the undoubted truth, helpfully and pithily summarised by Knowles J in the Family Division that:

> "*Memory becomes fainter with every day that passes and the imagination becomes correspondingly more active. Thus, contemporary documents are always of the utmost importance*" (And D v B, C and E [2022] EWHC 3089 (Fam) at paragraph [49]).

167. As regards the difficulty of assessing the "demeanour" of a witness as a guide to truth and accuracy and the effect on memory of a continued re-consideration of a case and of documents over time, I would also refer briefly to the convenient summary 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]:

"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."

[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.

[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]."*

168. 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).*
>
> *……*
>
> *[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.*"

169. 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."*

170. In this particular case, the witness statements served by the first to third respondents (the "Relevant Respondents") were served at a time when those respondents did not have legal representation. The petitioner, thorough her lawyers, asserts that the evidence giving process was "dishonestly 'gamed' " by the Relevant Respondents.

171. On 1 April 2022, the court made an order by consent extending the time for service of witness statements to 5 April 2022. By application dated 4 April 2022, the Relevant Respondents sought an order extending the time for service of their witness statements by some 10 days or so from 5 April to 15 April 2022.

172. The background was that the Relevant Respondents had had Ansons Solicitors Limited ("Ansons") acting for them. That firm came off the record in January 2022. Clarion Solicitors Limited ("Clarion") then started acting for them from the start of February 2022 and came onto the record for the Relevant Respondents. However, they came off the record on 29 March 2022.

173. The evidence in support of the application, was a witness statement of James Hughes. As regards the circumstances of each firm coming off the record he said this:

> *"They have come off record under the pretext of demanding money on account, but it has nothing to do with that. Clarion have acted for us in many cases, and they have always been paid and Ansons have been acting since 2016 and there has never been any issue over fees."*

174. As regards Clarion, he went on to say:

> "*13….It is a matter entirely of their own volition because of the tight court timetable and they cited the scale and burden of the task required for compliance with the deadlines for witness statements. They had not broached this subject in the two months they have been acting and this development came as a surprise and shock to me and my father and Grandfather.*
> *14. As with Ansons, I feel the tight deadlines and complexity of the case is too much for Clarion at this late stage. The witness statements and the requirement to complete a certificate of compliance may also have played a major part in their reluctance to help in the witness statements stage and make any extension application if necessary."*

175. By application dated 16 April 2022, a further application was made to extend the time for service of the Relevant Respondents' witness statements until 19 April 2022.

176. By order dated 20 April 2022, the court, among other things, extended the time for service of witness statements until 5:30pm on 19 April 2022, the order reciting that all witness statements and relevant hearsay notices had been served before that time.

177. Geldards LLP came onto the record shortly after that, the relevant notice being dated 4 May 2022.

178. The consequence of the evidence being served by litigants in person at the time that a witness statement was served was that it did not need to be supported by the certificate of compliance that a legal representative has to give under CPR PD 57AC paragraph 4.3. That certificate is one that the legal representative (a) has explained the purpose, proper content and proper practice in relation to the making of trial witness statements to the maker of the statement and (b) considers that the witness statement complies with CPR PD 52AC, paragraphs 18.1 and 18.2 of CPR PD 32 and that it has been prepared in accordance with the Statement of Best Practice contained in the Appendix to Practice Direction 57AC.

179. Paragraphs 18.1 and 18.2 of CPR PD 32 provide:

> *"Body of Witness Statement*
>
> *18.1 The witness statement must, if practicable, be in the intended witness's own words and must in any event be drafted in their own language, the statement should be expressed in the first person and should also state—*
>
> *(1) the full name of the witness,*
>
> *(2) his place of residence or, if he is making the statement in his professional, business or other occupational capacity, the address at which he works, the position he holds and the name of his firm or employer,*
>
> *(3) his occupation, or if he has none, his description,*
>
> *(4) the fact that he is a party to the proceedings or is the employee of such a party if it be the case; and*
>
> *(5) the process by which it has been prepared, for example, face-to-face, over the telephone, and/or through an interpreter.*
>
> *18.2 A witness statement must indicate— (1) which of the statements in it are made from the witness's own knowledge and which are matters of information or belief, and (2) the source for any matters of information or belief.*"

180. The relevant Statement of Best Practice has certain provisions which apply to the preparation of all witness statements and certain provisions which apply only to witness statements prepared when the relevant party is legally represented and certain provisions which apply only where the relevant party is not legally represented.

181. Paragraph 5 of CPR PD 57AC provides as follows:

> *"Sanctions*
>
> *5.1 The court retains its full powers of case management and the full range of sanctions available to it and nothing in paragraph 5.2 or paragraph 5.3 below confines either.*
>
> *5.2 If a party fails to comply with any part of this Practice Direction, the court may, upon application by any other party or of its own motion, do one or more of the following –*

> *(1) refuse to give or withdraw permission to rely on, or strike out, part or all of a trial witness statement,*
>
> *(2) order that a trial witness statement be re-drafted in accordance with this Practice Direction or as may be directed by the court,*
>
> *(3) make an adverse costs order against the non-complying party,*
>
> *(4) order a witness to give some or all of their evidence in chief orally.*
>
> *5.3 The court may, upon application by any other party or of its own motion, strike out a trial witness statement not endorsed with a certificate of compliance pursuant to paragraph 4.3 above if there is reason to consider that the relevant party was acting in person when it was signed in order to avoid the application of paragraph 4.3 above to the statement".*

182. At the PTR on 22 May 2022, I made an order (in part) as follows:

> *"1. By 4pm on Friday 27 May 2022, the First to Third Respondents serve and file a certificate of compliance for each of the witnesses on whose evidence they intend to rely at trial (whether by way of oral evidence or hearsay notice) in the form set out at paragraph 4.3 of CPR Practice Direction 57AC, save that:*
>
> *1.1 Paragraph 1 of the certificate of compliance may be amended to reflect the fact that the First to Third Respondents' legal representatives were not the relevant legal representative within the meaning of Practice Direction 57AC when the witness statements were originally served.*
> *1.2 Paragraph 3 of the certificate of compliance may be omitted.*
>
> *2. By 4pm on Friday 27 May 2022, the First to Third Respondents shall serve and file a short supplemental statement from each witness on whose evidence they intend to rely at trial (whether by way of oral evidence or hearsay notice) setting out proper details of the matters required by CPR Practice Direction 32 paragraph 18.1(5)."*

183. These directions were complied with. I set out later in this judgment what emerged from the further witness statements that I required. In their closing submissions, Mr Wormald and Mr Phillips submitted that the history revealed, and I should infer, that funding per se was not the problem or reason why Clarion came off the record; that the compliance problem (or more accurately requirements of CPR PD 57AC regarding legal representatives) was avoided by the engineering of a situation where there were no solicitors acting for the Relevant Respondents at the crucial phase and that the Relevant Respondents "dodged" the relevant requirements on the basis that they were not represented. This, it was said, was in line with a broader pattern of a willingness on the part of the Relevant Respondents to "game the litigation" and was a factor that I should "take into account".

184. I am not prepared to make the inferences that the Petitioner seeks. In my judgment, Clarion came off the record because they did not have the resources (assuming in the petitioner's favour, because the Relevant Respondents would not provide sufficient

funds) to complete the evidential process within the time available. In terms, James said that the Relevant Respondents did not have the sort of immediate funds to pay the large on account payment that was being required. This rings true. The short period for which Clarion had been instructed and the sheer volume of procedural matters that they were then having to deal with speaks volumes. Clarion did not go back the record, but a new firm, Geldards LLP did. So far as possible my order made at the PTR sought to redress the balance somewhat. The result of that order is dealt with later in this judgment with regard to each witness for the Relevant Respondents, but I did not detect any underlying problems with the manner in which the evidence had been prepared. No specific sanction was relied upon as being appropriate to be applied. I would, in any event, have been unhappy with a general exhortation to "take into account" the manner in which the witness statements were prepared without a more precise steer as regards particular matters and the precise reasons therefore.

185. I turn to the evidence of the individual witnesses, starting with the petitioner's witnesses.

Nora

186. In evidence was an affidavit of Nora made on 24 September 2017. As Nora said in that witness statement, at that date she was 87 years old and although relatively fit and healthy then, had recently spent a period in hospital. The affidavit was to deal with issues relating to ownership of and dealings with relevant family properties, but especially Edlington Wood.

187. Mr Lenon's assessment of Nora's evidence was as follows:

> "*The reliability of the Affidavit could not be tested by cross-examination and I accept the defendants' submission that her account of the background was partial and her description of the circumstances in which the Edlington Wood properties were acquired was incomplete and inaccurate in material respects."*

188. In those circumstances, I consider that I should treat her evidence with care. That view is confirmed by the history of what happened in 2015 onwards as dealt with later in this judgment,

189. In her evidence Nora complains about historic appointments of John as director of LWC in September 2006 and of Portbond in July 2009 and says that she was not consulted. Whether or not she was consulted in advance I have no doubt that at the time (or when he found out about them) she acquiesced in those appointments and there was nothing contentious about them at the time. She also complains about the appointment of James as a director of each of LWC and Portbond in December 2015. Again, whether or not she was formally "consulted" I am satisfied that she acquiesced in the same thereafter.

190. So far as relevant to these proceedings, the main passage of her affidavit are those where she confirmed that she is awaiting provision of relevant documents but that, as regards sums taken from the Companies by Lisa:

> "*I agreed to the relevant amounts being removed from London*

> *Wiper and being treated as dividends paid to myself and Charles. I understand that Charles also agreed to this at the relevant time. In the circumstances, it appears that the factual background was manipulated by Johnny in order to create a convenient set of reasons to dismiss Lisa from the business."*

191. This wording is somewhat curious. She does not say that Charles did agree to the removal of the relevant by Lisa but that she "understands" that he did. The reference to the "factual background being manipulated" also strikes me as being something of a circumlocution given the clear case of Lisa that the facts were simply lied about. These points, plus the relevant evidence as a whole, are areas where cross-examination could have been key.

192. Nora goes on to say that Lisa's removal was something she was never consulted about nor did she agree to it. The contemporaneous documentary evidence is to the contrary.

193. The other main point that she makes, relevant to these proceedings, is that she considers that Lisa was removed because it was inconvenient to have her as bookkeeper in circumstances where John wished the company to pay for his horse racing interests and for clothes. No mention is made of preventing Lisa reporting to Nora or anyone else about theft of stock (or the cash proceeds thereof) by John and/or by, or with the consent of, the other Relevant Respondents, which is one of Lisa's main allegations. Further, as will become clear, the evidence shows that although personal expenses of John (and the other Relevant Respondents) was paid for by the Companies, such sums were recharged to director's loan accounts and the Companies therefore at most loaned the relevant monies and further that this was a course that was agreed to until at least late 2015 and one over which Lisa, as bookkeeper, had full transparency over and actually implemented.

194. In short, other than for what her affidavit does not say, the assessment of Mr Lenon KC applies equally to Nora's evidence relevant to these proceedings in the sense that I reach the same assessment.

Lisa

195. Mr Lenon KC's assessment of Lisa as a witness was as follows:

> *"Lisa worked as the bookkeeper for the family business and gave evidence as to, amongst other things, the funding of the purchase price and renovation works at Wood House. Her recollection on a number of matters (such as her adamant assertions that her mother 5 invariably signed guarantees given on behalf of the family companies and that David had been a director of the family company J.L.D. Metals Ltd) was shown to be inconsistent with the contemporaneous documents and overall I did not regard her testimony as entirely reliable."*

196. In these proceedings Lisa made serious allegations that personal expenditure by the Relevant Respondents, or some of them, prior to November 2015 was expenditure paid by the Companies that had not been agreed to and that payment of the same amounted to acts of unfair prejudice. The complaints included payments made as long ago as 2006. As I shall explain, early in the trial it was conceded that such payments

by the Companies prior to November 2015 did not amount to unfair prejudice. This is because they were consistent with the informal basis upon which the Companies operated, by common consent of the shareholders, and that Nora's acquiescence meant that the such payments would not provide an independent ground of relief. This was a significant concession which seriously calls into doubt Lisa's reliability as a witness.

197. I examine other areas where I find her evidence to be unreliable in the course of this judgment. In short, the contemporaneous documents show in a number of respects that Lisa's evidence is simply wrong. I am sure that Lisa believes in the truth as she sees it but I regret to say that my assessment is that she has simply convinced herself of the truth of her narrative and that she is unable to retreat from that. As did Mr Andrew Lenon KC. I am slow to accept her evidence to the extent that it is uncorroborated either by other reliable evidence or the factual probabilities.

David

198. Mr Lenon KC's assessment of David was as follows:

> *"It was submitted on behalf of the defendants in closing that David's participation in the proceedings stemmed from his dependence on Lisa for provision from Nora's estate. Whether or not this was true (and it was not put to him in cross-examination), I did not regard him as a neutral observer given his obvious antipathy towards John."*

199. It was not suggested to me that David's evidence turned on any dependence on Lisa. I agree, however, with Mr Lenon's assessment of his obvious antipathy to the Relevant Respondents and the underlying lack of neutrality and balance of David's evidence. That antipathy, lack of a balanced approach and lack of neutrality given his involvement as a person acting for Lisa in the last year or so of the Companies' trading, are all demonstrated by the contemporaneous documents. In particular, the long-term breakdown in relations and hatred of and complete lack of trust of David in the Relevant Respondents is readily identifiable. Again, I place little weight on his evidence unless corroborated in the manner that I have expressed.

Charlie Pickering

200. The evidence of Charlie Pickering was mainly directed at what he considers to be his removal from office. He characterised that removal as being unjustified on the facts and as being effected to "gain control" of the Companies once his mother, Lisa, had been removed from her employment and directorship. Given his rather different job and status in the Companies (he was not a director) compared with his mother (who was bookkeeper), it was unclear to me how "control" was gained by his removal. He asserted in his witness statement that the Relevant Respondents had removed stock for unaccounted for cash payments and that he had told his mother and Nora about this but did not in terms say that that was why he was removed.

201. I deal with his evidence in more detail later in this judgment but again am extremely cautious in accepting it when uncorroborated by other contemporaneous records or the inherent probabilities. In Spring 2020 he sent a series of text messages, saying he

has all sorts of things on James and John and, in the context of then ongoing attempts to save the Companies, saying things such as:

> "*I don't care anymore about if we have nothing because I will fuck the job up, if you don't play ball"*

202. I turn to the witnesses relied upon by the Relevant Respondents.

Mr Fitton

203. Mr Fitton had made two witness statements for the trial in support of the Relevant Respondents. The first was dated 18 April 2022, the second 26 May 2022. The second witness statement was as a result of my order, that I have referred to earlier, requiring explanations as to how witness statements put forward for the Relevant Respondents had been prepared.

204. In his second witness statement, Mr Fitton explained how his first witness statement had been prepared. In brief, he had spoken to Ansons in a remote (Teams) meeting/call) about his witness statement and Ansons provided him with a list of questions they were going to ask to obtain necessary information from him to prepare his witness statement. James then contacted him in about March/April 2022 asking him if he could prepare a witness statement based upon the questions that Anson had earlier sent to him. James emailed Mr Fitton a template witness statement which had the heading for the proceedings at the start and a statement of truth at the end. There was nothing else in the draft document sent to Mr Fitton. Mr Fitton then looked at various documents, referred to in his witness statement. He recalled a lot of the detail from memory. He then wrote the statement without input from anyone else. When he was happy with the draft statement and the detail contained within it, he emailed it to James. James asked that the statement be formatted with numbered paragraphs. That was done Mr Fitton signed the statement and returned them He confirmed that the same applied, mutatis mutandis, to Mr Gregory.

205. I have not hesitation in accepting Mr Fitton's evidence as to the circumstances and process of preparing his witness statements and as to the contents of the same. I do not consider that anything in the preparation of his first witness statement causes me concern as to the truthfulness and accuracy of the same.

206. When giving evidence, Mr Fitton was clear but careful. Many of the questions put to him he was unable to answer given the passage of time, I did not find that surprising. I consider that his evidence was truthful and accurate and I unhesitatingly accept it.

Mr Gregory

207. Mr Gregory also gave evidence for the Relevant Respondents. He too had made two witness statements, one dated 18 April 2022, the second dated 26 May 2022.

208. In his second witness statement, Mr Gregory explained the process that he went through in preparing his first witness statement. In substance it confirmed what Mr

Fitton said about the matter. There had been an initial call with Anson at which specific questions were put (and the questions then sent to Mr Gregory) as well as a general discussion. In April 2022, James contacted him by email to ask him to prepare a witness statement. Mr Gregory was out of the office at the time and did not then see the relevant email. The email had sent a "top" and "tail" of a witness statement but with no substantive content. On his return to the office, Mr Gregory saw the email.

209. Thereafter:

> *"9. I drafted my own witness statement from my own memory and using my fi les and contemporaneous notes. To start, from memory, I made a note/outline of what I wanted to cover in my witness statement; I also made a note of the documents that Smith Craven had prepared historically. I then got out one of the files and reviewed my notes on the file to remind myself how the management accounts etc had been prepared and what specific documents were called as each client is slightly different in what their documents are called and what they provide. The Hughes' always provided a very detailed pack of documents for the preparation of their management accounts.*
> *10. I also looked at two reports that I had been involved in collecting financial information for back in 2015; there were two reports regarding potential / alleged financial misappropriation by Lisa, one regarding the company and one regarding 'mum and dad' i.e. Charles and Nora.*
> *11. When I had finished my statement one of my colleagues read through it to proofread it for spelling mistakes and grammatical errors.*
> *12. I then emailed my finished signed statement to James Hughes. James then emailed me back asking if I could insert paragraph numbers into my statement which I did; I resigned the statement and emailed it back to James."*

210. As in the case of Mr Fitton, I have not hesitation in accepting Mr Gregory's evidence as to the circumstances and process of preparing his witness statements and as to the contents of the same. I do not consider that anything in the preparation of his first witness statement causes me concern as to the truthfulness and accuracy of the same.

211. My assessment of Mr Gregory's evidence is effectively the same as my assessment of Mr Fitton's evidence. In short, I consider that on matters of substance the evidence was truthful and accurate and that he made clear where he could not now remember things.

212. As regards Mr Fitton and Mr Gregory, Mr Lenon did not as such say anything about their evidence as a matter of generality. He did however accept their evidence over that of Nora.

213. The evidence of Mr Fitton and Mr Gregory was inevitably largely dependent on their memories being "jogged" by the contemporaneous documents, though they were frank when they could not remember or their recollection varied from the precise formulations of matters set out in the contemporaneous documents.

David Clarkson

214. The Relevant Respondents relied upon evidence of Mr David Clarkson, He was not called to be cross-examined and his evidence was admitted without challenge. However, that evidence was largely irrelevant to the issues before me and I did not find it assisted me at all in my determinations and assessment.

Lisa Davey

215. The Relevant Respondents has also relied upon the evidence of Lisa Davey but she was not called and her witness statement was not admitted into evidence. As it happens, her witness statement did not appear to advance matters further in any event so this was not a situation where the failure to call her was one leading to the drawing of any adverse inferences.

Charles Hughes

216. Charles was not called to give evidence. Reliance was placed upon his witness statements. He was not called because of his state of health. Lisa objected to this presentation saying (correctly) that there was no expert medical evidence demonstrating why Charles could not give evidence. However, I take into account what Mr Lenon KC said about Charles in terms of his age, health and the evidence that he gave.

217. Mr Lenon's findings about Charles were as follows:

> *"[11] Charles is now aged 91 and frail. In view of his age, poor eyesight and hearing difficulties certain accommodations were made in order to facilitate his giving of oral evidence. Charles stated in cross examination that he did not recall having agreed, read, or signed his witness statement around six weeks previously and he answered many questions by stating that he could not remember, did not know, or provided no response to the question asked, including where these questions directed at matters discussed within his own witness statement. My impression was nevertheless that Charles was able to follow the questions put to him.*
>
> *[12] Charles has a close relationship with John and was plainly keen to support John's claim. He confirmed the truth of John's witness statement and, in cross-examination, volunteered supportive evidence about material matters which, if accurate, I would have expected to have been included in his and John's witness statements. Overall, I consider that I should not rely on Charles's uncorroborated evidence."*

218. It was accepted by Mr Mundy that Charles' statement is inaccurate in, for example, suggesting that he agreed that Lisa's salary should be increased to £150,000 at a time when John's salary increased to £250,000. In fact it appears that Lisa agreed a salary increase to £100,000 but that, because some was paid in arrears, the actual payment at least in one year was £150,000. Mr Mundy's submission was that uncorroborated neither Nora's nor Charles' statements were a sage guide to the truth on contentious issues. I have deal with Nora's statement already. I take the same approach to Charles' witness statement.

John

219. As regards John, Mr Lenon KC said:

> "*He was unable to explain satisfactorily some inherently implausible features of the alleged arrangement with Nora and Charles to which I refer later in the judgment.*"

220. It was, as I understood it, accepted that John was not in the best of health. As well as suffering from dyslexia he also suffers from dysphagia and tires easily. An agreed text was read to him at the start of his evidence stressing certain matters (such as the ability to have more frequent lavatory breaks). At times his evidence was somewhat confused. He also explained, which I accept, that his memory was not good in respect of the period when he had been in hospital.

221. As regards preparation of his witness statement for the trial, John explained in his second witness statement that some work had been done by Ansons and in particular there had been a meeting at which they had put questions and taken down answers. It was not entirely clear to me whether John had been by himself or with James when that had been done. Later, says John, he enlisted the help of a Mr Chaudhary, a solicitor who had been struck off to help prepare witness statements. Mr Chaudhary asked questions. Certain evidence was taken, at John's request, from his witness statement in the Property Proceedings. James passed through the room on occasion and found and/or showed documents when requested to by John. According to John, James did not suggest answers that John gave to Mr Chaudhary or correct James in what he was telling Mr Chaudhary. I accept this evidence but also note that the realities are that John and James have been liaising closely over some years not only during the course of the family proceedings but earlier on.

222. In short, in giving his evidence both oral and written, I consider that John was telling the truth as he saw it but that I should treat his evidence with care when not corroborated in the ways that I have earlier referred to in relation to the evidence of other witnesses.

223. For Lisa, it was submitted that the evidence of John (and James) was fatally undermined by the evidence that they gave to the effect that GT had been informed by them of the details of the deal that they had done with Remet Processing not long before the Pre-Pack Sale and the entry into separate agreement by John/James with Remet Processing at the same time. I deal with that evidence below. Although finding that evidence to lack accuracy I do not consider that the evidence shows that they were knowingly and deliberately lying rather than telling the events as they (wrongly) remembered them. I do not therefore regard John's evidence as untruthful whenever it conflicted with what Lisa says occurred. In my judgment it is necessary to judge John's (and James') evidence in a similar way to the evidence of Lisa: that is to be cautious about accepting it where uncorroborated.

James

224. In his second witness statement, James, explained that the demand by Clarions for an on account payment could not be met and this was why they came off the record as acting for the Relevant Respondents. I therefore reject the submission that the

Relevant Respondents were "gaming the system" so far as the changes in legal representation are concerned and the fact that they had no lawyers acting at the time that witness statements were prepared and filed.

225. I also accept James' evidence as to how his witness statement came to be prepared being based about 40% on a draft prepared by Ansons from questions asked by and answers provided to them. I also accept his evidence regarding the manner in which he then took the benefit of help and advice from Mr Chaudhary, how the "new" rules under what is now PDF 57AC was explained to him and how he then prepared his witness statement and took into account the limited counsel's input on the draft which was possible in the time available.

226. I should note that James' evidence was much more relevant to the period in the year or so up to the administrations of each of the Companies when he was, on the whole and for at least the majority of the relevant time, in the "driving seat" (as compared with his father). His evidence largely matched that of the contemporaneous documents and he was not slow to admit matters that might be seen as damaging his case and which a less truthful witness would simply deny on that basis. Nevertheless, as with the other family witnesses, by and large I looked to corroboration (of the sort previously described) where there was a major factual dispute between him and other witnesses.

Mr Greg Lacey: Expert

227. I had the benefit of an expert report from Mr Greg Lacey of FAR Consulting dated 7 April 2022 on behalf of Lisa, together with an Addendum to that report dated 25 April 2022 and his answers to various questions put to him by the Relevant Respondents. Some of his evidence was excluded by an earlier order by me, permission for such expert evidence not having been sought or given.

228. Mr Lacey gave oral evidence before me. I deal with his evidence later in this judgment. At this stage I should simply say that I regarded his evidence as balanced and reliable.

229. However, I have to comment on the scope of Mr Lacey's expert report.

230. As regards the scope of the expert report of Mr Lacey, the position was wholly unsatisfactory. The initial directions agreed between the parties purported to allow the experts to agree between them the scope of their reports and the issues that they would cover. However, ultimately the expert issues can only be determined from the pleadings. It is not for the experts to agree what the legal issues are nor which issues require expert evidence to address them. Further, the solicitors for the Petitioner seemed to regard the permission to call expert evidence as a carte blanche permission to ask him any questions that they wanted to, going beyond even the scope of the somewhat badly defined issues that he was permitted to opine upon. The result was that at an earlier hearing, before the trial, I struck out various sections of the expert report as clearly not having the permission of the court and it being too late to obtain such permission.

231. Further, there was a wholly unclear agreed direction that the expert evidence would be permitted to deal with:

> *" iii) verifying the transactions and accountancy treatment of the transactions which form the subject of this dispute."*

This omnibus description is wholly unclear. A further and later court order, again by consent, repeated the direction that was previously made regarding "*verifying transactions and accountancy treatment of transactions*". The result was that Mr Lacey (admittedly on instructions) appears to have investigated almost any transaction mentioned anywhere in the pleadings whether or not there was a legal issue about them or not. As such, rather than dealing with issues put to him Mr Lacey's role in large part turned into one of investigation as to whether or not there might be issues.

232. Although the court ultimately controls expert evidence, when presented with a draft consent order, as in this case, a Judge will often have inadequate time in which to consider the issues separately him or herself so as to determine whether the consent order is appropriate. In this, as with agreed extensions of time, the lawyers need to consider carefully whether to advise their client to consent to orders and not simply to take the easy course.

233. A considerable section of the report dealt with matters that I found on an earlier occasion the court had granted no permission for (and on that basis I had struck out the relevant sections of the expert report).

234. Furthermore, a lot of Mr Lacey's evidence was not expert evidence but simply evidence of fact as to what documents were or were not available to him and what those available to him showed.

235. I should make clear that I do not blame Mr Lacey. He did what he was asked to do. However, I do consider that the way in which the obtaining of expert evidence was approached, sought to be used and permission obtained from the court was all unfortunate and the cause of a lot of unnecessary cost.

236. The Respondents failed to comply with relevant court directions and accordingly there was no expert evidence on their behalf.

Conduct in relation to other Hughes' family companies

237. The Hughes family have owned and managed a number of companies over the years. Two such companies were JLD Metals Limited ("JLD Metals") and JLD (Holdings) Limited ("JLD Holdings"). The latter company, as its name suggests, was the holding company of JLD Metals. Both companies went into administrative receivership on 13 November 1992 when Mr Katz and Mr Gleave of Arthur Anderson were appointed joint administrative receivers of each of the companies. There is in evidence before me two reports of meetings of creditors held on 12 February 1993, one for each company (the "JLD Reports").

238. From those reports, the following can be gleaned. By the time of the administrative receivership, JLD Holdings held 70,100 of the issued ordinary shares in JLD Metals, and John held one such share. The shares in JLD Holdings were held as follows:

Charles	52,500
Nora	52,500

John	37,500
Lisa	7,500
	150,000

239. John and Lisa were directors of each of the companies. John was the managing director.

240. JLD Metals was incorporated in December 1980 to operate a non-ferrous metal reclamation business in Wath-upon-Dearne, Rotherham. By the time of the administrative receivership it operated from premises at Hobson Industrial Estate, Burnopfield, Newcastle-upon-Tyne, owned by its parent company.

241. The business operated by JLD Metals was substantial. Audited accounts for the 17 months ended 30 June 1991 showed a turnover of over £31 million with a net profit, after tax, of £319,000. Management accounts incorporating the results of JLD Holdings showed a turnover of over £19.6 million a gross profit of over £1.1 million but a net loss, after, among other things, overheads and tax, of £449,000.

242. The report to the meeting of creditors of JLD metals contained the following under the heading "Receivership strategy":

> "*2.1 Immediately following our appointment we conducted an investigation into the business to establish whether it was feasible to allow the company to trade for a limited period. We decided that it would be possible to trade the business profitably and thereby achieve a sale of the business as a going concern, which would ensure maximum possible realisations.*
>
> *We also discovered that the majority of the company's finished goods stock had been removed from the company's premises during the morning prior to our appointment. However, following extensive negotiations and injunctive proceedings, the entire stock that had been removed was returned and subsequently realised at trade prices."*

243. Lisa's case is that it was John who removed the stock, that he did so wrongfully and that I should take this into account, as demonstrating a propensity to act in this way, when considering her allegation that stock was wrongfully removed and/or otherwise wrongfully excluded from the sale by the administrators to Remit Processing in this case and/or her allegation that, well before the administrations in this case, stock was removed and sold without any accounting to the Companies for the proceeds of sale.

244. I am unable to draw any of the inferences that Lisa invites me to make in this respect. I have no idea who was responsible for the removal of the stock in the case of JLD Metals, nor the precise circumstances in which the removal and then return took place. I have no details of the "extensive negotiations" nor what they were about. Accordingly, I leave this matter out of account in considering the allegations of improper dealings in relation to stock of the Companies.

245. According to David, he and John each owned half of a company called Prontex Limited. They worked together in that company sometime prior to 2002. Prontex Limited was wound up in 2001.

246. In his witness statement, David asserted, of John:

> *"He was stealing from that company back then, he would pay cash and do false weighbridge tickets. That's why Prontex failed and why I left."*

247. This is relied upon by Lisa as showing a propensity on the part of John. I am not able to accept such a general assertion, with no corroborative material and accordingly am not satisfied that this allegation by David is true. I leave this alleged matter out of account.

Allegations in the Petition regarding alleged "cash sales" (stock sold for unaccounted cash); false allegations concerning, and unfair investigation of, payments to Lisa; removal of Lisa and Charlie from the Companies; legal proceedings against Lisa known to be on a false basis

248. These allegations are all intertwined.

(1) Cash sales

249. There is a general allegation that the Relevant Respondents enjoy significant benefits from (and/or allowing LWC and Portbond) to suffer from diversion to all of some of them of cash received from sales which ought to be accounted to LWS as set out in paragraphs 31-2 of the Petition (see paragraph 10(iii)(b) Petition). Paragraph 31 of the Petition refers to the allegation being a matter for "expert evidence". There is then a reference back to paragraph 25, which is an allegation that Charlie Pickering became aware of the cash sales and that employees had been instructed by John to use "internal tickets" so that the sales could not be traced. Paragraph 32 alleges that the cash sales and retention of the cash proceeds by John involved breaches of duty by the Relevant Respondents as directors. Of course, as regards James that could only be in respect of alleged cash sales after he had been appointed a director.

