Neutral Citation Number: [2022] EWHC 1496 (Comm)

Case No: CC-2019-CDF-000006

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN WALES
CIRCUIT COMMERCIAL COURT (QBD)

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 17 June 2022

Before:

HIS HONOUR JUDGE KEYSER QC
sitting as a Judge of the High Court

- -

Between:

(1) ZENITH LOGISTICS SERVICES (UK) LIMITED
(2) UNISERVE (UK) LIMITED
(3) JAMES KEMBALL LIMITED **Claimants**

- and –

(1) PETER JAMES KEATES
(2) CHRISTOPHER JAMES READ
(3) NICOLA HORSLEY
(4) HALENA LOUISE COURY
(5) MICHAEL ROGER DAVIES
(6) DEREK CLARIDGE
(7) LEONARD NEIL BUNDOCK
(8) BIOSOL RENEWABLES UK LIMITED
(9) SPRING LOGISTICS (UK) LIMITED
(10) SPRING RENEWABLES LIMITED
(11) SPRING FARM CONTRACTORS LIMITED **Defendants**

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Michael Duggan QC and **Nicholas Goodfellow** (instructed by **Holman Fenwick Willan LLP**) for the **Claimants**
Patrick Clarke (instructed by **W. Parry & Co**) for the **Seventh and Eighth Defendants**
The First, Second, Third and Sixth Defendants in person
The First Defendant on behalf of the **Ninth and Tenth Defendants**

Hearing dates: 9, 10, 11, 14, 15, 16, 23 March 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.

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HIS HONOUR JUDGE KEYSER QC

This judgment was handed down remotely by circulation to the parties or their representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10.30 am on Friday 17 June 2022.

JUDGE KEYSER QC:

Introduction and Overview

1. This is my judgment after the single trial of three claims that were commenced in London and, after case management, were transferred into this court for trial together. Those claims have been called "the Main Claim", "the Biosol Claim" and "the Read Claim". In that order, which is not their chronological order, they are respectively the big claim (>£3million), the medium-sized claim (>£300,000) and the little claim (>£30,000). Although there is some interconnection among the issues in the three claims, the duration of the proceedings, the length of the trial, the formidable size of the trial bundles and the written submissions, and the expense incurred in the litigation are overwhelmingly attributable to the Main Claim.

2. In this introductory section of the judgment I shall introduce the parties and the main actors, say something about their connections and relationships and explain in general terms how the claims arise and what they are about. I shall also say something about the trial and the witness evidence. In the next section, I shall provide a narrative. After that, I shall discuss the issues on each claim, dealing with the Biosol Claim, then the Read Claim, and finally the Main Claim.

The parties and their relationships

3. The claimants are members of the Uniserve Group of companies ("the Uniserve Group"), which was founded by Mr Iain Liddell in 1984. Mr Liddell is the Managing Director of the Uniserve Group and its ultimate beneficial owner.

    - The second claimant ("Uniserve UK") was incorporated in 1985. It is in the business of supplying a range of distribution, logistics and trade management services.

    - The first claimant ("Zenith") was incorporated in April 2010 by the first defendant ("Mr Keates"), who was its sole member. On 9 October 2015, when Zenith was in financial difficulties, Mr Keates sold his entire shareholding in Zenith to Uniserve UK for a nominal consideration. Zenith is in the business of providing distribution, logistics and trade management services; its business complements that of Uniserve UK.

    - The third claimant ("Kemball") was incorporated in 1973 but became part of the Uniserve Group only in April 2016. It supplies shipping containers to the freight transport industry. Kemball has featured very little in these proceedings; it is concerned only with one or two discrete parts of the Main Claim.

    From time to time I shall simply refer to "Uniserve". This deliberately vague reference will indicate that the matter in question falls somewhere within the scope or interest of one or more of the companies in the Uniserve Group and that further precision is either impossible or unnecessary.

4. The central character in these proceedings is Mr Keates. From 14 October 2015 until his dismissal on 8 May 2018 Mr Keates was employed by Zenith as Managing Director of both Zenith and Uniserve UK and was a director of all three claimants. He reported

directly to Mr Liddell and the Uniserve Group Board but had day-to-day operational and financial control of Zenith and was responsible for all of the transport and warehousing for the Uniserve Group.

5. All of the claims made in these proceedings revolve around the claimants' allegation that, during the course of his employment and the term of his office as a director, Mr Keates dishonestly misappropriated their assets to his own use and the use of friends and colleagues and conspired with others, including most of the other defendants, to use the assets and staff of the claimants to exploit business opportunities for the gain of himself and the others instead of the claimants.

6. Mr Keates had previously been involved in another road transport company by the name of Zenith Logistics Limited ("ZLL"). ZLL was incorporated in 2007, filed no accounts for any period after 2009, entered creditors' voluntary liquidation in 2011 and was dissolved in 2015. Mr Keates was a director of ZLL (as was Mr Paul Southern, mentioned below) and the annual returns show that he was the sole shareholder. ZLL had no part in the matters with which these proceedings are concerned but, as I shall explain, its existence has some relevance to part of the claim now advanced by Zenith against the sixth defendant.

7. On 19 July 2019 Mr Keates was adjudged bankrupt. At the case and costs management conference in the Main Claim on 6 December 2019, Master Davison stayed the proceedings against him pursuant to section 285(2) of the Insolvency Act 1986, save in respect of his obligation to give standard disclosure. That stay was lifted by an order made by Master Cook on 27 November 2020; at the same time, the claimants were given permission to amend the statements of case in the Main Claim for the purpose of averring that the breaches of contract and of fiduciary duty alleged against Mr Keates were committed fraudulently or dishonestly. The purpose of that order was to enable the claimants to pursue Mr Keates after his discharge from bankruptcy in respect of the consequences of his alleged fraud, pursuant to section 281(3) of the Insolvency Act 1986.

8. The second defendant ("Mr Read") was employed by Uniserve UK as Southern Operations Director both of Uniserve UK and of Zenith from 11 January 2016; despite his job title, he was not a member of the board of directors (a "statutory director") of either company. He was dismissed from his employment in May 2018 on the grounds of gross misconduct in connection both with his use of company cars to which (it was said) he was not, and knew he was not, entitled and with his alleged involvement with Mr Keates in the wrongful exploitation of business opportunities outside the Uniserve Group. Mr Read maintains that his use of the company car had been authorised by Mr Keates and that he believed it to be legitimate and above board. This dispute is the subject matter of the Read Claim, by which Zenith seeks to recover the costs it incurred in respect of the provision of the vehicles. In the Main Claim, Mr Read also denies any wrongdoing in respect of business ventures outside the Uniserve Group and maintains that he only ever acted in good faith in accordance with the instructions of his line manager, Mr Keates.

9. The third defendant ("Miss Horsley") was employed by Zenith as an Accounts Administrator from the time of its incorporation until her dismissal in June 2018. She had previously worked for another company owned by Mr Keates and was for many years until late 2014 in a personal relationship with him. At Zenith, Miss Horsley's

role involved raising invoices and dealing with staff expense claims. She was answerable to Mr Colin Newnes, Zenith's Finance Director. The claim against Miss Horsley is that she received payments and benefits to which she knew she was not entitled and that she was complicit in the making of illegitimate payments and the conferring of illegitimate benefits by Zenith on others on Mr Keates' instruction.

10. The fourth defendant ("Ms Coury") has been in a personal relationship with Mr Keates since 2016. She was never employed by any of the claimants, but from August 2017 until October 2018 she was a director of the ninth defendant. She is a defendant to the Main Claim.

11. The fifth defendant ("Mr Davies"; he is known as Roger Davies) is a director of, and the majority shareholder in, W. G. Davies (Landore) Limited ("WG Davies"), which carries on the business of the maintenance and repair of vehicles and the retail sale of vehicle parts and accessories from premises at Cardiff, Swansea and Tenby. Between 2008 and 2018 WG Davies serviced and maintained vehicles owned by Uniserve UK and Zenith. He is a defendant to the Main Claim.

12. The claim against Ms Coury was compromised by a settlement agreement and Tomlin Order in April 2020. The claim against Mr Davies was compromised by a settlement agreement and Tomlin Order in March 2021. Neither Ms Coury nor Mr Davies took any part in the trial.

13. The sixth defendant ("Mr Claridge"; he is also known as "Blue" and is referred to in some documents by that name) is a business associate of Mr Keates and is the director and owner of a building company called Alfred Properties Limited. Mr Claridge is something of an outlier in these proceedings, because he played no part in the central narrative that will be set out below; but what brings him within the wider concerns of the proceedings is, again, the involvement of Mr Keates. The claim against Mr Claridge is in three parts. First, that between October 2015 and March 2018 Mr Keates, with the assistance and connivance of others, caused Zenith to make payments to or for the benefit of Mr Claridge in the total sum of £89,267, purportedly upon invoices raised by "DC Driving Services", when Mr Claridge had not provided any driving or other services to which the payments could have related and when any other obligation to which the payments could have related could not justify the payments. Second, that Mr Keates caused Zenith to pay for certain benefits for Mr Claridge (notably his attendance at the Hong Kong Sevens in 2017) to which he was not entitled. Third, that the claimants paid for the purchase and transportation of a container for Mr Claridge's benefit, again at the instigation of Mr Keates and without justification.

14. The seventh defendant ("Mr Bundock") is a director of and the majority shareholder in the eighth defendant ("Biosol"). The other director and shareholder is his son, Benjamin ("Ben Bundock"). Mr Bundock's daughter, Amber Bundock, was a director until October 2021. Biosol is in the business of selling renewable energy systems, including biomass boilers, and has since May 2017 been on the Biomass Suppliers List of Ofgem, which administers the Non-Domestic Renewable Heat Incentive (RHI) Scheme. Biosol also sells woodchip to its customers for use as fuel in the biomass boilers. In and after 2015 Biosol installed biomass boilers in each of WG Davies's three places of business and supplied it with woodchip. WG Davies supplied Biosol with a tractor and trailer unit for use in transporting woodchip. In March 2017, when Biosol was looking for someone to assist in transporting woodchip to its customers, Mr

Davies introduced Mr Bundock to Mr Keates. This led to a contract between Zenith and Biosol for the provision of transportation services by Zenith to Biosol. In the Biosol Claim, Zenith seeks to recover from Biosol what it says is a debt owed to it under that contract. Within the Main Claim, Zenith also alleges that Mr Bundock and Biosol—as well as Mr Read, Ms Coury, Mr Davies, and the ninth, tenth and eleventh defendants—conspired unlawfully with Mr Keates to exploit for their own benefit biomass business opportunities with the use of Zenith's assets and staff.

15. The ninth, tenth and eleventh defendants have been referred to in these proceedings as "the Spring Companies", although they are distinct entities and do not have identical control or ownership.

- The ninth defendant ("Spring Logistics") was incorporated on 2 August 2017. Mr Keates was the sole shareholder and he and Ms Coury were the directors. Miss Horsley was the company secretary. The company was dissolved via compulsory strike-off in September 2019 but has been restored to the register.

- The tenth defendant ("Spring Renewables") was incorporated on 16 June 2017 under the name N & R Commercial Limited (N for Neil (Bundock) and R for Roger (Davies)). Mr Davies and Mr Bundock were the first directors and each held 50% of the issued shares. On 9 October 2017 the company changed its name to Spring Renewables Limited, and shortly afterwards Mr Keates was appointed as a director and shares were issued to him so that he, Mr Davies and Mr Bundock each held one third of the issued shares. Mr Davies and Mr Bundock resigned as directors in April 2018 but have remained as shareholders.

- The eleventh defendant ("Spring Farm") was incorporated on 12 September 2017. Mr Keates was the sole director and shareholder. The company was dissolved via compulsory strike-off on 19 February 2019 and has not been restored to the register.

Some other people

16. It is convenient to mention here a number of other persons who feature prominently in the narrative that follows:

- Mr Colin Newnes was employed as the Finance Director of Zenith from November 2011 until his death on 11 March 2018, and from November 2015 he held the office of a director of Zenith. At all times prior to Mr Newnes' death, the accounts of Zenith were separate from those of the rest of the Uniserve Group and were managed by him. His responsibilities included monitoring accounts, cash-flow and financial transactions, and supervising the day-to-day operations of the finance department. It is the claimants' case that while Mr Newnes was in post Mr Keates was able to act with impunity, but that when Mr Newnes died his illicit schemes began to unravel.

- The Accounts Department for which Mr Newnes had responsibility included Miss Horsley, Ms Catherine Watkins, who was employed as an Accounts Manager and is now the Finance Manager, and Ms Julie Makos, who like Mis Horsley was an Accounts Administrator.

- Mr Paul Stone has been employed since 2008 as the Group Human Resources Director for the Uniserve Group. It was Mr Stone who, together with Mr Barry Tuck, the Uniserve Group Accountant, carried out the initial investigation that led to the discovery of what is said to be serious wrongdoing on the part of Mr Keates and others.

- Mr Paul Southern is Zenith's Operations Director, based at its Chepstow premises. He has worked for Zenith since its incorporation in 2008, having been approached by Mr Keates, whom he knew from his prior employment in the logistics industry.

- Mr Michael Boardman is the General Manager South for Zenith, based at its Chepstow premises. He reports directly to Mr Southern. His duties include the management of Zenith's fleet of vehicles, so as to ensure that they are operating efficiently and that sufficient drivers and vehicles are available for necessary jobs. He was thus concerned with the provision of vehicles for Biosol's use from April 2017 in circumstances explained below.

- Mr Nigel Short is a director of Short Bros Homes Limited ("Short Bros") and the person with significant control of that company. At the time to which these proceedings relate, Short Bros owned premises at Resolven, near Port Talbot, which contained four biomass boilers and a woodchip drying facility. Pursuant to a written agreement, undated but taking effect on 1 April 2017, made between Short Bros and Mr Nigel Short and Biosol and Mr Bundock ("the Resolven Contract"), Biosol had the exclusive use of that facility for converting virgin timber into woodchip. Biosol has since purchased the Resolven site.

- DT & CI Burrows is the name of the farming partnership carried on at, and by the owners of, Sandridgebury Farm, St Albans ("the Farm"). (The same partnership is also referred to as CI & DT Burrows; nothing turns on this variation. References in some of the documents to DT & CI Burrows Ltd are, however, in error.) Mr Jamie Burrows was a member of the partnership and was involved in running operations at the Farm. Mr Keates lived near the Farm and made the initial suggestion that a biomass energy development, involving Mr Davies, Mr Bundock and Biosol, might take place there.

- Mr Grahame Bundock is Mr (Neil) Bundock's brother. At the times material to this case he was employed by Biosol, though he is not so employed any longer and did not give evidence at trial.

The trial

17. The claimants were represented at trial by Mr Michael Duggan QC and Mr Nicholas Goodfellow. They called the following witnesses: Mr Liddell; Mr Stone; Mr Southern; Mr Boardman; Ms Watkins; and Ms Makos.

18. Mr Keates filed a defence to the Main Claim in March 2019, when he was represented by solicitors. He also caused a defence to be filed by the same solicitors on behalf of Spring Logistics and Spring Renewables; Spring Farm had already been dissolved. As mentioned above, Mr Keates was adjudged bankrupt in July 2019. Since that time, he has represented himself and the remaining Spring Companies. These defendants did

not serve any witness statements, and Mr Keates did not give evidence at trial, though he cross-examined several witnesses with not inconsiderable skill and made submissions.

19. Mr Read filed defences in the Read Claim and in the Main Claim and gave evidence at trial, where he represented himself.

20. Miss Horsley filed an acknowledgment of service, which contained an admission of liability to the extent of £25,000 but stated an intention to defend the rest of the claim. She filed no further defence. Judgment for the admitted sum was entered by Master Davison at the case and costs management conference on 6 December 2019. Miss Horsley did not give evidence or make submissions at the trial (though she did write to explain her limited admission of liability as an attempt to settle the case) and attended only part of the trial.