250. The alleged cash sales also appear in the context of the allegations regarding the investigation of sums apparently received by Lisa and her dismissal/removal.

251. In brief, the allegations regarding the cash sales are as follows.

252. Lisa's duties, it is said, included the checking of finished stock of granules on Friday evenings after employees had gone home and that on Mondays she would re-check the stock levels of finished materials as well as reviewing invoices delivery notes, weighbridge tickets and paperwork and input the data into the Pegasus system (paragraph 12 of the Petition). (The Pegasus system did not however contain detailed stock records).

253. In about September/October 2015, Lisa confronted John about missing and unaccounted finished stock. His excuse was that the finished stock was not of a good enough quality and had had to be "re-run". In fact however, this explanation was

false. He was selling the stock for cash on Saturdays (to avoid detection by the claimant) and not accounting for the same. He refused to put the stock into the Pegasus system because he did not want to lose the cash sales (paragraphs 13 and 14 of the Petition.)

(2) Dismissal/Removal of Lisa

254. In breach of his duties, John caused the dismissal of Lisa as employee and removal in breach of his duties as a director:

(1) To stop her having access to company financial information so that she would not be able to divulge breaches of duty by John and Charles relating to the alleged cash sales and other benefits being taken personally;

(2) Out of personal animosity;

(3) In order to appoint his son James as director of each of the Companies to promote the interests of himself and his son over Lisa and her son.

(paragraphs16 and 18 of the Petition)

(3) Investigation

255. The investigation commissioned of the auditors was targeted at Lisa only. Its aim was to provide a pretext to dismiss Lisa. "Accordingly" John and Charles failed to cause the auditors to investigate their own misconduct and/or supplied false information to the auditors to set up Lisa and disguise their own misconduct, all of which amounted to one or more breaches of directors' duties by them (paragraph 17 of the Petition).

256. I should make clear at this point that, as the evidence emerged, the persons dealing with the investigation were doing so as company accountants not the separate team that dealt with audit matters.

(4) Causing the company to issue proceedings against Lisa

257. Proceedings were delayed whilst Nora was alive because the relevant Respondents knew that she would tell the truth. On Nora's death the proceedings were issued (paragraphs 19 and 20 of the Petition).

258. The claim was a false claim and known to be such. They were brought to bring unfair pressure to bring about a position in which John would become sole owner of the Companies and would be able to "milk" them for what they are worth (paragraphs 22/23).

259. It is to be inferred from the administrators' decision not to pursue the same that this was because they believed that it would not be likely to succeed (paragraph 23A).

(5) Dismissal of Charlie from employment

260. The allegations are that his dismissal was motivated (among other things) by a desire to prevent him passing information to Lisa about the financial misconduct of the Relevant Respondents regarding cash sales and other benefits taken from the

Companies and that loss and damage had been caused by the legal and settlement costs incurred by LWC in relation to the matter (paragraphs 24-26 of the Petition).

Directors' loan accounts and the alleged cash sales of stock

261. To understand the allegations against Lisa and how they emerged, it is helpful to set out the accounting position as it operated within the Companies in the relevant 4 or 5 years prior to 2015, that being the period in relation to which investigations took place and allegations were subsequently made.

262. The accounting position regarding drawings from the Companies for the benefit of members of the family is described by Mr Gregory in his witness statement. I do not understand this account to be contentious but, if it is in any respect, I have no hesitation in accepting his account in full.

263. In short, the accounting function was under the control of Lisa. Up until about August 2015, a directors' loan account was operated as a joint account in the sense that all family expenses/drawings for family members over and above any salaries, was debited to the directors' loan account. This loan account, usually in debit from the perspective of the account holder at the accounting year end was then historically cleared by crediting to the account the proceeds of a dividend declared annually in favour of Nora and Charles, as shareholders.

264. The sort of personal expenses debited to the account included, by way of example, costs incurred in relation to vehicles used by the family, including related hire purchase payments; credit card payments and other payments made for the benefit of family members.

265. From about November 2015 onwards, the directors loan accounts were split into separate sub loan accounts covering each of Nora, Charlie, John, Lisa and James. This enabled the tracking of balances owed by individuals.

266. It is also helpful to set out, in a little more detail, what Lisa says was taking place in the period prior to the investigations concerning her drawings (and thereafter) regarding the sale of stock for cash and the failure to account to the Companies for the proceeds of sale.

267. The Companies operated a Pegasus accounting system but that system did not and/or was not used to record daily stock movements. Instead, the accounting records for stock were kept on a separate laptop maintained by another employee, Mr Steve Mower, and recorded on an Excel spreadsheet outside the immediate control of the accounts department under the control of Lisa.

268. As regards the monthly management accounts prepared with the assistance of Mr Gregory, the latter explains that purchase and expense invoices were stamped with a company authorisation grid/grid checklist (completed in the main by Lisa) and supported by delivery notes and weighbridge tickets. Sales invoices and credit notes were also generated by the team working under Lisa and entered onto the accounting software. They were kept sequentially and supported by delivery notes and weighbridge tickets. A stock figure would separately be provided to Mr Gregory at the month end, which was mainly unsupported and consisted of primarily a

handwritten value. This was usually provided by John. At the year end a full stock sheet was made available to the audit team, initially at John S Ward and later at Smith Craven.

269. In brief, Lisa says that John operated a separate system of "internal tickets" in order to misappropriate stock from LWC without it being traced as missing from the records of LWC.

270. In her witness statement, Lisa said that at some point between August and October 2015 she had become suspicious about missing stock. In cross-examination, she was not able to explain what it was that triggered her suspicions. Indeed, her evidence that she was under a duty to check the stock position on a Friday (and Monday) appears to have been put forward as the reason that she discovered the alleged missing stock. However, she ultimately accepted that this was not part of her duties as employee or director. She decided to do this and/or, she said, was asked to do this, by her mother to keep an eye on the situation. Accordingly, what prompted this decision to check the position was not made clear.

271. She goes on to say that on most Fridays, after the employees had left for the day, she was under a duty to and would inspect the warehouse to check the quality of finished stock. On a Monday she would re-inspect the warehouse to check stock levels. On several occasions, she says, she noticed that substantial amounts of finished stock was missing. She says that this came to her attention by checking the finished copper stock ready for dispatch on a Friday, and then looking at the dispatches made on a Monday and comparing the two.

272. As regards the checking process, Lisa explained that there were bags of finished stock which would usually have a label on with a weight and description. She would usually be more interested in the high value finished stock, copper and would "jot down" what she had counted. However such notes were not produced and she confirmed that she did not give them to or make enquiry of Steve Mower who actually kept the stock records. She did say that she gave the information to Nora.

273. I should add that this evidence was in substance inconsistent with Charlie's witness statement. In that statement, he said that he was employed from 2008 and carried out a similar process to that described by Lisa. On many occasions he says he found missing stock and he reported that to Lisa and Nora. It is difficult to believe that Lisa and Charlie were carrying out the same sort of process with the same result in any period and also difficult to believe that Nora was told about their findings when stealing of stock (or not accounting for the cash proceeds) is not an allegation that Nora ever seems to have raised.

274. In their Defence, the Relevant Respondents had made the point that the relevant areas were covered by CCTV cameras so that of stock had been removed on a Saturday that would show upon on the CCTV recordings. Lisa had not answered this point is her points of reply. When asked about CCTV cameras in cross-examination she said that John had turned off the CCTV on Saturdays so that the movements of stock sold by way of illicit cash sales were not recorded. This was the first time that this allegation was made. She later went on to allege that Kevin Taylor from security had told her that John had turned off the CCTV cameras. Later again, she said that she asked Mr

Taylor if it was John who turned off the CCTV cameras and he said that he did not know. I do not accept this late and internally inconsistent evidence.

275. Lisa was also asked in cross-examination whether existing stock might need to be weighed (e.g. for stock takes). She accepted that this might happen and that in those circumstances an "internal" weighbridge ticket would be used. She asserted however that internal tickets were also used illicitly.

276. She continued in her witness statement to say that she confronted John and asked him where the missing granules were. He told her that the finished stock was not good enough and that it had had to be "re-run". She says that she later learned that John was selling stock at the weekends for cash and that she "understood" that stock was loaded onto vehicles on Saturday mornings or early Monday mornings for delivery.

277. Lisa says that she understands that a lot of employees were aware of Johnny's weekend dealings in stock and cash and that she reported her brother's dealings to her mother and also discussed it with her son Charlie and that she told Paul Gregory at Smith Craven.

278. In her witness statements she then refers to a Mr Robert Andrew, a driver, formerly at LWC and now working at Remet Processing. She says that she spoke to him on a monthly basis until 2020. She says that he has confirmed to her that he, Mr Andrew, is aware of several regular customers who routinely bought substantial amounts of stock from LWC in cash, usually on Saturdays; that John regularly instructed employees at LWC to load vehicles under his instruction without the correct paperwork "including weighbridge tickets" for the stock; that the stock sale was recorded on an "internal" ticket instead of the normal "outs" ticket; the cash sales were on Saturday and not properly accounted for all under the instruction of John; and finally that one of the regular Saturday customers was a firm called Booths.

279. Her witness statement was the first time that these allegations by Robert Andrew were raised. He was not called to give evidence.

280. Lisa's evidence was that she had challenged John (again) about the sales of missing stock at a meeting on 6 November 2015 when she was, in effect suspended. However, in her defence and counterclaim in the Recovery Proceedings, in recounting what occurred at this meeting she did not mention this matter even though, if it was true, it would have been the first thing one would expect to have been said. Instead she pleaded that at the meeting, the focus of her remarks had been how the sums paid for her benefit from the companies had been agreed and that John too had had sums paid on his behalf by the Companies.

281. I will come onto the evidence regarding the investigations by Smith Craven and the course of communications thereafter. It is telling that despite saying that she told Smith Craven about the thefts they have no recollection of that and it is not minuted. Further, she says that she refused to hand over the evidence (or copies of the evidence) of such cash sales to Smith Craven, although this seems an inconsistent approach to that she says she took of informing Smith Craven of what was going on in terms of illicit cash sales.

282. Finally, I note that although she says she had very full records of what had been taken and the relevant "false" weighbridge tickets by which this scheme was purportedly operated, she was unable to produce much documentation and that which she did produce was, to my mind, of little assistance.

The history of the claims against Lisa and her removal as employee and director

283. As various solicitors have been involved over time it is probably helpful to set out the various firms and who they have acted for:

Referred to in this judgment as	Firm	Persons acting for
John Partridge	John Partridge	Lisa
Prodicus	Prodicus Legal Limited	Nora, later her estate and also Charlie
ThomasMansfield	Thomas Mansfield Solicitors Limited	Lisa (as executrix and in her own right)
Ansons		The Companies The Relevant Respondents
Clarion		The Relevant Respondents
Geldards	Geldards LLP	The Relevant Respondents (from May 2022)

284. A draft report prepared by Smith Craven in about December 2015, explained, and defined as the "Draft LWC Report", later in this judgment refers to a meeting having been held on 8 May 2015 to review the overall operations of LWC and its financial standing, in the light of its trading performance, the barriers that the business was said to have encountered over recent months and the impact of legislation on the sector

which was said arguably to have placed restrictions on LWC. The relevant extract continues:

> "*This meeting was held in the presence of the Directors; John Hughes and Lisa Pickering, Barclays Bank and Smith Craven.*
>
> *It was acknowledged that the company had been less successful in terms of profitability during the last financial year and performance against previous years was poor. Given the discussions that took place and the financial evidence presented at that meeting, It was agreed that the dividends would be minimized, in order to maintain the stability of London Wiper.*
>
> *All parties present in that meeting, agreed that reduced dividends along with other measures, would undoubtedly assist the sustainability of the company.*
>
> *The serious cashflow issues experienced recently by the company, resulted in the need to increase the bank borrowing from Barclays Bank plc. The implications of this being that John Hughes, had to give a personal guarantee to the bank of £600,000, before the additional financial support was extended to the company*."

285. In my judgment, this gives a reason why there may have been greater concern to check the operation of the directors' loan account. It also explains the references to concerns of the Bank as to its operation as referred to in various documents.

286. In 2015, Smith Craven was instructed to carry out investigations regarding drawings from LWC and also drawings on a joint bank account of Charles and Nora. In evidence before me were two draft reports from Smith Craven dated December 2015. One draft report is stated to be an independent report prepared for Charles and Nora (the "Draft C&N Report"), the other is stated to be an independent report prepared for LWC (the "Draft LWC Report") (together, the "Draft SC Reports").

287. The Draft SC Reports record that Smith Craven had been instructed to write the reports as a result of "*financial anomalies highlighted in the August Management Accounts*" for LWC. The Draft LWC Report says that

> "*the entry that initiated the enquiries was £35,000, paid out to* [Charles and Nora]. *Detailed recipients were unable to substantiate this transaction, they were left questioning whether other drawings and the company accounts were indeed legitimate."*

288. The Draft LWC Report, says that Smith Craven had been instructed by "the shareholders of LWC" to write the report. The Draft C&N report says that the instruction came from Charles.

289. I deal with the contents of the Draft SC Reports in more detail below. However, for present purposes it is important to understand what each was dealing with in broad terms.

290. The Draft LWC Report sets out a summary of withdrawals by the two non-shareholding directors Lisa and John for the period 1 November 2011 to 31 October

2015. Schedule 1 sets out drawings by Lisa. Schedule 2 sets out drawings by John. These schedules were agreed, as to schedule 1 by Lisa and as to schedule 2 by John.

291. In addition, the directors' loan account for Charles and Nora was analytically reviewed. Those items that were believed to relate to Lisa form part of the drawings within Schedule 1, which Lisa is said to have agreed. Schedules 3 and 4 relate to specific items which John asserted should form part of the drawings by Lisa but the allocation of which was unresolved at the time of the Draft Report.

292. The alleged "anomalies" said to have been discovered in Smith Craven's examination of LWC's financial records, resulted in further investigations and analysis including in relation to the personal bank account of Charles and Nora. The results of the investigation and analysis of that personal bank account is set out in the Draft C&N Report.

293. The Draft C&N Report sets out sums received into the joint bank account of Charles and Nora. Schedule 2 highlights withdrawals from LWC apparently recorded as being for the benefit of Charles and Nora. According to the Draft Report, whilst a figure in excess of £574,000 had been withdrawn from LWC, only some £238,500 or so had been received into the personal joint bank account of Charles and Nora. Furthermore, sums had been paid out of the personal joint bank account which Charles claimed that he was unaware of.

294. Having set the background, it is now possible to turn to various meetings notes.

295. On 3 November 2015, Lisa met with Mr Gregory of Smith Craven. Lisa is recorded as bringing in Pegasus printouts for the Directors' Loan account summaries for the past four years which she wanted to go through and discuss. She is then recorded as going through in "*great detail the expenses relating to both herself and John Hughes, although greater emphasis was placed on the expenses of John, which Lisa spent most of the time on*". Lisa is recorded as having confirmed that "*the Barn expenses*" directly related to her. She is said to have informed Mr Gregory of her illness and got upset when doing so. The note ends, that it was agreed that the summaries of total expenditure of John and Lisa would be updated by Smith Craven with the benefit of the additional information that Lisa had provided at the meeting.

296. In her third witness statement, Lisa referred to a meeting at Smith Craven's offices, later confirmed in oral evidence by her to be the meeting on 3 November 2015. She asserted that she took to that meeting a file with paperwork which included the weighbridge tickets that John had used for copper granules which he had sold on internal weighbridge tickets. She said that Mr Gregory looked at them and told her to hand over the tickets on the basis that they were company property and that she could not keep them, even though, says Lisa, she told him that she had to keep them for her mother who wanted them. She said she felt intimidated and then left (with the weighbridge tickets). A few days later, she said, her solicitor received a letter from Smith Craven saying that all weighbridge tickets had to be returned to LWC.

297. The alleged letter from Smith Craven has not been identified. The note of Smith Craven is conspicuously silent as regards what would have been a very serious allegation. If it had been made I am sure that it would have been noted. There is no reason to think that those at Smith Craven were partial or prepared to cover up

allegations of fraud. The internal weighbridge tickets referred to have not been produced.

298. I am not satisfied that this aspect of the meeting, that is that Lisa produced internal weighbridge tickets and described or made the allegations of stock being sold for cash and Mr Gregory demanded that she leave them behind, took place.

299. A Smith Craven attendance note of a meeting on 6 November 2015, being a meeting with John, Charles, Mr Fitton and Mr Gregory records the following matters.

(1) The meeting was a brief meeting of 45 minutes to enable Mr Fitton and Mr Gregory to outline what had been happening with directors' loans accounts in respect of the year ends 2012-2015.

(2) Mr Fitton and Mr Gregory explained the implications for Charles personally in relation to sums drawn by Lisa from LWC and paid into his joint personal account, which was subsequently redrawn from the joint account for Lisa's benefit.

(3) Lisa's expenditure and payroll was closely analysed. From the Draft LWC Report, it become clear that part of the concerns became focussed on an apparent increase in Lisa's salary from £52,000 per annum to £150,000 per annum in the financial year 2013/14.

(4) There was a discussion about what actions the directors could take going ahead.

(5) John and Charles agreed that due to the seriousness of the potential situation, they would visit Nora personally to share the matter with her.

300. According to a letter from Ansons to John Partridge dated 10 January 2017:

> *"In relation to Lisa Pickering's resignation from the Companies, she was suspended on 6th November 2015 following receipt of the Accountants' Report. Charles and John Hughes visited Nora Hughes to discuss the position that day and explained the position to her. Her response was: "Lisa has to go". A Meeting was held at Smith Craven on 10th December and Minutes of that Meeting are Enclosure 9. Lisa Pickering subsequently sent in a letter of resignation and request for P45 which are Enclosure 10."*

301. According to Lisa, she was called into the board room by John on 6 November. Charles was sitting there already. She was accused of taking money from the Companies which had not been authorised in terms of payments for works on her house and she was shocked because, according to her, there was a longstanding arrangement that she could take such sums. She says that she was told that she had to look after Nora and she would be paid £30,000 (a year) and could change her Range Rover every 3 years but that she could not work for the Companies any more. She said that she raised the issue of all the money that John took from the Companies and also the cash sales of stock. As regards the latter she says that "this was all about" her having told John about her having found out about him carrying out the cash sales and pocketing the cash "a few months ago" when she had apparently said it had to stop or she would go to the police.

302. Despite telling the court in cross-examination that this meeting was "seared in her mind" she did not in her reply to the points of defence rely upon this meeting on an occasion on which she had raised the issue of the cash sales, notwithstanding the pleading in the points of defence that:

> *"this allegation [regarding the cash sales] has never been raised before - neither at the time of the Petitioner's dismissal from the companies for unlawfully removing funds from the companies (the cotemporaneous notes of the meeting with John, Lisa and SmithCraven accountants make no reference to these issues), in the course of pre-action correspondence, in the course of the parallel proceedings or at all."*

303. I am not satisfied that Lisa did raise this issue at this time.

304. By letter dated 10 November 2015, addressed to Lisa, Nora, signing herself as "Director/50% shareholder" wrote:

> "*I Nora Louise Hughes was fully aware myself and Charles Arthur Hughes agreed to the house expense would be charged to our loan account with the group of companies, to be cleared as normal by a dividend from Portbond Limited the holding company.*
>
> *With regard to your wage entitlement of £100000.00 per year you had a catch up. Where you only received £50000*".

305. On 11 November 2015, there was a further meeting between Lisa and Mr Gregory. This time Nora was also present. The relevant Smith Craven attendance note records the following.

(1) Lisa agreed the summary of her expenditure and agreed it save for one item. This was for some £84,000 regarding her High Court divorce settlement. This was entered into a separate column and the amended schedule copies and given to Lisa for reference.

(2) Lisa and Nora requested and were given the similar analysis undertaken for John.

(3) Lisa had prepared her own document of expenditure which she considered was expenditure of John's. This varied to some extent ("there were some discrepancies") from the version prepared by Smith Craven. Lisa suggested that the Smith Craven document should include car finance for two cars owned by John and an analysis of expenses relating to Mr Cooper. Mr Cooper is the person who looked after and stabled horses owned by LWC and by Charles and James personally.

306. The Draft LWC Report confirms that the sums which had been contained within Charles and Nora's loan accounts with LWC but which were believed to relate to Lisa were agreed by Lisa and form part of Schedule 1. Schedule 1 in fact includes certain elements identified as "Directors Loan account" and some items identified as being direct payments to third parties. After removing the element attributable to the High

Court divorce settlement the sums in question amount to just over £567,000 of which approximately £516,000 is derived from "Directors Loan account" and the remainder from payments direct by LWC as shown by its nominal ledger.

307. On 23 November 2015, Charles entered into a guarantee with the Bank in respect of the liabilities of LWC to The Bank plc up to a maximum sum of £600,000.

308. On 10 December 2015, a meeting was held at Smith Craven's offices. Present were Mr Fitton and Mr Gregory of Smith Craven, John, James and Charles and Nora and Lisa. The Smith Craven Note of the meeting records, among other things, the following:

(1) "*A full copy of the draft report inclusive of all appendices was presented to each person present."*
(2) *"Kelvin Fitton opened the meeting by presenting the report and commenced the outline of evidence with Schedule 2-The transactions of the Director's Loan Account relating to John Hughes. John confirmed that the entries outlined related to his expenditure, which was known by all shareholders and fellow directors. Cheques In respect of these transactions were under the control of Lisa Pickering."*
(3) *"Kelvin explained that John's expenses in the Directors loan Account were mainly showing as John's, while Lisa Pickering's (documented In Schedule 1) were shown as CA &NL Hughes*".
(4) Lisa asked for time to review the items set out in Schedules 3, 4 and 5.
(5) "*The question of how things had been documented was raised again: Why was John Hughes's expenditure documented clearly in the Directors Loan Account, yet Lisa Pickering's wasn't?"*
(6) "*Lisa explained that the spreadsheet used to outline such expenditure internally, had been given to Lisa Davy to complete, whilst she was away from the business having treatment for cancer…... Lisa claimed her expenditure could be easily identified by the cheque stubs however, this was disputed by both John and James, who claimed that Lisa's name had been added to the counterparts more recently*."
(7) "*Smith Craven had challenged Lisa Davy previously about the recording of expenditure and she had advised that everything that was recorded on the spreadsheet corresponded to the cheque stubs. Therefore if Lisa's name had appeared on the cheque stub at the time of recording on the spreadsheet, she would have documented* It. *She also advised that the cheques and cheque stubs were in the main written by Lisa Pickering."*

309. The note of the meeting goes on to deal with the Draft C&N Report. The following matters emerge:

(1) The Draft Report considers the personal income and expenditure of Charles and Nora.

(2) Most of the funds apparently withdrawn for the benefit of Charles and Nora were in fact for Lisa Pickering's benefit. Lisa accepted that this was so in relation to a sum of just over £212,000 which she said was in relation to the expenditure on her house and barn.

(3) Copies of the relevant cheques from the personal joint account had been obtained. They were apparently signed by Nora. Nora could only remember signing two or three of the cheques. The day before, Kelvin had been advised by Charles and

James, Nora could only remember signing two of the cheques. John asked Lisa if she had forged Nora's signature on any of the cheques. She denied this but could not confirm who had signed the cheques.

(4) Lisa asserted Charles and Nora had agreed all the monies spent on the house and barn but Charles denied it. Nora claimed that she had known.

310. The Note then continues to deal with a discussion regarding Lisa's salary. It is simplest to set the matter out in full, but I break it up into sub-paragraphs for ease of reading:

(1) "*Lisa advised that back in 2006 during a meeting with the company's previous accountant, David Butter (John. S Ward), she was advised that it would be better for her £100,000 salary to be deferred, until after her divorce proceedings were finalised. This was then delayed further as Peter died. Lisa was adamant that this was discussed at the meeting, yet neither Charles, nor John could remember the conversation*."

(2) *"John asked Lisa why this hadn't been mentioned at previous year ends and the figure accrued. No explanation was offered as to why it hadn't been mentioned but Lisa stated that the £100,000 was increased to £150,000 to catch up the arrears"*

(3) *"Kelvin asked Lisa why she hadn't mentioned the Increase to either Charles or John, so they could confirm they were in agreement to the amount at the time of amendment. Lisa referred back to the meeting In 2006 when it was allegedly agreed."*

(4) *"A conclusion was drawn to 'park' this matter as no party could agree on whether an increase in Lisa's salary to £150,000 had been sanctioned by the shareholders. Lisa suggested that the minutes from that meeting should be obtained. These would need to be sought from John S. Ward* [the previous accountants of the Company]"

311. The meeting, having returned to the question of the signatures on the cheques and possible forgery then gives the heading Lisa Pickering and the sentence:

"Lisa Pickering

Lisa offered to remortgage her house and put everything right."

312. The Note then continued with a note of discussions about various assets of Lisa's that might be utilised in this endeavour.

313. Under the heading "Repayment", the following is then noted:

"***Repayment***
John advised that recently when all this started to come to light, Lisa offered John £80,000 which Lisa denies.
John & James confirmed, that if Lisa were to repay Charles and Nora in full and offer some repayment back to London Wiper Company, In view of the hardship the company was experience whilst Lisa was drawing heavily from it, then they would repay £120,000, as a contribution in respect of their drawings documented in schedule 2."

314. Under the heading, "Employment", the following is then noted:

> "***Employment***
> *Charles Pickering was discussed and whether his job and role within the company was secure.*
> *Lisa wanted to come back to work within the company for a few days a week, but not be Involved in the finances. She said she would no longer sign company cheques if she returned to work.*
> *Charles agreed with John that Lisa was not to return to the business. When questioned by Nora If this was his final word on the subject, he replied yes."*

315. Under the heading "Proceedings" the first two paragraphs were as follows:

> "***Proceedings***
> *It was shared that the Bank had questioned whether criminal proceedings and the repayment of funds from their overdraft was appropriate.*
> *Kelvin asked Lisa why she had paid the funds from London Wiper into Charles and Nora Hughes'~ account and then withdrawn the amounts plus additional capital. Lisa explained that her intention was to drawn from her parents and then catch up with the company payments.*
> *Lisa was also asked why the money was taken at a time when London Wiper Company Ltd was struggling financially and why neither John or Charles were not aware of the transactions.*
> *Lisa suggested it was taken at that time because of her Illness and because of the building work that needed completing."*

316. The note of the meeting ended with the heading "conclusions" and the following:

> "*Conclusion*
> *The action to be taken is as follows:*
> *• Lisa to make a formal offer of repayment to both her parents and to London Wiper Company Limited with a date for this practice to commence.*
> *• Lisa Pickering is to be removed as a Director from the following companies: Portbond Ltd, Caprina Ltd and Caprina Trading Ltd.*
> *• The formal acknowledgement of Lisa Pickering having been removed as a Director of London Wiper Company Limited following a period of suspension."*

317. An entry in a desk diary, probably of James, for 10 December 2015 lists the meeting at Smith Craven as a diary entry. At the bottom of the page, in very short form, it is recorded that Lisa would pay back the money owed to Mum and Dad and LWC, that she was coming back with an offer in 7 days and that she would have liked to come back to the company but "*Mum, Dad and John said NO and I wont sign checks [sic] again we all said no.*"

318. Of this meeting, Mr Lenon KC made the following findings:

> "*[48] On 10 December 2015 a meeting took place at Smith Craven attended by Nora, Charles, Lisa, John and James and Messrs Fitton and Gregory, partners in the firm, to consider their reports. This meeting is referred to by Nora in her Affidavit as an occasion when she made clear that, as a 50% owner, she intended to sell her share in the Edlington properties in order to raise some money. On the*

> *basis of Messrs Fitton and Gregory's evidence, I accept that Nora did not say anything openly about her ownership of the properties (although she may well have done so privately to Lisa). The issue of the ownership of the Annex was certainly mentioned. Mr Gregory's note of the meeting records that Lisa described the Annex as belonging to Nora and Charles and that James confirmed that the Annex was "still Nora's and Charles's*".

319. Lisa has attacked the minutes as being seriously inaccurate in several respects. Despite the finding of Mr Lenon set out above, she also insisted that the minutes were inaccurate in not referring to the intention of Nora to sell Edlington Woods which she said was mentioned 3 or 4 times. Although it is rare for minutes accurately to record everything that took place I am satisfied that in substance they are accurate and, in particular, that they accurately record an offer or agreement by Lisa to repay monies. I am not satisfied that the inaccuracies identified by Lisa (so far as substantial and relevant to the points that I have to decide) are in fact inaccuracies in the minutes in terms of what was said or understood at the meeting,

320. It was common ground that Lisa did not raise at this meeting the cash sales: she says that is because she wanted to sort matters out and so did not raise it. This makes little sense. If there was a question (which there was in her mind) that John had been taking money out of the company by way of payments for personal expenditure there was every reason to sort things out by also raising the fact that he had taken out cash (by selling stock for cash and not accounting for the proceeds).

321. According to the return filed at Companies House, Lisa ceased to be a director of each of the Companies on 11 December 2015, although the electronic filings were not made until 22 December 2015. By letter of 11 December 2015, she resigned as a director of Caprina Limited.

322. By letter dated 6 January 2016 to Mr Fitton at Smith Craven, Lisa set out her position with regard to her salary. She said that her salary had been £50,000. In 2006 it had been agreed that the salary would double to £100,000 at a meeting between her parents, herself and Mr David Butler. She said that Mr Butler had a note of a telephone call to John on that date confirming the doubling of the salary. Such a note has not been produced. She said that at the meeting, it was agreed that she would not take the new salary until her divorce had been finalised. In 2013, her salary increased to £150,000 to catch up on the salary agreed in 2006 and John was aware of the salary increase.

323. A Smith Craven meeting minute of a meeting on 18 January 2016 records a meeting between Lisa and Mr Fitton and Mr Gregory. Among the matters recorded are the following:

> "*The meeting had been arranged to enable Lisa to provide an update in relation to her offer to repay the monies taken, as agreed in the meeting held on the 10th of December 2015.*
> *It materialised very early on, that this was not Lisa's agenda for the meeting. Instead the main purpose from her perspective was in fact to provide Kelvin & Paul with further details of funds in which John Hughes had benefited….*
> *Lisa's focus was clearly to demonstrate (with written evidence) that John had also had funds from the business relating to his personal expenditure. The*

> *suggestion being that if John had had this capital, it was also acceptable for her to do the same.*
> *Kelvin reiterated the fact that what each individual had taken from the business was irrelevant really, the point of all this focus was what had been knowingly deducted and this was the fundamental difference in the Directors Loan Accounts and payroll: Everybody knew what John Hughes had had, whereas nobody was aware of all the drawings Lisa Pickering was making. This point was repeated several times during the meeting.*
> *Lisa however, continually claimed that both Mum and Dad and John did know. Kelvin highlighted the fact that they knew of some items of expenditure; the kitchen and the high court divorce settlement but nothing else.*
> *….*
> *Kelvin raised the matter of repayment of monies: Lisa advised that a mortgage would be applied for on the property that her son Charlie lives in, once the building work had been finalised and signed off. Lisa currently owns this property, but she agreed that she would sign it over to Charlie and he would then apply for a mortgage to raise some capital. Lisa also advised that she was also pursuing a Medical Insurance claim and would see if money could be released early. She accepted that this may take some time as the Insurers need to see further medical evidence."*

324. On 27 January 2016 there was a meeting between Nora and Lisa on the one hand and Mr Fitton and Mr Gregory on the other at Nora's residence. The note of the meeting by Smith Craven reveals the following matters, among others:

(1) The purpose of the meeting was to discuss personal tax returns for herself, Nora, and Charles and the liabilities which arose. The personal tax arising was not tax that either of the Companies could pay on their behalf and then re-charge to them through their loan accounts.

(2) Lisa confirmed that once her life insurance policy paid out, she would pay her mother some of the monies owed back, but this would not be in the short term. Also Charlie, Lisa's son, was apparently willing to try and raise capital by way of mortgage over his property but again this would not produce funds imminently,

(3) Nora indicated that in general she did not really understand all that had gone off, but she thought it might have been better to have had a meeting before it all "kicked off" to try and sort matters out between all parties.

(4) Mr Fitton suggested that a round-table meeting could be held but it could require agreement of all the parties involved.

325. Following the meeting with Nora and Lisa, Mr Fitton and Mr Gregory met with Charles. Again, the meeting is the subject of a Smith Craven "Meeting Minutes" document. Charles was in bed during the visit having recently had a short spell in hospital. The tax return and liability was discussed and it was reiterated that £80,000 was due by the end of January and a further £80,0000 due in July 2016. Nora was reported as having said she would be in touch with Charles regarding the joint liability and how it could be paid. Charles is recorded as saying that he did not think Lisa would make any form of repayment:

> *" He was clearly upset by all that has gone one, in particular the fact that Lisa had not held her hands up to the unauthorised withdrawals. Had she done so, Charlie advised that he would have worked with her to provide a solution to It all. He stated he had always told her to tell the truth and that he could help If she told the truth, but If she chose not to, then he wouldn't do anything to help."*

326. By letter dated 28 January 2016, addressed to Smith Craven, Nora asked for the latest financial position for LWC (and Caprina), who was paying John's personal tax and up to date directors loan account.

327. A Smith Craven Meeting Minutes document of a meeting on 3 February 2016 between Lisa, Charles and Mr Fitton and Mr Gregory recorded the following:

(1) The meeting had bene called at the request of Charles.

(2) Charles had been ill. Mr Gregory commented that it was good to see Charles up again.

(3) Charles expressed his concerns regarding the Bank's desire for a prosecution of Lisa in relation to money that she had taken. He said this would have been avoided if Lisa had come to him in the first place. The Bank were pressing to know what was happening and therefore Charles explained that he wanted a letter setting out what Lisa was going to repay.

(4) Lisa then said, "take me to court then". Charles explained that that was not what they wanted to do,

(5) Lisa maintained Charles knew about the.money but Charles maintained he only knew about the money for the kitchen and the divorce settlement.

(6) Lisa then gave various explanations as to why there would be a delay in her raising money: options under consideration being a mortgage over the barn and release of monies from a life policy that she held.

328. Lisa maintained that these minutes were inaccurate too. For example, she denied that anything was said about the Bank wanting proceedings to be brought (as set out in sub-paragraph (3) of the last paragraph above).

329. A Smith Craven Note of a meeting on 18 February 2016 between Lisa and Mr Gregory records that Lisa wanted various points noted. These included that she agreed a certain sum was owed by her. She denied that the tax and salary should be part of any calculation on the basis that Nora and Charles had agreed that she could have those sums. The calculation and the comments on the notes are as follows:

> *"£687,456.45 (per summary in report dated 10 December 2015)*
>
> *(84,000.00) less agreed monies*
>
> *(36,452.64) per Lisa exclude Barclaycard (John's had this and not repaid)*
>
> *(1,500.00) Also JVN Architecture – Per Lisa related to Charles Pickering*

(29,5000.00)	*Lisa disputes the Wath cash-says she paid £6,500 privately only)*
535.21.81	*per Lisa as agreed monies owed*
(413,707.12)	*says John has had this (previously provided by Lissa). Lisa tried to deduct this from what she owes."*

330. By letter dated 24 February 2016, Smith Craven (by Mr Fitton) replied to Nora's letter of 28 January regarding management accounts. The letter explained that whilst she had every right to the information, given the current dispute Charles and John had advised that they wanted such information to remain on the company premises and that therefore Smith Craven would continue to forward all accounting information there and she should seek such information directly from Charles and John. The letter hoped that she would understand the "*very difficult position both myself and the firm find ourselves in and whilst trying to maintain both impartiality and transparency for all parties, I feel this is the most appropriate course of action in this instance.*"

331. By letter dated 29 February 2016, Lisa wrote to John asking for her P45 and stating that the date that she left was 6 November 2015.

332. By letter dated 21 March 2016, a pre-action letter was sent by Ansons LLP, solicitors, on behalf of Portbond and LWC to Lisa. The letter:

(1) Alleged an unauthorised increaser in Lisa's salary some time prior to the year end 2011/12 from just above £50,000 to £150,000 and sought repayment of alleged overpayments by reference thereto of over £258,000.

(2) Alleged that between 2011 and 2015 just under £717,000 had been withdrawn by Lisa from LWC. This mainly took the form of payment of personal suppliers of hers and that in a high proportion of cases the expenditure was falsely accounted for by recording it as a debit to the loan account of her parents. The letter enclosed the Smith Craven Schedule that had been gone through at a meeting on 18 February 2016. At that meeting Lisa was said to have agreed £535,212.81 had been drawn by her personally. The letter went on to deal with further additions that should be made, bringing the figure up to £632,000, certain allowances which should be deducted (e.g. the costs of her kitchen in the sum of £50,000) and claimed a balance of £478,482. As regards a number of the additional items over and above the £535,212, it was said that Lisa said that they should not be included because John had had certain sums from the Company. The general answer to this was:

"*It is no defence to try and compare your situation to any drawings made by your rother John [ ]. Your brother's drawings were made with the knowledge of the Company's board and with its approval."*

333. In his letter of reply on behalf of Lisa, dated 14 April 2016, Mr Partridge asserted that the salary increase was agreed. He referred to a note of "the business" and a file note to support it, including making a call to John to make him aware of the position. As

regards the other sums taken by Lisa, it was said that they were taken within the well-established operation of LWC whereby Lisa and John were allowed to have substantial drawings set against the directors' loan accounts and that the drawings in this case had been authorised by Nora and Charles. Somewhat tellingly, the letter makes no suggestion that the allegation that unauthorised drawings were made was because of Lisa finding out that John had been selling stock for cash illicitly and retaining the proceeds. Instead:

> "*It is my Clients view that the business is struggling financially at present. Turnover has diminished massively over recent years. She considers that she is being used as a scapegoat and that this recovery is being "sold" to lenders as an asset of the business which it patently is not and was never intended to be by the Board who were responsible for the decisions at the time they were made."*

334. Further, the letter does not suggest that John had been taking money improperly or without authority so that he was in the same position as Lisa. Rather, it was in effect asserted that payments to or for both had been authorised and were within the normal operating mode of the Company.

335. By a letter dated 11 May 2016, Mr Butler wrote to Mr Partridge:

> " *I have seen your letter dated 14th April 2016 to Anson Solicitors, with the inclusion :-*
>
> > *"I understand that the former accountant David Butler has a note of this business and a file note to support including making a call to John Hughes to make him aware."*
>
> *For personal reasons I have no wish to be involved in these family*
>
> *matters."*

336. By letter dated 23 May 2016 to Nora, Smith Craven explained the position regarding amended tax returns. The key points, for present purposes, can be taken from the letter as follows:

> "*The revised Returns for Mr C A Hughes having been submitted on 28 April 2016 reflect the legal action being taken against Lisa Pickering.*
>
> *The Accounts now reflect the monies drawn by Lisa as a Debtor in the accounts and therefore, the Tax Return being amended for the reversal of Dividends taken in previous years and effecting the 2015 Personal Tax Returns.*
>
> *The original Tax Return discussed in January 2016 showed a liability due to HMRC in January 2016 of £40,919.77 and in July 2016 of £39,006.59.*
>
> *The amended Return now shows a nil liability for January 2016 and a reduced liability in July 2016 of £15,371.91. This will, after being submitted to HMRC also generate a refund of £32,011.50. All to reflect the overpayment of tax as a result of the Dividends being overstated due to monies drawn by Lisa.*
> *.....*

> *I look forward to meeting you again on Monday 6 June at 10am to discuss your Tax Return but also to discuss Lisa's thoughts and her cash offer which will hopefully open the way to negotiations and avoid this process going further and eventually to Court."*

337. By email dated 11 December 2017, Prodicus Legal wrote to Ansons referring back to their letter of 2 November 2017, enclosing the draft letter said to have been approved by Nora. In addition to the matter raised by the draft letter, a number of other concerns were raised regarding (a) an alleged failure of John/Charles to account to the Companies for prizes and winnings in relation horses which Portbond had paid the running costs of; (b) substantial sums said to have been paid in respect of the construction/renovation of residential properties at three specified addresses; (c) that John continued to "live out of the companies" spending sums on personal matters which could not be justified as legitimate business expenses of LWC; (d) that statutory accounts were filed before Nora's concerns were addressed. No mention was made of any alleged illicit sales for cash of company stock.

338. By letter dated 7 January 2017, Smith Craven wrote to Lisa referring to the meeting of December 2015 and asking for proposals regarding her agreement to repay monies owed to LWC and threatening further action in default.

339. By letter dated 12 April 2017, Prodicus Legal Limited, solicitors acting for Nora, wrote to Ansons seeking information and referring to Nora's concerns as regards the financial dealings and governance of each of the Companies.

340. By email dated 15 August 2019, information was provided to Prodicus Legal Ltd.

341. By letter dated 18 August 2017, Wheawill & Sudworth, accountants, acting for Nora sought information from Smith Craven.

342. By letter dated 11 September 2017, Smith Craven responded to Wheawill & Sudworth pointing out that much of the information had already been provided to Prodicus Legal Limited and answering the requests for information made.

343. As said, Nora died on 25 October 2017.

344. On 2 November 2017, Prodicus Legal Limited confirmed that they had been retained by the executors of Nora. They enclosed a letter said to have been approved by Nora on the day before she died, 24 October 2017. The letter stated that,

> "*The Executors appreciate that some events have overtaken the contents of the draft letter which relate to the proposed board meetings, but we are instructed to deliver the letter to you and ask that you take your clients' instructions and return to us regarding its contents*."

345. The letter enclosed dated 24 October 2017 raises 9 issues related to the 2015 Companies draft accounts, some 22 questions in relation to bank account statements and sums paid by (chiefly) LWC for or in respect of John and then raises some 6 general issues. Among the latter, is an expressed concern that John and Charles were living "the high life" at the expense of the Companies. "*Our client will require all*

expenses to be properly accounted for and illegitimate expenses to be recovered from the individual." Point (iv) was as follows:

> "*It is apparent from the history of the companies that the Hughes family has become accustomed to dealing with matters informally and without due regard to, for example, due process. For the avoidance of doubt, to the extent that our client may have permitted your clients to deal with company matters informally, the same is hereby withdrawn. Our client requires each company's affairs to be conducted in accordance with all relevant statutory requirements and the articles of association of each."*

346. The claim form initiating the Recovery Proceedings was issued on 28 December 2017.

347. The Particulars of Claim are dated 13 December 2017. Breaches of duties owed as employee and director by Lisa are alleged. The breaches involve an allegation of removal of just under £717,000. Of that, some £134,000 (£50,000 for kitchen improvement and £84,800 in relation to her divorce settlement) were accepted as having been authorised. The total unauthorised drawings asserted were therefore just over £582,000. The agreement of Lisa to just over £535,0000 at the meeting on 18 February 2016 is pleaded.

348. By email dated 8 May 2018, Mr Gregory confirmed to John that the balances on the loan accounts for the period ended 31 March 2018 were as follows (which included the proceeds for a car allocated to John's accounts as had been discussed):

John	£232,898.87 overdrawn
Charles	£ 24,675.57 overdrawn
Nora	£ 16,766.79 (in credit and increasing month on month re the rent split in relation to the Site)
Lisa	£ 1,715.41(overdrawn)

349. That defence and counterclaim in the Recovery Proceedings contains a statement of truth by Lisa dated 21 September 2018. I cannot in fact find any counterclaim (a point that the reply confirms). No mention of any theft of stock or their proceeds is advanced in the defence and counterclaim. In paragraph 30 Lisa deals with her exclusion from the Companies. While the paragraph asserts that Charles and John used the allegation of unauthorised withdrawal of funds as a pretext to exclude Lisa from the operation of the Companies, that alleged to have been their desire formed by November 2015, the only (slight) explanation offered as actuating such desire is a pleaded alleged desire by Charles and John "to exclude the female side of the family" from the Companies. Tellingly, no mention is made at all of the dismissal/removal being actuated by Lisa's discovery of improper cash sales/diversion of proceeds of cash sales of stock.

350. In the reply, dated 17 October 2018, the pleading in the defence and counterclaim regarding the allegation of a desire to exclude Lisa and to exclude the female side of the family is denied. The reply pleads as follows:

> "*As to Nora, no such. desire had been formed and no steps were taken to exclude her - she had no involvement in the day to day operation of the Claimants. In regard to Lisa, it is admitted that a desire to exclude Lisa from the Claimants had arisen - · that desire arose as a consequence of the discovery of her misappropriation of funds from the Claimants. The Claimants note that the Defendant fails to plead to any alternative motive or reason for a desire to exclude Nora and Lisa from the Claimants arising. Indeed, the contrary was true - the businesses were*
> *operating successfully and the roles of the various family members were established and settled - save for the unlawful removal of funds by Lisa, there was nothing that would have led to a desire to remove either her or Nora from the Claimants."*

351. The petition presented on 7 June 2019 was the first occasion on which it was alleged that stock had been sold for cash and the proceeds retained by John and his father. The relevant pleading is as follows (and is in stark contrast to the Defence and counterclaim in the recovery proceedings):

> "*16. John Hughes caused the dismissal of Lisa Pickering from her employment by the Company and the removal from her directorships of the companies because:*
>
> *(i) he did not want her to continue to have access to the financial information relating to the companies because he wanted to prevent her divulging the same to her mother to stop her knowing how he and his father were acting in breach of the directors' duties and duty to account as set out in paragraph 6 above; and*
>
> *(ii) he was acting out of personal animosity towards Lisa Pickering; and*
>
> *(iii) so that he could appoint his son James Hughes as a director of both companies in her place to promote the interests of his side of the family (ie himself and his son) at the expense of his sister and her side of the family (ie herself and her son, Charlie Pickering)."*

352. By letter dated 4 November 2019, Smith Craven confirmed to Prodicus Legal Limited that the overdrawn loan account balances as at 22 October 2019 were as follows:

Charles	£195.462.39
John	£391,656.43
James	£ 19,875.34

353. The letter went on to confirm that the overdrawn loan account balances had reduced as at 4 November 2019 as follows:

Charles	£190,902.19
John	£384,995.48
James	£ 2,979.60

354. I accept and find that although the Smith Craven paper audit trial of how the investigation started is, with the benefit of hindsight, not ideal, that situation is quite understandable given the then working relationship that Smith Craven had with the Companies and the individual members of the Hughes family and what Smith Craven were being told. There is nothing suspicious in the absence of such documents.

355. I also accept the evidence of Mr Fitton that, at the start of the involvement of Smith Craven, John and Charles had not started from the premise that Lisa had taken funds without permission. Rather, they had wanted the position to be investigated. This is consistent with the contemporaneous documentation.

356. I am also satisfied that the Smith Craven minutes or notes of meetings (based as they are on the contemporaneous notes of Mr Gregory, which were also in evidence) are a fair record of what took place at such meetings and what was discussed and that they are accurate in what they state. I am also satisfied that no major issues that were raised or discussed were omitted from such minutes. It follows that I reject Lisa's evidence that she told Mr Gregory and/or Mr Fitton at an early stage (a) that John had been selling company stock for cash which he retained and/or (b) that her having raised this issue was the reason for the investigation of her own drawings.

357. I also find that Nora did not immediately take the line that the payments to Lisa from the Companies, direct and indirect, were all authorised. I also find that the Smith Craven investigation was agreed to by Nora and that she wanted it to encompass drawings by John, which is what it did.

358. I also find that Nora initially agreed that Lisa would have to go as director and employee, as is confirmed by the contemporaneous documentation.

359. I also find that the investigation carried out by Smith Craven was carried out fully and fairly. I also note that it was not simply an investigation into sums drawn by Lisa but also covered sums drawn by John.

360. I also accept Mr Fitton's evidence that he did not know at the time (that is late 2015) that Lisa's case was that John had sold stock for cash and not accounted to LWC for the proceeds nor did he know that Lisa's case at the time was that it was her confrontation of John over such stock sales which prompted the initiation of the inquiry. I also accept his evidence that there has been an Inland Revenue enquiry of John which has not substantiated Lisa's allegations.

Charlie Pickering's dismissal

361. The allegations in the Petition are that the dismissal of Charlie was unfairly prejudicial because it was motivated to prevent him identifying breaches of duty by

the Relevant Respondents (including in relation to cash sales), so that he would not be able to report the same to Lisa; it was effected in breach of director's duties to make it easier to hide breaches of duty from Lisa and it caused loss to LWC being the cost of the settlement with Charlie and legal costs incurred by LWC.

362. On 26 April 2018, there was an incident at LWC's premises. Charlie used a mobile phone while outside. This was not permitted. He was told off by John. John asserted that Charlie was aggressive back.

363. By letter dated 30 April 2018, Prodicus Legal wrote to John on behalf of Charlie complaining about the "*extremely aggressive and provocative behaviour*" to which he had been made subject "*over the last 12 months or so*", culminating in an alleged assault on 26 April 2018. The first part of the assault was alleged to have arisen when John "*confronted* [Charlie] *over a non-issue relating to use of telephone in the car park/skip storage area of the company site*". Having confronted Charlie it was said that John then "*gestured towards his face with* [his] *hand with keys held at the same time*" which "*caused* [Charlie] *to legitimately fear that he would be subject to injury on or about the Area of his eyes from the keys*". Then, it was said, having returned indoors Charlie "*pushed my client from behind causing him to stumble forward*". This was said to be "*evidence of instability*". Charlie had been advised not to attend work until the board had dealt with the matter.

364. On 9 July 2018 a grievance hearing, followed immediately by a disciplinary hearing took place. The chair was Vicky Stoneman, a director of Effective HR Solutions Limited. That company provides an outsourced human resource function to small and medium sized companies that may not have the resources to have its own specialist human resources function. Charlie was accompanied by his union representative, a Mr Ron Stanley.

365. As regards the grievance hearing, two complaints were identified: (a) that John Hughes had bullied Charlie since Charlie's mother had left and (b) that Charlie's employment terms were less favourable than they had previously been.

366. As regards the disciplinary hearing, the allegations were:

(1) Using a mobile phone repeatedly in the yard, having previously been asked not to;

(2) Speaking aggressively toward John on 26 April 2018.

367. During the investigation, Ms Stoneman spoke to James John, and 4 employees as referred to in a letter of 11 July which I shall come onto.

368. I have a very full note of the hearings which reads like a transcript ("the DH Note"). Among the points of note are the following:

(1) Charlie had had statements from various witnesses which he went through with Ms Stoneman to the extent that he wished to.

(2) When asked if he had sworn at John on 26 April 2018 he said he could not remember swearing at John.

(3) According to the union representative: it was "*custom and practice that employees do not use their phone, but John, so its creating a double standard"*.

(4) It was suggested by the union representative that the process was "*contrived and John was doing* [it] *after the fact*". Ms Stoneman asked if they were content that she should hear the case, given that if they felt that the process was contrived then they must feel she was involved. The union representative confirmed that, on the contrary, they were "very happy" for her to hear the case as she was "unbiased".

(5) Ms Stoneman asked specifically whether there was any reason Charlie could think of as to why John would make up his statement that he had given previous warnings to Charlie about not using a phone and Charlie simply said: "*it suits for me not to be here at the time*".

(6) The union representative in summing up, said that John should withdraw the allegations against Charlie and find an appropriate method of mediation between himself and Charlie's mother rather than bringing Charlie into the situation.

(7) There was therefore no suggestion that the matter had been engineered to prevent Charlie finding out, or continuing to report to Lisa or Nora, about stock illicitly sold for cash and the proceeds not accounted for to LWC.

369. In a letter dated 11 July 2018, Ms Stoneman wrote to Charlie setting out her findings regarding his complaints under the grievance procedure.

370. As regards the allegation of bullying, this allegation was not upheld. Employees who had been asked did not want to get involved and so it was therefore very much one person's word against another's. The allegation broke down into three sub-allegations.

371. The first sub-allegation was that Charlie had been called into the board room on several occasions by John and was then told things like "*Your mother is a fucking cunt*". As regards this, Ms Stoneman considered that the probabilities were against such allegations being true: first they had not been raised before and secondly it was unlikely that John would behave in this way knowing there were legal proceedings on foot and given the impact such conduct could have on those proceedings. She did not believe John would behave in that manner in any event.

372. The second sub-allegation related to events on 26 April 2018 and were that John had waved his keys at Charlie in an aggressive manner and pushed him out of the doorway to his office. Ms Stoneman considered that John would not have waved keys in a threatening, let alone a bullying, manner and that the aggressor was in fact Charlie. As regards John pushing Charlie, she believed Charlie to be the aggressor and as he had never followed the matter up at the time did not consider that it could have been as serious an incident as Charlie had stated. It emerges from the DH Note that the keys being waived in his face was a matter that he had reported to the police which had never been followed up.

373. The third matter related to a "significant amount of paperwork with solicitors" regarding "numerous incidents" which Charlie said he would share with her. He did not do so. She could only base her decision on the facts before her.

374. Ms Stoneman also commented on a text from Charlie to an employee, Lisa Davey, in which he referred to feeling discriminated against. However, Ms Stoneman felt she had insufficient information on this matter or on what grounds Charlie felt discriminated against. She also noted that Lisa's messages did not come across to her as someone who was concerned for him on a serious level but simply as though it was a family dispute "I am not getting in the middle". This implied to Ms Stoneman that the situation was nothing out of the ordinary. She also noted that Charlie had at no point stated how the alleged conduct had left him feeling, which is what she would normally expect to see in a complaint of bullying and harassment.

375. With regard to an alleged change in employment terms, the only differences identified were an absence of a company car for four months, but apparently at a time when Charlie had had an accident. The four month gap was not ideal. However, the fact that by the time of the hearing he had a car again did not suggest an intentional change in employment terms. As regards absence of the fuel card, this would not prevent him claiming expenses like any other employee and therefore she did not consider that the employment terms were less favourable on a permanent basis than they had been.

376. In a further letter dated 11 July 2018, Ms Stoneman wrote to Charlie setting out the outcome of the disciplinary hearing. Both allegations were found to be made out and to amount to gross misconduct meriting immediate dismissal, which is what the letter give notice of. Ms Stoneman referred to two letters to employees about mobile phones but Charlie had said he had not seen them. Ms Stoneman does not seem to have relied upon these letters but rather upon Charlie having been verbally told on three earlier occasions in the same week not to use his mobile phone. She also referred to CCTV coverage but did not rely upon it as she felt it added nothing of value: both Charlie and John confirming Charlie had used his mobile phone. She said that she had spoken to James, and the four named employees who were made aware that their statements would be shared with Charlie.

377. As regards the allegation of using the mobile phone, some key points coming out of the letter were as follows:

(1) Both parties confirmed that Charlie did use his phone in the yard.

(2) Charlies suggested (a) he was in the car park not a heavy plant area, so in fact there was no problem in him using his phone and (b) he had not received letters setting out a prohibition on employees using mobile phones and (c) the prohibition did not apply to him anyway as he did not operate heavy machinery.

(3) As regards (a) and (c), Ms Stoneman considered that there are lorries driving in and out of the site on a regular basis and to be on the phone at any time was a distraction and dangerous.

(4) As regards (b), Ms Stoneman accepted John's evidence that Charlie had been told by John on three occasions in the three days immediately preceding the relevant incident that he should not use his phone. Charlie had denied this and suggested that John had made it up to get rid of him. Ms Stoneman considered that John did not fabricate his statement. He had worked alongside Charlie for at least two years even after Lisa left the business (in November 2015). If John had wanted to

remove Charlie he would have done it at an earlier stage. If John used his phone that might appear to be double standards but ultimately employees should abide by the rules and the relevant instructions of their managers. Given this was the fourth relevant occasion, it was serious and the conduct likely to recur.

(5) Ms Stoneman also commented:

> *"I think the other issue is that whilst you are a relative of John and James, you are still an employee, and that the family ties are muddying the water somewhat."*

378. As regards the allegation of speaking aggressively to John on 26 April 2018:

(1) The conclusion was that Charlie did speak to John aggressively by using phrases such as "*you are not my fucking boss*".

(2) This conclusion was based upon the following matters: (a) When John challenged Charlie about using the phone, Charlie he did not just put the phone down but went up to him and challenged him and followed him into the building, that not being the actions of someone who has "just taken" verbal abuse from John as Charlie had asserted; (b) a text message from Charlie to another employee, Lisa Davey, 10 days earlier had been to the effect that Charlie was upset about the whole situation and that he felt he had been discriminated against, yet nothing had happened on the previous days when he had been spoken to by John about using his mobile phone. If John was the aggressor why didn't anything different happen on those prior days?; (c) the reason for this behaviour was not provocation by John but a build-up of frustration and on the 26th Charlie decided to do something about it.

379. On 14 December 2018, Charlie and LWC entered into an ACAS agreement under which LWC agreed, without any admission of liability, to pay Charlie £17,000 in full and final settlement of all and any claims that he might have under existing employment tribunal claims and all any and other claims that he had or might have then or in the future against LWC or any associated companies or its officers or employees whether arising from his employment, its termination or from events occurring after the agreement.

380. I also have a transcript for the hearings on 9 July 2018.

381. In his witness statement Charlie said that he started working at LWC in 2008, but that once his mother ceased working in the business day-to-day (which I took to mean after her suspension in November 2015), John "systematically" sought to dismiss him on numerous occasions. No examples were given as to what form this attempted dismissal had taken. Rather, he referred to verbal abuse that he received with regard to himself and his mother which he said was to try and provoke a reaction from him and to get him out of the business. He says that "when all this failed" John tried "other tactics", which resulted in Charlie bringing an unfair dismissal claim.

382. As regards the incident on 26 April 2018, in his witness statement Charlie asserts much of the same points that he raised at the disciplinary hearing: he was in the car

park/skip storage area and there were no heavy machines in the area; he would not have used his phone near heavy plant; the use of his phone was critical for his job; heavy machine operators were not supposed to use mobile phones but he did not use heavy plant and was not such an operator. He, James and John used phones at the yard as they had done for years. The first time that the use by him of his mobile phone was criticised was after his mother was dismissed.

383. In his witness statement, Charlie said that once his mother left John systematically sought to dismiss me "so as to gain full control". As Charlie was not a director it is unclear what this means.

384. In his witness statement Charlie also alleged that he would take stock figures in an evening, count the tonnes of granules in the yard and then find "on a Monday morning" that there was "missing stock". John, he says would use internal tickets rather than out tickets "when stock was being sold for cash deals". He says that he told his mother and grandmother on "numerous occasions".

385. In cross-examination he accepted that he did not need to carry out stock takes for the purposes of his work for the Companies in doing deals and invoicing customers. Nevertheless he said that "every night" he would check and record the stock positions and that he would definitely do this every Friday. His explanation was that he just did this historically and not because his mother had raised an issue about it. In effect he said that he carried out a full audit on a daily basis of stock, reconciling the stock there with what finished stock had been produced in the day and what had been sold in the day. I consider this inherently unlikely and it would be a job that would have taken a long time. If it was so simple there is no real explanation as to why stock takes were so infrequent or difficult.

386. For the first time, in cross-examination, he asserted that he had asked Steve Mower about where missing stock had gone and that he was told it had gone to C F Booth. He said that there were internal tickets that John had, in effect, doctored.

Cash Sales: conclusions

387. In his report, Mr Lacey pointed out that given the purpose of selling stock for cash (and then not accounting for the proceeds) would be to avoid reporting sales, it would be innately difficult to directly demonstrate through available accounting records that sales had been for cash. I accept that there would be a difficulty but of course if the stock records were well kept then absence of stock, not accounted for by sales, should show up. This is particularly so given the detailed records required to be kept under legislation by scrap metal merchants.

388. Mr Lacey identified the records available to him and that he had not been given access to the detailed stock records that were alleged to exist as being maintained on John's laptop computer. Such records of stock as were available to him were very limited, such that he had no visibility at all over what stock was purchased and sold each month and no ability to reconcile stock.

389. Accordingly an exercise that would in normal circumstances be difficult "has become impossible".

390. He therefore attempted to comment on movements in gross profit margin and reviewing the amounts realised from the sale of stock. He concluded that there was a significant increase in LWC's gross profit margin between August 2015 and August 2016 and that this coincided with a drop in the overall price of copper and a period in which Lisa was said to have been applying a degree of scrutiny to potential cash sales. The inference (although this was not expressly stated) was that the increase in the gross profit margin could not be explained by a rise in copper prices and that the likelihood is that it was to be explained by sales being put through the books and the alleged practice of selling stock for cash without accounting to the Companies for the proceeds being restricted or suspended.

391. However, in his answers to questions, Mr Lacey accepted that:

> "*I do not know specifically why the margin was higher in that year, there are likely to have been a number of factors that impacted this. For example, in his Witness Statement John Hughes has referred to an increase in profitability post 2015 arising from a short term contract with BT. I am unable to verify whether that is correct, or, assuming it is correct, the effect this may have had on gross margins*."

392. At the end of the day, I do not find Mr Lacey's evidence on this area as being of any great assistance to me. There is a possible pointer to there having been the alleged cash sales in terms of the gross profit margin change, but that evidence is equally consistent with other explanations. At the end of the day the expert evidence on this point is simply neutral.