21. Ms Coury and Mr Davies, who had reached settlement with the claimants, did not give evidence or attend the trial.

22. Mr Claridge filed a defence denying liability. He did not serve any witness statements and did not give evidence at the trial, when he represented himself with the assistance of his McKenzie Friend, Ms Brown. He filed written closing submissions.

23. Mr Bundock and Biosol filed defences denying liability in the Main Claim. Biosol filed a defence denying liability in the Biosol Claim. They were represented at trial by Mr Patrick Clarke. Evidence at trial was given by Mr Bundock, Benjamin Bundock and Amber Bundock.

24. None of the defendants who failed to serve witness statements in accordance with the case management directions—Mr Keates, Miss Horsley and Mr Claridge—applied for permission to give evidence at the trial. The cases they advance appear from their respective defences, from the questions they asked of other witnesses and from their closing submissions. But those cases can receive evidential support only from the documents and the testimony of those witnesses whose evidence was received at trial.

25. Concerning those who did give evidence, I shall make only brief comments at this point. My views will be apparent from the detailed findings set out below, which to a large extent are based on consideration of the documents. For the present, these observations will suffice.

    - I regarded the claimants' witnesses as basically truthful. This is true also of Mr Liddell. However, he made no attempt to conceal his animus against those who he believed had cheated his companies. Mr Read submitted that, feeling aggrieved at Mr Keates, Mr Liddell had "come down with as much force as possible on anyone involved" and had "cast the net to financially cripple and torment individuals associated with Mr Keates". This was borne out by the manner in which he gave evidence and is in my view reflected in some of the more petty, as well as in some of the more outlandish, claims that have been advanced—claims that he has advanced without positive dishonesty but also without much regard to the adequacy of their evidential basis. This also led him on occasion to make bolder assertions in evidence than he ought to have done:

for example, in respect of a written agreement relating to the Biosol Contract, and in respect of the causes of errors allegedly made by Mr Keates.

- Unhappily, I am unable to conclude that the defendants who gave evidence and their witnesses were truthful witnesses. My adverse conclusion as to their credibility is based on objective considerations relating in particular to the documents and the inherent plausibility of their evidence.

- Mr Read presented at trial as pleasant and likeable, which no doubt he is. But I did not regard him as a frank and honest witness. His evidence, regrettably, was an exercise in seeking to get out of a tight spot. When cross-examined by Mr Duggan, he gave on a number of matters what I regarded as evasive and untruthful answers, which were both implausible and in marked contrast to answers that he gave in the course of the disciplinary proceedings that led to his dismissal. For example: he accepted that he had been actively involved in the project concerning the Farm, but he strongly denied any wrongdoing; he asserted that he had not realised that there was anything untoward in the Spring Logistics venture until he had been confronted by evidence in the course of Uniserve's investigations in April 2018, and he remarked, "I didn't believe I was doing anything that was outside the interests of the [Uniserve] business", although that was contrary to the responses that he gave in the disciplinary hearing; he denied having had any intention to leave the Uniserve Group to go to work in the Spring venture, though again that sits ill with his responses in the disciplinary proceedings. When Mr Duggan put to him the record that he said in the disciplinary proceedings, "I knew the business was going on and I should have held my hands up", Mr Read replied, "I think at the time, once this had come out, if I had known there was wrongdoing I should absolutely have held my hands up, but I didn't genuinely believe there was any wrongdoing." This conflicts with any reasonable reading of what was said at the disciplinary meeting, and I do not accept it. Again, when Mr Read was asked why he had not mentioned the Spring venture to Mr Liddell he replied, "I didn't see Mr Liddell very often and certainly not in the capacity of sitting down and having a discussion. … I didn't see any need to mention it." But this is clearly contrary to what Mr Read acknowledged to Mr Liddell in the disciplinary meeting.

- As for Mr Bundock, he displayed a frustrating inability to answer questions succinctly and pertinently. I do not assume that this was tactical: in large measure it is a sign of nothing more than the way he talks. However, his evidence was notable for the repeated excuse, in the face of adverse documents, that he had raised objections by telephone. I regarded this as tactical and Mr Bundock as a generally untruthful witness. Unfortunately, both of his children employed the same tactic, just as dishonestly.

26. In addition to the witness evidence, a large amount of documentation was referred to at trial. I have reviewed all the documents that were relied on—a task, I regret to say, made more difficult by the fact that the electronic bundles were prepared in a high-tech but unduly complicated manner, rather than with the simplicity enjoined by the current Guidance on the preparation of bundles; this has delayed preparation of this judgment—but, despite the length of this judgment, I shall refer only to those parts of the

documentation and the witness evidence that seem necessary or useful for carrying the narrative or explaining my conclusions.

Central Narrative

27. In or about March 2017, Biosol and Mr Bundock entered into the Resolven Contract with Short Bros and Mr Nigel Short; the contract took effect on 1 April 2017. In return for its exclusive use of the facility at Resolven, Biosol was required, among other things, to run the plant there so as to produce a minimum of 22,686,000 kwh p.a., to pay for the running costs of the plant, and to pay to Short Bros 50% of profit generated by the wood supply business on the terms set out in Appendix 1 to the contract.

28. By this time, Biosol, which had only one vehicle, lacked sufficient transport facilities for the needs of its business. Mr Davies forged an introduction between Mr Bundock and Mr Keates; they appear to have met for the first time, though quite informally and without especial significance, on 24 March 2017. On 29 March, Mr Bundock sent a text message to Mr Keates:

> "Hi Peter[,] Neil here from biosol[;] had your number from Roger Davies. Thanks for meeting Friday re biomass. Just come from meeting and we're looking at supplying 3 trailer loads of chip daily just wondering if you can assist?? This is long term."

Mr Keates responded, "Love to help", and asked for the times and places for collection and delivery. The collection point was in Isfield, East Sussex; the delivery point was Resolven.

29. On Saturday 1 April 2017 Mr Keates and Mr Bundock met, in the company of Mr Davies, at Zenith's premises in Chepstow to discuss the transport services that Zenith could provide to Biosol. On 3 April Mr Keates sent the following email to Mr Bundock; it was copied to Mr Boardman, Mr Southern, Mr Davies and Mr Newnes:

> "Many thanks for your time on Saturday and we look forward to forming a strong partnership with you and your team.
>
> As discussed I will draw up a service level agreement over the next few days but in the interim please see bullet points below to what we have agreed and please feel free to add/comment. I hope to have a working document ready for discussion when I return to the UK on the 11th April. However in the meantime we will start with the hired equipment and place orders for new fleet.
>
> - Biosol Renewables UK limited (BS) & Zenith Logistics Services (UK) Limited (ZLS) will enter into an open book transport partnership for the transport of wood product to variation [sic] locations across the UK.

- ZLS will provide all transport related services as and when required by BS and work with BS to find the optimal commercial solution.

- The agreement between BS and ZLS will be for a minimum period of 5 years.

- ZLS will manage all inbound transport operations for BS and use all reasonable endeavours to meet the demands of the BS business.

- The initial requirement is to collect and deliver 18000 tons per annum from various points across the UK, with the first loads being sourced from Uckfield Sussex & ZLS will ensure that the correct amount of assets and resource is in place to deal with this initial volume.

- ZLS will start operating from the 3rd April 2017 with rental equipment and look to acquire 4 walking floor trailers and 4 tractor units. The fleet size going forward will be adjusted in accordance with the contractual demands of BS. For the sake of clarity ZLS will increase the fleet when contractual supply of materials is agreed with BS and their customers.

- The operation will operate across 7 days per week or to the optimum amount of working days that can be achieved due to delivery and collection restrictions.

I appreciate that the above is not an exhaustive list but it gives us a starting point. As you know Myself and Paul Southern are away for a week but we will be in regular contact and Mike Boardman will ensure that we get this operation up and running as soon as possible. This morning we are collecting a walking floor trailer and a tractor unit so we can start collections early this week. I will ask Mike to call you later once we have confirmation that the equipment is ready to go into service."

30. Mr Bundock's evidence was that the email did not accurately reflect what had been discussed at the meeting and that he had expressed his disagreement in a telephone conversation with Mr Keates on 4 April. According to Mr Bundock, at the meeting he had told Mr Keates that Biosol's current requirements were for transportation of approximately 8,000 tonnes of biomass fuel to customers annually; this could be achieved with two trucks at most, save at busy periods when a third might be required, and Biosol already had the use of one truck that had been supplied by WG Davies. Mr Bundock said that the agreement reached with Mr Keates was as follows: Zenith would provide wood haulage services to Biosol, to and from various locations that were mainly in South Wales and southern England; the services were to be provided as and when required; no specific term was mentioned—the contract was on an "ongoing" basis; and the contract was open book with a margin of 10%.

31. Evidence regarding the vehicles used for the contract between Zenith and Biosol ("the Biosol Contract") was given by Mr Southern and Mr Boardman, though the information in their witness statements seems to have been telescoped as to chronology. The position, I think, was that on or shortly after 3 April Zenith placed an order with MAN, probably via WG Davies, for the acquisition on hire-purchase of four tractor units, four walking trailer units, and one low loader trailer. (A flatbed trailer within the existing Zenith fleet was used. I say more about the low loader trailer below.) The trailers were ordered to a specification designed for use specifically on the Biosol Contract (Mr Boardman said they were "purpose-built") and were not used on other contracts but only on the Biosol Contract. The delivery dates for the new vehicles are unclear but can be inferred approximately from the pattern of invoicing: in the first three weeks Zenith invoiced for one tractor and trailer; thereafter until the second week of June it invoiced for an additional trailer; during the second half of June and the whole of July it invoiced for two tractors and two trailers; during August it invoiced for four tractors and five trailers; and thereafter it invoiced for five tractors and five trailers. (It is pointed out that the email of 3 April refers to acquiring only four tractors and trailers. However, it assumes that existing rental vehicles will be available from the outset and that new vehicles will be required. The terms of the email do not themselves make clear whether the new vehicles would be additional to those initially used.)

32. When Mr Keates wrote to Mr Bundock, he mentioned that he would be abroad during the coming week. This was a reference to a trip from 3 to 10 April 2017 in order to attend the Hong Kong Rugby Sevens. Those who went on the trip included Mr Keates, Mr Read, Mr Davies, Mr Claridge, Mr Southern and Mr Newnes; there were nine in all. Those who went enjoyed business-class flights, hotel accommodation and passes for the rugby. The bill for all of this was paid by Zenith in a total sum of £49,320. Mr Liddell was in Hong Kong on business and met the others briefly in a bar there; it was his first meeting with Mr Davies. According to Mr Liddell, whose evidence I accept, Mr Keates told him that all those on the trip had paid for themselves; he (Mr Liddell) did not understand that Zenith was paying for them to attend, and there was no reason why Zenith should have paid, because it was not a business trip. Mr Claridge says that he did indeed pay for himself, directly to Mr Keates; there is an issue about that. There is a different issue as to the propriety of the benefits conferred on the others who attended. These issues are addressed below.

33. It is an agreed fact that Zenith started providing transportation services to Biosol on 10 April 2017.

34. On 19 April 2017 Biosol submitted to Zenith a Credit Account Application for a credit facility of £10,000. That facility was granted and appears to have been the only credit facility that was ever granted formally to Biosol. An internal document produced by Mr Newnes in December 2017 showed that Biosol had a credit limit of £100,000 (as against a debit balance in excess of £160,000 according to the invoices issued as at that time). It is unclear what basis Mr Newnes had for making that record. I think it by no means unlikely that he did so in order to mislead Mr Liddell as to the extent to which Biosol was being allowed to exceed its credit limit by the end of 2017.

35. On 17 May 2017 Mr Davies sent an email to a business associate of his, Mr Mike Thomson, which he copied to Mr Bundock:

> "I had a meeting today with Biosol Renewables …

> WGD recently invested 850k in Solar power generation, Biomass heat generation across our depots. This has led to a partnership being created between myself & Neil Bundock to acquire some commercial real estate to let and install a Biomass boiler to generate an investment return of circa 20% per annum!
>
> WGD/MAN are keen to develop our relationship with Zenith logistics, Peter Keates - group Company of Uniserve. I met Iain Liddell MD at Uniserve recently in Hong Kong whilst on a trip to the Sevens Rugby with Peter Keates, hence the opportunity to present to Iain the Biosol Business solutions of Renewables for the Uniserve Warehouse operations across the UK. Uniserve are currently building a 125million warehouse facility in Upminster.
>
> In addition to this MAN/WGD are aware that these potential biomass boilers will require wood fuel on a regular basis so that's where we come in with the transport solution, Biosol have already been using Zenith to collect & deliver Biomass fuel for existing customers across South Wales.
>
> We have 4 trucks on order for Zenith that will be dedicated to this business.
>
> …
>
> Hope the above is sufficient to start you off … the Biomass solution for Upminster alone Neil estimates would be a 30million investment, I'm also looking to supply circa 90 vehicles within 12mths!!"

36. Matters were taken further at a meeting on 23 May 2017 at Uniserve UK's premises at Upminster. Those in attendance were Mr Liddell, Mr Keates, Mr Davies and Mr Bundock. The purpose of the meeting was for Mr Bundock and Mr Davies to make a proposal that Biosol and Uniserve would cooperate to produce renewable energy by means of biomass boilers at sites owned by Uniserve across the country, beginning with its vacant site at Paisley, Scotland. At the meeting, Mr Davies and Mr Bundock also mentioned to Mr Liddell that they were looking to carry out similar schemes together (that is, not with Uniserve) at other sites. Mr Liddell's evidence was that this gave him no reason for concern; in his witness statement he stated:

> "At no point during the 23 May Meeting, or indeed afterwards, was it suggested to me that Mr Keates would be involved in his personal capacity in the pursuit of such opportunities. As far as I was aware, the sole business opportunity that was being presented to me was that which related to the use of sites under the ownership of Uniserve UK."

I accept that evidence.

37. Mr Liddell raised a second matter at the meeting on 23 May 2017: what in a later email he described as, "A new biomass fuel manufacturing process to convert human and

animal waste to ultra high burning fuels." This was a potential venture that had been suggested independently to Mr Liddell by Mr John Webster, a business associate of his in Australia. It was Mr Liddell's idea to combine the two business opportunities, relating to biomass boilers at Uniserve's sites and to the production of fuel pellets from waste, into one business proposition, to which the name "Project Ignite" was later given.

38. On 9 June 2017 Mr Liddell visited the Resolven site, in the presence of Mr Bundock and Mr Keates, in order to acquaint himself with the woodchip-drying operations there. In the email exchanges that followed, it was agreed that the various parties would put together short presentations and that Mr Liddell would then collate them and prepare an initial draft of an investment package and business plan. His thoughts at around this time appear from an email that he sent to Mr Webster the following month:

> "The business plan would be something like, we get 5 investors each put in a £1 million and a build a 1 x plant and 4 biomass boilers and use this as the flag ship to expand more plants, sell the fuel and boilers going forward, I have the perfect site in Scotland for this which is available now."

39. On 16 June 2017 the tenth defendant was incorporated as N & R Commercial Limited. At that time, it had nothing to do with Zenith, Uniserve UK or the matters with which this case is concerned. Mr Bundock and Mr Davies incorporated the company with a view to using it in connection with a plan to install a biomass boiler in the premises of WG Davies in Llansamlet. Nothing came of that plan, and the company never traded as N & R Commercial Limited. What if anything it did after it became Spring Renewables is a matter of contention.

40. On 26 June 2017 Mr Keates, Mr Davies and Mr Bundock visited the Paisley site. Mr Liddell was not present.

41. At the request of Mr Liddell, Mr Bundock produced a number of slides containing a presentation for the proposal relating to the Paisley site. The proposal was for the installation of four biomass boilers at the Paisley site, together with a drying floor that would be used to dry woodchip for use as fuel in the boilers. The slides contained detailed calculations as to the income that could be achieved, indicating a payback period of just over 3 years.

42. Mr Bundock sent the slides to Mr Keates on 5 July and Mr Keates forwarded them to Mr Liddell on 6 July.

43. However, on 15 July 2017 Mr Keates forwarded Mr Bundock's slides to Mr Jamie Burrows of DT & CI Burrows. Mr Keates explained the gist of what he had in mind: "You dry virgin wood chip an[d] generate sales. You can use the heat for other things like corn driers." Mr Burrows replied, "Let's look at it. I know a couple of guys that have gone into it. I'd like to set something up that could work as a corn drier, but really my main interest would be in it heating units that I want to convert the stables into." Mr Keates replied, "Yes. Give me a call."

44. On 17 July 2017 Mr Liddell provided to Mr Bundock and Mr Davies a slide presentation in respect of the proposal relating to fuel pellets.

45. On 21 July 2017 Mr Read sent an email to Mr Bundock and Mr Davies, copying it to Mr Keates, with the subject line "Midlands Opportunity". The main paragraph read:

> "Following our discussions reference the Midlands and the potential for a tri party agreement to develop a further plant I am keen to get together to discuss in detail, I know that if we are to do this we need to act fast and therefore time is of the essence, we are gathering together finalised property details and I will have them for early next week and then it is a case of establishing what further investment is required and agreeing a way forward between us all to make it happen."

46. It is probable that the reference to "Midlands Opportunity" and "the Midlands" were to Uniserve premises. That indeed was Mr Read's evidence. It is less clear what the mention of a potential to develop "a further plant" referred to. In oral evidence, Mr Read explained that this related to a proposal to put a biomass boiler into a Uniserve building, but that nothing came of this proposal, because it "was just superseded by everything else that was going on", though there remained a potential opportunity to put boilers into the Uniserve buildings. That is possible, but I think it more likely that the reference is to a project at the Farm. This is the first reference in the documents to a venture involving three parties. Mr Read said under cross-examination that the three parties were to be Uniserve, Mr Bundock and Mr Davies. That would be consistent with his explanation of the potential to develop "a further plant". However, it is notable that the mention of a potential "tri party agreement" relates specifically to the "further plant" rather than to the Midlands; that is rather odd if the proposal for Uniserve's Midlands premises also concerned a tri-partite agreement among Uniserve, Mr Bundock and Mr Davies. While bearing in mind the caution required in relying on the precise wording of informally written emails, I think that the terms of the email, when taken together with the rest of the evidence and what is known of subsequent events, makes it probable that the mention of "a further plant" was to the Farm.

47. On 23 July 2017 Mr Keates met with Mr Jamie Burrows at the Farm.

48. On 24 July 2017 Mr Keates sent an email from his Zenith address, with the subject line "Biomass", to Mr Bundock; Mr Davies, Mr Read and Ms Coury—she, at a Spring Logistics email address—were copied in. The first substantive paragraph of the email read:

> "I met with a farmer yesterday near St Albans who is seriously interested in putting to [scil. two] boilers on his farm and fuelling them using horse manure. There is an opportunity here for us to be part of this and enjoy the rewards but we have to move quickly …"

This is the first express mention of the proposal concerning the Farm, although its genesis can be seen in Mr Keates' email of 15 July and it is, in my view, alluded to in Mr Read's email of 21 July.

49. There are emails that show that on 27 July 2017 Mr Bundock either met or, more likely, spoke to Mr Liddell concerning the Paisley site.

50. On 28 July 2017 Mr Bundock and Mr Davies attended at Uniserve's premises in Chepstow, where they met with Mr Keates and Mr Read. There are no minutes or other documentary records of what transpired at the meeting on 28 July 2017. However, on 31 July Mr Read sent an email, with the subject line "St Albans Opportunity", to Mr Keates, Mr Davies and Mr Bundock. The attachment to the email was a document, "Sandridge Bury Farm Biomass & CHP Initiative", that Mr Read had written. It began with an "Overview":

> "This document outlines the basis of a proposed partnership agreement between the four parties, Spring Logistics (3 parties) and DT & CI Burrows Ltd (1 party) to install 1 Biomass boiler, 1 CHP unit and 1 woodchip drying floor at Sandridge Bury Farm, St Albans."

The document set out anticipated investment and costs, including £303,000 for the purchase of equipment and £75,000 for the cost of installation, and under the heading "Commercial Agreement" stated:

> "The commercial agreement is based on the following logic:
>
> Spring Logistics:
>
> 1. Will fund all capital outlay for the required equipment to be purchased and installed within the facility at St Albans to the tune of £378k as detailed above.
>
> 2. Will pay DT & CI Burrows Ltd £20k per annum to manage the facility including all woodchip handling within and in and out of the facility.
>
> 3. DT & CI Burrows Ltd will provide the space, Telehandler and any tractor usage at their cost.
>
> 4. DT & CI Burrows Ltd on the agreement on contractual deal will provide a property lease deal to Spring Logistics for the term of 20 years under the terms sin point 3.
>
> 5. All revenue generated will be retained 100% by Spring Logistics until the initial £378k of cost in [scil. is] recovered. (Final costs to be determined at point of order and installation.)
>
> 6. Post recovery of all costs in point 4 all net profit will be shared 50/50 between Spring Logistics and DT & CI Burrows Ltd."

51. In the email, Mr Read explained that he had written the document "in such a way that we can share with [DT & CI Burrows] so therefore some of the finer detail for us to agree as a tri party (Spring Logistics) is not included." (The document was sent to DT & CI Burrows a few days later.) He went on to extol the merits of the proposal and to

suggest that "we each fund [the necessary deposit on equipment] and then take the VAT benefit back into Spring Logistics business." He wrote, "If we action the above ASAP we can then get the ball rolling whilst we look to sort finance."

52. Mr Read's evidence in cross-examination was that he understood Mr Keates to be proposing a venture for the Uniserve Group in conjunction with Mr Bundock and Mr Davies, and that he did not give much thought to the mention of Spring Logistics. When it was put to him that it was clear that the Spring Companies were totally different from the Uniserve Group, he replied, "No". He said that he viewed Spring Logistics as a tripartite venture involving Mr Bundock, Mr Davies and Uniserve. He said: "Uniserve consists, I believe, of fifty businesses, all with different trading names." Referring to the document attached to the email, he said: "This was written in July 2017 … and it was categorically at that point Mr Keates [was] stating that this was an initiative being looked at with Uniserve." Mr Read acknowledged that he had been copied in on communications regarding the financing of the Farm project, but he commented that the Uniserve Group "quite often got funding for capital assets" and that he would not have been party to discussions concerning finance at board level.

53. I make the following observations and findings in respect of the document attached to Mr Read's email of 31 July 2017 and his evidence concerning it.

1) The ninth defendant had not yet been incorporated; Mr Keates incorporated it on 2 August 2017. In the email, Mr Read was using "Spring Logistics" as the name used for a prospective business venture or for those engaged in it. The three parties involved in the venture were (i) Mr Davies / WG Davies, (ii) Mr Bundock / Biosol, and (iii) Mr Keates.

2) For several reasons, I reject Mr Read's evidence that he believed that the third party in the venture was to be a company within the Uniserve Group.

3) The documents relating to the Farm and to Spring Logistics make no mention of Uniserve. (I note, of course, that at this stage all emails were sent from Zenith email accounts, and that even when a Spring Logistics email account was set up Mr Read never had an address on that account but always used his Zenith address.)

4) Mr Read did not mention the Farm or Spring Logistics to Mr Liddell. The tenor of his evidence was that he had no opportunity or cause to do so. That is inherently implausible and is contradicted by what he later said in his disciplinary proceedings.

5) Neither Mr Bundock nor anyone else mentioned Spring Logistics to Mr Liddell until in April 2018 Mr Bundock claimed that the invoices sent by Zenith to Biosol for transport services ought instead to have been sent to Spring Logistics. Further, no one had mentioned the Farm to Mr Liddell. (It is true that, at a later date, Mr Bundock alluded to the Farm as one of Biosol's ventures, but not in any way that could have been meaningful to Mr Liddell or alerted him to Mr Keates' involvement.)

6) There is a serious tension between the evidence of Mr Read and that of Mr Bundock. Mr Read's evidence was that he thought Spring Logistics and the

project at the Farm involved Uniserve and therefore were within Mr Liddell's purview; he just lacked opportunity, and saw no necessity, to mention them to Mr Liddell. But Mr Bundock said that he thought that Spring Logistics and the Farm project were a private venture of Mr Keates and nothing to do with Uniserve or Mr Liddell; that was why he said nothing to Mr Liddell. Although it is logically possible that both pieces of evidence are true, it very unlikely that they both are: it is implausible that over a period of several months Mr Read believed that he and Mr Keates were acting for the Uniserve Group while Mr Bundock believed the contrary.

7) When he was questioned about this in his disciplinary proceedings (see below), Mr Read acknowledged that he understood Spring Logistics to be a business opportunity separate and distinct from Uniserve. He did indeed say that he did not realise this at first, but I think it more probable that he knew the truth in July 2017 and was trying to minimise his guilt when facing possible dismissal from his employment.

54. The email chain initiated by Mr Read's email of 31 July 2017 continued on 3 August, when Mr Davies asked, "Are we cracking on with this?" and Mr Keates replied, "I am meeting with Jamie [Burrows] on Saturday [i.e. 5 August]. But basically yes."

55. After Mr Keates had met with Mr Jamie Burrows, on 6 August 2017 he sent the following email to Mr Bundock, Mr Davies and Mr Read:

> "I spent a lot of time with Jamie at sandridgebury farm St Albans yesterday to look at all options and what could be achieved. We also met with a local estate owner reference wood supply. Basically the up shot of my meeting is we believe that we can go with two wood chip boilers with CHP units and drying floors and one horse manure boiler with a CHP unit.
>
> We need to move quickly on this and produce a plan for the funding. I require confirmation that everyone is up for it."

56. Mr Bundock and Mr Davies both expressed enthusiasm. Mr Read made a query concerning the building that would be required to house the plant and said that he would "rework the numbers … based on this new plan." Mr Davies suggested that Mr Bundock use a contact of his to arrange finance. On 7 August 2017 Mr Bundock sent an email on the chain commenced on 31 July: "Hi all spoken to nick at Lombards meeting arranged at Chepstow 1pm Thursday, hope this is convenient for all if not please let me know and I can try and amend?" Mr Davies said that he would be unable to attend but told the others to go ahead and asked to be counted in.

57. There is no documentary record of what transpired at the meeting on 10 August 2017 with Mr Nick Mulholland of Lombard Finance. I infer from the emails that it was attended by Mr Keates, Mr Read and Mr Bundock but not by Mr Davies.

58. Also on 10 August 2017, Mr Keates signed an application for finance from Agco Finance, a company specialising in the provision of finance for the acquisition of agricultural equipment. The application showed that the business was carried on by "Spring Logistics (UK) Ltd". It stated in manuscript:

> "Peter Keates currently employed as managing director of a number of business for the Uniserve Group and paid a salary plus car allowance and additional benefits.
>
> Spring Logistics primary trade activity is the supply of wood chippings and feed in tariff to the National Grid."

The relationship of this application to the meeting with Mr Mulholland on the same day is not clear, though both plainly had to do with financing the venture that had been discussed in the emails during the previous fortnight.

59. On 11 August 2017 a Business Manager at Barclays Bank sent to Ms Coury a number of questions concerning Spring Logistics; clearly an application for finance had been made to Barclays Bank also. Ms Coury passed the questions on to Mr Keates, and he in turn forwarded them to Mr Newnes at a Spring Logistics email address with the message, "I'm tied up can you have a look at this please". Mr Newnes provided the answers directly to Barclays Bank on 14 August. In answer to a question as to the amount of funds that had been invested to start the business, Mr Newnes replied: "Circa net £250k will be raised by way of cashing in other investments." In answer to the question whether there would be any additional investments into the business and, if so, the source of those investments, he replied: "Potentially, we are discussing the opportunity with other interested parties who may invest & become shareholders." When the bank asked for clarification of the answers on 18 August, Mr Keates again forwarded the query to Mr Newnes at his Spring Logistics email address.

60. On 17 August 2017 Mr Bundock enquired of Mr Liddell whether "there were any thoughts on progression of the Biomass installation at Paisley or further development on the human waste project." There was no mention of the Farm or Spring Logistics or any other project, and Mr Bundock accepts that he did not mention them to Mr Liddell.

61. Also on 17 August 2017 Mr Read sent to Mr Jamie Burrows some details of space requirements for the boilers at the Farm.

62. On 18 August 2017 Mr Newnes sent to Mr Bundock, by email from his Spring Logistics address, a Letter of Intention, which he asked Mr Bundock to print on his letterhead and return promptly:

> "This letter is to confirm the intention of Biosol Renewables UK Ltd to award Spring Logistics a three year contract with a 12 month notice period for the provision of supply 8000 tonne of wood chip in line with your quotation date 02nd July 2017.
>
> This agreement is subject to the following:
>
> • Procurement of & supply a Tractor, Low loader
>
> • Access to a log/wood chipper".

The documents do not show whether this letter of intent was signed and returned, but I understood Mr Bundock's evidence to be that it was. I understood him also to say that

transportation, as distinct from supply, would be dealt with only by Zenith or Uniserve UK, but that he understood that Mr Keates was the owner of both Zenith and Spring Logistics.

63. On 21 August 2017 Ben Bundock sent to Mr Mullholland two attachments comprising specimen quotations, respectively "Spring Logistics Wood Chip" and "Spring Logistics Biotherm"; he copied the email to Mr Keates, Mr Davies, Mr Bundock and Mr Newnes. I infer that the documents were intended to provide Lombard with detailed information regarding the costing of the proposed development at the Farm.

64. On 22 August 2017 Mr Read met Mr Jamie Burrows "and had a couple of productive hours", as he reported to Mr Davies, Mr Bundock, Mr Keates and Mr Burrows in an email sent two days later. The email continued:

> "[T]here are still a couple of bits for us to work through to finalise the plans and I think that the best way to do this is to walk through the end to end collectively, in summary we are as follows:
>
> Wood chip & CHP set up - We are clear on location for this and I will now start having dialogue with Lucie to ensure that we get a building fit for purpose sent in for planning approval, Neil would be useful to discuss with you when you return.
>
> Manure & CHP set up - Given the space requirements this is proving a little more difficult, by no means impossible to overcome we just need to be a bit more creative. The location of this needs to be near the stables and livery yard to benefit all round. We have some ideas on this but need final clarification of size requirements.
>
> In [scil. I] would like us to be in a position by the end of next week to have a very clear strategy for the end to end project and to support this I really feel it would be beneficial to see example set ups of both wood chip and manure, enable us all to visualise space and layout requirements and then finally translate that into solution design for Sandridge Bury Farm.
>
> With the above in mind I have spoken to Neil and we propose the following:
>
> Thursday 31st – Peter Jamie and I will drive across from St Albans to visit Resolven, following this Neil can you arrange for us to visit the Horse manure set up, I think the equivalent to what we are trying to achieve is Southampton.
>
> Thursday PM / Friday AM – We collectively view the facilities at St Albans and agree a strategy for locations and final set up.
>
> I appreciate that this is a couple of days out of everyone's diaries but we need to get cracking on with this, I am more than happy

> to push on with the work post this but I want us all in the same place and aligned with our plans."

For present purposes, the relevance of this email is the insight it gives into Mr Read's involvement in the Farm project.

65. Later that day, 24 August 2017, Mr Keates sent a text message to Mr Davies:

> "I'm back in the country tomorrow and could do with a catch up if you are around. I've bought a tractor and part way through financing a chipper as we really need to get this moving. Hence the reason for trying to get to see Neil next week to understand where's [sic] he is. We need to buy timber as Neil tells me he doesn't have the cash. I'm shelling out huge amounts of cash (£150k) which I can't put through group and just need to know we are all pulling in the right direction."