393. It is therefore necessary to turn again to the evidence of fact.

394. I have made a number of findings of fact earlier in this judgment. I have them all well in mind.

395. As regards the alleged cash sales I find that these are not made out. The most significant factor in this respect is, in my assessment, the fact that this allegation was only raised by the petition and not in the course of the investigations and negotiations thereafter and not even in the defence to the Recovery Proceedings.

396. In addition: Charlie's account is inconsistent with Lisa's account so far as it suggests that they were both identifying cash sales at the same time. Further, he too did not raise cash sales as an issue in connection with his removal. Nora also did not raise the issue or even do anything about it though according to Lisa and Charlie she was told all about it.

397. Although there were said to be copious records demonstrating the fraud, nothing significant has been produced and nothing was produced to Smith Craven.

398. There are also other matters: Lisa's unsatisfactory, late and inconsistent evidence regarding the CCTV. Her inability to explain what prompted her suspicions in turn prompting her alleged investigations into stock levels.

Conclusions: investigations and removal of Lisa, the Recovery Proceedings

399. I am satisfied that the investigations inot Lisa were not prompted by any misconduct or allegations of misconduct against any of the Relevant Respondents.

400. I am also satisfied that they were genuinely instituted to find out what had happened with regard to the directors' loan account of Charles and Nora and payments by the Companies for the benefit of Lisa.

401. I am also satisfied that Nora agreed to the investigations (even if after their immediate institution) and that they were not carried out by Smith Craven in an unfair manner nor was anything that the Relevant Respondents did motivated by making the investigations unfair nor did they make them so. The investigations were clearly not targeted at Lisa only: Nora and Lisa were vociferous that the investigations should also be into John's dealings with the Companies. I reject the case that the investigations were instituted as a "pretext" to get rid of Lisa. Her removal flowed from the product of the investigations.

402. I am unaware of any misconduct of the Relevant Respondents which, it is said was sought to be disguised by then in the course of the investigations.

403. As regards "false information", I accept that the assertions as to her salary turned out to be wrong but given the time lapse between the relevant events and the paucity of evidence I do not find the allegations or the attempt to investigate the same as having been instituted maliciously knowing the true position and that here had been nothing to investigate.

404. As regards sums wrongly taken by Lisa, it is accepted by her expert that a sum of at least £573,000 was taken by her by way of personal expenditure from the Companies. It is said by the expert that he was told that Nora had approved the same. However, Nora's approval alone would not have been enough. Furthermore, even on this case, such sums should then have been re-charged to Lisa personally (or possibly through Nora's and Charles' directors' loan account, if Charles as well as Nora had agreed to this). On the evidence I find that Charles had not agreed to this course. After all, Lisa herself agreed to repay sums back in the course of the investigation even though there now may be a dispute as to the precise sum which was agreed.

405. As regards Lisa's removal as employee and director, it seems to me that that followed from the result of the investigations. There was no breach of duties by the Relevant Respondents. Indeed, Charles was reluctant to take this step (see the Smith Craven note of the meeting on 3 February 2016) and John in his oral evidence explained that he did not want to remove her believing at the time she was terminally ill from cancer and described her removal as similar to "chopping off his right arm". In any event, it is not a matter of which she as successor in title to Nora's shares can complain about because Nora clearly (and understandably) acquiesced in the matter at the time.

406. As regards the initiation of proceedings against Lisa (which proceedings did not carry forward any claim about Lisa's increase in salary, though that had been threatened), there were, in my judgment, good grounds for the claim to be brought. I do not consider that it was brought for improper purposes or without belief in its validity. The fact that the Administrators, who I believe were under threat of a security for costs application, decided not to adopt the proceedings on behalf of the Company

does not of itself lead to the conclusion that the proceedings were bound to fail or that they were wrongly brought (including being brought for the wrong reasons).

Conclusion: dismissal of Charlie Pickering

407. I was not addressed on the question of whether the conclusions of Ms Stoneman were inadmissible hearsay. On any view however, it seems to me that they demonstrate that an independent person, experienced in the area, and who conducted a longer hearing on the matter with a great deal of material came to the conclusions that she did. It does not seem to me that it is possible to say that the claims brought against Charlie Pickering were baseless nor that they were not brought bona fide in the interests of the company but for the collateral purpose of preventing him reporting back to Lisa on alleged wrongdoing by the Relevant Respondents. The only relevant wrongdoing could be the alleged cash sales which I have found did not take place. That leaves wrongdoing in terms of alleged wrongful payment by the Companies of matters of personal expenditure etc. but there is no reason to think that Charlie had ready access to such information or that he in fact did report on such matters.

408. On the more limited evidence available to me, I am satisfied that there were good grounds to dismiss Charlie Pickering and on the face of the evidence before me he was correctly dismissed. However, even if I am wrong about that, I agree with Mr Mundy's submissions that any fault in this respect would at most be mismanagement not amounting to unfair prejudice. There was no right, even of a quasi-partnership nature, in Lisa to have her son employed. The only damage is said to have been one of the legal and settlement costs involved, which I suspect did not significantly affect the value of Lisa's shareholding. In any event, even if I am wrong and there was unfair prejudice, the conduct in question is not such as I would have ordered a share buy-out as a result.

Benefits alleged to be taken from the Company by the Relevant Respondents: Funding of "extravagant personal lifestyles"

409. At the time when the trial commenced, the Petitioner's case regarding sums drawn from the company by the Relevant Respondents was as follows.

410. Although the same allegation was scattered throughout the pleading, the nub of the matter appeared in paragraphs 27 and 30 of the amended Petition (and relevant Schedules to the Petition):

> "*27. The First to Third Respondents have in breach of their directors' duties used the Subsidiary's monies (including since August 2016 those borrowed from the bank at commercial rates as set out in paragraph 28 below) to fund their individual extravagant lifestyles including causing the Subsidiary to pay monies under the pretence that they are legitimate and necessary expenses of the Subsidiary when they are not. At this stage and pending disclosure the best particulars that the Petitioner can give are:*
>
> *(i) Sums spent by the Subsidiary on personal expenses and liabilities of the First to Third Respondents in breach of their directors' duties set out in Schedule 1; and*

> *(ii) Sums spent by the Subsidiary on the personal hobbies of the First to Third Respondents including horseracing and show jumping in breach of their directors' duties set out in Schedule 2;*
>
> (iii) *Sums spent on providing John Hughes with more than one luxury car at a time*."

411. The matter was then complicated because, despite the amendments brought about to bring substantive allegations of unfair prejudice into the Petition and remove them from pleadings elsewhere (especially the Points of Reply), paragraph 27 concluded by placing reliance on, or at least said that the Petitioner "refers to", paragraph 61 of her Defence in the Recovery Proceedings. In fact that paragraph of the Defence simply referred to the Petition and said that the defendant would seek an order for the petition to be heard together with the Recovery proceedings. The Schedules to the Petition were, unhelpfully, not included in the Trial Bundles with the amended Petition.

412. As far as I could tell the Schedules to the Petition remained in their original form and in the trial bundle followed on from the original unamended petition.

413. Schedule 1 to the original Petition set out various matters referred to as "Personal Expenses and Liabilities" . The first series of listed items was a list of dates and amounts of money apparently obtained from Barclaycard statements of each of the Relevant Respondents. The dates in question fell within the period October 2015 to April 2017. The total of these amounts was approximately £215,000. Finally there was an item described as "John Hughes-Work at Tilts House" (with the address) Watch Construction Ltd and Lewmar Construction Limited said to have been expended between 2011 and 2012 (£197,220.20).

414. Schedule Two to the original Petition set out various matters referred to as "Personal Hobbies including horseracing and show jumping". The matters appeared to relate to what I will refer to as "equestrian matters". The quantum of many matters was said to be "unknown". Those that were specified totalled approximately £121,390,000. The items in question dated as far back as 2006.

415. Paragraph 30 amounted to an allegation that, in leaving outstanding sums on directors' accounts which the Relevant Respondents owed one or other of the Companies, the Relevant Respondents caused damage to LWC by reason of its tax liability under s455 of the Corporation Tax Act 2010.

416. Finally in this context, it was said that the relevant personal benefits taken by the Relevant Respondents were disguised dividends in circumstances where dividends were not paid/declared after those in respect of the year 31 October 2015.

417. In the petitioner's skeleton argument for trial, the "*particular matters of complaint*" in connection with the allegation characterised as being the use of the Companies "*as piggybanks to support the lifestyles of John and his family*" were set out in five sub-paragraphs, but by reference to the expert's report and not the Petition. The two did not match and different periods were referred to. In particular, for the first time reference was made to "substantial expenditure on salaries for family members".

418. In these circumstances I asked on the first day of the trial for the provision of one document setting out the petitioner's case as regards the alleged financial irregularities relating to improper benefits taken from the Companies said to fund the Relevant Respondents "extravagant lifestyles". That document set out at paragraph 2.1 the following:

> "*2.1 It is accepted that payments prior to November 2015 do not of themselves constitute unfairly prejudicial acts or conduct of the Companies' affairs. That is because they were consistent with the informal basis on which the Companies were operated, by common consent of the shareholders, whereby the Companies would be used to make payments for the benefit of family members, and in particular John and Lisa. Nora's acquiescence to that means that such payments would not provide an independent ground for relief.".*

419. In fact, Lisa had been well aware of these payments as she had been, in effect, the Companies' bookkeeper.

420. The document went on to identify the following eight categories of expenditure relied upon. In this list I exclude the separate items that related to what is said to be the costs incurred by the Companies on the Recovery Proceedings and in relation to the dismissal of Charlie Pickering which of course do not form part of the financial complaints relating to using the Companies as a "piggybank". The items were:

(1) DLA drawings by John, James, and Charles;
(2) Additional corporation tax liability on overdrawn DLAs;
(3) Credit card expenditure for the benefit of John and Charles;
(4) Horse-related expenditure;
(5) Child Support Agency payments;
(6) Expenditure on cars;
(7) Lorraine's salary;
(8) Payments to James for investment in his property business.

421. By the time of closing submissions, it was sought to re-amend the petition to insert a new s27A relying on the following matters:

(a) Lorraine's salary of approximately £181,000 per annum;

(b) The provision of two luxury cars at a time for the First Respondent's use;

(c) The provision of the benefit of racehorses, show jumpers and associated grooms vet bills horsebox services (including fuel and insurance) race sponsorship, stabling, livery, and training costs and other expenses;

(d) The employment of Debbie Shawcroft and Martin Cooper as grooms, with payments being accounted for as R&D;

(e) Payment of child support agency payments in respect of one or more of John's children;

(f) Payments by the LWC to James for investment in his property business (including four cheques in the sum of £25,000 on four dates between October 2016 and January 2017).

The original paragraphs 27 and 30 and schedules 1 and 2 remained unchanged. However, after closing, a revised schedule, Schedule 3, was lodged which as I understand it sets out the entirety of the relevant financial allegations that the Petitioner relies upon. This schedule was thereafter subject to comment by the Relevant Respondents.

422. I now turn to the matters in Schedule 3, but I take them in a different order to that set out in the Schedule.

(a) Salaries: John's salary including Lorraine's salary; James' salary; Charles' salary

423. As regards John's and Lorraine's combined salaries the sums complained about are as follows:

Year	**Total Salary**
01.11.15 to 31.10.16	£278,359.76
01.11.16 to 31.10.17	£305,275.18
01.11.17 to 31.10.18	£284,736.50
01.11.18 to 31.10.19	£290,828.53
01.11.19 to 07.10.20	£264,592.78

424. As regards Lorraine's salary looked at in isolation, the question was raised in the trial as to whether there could be unfair prejudice if it had been decided to split John's salary between Lorraine and John in circumstances where the overall salary of the two was not significantly different from the salary previously received by John. This was the evidence in the case. I assume that it was in light of that issue that the complaint (not raised in even the proposed amendments to the petition) is raised on the basis of the combined salaries of Lorraine and John being excessive. As I understand the case finally brought by the petitioner it was simply with regard to the salaries of John and Lorraine taken on a combined or pooled basis.

425. As regards Lorraine's salary that was raised expressly in the Points of Reply by amendment following the order of HH Judge Jackson based upon the proposition that substantive points of unfair prejudice should be pleaded in the Petition and not in the points of reply. I should note that as regards Lorraine's salary, the issue raised in the re-amended Points of Reply was that payment of Lorraine's salary was one of the

matters damaging the cashflow and financial position of the Companies and pleading to paragraph 10A of the amended points of defence which, in relation to the overall case about the insolvency of the Companies, asserted, as party of the background to the financial difficulties, that in 2015 the Companies were experiencing cashflow difficulties. As such the point made by the Points of Reply was to the effect that the payments to Lorraine exacerbated the financial position of the Companies and brought about the insolvency and administrations of the Companies. As will be seen that case was subsequently not pursued.

426. As regards salaries, reliance is placed on Mr Lacey's report. That report identified from the available accounting records of the Companies what the salary payments were. No other relevant evidence is given.

427. I would not allow the amendment to be made to raise a case as to the combined salaries of John and Lorraine. Quite simply it is too late to do so, as the history of the case brought in this respect demonstrates. To permit the amendment would unfairly prejudice the Relevant Respondents who have not had an opportunity to adduce evidence on the point. I would also not permit the amendment sought to enable a case to be brought as regards Lorraine's salary in isolation. Again, it is too late and would prejudice the Relevant Respondents.

428. In any event, I am wholly unsatisfied that the remuneration was excessive. Looked at in isolation the salary paid to Lorraine cannot be justified. However, in reality, the evidence was that John "diverted" part of his salary to Lorraine and took a cut himself. In the family context, there was no significant change in salary overall. The allegation is (under Schedule 3) an allegation that the two salaries taken together were excessive (looking at the work that John and Lorraine did on a pooled basis of the pooled salaries). There is no objective evidence that the pooled salaries were excessive for the pooled work undertaken. Neither GT nor the Bank (who can be taken to have looking at the Companies' financial positions in the period after 2015) apparently raised any issue.

429. As regards any allegation that the salaries taken were taken whilst the petitioner (or Nora) was excluded from a salary, the answer is that neither Nora nor Lisa had any legitimate expectation that they would be employed. On the other hand the employment of John was obviously necessary and appropriate. Lorraine had been employed prior to 2015, with what must be assumed to be Nora's acceptance. Although her salary went up considerably, John's reduced and the salaries were looked at and justified on a pooled basis. Prior to 2015, the pooled salaries (according to Mr Lacey) were £236,195.21 (9 mths to 31.10.11); £283,984.54 (y/e 31.10.12); £273,375.32 (y/e 31.10.13); £270,243.90 (y/e 31.10.14). The salaries on a joint basis did not significantly increase after that as can be seen from the table set out earlier. I infer that joint salaries at this sort of level were acquiesced in by Nora (and in circumstances where she, Nora, was not employed and receiving a salary).

430. Without any objective evidence that the salaries were excessive such that they amounted to a disguised distribution, there is no ground to find that the payment of these salaries amounted to unfair prejudice. For completeness, I should also say that I reject the submission on behalf of Lisa made in closing that the salaries should have been reduced when the Companies entered into financial difficulties. There is no

evidence that the Bank or GT took this view. The same job had to be done. There is no evidence as to what sort of level the salaries should have been reduced to or why.

431. As regards the salaries of James and Charles, similar points apply (mutatis mutandis).

432. The salaries complained of as regards Charles are as follows:

Year	**Salary**
01.11.15 to 31.10.16	£34,815
01.11.16 to 31.10.17	£35.075.98
01.11.17 to 31.10.18	£34.426.73
01.11.18 to 31.10.19	£34,373.34
01.11.19 to 07.10.20	£31,102.06

433. This compares with salary as follows in the preceding period: £31,426 (9 mths to 31.10.11); £32,396.45 (y/e 31.10.12); £32,316.84 (y/e 31.10.13); £39,363.32 (y/e 31.10.14); £41,449.33 (y/e 31.10.15).

434. As regards James, the complaints are of the following remuneration from the Companies:

Year	**Salary**
01.11.15 to 31.10.16	£46,005.36
01.11.16 to 31.10.17	£47,750.60
01.11.17 to 31.10.18	£147,969.53
01.11.18 to 31.10.19	£185,052.91
01.11.19 to 07.10.20	£173,970.30

435. This compares with salary as follows in the preceding period: £32,160.20 (9 mths to 31.10.11); £38,376.14 (y/e 31.10.12); £40,609.94 (y/e 31.10.13); £65,610.86 (y/e 31.10.14); £46,281.39 (y/e 31.10.15).

436. First, as regards each of Charles and James, I would not allow the case to be raised: the matter being raised by Schedule 3 and not even by the proposed re-amended Petition. In any event the amendments are too late and if allowed would unfairly prejudice the Relevant Respondents by removing an opportunity for them to adduce relevant evidence.

437. Further, and on the merits, for the same reasons, mutatis mutandis as apply to the combined salary of James and Lorraine, I do not consider that a case of excessive salaries is made out or that unfair prejudice is made out regarding the salary payments. As regards James, it is notable that his salary increased considerably in 2018 but it was still a £100,000 or so less than John and Lorraine's combined salary and that at this point there may well have been more onerous duties falling upon him, particularly as the financial position deteriorated and later as his father became ill.

(b) Company credit card expenditure of John and Charles

438. Each of John and Charles had the benefit of use of a company credit card, from LWC as it happens though that is an unimportant detail, being a Barclaycard. As I understand it the payments from those cards formed the basis of Schedule 1 to the Petition. The majority of the payments on these credit cards were re-charged to the relevant director's loan accounts. Such expenditure was therefore treated as personal expenditure and not company expenditure. There is a separate complaint about the use of DLAs and this aspect of the use of the Barclaycards adds nothing to it and will be considered in that context.

439. However, certain matters charged to the Barclaycards were not re-charged to John and Charles by way of the DLAs. The claim in respect of John is a figure of £67,410.38 said to cover the period October 2015 to April 2017. The claim in respect of Charles is a sum of £5,871.15, said to cover the period October 2015 to 2017.

440. In his report Mr Lacey identifies from Schedule 1 of the Petition the sums charged to Barclaycard. He then identifies in relation to those sums, which of such sums have been re-charged to the individuals through director's loan account as personal expenditure. The difference is the figures identified above. However, Mr Lacey's Report does not deal with whether those balances were properly spent on company matters or whether they amounted to personal expenditure. The most that he says is that based on his "limited review" it appears that private expenditure generally appears to have been posted correctly to DLAs. The inference therefore is that the balance of such expenditure was properly company expenditure. No examples are given of personal expenditure not being posted to a relevant DLA. There was no cross-examination of John regarding any alleged use by him of his company credit care for personal expenditure which was not then posted to an appropriate DLA. I am not satisfied that this head of claim is made out.

441. For completeness I should add that the only other item in Schedule 1 is not pursued as it took place prior to November 2015.

(c) Car expenditure

442. The claims under this head, as set out in Schedule 3, relate to the following expenditure:

Item	Amount
John's Rage Rover YR53 LDC Nov 2015-Jan 2017	£12,112.50
John's Range Rover YT14 VFS Nov 2015 to Mar 2017	£25.381.00
John's Jaguar Apr 2018 to Oct 2020	£13,249.20
John's Aston Martin Mar 2019 to Oct 2019	£18,100.74
James' Range Rover Y63 RSO Nov 2015 to Jan 2017	£22,395

443. It is accepted by the petitioner that these sums were all re-charged to relevant director's loan accounts. As such they were not treated as company expenditure. Further the relevant complaint about DLA's remains to be considered but this particular head adds nothing to it. It follows that the existing claim of unfair prejudice in paragraph 27(iii) of the Petition, to the effect that the costs of providing John with "more than on luxury car at a time" were wrongly treated as proper expenses of LWC when they were not, also fails on the facts and the case as now put.

(d) Horse related expenditure

444. In the current Petition, a claim about expenditure on personal hobbies (mainly, if not entirely, equestrian related) is set out in paragraph 27 and Schedule 2. In Schedule 2 a number of items are said to be of unknown value/monetary amount. I treat the relevant part of Schedule 3 as now setting out the petitioner's case on this head of claim of unfair prejudice.

445. The claims are as follows:

Period	Amount
01.11.15 to 31.10.16	£27,745
01.11.16 to 31.10.17	£28,332
01.11.17 to 31.10.18	£42,241
01.11.18 to 31.10.19	£34,040
01.11.19 to 07.10.20	£5,160

446. It is apparent that these figures are taken from a table in Mr Lacey's report at paragraph 7.12 where he summarises the total costs of the services provided to horses said to be owned by James, Charles and LWC. On the face of it therefore, to the extent that sums were paid in respect of LWC, such expenditure was proper company expenditure (rather than personal expenditure). There may or may not be a separate issue as to whether it was proper of the Company (LWC) to be running an equine venture. However, LWC had done this without complaint and in any event this aspect was not explored in evidence.

447. Schedule 17 of Mr Lacey's Report sets out the individual items which LWC paid for in terms of equestrian costs for the period from the year ended 31 October 2013 to the year ended 7 October 2020. The breakdown of the items on which money was spent for the years that I have detailed above are as follows:

Period	Amount	Costs
01.11.15 to 31.10.16	£27,745	Neil Cartwright (£150.00) Doncaster Bloodstock Sales (-£299.25) James Hughes (£167.50) M Cooper (£27,490.00) Dan Skelton (£237.00)
01.11.16 to 31.10.17	£28,332	Yorkshire Equine Practice (£3,798.12) Doncaster Racecourse (£8,244.00)

		M Cooper (£16,290.00)
01.11.17 to 31.10.18	£42,241	Doncaster Racecourse (£13,661.40) M Cooper (£28,580)
01.11.18 to 31.10.19	£34,040	M Cooper
01.11.19 to 07.10.20	£5,160	M Cooper

448. Mr Lacey's schedule at his Appendix 17 also shows that considerable sums were spent by LWC on equine-related matters in the years before:

Year	**Amount**
01.11.12 to 31.10.13	£98,394.06
01.11.13 to 31.10.14	£69,818.36
01.11.14 to 31.10.15	£47,651,11

449. In the Draft LWC Report, the question of expenses of Martin Cooper were considered. Paragraph 2.3 of the draft report under the heading "horses" states as follows:

" *2.3 Horses*
A schedule of the expenses relating to horses and stabling paid out to M. Cooper, appears as schedule 7. We have been advised that Charles Hughes owns 6 horses, James Hughes owns 4 and there are 3 racehorses owned by the company (London Wiper Company Ltd Trading as Universal Recycling Company).
A total of 13 horses are therefore looked after and stabled by M. Cooper. The costs relating to these animals have been apportioned appropriately. The costs relating to James Hughes's 4 horses total £16,627.69 during the period evaluated, this amount subsequently appears as part of John Hughes's overall drawings/expenditure in schedule 2."

450. Schedule 7 shows the following sums as paid to M Cooper for the years 2013 to 2015. The equivalent sums attributed to M Cooper by Mr Lacey (which match) are also shown below.

Year	Amount according to LWC Draft Report	Amount according to Mr Lacey's report
2013	13,830	£13,830
2014	16,140	£16,140
2015	24.070	£24,070

451. Accordingly, what the LWC Draft Report confirms (among other things) is that an attribution process was gone through under which (for example) M Cooper's costs were attributed between the Company (LWC) and John, James and Charles dependent on the number of horses that each held at the time. This is not challenged or specifically dealt with by Mr Lacey in his report. Further, there is no evidence that that position altered after 2015.

452. In any event, James confirmed that Martin Cooper did not just work on James' horses. He also looked after the driving ponies at Edlington Farm, maintained the menage owned by LWC, worked on the grounds of Edlington Wood and oversaw the livery business at Holywell Farm (originally bought by Portbond in 2011, Portbond then spending sums on indoor and outdoor stables and earning an income from letting it out).

453. My conclusions are as follows. First, the petitioner cannot complain about possible mismanagement in Portbond/LWC maintaining horses, getting involved in horseracing and equine related matters. That commenced long before 2015 and was agreed to or acquiesced in by Nora. Furthermore, the Companies' business had a product that was relevant to the horse racing world. In the proof of evidence of Mr Fitton in relation to an appeal against the service in May 2014 of an enforcement notice in respect of the Kilnhurst Site, Mr Fitton dealt with the Companies' Products. Having dealt with cable processing, copper granules, aluminium recycling, WEE Recycling, and secure data processing, he stated the following:

> *" **7.6 Equestrian Surfaces, Arenas** & **Gallops:** All the Equestrian products were born out of the passion for horses and riding, of one of the Senior Leadership Team and the Company's commitment to reducing the amount of waste sent to waste treatments sites, namely landfills. By using their strong connections in the industry, they discovered that previously discarded waste from the jelly cable plant could actually be used as artificial ground for horses*

> *at arenas. Mixed with wax it becomes a product which is outstanding for such purposes and superior to anything else on the market.*
> *Through the recycling of both jelly filled and dry scrap cables, the equestrian department provide plastic granules for the equestrian surface industry. These surfaces are designed to help prevent freezing in cold weather and are suitable to mix with sand for application in both indoor and outdoor arenas and gallops. These granules are of the PVC variety and are known as PVC granules, although the Company also supply the petroleum jelly polythene type, which are known by a patented name of Vasa Track.*
> *Vasa Track is a petroleum jelly covered polythene riding surface produced from jelly filled cables through a water separation granulation plant. These are used to create a springy and stable surface when mixed with sand. It creates excellent stability due to the petroleum jelly in the polythene and is used in many arenas, gallops and all weather race tracks throughout the UK, Europe and the rest of the world."*

454. Secondly, so far as concerns any element of personal benefit to any of the Relevant Respondents flowing from the employment of Martin Cooper who also looked after their personal horses, the position is as follows. At the end of 2015 the contemporaneous evidence is that there had been a proper apportionment/allocation exercise of such expenses as between the Companies and the individual Relevant Respondents. There is no evidence that that practice did not continue. I am unable to decide that it did not.

455. However, even if it did not continue and some form of claim remains against the Relevant Respondents, that is a claim of the relevant Company. It is a monetary claim. I would not by itself have regarded that situation, even if being unfairly prejudicial, as justifying a buy-out order but rather consider that the correct remedy would be for the relevant sum to be repaid to the Company. If that is correct, then even if there is a claim, it is one that the administrators can bring and it seems unlikely, given the overall deficiency in LWC that the petitioner has sufficient interest in the matter to justify relief being granted on the Petition.

456. As regards the payment to or in respect of Doncaster racecourse, John's position was that LWC had long rented a box at Doncaster Racecourse (which it shared with another company) and used it for corporate hospitality. Lisa confirmed that this was the position. In the circumstances I do not consider that any case of unfair prejudice is made out in relation to this item.

457. As regards the payment to Dan Skelton Racing Limited, this expenditure is said by John to have been to the trainer of the Companies' racecourses for which the Company paid. I am not satisfied that he is incorrect on this point and I am not satisfied that there was anything unfairly prejudicial about such payments.

458. As regards the payments to the vets, the sums are de minimis. Further, I am not satisfied that the expenditure related to anything other than LWC's own horses (which is John's evidence). Accordingly the complaint is not made out.

459. As regards the payments to James Hughes and Neil Cartwright, in my judgment an application to amend is needed to bring these claims in which claims are not contained within Schedule 2 to the Petition. I would not allow such amendment given

the late time at which it is raised and the de minimis nature of the sums involved. In any event, on the evidence that I was referred to and heard I am not satisfied that any unfair prejudice is made out in relation to such payments.

460. To the extent that I am wrong in relation to any of the payments of the vets bills, and to James Hughes, Neil Cartwright and Dan Skelton, the same point arises about these being monetary claims which the administrators can bring and that I would not have ordered a share buy-out based on those facts (whether taken alone or with the other equine related expenditure points).

(e) Child support agency payments

461. The complaint that is sought to be raised is that Child Support Agency payments were paid by LWC in respect of attachment of earnings orders requiring LWC as employer to pay sums from the employee's remuneration in respect of a court order. The payments in question total £44,422 in respect of the years ended 31 October 2016 to 31 October 2019 and then the part year ended 7 October 2020.

462. This is a new allegation for which permission to amend is required. At the start of the trial the Child Support Agency payments were mentioned in the Points of Reply in answer to an allegation about the Company's insolvency. The position in this respect is the same as the position applying to the case about Lorraine's salary. A case on this issue was only clearly raised when what was to become Schedule 3 appeared in an early iteration. I do not allow permission to amend. Again, it is too late and would be unfair to the Relevant Respondents.

463. In particular, John's position is that the payments were in fact deducted from his current salary rather than being an additional benefit to him on top of his salary. John's position reflects what would be the usual position. Mr Lacey simply says that he has seen no evidence that they were deducted from the gross pay paid to John. I am not satisfied that the payments were not so deducted.

464. It is also submitted on behalf of John that, even if these payments were, in effect, a top up on his salary (they are approximately £10,000 a year), then such a top up would not bring his salary within the "excessive salary" range. This and the last point demonstrates why it is unfair to allow this amendment now to be made.

465. Accordingly, I am not satisfied that there is relevant unfair prejudice in this respect.

(f) Payments to James for investment in his property business

466. In the pre-cursor schedule to Schedule 3 produced during the trial, one of the headings of claim was £100,000 being the subject of cheques payable to Oxley & Coward solicitors from 5 October 2016 to 5 January 2017. This claim also appears in the Points of Reply but as part of an answer to an allegation that Lisa was properly removed as a director given the allegations and investigations into the financial management of the companies for which she had sole responsibility. They were not raised as a separate matter of unfair prejudice. As I have already said, in my judgment it would be unfair to allow this allegation to be raised so late. The fact that the factual allegation may have been raised is not sufficient, it is of key importance for a respondent to know what allegations of unfair prejudice are being made and his/her

decision as to the amount of time and effort to be put into contesting allegations can well be affected by the relevance of the factual issue raised.

467. In any event, this matter is not contained within Schedule 3 and, as I understand matters, it is not therefore now pursued.

468. For completeness, however, I will deal with the point briefly.

469. The allegation is that the payments, made to solicitors (Oxley & Coward), were in fact made for the benefit of James' property investment business. The only evidence of this is double hearsay: Lisa says that Charlie Pickering was told this by Chris Earl who worked at LWC.

470. However, the explanation given and repeated in witness statements was that the four payments in question represented payment of part of the outstanding purchase price of the Redirack site, adjoining the Kilnhurst Site. The purchase price was £1.15 million together with a deferred consideration of £200,000 agreed to be paid over two years. The four cheques, say the Relevant Respondents, were to pay the then outstanding £100,000. There is no evidence that the £100,000 was otherwise paid to the former owners of the Redirack site. The likelihood is that the respondents' account is correct. Certainly, I would not be prepared to rely upon the hearsay evidence to the contrary. James (whose companies were said to have received the sums) was not cross-examined about them. John was criticised for not producing relevant documents but the documents would be company documents. Oxley & Coward were asked about the matter by Lisa's solicitors but did not respond.