66. On 25 August 2017 Zenith made a payment of £87,840 to Agco Finance for the benefit of Spring Logistics. The payment was authorised by Mr Newnes. I find as a fact that the payment was in respect of finance provided by Agco Finance to Spring Logistics and did not relate to any business of Zenith or the Uniserve Group.

67. However, Zenith continued to provide services to Biosol in respect of the transportation of woodchip to the Resolven site. On 2 September 2017 Mr Keates sent an email to Mr Newnes, Mr Southern and Mr Read:

> "I have agreed in principle that we run Resolven so we can get the maximum use out of the Zenith fleet and push more volume through the site.
>
> This includes operating the telehandler on site, however I am looking into buying one that is fit for purpose as the Merlow that they have is not fit for purpose. I think that we need multi skilled drivers who can drive the telehandler and would like to explore the possibility of training some of our guys before we go and recruit.
>
> Your thoughts would be appreciated and suggest we have a call on Monday when I am in Chepstow."

It is probable that Mr Keates meant that Spring Logistics would run Resolven, not that Zenith would do so: Zenith was a transportation company and would have no apparent interest in running the site or capacity to do so; if the "we" in the first line had been Zenith, the reference would probably have been to "our fleet" rather than "the Zenith fleet"; and the email was sent from Mr Keates' Spring Logistics account, not from his Zenith account. I do not think that the paragraph concerning the telehandler tells strongly against this conclusion, because the idea was apparently that drivers in the Zenith fleet, who were dedicated to the Biosol Contract, would operate the telehandler as well as driving other vehicles.

68. Meanwhile, the proposal involving the Paisley site and the fuel pellets was progressing, albeit slowly. After some further communications in August 2017 regarding the proposed venture concerning Paisley and the waste fuel pellets, on 6 September 2017 Mr Liddell sent to Mr Bundock a "Project Ignite Business Plan", which focused on the sale of fuel pellets but included the proposed venture at Paisley.

69. On 7 September 2017 Zenith contracted to hire a low loader trailer for a term of five years at a cost of £798.10 per month. Mr Southern signed the lease agreement upon the instructions of Mr Keates.

70. On 12 September 2017 Spring Farm was incorporated, with Mr Keates as its sole member and director.

71. On 19 September 2017 Mr Newnes sent an email to Mr Bundock from his Spring Logistics address, asking for information "to plan a cashflow & assist in requests when approaching finance companies". The information concerned woodchip volumes for Biosol's customers, and information concerning the costs of installations at Hereford, St Albans (i.e. the Farm) and Tenby (i.e. WG Davies). (It has been suggested that mention of Hereford might be a mistake for Ammanford, where Biosol's own premises were. However, as an email on 17 October shows, the original idea was to use a site in Hereford.) Mr Newnes said: "I can then work out the balance to be put back into the cashflow for future projects." On the following day Mr Bundock provided information as requested. This may be noted as one example of Mr Newnes spending his time working on Spring Logistics business instead of Uniserve business.

72. On 27 September 2017 Mr Read had a telephone conversation with "Norbert" at Biosol and arranged to meet him and a planning consultant at the Farm on Monday 2 October 2017 in order "to jointly … establish size and structure of building and how it all ties together" (Mr Read's confirmatory email on 28 September).

73. Mr Read was also working on the operations at Resolven. On 4 October 2017 he sent an email to Mr Keates, Mr Davies and Mr Newnes, apparently after they had met together; no record of the meeting exists. (Mr Bundock was abroad, had not been at the meeting and was not copied into the email.) It said:

> "I have reworked all of the numbers that we discussed in the meeting and put them into a format that we can play around as we wish, there is a lot of useful discussions points contained within but headline summary for me is:
>
> 1. Resolven as it stands at the minute under current contractual arrangements returns a loss of c £170K even with 40000 woodchip sales, we need to sell 56000 to break even.
>
> 2. Resolven appears to be a nonstarter even with a buyout at £3mn we need to turn 40000 tonnes of sales and receive 90% of the RHI at £900K per annum purely to break even.
>
> 3. Running Resolven would detract from woodchip sales we could make elsewhere for real profit.

> 4. There is healthy return from the 3 other sites and this is where we should be focusing our efforts – £20mn over the 20 year term allowing for 5 year finance payback at 5%.
>
> 5. Woodchip profit from the 3 sites would deliver further benefit over and above point 4."

The reference to "the 3 other sites" is to WG Davies' premises at Tenby, the Farm, and either premises in Hereford or Biosol's premises in Ammanford.

74. On 4 October 2017 Mr Davies replied to Mr Read, expressing the view that Mr Bundock would "go bust" if he did not renegotiate his agreement with Mr Short. Mr Read responded in agreement, commenting that Mr Bundock was "on a loser with Resolven".

75. On 10 October 2017 N & R Commercial Limited changed its name to Spring Renewables Limited. The shareholdings were adjusted so that the issued shares were held equally by Mr Keates, Mr Bundock and Mr Davies. On 11 October 2017 Mr Keates was appointed as a director.

76. In an email on 11 October 2017, Mr Read asked Norbert for progress after their meeting on 2 October:

> "[P]lease could you update me on where you are at with the technical drawings for St Albans as I was expecting to receive something by now. I am waiting to get some detailed building plans drawn up and start the planning process."

77. On 15 October 2017 Mr Keates sent to Mr Liddell a spreadsheet setting out a financial analysis of the Paisley project. The claimants rely on this for the fact that it is closely similar to the document that Mr Read had prepared in respect of Resolven. This is said to be an indication of the similarity between the project that was being discussed with Mr Liddell and those projects that were not.

78. On 16 October 2017 Mr Read sent to Mr Keates, Mr Davies, Mr Bundock and Mr Newnes an "Updated spreadsheet [i.e. updated since that which he sent on 4 October] now accounting for CHP units at Tenby and Farm".

79. On 17 October 2017 Mr Davies sent an email to Mr Keates, copied to Mr Read, Mr Bundock and Mr Newnes. It read in part:

> "Hopefully Colin [Newnes] has everything to submit a detailed application for funding to NatWest - Neil will arrange a meeting with Nick & Natasha ASAP at Chepstow (hopefully we can all attend) Colin if you need me to do something please don't hesitate to call me.
>
> …
>
> How did you get on with Iain, is Paisley a goer?"

80. On 18 October 2017 Mr Keates sent an email from his Spring Logistics address with the subject line "Resolven". The recipients of the email were Mr Read, Mr Newnes

and Ms Coury (both of these at Spring Logistics addresses), Mr Davies and Mr Bundock. The email recorded Mr Keates' understanding of what had been agreed in principle in a telephone conversation with Mr Bundock and Mr Nigel Short (NS).

> "1. NS will cover all operating costs for the plant which includes utilities rates and labour.
>
> 2. The plant will only operate when wood chip sales dictate. The plant will not operate just to generate RHI. So currently switched off.
>
> 3. Biosol will procure timber, chip and pay for deliveries.
>
> 4. An open book approach will exist between both parties. RHI will be separate until the capital for the plant is repaid and then RHI will become part of the agreement.
>
> 5. All profits on wood chip sales will split equally between Biosol and NS.
>
> 6. Biosol will pay Spring Logistics for the telehandler chipping and all associated transport.
>
> 7. Halena [Coury] and Chris Read will develop a sales strategy for Spring Renewables to sale (sic) wood chip.
>
> There was a conversation around Spring taking 50% of Biosol's profit from woodchip but I think we need to discuss this in more detail as currently we are all just incurring costs."

81. Mr Read was asked questions about this email in cross-examination. He accepted that Spring Logistics had no transport facilities; he said he had "no idea" where the transport was going to come from. The tenor of his evidence was that the email made little sense to him—he said that the mention of him developing a sales strategy for Spring Renewables was "just totally not true"—and that he did not respond to it at all, though he did not think that the email dealt with anything that was in improper competition or conflict with Uniserve. That was a difficult position to maintain and I do not accept it. The major plank of Mr Read's case in these proceedings is that he followed in good faith the instructions of Mr Keates, who was the person from whom he was required to take instructions. It is not clear, therefore, what basis Mr Read could have had for ignoring what Mr Keates wrote in this email, if indeed there was nothing untoward in it. Mr Read failed to give any answer or explanation that I found in the least convincing. In my judgment, this is another instance of him attempting to wriggle out of a tight spot by failing to be truthful. As for the source of the transport, I find that it was obvious and was known to all of the persons involved that it would be Zenith; no alternative source of transport was in question.

82. Mr Bundock replied to Mr Keates on the same day. He confirmed the telephone conversation mentioned by Mr Keates but said, "I did say that from resolven I would transfer all Biosol's profits into spring not 50 per cent as in essence spring would take over from Biosol in this agreement with Nigel short." His response did not challenge

the statement that Biosol would continue to be liable for the costs of the telehandler, chipping and transport and would pay for deliveries. Mr Bundock's oral evidence was to the effect that Biosol would entirely cease to be involved and that the arrangement would be purely between Short Bros and Spring. Mr Keates' email and Mr Bundock's response indicate that there was no suggestion that the claimants would be involved in the Resolven site, other than in respect of the provision of transport services.

83. On 20 October 2017 Mr Keates sent an email (this time from his Zenith address) to the same recipients as two days earlier. The email set out an agenda for a meeting to take place on 23 October at Celtic Manor Hotel, Newport:

> "1. Spring Renewables agreement with Biosol / Nigel Short
>
> 2. Operating of Resolven
>
> 3. Wood chipping service from Spring Logistics (start date)
>
> 4. Bank meeting -1430 Natasha and Nick
>
> 5. Sales and Marketing Strategy (a) Current sales pipeline (b) Sales Agreements (c) Alun Conduit
>
> 6. Timber supplies and transport".

84. Mr Read received this email but said in cross-examination that he did not attend the subsequent meeting. However, I think it likely that he did attend. In an email to Mr Davies on 18 October, in a chain with the subject line "Spring Renewables Meeting", he wrote: "No problem with me being there, I will be starting to put together some expectations and documents for managing implementation today and I will share these with you all next Monday" (i.e. Monday 23 October). A few minutes later, he sent an email in the same chain to Mr Keates, remarking that he "was going to have a day on Spring today unless you need me to do anything else".

85. In cross-examination Mr Read said that he thought that Spring Renewables was just an extension of what he had been told already and that he was not aware that the matters being discussed were nothing to do with the Uniserve Group: "Mr Keates still maintained that this was part of the discussions with Mr Liddell." There are several reasons why I do not believe this evidence. First, for reasons that will be apparent throughout this judgment, I do not regard Mr Read as a truthful witness. Second, Mr Bundock acknowledged that he knew very well that Mr Keates' involvement in the Spring Companies was his personal venture, not a matter concerning Uniserve (his case—which I also do not accept—was that he saw nothing wrong with this, as he understood Mr Keates to be the owner of Zenith and therefore free to engage in any business ventures he wanted to). This at least makes it unlikely that Mr Keates "maintained throughout" (Mr Read's words in cross-examination) to Mr Read that Mr Liddell knew about Spring, because it is unlikely that he would give strikingly different accounts to two people who had regular contact in respect of the Farm and Resolven. Third, there are no documents indicating that Mr Liddell was told of the Spring venture and his evidence, which I accept, is that he did not know of it. Fourth, it is clear from the exchanges between Mr Liddell and Mr Read in the latter's disciplinary meeting (see below) that there was at least a reasonable opportunity for the two men to speak.

Therefore, it is highly improbable that Mr Keates led Mr Read to believe that the Spring venture was known to and approved by Mr Liddell and under the Uniserve umbrella; the chances of Mr Read saying something about it to Mr Liddell would have been obvious. Fifth, in his disciplinary meeting Mr Read accepted that, if not from the very outset then at least after a while, he knew that Spring was a personal venture of Mr Keates and nothing to do with Uniserve.

86. On 23 October 2017 was the meeting at Celtic Manor Hotel, Newport. Those present were Mr Keates, Mr Read, Mr Davies, Mr Bundock, Ms Natasha Hopkins (NatWest), Mr Nick Mulholland (Lombard), Ms Alison Woodhead (Clientseye), Mr John Worsford (Biosol), and Mr Matt Powell (whose role is unclear). There is no record of what was discussed at the meeting, though presumably it had to do with the matters on the agenda.

87. On 24 October 2017 Mr Keates sent an email about "Resolven" to Ms Coury, Mr Newnes and Mr Read. (All the email addresses used, save that of Mr Read, were Spring Logistics addresses.) The opening paragraph of the email said:

> "Obviously aware that you guys want to get on with this process however, I believe that we need to grab the 'bull by the horns' and start running the sales and logistics streams for Resolven. There is no doubt that the Biosol are struggling and no one has an handle on exactly what we have in stock dry or wet and therefore what timber requires purchasing."

88. On 25 October 2017 Natasha Hopkins sent an email to Mr Davies, copied to Mr Bundock and Mr Newnes. She confirmed that "the account"—apparently, a new NatWest account for Spring Renewables—had been opened and discussed arrangements for "Peter" (Keates) and Mr Newnes to be added to the mandate; this would be easy in the case of Mr Keates, but as Mr Newnes was not an existing NatWest customer confirmation of his identity was required.

89. The case advanced by Biosol and Mr Bundock is that Spring Renewables had no involvement in the Resolven and woodchip business; this was purely a matter for Spring Logistics. I reject that contention. The documents mentioned in the preceding paragraphs indicate, in my view, that Spring Renewables was to be the relevant trading entity and that Spring Logistics was to be the provider of services to facilitate the trade. Further matters support this conclusion.

    1) On 27 August 2017 Tilhill Forestry Ltd sent a pro forma invoice by email to Mr Newnes (on his Spring Logistics email account). It appears that the invoice was addressed to Spring Logistics. Mr Newnes forwarded the email to Mr Davies, who asked him, "Is the invoice correct? Spring Logistics?" Mr Newnes replied, "Yes as we can't access spring renewables I'll process through spring logistics & we can sort out recharged etc later." Mr Davies replied, "Ok – money on its way".

    2) Mr Grahame Bundock's email of 14 November 2017, mentioned below.

    3) The Spring Renewables website, which was operational from December 2017, advertised that the company supplied "top quality virgin wood chip".

4) On 31 January 2018 Mr Lee Dowson of Amethyst Systems Limited sent an email to Mr Newnes, with the subject line "Woodchip system", containing "Site Visit notes for Spring Renewables in Resolven, Wales", which made clear that the supply of woodchip was an activity of Spring Renewables.

5) In February 2018 Mr Davies and Mr Bundock engaged Mr Ben Jenkins as a sales representative with a view to identifying and approaching new customers for woodchip. Mr Bundock's contention is that he did this on behalf of Spring Logistics, by way of assistance to Mr Keates and Mr Newnes. I find, however, that Mr Jenkins was engaged on behalf of Spring Renewables and that Mr Bundock's self-serving account is false.

90. On 27 October 2017 Mr Davies paid £18,740 to Spring Logistics. The case he advanced in these proceedings, before he reached settlement, was that this was a loan. However, no documentation in respect of a loan has been disclosed. On 30 January 2018 Mr Davies sent an email to Mr Newnes, copied to Mr Keates and Mr Bundock, asking to see Spring Logistics' "accounts", because he wanted to see what had been spent on advice and assistance provided by Ms Woodhead (cf. the meeting of 23 October 2017). In an email to Mr Newnes on 20 February 2018, Mr Davies remarked that he had "pit [scil. put] 18k into Spring", an apparent reference to the payment on 27 October 2017. These matters lead me to the view that Mr Davies had not made a loan but had made an investment in Spring Logistics. This and the tangled web of documentation to which I have referred lead me to the further view that, despite the legal ownership of Spring Logistics (paragraph 15 above) and the lack of clear and credible accounts in the evidence of those involved, there was not a clear and definite separation between the beneficial involvements of the various individuals in the Spring Companies.