471. If I am wrong in refusing permission to amend for the reasons that I have given, I would in any event hold that I am not satisfied that the payments were made for James' personal benefit as alleged and therefore I am not satisfied that there is any unfair prejudice with regard to the cheques in question.

(g) Directors' loan accounts and associated tax liabilities

The allegations

472. The allegations in this respect are that the operation of the directors' loan accounts for each of the Relevant Respondents during the period after November 2015, when they showed sums owing to the Companies (primarily if not exclusively LWC) from each of them at the relevant year end, was unfairly prejudicial as being:

(1) in breach of their directors' duties as being "interest free unsecured loans at LWC's expense to themselves and/or each other" (Petition, paragraph 29(ii));

(2) by not repaying the loans, the Relevant Respondents have benefitted themselves at LWC's expense in breach of their director's duties (Petition, paragraph 29, conclusion)

(3) by leaving the sums outstanding at the year end, the Relevant Respondents have caused further damage to LWC by reason of the liability to tax of LWC in arising in respect of such outstanding loans pursuant to section 455 Corporation Tax Act 2010 (the "s455 Liability") (Petition, paragraph 30).

473. In closing, it was confirmed that the main thrust of the complaint was that, whereas, prior to November 2015, outstanding loan accounts had been cleared in respect of each year end by way of a declared dividend, this practice ceased thereafter and the loan accounts were not cleared. Had the loan accounts been cleared by way of a declared dividend then Nora or Lisa as shareholder would have participated in benefits taken from the Company by reason of their share of the dividend. If a dividend was not something the Companies could afford, then it is said, it was unfair to continue the practice of taking the benefit of the Companies funding personal expenditure though director's loan accounts when that benefitted one part of the family over another part of the family.

474. Although as pleaded there was more than a suggestion that the damage to the Companies was that they were spending money they could not afford and that this had a detrimental effect on their solvency and forced the Companies into insolvency, that case was, at the end of the day, not pursued. In any event, other than the fact of financial difficulty, there was no real evidence and no substantive submissions by reference to the financial position of the Companies over time so as to make out such a case. Indeed, one of the problems with it is that neither the Bank nor GT seem to have raised concerns in this respect which one would have thought they would have done given the detailed financial analyses and concerns raised by or of both of them.

The evidence

475. Save in two respects, Mr Lacey's Report was not substantively challenged so far as it dealt with the quantum of the relevant director's loan accounts. The two respects in which there were challenged was that James denied that he owed anything whereas Mr Lacey considered that the accounting records showed that James owed just over £1,279. James was not cross-examined on this point. The second respect in which there was an issue with the figures put forward in Mr Lacey's main report concerns a payment of £300,000 injected into LWC in November 2019. According to Mr Lacey there were two payments of £50,000 and £250,000 respectively. In the Companies' accounting records, this sum is shown as a loan by Caprina Trading. However, the administrators have accepted that this sum, is to be treated as an injection by John and part repayment of the sums outstanding from him to LWC on his director's loan account. On this basis, the sum would presumably have been lent by Caprina Trading to John. The Administrators in their progress report to 6 October 2021 say:

> " *Following my investigations into the matter during the Period, it was established that £364,929 was received prior to my appointment in partial repayment of the outstanding balance. It is understood that this transaction was not correctly accounted for in LWC's books and records. The remaining balance is considered to be outstanding, and I am currently in discussions with the parties in order to seek recoveries of these monies. To date, no funds have been recovered*".

476. I was not taken through all of this in any detail. Mr Lacey in his addendum report explained what the accounting records seemed to show. As I understand it the Relevant Respondents for the purposes of the directors' loan balances put forward by Mr Lacey in his main report only assert that John should have the benefit of a payment of £300,000. Accordingly, I ignore the other nearly £65,000 referred to by

the Administrators in their progress report but assume that sum is taken into account to the extent that the relevant Respondents say that it should be.

477. From his analysis of the Companies' accounting records Mr Lacey identified that the directors' loan accounts at the relevant year ends, 31 October, to be as follows. The tables set out below are taken from the detailed analysis of the loan accounts carried out by Mr Lacey in Appendix 15 to his report. Where the end date is prior to 7 October 2020, I understand him to say that there was no further change between the last entry in the table below and 7 October 2020.

478. The state of John's loan account was as follows:

Year ending (31.10 other than where specified)	**Amount outstanding (in favour of Company)**
2016	£29,192.73
2017	£205,346.22
2018	£301,027.88
2019	£391,400.66
2020 (July 2020)	£364,929.31

479. Taking into account what the administrators have accepted to be an injection of £300,000 by John in November 2019, it follows that his ultimate liability as at 2020 was £64,929.31.

480. The state of Charles' loan account was as follows:

Year ending (31.10 other than where specified)	Amount outstanding (in favour of Company)
2016	£-
2017	£3,167.26
2018	£61,788.86

2019	£195,462.39
2019 (Nov 19)	£190,902.19

481. The state of James' loan account was as follows:

Year ending (31.10 other than where specified)	**Amount outstanding (in favour of Company)**
2016	£-
2017	£-
2018	£-
2019	£4,258.31
2020 (Jan 2020)	£1,279.46

482. These figures, (a) on a combined basis and also showing the position prior to 31 October 2016, at which point separate loan accounts were set up for Charles and John contrasted with the one "NL Hughes" loan account for the year endings 31 October 201 and 31 October 2015, (b) rounded, (c) leaving out of account any further sums owed by Lisa and James and the £300,000 paid by Caprina Trading in November 2019 are as follows:

31.10.14 £	31.10.15(pre dividend of £605,000)[2] £	31.10.16 £	31.10.17 £	31.10.18 £	31.10.19 £	31.10.20 £
511,135	604,110.	94,427	203,558	393.383	617,429	586.397

[2] In the appendix this sum is shown as a dividend. However, in the narrative of his report at paragraph 5,13 Mr Lacey refers to a dividend of £511,135 and a posting to a credit account in Lisa's name of the sum of £605,000. On this basis, the outstanding sum owed to the company by way of overall loan accounts prior to the dividend, would have been £1,115,245 and after the dividend would have been £604,110. Similarly, on the same basis, if the sums treated as owed to Lisa are left out of account, the outstanding balance in favour of the Company would have been £510,245 prior to the payment of the dividend and (£890) afterwards.

483. Taking into account the further reduction in his loan account by £300,000 as a result of the payments by Caprina Trading, the combined liabilities for October 2020 are reduced to £286,397.

484. According to the Relevant Respondents, interest ran on the directors' loan accounts at a rate of 3% p.a. I am not prepared to assume that this is untrue. The burden of providing the loan accounts did not carry interest lies at the petitioner's door.

485. So far as the tax position is concerned, Mr Lacey was unclear from the available records whether or not relevant tax had been paid in respect of these loans. Based on the movements in the overall outstanding DLA balances in accordance with the trial balances that he earlier sets out, he calculates the penalty tax charge that should have been payable each year which has the result of a cumulative tax liability in respect of the accounting years ended 31 October, from 2016 through to 2020 of some £190,868. The management accounts apparently show a sum of £117, 915 as paid which is the figure he uses in suggesting what impact this matter had on cash flow. The Administrators in their progress report to 6 October 2021 say in relation to this matter:

> *" Also included on the directors' statement of affairs was a tax debtor with a book value of £117,915 in relation to the overdrawn directors' loan accounts. This is likely to be irrecoverable but will depend on the outcome of the directors' loan account recoveries."*

Discussion and conclusions

486. I have dealt with the position regarding cash flow and insolvency. No relevant case is raised in that respect.

487. So far as sums outstanding on the Relevant Respondent directors' loan accounts are themselves concerned, I reject the submission that these sums were unlawful returns of capital or disguised dividends. The sums in question were and always were treated as debts owed to the Company. Indeed, the Administrators have sought to realise the same.

488. The use of directors' loan accounts to recharge personal expenditure paid on behalf of directors by the Company, was a long established custom prior to 2015. Nora's letter of 24 October 2017 required that expenses be properly accounted for. There was no suggestion that all personal expenditure must cease. Further, the sorts of levels of personal expenditure recharged to loan account were of the same order as they had been prior to 2015 and in respect of much the same sorts of items of expenditure.

489. The real complaint, it seems to me, is that the loans were either not repaid at each year end or, alternatively, that dividends were not paid and declared, as was formerly the position, to clear the sums outstanding on a loan account. Of course, had dividends been declared, Nora/Lisa would have benefitted from the dividend paid on their shares.

490. The question of whether the Companies could have paid and declared a dividend on the accounting figures (i.e. whether there were available distributable reserves as

Portbond level) and in terms of cash flow, was not greatly explored before me. It is undoubtedly the case that the Bank was pushing for no dividends to be declared and paid and the Companies were undergoing financial difficulties in the relevant period. There was some discussion as to whether the Relevant Respondents (or the relevant ones) were not prepared to declare a dividend because they did not want Lisa to receive a dividend when, in their eyes, she still owed the Companies money. This does not really meet the legal issue which is whether dividends could have been lawfully declared and paid. I am not satisfied that they could have been.

491. The real nub of the matter is whether and if so what prejudice has been suffered (I discuss unfairness in a moment). As I have said, I am not satisfied that dividends could have been declared/paid or, put another way, that they would have been paid had the Relevant Respondents been acting properly. In my judgment, it is the fact that the Relevant Respondents had the cash flow advantage of the directors' loans without having to repay the same at each year end which is the loss suffered by the Company and which reflects the potential unfairness to Lisa in the Relevant Respondents, on her case, having had benefits out of the Company at a time that she did not. (This is subject to the question of whether the loans by the Company under the loan accounts carried interest, as the Relevant Respondents' assert, and whether that rate either fully compensates the Companies and/or removes any advantage for the Relevant Respondents. (Another potential basis of compensation would be to strip the Relevant Respondents of the value that they had in terms of the use of the money during the relevant periods). However, the loss to the Companies is not the loans themselves (which remained, and remain at all times, debts owed by the Relevant Respondents), but simply full interest on such sums.

492. If the potential prejudice is in effect lost interest to the Companies, then the measure of the unfairness to Lisa is simply the relevant monetary sum. Even if the Companies are not entitled as a matter of law to interest at a fair rate either properly to recompense the Companies for the loss that they suffered or to strip the Relevant Respondents of any gain measured in the value of the use of the money that they had out of the Companies, this is the sort of remedy that I would have been looking at to put right any unfair prejudice suffered by Lisa as a result of the Relevant Respondents directors' loan accounts running (from the Company's perspective) in credit (i.e. the directors were debtors). I would not have required the Relevant Respondents to buy out her shares. This is because she did not have a legitimate expectation of payment of a dividend, whether looked at in terms of any shareholder understanding/agreement nor in terms of establishing that non-declaration and non-payment of a dividend was simply a breach of directors' duties. The prejudice of monetary value could be put right by an order for monetary compensation.

493. There remain however two points, first, does Lisa have a sufficient interest to require, as a remedy for her, payment to the Company? Put another way, has the non-payment of what I will loosely call "interest" prejudiced her? Given the insolvency of the Companies, I doubt that she can establish prejudice to shareholders but would be prepared to allow Lisa to argue the point further were it not for my conclusion on unfairness, which I now turn to.

494. The second point is whether unfairness is established and whether or not the non-payment of "interest" is unfair. Any unfairness can only be founded upon the

proposition that the Relevant Respondents have had a benefit out of the Company that Lisa has not. However, Lisa has herself had a benefit, which she agreed to repay, of over £573,000 from the Companies. That sum was outstanding for many years. By way of contrast, the total capital sum outstanding in respect of the Relevant Respondents as at 7 October 2020 was some £260,000 or so.

495. This is one of those cases where I consider that the sums taken out of the Companies by Lisa and which she agreed to pay back means that it is not unfair that the Relevant Respondents owe some £260,000 or so to the Companies. Alternatively, I would not have granted a remedy in the circumstances.

General conclusion: allegation of financial support to fund extravagant personal lifestyles.

496. Accordingly, I find no unfair prejudice established regarding the allegations pursued by Lisa in relation to what has generally been referred to as the funding by the Companies of "extravagant personal lifestyles".

Allegations relating to the Pre-Pack sale: summary

497. There are three key matters relied upon by the Petitioner as amounting to unfair prejudice in connection with the Pre-Pack Sale to Remet:

(1) that the Pre-Pack Sale was a situation engineered by the Relevant Respondents to prejudice Lisa by removing her from any interest in the business of the Companies which thereafter was carried on in the new home of Remet Processing, whilst John and James were in a position to continue benefitting from the same as shareholders and directors of Remet Processing;

(2) that stock of the Companies was sold by the Administrators at a price of £1 on the basis that stock had been reduced to nil or had minimal value, when in fact LWC owned stock with considerable value. That stock was effectively stolen and diverted by the Relevant Respondents either to Remet Processing or to some third party;

(3) that plant/machinery belonging to LWC was taken and sold by John to Remet Processing for his own benefit.

498. I deal with the allegations regarding stock and plant and machinery in more detail later in this judgment. As matters stand they do not feature in the Petition and permission to amend is needed and is sought. However, at this stage, I focus on the allegations more centrally directed at the Pre-Pack Sale itself, both as set out in the Petition and as sought to be introduced by late amendment.

499. In the Petition itself, the allegations are:

(1) "…*the administration of the companies was a device employed by the First to Third Respondents to ensure that the Petitioner would be excluded from receiving any benefit from the companies' business and assets while the First and Second Respondents could continue to control and benefit from them. The means used to achieve that aim was a pre-pack sale of the companies' business and assets, and*

other connected properties, to a company in which 95% of the shares are held by the First Respondent (but none by the Petitioner), with the First and Second Respondents (but not the Petitioner) being appointed as directors" (paragraph 34B) [the reference to 95% was later sought to be amended to 45%];

(2) *It is the Petitioner's case that the cause (or at least the predominant cause) of any financial difficulty experienced by the companies was the First to Third Respondents' misconduct and mismanagement of the companies' affairs, including the misconduct and mismanagement pleaded in this Petition* (paragraph 34D);

(3) Having cited the Pre-Pack Sale agreement selling the Companies' businesses and assets with a price of £5,775,000; the sale by the receivers of the Kilnhurst Site "*for just £800,000*" when prior to their appointment it had "*been valued at between £3,475,000 and £5,000,000*"; and the sale by John of the Disputed Strip, the overall result of such transactions is pleaded as being that the entire business and assets of the Companies "*in which the Petitioner and First Respondent each had a 50% interest as shareholder*", the Kilnhurst Site and the Disputed Strip have been sold to Remet Processing, in which John holds 45% of the shares and the Petitioner none, and of which John and James were appointed directors but the petitioner was not (paragraph 34H and 34J).

(4) The value of all the property acquired by Remet Processing had a value of at least £27 million whereas Remet paid only £6,575,000 in cash.

(5) The Relevant Respondents conduct "*in connection with the decision to appoint administrators*" amounts to unfairly prejudicial conduct (paragraph 34K).

500. These amended provisions in the Petition were introduced following the first raising of a similar case by way of the Points of Reply and a subsequent decision of HH Judge Jackson to strike out that part of the Points of Reply on the basis that, as substantive allegations of unfair prejudice they should be pleaded in the Petition, but to permit amendments to the Petition itself so as properly to raise the case.

501. The paragraph numbering in the proposed re-amended petition does not marry with the paragraph numbering in the Petition. I turn to the draft re-amended petition and use the paragraph numbering of that document. The amendments sought to be made regarding the Pre-Pack sale are as follows:

(1) A deletion of the allegation that Remet Processing paid £6.5 million (as rounded by me) for assets with a value of £27 million.

(2) The insertion of an allegation that the appointment of administrators was made in breach of duty by the Relevant Respondents in that (a) they did not consider in good faith that it would be most likely to promote the success of the companies for the benefit of their members or that it was in the interests of creditors but rather (b) it was made to advance their own personal ends (in summary to continue to derive benefit from the Companies' business whilst excluding Lisa from any benefit).

502. As regards these proposed amendments I permit them to be made.

503. There can be no prejudice in reducing the case (though that may have costs consequences) and therefore the deletion of the allegation regarding the value of what Remet Processing paid compared with what it received can cause no prejudice. In any event, the allegation was misconceived. If there is a complaint in this respect (and I am wholly unsatisfied on the evidence that there is) then the complaint would be (a) about the conduct of the administrators who effected the sale of the company's assets, to the extent that that could be shown to be at an undervalue and (b) about the conduct of the receivers of the Kilnhurst Site, to the extent that the sale of that site could be established to be at an undervalue and which sale was not an act or omission of the Companies nor did it involve the conduct of their affairs and (c) a complaint about the conduct of John as (on Lisa's case) trustee of the Disputed Strip for her and him, but again which was not an act or omission of the Companies nor amounting to the conduct of their affairs.

504. As regards the new allegation of breach of duty, that is largely (though not entirely) a matter of law and otherwise depends on the intentions, knowledge and motives of the Relevant Respondents, all of which was in issue in the proceedings in any event.

The facts: the path to administration

505. The last set of audited accounts for each of the Companies was for the year ended 31 October 2018. In each case, they were signed off by John Hughes on behalf of the respective boards of directors on 26 July 2019.

506. The 2018 accounts for Portbond show a consolidated income statement for the year with a turnover of over £29 million, an operating profit of over £1.4 million, an exceptional item of some £1,125,000 (being a debit), a profit before tax of £145,656 and a profit after tax of £245,648. The exceptional item related to a fire at the company premises in 2016. Initial indications had been that a payment out of £1,625,000 would be made and provision for such sum had been made. In the event, an out of court settlement was agreed at £500,000. This necessitated the adjustment of £1,125,000. Had this adjustment not had to be made the profit before tax would have been inflated by the relevant sum to over £1.2 million. The consolidated balance sheet showed net assets and shareholders' funds of over £7.4 million. Portbond's balance sheet showed net assets and shareholders' funds of over £9.6 million.

507. The 2018 accounts for LWC showed a turnover of over £29.2 million, the same exceptional item of £1,125,000 and a loss for the financial year of just over £91,500. The balance sheet showed net assets and shareholders' funds of just over £2.1 million.

508. During 2019, the financial position of the Companies worsened. The Bank decided that it wished to exit its relationship with the Companies.

509. John was diagnosed with cancer and, in June 2019, started a course of chemotherapy. He had major surgery in September 2019 and did not come out of hospital until December 2019.

510. Remet, a scrap metal dealer that traded with LWC, expressed an interest in the Companies.

511. In early September 2019, there were some meetings broadly between Lisa on the one hand and the Relevant Respondents, or their representatives, on the other hand which took place with a view to reaching a settlement of various disputes between them. Evidence regarding these meetings was relied upon by Lisa, on the basis that they demonstrated an early intention on the part of the Relevant Respondents to place the Companies into insolvency in order to defeat any attempt by her to realise the value of her shareholding in Portbond.

512. On 3 September 2019, there was a round table, "without prejudice" meeting at the Holiday Inn in Doncaster between Lisa and her solicitors (Prodicus) and James and his solicitors (Ansons, who were also representing Charles and James). Charlie and David also attended. The purpose of the meetings was to attempt to reach a settlement in relation to the various disputes between Lisa and the Relevant Respondents (which included, among other things, the property disputes later determined by Mr Lenon KC as well as matters relating to the Companies). In the proceedings before me, privilege was waived by the parties in relation to this meeting and the other "without prejudice" meetings that I mention.

513. At the meeting on 3 September 2019, and as regards disputes regarding the Companies, the Relevant Respondents put forward an offer of £3.2m to buy out Lisa's shareholding in Portbond. The Anson's note records trading as stated to be "currently not easy" and that the Company (Portbond) was "more or less breaking even".

514. Lisa's counteroffer was a single package dealing with all aspects of all the relevant disputes. As regards Portbond, the offer was an exchange of her shares for £3.2 million plus all shares in Caprina not held by her plus the other half of Pondfield House This was said to value her shares in Portbond at over £6 million.

515. In discussion, the valuation of Lisa's shares was considered further. Anson's note records the following, including a question from Ansons as to whether Lisa would be prepared to buy the Relevant Respondents' shares for £6 million:

> "*David Hughes commented business could be worth more than £12M. He said machinery written down and valued at nil despite having value….. MDR [solicitor at Ansons] asked if they would be prepared to purchase it for £6M. David Hughes said he was looking at it on the basis it went bump first and then he would buy it after it was wound up following the court case. MDR suggested that he should not be involved in the negotiations if that was his position."*

516. In cross-examination, David admitted that he had suggested buying the company after it "went bump". He said that he was being sarcastic, because this had been James' plan from "day one". That this suggestion was indeed made by David is confirmed by the Prodicus' note of the meeting. If the suggestion was taken as being purely sarcastic and facetious I would not have expected it to have appeared in both notes in the way that it does or to have generated the recorded comment of the solicitor from Ansons (MDR).

517. Reference to an investor also appears in the Anson's notes of the meeting on 3 September 2019. As I read those notes, what was suggested was that there was an unnamed potential investor in Portbond. Investment by that investor would enable a

share sale to go ahead and would involve a company reorganisation once the share purchase from Lisa was completed.

518. There was another meeting between Lisa and James at the Holiday Inn on 5 September 2019. Initially this meeting was between Lisa and James only but David joined the meeting later in the day. Of this meeting, Lisa says that James offered her £6 million for her shares in Portbond. James, on the other hand, says that Lisa said that she wanted £6 million for her shares and that he agreed to take that figure to the potential investor for his consideration.

519. Lisa also says that having offered to pay £6 million for her shares, James threatened her, saying "*if you don't sign we will make sure you get nothing not a penny, we will bust it*". She said in evidence that this threat overshadowed the whole meeting and worried her.

520. The meeting was the subject of an email from Prodicus to Ansons the following day, 6 September 2019. According to that email, it was Lisa's understanding that James would return to her once he had discussed terms with "*the investor who remains prepared to purchase my client shares in Portbond Ltd*" and once the investor had "*indicated the price at which he is prepared to acquire*" Lisa's shares. This does not suggest that a price of £6 million had been offered to be paid by James or that he had threatened that is she did not "sign" an agreement to sell her shares for £6 million, he would "bust" the Companies. There is no mention of any threat by James in any of the contemporaneous documents.

521. The Prodicus email also says:

> "*Your client told my client in stark terms that Portbond Ltd " has no money". I am instructed that there was a frank exchange of views between our clients regarding the financial position of London Wiper Company.*
> *My client told your client that she is prepared to work with James Hughes in the business in order to work through the financial problems in an attempt to ensure that Universal returns to profitability.*
> *There was also a blunt discussion regarding the stock position at Universal. Mr James Hughes indicated that he is unable to explain why there is very little stock on site at Kilnhurst. My client understands that Mr James Hughes does acknowledge that the stock position is very worrying."*

522. The meeting was also the subject of an email dated 7 September 2019 from James to Ansons, telling the latter the key points from the meeting. As regards Lisa's shares in Portbond, the email records that:

> *"I explained to Lisa that for a real bid to come with proof of funds etc, I insist that Lisa puts a proper figure on her shares in Portbond with no package, no bolt ons etc, this was hard at 1st to obtain, but eventually after sometime Lisa agreed to £6 m for her shares in Portbond, but said how long would it take etc to get paid for them.*
>
> *I quite rightly stated that in order for a bid to be tabled, I needed to get this figure you had provided of £6 m and now go back to the investors and go from there when they have chance to view all of the documents etc. I said it could take*

> *3-6 months (David now present) and said "we can't wait that long, you haven't gotten investor and you're just delaying things" he then went on to say "put them in court and wind the Fokker (business) up, and I'll buy it back" Lisa then said David calm down etc and asked him to sit back down*".

523. The record in the Prodicus' email that Lisa was told that Portbond "has no money", fits in with the reaction of David recorded in the email of James stated 7 September 2019.

524. I find that the Prodicus email (and John's account in evidence and in his contemporaneous email) on this point of how the price of Lisa's shares was to be dealt with, is more accurate than Lisa's memory. I also find that James' email of 7 September 2019 accurately records the gist of the words used by David, it being a contemporaneous record and Lisa having accepted in cross-examination that David mentioned buying the company and David having accepted in cross-examination that Lisa said she wanted £6 million for her shares and that he, David, suggested winding up the company.

525. I find that no threat was made by James, as suggested by Lisa, to "bust" either Portbond and/or LWC if she would not sign an agreement to sell her shares for £6 million. As is clear from the contemporaneous records, the suggested £6 million price came from Lisa, not James. James agreed to take the figure back to the proposed investor and did not (and was not able to) agree it (or to make a threat with regard to her not signing an alleged agreement which clearly had not been made but which in any event related to an offer price originating from Lisa). The making of such an alleged threat makes little sense in the full context of the circumstances and the contemporaneous documents.

526. Meanwhile, on 6 September 2019, James wrote to Remet referring to the talks that "we" are in regarding the purchase of 50% of Portbond's shares from Lisa. The email then set out some broad parameters of valuation and suggested that the business had net assets of some £10.2 million plus goodwill and forecasting that "*with a partnership*" some*"£3-4 million per year nett*" could be made using "*your buying power and our technical capabilities*".

527. By letter dated 19 September 2019, Prodicus, on behalf of Lisa, made demand for sums due to Nora's estate in respect of rent for the Kilnhurst Site, declared but unpaid dividends and the balance of Nora's loan account. The full amounts claimed, exceeded £190,000 as against LWC and just under £10,000 as against Portbond . In default, presentation of winding up petitions was threatened. This reflects the line that David had threatened.

528. By email dated 8 October 2019, James wrote to Remet with a "proposal to move forward". The proposal involved the setting up of a new company owned equally by Remet on the one hand and John and James on the other. The email then set out a number of detailed steps. In summary, the first step was for Lisa, Remet and John/James to agree an independent valuer to value the Kilnhurst Site (with a view to Lisa's 50% interest being purchased) and the plant machinery and vehicles associated with the business to be purchased by the new company in order to trade. The next proposed step was seeking to release the Bank charge over the Kilnhurst Site and the charge over certain Company assets proposed to be purchased by the new company.

529. As regards the company business, it was reported that "*at present*" the companies would have a:

> "*group loss for the end of year accounting period due to many issues and ongoing issues. Working capital, Bricks, market decline in ferrous and nonferrous and export limitations of the main contributor among other things. Also, there has been ongoing works to please the local environment agency and the residential site next door plus consultants in this field which is ongoing to keep things smooth."*

530. It was then proposed that the new company would purchase the plant machinery vehicles in stock at an agreed and fair amount, provided that the Bank would lift the debenture on the company for fixed assets etc. Lisa would then obtain an enhanced shareholding percentage in Portbond, which was to be calculated by the accountants. Portbond and LWC would thereafter only be property companies with an ongoing bank debt and directors loan debits. The benefit for Lisa was the immediate cash payment for 50% of the true market value and the higher percentage shareholding in Portbond.

531. These arrangements were finessed by way of a draft email/letter to Lisa from James into which Remet had a certain amount of input.

532. On 30 October 2019, Remet sent James a letter of intent "*for onward transmission to the sellers*". In broad terms, it set out "subject to contract", heads of terms under which Remet, or a subsidiary of Remet, would purchase the trade goodwill staff and certain business assets of the Companies and the Kilnhurst Site. The proposed aggregate price was £2,050,000 for the Kilnhurst Site, fair market value to be determined for the stock/inventory held by the Companies and £4.4 million for the plant machinery employs in trade of the Companies relating to the Universal Recycling business only.

533. By Letter dated 5 November 2019, Ansons sent to Prodicus the letter of intent signed by Remet. The letter explained that, as Lisa was aware, and due to a number of factors outside the Companies' control, the Companies' financial performance had declined over the last few months and that current financial forecasts suggested that the business would make a loss for the year. In light of that, the directors were considering all appropriate options and had been exploring other forms of investment and/or affordable finance. The interest of Remet and details about Remet were then set out. The suggestion was that Remet meet with Lisa and the Relevant Respondents to discuss the offer in more detail.

534. By the reply, also by letter dated 5 November 2019, Prodicus complained that Lisa had not been involved in the negotiations with Remet nor been kept appraised of the position. As a prerequisite to any meeting with Remet she demanded that the issue of the rent arrears, lease renewal and directors loan accounts be addressed first.

535. In the context of the worsening financial position of the Companies, GT was engaged by letter dated 15 November 2019 to carry out further work. This ultimately resulted in the Jan 2020 GT Report.

536. The Jan 2020 GT Report, set out the circumstances in which GT had come to be engaged as follows:

> *"Factors leading to this report*
> *Trading performance*
> *• The trading performance of Universal Recycling has been below budget throughout FY19*
> *• The recycling industry as a whole has suffered a downturn, with Management citing Brexit related uncertainty (with less material available to process) and a decline in the price of non-ferrous metals over the last twelve months*
> *• The ill health of the shareholder and director John Hughes has also adversely impacted performance*
> *• The aforementioned shareholder dispute has also commanded much of Management's time, and had an impact on the level of trading achieved in the year*
> *Cash constraints and banking facilities*
> *• The underperformance of Universal Recycling has led to an increased reliance on the overdraft facility*
> *• The invoice finance facility has also encountered two issues:*
> *~ £454,000 of debtor receipts were not paid into the trust account (although the position has since been rectified); and*
> *~ A number of customers of Universal Recycling are also suppliers, resulting in contras being applied*
> *• The Bank wishes to exit its relationship with Universal Recycling, and has asked the Company to explore options that would allow all amounts owed to the Bank to be settled by 31 January 2020*
> *• A potential sale of the trade and assets of the business is currently being explored by Management."*

537. The agreed remit of the work included various financial work and a report on the proposed sale to Remet.

538. On about 26 November 2019, two payments, totalling £300,000 were received into the bank account of LWC from Caprina Trading. I have dealt with these payments in connection with the allegations about the director's loan accounts.

539. By email dated 26 November 2019, Prodicus revealed that, notwithstanding her complaint that she had not been kept informed by the Relevant Respondents, Lisa had discussed a proposed sale of the trading assets of LWC with Sims on a confidential basis. Apparently, she had met with Sims, which employed Charlie, and understood that Sims was keen to make an offer to acquire the assets referred to in the Remet offer and to take a lease of the Kilnhurst Site. The email asked to hear back as soon as possible:

> "*as I understand that your clients believe that LWC is likely to run out of cash shortly and Sims wish to proceed as quickly as possible*".

540. It was agreed between Lisa and the Relevant Respondents that they would work together "*in good faith to present a unified and coherent approach to Sims*".

Negotiations with Remet were put on pause, at Lisa's request. A non-disclosure agreement was entered into with Sims. Sims made a site visit in December.

541. In the meantime the Bank's position was reflected in a letter dated 28 November 2019. The Bank confirmed that it was willing to support the Companies until 31 January 2020, but said but that it was seeking full repayment of all its exposure and that in the event that a sale to achieve that end in full was not realised then alternative means to achieve the Bank's goal should be pursued.