91. On 1 November 2017 Ms Coury made a request that the relevant name in the Biomass Suppliers List be changed from Biosol's to "Biosol Wood Renewables Wales UK Ltd". The reason for this is not apparent; no company by that name existed. Mr Bundock's evidence was that he changed the name on the list back to Biosol.

92. On 8 November 2017 Mr Newnes sent to Amber Bundock by email (copied to Mr Bundock) an invoice from Spring Logistics in respect of the use of the telehandler. Miss Bundock's evidence was that she had no idea why the invoice had been sent to Biosol. However, the invoice was consistent with the contents of the email of 18 October, which Mr Bundock had not queried in this regard. Further, there is no documentation showing that Miss Bundock queried the invoice. I find that the invoice was properly sent to Biosol.

93. On 13 November 2017 Ben Bundock sent to Ms Coury an email containing a list of Biosol's customers and details of their payment terms.

94. On 14 November 2017 Grahame Bundock sent an email, with the subject line "Invoicing", to WG Davies:

> "I am emailing to inform you we have amalgamated the supply of woodchip with our new partnership company Spring Renewables.

> As of now all invoicing for wood chip products will come from Spring Logistics, all other services remain the same i.e.: wood preparation, deliveries and quality control.
>
> I remain the point of contact and I will be arranging deliveries and quality control."

(This appears to be the only such email to have been disclosed, but it seems very probable that this is an instance of a standard email sent to all of Biosol's woodchip customers.) The claimants rely on this email as evidence that Biosol's claim to have dropped out of the picture by reason of novation of the contracts with individual customers is false. When Mr Neil Bundock was asked about the email in cross-examination, he accepted that customers would not have understood from it that Biosol was no longer the contracting party and said that his brother had not expressed himself well. In my view, for reasons already indicated, he had expressed himself well enough. The position was simply that the contracts remained between the customers and Biosol, Spring Renewables was acting in something akin to a partnership with Biosol, and Spring Logistics was administering the operation of the contracts.

95. Mr Newnes on behalf of Zenith continued to issue regular invoices to Biosol for its transport services. There is no documentary evidence that Biosol or the Bundocks challenged the invoices before April 2018. The evidence of Mr Bundock, Amber Bundock and Ben Bundock was that the invoices were indeed challenged orally. I reject that evidence and regard it as obviously and deliberately false. It cannot stand with either the absence of written evidence of challenge or the terms of the documents that do in fact exist. In particular:

- On 19 December 2017 Mr Newnes sent to Amber Bundock by email a statement of account, showing that Biosol then owed Zenith £161,638.99 and informing her, "I need to arrange payment of the oldest invoices of ours to keep HQ happy". Two points may be noted. First, such an email, containing as it did no recognition of any challenge to the invoices, would be practically inexplicable if the Bundocks had been challenging the invoices. Second, instead of stating and reiterating a challenge to the invoices, Amber Bundock replied by asking which invoices Mr Newnes wanted her to pay.

- When Mr Newnes replied by asking for payment of £32,670.05 in respect of invoices outstanding for more than 120 days, there was no response querying the invoices.

- On 3 January 2018 Mr Newnes sent a further statement of account. On this occasion, Amber Bundock asked for information as to which invoices the payment made by Biosol in November had been attributed to. Mr Newnes provided that information and said, "we'll need to sort out a payment to keep group off my back & ensure we get the order for boiler installs across the group sites." Again, there is no documentary evidence that any challenge was made to the claim for payment.

96. Meanwhile, the project at the Farm was progressing. On 20 November 2017 Mr Keates sent an email to Mr Bundock, copied to Mr Davies and to Mr Newnes (the latter at his Spring Logistics address):

> "I need to specifications and drawings for St Albans 1 and 2 as I'm going to try and fund it through a guy I met over the weekend.
>
> I can [presumably, can't] do anything with prep landing for phase 2 until I have the drawings . If your workload is too great then let me know as maybe we have to look outside our group."

97. On the following day, 21 November 2017, Mr Newnes contacted Barclays Bank with a view to being added as a signatory on two accounts held with that bank, one by Spring Logistics and the other by DT & CI Burrows.

98. An indication of the level of Mr Keates' and Mr Newnes' involvement with operations at the Farm is given by an email sent by Mr Keates to Mr Jamie Burrows on 27 December 2017 (copied to Ms Coury and Mr Newnes) with the subject line "List for Us". The email, which began with the sentence, "Further to our little conversation there are a number of things that me and you need to cover off asap", listed 14 action points; these included the need to agree with Mr Newnes "detailed cashflow and how this is managed weekly".

99. Mr Liddell did not know anything about the proposed business venture at the Farm. Mr Bundock acknowledged in evidence that he did not mention it to Mr Liddell; he said that he knew that Mr Keates' involvement was on a purely personal basis, not on behalf of the Uniserve Group, and that he therefore had no reason to tell Mr Liddell about it. I find that none of the other persons involved mentioned it to Mr Liddell either.

100. On 16 January 2018 Mr Davies sent an email to Mr Bundock, Mr Keates and Mr Newnes with regard to an Ofgem audit that had taken place that day and the need to have "Spring Logistics" registered as a supplier. That email was sent to Mr Keates at his Zenith email address. On 17 January Ms Coury sent an email to Mr Keates: "Roger needs to use your spring email address not Zenith."

101. On 30 January 2018 Ms Woodhead sent an email to Mr Bundock (copied to Mr Davies, Mr Keates, Mr Newnes and Ms Coury) with the subject line "Where marketing and sales meet". The email thanked him for his time that day—whether in a meeting or by telephone or Skype is unclear—and said, "I thought this might help you to consider how the sales and marketing for Spring should link up and what we are trying to do with the website and what Ben can do to close the deal." In my view, this is properly understood as an indication of Mr Bundock's involvement regarding the Spring Renewables website. Just over a week later, on 7 February 2018, Ms Woodhead sent an email to Mr Davies and Mr Bundock, in which she said that she had added a freephone number "from Biosol to the Spring website" and asked Mr Bundock to ensure that the number was answered as "Spring Renewables".

102. On 31 January 2018 Mr Lee Dowson, of Amethyst Systems Limited, prepared "Site Visit notes for Spring Renewables in Resolven, Wales". These related to the business of the supply of woodchip.

103. In February 2018 a sales representative, Mr Ben Jenkins, was engaged—probably on a self-employed basis—to "cold call" customers. Mr Bundock's evidence was that he was engaged by Spring Logistics and that he, Mr Bundock, got involved only because

Mr Keates and Mr Newnes were both unavailable. I reject that evidence. The sufficient reason why he was involved was that the engagement was part of the Spring Renewables business. I note that Mr Jenkins' email address was a Spring Renewables, not a Spring Logistics, address.

104. Project Ignite continued to generate emails and attention during the late part of 2017 and well into February 2018. It is unnecessary to explore the details of the deliberations and communications here. There were concerns—perhaps not insurmountable, but significant—regarding the proposal for the Paisley site. More importantly, it became apparent that there were significant issues concerning the transportation of fuel pellets made from human waste. Mr Liddell's evidence, which I accept, was: "As these issues became more apparent in or around January/February 2018, I decided not to proceed with Project Ignite and the Paisley opportunity." I find that, as Mr Liddell stated, the Paisley proposal remained under active consideration until February 2018.

105. In early March 2018 Mr Liddell became involved in efforts to obtain payment from Biosol of the invoices issued by Zenith. On 5 March Mr Liddell sent a text message to Mr Bundock: "looks like Biosol are £238k outstanding and I am being told you are unable to pay, is this correct?" Mr Bundock replied: "Sorry Iain this is news to me let me investigate." On 6 March Mr Newnes sent a text message to Mr Bundock: "Can you come to Chepstow Friday morning & we go through the invoices & put a plan together?" On the same day, Mr Liddell asked Mr Bundock whether he was "any clearer on the outstanding amount and when it can be settled", and Mr Bundock replied, "Spoken to Colin and meeting him on Friday [9 March] morning to sort out". It seems likely that Mr Newnes and Mr Bundock did meet or speak on 9 March and that on Saturday 10 March Mr Bundock and Mr Liddell spoke by telephone.

106. On Sunday 11 March 2018 Mr Newnes died suddenly and unexpectedly. This sad event set the cat among the pigeons.

107. On the morning of 12 March 2018 Mr Keates and Mr Read went into Mr Newnes' office and, after spending some time there, locked it.

108. On the afternoon of 12 March 2018 Mr Bundock sent an email to Mr Liddell. After expressing his condolences on Mr Newnes' death, he continued:

> "With regards our conversation Saturday I can confirm the weekly repayments and I have several installations coming to a close imminently and I will endeavour to clear the debt owing as soon as possible."

Again, there was no suggestion in the written communications that the debt was disputed, and I find as a fact that no oral dispute had been raised at this time.

109. On 13 March 2018 Mr Davies arranged a meeting to discuss Biosol and Spring Renewables. Those present at the meeting were Mr Davies, Mr Keates, Mr Bundock and Mr Byron Gambold, who was an acquaintance of Mr Davies. So far as I know there are no records of the meeting. However, after further text messages passing between Mr Liddell and Mr Bundock in late March, on 4 April Mr Bundock said that Mr Gambold was discussing an "all account reconciliation" with Mr Keates. On 11 April Mr Gambold informed Mr Liddell that Biosol accepted liability for £42,943.66;

the rest of the debt, he said, was owed by Spring Logistics, which had taken over the supply of woodchip and transportation from Biosol on 27 October 2017 and had thereafter traded in its own right. In an exchange on 13 April Mr Bundock referred to the "spring logistics situation". In answer to Mr Liddell's query what this meant, Mr Bundock replied on 14 April:

> "Peter and Helena [sic] and Colin took over the distribution from Resolven in October and all monies went direct from Nigel Short to Peter via spring logistics and spring logistics invoices all customers hence Peter Colin and … Helena took over the running and responsibility for the transport and I have been waiting for credit notes!!
>
> As such I have had no responsibility in the transport since then and I'm sorry to have been dragged into this.
>
> Peter roger and I were to do work together on various sites of ours but nothing has transpired.
>
> I hope this clarifies a few things but all of what I have said can be corroborated via roger and Nigel and Nathan Short as they dealt directly with peter and spring logistics in the wood chip distribution from Resolven."

This appears to be the first written challenge from Biosol to the debt alleged by Zenith and the first written mention of credit notes. It sits uncomfortably with Mr Bundock's earlier assurance that the debt would be paid, as well as with the fact that Mr Newnes had sent a statement of account showing the full extent of the debt on 3 January 2018 and continued to send further invoices thereafter.

110. Meanwhile, towards the end of March, Mr Keates' personal assistant approached Mr Stone with concerns regarding Mr Keates' expense claims. In the light of what he was told, on 2 April 2018 Mr Stone attended with Mr Tuck at Zenith's premises at Chepstow, ostensibly to carry out an internal audit but actually to investigate the concerns regarding Mr Keates. In the course of that investigation he discovered the existence of Spring Logistics, Spring Renewables and Spring Farm and Mr Keates' connection with those companies.

111. On 10 April 2018 Mr Keates was suspended from his employment on the grounds of suspected gross misconduct.

112. On 11 April 2018 Mr Read was suspended and was interviewed by Mr Stone and Mr Liddell. There is a lengthy contemporaneous note of the meeting, which I find is substantially accurate albeit no doubt not verbatim. Mr Liddell said that Uniserve was investigating matters including "bribery, deception and theft"; Mr Read said that he had never been involved in anything like that. Mr Read said that Spring was "nothing to do with [him]" and that he didn't know the details or anything beyond what he had heard in conversations between Mr Keates and "it might have been Colin". He knew that Spring Logistics was "Peter's wider business" but no more than that. When he was asked about a financial spreadsheet for Spring, he said, "Anyone could have put my name on it, it has nothing to do with me"; though he subsequently appeared to

acknowledge that he had spent "very little" time working on "a couple of spreadsheets" on the basis that he had been instructed to do so by Mr Keates. His answers indicated that he knew that Spring was not part of Uniserve, that he did not know of the use of Uniserve Group equipment for the Spring business, and that he understood that Mr Keates was in charge of Spring. He insisted that he had no personal interest in Spring and had not gained financially. Mr Stone (PS) asked Mr Read (CR) about his company car:

> "PS You have a car through Zenith. Do you pay for that yourself?
>
> CR No. When I joined the business I got offered a deal. I said I wasn't going to join but then got offered a car as well as a car allowance.
>
> PS Who gave you that?
>
> CR Peter.
>
> PS You know that's wrong?
>
> CR Yes, but it was agreed by Peter."

113. On 1 May 2018 Mr Stone chaired a disciplinary hearing for Mr Read. Again, there are contemporaneous notes of the meeting, which I find to be substantially accurate in all material respects, though they are not verbatim transcripts. References below are to these notes, though I shall not slavishly follow the punctuation. At the outset of the meeting Mr Stone summarised the allegations: that Mr Read had "collaborated to take business away from the Uniserve Group to Spring and receiving the company vehicle in addition to an allowance." There was the following exchange regarding the vehicles:

> "PS In the suspension meeting you said Peter Keates had given you the car to convince you to join but you also had an allowance knowing it was wrong.
>
> CR Yes, and there is no further explanation."

Most of the meeting concerned Mr Read's involvement in the Spring venture. I note the following passages.

> "PS Give us your explanation of your involvement [in Spring Logistics], particularly what you thought when establishing email addresses.
>
> CR My first introduction was when I went to Resolven with Iain. I knew we did some work for Biosol and thought the concept quite good. After a while there was talk around Paisley. Further down the line it became obvious that Peter Keates had some conversation before my involvement, and it wasn't clear initially that it was nothing to do with the (Uniserve) business but another

business. My first involvement I was asked to go to a meeting to discuss boilers in three locations.

PS What did you think was happening?

CR After that initial meeting? After the initial meeting I was thinking, 'Is there a business opportunity?'

PS What did you think Spring Logistics was about then?

CR Putting the three boilers into the three locations.

PS The email addresses?

CR I thought, 'There is a work opportunity here – a change maybe further down the line.' I asked if I could become involved in the Paisley project prior to that. Never been into any Spring Logistic inbox.

PS But you have had correspondence from Spring Logistic email addresses?

CR I wrote an email asking for email addresses.

PS Did you ever think, 'This is not right?'

CR At the time I thought it's a business venture. … Peter has made comments in the past that he's mentioned to Iain he wants to do a business venture. Obviously I now know that he hadn't had this discussion.

PS There's an email in your Outbox re Opportunity outside Uniserve. Was the intent to sever all ties?

CR Yes, I thought at the time a good opportunity. Peter Keates is very good at telling you the little bits he wanted to tell you. I've been a fool and am suffering for it now. An opportunity to do something different down the line. …

PS When was it your intention to exit from Uniserve?

CR In the early days I didn't know – how long to set it up, what it would look like etc. And then towards back end of the year nothing happening. …

…

PS You had no suspicion [Mr Keates] was taking money from Zenith to use for his own personal gain?

CR No.

…

PS … Put yourself in our position. In April you were still getting emails from Peter Keates asking you to discuss such a matter with him. We can only assume you were going to do this with him. Otherwise, why not raise the flag to us?

CR My explanation is I thought there may be an opportunity further down the line from a career perspective. I thought it was a good business – thought the biomass idea was a good one.

PS Setting up email addresses means it's a separate business venture.

CR I know, and I've naively done stuff.

IL You know it was wrong to conceal this from us?

CR Yes. I've done what I was instructed to do, but you should have known about it.

IL You see me enough to have mentioned it.

CR I know.

IL You know it was wrong to be paid by Zenith or Uniserve and be doing work for Spring?

CR Yes, at a point, yes I did. At very initial meetings it wasn't clear, but it did at a point become clear. … I knew the business was going on and I should have held my hands up.

…

PS You understand the allegations and the evidence, you agree to the allegations and can give no explanation other than looking elsewhere for an opportunity – saying you were doing what Peter asked you to, but you are aware of your contractual obligations. We'll adjourn the meeting. is there anything else you want to add?

CR I know, and I apologise for what I've done.

PS There will be a cost involved regarding the car.

CR Yes, I know about that. the other money going out of the business, I want to apologise for my part in that."

114. By letter dated 4 May 2018 Mr Read was dismissed from his employment on account of gross misconduct relating to the inappropriate use of a company car and his involvement in the business of the Spring Companies.

115. On 4 May 2018 Mr Stone chaired a disciplinary meeting in respect of Mr Keates (PK). Again, there are contemporaneous notes that I accept as being substantially accurate in all material respects. The meeting addressed first the allegation in respect of the wrongful claiming of expenses. It was put to Mr Keates that he had made double claims, and he said that he could not recall every doing so. The meeting turned to Mr Keates' involvement in the Spring venture. He said: "I didn't realise I couldn't be director of another business. I wasn't in direct competition." He was referred to his contract of employment and replied, "Are you telling me that reading it and signing it on email it's a legally binding document?" "I did not know / did not recall I'd signed it electronically." When Mr Stone offered to read the sections of which Mr Keates was allegedly in breach, the latter replied, "There's no point." The note records the following exchanges among Mr Keates (PK), Mr Stone (PS) and Mr Liddell (IL):

> "PK UK Limited was me and my partner looking at where she could do something different. There was an opportunity with Nigel Short to buy and sell woodchip. Biosol was with Zenith. I believe no direct competition to Uniserve as Uniserve do not buy or sell woodchip. Never intended to run transport. SR [Spring Renewables] was basically RD [Roger Davies], NB [Neil Bundock] and myself going to buy three boilers, one in Wales and one in St Albans on a friend's farm.
>
> IL Lets go back to Spring Logistics. How can you say nothing to do with what we're doing?
>
> PK We booked transport through Zenith and Zenith would do Biosol.
>
> IL You knew it was in direct competition – it was a Zenith customer and transport. Your business case was selling woodchip including transport.
>
> PK We weren't supplying the transport. Trying to help as Biosol getting in a muddle with Resolven. Biosol were still to buy the transport from Zenith.
>
> IL Why did you put Chris Read in and when?
>
> PS Why establish email addresses for Zenith employees?
>
> PK Mike Boardman never used his. I don't know why; I did not ask. I set one up for Chris and Colin. The idea was we could sell a lot of woodchip. CR [Mr Read] was looking to get out. It was my future, my retirement plan and nothing to do with transport."

"PJ Derek Claridge lent Zenith 1 [i.e. ZLL] £140K in 2002 and was carried into Zenith 2 [i.e. Zenith, the first claimant].

IL We found out at the same time as found you were bankrupt.

PK My bankruptcy got annulled. What you on about now? I went to court and got it annulled.

PS Going back to Claridge …

PK That was before Uniserve came along and part of the deal was that he could have a phone.

IL Where does it go into in Zenith 2?

PK I don't know. Colin did that, but it's in the balance sheet. But you never basically looked at anything before you took over Zenith.

IL A little bit of due diligence with Colin, but that was not mentioned."

"PS There's the whole issue around purchasing a container for Claridge and shipping through us.

PK He came to me, said I could arrange it, got Steve involved, charge to Uniserve, charge Zenith, Zenith charge Claridge. Spoken to him since I've been on suspension and he told me he had paid it back to Colin in cash.

PS Where would that be paid?

PK Don't know.

IL Did he pay his HK [Hong Kong] 7's trip in cash also?

PK Yes.

IL The trip he'd been saving up all year to go on?

PK Let's address that now. You paid me a bonus in 2016. I never took that money.

IL It was all paid for through Belgravia Travel; the invoice is there.

PK But then I paid it back. I never took my bonus and I know Paul Southern didn't take his bonus either.

PS Who paid?

PK RD [Roger Davies], Edward McDonald, Darren (can't remember surname), I did mine out of my bonus payment.

PS So everything was paid back regarding the container to Colin—so it should be traceable somewhere?

PK An invoice was raised on a monthly basis to be put through this system and it was put down to driving services.

PS Put [your]self in our positon. What would you think?

PK You can see what it is.

PS It's a fraudulent invoice?

PK I'm not taking the blame for that one. I'm not going to sit here and blame a deceased friend though.

PS Colin's getting a lot of blame. And you're saying you would never know about any of this?

PK No, I knew that was there."

"PS Not diverting business from Uniserve in any way?

PK No.

PS Just diverting employees away from Uniserve work?

PK Yes.

PS Why?

PK CR [Mr Read] worked quite a lot on it. PS [Paul Southern] did nothing in it. All MB [Mike Boardman] did was sort out a few vehicles. Nothing to do with it whatsoever. [The note of the meeting attributes this comment to CR, but that is clearly a mistake.]

PS So none of our trucks used for SL [Spring Logistics]?

PK Once I used it and I drove it myself.

PS Drivers didn't come back with cheques made out to SL?

PK No.

IL You know it wrong to be paid by Uniserve and doing all work for yourself and diverting CR's time?

> PK I didn't put CR's arm up his back—he wanted to do it. … He wanted to get away and get closer to home. I know that doesn't excuse his working with me. He wasn't working on it days and days. There were two and three emails a and night times weekend [sic]. Not saying he did it every week. Yes, I do know it was wrong. I know that now, but CR was doing it voluntarily.
>
> IL His justification is you were his boss and he was doing as asked. You knew as Director of the business. Why?
>
> PK My view trying do something for my future. Lost £750k in Zenith. Trying to do something for me and my kids. At no time did I look to take anything away from Uniserve for SL.
>
> IL Did you know it would be damaging?
>
> PK Of course I cared."
>
> "PK [I] told him [i.e. Mr Newnes] to just get on and get the money back from Claridge.
>
> IL We didn't know that CN was corrupt and you've just said you didn't know?
>
> PK I had no access to the bank account, I didn't touch it. Yes, I had the loan account. You've met Derek Claridge, you know what he's like: second-hand car dealer. But [I] told him mates rates but have to pay for it; and he did.
>
> IL But you know it [was] wrong.
>
> PK I honestly didn't think [so] in the early stages.
>
> PS When did you begin to think it, then?
>
> PK When you told me to get out of the business."

There is a great deal more in the notes, in particular regarding specific payments, but these already over-long extracts must suffice for the present.

116. By letter dated 8 May 2018 Mr Keates was dismissed from his employment.

117. On 23 April 2018 Mr Davies resigned as a director of Spring Renewables.

118. On 24 April 2018 Mr Bundock resigned as a director of Spring Renewables.

119. On 14 June 2018 Ms Horsley was dismissed from her employment by Zenith.

120. Mr Keates, Mr Read and Ms Horsley all appealed against their respective dismissals, but their appeals were considered and rejected by the Uniserve Group's Chief Operating Officer.

121. On 28 June 2018 Zenith commenced the Biosol Claim.

122. On 26 July 2018 Zenith commenced the Read Claim.

123. On 25 October 2018 Ms Coury resigned as a director of Spring Logistics.

124. On 13 February 2019 the claimants commenced the Main Claim.

125. On 19 February 2019 Spring Farm was dissolved via compulsory strike-off.

126. On 19 July 2019 Mr Keates was adjudged bankrupt on his own petition. He was discharged from bankruptcy on 19 July 2020.

127. On 24 September 2019 Spring Logistics was dissolved via compulsory strike-off. Upon the claimants' application, it was restored to the register on 10 May 2021.

128. In the light of this narrative, I turn to address the three claims. For ease of exposition, I shall deal with them in the following order: (1) the Biosol Claim; (2) the Read Claim; (3) the Main Claim.

The Biosol Claim

129. The Biosol Claim was commenced in June 2018 and is brought by Zenith against Biosol under the Biosol Contract. The claim is for £260,992.75 in respect of unpaid invoices for the provision of services under the Biosol Contract, together with contractual interest.

130. Biosol admits that there was an oral contract, though it denies Zenith's case that it was reduced to signed writing and disputes Zenith's case as to the terms of the contract. Biosol makes only a qualified admission that it owes £46,000 for services supplied; in evidence at trial Mr Bundock stated that £46,000 was the total liability that Biosol had incurred under the contract and that all moneys owed had been paid, though I find that even on his own case that is incorrect as no moneys have been paid since the partial admission in 2018. Biosol avers that the contract between it and Zenith was terminated by mutual agreement in October 2017, and that thereafter the supplies of woodchip were made not by Biosol but by Short Bros and the necessary transportation services were provided not by Zenith but by Spring Logistics.

131. The parties have agreed a list of eight issues in respect of the Biosol Claim, but those issues can be considered under three broad questions:

    1) What were the terms of the Biosol Contract?

    2) Did the Biosol Contract come to an end in October 2017?

    3) What is the state of the account between the parties?

(1) The terms of the Biosol Contract

132. It is common ground that an agreement was reached on 1 April 2017. The terms of Mr Keates' email of 3 April 2017, in which he set out what he said had been agreed, have been set out above.

133. Zenith's primary case is that the terms of the agreement were reduced to a formal written agreement, which was signed. A copy of the unsigned agreement has been produced, although Zenith cannot find a copy of the signed agreement. On balance, I find that no signed agreement was ever executed and that the parties proceeded on the basis of the oral agreement made on 1 April 2017.

134. Zenith's case is that under the Biosol Contract it was to provide transport and logistics services to Biosol for an initial term of 5 years from 3 April 2017 and was to be paid an amount equal to 110% of the direct and indirect costs incurred in connection with the provision of the services. This was, therefore, an "open book" agreement, under which Biosol would have full access to the costs of operating the contract. These terms of the contract are evidenced by Mr Keates' email of 3 April 2017 and are in part common ground. For Biosol, Mr Bundock denies that there was an agreement that the contract should last for any specific term; he says that it was on an "ongoing" basis. I accept that Mr Keates' email is the best evidence of what was agreed and I find that the agreement was an initial term of 5 years from 3 April 2017. This also is consistent with Mr Bundock's text message on 29 March 2017, which had been keen to make the point, "This is long term." In the circumstances, however, little if anything directly turns on that finding.

135. The important issues between the parties regarding terms are as follows. Zenith's case is that it was to operate a dedicated fleet for Biosol on a full-time basis and would for this purpose acquire, as a starting point, four walking floor trailers and four tractor units that were to be set aside for Biosol's requirements. Biosol's case is that the agreement was that Zenith would provide wood haulage services as and when required and would pay only for such services as were provided—in particular, that it would only pay for trucks or trailers if it had use of them on a given day.

136. Zenith's case rests mainly on the email of 3 April 2017, the history of invoicing, and Biosol's response or lack of response to both of these. (Post-contract conduct is here relevant to the factual question of what was agreed; this is not a case where such conduct is relied on impermissibly as an aid to construction.) Biosol's case as to what was agreed rests primarily on Mr Bundock's evidence, both as to the meeting on 1 April 2017 and as to the further telephone conversation with Mr Keates on 4 April 2017. His evidence, which I have summarised above, was the only direct witness evidence of the agreement, as neither Mr Keates nor Mr Davies gave evidence. However, I reject it.

    1) Although Mr Keates' email shows that it was envisaged that a formal written contract would be prepared, it is carefully if informally written, records matters in some detail and makes clear that the matters it records were to be put into immediate operation. The tenor of Mr Bundock's evidence is that the email mis-states the terms of the agreement in material respects; he says, accordingly, that he challenged it. However, it is inherently improbable that Mr Keates would have included so many mistakes or falsehoods within the email. If Mr Bundock were right, Mr Keates would either badly have misunderstood his

conversation with Mr Bundock—which is unlikely, as whatever else may be said of him he is obviously astute and able—or deliberately produced a false record of the agreement for no apparent reason and in circumstances that invited an immediate riposte and contradiction.

2) Mr Keates' email expressly invited Mr Bundock to add to or comment on the summary of what had been agreed. It is strongly probable that, if Mr Bundock had considered that the record of "what we have agreed" was materially inaccurate or that Zenith was wrong to "look to acquire 4 walking floor trailers and 4 tractor units" or was looking to acquire them on a mistaken basis, he would have made his position clear by an email, copying in all the recipients of Mr Keates' email. In fact, there are no emails or other documents that put the terms of the email in question until after the business relationship between the parties had ended. Mr Bundock's evidence was characterized by a repeated assertion that he had queried or challenged the contents of documents but had always done so orally and never in writing. In my view the assertion is a deliberate falsehood and was used by Mr Bundock as a tactic for getting around the fact that the documents are against him.

3) In his oral evidence Mr Bundock maintained that Biosol's single vehicle was sufficient for its daily needs at the time. Mr Clarke in his closing submissions tried to maintain that Biosol could have coped with the daily transportation of three trailer loads with its single vehicle by making repeat journeys in a day. None of this has any credibility. Biosol's request for assistance from Mr Keates shows that it lacked in-house capacity to meet its needs. As for multiple daily journeys with a single vehicle, the round trip between the two sites (in South Wales and the south of England) would be at least eight hours, probably more; and there remained the necessary deliveries of woodchip to Biosol's customers. Further, it is in my view clear that the orders placed by Zenith for new vehicles were specifically on the agreed basis that they would give Biosol increased capacity to deliver woodchip and would thereby facilitate the anticipated growth of Biosol's business.

4) Mr Bundock accepted that he knew that Zenith had acquired four tractors and trailers and had done so to service Biosol's business; he said that he had told Mr Keates that these were not required but that Mr Keates had nevertheless decided to go ahead with the purchase on the basis of planning for the future (transcript, day 4, pages 133-134). While this is not impossible, it is inherently unlikely that Mr Keates would commit to such expenditure for vehicles that were not currently required and in respect of a business with which Zenith had no prior business relationship. This is apart from the point, already made, that the evidence does not support Mr Bundock's claim to have challenged Mr Keates on this point.

5) The relevant text of the email sent by Mr Davies on 17 May 2017 has been set out above. In my view the reference to having "4 trucks on order for Zenith that will be dedicated to this business" is clearly to the vehicles mentioned by Mr Keates in his email of 3 April 2017 for use on the Biosol Contract. Mr Davies was present at the meeting on 1 April 2017, when the Biosol Contract was made, and was one of the recipients of the email of 3 April 2017. He clearly knew nothing of Mr Bundock's alleged correction of this point in subsequent

conversation with Mr Keates. He also clearly understood that the vehicles in question were obtained so as to be "dedicated" to the Biosol Contract. Further, Mr Davies' email of 17 May 2017 was copied to Mr Bundock, yet there is no evidence in the emails or other documents to show that Mr Bundock challenged Mr Davies's assertion. When Mr Bundock was asked about this email (transcript, day 4, pages 135-138) he suggested two reasons why he might not have taken notice of, or even seen, Mr Davies's email, namely that it was not addressed to him and that the particular email address on which he was copied in on the email meant that it might have come to the attention of one or other of his children, who might not have referred it to him. I regard those explanations as implausible and as typical of Mr Bundock's efforts to get around the evidence of the documents.

6) The newly acquired trailers were not merely dedicated to the Biosol Contract but were specifically purpose-built for that use, rendering them unsuitable for much other use. Although it is not impossible that Zenith made the decision to acquire such dedicated trailers without an understanding that Biosol would meet the cost, I do not regard this as at all likely. This tends to confirm that Mr Bundock's account of what was agreed is false. Once it is acknowledged that Zenith was to acquire bespoke vehicles that were dedicated to the performance of the Biosol Contract, the contention that Biosol would bear only such costs of the vehicles as were strictly referable to the days when Biosol actually used them makes no commercial sense. Of course, it is not impossible that Mr Keates orally made such an agreement: parties can make agreements that lack commercial sense. However, it is implausible that he did so and I see no good reason to suppose that he did so. Against this, the point is made that the actual use made by Biosol of the vehicles under the Biosol Contract did not come close to full use of the allegedly dedicated fleet; this, it is said, shows that the agreement alleged by Zenith made no commercial sense for Biosol. There is some truth in this, but I am not greatly impressed. First, Biosol had only very recently entered into the Resolven Contract with Short Bros and was ambitious to expand its woodchip business quickly. Second, Biosol was a new customer for Zenith. Third, for both of those reasons, it is to be expected that the risks of investment associated with the development of Biosol's business would be borne by Biosol rather than by Zenith. Fourth, with due respect to Mr Bundock, I have no doubt that he is a less intelligent and astute businessman than is Mr Keates. The fact that the Resolven Contract was quickly seen to be potentially ruinous of Biosol is some illustration of this.