542. A draft of the 2020 GT Report was sent to James on 20 December 2019. Management comments were provided to GT. The report was finalised on 15 January 2020.

543. The Jan 2020 GT report analysed offers or potential offers from two companies. First, Remet and secondly Sims. It confirmed that Sims had been introduced by Lisa, but that subsequently negotiations had been opened by James and John.

544. As regards Remet, the 30 October 2019 letter of intent was summarised in the Jan 2020 GT Report as follows, which also note that the directors of the Companies considered that the offer should be increased:

> *"1. Remet*
> *• On 30 October 2019, the Directors received a letter of intent from The Remet Company Limited (Remet) to acquire the trade (as a going concern), goodwill, staff and certain business assets of the Company and the freehold site of the business*
> *• The Remet offer (excluding the value of inventory which is to be determined based on the fair market value at completion), totals £6.45 million*
> Remet offer vs Directors' ask

	Remet Offer '000s	Directors Ask '000s
Freehold site	2,050	2,100
Plants, machinery, employees and trade	4,400	6,000
Total excluding inventory	**6,450**	**8,100**
Inventory (at Oct 19 balance sheet value)	1,980	1,980
Total including inventory	8,430	10,080

> *• In addition it assumes the purchase of the premises from which the business trades. These are owned personally by the shareholders, so the Directors cannot agree to sell this property without the shareholders' consent.*
> *• From our discussions with Management, its preference would be to retain the Wharf Road property and benefit from a rental income (rather than dispose of an asset)*

> *• The Directors believe the P&M alone could be realised for more than £4.4 million, so the offer both undervalues the physical assets and ascribes no value to the trade or goodwill*
> *• Management has asked Remet to improve its offer to at least c£6 million per a desktop valuation of the equipment performed by Eldan (the main machinery supplier)*
> *• The offer is subject to due diligence and advises that an SPA would be issued within six weeks (ie by 15 December 2019) with a target completion date of 31 January 2020. This was, however, conditional on both parties agreeing to a six month exclusivity period. As the offer has not been accepted, it is not clear whether, or not, the Remet offer remains available".*

545. In the Jan 2020 GT Report, the Sims and Remet positions were compared. As regards Sims it as reported that a letter of intent had not been received at the time of the report being finalised but that Sims had indicated that in mid-January 2020 it would provide a valuation/offer for the business. Two points made in the report were:

> *"Management believes the Sims offer will be significantly higher than from Remet, as Universal would be an attractive bolt on acquisition for Sims providing additional machinery, production capacity and licences (both environmental and working hours). As well as removing Universal as one of its main competitors from the market. Accordingly Management believes it would pay a premium for such an opportunity*
>
> *Management advises it considers Sims to be a credible potential purchaser."*

546. This is inconsistent with Lisa's case that the Relevant Respondents were throughout pushing the Remet offer and seeking to undermine or reject other offers because of actual or hoped for agreement with Remet as to their personal futures.

547. The Jan 2020 GT Report also expressed concern that, if the sale fell through, the Companies would need to refinance or to sell assets. In that respect, GT were reported as having contacted five potential funders resulting in mixed responses. It explained that management "*would have to monitor the working capital position closely*". A major issue was whether the bank would require repayment in full on 31 January 2020 or if it would support the business while the further options were explored.

548. The offer from Sims did not materialise. By email dated 27 January 2020, Mr Saunders of Sims wrote that they had been:

> "*impressed by the set-up at the site and the knowledge and experience of the management. We can see synergies with our existing business and believe that it has the potential to be a good strategic fit.*
> *We have now had the opportunity to make a proposal to the Group Executive for the potential acquisition of the business. Unfortunately at this time, due to uncertainties in the market, the Group is unwilling to support an offer for the business. Whilst this may change at some point it is unlikely to do so in the near future."*

549. In February 2020, GT was engaged by the Companies to assist in a refinancing process through further lending and in obtaining the necessary valuations to that end.

550. During March 2020 various valuations of assets/properties owned by or used by the Companies were undertaken. These included a valuation report of Sanderson Weatherall dated 19 March 2020 regarding the property portfolio.

551. Also during March 2020, the Covid 19 pandemic struck. The Companies sought further financial assistance from the Bank. The Companies furloughed some 31 of their 40 staff and ran a skeleton operation to process existing stock onsite. Negotiations with Remet paused and John had radiotherapy.

552. As reported in the SIP 16 Report:

> *".....shortly after commencing our* work [commissioned in February 2020], *it became apparent that the financial position of the Companies was continuing to deteriorate and that this would naturally be a barrier to any refinance opportunity. This matter was compounded in mid-March 2020 when restrictions were imposed by HM Government due to the Covid-19 pandemic, leading to a significant reduction in trade of the Companies and the furloughing of the majority of personnel*".

553. By letter of engagement dated 30 March 2020, GT was engaged by the Bank and the Companies to provide further services including an updated assessment of the Companies' financial position, short term cash flow and viability and the conduct of a high-level contingency planning exercise involving the production of an overview of available options open to the directors and advice to the directors on the actions they should take to ensure compliance with their fiduciary duties and recommended course of action and next steps.

554. As explained in the SIP 16 Report:

> "*Given the impact on the financial position of the Companies of a continued deterioration in trading and the Covid-19 restrictions, Grant Thornton was then further engaged on 30 March 2020 to consider the ongoing viability of the Companies and the options available to the Directors and the Bank. The scope of this work was as follows:*
>
> - *assess the Companies' current financial position, short term cash flow forecast and ongoing viability*
> - *conduct a high-level contingency planning exercise; and*
> - *update the estimated outcome statements previously shared with the Bank."*

555. By letter dated 5 May 2020, GT presented the May GT Contingency Planning Report. The "headline" in the executive summary was:

> "*The Group is unable to meet its liabilities as and when they fall due and is technically cash flow insolvent. Given recent (pre Covid-19) trading, it is unlikely that it will be able to trade out of this once restrictions are lifted. We estimate that assets are sufficient to repay the Bank in full, even on a break-up basis, albeit this is heavily dependent on achieving asset valuations*"

556. The report noted that the Companies had incurred some £275,000 of losses in the four months to 28 February 2020.

557. The Key Options contained in the May GT Contingency Report were six, ranging from a solvent wind down and members' voluntary liquidation (considered not to be a viable option) through to a creditors' voluntary liquidation.

558. The second option was a going concern sale to Remet. The Options summary was as follows:

Option	*Impact/Observation*	*Grant Thornton View*
2.Going concern sale	*-The indicative offer from Remet is for the acquisition of certain trading assets on a going concern basis. This would leave behind all liabilities for the Directors to settle from sale consideration. Based upon current valuations this would result in a return to Shareholders in the region of £2.9 million* *• We understand from Management that the Remet offer is currently on hold due to Covid-19 driven cessation of trade at Remet*	*• Remet's offer was always subject to due diligence and would likely be revised downwards in light of recent trading and the economic uncertainty brought by Covid-19, that is if it was prepared to execute at all in the current climate* *• It is therefore very unlikely that any revised offer would result in a net return to Shareholders*

559. The third option was an accelerated merger and acquisition ("AMA") process on a solvent basis. The Options summary was as follows:

Option	*Impact/Observation*	*Grant Thornton View*
AMA process (solvent)	*• It is unlikely that one single purchaser would be found that required all assets, given that there are non-trading property assets* *• In the current Covid-19 climate it is unclear as to what the level of appetite would be for the trading business*	*• Given the financial position of the Group and broader economic landscape, it is likely any offer would be for business and assets only with purchase consideration being less than liabilities, resulting in immediate insolvency*

	from trade buyers and distressed investors to execute any transaction	

560. The fourth option was an AMA and pre-packaged administration. The option summary was as follows:

Option	*Impact/Observation*	*Grant Thornton View*
4. AMA and pre-packaged administration	*• Based upon current valuations this suggests repayment in full to the Bank. However, as with the sale options above, the level of interest is currently unclear and further uncertainty would be added if any purchaser required funding*	*• Likely to be a purchase either by the Directors or Remet* *• Any return would be dependent on the desire of each party to execute and access to funding. Unless competitive tension can be achieved then it maybe challenging to achieve full value for assets*

561. The summary of GT's recommendations was as follows:

"*Recommendations for the Group*
• The Directors must therefore take proactive steps to manage the current situation for the benefit of all creditors, which given the financial position of the Group is their primary responsibility
• In terms of options available, given the current financial position we are of the view that there is insufficient time or desire from Remet to execute a going concern sale. However, the Directors should pursue this in short order to bring matters to a conclusion
• Assuming Remet do not wish to or cannot execute, then we recommend the following steps:
• The Directors should engage Grant Thornton to undertake an AMA process, as set out on page 24 with a conclusion of the process by the end of May 2020
• The Directors and/or Shareholders should work with Grant Thornton to identify potentially interested parties who may wish to acquire the business and assets either on a solvent or insolvent basis
• All parties should plan for an administration appointment in early June 2020, followed either by a pre-pack sale or a planned managed wind down, the viability of which should be considered as a contingency option during the AMA phase"

562. As reported in the SIP16 Report:

> "*Following the issuing of our report in May 2020, the Directors concluded that the optimal solution for the stakeholders would be to pursue a sale of the Companies on an accelerated basis, be that on a share sale or business and asset sale basis. Grant Thornton was subsequently engaged by the Directors on 3 June 2020 to commence an accelerated sale process (AMA) for LWC. This work included:*
>
> *sale preparation including the writing of a teaser document, information memorandum, process letter and set up of a data room for interested parties*
>
> *identification of interested parties through discussions with management regarding possible trade buyers, a review of our own internal database to identify possible equity investors and publicly available information regarding recent transactions in the sector*
>
> *introduction to potentially interested parties and support to the Companies in dealing with any information requests and progressing them; and*
>
> *sale negotiations and project management to the completion of a sale."*

563. By letter dated 27 May 2020, GT issued terms of engagement to the Companies in connection with a proposed accelerated sale of LWC. The Companies accepted such terms on 29 May 2020. Two potential routes for sale were identified. The first was a sale of LWC's shares. The second was a sale of certain business and assets of LWC in a pre-pack sale by an administrator. Three phases were envisaged, the first was sale preparatory work. This involved (among other things) (1) the preparation and issue of both an extended teaser document (for initial introductions to potential acquirers) and an information pack (containing more information for potential acquirers); and (2) the identification of an introduction to potential acquirers. The second phase encompassed the sale negotiations, in which GT would lead detailed negotiations. The third phase encompassed the project management and completion of the sale.

564. As regards the AMA process as it thereafter took place, all the documents that I have seen are consistent with or support the view that GT did indeed remain in the "lead" or driving seat.

565. The proposed accelerated sale was given the title "Project Copper". Lisa was given information about the sale and copies of the Teaser document and the information memorandum under cover of an email from Chris Petts of GT dated 12 June 2020.

566. As the SIP 16 report later stated:

> *"*[GT's] *initial strategy was to support the Companies to achieve a solvent share sale. However, as we progressed, it became increasingly apparent that there was limited appetite for a share sale. There was, however, some level of interest in a sale of the business and assets of the Companies."*

567. As the SIP 16 Report records, GT sent the teaser to some 88 parties and the information memorandum to some 20 parties who had signed non-disclosure agreements. This process commenced on 25 June 2020.

568. By email dated 3 July 2020, Chris Petts of GT sent an email to "key stakeholders" which included Lisa. The then proposed timetable (involving, among other dates, the submission of non-binding indicative offers by 10 July 2020) was given, as was the numbers of teasers and information memoranda issued and the numbers of potential acquirors who had been given access to the data room. In due course, that became 11 parties.

569. Prodicus, on behalf of Lisa, asked Ansons for an update by email dated 15 July 2020. Among the questions asked were whether GT believed the Company to be insolvent and whether the Bank would appoint administrators if the bank debt was not settled soon.

570. Ansons replied by email dated 17 July 2020. It said that there were two potentially interested parties who were due to visit the trading site and a further update would be provided after that. Trading continued to be poor and losses to be incurred. The Bank had indicated informally that it would not continue support post September. Lisa's views were sought on an alternative strategy to dispose of some non-core assets either to pay off or greatly reduce the Bank debt. Documents in evidence suggest that James looked into the possibility of the Caprina companies buying Portbond's investment assets (see e.g. email dated 6 July 2020 from James to Mark Flanagan of Commercial Finance Partnership).

571. As reported in the SIP 16 Report, Sanderson Weatherall LLP had been asked to prepare not only the property valuations that I have referred to but also full plant and machinery valuations. Refreshed valuations were provide by Sanderson Weatherall LLP during the AMA process, These appear to have been obtained in about July 2020. Further, GT employed Avison Young (UK) Limited to undertake a secondary valuation of one of the properties and Hilco Appraisal Limited to undertake a secondary valuation of the plant and machinery. Each of the valuers had confirmed to GT their independence in the relevant matters.

572. In August 2020, GT provided a draft summary of the accelerated sale process. There had been four potentially interested parties that had progressed to a point of expressing a realistic interest.

573. Ron Hull Jnr Limited had submitted an indicative offer but GT had explained to that potential acquiror that the offer was "*significantly below what we would consider acceptable and that it would need revising*." Ron Hull Jnr Limited subsequently declined to revise its offer.

574. Environcom Limited decided not to make an offer making the points that, from its perspective, the business required more than just working capital to change its fortunes, there was a lack of senior management, and the directors had other interests in the sector where they could divert trade to.

575. European Metal Recycling Limited (EMR) considered that the current volume of operations was in breach of permit; revision to the permit would take too long and that it was therefore not interested in continued trading from the site. However it made an offer for all property assets and all plant and machinery. The report analysed this offer and its ramifications in some detail. GT summed the offer up as follows:

> "*Whilst the offer is proceedable, it would result in cessation of operations at the site, a shortfall to unsecured creditors and no return to shareholders."*

576. As the SIP 16 report sets out:

> "*On 30 July 2020 we received an offer from a trade party for the business and assets of the Companies. Acceptance of this offer by the Directors would have resulted in the insolvency of the Companies, with the sale being completed by way of a pre-pack administration, and cessation of trade from the site, with the loss of all jobs.*
>
> *On 5 August 2020 we received an offer from The Remet Company Limited whereby a connected entity, the Purchaser, would repay the Bank lending in full in exchange for assignment of the Bank's charges. This would be a solvent transaction that would enable the Companies to continue to trade. Following discussions with various stakeholders the Directors opted to pursue The Remet Company Limited's offer and reject the offer from the trade party."*

577. The Remet offer of 5 August 2020, involved no change in the ownership of LWC.

578. At this point a Harold Sorsky at Remet was involved in the discussions with James. In an email dated 4 August 2020, he suggested that Remet's "plan" was to appoint a receiver after the transaction had done through but that it was "*important that we get Lisa on side for the subsequent Liquidation of the rump of what's left after the receivership as we need 75 percent of the shareholders who approve the liquidation*". He suggested administration as an alternative if Lisa "*doesn't want to play*".

579. It was suggested on behalf of Lisa that this was suspicious and unsatisfactory and it was at the least hinted that it revealed some form of plot between the Relevant Respondents and Mr Sorsky to benefit them unfairly at the expense of Lisa . I do not accept this. It is unclear precisely what Mr Sorsky had in mind but he clearly envisaged that solvent trading was not possible and that Remet might put the Companies into an insolvent regime (as they were at risk of already, given the position of the Bank). The suggestion that it was hoped that Lisa would join in and agree to the liquidation does not suggest to me that some clandestine plot was being hatched. In any event, as I go onto explain, it became accepted that a sale of assets, but neither a sale of shares nor a simple "buy-out" or "take over" of the Bank's position, would work.

580. According to James, Remet's chairman, a Mr Joe Stelzer, took over Mr Sorsky's role. As shown by, for example, an email from James to Mr Stelzer dated 27 August 2020, information was being shared and discussions taking place between these two persons (rather than Mr Sorsky being involved).

581. I note that Mr Stelzer's contact email at this time was from his firm, Silver Cloud Investments Limited, which I understand to be a company which, at that time, provided a variety of services to directors and companies including (without limitation) regarding capital raising, turnaround assistance, restructuring and the like. Mr Steltzer does not seem to have become a director of Remet until 2021.

582. According to Lisa, she met with Philip Reid of Remet on 24 August 2020, as evidenced by a meeting note of that date. According to her, Mr Reid offered to buy the interests of herself and John in Portbond and the Kilnhurst site for £750,000, £375,000 each. She rejected that offer.

583. On 27 August 2020, Mr Stelzer forwarded a summary of the financial position of the Companies that had been prepared and sent to him by James. He refers to a meeting that he had with Lisa the day before.

584. According to the SIP 16 Report:

> *"…towards the end of August 2020, following a period of initial financial due diligence, a revised offer for the business and assets was received from the Purchaser.*
> *The Directors subsequently concluded that given the level and structure of the offer from the Purchaser, and current financial position of the Companies, there was now no likelihood of a solvent solution. The Directors therefore engaged Grant Thornton on 2 September 2020 to assist them in taking steps to place both of the Companies in administration. The scope of this work included the completion of the AMA process and supporting the Directors in considering whether or not a pre-pack sale could be achieved upon appointment of administrators and whether this would be the optimal solution for creditors."*

585. On 2 September 2020, Remet Processing was incorporated. The directors were Philip Reid and Walter Reid.

586. It is clear from texted messages that James was in touch with Mr Stelzer during early September 2020, discussing potential offers for the business and assets of LWC and for parcels of the jointly owned land.

587. On 4 September 2020, Portbond and LWC appointed GT to assist in placing the Companies into administration with a view to a pre-pack sale to Remet, as already referred to in the extract of the SIP 16 Report that I have set out. It will be noted that GT was to be involved in the process. From the limited documents before me, GT appears to thereafter have remained in the "lead" as it had been before.

588. On the same day, Remet prepared a "subject to contract offer" to GT for £6.4million (but excluding business plant and machinery owned by John and excluding the Disputed Strip owned by John). The offer indicated that Remet was flexible as to the apportionment of consideration. This letter appears to have been sent under cover of an email dated 10 September 2020 and sent to GT.

589. On 11 September GT sent, by email, an update of its assessment of the position to the Bank. The relevant document was entitled "EOS Update" and dated 11 September 2020. The estimated outcome statement compared (1) a pre-pack to Remet, on the basis of its current offer of £6.4 million (excluding the plant and machinery that John Hughes was claiming personal ownership of and the Disputed Strip owned by him); (2) a pre-pack sale to EMR (which was recorded as having refreshed its offer from that received in July) of group owned plant and machinery only, with the properties being openly marketed, (3) an administration, described as a "closure administration" with no pre-pack sale and properties realising valuation figures provided by

Sanderson Weatherall; (4) a "closure administration", but with the properties achieving 95% of the Sanderson Weatherall valuations.

590. The Remet offer saw the bank suffering a shortfall of £1.1 million from group assets, but with almost all being recovered under the receivership of the jointly owned land (with a £129,000 shortfall) and unsecured creditors receiving approximately £189,000 under the prescribed part. It was also evaluated as carrying lesser execution risk. The EMR offer had an estimated outcome statement with a shortfall to the Bank overall being £296.000 with unsecured creditors receiving approximately £91,000.

591. Meanwhile negotiations took place between Remet and James regarding the involvement of James and John in the business after its acquisition from the Companies. The version of the draft Heads of Terms agreed on 14 September 2020 involved:

(1) The transfer of the Disputed Strip and of plant and machinery owned by John to Remet Processing plus the share (if any) of John's interest in the proceeds from the sale of the Kilnhurst Site (once the Bank had been paid off);

(2) The transfers in (1) would be consideration for a 45% share interest in Remet Processing;

(3) The purchase by Remet Processing under the pre-pack sale by the Companies in administration would be funded by a loan from Remet (the "Loan"). Interest would be charged on the Loan at 7%. Further working capital would be provided by Remet and interest would be charged on that sum at 3.75% above bank rate of the utilised amount. Cash flows from profits would be used to repay the Loan and no dividends would be paid until the Loan had been repaid in full;

(4) There would be three directors of Remet Processing provided by Remet Company. John and James would be made directors, if they requested, three months after completion;

(5) John would be employed at a salary of £100,000 per annum and James at a salary of £80,000 pa.

592. During 14 September, various negotiations had taken place regarding these heads of terms. Among other things, James negotiated:- a decrease in the interest rate to be charged by Remet on loans to be made to Remet Processing, from 10% to 7% for the initial loan to enable the purchase to go ahead and 3.5% for working capital loan; an increase in the shareholding in Remet Processing to be given to John/James in exchange for John's assets from 40% to 45%; and an increase in the salaries of James and John from £70,000 each to £100,000 (John) and £80,000 (James).

593. On 15 September 2020, Remet put forward a formal updated offer by letter of that date which was shared with the Bank by GT.

594. GT also provided a further report being described as "EOS update" (the "September 2020 GT EOS"). The September 2020 GT EOS considered estimated outcomes with regard to four options. By this time, in addition the Remet offer of £6.4 million as an all cash transaction for the Companies' properties, plant and machinery and the

Kilnhurst Site, EMR had "refreshed" its offer from the one made in July. The EMR offer at this point was, in broad summary, an offer of £1.8 million for group owned plant and machinery only. The EOS prepared for this scenario assumed the open marketing of the properties and transactions at the lower of the two valuations provided by Sanderson Weatherall assuming a restricted marketing period of six months.

595. The four options and the "headline" comment (for the Bank) on each were as follows:

Option	**GT headline comment**
Pre-Pack to Remet	The current Remet offer would see the Bank suffer a shortfall of £0.9 million from Group assets, which would be fully recovered under the receivership. Amounts available to unsecured creditors would be c£258,000 under the prescribed part
Pre-Pack to EMR of plant and machinery, open market property sales	Should the EMR deal be accepted, and the properties transact based on Sanderson Weatherall's valuations, the Bank will incur a £1.1 million shortfall. This shortfall would be partially recovered from the sale of SYK95230, being the land under receivership, leaving a total £299,000 shortfall. Unsecured creditors will receive c£91 ,000 under the prescribed part
Closure administration (assuming Smith Weatherall valuations achieved)	
Closure administration (achieving 95% of Smith Weatherall ex-situ valuation)	The Bank will suffer a £0.6 million shortfall on Group assets and would need to appoint a receiver over the third party charged assets to recover this. Unsecured creditors will receive c£270,000 under the prescribed part

596. As regards the Bank, under all but the first of the closure administration scenarios, the Bank was envisaged as being repaid in full. As regards the owners of the Kilnhurst Site, the estimated funds available at the end of the day ranged from nil (under the EMR sale scenario) to £0.6m (under the closure administration route). As regards unsecured creditors, the sums estimated as being available varied between £0.9m (pre-pack to EMR) to £0.29m (closure administration), with an estimated amount of £0.26m in the case of the Remet pre-pack. Each of the options had its own execution risk.

597. The conclusions and recommendations contained in the September GT EOS were as follows:

> *" **Conclusion and recommendation***
> *• Having conducted an extensive AMA process, with the business and assets having been presented to the market for the past 12 weeks, and having explored a pre-packaged administration with both EMR and Remet, we are of the view that the interest of creditors as a whole is best served by effecting a pre-packaged administration to Remet for £6.4 million day one cash (with £1.0 million being allocated, dealt with and distributed via a receiver over the charged trading land)*
> *• Whilst we note that this will deliver a gross proceeds level lower than that which the professional agents believe may be achievable, when one factors in the types of assets (particularly those of an industrial nature), the volume of assets (there will be multiple buyers from multiple sources required), and critically the holding costs and professional time required to effect the break-up; the net funds available to the unsecured creditors are £30,000 different between the pre-pack and closure case*
> *• Given the execution risks involved in delivering the break-up basis, as shown within EOS 4, the pre-pack option is therefore supported and recommended by the administrators elect."*

598. Remet's solicitors, Irwin Mitchell, sent a due diligence questionnaire ("DDQ") to GT and/or their solicitor, Addleshaw Goddard, on about 18 September 2020, as confirmed by an email of that date sent by Irwin Mitchell to Philip Brewer at Remet. A further series of emails on 22 September 2020 reveal that there were concerns that James and John had apparently not instructed solicitors by that date and that an updated DDQ was in the course of being updated. This chain of emails was forwarded to John to chase the instruction of lawyers by him and James. The DDQ attached was of course a request for information by Irwin Mitchell to assist in their legal due diligence review.

599. The DDQ document commenced by confirming that the legal due diligence review was in connection with the proposed acquisition by Remet Processing of: (a) by way of pre-pack administration, for a total consideration of £6,400,000 the business as a going concern of the Companies together with the assets owned or used in connection with the Business and (b) simultaneously, certain other key assets from John and/or James "*in consideration for a subscription for shares in the Buyer, such assets being*" the Disputed Strip, and certain other plan and machinery required to continue to operate the business.

600. The Pre-Pack Sale and the various agreements between John/James and Remet/Remet Processing were completed on 7 October 2020.

Discussion of the petitioner's case regarding the Pre-Pack Sale

601. The issues/allegations that I need to address are as follows:

(1) The Relevant Respondents driving the Companies into insolvency or causing their insolvency;

(2) The effect of the Pre-Pack Sale by the administrators: exclusion of Lisa from the businesses.

(3) Whether the Relevant Respondents acted in the best interests of the Companies;

(4) What disclosure was made by the Relevant Respondents of their interests in Remet Processing to GT and what is the consequence.

(a) The Relevant Respondents driving the Companies into insolvency or causing the insolvency

602. What was apparently Lisa's main allegation, that the administrations were a "device" to ensure the exclusion of her from the Companies businesses raised the spectre that it was being asserted that the Relevant Respondents had engineered the insolvencies and/or the Pre-Pack Sales with the intention of bringing about the exclusion of Lisa from the Companies. This appeared to be supported by her skeleton argument for trial where it was said that:

> "*Having driven the Companies into the ground,* [the relevant Respondents] *responded to the Petition by engineering a pre-pack sale of the Companies' business and assets to a new company of which 45% of the shares are held by John and none by Lisa…This amounts to a comprehensive stripping of the Companies' value in favour of John and at the expense of Lisa….*"

603. In oral opening, it was explained by Mr Wormwald that this would be to misunderstand Lisa's case. She did not assert that the Companies were deliberately pushed into insolvency and administration.

604. Nevertheless, during the trial there seemed to be suggestions that the insolvency had been caused in a culpable way by the Relevant Respondents whether by mismanagement or, as it mainly seem to be asserted, by reason of their having taken sums out of the Companies by reference to the challenges regarding company expenditure/non re-payment of director's loan accounts that I have already deal with.

605. It seems to me that, for the avoidance of doubt, I should make clear findings on the point. I am wholly unsatisfied that the Relevant Respondents' conduct in connection with the Companies' respective businesses and insolvencies (a) was directed at damaging Lisa and/or (b) caused the insolvencies. I am wholly unsatisfied that their conduct of the Companies' affairs (or specific acts or omissions of the Companies for which they are responsible) amount to a conduct of either Companies' affairs which is unfairly prejudicial to Lisa or which amount to acts of omissions of either Company which are so unfairly prejudicial.

606. So far as any deliberate pushing of the Companies into insolvency is concerned, this would run against the interests of the Relevant Respondents who were in any event clearly seeking to pursue a solvent outcome for as long as possible. Further, it is difficult to see how they could have got away with deliberately pursuing insolvency, given the involvement of the Bank and GT. Lisa's case (pursued vigorously in cross-examination) was built around the suggestion that James had threatened to "bust the companies" in September 2019 and that that had remained the plan. I have dealt with that evidence already. In short, the case was one of suspicion put forward as fact but without underlying material even beginning to make out the case.

607. Further, the developing situation, as set out in the detailed GT reports and of which I have provided only a few conclusions, clearly shows the developing situation and the natural causes outside the control of the Relevant Respondents which brought the Companies to insolvent positions. Mr Mundy in his written closing submissions highlighted a number of areas which contributed to the difficult financial position. I agree with his submissions in this respect and simply set out those items by way of broad summary:

(1) A fire in May 2017 led to an insurance claim for £1.625 million which settled for around £500,000. I cannot reach any conclusion as to whether the claim in full was justified or not, but this incident demonstrates on any view a matter causing problems for the Companies;

(2) About £2million was spent in 2017 in investing in new machinery to gain a competitive advantage against a background of competition easing and prices rising as a result of an embargo against China;

(3) From 2018, LWC spent about £300,000 on noise mitigation;

(4) From late 2017 to March 2020, copper prices fell by about a third;

(5) Credit insurers refused to insure five of LWC's largest suppliers for supplies to LWC and as a result the Companies could not get supplies on account . As it did not have the cash to pay up in front it lost suppliers. Buying less stock there was less to process and to sell;

(6) John became unwell as I have already dealt with;

(7) Sales deteriorated from about £2.3 million a month in November 2018 to £1 million a month by October 2019;

(8) Covid caused further problems including the halving of LWC's turnover, the mothballing of LWC's operation and cash flow insolvency.

608. In my judgment, there is also no sustainable case that the Relevant Respondents in some way controlled the particular Pre-Pack Sale that was finally entered into. Of course, the decision to enter into that Pre-Pack was a decision of the Administrators, against the factual background that I have set out earlier in this judgment. Mr Wormald portrayed the situation as one where the Relevant Respondents had essentially decided at an early stage that a deal with Remet was the one that would take place, so that they could do their "side deal" with Remet. I disagree with that submission. The GT Reports show how matters developed and how other potential bidders were engaged with. Further as I keep saying, ultimately the decision to enter the Pre-Pack was one for the Administrators. They entered the Pre-Pack on the basis of the expert advice that they received and for the reasons that I have attempted to summarise earlier in this judgment.

609. Further, I did not understand it to be part of Lisa's case that the Relevant Respondents had mismanaged the Companies affairs in manner that was unfairly prejudicial to her and brought about their insolvency. On the materials before me and the submissions made I would have been wholly unpersuaded that such a case was made out.

610. Finally, I reject the suggestion that the Companies were forced into insolvency because of the manner in which they received benefits from the Company either directly on the basis that the same was proper expenditure by the Company or that it was, in effect, loans which were dealt with and accounted for by way of director's loan accounts.

(b) The effect of the Pre-Pack Sale by the administrators: exclusion of Lisa from the businesses.

611. I should re-iterate that in opening Mr Wormald made clear that Lisa was not asserting a case that the Pre-Pack Sale was unfairly prejudicial because it was a sale at an under-value. Separately, Lisa asserted that certain Company stock and plant and machinery was disposed of by the Relevant Respondents (or one or more of them) without the Companies receiving the benefit of the same. I deal with those separate allegations later in this judgment. Subject to that point however, her case was not one that the Administrators (who would of course have been primarily responsible) had sold Company assets at less than their then market value. Indeed, the allegation in the Petition that, under the Pre-Pack sale and the other transactions taking effect at that time, Remet Processing had acquired assets worth £27 million for just over £6.5 million was sought to be deleted in closing.