7) The lack of challenge to the invoices until after the relationship between the parties had broken down is good evidence that Biosol's own understanding of what had been agreed in the Biosol Contract was the same as that now advanced by Zenith. The invoices were first sent by Zenith to Biosol on 4 July 2017 and were sent, by post, regularly thereafter. As the Biosol Contract was an "open book" contract, the invoices were supported by a billing spreadsheet in Excel format, which was first created by Mr Boardman on 4 April 2017 (i.e. the day after Mr Keates' email setting out the agreed terms) and had a separate tab for each week. Mr Bundock, Ben Bundock and Amber Bundock all gave evidence to the effect that the invoices were repeatedly challenged and that credit notes were promised. I unhesitatingly reject their evidence and find that no challenge

was made until after Mr Newnes' death and Mr Gambold's involvement. Many of the relevant points in the chronology have been identified above.

137. I find, accordingly, that Zenith's case is correct: the costs it incurred pursuant to the Biosol Contract in hiring the vehicles for the purpose of Biosol's work were recoverable from Biosol, save to the extent that those costs were recovered by Zenith by using the vehicles for other work; in that case, the revenue earned from the vehicles was credited to Biosol on its account with Zenith. For the avoidance of doubt, I accept that this related not just to the vehicles themselves but to the drivers required for them. Without drivers, the vehicles were not available for provision to Biosol.

(2) Termination of the Biosol Contract?

138. Biosol contends that the Biosol Contract was terminated in October 2017. The easiest way to consider this contention is to begin with the statements of case. Biosol's pleaded case appears principally from paragraph 9 of its defence in the Biosol Claim (I shall substitute "Zenith" and "Biosol" for "the claimant" and "the defendant" respectively):

> "Biosol avers that Zenith provided transport services to Biosol from April 2017 to October 2017, at which point the arrangement between Zenith and Biosol came to an end by mutual agreement. In October 2017 Mr Bundock of Biosol contacted Mr Keates of Zenith and advised him that the defendant had lost a wood fuel supply contract with its major customer (R&A Properties) and therefore would no longer require transport services for that customer. Shortly thereafter a meeting took place between Mr Bundock, Mr Keates, Mr Colin Newnes … and Mr Nigel Short, at which an agreement was reached that Mr Short's company (Short Brothers Limited) would assume the role of Biosol in supplying the wood fuel products to Biosol's customers (including R&A Properties) and a company named Spring Logistics Limited would assume the role of Zenith in providing the transportation services. Spring Logistics Limited was a company owned by Mr Keates and a Halena Coury. By agreement the arrangement between Zenith and Biosol was terminated from that point."

In further information pursuant to Part 18, provided on 29 October 2018, Biosol gave these responses (where "Spring" means Spring Logistics):

> "2. The contracts between Biosol and Short Brothers for the supply of wood products were novated. It was agreed between Biosol and Short Brothers that Short Brothers would assume the obligation to supply the customers with wood products and Biosol would be released from its obligation to supply the customers with wood products.
>
> 3. Such was verbally agreed between Mr Nigel Short of Short Brothers and Mr Neil Bundock of Biosol. It was not recorded or referred to in any document.

> 4. No contractual arrangement was agreed between Biosol and Spring for Spring to assume the role of Zenith in providing the transportation services; such contractual arrangement was agreed between Mr Peter Keates and Mr Nigel Short. Mr Peter Keates and Mr Neil Bundock agreed that the contractual arrangement between Zenith and Biosol for the provision of transportation services would be terminated with immediate effect by mutual agreement. Biosol is not aware of the precise nature or terms of the contractual arrangement entered into between Short Brothers and Spring.
>
> …
>
> 8. Biosol's understanding was that Spring was utilising the logistics equipment of Zenith to provide transportation services for Short Brothers. Biosol understood that Zenith was to invoice Spring for use of the logistics equipment and Spring was to invoice Short Brothers for the transportation services."

In additional Part 18 further information, dated 13 November 2018, Biosol averred:

- that the "verbal agreement" between Mr Short and Mr Bundock was made at a meeting on 20 October 2017 at Biosol's offices, which was attended in addition by Ben Bundock, Amber Bundock, Mr Keates, Ms Coury and Mr Newnes;

- that Biosol's customers "provided their consent to the novation of their contracts" on or around 13 November 2017 and that this was dealt with by Ms Coury of Spring Logistics, who had indicated that she would do so;

- that the arrangement for invoicing for transportation (that is, from Zenith to Spring Logistics, and from Spring Logistics to Short Bros) was agreed at the meeting on 20 October and at the further meeting (mentioned above) on 23 October 2017.

139. Biosol's pleaded case is thus as follows. Biosol was going to stop supplying woodchip. Short Bros agreed with Biosol that it would supply woodchip to Biosol's former customers. (This is described as novation, though the case as to agreements with Biosol's customers to novate their contracts to Short Bros is thin. This is not a central issue; its relevance to the question of the transportation contracts is indirect.) Therefore Biosol no longer required transportation services, but Short Bros did. In those circumstances, Zenith agreed to terminate the Biosol Contract and agreed with Spring Logistics to make its vehicles available to Spring Logistics; and Spring Logistics contracted to provide transportation services to Short Bros. Thereafter, payment for any relevant transportation services was to be made by Spring Logistics to Zenith and by Short Bros to Spring Logistics. Save for the fact that the claim that the woodchip customers' contracts were novated must be wrong, this is a rational account: it would be perfectly possible for Zenith and Biosol to terminate the Biosol Contract by mutual agreement, releasing each other from obligations thereunder, to take account of altered commercial realities. (This is why I have not thought it necessary to discuss the legal requirements of a novation, which were the focus of Zenith's submissions on this matter.) The question, rather, is whether the account is true to the facts.

140. Mr Bundock's witness statement, which was substantially in accord with his oral evidence, does not fully accord with Biosol's pleaded case. He stated that Mr Keates and Ms Coury had "displayed a real appetite to take over the Resolven site" since June 2017 and, with apparent reference to September 2017, stated:

> "it was agreed that we hand over this responsibility [i.e. of the running of the Resolven biomass fuel plant] to Mr Keates who had discussed this proposition with Mr Short, the content of the discussions was unknown to me as I was not party to any of these meetings" (para 38).

Mr Bundock did not then relate the alleged meeting with Mr Short. Instead, in paragraph 44 of his statement he referred to the meeting on 23 October 2017; then he continued:

> "45. Unbeknown to myself [I think this means something like: Without prior warning to me], Mr Keates and Ms Coury then asked when Spring Logistics could take over Biosol. This was a huge shock to me and did not understand where this was coming from or going. Yes, Spring Logistics was taking over the running of Resolven and Biosol's responsibilities there, but Biosol still remained and was continuing to trade in the sales, supply and installation of biomass boilers. I acutely remember the reaction of Mr Davies to this, who appeared to have been taken aback by this statement. I had never intended to relinquish any part of Biosol. It appeared that Mr Keates and Ms Coury had their own agenda and were trying to acquire my company.
>
> 46. Mr Keates then made it known that upon conclusion of this meeting that he, Ms Coury and Mr Newnes had a meeting arranged with Mr Short and his representatives in Cardiff and would be leaving to attend directly after the meeting. I was totally unaware of this and rather shocked. Even though I was shocked, I did understand as I had no further involvement at Resolven and with Mr Short.
>
> 47. Further discussions continued in October 2017 surrounding the takeover of the Resolven plant by Mr Keates and Ms Coury continued to a degree that on 27 October 2017, Mr Keates and Ms Coury took over all responsibilities of Biosol at the Resolven wood chip plant. My brother Mr Grahame Bundock, being the point of contact for Biosol's wood chip customers, assisted Spring Logistics during the transition for a short period of time. Mr Keates and Ms Coury, together with Mr Newnes, were in direct contact with Mr Short and I/Biosol took no further part or responsibility in the wood chip operation and fuel deliveries to customers. Biosol have not received any income regarding the sale of wood chip fuel from Resolven from customers since the takeover by Spring Logistics of the plant."

141. The account in Mr Bundock's witness statement has the following significant features:

- It does not narrate the pleaded agreement between Biosol and Short Bros. Rather, it portrays a situation in which Spring Logistics held discussions with Short Bros, from which Biosol was excluded.

- It does not say that Short Bros were (in whatever way) to take over Biosol's customers. Rather, it at least implies that Spring Logistics took over the customers.

- It does not give an account of the agreement to terminate the Biosol Contract. The statement does not attribute such an agreement to the alleged meeting on 20 October 2017—it does not mention such a meeting. And it does not say anything about such an agreement being made in the meeting on 23 October 2017.

142. The texts of the main contemporaneous documents have been set out in the narrative above. I refer in particular to the emails on 2 September, 18 October, 20 October and 14 November 2017. Having regard to these documents and to what is known of the facts in that period, I think that the following conclusions are probable:

1) The contracts with the woodchip customers remained with Biosol. I can see no evidence that there was a "novation" or that the customers purported to contract with any different entity, and Grahame Bundock's email of 14 November 2017 implies an arrangement well short of that. When Spring Logistics sent invoices for the woodchip to the customers, it did this on behalf of Biosol, not because it was the contracting party.

2) Biosol's woodchip business was henceforth carried on as a joint venture with Spring Renewables, which it must be remembered was in the nature of a quasi-partnership between Mr Keates, Mr Bundock and Mr Davies. The division of profits had not been finally agreed, probably because the woodchip business was not yet profitable.

3) Spring Logistics would be responsible for the woodchipping operations at Resolven, including the provision and operation of the telehandler. It would also do the invoicing for woodchip, but it would not itself be the contracting party for the sale of woodchip.

4) Biosol continued to be responsible both for the costs of procuring and delivering woodchip and for the costs incurred by Spring Logistics.

143. With specific regard to the third and fourth of these conclusions and to points 3 and 6 of the email of 18 October 2017, I think that the position is in fact straightforward and that Biosol and Mr Bundock have attempted to obfuscate matters. Biosol remained the contracting party for woodchip sales and it remained the party responsible for paying for the procurement of timber and the delivery of woodchip. Nothing had changed in that regard: Biosol's contention to the contrary, which is fundamental to its case, is false. Spring Logistics was running Resolven, including the chipping operations and the telehandler and associated matters: that is what it was to be paid for. Spring Logistics had nothing to do with the provision of transportation for deliveries: it had no

transport facilities, and no one thought that it was to be providing those services. This is reflected in the distinction between points 2 and 6 in the email of 18 October. Contrary to its contention in these proceedings, Biosol would continue to pay for the delivery services; this was not a liability of Short Bros. Those services would continue to be provided by Zenith, which (as everyone knew) alone had the necessary transport facilities. There was no purpose in interposing Spring Logistics between Biosol and Zenith. Indeed, it would have been absurd for Mr Keates to agree to such an interposition, because it would impose a liability on Spring Logistics with no corresponding gain. Yet it is he who is supposed to have made the agreement to terminate the Biosol Contract.

144. Consistently with all of this: (1) the documents contain no mention of the termination or cancellation of the Biosol Contract; (2) the documents do not record any protest on the part of Biosol when Zenith continued not only to invoice it regularly under the Biosol Contract after October 2017 but also to press for payment; and (3) Biosol and the Bundocks did not (as I find) make any oral protest about the continued invoices, either as to their issue or in respect of their amount.

(3) The state of account under the Biosol Contract

145. Three simple facts may be taken as the starting point for consideration of the amount of the debt. First, this was an "open book" contract on the terms summarised above. Second, from July 2017 onwards invoices were submitted regularly with specification of how the charges were arrived at. Third, the invoices were not disputed.

146. Biosol raise numerous detailed objections to the claim advanced by Zenith, quite apart from the major disputes concerning the terms of the contract and the period for which services were provided. Many of the points raised rely on the contention that, because Zenith has not provided a great deal of underlying documentation to support the charges in the invoice, it has not established costs as it was required to do under an "open book" contract. I regard that contention as misguided. Zenith is entitled to payment of its actual costs plus a 10% mark-up. Because this was an "open book" contract, Biosol was entitled to ask to see the underlying documents for the breakdowns that were provided for the invoices (cf. the question and answer in the cross-examination of Mr Boardman on day 3: transcript, page 52, lines 4 – 8). In fact, however, it did not raise any objection or query in respect of the invoices and did not ask to see the underlying documentation. The question for me is simply whether, on the balance of probabilities, the costs reflected in the invoices were actually incurred pursuant to the terms of the contract. The relative paucity of contemporaneous documentation is now available is relevant to answering that issue but it is only one factor to be taken into account along with the entirety of the other evidence. The fact that Zenith did in fact, under an "open book" contract, submit itemised invoices is itself relevant in considering whether it is probable that the costs indicated by those invoices were incurred, as is the lack of challenge to them.

147. A challenge is made to the rates at which drivers' time was charged, in respect of which the underlying documentation is sparse. Zenith has charged at a rate of £135 per day for each driver, calculated on the basis of an average wage of £115 per shift plus tax, national insurance and pension. Mr Boardman's evidence was that this was the actual cost to Zenith of a driver. Biosol has used disclosed documentation in respect of a number of drivers (P60s, payslips, employment contracts) and, on the basis particularly

of the P60s, has calculated a figure of £75 per day for each driver. I do not find that calculation at all convincing. Mr Boardman explained that the P60s relied on related to employees who had worked a part of a year. More helpful, in my view, is consideration of the evidence of the annual salaries of drivers in 2019 and 2020, which show that daily rates of £135 is not implausible. In those circumstances, and as the charges were clearly set out in an "open book" contract, I accept Zenith's case on this point.

148. A challenge is made to a parking fee of £65 per week for each vehicle. This was shown on the invoices. Mr Boardman's evidence was that this charge was incorporated into all Zenith's transportation service contracts. He also asserted that the charge was agreed verbally (which I take to mean orally) between Mr Keates and Mr Bundock. Mr Bundock denied such an agreement and I do not find that one was made. However, I agree with Mr Duggan and Mr Goodfellow that no such agreement was necessary. The cost of providing transport services by means of a fleet of dedicated vehicles would necessarily involve, as part of the overheads, the cost of accommodating (parking) those vehicles when they were off-road. I can see nothing wrong in the inclusion of a charge in that regard. The fact that the charge was indeed made in an "open book" contract is prima facie evidence that it was incurred, and it was not challenged. (I add that the regular provision of unchallenged invoices containing such a charge probably gave rise to an implied contract. But it is not necessary to my decision to discuss that point further.)

149. A challenge is made to charges for the use of a flatbed trailer, beyond a charge that is accepted for seven days' use. In a document headed "Defendant's particularised position in respect of the disputed invoices in the claim", signed by Ben Bundock and dated 2 September 2020, Biosol stated, "The defendant did not agree to the use [of] a flatbed trailer and denies having had the use of a flatbed trailer. The defendant did not have any such use for this equipment." In his oral evidence, Mr (Neil) Bundock acknowledged the use of a flatbed trailer, though only on a single day for the purpose of moving a steel frame. It is now the case that no challenge is made to a further six days of use for collecting hay. Biosol's position in respect of the flatbed trailer has been inconsistent and Mr Bundock's evidence by itself must be considered unpersuasive. I accept on the balance of probability that the charges on the invoices, unchallenged by Biosol until after the contract had ended, related to use actually made of the flatbed trailer by Biosol.