612. It is true that the end result of all the transactions was that Lisa's shareholding remained with a valueless shareholding in Portbond but that John/James negotiated a shareholding in the company carrying ahead the businesses in the future: Remet Processing. Leaving aside the issues of alleged Company stock and plant and machinery wrongly being taken by James/John, the negotiation of a shareholding seems understandable in circumstances where Remet was obviously anxious to obtain the benefit of John's and James' experience and ability to work in the business; the benefit of the other consideration acquired under the various arrangements with James/John including the Disputed Strip, John's share of any value remaining in the Kilnhurst Site and the valuable warranties obtained regarding the Companies and their businesses, which of course the Administrators, in line with usual practice, were unwilling to give. Lisa had no legitimate expectation to have a position in the management of the Companies or their businesses, whether before or after the Pre-Pack. As regards her shareholding in Portbond, she had no legitimate expectation to receive or have negotiated on her behalf either some form of shareholding in Remet Processing or some other benefit, given the insolvent position of the Companies.

613. Provided that her position as shareholder in an insolvent company was not prejudiced by the Pre-Pack Sale, then it is difficult to see how there can be any unfair prejudice to Lisa. Further, it is important to recognise what the shareholding in Remet Processing reflected. True it was that it acquired the business and assets of the Companies (other than the investment properties). However, those businesses and assets were now owned by a company which had a similar level of debt to the Companies (by reason of the loan from Remet), albeit with a promise of further capital going ahead. There were limits as to when any dividends could be paid and the salaries taken by John and James were significantly reduced for their former salaries.

614. Any complaints about other use of other, non-Company, assets by James and John cannot amount to acts of omissions of either Companies or the conduct of either of their affairs. I accept that, in certain circumstances and in theory, where a company, in the position of the Companies in this case, enters into one or more of a group of related transactions not all of which it is party to, but which has an overall effect of prejudicing a shareholder, that may amount to unfair prejudice. This may be so even though the prejudice arises as a result of the transactions as a whole. No such circumstances were put forward to me or, in my judgment, arise in the case before me.

615. I now turn to the more technical arguments, regarding an alleged failure to act in the best interests of the Company and/or a failure to disclose the arrangements that John and James had personally entered into with Remet/Remet Processing.

(c) Acting in the best interests of the Company

616. Under s172 Companies Act 2006, a director owes a duty to act "in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole". This duty, in the context of insolvency, has recently been the subject of consideration by the Supreme Court in *BTI 2014 LLC v Sequana SA and others* [2022] UKSC 25; [2022] 3 WLR 709. I considered whether or not I should restore the case for further argument in the light of that decision but decided that it was not necessary for reasons that will become clear. .

617. As regards the duty as a generality, the requirement is that the director must bona fide believe that the relevant decision would be most likely to promote the success of the company: the test is not an objective one. As it is put in Palmer's Company Law, leaving out the footnotes): .

> "*8.2608 The essential principle is that it is for directors to make decisions, in good faith, as to how to promote the success of the company for the benefit of the members as a whole. This test repeats the common law rule from which it is derived (Smith & Fawcett, Re, above). A court will not inquire whether, objectively, the decision was actually the best decision for the company, nor whether the director's honestly held belief was a reasonable one.*
> *8.2609 On the other hand, a court may be easily persuaded that the director did not think the action was in the company's best interest if it forms the view that no reasonable director could have concluded that a particular course of action was in the interests of the company. However, this is a matter of weighing the evidence: the ultimate test remains a subjective one, but a director whose action caused substantial damage to the company will find the court less likely to believe his statement that he acted in what he considered the best interests of the company*."

618. As regards the vexed question of the time at which and extent to which directors are required to consider the interests of creditors when considering the promotion of the success of the company, the Supreme Court in the *Sequana* case confirmed that where a company moves to a situation of financial difficulty and then to one where the outcome is inevitable insolvent liquidation or administration, the interests of the members will have to be considered together with the interests of its creditors as a

whole the closer the company gets to inevitable insolvent liquidation/administration. The weight of the creditors' interests in this assessment, particularly as they may conflict with members' interests, will increase the closer to inevitable insolvency the company reaches and the more serious the company's financial position becomes. The financial difficulties a company incurs will be on a spectrum and where, at the end, as here, insolvent administration results, the preceding direction of travel may not always at all time be the same way nor will the financial difficulties necessarily mount in a linear manner.

619. As regards the time at which the interests of creditors as a whole begin to be required to be taken into account it is not any financial difficulty that the company faces which will trigger this change of emphasis or object in the subjective duty to act in the company's best interests. The interests of creditors only need to be taken into account once insolvent liquidation/administration is probable or when the company is actually insolvent or bordering on it or when a proposed transaction would have the effect of putting the company into that position.

620. As regards the weight to be given to the interests of creditors over those of members (if there is, and there need not necessarily be) a conflict between the two, that will increase the more serious the financial position becomes until:

> "*where insolvent liquidation or administration is inevitable, the interests of the members cease to bear any weight, and the rule consequently requires the company's interests to be treated as equivalent to the interests of its creditors as a whole*."

621. In this case there is no need to consider the slight differences between the formulations of the different members of the Supreme Court who sat on the *Sequana* case. This, plus the fact that the Supreme Court re-affirmed what has long been considered to be long standing legal principle, is why I did not seek further submissions in the light of judgments in the *Sequana* case.

622. In short, the growing financial problems that the Company faced are mapped out in the relevant GT Reports that I have considered. Those reports show a careful and increasing concern with the interests of creditors though, as a matter of fact, I cannot detect any real conflict between the interests of members and creditors in the ends that the directors sought which was to try and save the companies and business first, on a solvent basis, and then, when that proved not to be possible, to realise the greatest sums that could be realised but balancing the needs to maximise returns against matters such as execution risk and delay in realisation. It seems to clear that the Relevant Respondents in this case, with the assistance of GT, acted in what they bona fide considered to be in the best interests of the Companies over time.

623. As regards the specific complaint, that in placing the Companies into insolvent administration the directors were not acting bona fide in what they considered to be in the best interests of the creditors of those Companies, there is simply no evidence to support that. That the Relevant Respondents also negotiated benefits for themselves does not mean that they thereby ceased to act in what they considered to be the best interests of the Companies.

624. I also note that, at the time of placing the Companies into insolvent administration, a formal insolvency process was inevitable. In terms of their duties as directors, they were no longer at that point under any subjective duty to consider the best interests of members.

625. The parties debated before me whether or not the Relevant Respondents, as directors, remained under the duty in s172 Companies Act 2006 after the Companies had been placed into insolvent administration (see *System Building Services Group Limited* [2020] EWHC 54 (Ch); [2020]1 BCLC 205). This point arose because of a submission by the Relevant Respondents that the entry into the Pre-Pack Sale was a decision of the administrators and not the Relevant Respondents so that that transaction could not be impugned as against the Relevant Respondents under s172 Companies Act 2006.

626. I do not consider, on the facts of this case, that I need to consider the correctness of the decision in *System Building Services Group*. The allegation in this case is that it was the placing of the Companies into administration (with a view to the Pre-Pack Sale, though ultimately it was the Administrators who were responsible for the Pre-Pack Sale). That was said to be a breach of the duty under s172 Companies Act 2006 on the basis that the directors did not subjectively consider the best interests of the Company but rather were actuated solely by their own personal interests in that and the other transactions effected with Remet and Remet Processing at that time. As I have said, I am satisfied that they did subjectively consider that the best interests of the Companies at the time of placing them into insolvent administration and given that a pre-pack sale was the object of the administrations, that they subjectively considered that the placing into administration of the Companies to effect such Pre-Pack Sale was in the company's best interests. Nothing changed in the short period between the Companies being placed into administration and the execution of the Pre-Pack Sales and therefore, even if the s172 duty continued post administration, the Relevant Respondents complied with it.

627. Although not raised before me, I deal shortly with a possible case that the Relevant Respondents, in placing the Companies into administration, were acting not just in what they considered to be in the interests of the Companies (and their creditors) but also in their own self-interests and whether or not this is a cause of complaint under the duty not to act for a collateral purpose as now enshrined in s171(b) Companies Act 2006. This is an area that has fairly recently been considered by the Supreme Court in *Eclairs Group Ltd (Appellant) v JKX Oil & Gas plc* [2015] UKSC 71; [2016] 3 All E.R. 641. The majority decided that it did not need to and should not decide as to whether the key test, where there are multiple purposes at play, is what the primary purpose is or whether a "but for" causation test is the appropriate test, as Lords Sumption and Lord Hodge proposed.

628. Again, in this case, the differences between the members of the Supreme Court does not create a difficulty in this case. I am satisfied that the primary purpose of the Relevant Respondents in placing the Companies into insolvent administration was to achieve the Pre-Pack for the benefit of the Creditors and that such administrations and Pre-Pack Sale would have occurred in any event whether or not the Relevant Respondents had had the purpose of benefitting themselves. In short, both tests are satisfied.

629. As regards both potential breaches of duties under the Companies Act 2006 which have been identified, I would add that I am not satisfied that, even if made out, they would have founded a case of unfair prejudice of Lisa's interests as a member. This is for two reasons: first I do not consider that the outcome would have been any different. Secondly, the only constituency affected at the relevant stage was that of the Companies' creditors.

(d) Disclosure of Interest in Remet Processing to the Administrators

630. As part of the evidence (although not pleaded in the Petition nor sought to be added in by way of amendment), Lisa relied upon what was said to be conduct of the Relevant Respondents in not disclosing to GT (and the future administrators) the fact that under the overall package that Remet had agreed, John and James were to be employed, to receive shares in Remet Processing and to be appointed directors. As I understood it this conduct was relied upon, first as a matter going to the credibility of some or all of the Respondents as witnesses. This was because they said that they had indeed told GT about the arrangements affecting them (the Respondents) to been entered into at the same time as the Pre Pack Sale. Lisa said that this evidence was clearly wrong and that they were lying. This, it was said, undermined their evidence generally. Secondly, the conduct was relied upon as being relevant to the overall case that the Relevant Respondents were looking after their own interests at the expense of Lisa and, it was said, seeking to hide that result from her.

631. In addition, Lisa relied upon the manner in which the appointment of James and John as directors of Remet Processing was "hidden" for three months by being agreed as happening but not to occur for that three month period. This, said Lisa, is another attempt to hide what was going on.

632. The key documents regarding the GT position in this respect are three. First, there is the SIP 16 Report itself. In Section 6, details of the transaction, against the entry "*Company directors, former directors, or their associates*" is the following entry:

> " *James Hughes and John Hughes to be engaged in a management capacity, specifics of involvement not yet agreed*".

633. The second set of documents are the emails in September 2020 that I have referred to above, including the sending of a DDQ questionnaire which revealed that John/James were subscribing for shares in Remet Processing in exchange for the transfer of the Disputed Strip and other property.

634. The third set of relevant documents is contained in relevant correspondence between Thomas Mansfield and the solicitors of the administrators, Addleshaw Goddard LLP.

(1) By letter dated 30 July 2021, Thomas Mansfield wrote to the administrator at GT. A whole raft of matters and complaints and questions were raised. One such matter related to the agreement reached between John and Remet Processing whereby John sold a quantity of machinery (which is a matter dealt with later in this judgment) and the Disputed Strip. The result, it was said, was that:

> "*This agreement between RPL and John Hughes had the result of John Hughes acquiring 45% of the authorised and issued share capital of RPL,*

> *and thereby a 45% interest in the assets disposed of by you under the pre-pack, a matter nowhere referred to in your report to the creditors of 9 October 2020 or subsequent reports*.".

(2) The first and fourth of the questions then posed were as follows:, the overarching request being to "*please explain*:

> "*1. When you first learned about the transaction or intended transaction between John Hughes and RPL of 7 October 2020;*
>
> *....."*

(3) The response of Addleshaw Goddard by letter dated 8 September 2021 included the following:

> "*1. We are not sure what you mean by "transaction" as two transactions are set out in your narrative under this heading. If you mean the sale of certain items to Remet Processing Ltd (RPL), the Administrator was aware that John Hughes intended to sell certain of his property to RPL at or shortly after the time the Companies' assets were sold to RPL by the administrators. This was a third party sale which did not involve the Companies' assets and so was not under the control of the administrators. The* [Disputed] s*trip did not form part of the Companies' assets and was not sold by the administrators.*
>
> *If you mean the transaction whereby John Hughes became a shareholder in RPL, our client learned of it in your letter of 30 July."*

635. At this point it is important to understand the then regime under SIP 16. SUP 16 is a Statement of Insolvency Practice. Statements of insolvency Practice, or SIPs are issued to insolvency practitioners under procedures agreed between the insolvency regulatory authorities, acting through the Joint Insolvency Committee.

636. The purpose of SIP 16 is to ensure that <u>creditors</u> are informed as to the reasons why a practitioner decided on a pre-packaged sale (emphasis supplied). Paragraph 6 of SIP 16 provides:

> "*The administrator should provide creditors with sufficient information ("the SIP 16 statement") such that a reasonable and informed third party would conclude that the pre-packaged sale was appropriate and that the administrator has acted with due regard for the creditors' interests. In a connected party transaction the level of detail may need to be greater."*

637. Under SIP 16, there are disclosure requirements (referred to as a SIP 16 Statement and in this judgment, as regards this case, referred to by me as the SIP 16 Report). So far as relevant the relevant provisions are as follows:

"**Information disclosure requirements in the SIP 16 statement**

"*The administrator should include a statement explaining the statutory purpose pursued, confirming that the transaction enables the statutory purpose to be achieved and that the outcome achieved was the best available outcome for creditors as a whole in all the circumstances. The following information should be included in the administrator's explanation of a prepackaged sale, as far as the administrator is aware after making appropriate enquiries:*

….

The transaction

The date of the transaction.

Purchaser and related parties

- The identity of the purchaser.

- Any connection between the purchaser and the directors, shareholders or secured creditors of the company or their associates.

- The names of any directors, or former directors (or their associates), of the company who are involved in the management, financing, or ownership of the purchasing entity, or of any other entity into which any of the assets are transferred."

638. There are also the provisions of the Companies Act 2006, sections 175 and 177. I was not addressed regarding these sections and therefore strictly no point arises upon them. This however did not stop Mr Wormald and Mr Phillips from asserting a conflict of interest in their closing written submissions and almost as being a part of or equivalent to the breach of the s172 duty. For completeness I should say that my initial view would have been that s177 but not section 175 applied. There might have been a real issue as to whether section 177(6)(a) applied. Given the question of the importance of knowledge of the Administrators, it might well be that had section 177 been relied upon by Lisa, further evidence or disclosure would have been sought by the Relevant Respondents. On this basis, I do not consider that it would have been fair to allow breach of these sections to be raised and to the extent it was slipped into closing submissions I do not allow it.

639. There was clearly some disclosure to GT of the position. The DDQ suggests that the matter was not being hidden. It is unclear if the matter (in terms of seeking information) was chased by GT and if not, why not. The obligation to make disclosure lay upon GT. I am sure that had they have known more they would have disclosed more. GT or, more accurately, the Administrators, were required to comply with SIP 16. I do not know whether or not the ramifications of SIP 16 were explained to the Relevant Respondents and/or whether and how they were told that they had to provide information to GT to enable the administrators to comply with SIP 16 nor to what extent similar points were made to Remet.

640. In oral evidence, John suggested that the heads of terms that were agreed with Remet were circulated to, at the least, GT and the Bank. He later said that he had spoken to Chris Petts at GT, and someone at the Bank, and that Mr Petts had wished him "good luck". There are problems with this evidence. If GT had been formally made aware of the proposals for the arrangements between John/James and Remet/Remet Processing then the probabilities are that they would have made a note of the same and put it in the SSIP 16 Report. I appreciate that GT seem to have known there were at the least incompletely agreed arrangements which they do refer to in the SIP 16 Report but, possibly surprisingly, they did not (I assume) seek to clarify the position prior to the Pre-Pack Sale. Nevertheless, this does not detract from the point of inherent probabilities that if they had been told more they would have noted it. On the other hand, as I have said, GT was clearly made aware of some management role and the DDQ position suggests they were made aware of a lot more.

641. At the end of the day, I am not satisfied on the evidence before me that John and James were correct in their evidence about the particular circumstances in which they say that GT was notified of their interests, or immediately to be acquired interests, with regard to Remet Processing. However, I consider that they were truthful in that evidence in the sense that they genuinely believed it when they were giving the evidence. This is one of those situations where, over time, memory fades and imagination grows. I do not regard John or James as deliberately lying on this point. In each case, their evidence is, it seems to me, an example of someone convincing themselves that something happened or must have happened when it did not (or at least in that way). Clearly there was some communication on the topic otherwise the limited disclosure given in the SSAP 16 Report would not have been made. So far as credit is concerned, this incident simply confirms my view that, for the sorts of reasons set out by Mr Lenon KC, oral evidence may be unreliable and in this case I should be careful to accept oral evidence now from any of the main protagonists unless there is some form of corroborative evidence (e.g. contemporaneous documentary evidence) or such evidence otherwise fits in with the inherent probabilities.

642. The next question, however, is whether GT was informed of more than was inserted in the SIP 16 Report. Was there a mistake in this respect? Moreover, on what investigation/inquiries was the letter from Addleshaw Goddard written? As an issue that was not pleaded and on the evidence that I have seen I am not satisfied that the position has been as fully investigated by either side as it might otherwise have been. Even if there was not full formal disclosure to GT, given they knew there were arrangements to be finalised I am unclear whether GT made further inquiry and if not, why not.

643. On this basis I find that there was at least some disclosure (as per the SIP 16 Report, to the effect that they were likely to have a role in Remet Processing post the Pre-Pack Sale and also with regard to the DDQ) but not full formal disclosure of the position as between John/James and Remet/Remet Processing to GT. I am unable to decide whether this was a culpable failure by the Relevant Respondents.

644. Do these conclusions, and the evidence, support the view that the matter was hidden for the sort of reasons which I understand Lisa to put forward? In my judgment the answer is "no". There was some disclosure. I have no evidence as to what if anything

was asked by GT of John/James in the relevant respect. There is no suggestion that GT asked for further information, but that they were lied to or information was refused. It must be assumed that had they asked, then further information would have been provided. I conclude that this matter does not overall assist Lisa's case.

645. Whilst I am considering the question of the SIP 16 Report I should also consider the arrangements between Remet/Remet Processing and John/James, that the latter would only be appointed directors of Remet Processing after three months. The rationale of this step was explained by John as being, in effect, to prevent lack of confidence in those anticipated to be dealing with Remet Processing in the future, such entities in many cases likely to be entities which also had dealt with the Companies in the past. As I understand it, the rationale was that after three months or so of Remet Processing trading successfully, the revelation of the (then new) roles of James and John as directors would not significantly undermine market confidence in Remet Processing. Although there may be said to be some logical flaws in this rationale I accept that it was what motivated the arrangement.

646. Finally, in this context I need to deal with an assertion on behalf of Lisa made in closing. As I have said, the trial had been conducted on the basis of a clear concession by Lisa that the Administrators had achieved a proper consideration for the Companies' assets and business under the Pre-Pack Sale. This was confirmed to me and reflected in the proposed deletion in the Petition of the allegation that, under the Pre-Pack sale and the other transaction effect at that time, Remet Processing had acquired assets worth £27 million for just over £6.5 million.

647. In the written closing submissions for Lisa it was submitted that had GT known that the Pre-Pack Sale was "*in effect a species of directors buy-out*" and that:

> "*all those involved valued the assets far in excess of the valuation figures recorded by the professional valuers, they would no doubt have insisted on: (a) transparency as to valuation and as to the true identity of the bidder; (b) a new or revised process of tender. Further on the assumption that the RPL bid was still advanced, they would in all likelihood, have achieved a higher price and a solvent sale. It follows that part of the Petitioner's case is that as well as unfairly prejudicing her, this was a fraud on creditors.*"

648. Particularly given the procedural history of this case, I deprecate this attempt to raise a new case that was not pleaded and which is inconsistent with the concession made and on the basis of which the trial took place.

649. Further, I am wholly unclear what evidence is relied upon in support of the proposition that "*all those involved valued the assets far in excess of the valuation figures*" put forward by the expert. In any event, I disagree with that proposition and find that it is not established. I also wholly reject the proposition that a new or revised process of tender would have been embarked upon had the deals between John/James and Remet Processing been disclosed to GT. GT had taken its own valuation advice and carefully considered the appropriate deal that they could do. They had also had well in mind, as revealed in their EOS reports that a Pre-Pack to Remet would probably involve the Relevant Respondents having a management role in the business going ahead.

650. Finally, I wholly reject the proposition, which flies in the face of the available evidence and/or lacks any evidence to support it, that "*in all likelihood*" GT would then have achieved a *"higher price and a solvent sale*".

651. In conclusion, I reject as unpleaded, any case that (a) had there been fuller disclosure, GT/the proposed Administrators would have revisited the deal agreed in principle with Remet/Remet Processing and would have required re-tendering and/or further professional valuations and that (b) the result of (a) would have been that Remet would have agreed to do the deal at a higher consideration and/or a higher consideration that would have resulted in a solvent outcome for the Companies.

652. Further I find on the evidence before me that none of the propositions in these paragraphs (a) and (b) have been established.

Summary: the Pre-Pack Sale

653. In their written closing submissions, Mr Wormald and Mr Phillips put Lisa's case as follows:

> "*Put at its broadest, Lisa's case is that John and James's conduct of the various negotiations involving Remet was entirely motivated by self-interest, with the aim of achieving a transaction which would involve the Companies' business and assets being acquired by a new company in which John would have an interest but Lisa would not, and doing so at the lowest possible price in order to maximise the value that they would receive from the transaction and to avoid them having to contribute anything of real value towards the acquisition. In order to succeed it was necessary for them to keep the true nature and purpose of the transaction secret from both Lisa and Grant Thornton, which they did"*.

654. They also submitted that Remet Processing's "*offer price bore no relation to the value of what RPL was acquiring*" (the inference being that the real value was considerably more) and that the Companies were in fact not insolvent at the time they entered administration but that the shares of Lisa had value, or there is a prospect that they had value, "at all times".

655. My conclusions, put at their broadest, are:

(1) Aspects of these allegations are not permitted to be raised (eg conflict of interest, non-disclosure to GT and that the Pre-Pack Sale, agreed to by the Administrators, was at an undervalue).

(2) In conducting the Companies' affairs during 2020, the Relevant Respondents were motivated by a desire to achieve the best outcome possible for the shareholders and creditors and, when the shareholders' ceased to have an economic interest in the Companies, for the benefit of the creditors.

(3) They were not aiming at a transaction which would result in them continuing to have an interest and Lisa to not having one.

(4) They were not aiming at a sale to Remet at the lowest possible price, to maximise the value that they would achieve through their proposed shareholdings in Remet

Processing. Further, they did contribute things of real value to Remet Processing.

(5) The end situation was that they did have an interest, through their shareholding in Remet Processing, in the business and assets of the Companies once they transferred to Remet Processing. Lisa did not. However, the sale price was properly considered by the Administrators to be a proper one and it was not an undervalue.

(6) Further, if and to the extent there was not full disclosure to GT of the Relevant Respondents' interest in Remet Processing, it is unclear that this was the culpable fault of the Relevant Respondents. If there had been such full disclosure it would not have resulted in the price for the Companies' assets being increased. It would not, on any view, have resulted in (for example) the deficit in LWC being wiped out so as to create shareholder value in Portbond. Nor would it have resulted in the Pre-Pack Sale to Remet Processing being replaced with a sale to some other entity or to Remet agreeing to proceed without the Relevant Respondents being "on board" and with an interest in Remet Processing.

(7) Once insolvent administration was inevitable, Lisa ceased to have any economic interest in the Companies and it was understandable that she was not then "fully engaged and informed".

(8) The Relevant Respondents did not "succeed" in their alleged motivation because they did not have it but in any event the close involvement of GT meant that the conduct of the AMA process; the involvement of and information provided to Lisa in that process; and the eventual Pre-Pack Sale were not matters of unfair prejudice to Lisa.

(9) Further, the Pre-Pack Sale was not a sale at an undervalue and the Companies were truly massively insolvent by October 2020.

Allegation: Sale of Machinery by John which belonged to the Company

(a) The case

656. The allegation is that John, in effect, stole plant and machinery belonging to LWC (being the machinery, or possibly some of it, set out in Schedule 2 to the Subscription Agreement) by purporting to transfer it to Remet Processing as part of the consideration paid to that company for shares in it, issued to John.

657. This allegation is not pleaded in the amended Petition. The most that was said was that certain machinery had been sold under the Subscription Agreement which included plant and machinery recorded in LWCs fixed asset register but which John claimed to own personally. It was not positively asserted the plant and machinery did belong to LWC nor was any complaint as such raised in relation to that issue other than the general attack on the Subscription Agreement as part of the overall arrangements at the time of the Pre-Pack Sale by which the Petitioner was excluded from future enjoyment of the Companies' business and assets .

658. The case sought to be put did not form part of the agreed list of issues. As such, I would not have allowed it to proceed. There was plenty of time to amend to bring

claims and properly plead them. The result of the absence of a pleaded case is that the most notice that the Respondents received of this claim as amounting to an incident of unfair prejudice was shortly before and during the trial itself.

659. The Skeleton Argument for the petitioner at the start of the trial referred, *en passant* to the Subscription Agreement involving, as part of the consideration for shares and management roles given to John and James:

> "various items of plant and machinery, at least half of which were included on the Companies' fixed assets register and therefore belonged to the Companies rather than to him personally (**G/215/1455**)." (emphasis supplied)

Which "half" was never identified to me. Further, the skeleton argument did not clearly identify that this was a separate allegation of unfair prejudice.

660. In an initial latter of instruction from the petitioner, Mr Lacey was asked to focus on ten matters of which the tenth was:

> "*10. Evidence of ownership of the plant and machinery referred to in the Schedule to the Subscription Agreement entered into between John Hughes and* [Remet Processing] *dated 7 October 2020"*

661. As the defendants never instructed an expert there was never a discussion between experts about the matter.

662. I deal with the evidence of Mr Lacey in more detail below. However, for present purposes, it suffices to say that that evidence was not proper expert evidence but evidence of fact as to what the accounting records of the company showed (and as to certain evidence that he did not have). His then conclusions from the facts that certain plant/equipment (in fact three items) set out in Schedule 2 to the Subscription Agreement as sold by John was in fact owned by Portbond/LWC are not conclusions which amount to expert opinion.

663. As regards the factual evidence served by way of witness statements the position is as follows.

(1) Lisa, in her trial witness statement dated 5 April 2022, asserted her "understanding" that as part of the pre-pack sale John sold various items of plant and machinery which he claimed to own but which he did not own. The plant and machinery was said to have been subject to a valuation prepared by James in about March 2020 which included such items (paragraph 125).

(2) Charles did not deal with this issue in his trial witness statement dated 18 April 2022.

(3) John, in his witness statement dated 25 April 2022, did deal with the issue (paragraphs 185-188). As far as I can see this is because it was a matter that had been raised somewhere and at sometime but which had not formed a pleaded substantive ground of complaint amounting to unfair prejudice. His explanation was limited to dealing with the issue of the valuation prepared by James in about March 2020. He explained that the plant and machinery sold by him personally

under the Subscription Agreement as part of the consideration for shares in Remet Processing Limited were assets which belonged to Preston Cable Granulation Limited, not LWC, and that when James produced the March 2020 document he, James, had not known that and the document was therefore simply wrong.

(4) James did not deal with the issue in his witness statements.

(b) The proposed amended case

664. One of the proposed amendments put forward by Lisa is to assert that the plant and machinery sold under the Subscription Agreement belonged to the Companies and was misappropriated by John in breach of his duty.

665. I would not allow this proposed amendment. My reason for this is that had the matter been properly put forward then the Relevant Respondents may well have sought further evidence and/or put in further evidence themselves. In particular, the allegation amounts to an implicit allegation that the administrators were either themselves negligent in allowing company assets to be sold under the pre-pack but by John personally and/or that the administrators were misled by John (and possibly others). Evidence from the administrators and even further third party disclosure may have been sought had the allegation been properly made in a timeous matter. Further, more evidence might have been obtained and deployed regarding the question of how John acquired ownership of the assets in question. Although it is true that John dealt with the issue briefly in his trial witness statement, James did not. Further, dealing with what may have been seen as a side issue going to credit or general mud-slinging is not the same as dealing with an allegation giving rise to, what would in other contexts be called a cause of action which is relied upon.

(c) The facts

666. I turn now to the facts.

667. On or about 5 March 2020, James arranged for preparation of an "Inventory and Valuation of the Waste Processing Machinery and Equipment on a market value basis for removal from the premises as at 5 March 2020" ("James' Inventory"). That James' Inventory, ostensibly of Portbond/LWC machinery and equipment, included items that were later contained within Schedule 2 to the Subscription Agreement. As such, under the Subscription Agreement, that machinery and equipment was treated as being owned by John and transferred to Remet Processing as part of the consideration for the issue of shares to him and James.

668. Lisa's case is that the James' Inventory shows that all of the relevant machinery and equipment in fact and law belonged to one or other of the Companies and that none of it belonged to John personally.

669. The explanation given for this, both in his trial witness statement and repeated in cross-examination by John, was that James' Inventory had been prepared on James' instructions. This was at a time when John was ill. James assumed that certain old machinery on site belonged to the Companies and did not know the history of the matter and that some of it did not belong to the Companies. I accept this evidence so

far as it relates to the circumstances of the taking of James' Inventory. Accordingly, it is simply a neutral piece of evidence on the relevant issue of ownership.

670. When it came to the Pre-Pack Sale, it is clear that for some time prior to the sale John had been alleging that he was the owner of a certain amount of identified plant and machinery and that this was known and identified to GT some time before September 2020. I have referred, for example, to the GT report of 11 September 2020 identifying that the Remet offer excluded such machinery and plant and that GT (and the Bank) clearly knew what it was.

671. The machinery in question was, at the time of the pre-pack, clearly identified so far as it was included within Schedule 3 to the Pre-Pack Sale Agreement as assets excluded from the Pre-Pack Sale. The administrators/GT must therefore have known about and agreed to it being excluded from the sale so that it was not treated as assets of Portbond/LWC.

672. In the SIP 16 report, the Administrators referred to the outcome for creditors achieved by the Pre-Pack sale. As regards Company plant and machinery, the Pre-Pack Sale achieved a realisation of £2.2m compared with a valuation of £2.4 million. The variance was some £203,000 and the proceeds achieved amounted to some 91% of the valuation. However, the report pointed out that:

> "*In the event of a closure the Joint Administrators would be required to account to John Hughes for the assets claimed to be owned personally by him, valued at £362,500*."

The Joint Administrators therefore, again, clearly accepted that the relevant plant/machinery belonged to John, or perhaps more accurately, that it did not belong to LWC.

673. The Companies' plant had been valued as at 9 July 2020, on an accelerated sale basis. Given the passage of time, continued uncertainty flowing from Covid-19 and a more recent surplus of similar equipment on the auction market the expert valuers, SW and Hilco Appraisal Limited advised a 20% discount value on the July 2020 valuation.

674. Turning to the Pre-Pack Sale Agreement, Plant and Vehicles were two defined items of "Assets" that were sold as part of the sale. The Plant and Vehicles were defined as encompassing all of the matters listed in Schedule 2 to the Asset Agreement. Under the Pre-Pack Sale Agreement the consideration attributed to Plant and Vehicles was as follows:

Plant: £2,046,789

The Vehicles £128,000

675. "Plant" was defined as being:

> "(a) *all the plant, machinery, office furniture, fittings and equipment listed in Part 1 of Schedule 2 (and in each case all ancillary items thereto);*

> *(b) all the plant, machinery, office furniture, fittings and equipment listed in Parts 3 and 4 of Schedule 2, to the extent such plant, machinery, office furniture, fittings and equipment is not already referred to in Part 1 of Schedule 2; and*
>
> *(c) any and all other plant, machinery, office furniture, fittings and equipment relating to the Business (and in each case all ancillary items thereto) which is in the ownership of the Seller on the Transfer Date and which is not listed in Part 1 of Schedule 2, where each such item of plant, machinery, office furniture, fittings and equipment has a value of £10,000 or less*
>
> *excluding any ROT Chattels.*
>
> The "Transfer Date" was the date of completion.

676. "Vehicles" were defined as being:

> *"(a) all the motor vehicles and trailers listed in Part 2 of Schedule 2;*
>
> *(b) all the motor vehicles and trailers in Parts 3 and 4 of Schedule 2, to the extent such motor vehicles and trailers are not already referred to in Part 2 of Schedule 2; and*
>
> *(c) any and all other motor vehicles and trailers relating to the Business which are in the ownership of the Seller on the Transfer Date and which are not listed in Part 2 of Schedule 2, where each such motor vehicle and trailer has a value of £10,000 or less."*

677. Schedule 2 therefore comprised four parts. These are described at the start of Schedule 2 as follows:

> *"**Part 1***
> ***The Plant***
> *(See attached list)*
> ***Part 2***
> ***The Vehicles***
> *(See attached list)*
> ***Part 3***
> ***Portbond - List of Fixed Assets***
> *(See attached list)*
> ***Part4***
> ***London Wiper Company Limited - List of Fixed Assets***
> *(See attached list)"*

678. Parts 3 and 4 include various extracts from management accounts and some lists of fixed assets as at July 2020. I was not taken through the exercise of comparing the different parts of Schedule 2 to see to what extent (if at all) they overlapped.

679. The Pre-Pack Sale Agreement excluded from the sale "Excluded Assets" which are defined as follows:

> "***Excluded Assets*** *means the property rights and assets of or used by the Seller which are not expressly sold pursuant to this Agreement including but not limited to those set out in clause 8 (Excluded Assets)"*

680. Clause 8 provides:

> *"All assets and items owned by or in the possession of the Seller other than the Assets are excluded from the sale under this Agreement. In particular but without prejudice to the generality of the foregoing, the following assets or items are excluded:*
>
> …
>
> *(g) the interest of the Seller in any vehicles other than the Vehicles;*
>
> *.....*
>
> *(I) the Third Party Assets;".*

681. The Third Party Assets are defined as being:

> "***Third Party Assets*** *means any assets which are the subject of hire purchase, lease purchase, credit sale or leasing agreements, or on loan to the Seller or otherwise in the ownership of third parties and which are situate at either Property on or which are otherwise put into the possession of the Buyer at any time after the Transfer Date, including but not limited to the Lombard Asset and the items listed in Schedule 3 but excluding any ROT Chattels".*

682. The Subscription Agreement provided for the transfer by John to Remet Processing of the "Consideration Assets" defined as follows:

> "***Consideration Assets "*** *means all the assets owned by* [John] *of whatever nature and wherever situated which are used in connection with the Target Business , including without limitation , those assets (including the Plant) listed in Schedule 2 , the right , title and interest in which are agreed to be transferred as part consideration for the Subscription , save for the Excluded Assets".*

683. In concrete terms and by reference to specific equipment, Lisa's case that John had in effect stolen plant and machinery or the Companies and purportedly sold it under the Subscription Agreement for his personal benefit, was set out by Mr Lacey, the expert, with regard to three specific matters.

684. The expert report of Mr Lacey confirmed that he had encountered significant difficulties in tracking items listed in the Schedules to the Pre-Pack Sale Agreement and the Subscription Agreement to the separate fixed asset registers and trial balance records of the Companies. Further, some of the plant/machinery in question appeared

to pre-date the period over which he had been provided with detailed underlying accounting records. However, he identified a number of items of plant and machinery contained within Schedule 2 to the Subscription Agreement where he felt there was evidence suggesting that they belonged to LWC.

685. First, he referred to certain plant and machinery referred to as or forming part of "Old Super Chopper Line 2" and "Greasy Plant" (included in Schedule 2 to the Subscription Agreement as assets of John). He said that these items were also included in Schedule 3 to the Pre-Pack Sale Agreement (as assets excluded from the Pre-Pack Sale). On the face of things therefore, the administrators agreed that these items should be excluded from the sale by the Companies as "Excluded Assets". No pleaded case was put forward that the Administrators either wrongly so agreed or were in some way misled or the like. The absence of such a pleading is relevant when considering whether permission to amend should be permitted. If properly pleaded further evidence might have been called by the respondents, not least from GT/the Administrators as to how and why they reached the agreement that they did and/or as to how and when and why these items appeared in the fixed asset register of Portbond (if they ever did). This may, after all, have resulted from James' Inventory or from an inventory being made up by someone who was not instructed as to John's position.

686. In any event, Mr Lacey points out that Schedule 3 to the Pre-Pack Sale agreement shows against these two items (comprising a number of items each) a notation indicating that they were said to have been listed in the fixed asset register of Portbond. That however demonstrates that the administrators were well aware that there might be an issue as to the ownership of the items in question and yet they were content to enter into the Pre-Pack Sale Agreement excluding such items from the sale. On the basis of that I am not able to find, on a balance of probabilities, that the items in fact belonged to the Companies (or one or other of them).

687. Further, and in any event, in cross-examination Mr Lacey conceded that he could not tell whether "Old Super Chopper Line 2" sold by John as listed under Schedule 2 to the Subscription Agreement (as his asset) was Super Chopper Line 1 or Super Chopper Line 3 (Allan's line) both sold by the Companies under the pre-pack Sale Agreement and listed in Schedule 2 to that Agreement. The likelihood is that they are different as Old Super Chopper Line 2 and Greasy Plant, mirroring the entries in the Schedule 2 to the Subscription Agreement, are listed in Schedule 3 to the Pre-Pack Sale Agreement as items not sold by the Companies but owned by a third party.

688. Similarly, Mr Lacey could not confirm whether or not the "greasy plant" referred to in Schedule 2 to the Pre-Pack Sale Agreement was the same "greasy plant" sold by John. In short, Mr Lacey was unable on the papers available to him to identify whether the relevant plant and machinery referred to in the Subscription Agreement as belonging to John, in fact and law did so or not.

689. Furthermore, his analysis simply depended on comparing the schedules to the Pre-Pack Sale Agreement with Schedule 2 to the Subscription Agreement. Clearly under Schedule 3 of the Pre-Pack Sale Agreement, the two items of Super Chopper Line 2 were excluded by the Administrators from the Pre-Pack Sale. If the item <u>was</u> also included under Schedule 2 to the Pre-Pack Agreement, then the Pre-Pack Sale Agreement was internally inconsistent and it could be said that any complaint would

come from Remet Processing who might be said at most to have wrongly provided consideration to both John and the administrators for the same item.

690. No analysis of the documents was provided to me to suggest that Mr Lacey was wrong in his assessment in cross-examination that he cannot really draw any very firm conclusions other than that questions are raised. Nor was John cross-examined in detail about these particular items of plant and machinery.

691. Accordingly, even if, this issue is permitted to be raised by the petitioner, I am not satisfied that the evidence in respect of this plant and machinery shows that John sold plant and machinery belonging to either of the Companies to Remet Processing.

692. Secondly, Mr Lacey identified some capitalised expenditure by LWC on the "Ally Line". However, as he accepted in cross-examination, the fact that LWC spent money on upkeep or improvements of plant and machinery did not necessarily demonstrate (or, I would say, even on the balance of probabilities demonstrate) that it owned the plant and machinery, even if the spend was capitalised in LWC's accounts. The sums capitalised in LWC's accounts were treated as part of the Plant sold under the Pre-Pack Sale Agreement and are listed in Schedule 2 to that agreement so that the Companies received consideration in respect of the sale by them of such capitalised items. Further, the Ally Line was listed under Schedule 3 to the Pre-Pack Sale Agreement so that the administrators effectively accepted that such items did not belong to either of the Companies. All the points that I have made regarding the greasy plant and the Super Chopper Line 2 apply, mutatis mutandis.

693. Accordingly, even if Lisa is entitled to raise this issue, I am not satisfied that John in selling the Ally Line under the Subscription Agreement was thereby selling company property.

694. Thirdly, Mr Lacey identified that the LWC fixed asset register, apparently contained within Schedule 2 to the Pre-Pack Sale Agreement, indicates that LWC acquired a New Machine-Holman Wilfrey-7000 Wilfrey Single Deck-Left Hand + 7000 Deck unit" in June 2019 for a total cost of £24,148. This machinery is in fact contained in a list of Plant and Machinery of LWC according to management accounts dated July 2020 which forms part of Part 4 of Schedule 2 to the Asset Sale Agreement.

695. In the Subscription Agreement, Schedule 2 includes the following items:

> "***NEW HEAVY GRANULATION LINE***
>
> *Holm-Wilfrey Wet Table, Serial Number: 190352, Year of Man: 2019*"

696. It is not immediately obvious to me that this item is included in Schedule 3 to the Pre-Pack Sale Agreement. What might be said is that there is a possibility that the same item was purportedly sold twice, once by the administrators under the Pre-Pack and once by John under the Subscription Agreement. I note also that the date of the item does not fit within the general description of Schedule 3 property given by John which is that it was old equipment originally acquired by Hughes' family companies before later being lent to LWC. If this is right, the complaint is one to be made by Remet Processing rather than LWC. The alternative is that the New Heavy Granulation Line in Schedule 2 to the Subscription Agreement is nothing to do with the machine listed

in Schedule 2 to the Pre-Pack Sale Agreement. As I understood his evidence, Mr Lacey fairly accepted that without serial numbers he couldn't really come to any conclusions.

697. Mr Lacey fairly said in his report and in cross-examination that he could not be sure that the two items of equipment were the same. Furthermore, he was unable to say whether a 7000 Deck unit was the same as or included within or formed part of a "Wet Table". In my judgment, it is not possible on the balance of probabilities to say that the relevant machinery in question identified in the documents was the same (or different) and accordingly, it is not possible for me to be satisfied, as regards this equipment, that John purported to sell machinery of either of the Companies for his own benefit.

698. Mr Lacey (assuming identity between the three items I have referred to in Schedule 2 to the Subscription Agreement and in the Companies' lists of assets) pointed out there was no accounting evidence of John having purchased the same from either of the Companies. He went on to describe why it would be unlikely that John would purchase the plant/machinery from the Companies. However, that was not John's case.

699. In his witness statement John said more than once that the items did not belong to him but to Preston Cable Granulation Limited. It followed that the items had not been purchased from the Companies but rather lent to the Companies:

> *"They don't belong to me personally. They belonged to Preston Cable Granulation Ltd."*
>
> *"All the assets listed in Schedule 2 of the SSA originally belonged to Preston Cable Granulation Limited as that company had originally owned the land at the Kilnhurst Site and had installed various items of plant and machinery there. When the land was transferred to my Mum and Dad, they only took ownership of the land, they didn't take ownership of the plant and machinery, hence why it remained with Preston Cable Granulation Limited."*
>
> [At a Zoom meeting with GT and the Bank in June 2020]: *I explained to them that those assets belonged to Preston Cable Granulation Limited, and the inventory was incorrect. They both accepted that…*

700. In my judgment, four main matters came out of John's oral evidence:

(1) It was unclear how, when and in respect of which items on the schedule to the Subscription Agreement, ownership had passed to John or whether it had been acquired by (and remained in the ownership of) family companies (other than either of the Companies) such as Preston Granulation Limited or even other companies, for example, Caprina and whether title had subsequently passed to John and if so how and when;

(2) Because of the age of the machinery, John was able to identify plant and machinery that did not belong to LWC (but had, in effect, been loaned to it);

(3) His position as regards (2), was accepted by GT and the Bank at a meeting, or following a meeting, at which he and Chris Pett of GT went round looking at plant and machinery, serial numbers and the like;

(4) The relevant Plant and Equipment had been loaned to LWC/Portbond and no licence fee/rent or other payment had been charged to those Companies for its use.

701. Although I am not satisfied on the evidence that John owned all of the plant and machinery that he transferred to Remet Processing under the Subscription Agreement, I am satisfied, on the balance of probabilities, that it did not belong to either of the two Companies. My doubt is as to whether some of it, at the very least, was owned by other Hughes' family companies or even the Crown by way of boa vacantia on the dissolution of any such company. That however is not an issue that I have to decide or even can decide in these proceedings given the absence of any very clear evidence and the limited cross-examination of John on this issue that, understandably, took place,

702. Apart from this, the cross-examination of John was, as I have said, generic rather than being focussed on particular items, even the items identified by Mr Lacey. Instead, the cross-exanimation was directed at whether John could demonstrate how and when he had acquired items from other Hughes' companies. The oral evidence was somewhat unclear (again, in my judgment, flowing from a failure to have the relevant issues properly identified by the statements of case), but at most raised uncertainties as to whether John had acquired the items from other Hughes' family companies. It did not raise a case that either of the Companies had owned the same. I only need to be satisfied that the items were not stolen from the Companies. I do not need to determine the position as between John and other Hughes' family companies (or the Crown as taking bona vacantia in respect of no doubt some now dissolved Hughes' family companies).

703. In summary therefore:

(1) I would not allow this issue to be raised. It is not referred to in the amended Petition. I would not allow the relevant re-amendment sought. The uncertainties raised by the evidence and points made by Mr Lacey might have been addressed by further evidence if the matter had been properly pleaded at an earlier stage.

(2) If I am wrong in my decision summarised at (1), then the main evidence relied upon by Lisa, namely the James' Inventory, does not persuade me of her case, on the balance of probabilities. I accept John's evidence as to the circumstances in which the James' Inventory came into being and regard it as being a neutral piece of evidence.

(3) The evidence relating to the three items identified by Mr Lacey is not such as to satisfy me that the administrators did not knowingly (and properly) agree to treat the items in question as assets of John.

(4) I am not satisfied that the three individual items (or groups of items in one case) identified by Mr Lacey were items which belonged to the Companies (or one or other of them) and that John effectively stole the same and sold them to Remet Processing for his own benefit.

(5) As a general matter, the limited evidence as to how John had acquired them from other Hughes' family companies is not something that persuades me that any of the items in Schedule 2 to the Subscription Agreement belonged to one or other of the Companies. At most the evidence raises an issue as to whether John or some other entity owned the items, but I am satisfied, on the balance of probabilities, that neither Company owned any of the same.

(6) It follows that this head of alleged unfair prejudice should not be allowed to be raised but if I am wrong on that, I am satisfied that it is not made out.

(7) I should add for completeness that, even if I am incorrect about this, it is unclear to me that there would be any prejudice to Lisa as member given the scale of the insolvencies of the Companies.

Allegation: Theft of Stock from the Companies at or about the time of the Pre-Pack Sale

(1) The case

704. There is no allegation in the amended Petition that the Relevant Respondents stole stock from the Companies at or about the time of the Pre-Pack Sale. It did not form part of the agreed list of issues for trial.

705. It was not clear from the Petitioner's skeleton argument that this was a self- standing allegation of unfair prejudice. The skeleton simply said, *en passant* and not in the section dealing with "the issues", that the Relevant Respondents had not allayed Lisa's "suspicions" about dealings in stock and that the Petitioner's expert was of the view that some £1.5 million of stock had been either sold at very significant discount, sold for cash or transferred to Remet Processing at no cost.

706. This claim of unfair prejudice is sought to be brought in by re-amendment (see paragraph 33F). The proposed amendment makes a case as follows:

(1) As at 1 October 2020, the Companies had stock valued at £1.54 million. The Pre-Pack Sale involved a sale of stock for £1. The £1.54 million stock had been removed prior to the Pre-Pack Sale and the proceeds not accounted for. The Relevant Respondents caused or permitted this misappropriation.

(2) The Petitioner attended the Kilnhurst Site the day after the Pre-Pack Sale and saw stock there weighing approximately 920 tonnes with an approximate value of £1.71m. Part of this stock was company stock which was thereafter used in Remet Processing's business, that being the purpose of the misappropriation.

707. Even by this amendment it is not clear to what extent the Petitioner alleges that stock was (a) sold and the proceeds wrongly retained by one or more of the Respondents; or (b) physically removed prior to the Pre-Pack Sale or (c) transferred wrongly by the Relevant Respondents to Remet Processing for no consideration and whether (a) and (c) are alternatives or whether the case is that one or both of (a) and (c) took place.

708. I would not allow this proposed amendment. Quite simply, it is too late. Further evidence, not least from the Administrators or their staff and from Remet Processing, might well have been sought by the Relevant Respondents had the allegation been

properly put and disclosure from Remet Processing and possibly Remet might have been key. Further, the allegation is unclear. Indeed in written closing submissions for Lisa it was said that stock was stolen by John as LWC entered administration "in all likelihood" by transferring it for a nil consideration to Remet Processing.

(2) The Facts

709. I turn to the facts.

710. First, there is the evidence of Mr Lacey which starts off on this point on a factual basis.

711. According to Mr Lacey, the closing stock value for the Companies as at 31 March 2020 had been £2.75 million. As at 31 July 2020, according to management accounts and the 2020 trial balance information provided to Mr Lacey, the closing stock value had been £1.9 million. These are all book values or assumed book values.

712. In August 2020, GT prepared a report described as "Project Copper Summary of AMA Process" ("The Project Copper Report"). As part of that report, GT set out an estimate outcome statement as at 6 August 2020, reflecting an offer received from European Metal Recycling Limited ("EMR"). Stock and spare parts for LWC was shown as having a value of £75,000.

713. By report dated 11 September 2020 called "Universal Recycling EOS update", GT made a further report. In that report they compared various possible outcomes including a pre-pack to Remet, a pre-pack to EMR and a closure administration under two different scenarios. Estimated outcome statements were prepared for each. Stock and spare parts for LWC were shown as having a value of £38,000 as at 11 September 2020. A note to the EOS under scenario 3, has a number of assumptions. One of those is that 10% of the net book value of stock and spare parts would be realised. This suggests that the net book value was not £38,000 but £380,000. The same valuation, £38,000, is given for stock and spare parts in each of the scenarios.

714. A similar report dated 15 September 2020 with the same name as the 11 September Report, showed stock at the same valuation as the 11 September report. A note to the EOS under scenario 3, has a number of assumptions. As with the earlier September report, one of those assumptions is that 10% of the net book value of stock and spare parts will be realised. This suggests that net book value was not £38,000 but £380,000. The same valuation, £38,000, is given for stock and spare parts in each of the scenarios.

715. I need not decide whether these two reports of 11 September 2020 and 15 September 2020 are drafts with only one final report being formally issued and signed off or whether they are two separate reports, each of which was finalised, signed off and issued at the relevant date that it bears.

716. Under the Pre-Pack Sale Agreement, "the Stock" was defined as*:*

> *"the stock-in-trade of the Business at the Transfer Date, including without limitation goods and other assets purchased for resale, stores, raw materials and*

> *components purchased for incorporation into products for sale, work-in-progress and finished products of the Business excluding any ROT Chattels".*

717. Under clause 4, the Consideration of £5,783,000 was apportioned mainly to the Properties, Plant and Vehicles (as therein defined). Stock was one among a number of matters to which a sum of £1 only of the consideration monies was apportioned. It does not seem to me necessarily to follow from the Pre-Pack Sale documentation itself that there was no stock as at completion or that such stock as existed was valueless. Apportionment of sale consideration to stock is not the same as a valuation of stock nor a statement that no stock existed.

718. However, in the Statement of the Administrators' Proposals, dated 9 October 2020, it is stated that:

> *"Following discussions with the Directors, we established that stock levels had been run down to ostensibly nil as working capital restrictions had caused acquisitions of new stock to cease. Stock on site has primarily been processed over recent months. Stock value was therefore considered negligible and we therefore did not seek a formal valuation of this asset."*

719. It is unclear precisely what steps were taken by GT to verify and establish the position with regard to stock. However, in a letter of Addleshaw Goddard, solicitors to the Administrators, dated 8 September 2021, sent to Thomas Middleton it was said:

> "*The administrators monitored stock over time and saw the stock levels materially reduce in line with decreased trading. Accordingly, our client has no evidence that the stock position was anything other than minimal at the time of the administrators' appointment."*

720. I therefore reject the (implicit) assertion of the petitioner in her closing written submissions that the Administrators' assessment (through GT) was based (solely) "on what the directors had told them".

721. Indeed, that stock levels had materially been reducing during the relevant period is confirmed by emails in the Summer/Autumn of 2020.

722. In her email dated 17 August 2020 sent to GT, one of Lisa's questions was "where has all the stock gone?". Furthermore, this appears to have been against a background where Lisa was seeking information which she said that she did not have rather than a reaction to a specific report back to her of stock levels, though it is possible that the question was raised in response to the August report of GT. Unfortunately the full chain of correspondence is difficult to identify from the bundles.

723. By email dated 6 September 2019, Prodicus wrote to the Relevant Respondents' solicitors referring to a recent "blunt" discussion between Lisa and James with reference to there being "very little stock" at the Kilnhurst site.

724. There is the further point that GT was therefore well aware that this might be a hot topic where they would need to check the position and take care.

725. Irwin Mitchell LLP, on behalf of Remet Processing, sent a legal due diligence information request dated 17 September 2020. A question was raised as to stock levels, assets and liabilities since the last statutory accounts. The response was to say that there might be a "slight downturn linked to a downturn in trade generally" and a reference to the financial information in folder 1 in the data room. I was not taken to that material. There was also a reference to a depreciation of assets as expected in the usual course of business. However, one would have expected Remet to raise a point about this nearer to completion if there was a significant and unexplained disappearance of stock. In fact Remet's position has been (as I explain later in this judgment) that it was aware that stock levels were minimal as at completion of the Pre-Pack Sale.

726. I am not prepared to draw the inference from the evidence about Remet that Remet in fact accepted, then or on completion, stock with a large value belonging to LWC but for which it did not pay the Administrators but instead knowingly misled the administrators or acquiesced in an assumption by them that the stock was in fact minimal and/or valueless. This is the sort of point that might well have been relevant to cross-examination of a witness from Remet had one been called and/or to disclosure from Remet had it taken place.

727. The day after completion of the Pre-Pack Sale, that is on 8 October 2020, Lisa says that she attended the Kilnhurst site and identified stock with a calculated value of £1.7 million. On this occasion there are detailed notes that Lisa took of the weights and types of material that she saw on site, with values attributed accordingly.

728. It is accepted that there was indeed stock on site on that date. However, the position of the Relevant Respondents is that the stock had been stored there by Remet with the Administrators' consent.

729. Some contemporaneous support for this is a Whatsapp message between Philip Reid and Joe Stelzer of Remet dated 22 September 2020 in which Philip Read asks:

> *"Joe, would you be able to touch base with gt and see I it ok to deliver cables next week but retain title, as we have some deliveries planned."*

It is fair to point out that, at this stage, it was intended that the relevant materials would be stored and not processed.

730. Later, on 27 September 2020, James Reid, asks James, in the same WhatsApp group, to respond to his email confirming "*retention of good we are delivering this week*".

731. Confirmation that (a) goods were stored at the Kilnhurst Site by Remet prior to completion of the Pre-Pack Sale and (b) that the LWC stock at completion was minimal, is confirmed in a letter from Remet's solicitors the following year.

732. The position is, however, further complicated by another allegation that Lisa made, but the status of which before me I was unclear about, to the effect that stock had been removed from LWC in the week prior to the Pre-Pack Sale and sent to Caprina Trading Limited. This allegation is set out clearly in correspondence sent by Thomas Mansfield to GT for example, a letter dated 30 July 2021, in which, having referred to the £1.7 million in stock on the Kilnhurst Premises that she found on her visit dated 8 October 2020, the letter goes on to say:

> *"Our instructions are that a further quantity of stock belonging to the Companies, upon the instruction of John and/or James Hughes, was transferred to the premises of Caprina Trading Limited approximately one week prior to your appointment. Caprina Trading Limited is another family company in which our client has a 50% interest and from which she has been excluded by John Hughes"*

733. The relevant letter on behalf of Remet, dated 19 August 2021, and sent by its solicitors Irwin Mitchell LLP, responds to a letter before claim dated 29 July 2021 sent on behalf of Lisa by Thomas Mansfield regarding the Disputed Strip. In the course of that letter, a passage deals with allegations made by Lisa about stock:

> *"**Stock owned by LWC***
> *RPL requires further information from your client regarding the quantity of stock that she states was removed from the Kilnhurst Site a week prior to the completion of agreements and which was moved to the premises of Caprina Trading Limited, which your client has a 50% interest.*
> *We are instructed that, when our client negotiated the deal with the Administrative Receivers[3] the stock value was minimal and consistent with what was found on site. Further it is denied that there was £1.7m worth of stock at the Kilnhurst Site on 8 October 2020 or anything close to that value. It is understood that The Remet Company Limited sent stock which was to be held strictly to its order prior to completion of the agreements but the value of that was around £380,000. Enclosed are invoices to confirm this.*
> *If, as it would seem from what your client has said, that Caprina Trading Limited is holding stock that form part of the sale/purchase of the Kilnhurst Site, RPL requires the return of this immediately and if it is not returned our client reserves its rights to bring action against Caprina Trading Limited to recover this."*

734. It was submitted to me on behalf of Lisa that Remet had no reason to store stock and that the storage of such stock reflected a different business to that in fact undertaken by Remet. That was based on tenuous evidence and in any event did not deal with the possibility that Remet was gearing up to continue the LWC business and obtaining stock accordingly. Indeed, I was not addressed as to the content of the invoices sent by Irwin Mitchell as sent with their letter of 19 August 2021 and whether they supported the supposition as to the very different business of Remet as asserted by Lisa.

(3) The expert evidence

[3] Irwin Mitchell LLP tended to refer to the Administrators as "administrative receivers". This may be because there were receivers (the same individuals as appointed Administrators) appointed over the Kilnhurst Site,

735. Mr Lacey calculates that the closing stock position (by way of book value) as at 9 October 2020 would have been £1.5 million. This is calculated by him by taking the opening stock figure that he had calculated of £1.9 million as at 31 July 2020, subtracting sales (assumed to be at cost) of £425,215 taken from the sales' day book and adding in stock purchases of just under £67,000, which he identified by reference to entries in the purchases' day book "which conceivably have been for stock" and which, he said, "appears" to have yielded a figure of £67,000 figure. This £1.5 million figure is relied upon by Lisa as being close to the figure of £1.7 million that she says is applicable. The difficulty is that she seems to say that the figure should further be inflated by reference to stock stolen by or for Caprina Trading Limited. The expert's assessment and Lisa's assessment do not therefore correlate as closely as the submissions to me on behalf of Lisa suggested.

736. According to Mr Lacey as set out in his report, as the stock transferred under the Pre-Pack Sale was transferred "at a value" of £1 (but as I have said, an apportionment of consideration is not the same as a value), he considers it likely that between 31 July 2020 and 1 October 2020, stock was either:

(1) Sold at a very significant discount to cost, i.e. sold at a discount of more than 75%. If this was the case, he says, it would beg the question of who benefitted from the discount;

(2) Sold for cash, the cash not being reported within LWC's accounts; and/or

(3) Simply transferred to Remet Processing at no cost despite potentially having a value, based on cost of £1.5 million although this would appear to be directly at odds with the statement (made by the Administrators in their proposals dated 9 October 2020 and set out earlier in this judgment).

737. In cross-examination, Mr Lacey very properly accepted that his figures for closing stock of about £2.6 million as at October 2019 included not just stock but also spare parts. The GT Report of January 2020 assessed the value of finished goods (£476,000), raw materials (£1,441,000) and spare parts (£744,000) as at September 2019. If the values of spare parts had not altered by the end of October 2019, that meant that some £744,000 would fall to be removed from Mr Lacey's closing stock figure of £2.6 million. That would bring the closing stock figure as at November 2019 down to £1.9 million. The effect of that would be that, as he accepted, his figure for "missing" closing stock as at October 2020 would be reduced from £1.5 million to £756,000 or so.

738. Further, Mr Lacey very properly accepted that that in addition to the three possibilities that he had identified as explaining the reduction in stock value of LWC to nil as at the date of the Pre Pack Sale, a further explanation might well be an over-estimate of the value of stock at an earlier stage. In this respect he accepted that there were provisions in the LWC accounts for fire-damaged stock, that there was no provision for stock that might be found to comprise persistent organic pollutants, that there had been issues as to require adjustments to stock values in previous years and that it was a far from straightforward job to value raw stock. Indeed, as regards the stock values quoted in the GT January 2020 Report it was confirmed in that report that there had been fire damaged stock which was more difficult to value and in respect of which a provision of £453,000 had been applied. Further, a provision of £209,000 had been

made in respect of slow-moving BT L/G cable. Overestimation of assets was certainly a possibility.

739. In these circumstances, I am not satisfied that the allegation regarding stock is made out.

740. Finally in this context, there is the question of "prejudice" (as in "unfair prejudice") to Lisa even assuming her complaint is correct but that turns on the figures in the administrations. It does however seem unlikely that a recovery in respect of such stock would turn the LWC administration into a solvent one such that a dividend would be due to Portbond There is a debt apparently owed to Portbond but it is not clear to me in what amount and so how any increased return on that debt would affect the solvency position of Portbond.

Overall Conclusion

741. I am not satisfied that any matters of unfair prejudice are made out. The petition must be dismissed. If an order cannot be agreed within 21 days of hand-down of this judgment, the parties should apply for a further short hearing to deal with consequential matters. In the meantime I adjourn the question of all matters consequential on this judgment (including the form of order and question of permission to appeal) pending the making of an order in agreed form or to the hearing mentioned. I also extend the time for appealing so that the relevant 21 day period runs from the date that the order flowing from this judgment is sealed.