150. A challenge is made to charges in respect of the use of a low loader trailer. In this case, it appears probable that the trailer was kept at the Farm and was not used for the Biosol Contract. Mr Boardman believed that Biosol was using it, but in this he was misled by Mr Keates. The charges should be deducted from the Biosol Claim. (A different claim in respect of the low loader trailer is dealt with in paragraph 209 below.)

151. A challenge is made to the charges made for insurance. However, the issue turns on the prior issue whether Biosol was liable to pay for a standing fleet of vehicles or only for such use as was actually made of them. As I have held in favour of Zenith on that issue, this challenge fails.

152. Accordingly, the Biosol Claim succeeds in full, save only for the deduction of the charges in respect of the low loader trailer.

The Read Claim

153. The Read Claim is brought by Zenith, not by Mr Read's employer, Uniserve UK, because the expenses incurred in respect of the provision of the vehicles used by Mr Read were paid by Zenith. The claim is advanced on the alternative bases of restitution for unjust enrichment and equitable compensation.

154. The following facts are not contentious and are established on the evidence.

- Mr Read was employed by Uniserve UK under an employment contract dated 19 January 2016 ("the Read Contract").

- The formal offer of employment to Mr Read was made not by Mr Keates but by Mr Stone, in a letter dated 19 January 2016. The letter was accompanied by the Read Contract, which Mr Read signed in acceptance. The letter and the Read Contract made no mention of the use of a company car, but clause 12 of the Read Contract provided for a car allowance of £9,600 p.a. "for use in the performance of your duties under this agreement".

- A "contract details form" prepared by Mr Keates on 12 January 2016, for the use of Uniserve Group's HR department, stated that Mr Read would not receive a company car but would have a car allowance of £800 p.m.

- Despite the terms of the Read Contract and the information provided to Uniserve Group's HR department, Mr Keates had proposed to Mr Read a package that included the use of a company car.

- During the course of his employment by Uniserve UK, and in addition to receiving his car allowance, Mr Read had the use of company cars as follows:

    i. From January 2016 until February 2017, a Land Rover Discovery. This vehicle had previously been used by Mr Keates and was subject of a pre-existing lease agreement.

    ii. From February 2017 until April 2017, a BMW X5. Mr Read arranged the short-term lease of this car.

    iii. From April 2017 until May 2018, an Audi Q7. Mr Read arranged the lease agreement and executed it as "Ops Director" of Zenith, which was named as the hirer. Zenith cancelled the lease on or about 1 May 2018.

- Mr Read was not, despite his job title, a director of either Zenith or Uniserve UK, but Mr Keates was a director of both companies.

- Mr Keates knew of and purported to authorise Mr Read's use of the cars and his entry into the leasing agreements.

- The total amount paid by Zenith in respect of the provision of the cars (including not only the hire charges but the IPT in respect of insurance and a sum of £4,400 to obtain early cancellation of the leasing agreement relating to the Audi Q7) was £39,312.42.

155. Zenith's case is that Mr Read is liable to pay to Zenith the value of the benefits he unjustly received by the use of the car, in circumstances where those benefits were conferred on him by the conduct of Mr Keates acting in breach of his fiduciary duties to Zenith. Alternatively, as Mr Read knew that he was not entitled to the use of a company car and that Mr Keates was acting wrongfully and in breach of his fiduciary duties to Zenith in authorising his use of a company car, he has knowingly received the benefits by reason of Mr Keates' breach of fiduciary duty to Zenith and is liable to pay equitable compensation in the amount of the loss incurred by Zenith.

156. Mr Read's primary response, in his defence and his evidence, is to the following effect. His employment by Uniserve UK was the result of negotiations with Mr Keates. Mr Read had an attractive offer of employment from a third party; Mr Keates was making efforts to match that offer. The terms eventually offered by Mr Keates included, in addition to salary, an allowance that was described as a car allowance and an entitlement to the use of a car funded by the Uniserve Group. It was on the basis of this inducement that Mr Read took up employment with Uniserve UK, and when he commenced work he was given the use of the Land Rover that was already contained within the Group and had previously been used by Mr Keates. His use of company cars was known within Zenith and Uniserve UK and was not unusual: other employees also used cars in the company pool.

157. In its Reply, Zenith states:

> "3.2. It is denied that [Zenith] and Uniserve (UK) were at all material times aware that [Mr Read] had the use of a company car as well as receiving a car allowance:
>
> 3.2.1. It is admitted that an arrangement was offered to [Mr Read] by Mr Keates, whereby [Mr Read] was to receive a company car in addition to a car allowance, but denied that Mr Keates was authorised to offer any such arrangement on behalf of Uniserve (UK) and/ or [Zenith], or that it was binding on either party.
>
> 3.2.2. It is denied that Mr Keates' knowledge is to be attributed in law to Uniserve (UK) and/ or [Zenith], because he was acting outside the scope of his authority as director and in flagrant breach of his fiduciary duties.
>
> 3.3. Further, it is denied that [Mr Read] believed Mr Keates had authority to offer any such arrangement, as [Mr Read] knew that this arrangement was irregular and wrong. Alternatively, if (which is denied) [Mr Read] relied on the existence of apparent authority on the part of Mr Keates, it is denied that any such reliance was reasonable."

158. In support of its claim in unjust enrichment, Zenith relies on the decision of Sales J in *Relfo Limited (in Liquidation) v Varsani* [2012] EWHC 2168 (Ch). Mr Goreica, a director of the claimant company, acting in breach of fiduciary duty and without authority, misdirected money from the company's bank account for his own purposes, with a view to an equivalent sum ultimately being deposited in the defendant's bank account via a series of intermediate transactions. Sales J held the defendant liable for knowing receipt. He also, and in the alternative, held the defendant liable in unjust enrichment. The Court of Appeal upheld both grounds of his decision, though without needing to discuss the specific basis of liability in unjust enrichment, as to which there was no appeal. (It may be that the discussion of unjust enrichment at both levels was strictly obiter, but both Sales J and the Court of Appeal gave fully reasoned judgments on the point.) At [86] Sales J recorded one of the submissions on behalf of the company (the references are to paragraphs in the 8th edition of Goff & Jones, *The Law of Unjust Enrichment*):

> "Mr Shaw maintained that a proper ground for restitution was made out, showing that Bhimji Varsani's enrichment at Relfo's expense was unjust, in that the transfer of funds from Relfo by Mr Gorecia had been with a lack of proper consent by Relfo since Relfo was caused to make that transfer by Mr Gorecia acting in breach of fiduciary duty and without authority (ibid., paras. 1-22, 8-32 to 8-36 and at paras. 8-45 and 8-50 to 8-59, with reference in particular to dicta of Lord Nicholls of Birkenhead in *Criterion Properties Plc v Stratford UK Properties Ltd* [2004] UKHL 28; [2004] 1 WLR 1846 at [3]-[4], who observed that if it were established that a benefit had been conferred on B by company A as a result of the directors of company A acting for an improper purpose and without authority, then 'irrespective of whether B still has the assets in question, A will have a personal claim against B for unjust enrichment, subject always to a defence of change of position. B's personal accountability will not be dependent upon proof of fraud or "unconscionable" conduct on his part. B's accountability in this regard will be "strict"'). Mr Shaw referred to *Hopkins v TL Dallas Group Ltd* [2005] 1 BCLC 543 at [87]-[89] in support of the proposition that grant of actual authority to an agent will not include authority to act for the agent's benefit rather than that of his principal."

After mentioning a different point that does not call for discussion here (it was considered in the Court of Appeal), Sales J continued:

> "88. I accept Mr Shaw's submissions, set out above. In my view Bhimji Varsani was clearly enriched by the Intertrade payment at the expense of Relfo. That is so even if the Intertrade payment cannot be identified with the Relfo/Mirren payment according to the rules of tracing. Relfo had its funds diverted by Mr Gorecia in breach of his fiduciary duty as a director of Relfo and acting outside the scope of his authority from Relfo. In my judgment, that establishes a proper ground for an *in personam* claim by

> Relfo under the law of unjust enrichment against Bhimji Varsani for repayment of a sum equivalent to the extent of his enrichment, namely the amount of the Intertrade payment. If Relfo had paid those monies to Bhimji Varsani by mistake it would have had a right to restitution of them. The position can in my view be no different where the matters which have affected Relfo's consent to the transfer of value from itself to Bhimji Varsani involve instead a breach of fiduciary duty and of authority by its director and controller, Mr Gorecia, acting to perpetrate a fraud on the company.
>
> 89. Liability in unjust enrichment is 'strict', in the sense that Lord Nicholls uses that term. It does not depend upon knowledge of the recipient that the receipt is improper in some way, so as to affect his conscience, unlike liability in equity for knowing receipt (and, accordingly, liability under the law of unjust enrichment may not carry the full range of obligations which might arise in relation to a person found liable in equity to account for the property on the grounds of knowing receipt, including perhaps an obligation to keep funds separate and unmixed and to account for their use as referred to in *Sinclair Investments*). The law of unjust enrichment also carries with it its own framework of legal defences."

159. In my judgment, the underlying reasoning of Sales J in the *Relfo Limited* case is applicable here and (with respect) is correct. Mr Read received a benefit from Zenith to which he was not entitled and did so because Mr Keates acted in breach of fiduciary duty to Zenith by causing it to confer the benefit. It is immaterial whether or not Mr Read knew that he was receiving a benefit to which he was not entitled: liability to make restitution on the grounds of unjust enrichment does not depend on such knowledge. In fact, however, he knew this very well, as his answers at the disciplinary hearings on 11 April and 1 May 2018 make clear. At trial, by contrast, Mr Read maintained the stance that, as others at Uniserve UK knew that he was using company cars and the cost of them was reflected in documents produced by Mr Newnes, his use of the cars was not wrongful but entirely proper. It may be that Mr Southern knew of the arrangement and had received a similar deal, but I am quite satisfied that Mr Read knew that he was being given a benefit to which he was not entitled in addition to his £9,600 p.a. car allowance.

160. Mr Read's knowledge of the wrongfulness of his receipt of the benefit, and thus of Mr Keates' action in conferring it, is relevant to the alternative way in which Zenith puts its claim. The benefit enjoyed by Mr Read (namely, the use of the cars) represented the traceable proceeds of Zenith's moneys (namely, what it paid for the provision of the cars), which were misapplied by reason of Mr Keates' breach of fiduciary duty to Zenith.

161. At trial Mr Read raised a particular defence to the Read Claim, though one that was not found in the statements of case: that Zenith had not, in fact, suffered any loss in respect of the provision to him of company cars, because the costs were recovered from Homebase under an "open book" agreement. Mr Read relied on a witness statement from Mr Justin Carl Winrow, a friend of his who worked for Uniserve UK as an

Operations Network Manager from April 2016 and for Zenith as a General Manager from early 2018. Mr Winrow's statement was read in evidence; he had not been asked to attend for cross-examination. In paragraph 7 of the statement he said:

> "the vehicle … element of the structured deal was regularly visible through budgeting and business profitability work I was involve[d] in[,] for example the monthly reconciliation against the Homebase account where the car was accounted for."

162. I do not accept this defence. First, it is a matter that ought to have been pleaded, especially since Mr Read was represented by lawyers when his defence was filed and his witness statements served. Second, Mr Winrow's fleeting mention of the Homebase account does not provide an adequate basis for a finding that the costs of Mr Read's cars were either charged for or recovered under the Homebase "open book" contract. Third, I do not find the claim that they were so charged for or recovered to be inherently very plausible: the Uniserve Group provides a great deal of warehousing services to numerous customers, and no convincing reason has been shown for attributing the cost of Mr Read's cars to the Homebase contract. Fourth, there is no documentation to show that the costs of Mr Read's cars were charged to and recovered from Homebase. It is known that a claim was intimated against Homebase for repudiatory breach of its "open book" contract and that a confidential settlement agreement was reached. That settlement agreement has not been disclosed. However, in order to ascertain the merits of the unpleaded defence it would be necessary to examine not the settlement agreement but the "open book" that laid bare the basis of charging. In circumstances where this defence has not been pleaded and does not appear to have much apparent merit and where no request or application for the necessary disclosure has ever been made, I am not inclined to order further disclosure. Fifth, in any event, the letter of intent with Homebase was signed in January 2017, but Mr Read's use of a company car had commenced in January 2016. Therefore the defence raised in the course of the trial could only relate to a proportion of the claim. Sixth, Mr Liddell did not accept that the costs had been recovered.

163. In respect both of unjust enrichment and knowing receipt, I consider that the amount of Mr Read's liability does not properly include the £4,400 paid by Zenith to obtain early cancellation of the leasing agreement in respect of the Audi Q7 vehicle. That payment represents a loss to Zenith, but I do not consider that it represents a receipt by or an enrichment of Mr Read. The amount of his liability is therefore £34,912.42.

The Main Claim

164. The focus of the Main Claim is on allegations that, from October 2015 when he transferred his shareholding in Zenith to Uniserve UK until May 2018 when he was dismissed from his employment, Mr Keates acted in breach of his contract of employment with Zenith and in breach of the fiduciary duties that he owed to each of the claimants.

165. I have found the Main Claim to be both overblown and unwieldy. Its nature owes much, I think, to Mr Liddell's determination—clearly expressed in the course of the disciplinary proceedings—to come down as hard as he could on everyone who was

involved in wrongdoing against his companies. This has resulted in too many allegations being made.

166. The claimants identify three "strands" to the Main Claim (cf. the closing submissions, paragraph 12):

1) That Mr Keates acted to exploit biomass business opportunities, using Zenith's staff and its assets, as part of a conspiracy involving Mr Read, Mr Bundock, Biosol and the Spring Companies. This strand has a factual connection to the Biosol Claim, though it raises different issues.

2) That Mr Keates misused and misappropriated Zenith's assets for the mutual benefit of himself and others, when acting in concert with other defendants. This strand involves:

a) In respect of Mr Read, his use of company cars (which overlaps with the Read Claim) and his attendance at a trip to Hong Kong;

b) In respect of Ms Horsley, her receipt of illegitimate expenses, her issue of illegitimate fuel cards to herself and third parties, and her making of illegitimate payments, in particular to Mr Claridge;

c) In respect of Mr Claridge, his receipt of illegitimate payments and various benefits that were funded by the claimants.

3) That Mr Keates misused and misappropriated the claimants' assets for his own personal gain.

167. For ease of exposition I shall add a further strand to deal with matters that the claimants identify as losses consequential on the first strand, namely:

1A) Loss of profits said to have been caused to the claimants by reason of Mr Keates deliberately disregarding his duties to them or being diverted from performance of his duties by "frolics of his own".

168. I shall discuss these strands and their ramifications in turn. By way of preamble, however, I shall first set out some relevant law.

Relevant law

Section 281 of the Insolvency Act 1986

169. So far as material, section 281 of the Insolvency Act 1986 provides:

> "(1) Subject as follows, where a bankrupt is discharged, the discharge releases him from all the bankruptcy debts …
>
> …
>
> (3) Discharge does not release the bankrupt from any bankruptcy debt which he incurred in respect of, or forbearance in respect of which was secured by means of,

> any fraud or fraudulent breach of trust to which he was a party."

170. In *JSC BM Bank v Kekhman* [2018] EWHC 791 (Comm), at [487]-[488], Bryan J rejected the submission that in section 281(3) "fraud" meant only the tort of deceit and continued:

> "I consider that the exception extends to any debts of the bankrupt resulting from his actual dishonesty. In this regard I agree with the analysis of HHJ Simon Barker QC in *Templeton Insurance Ltd v Brunswick* [2012] EWHC 1522(Ch), and what was stated by him at paragraph [55]:
>
> > 'In my judgment, a "fraudulent breach of contract" or a "fraudulent breach of fiduciary duty" is as capable of coming within the meaning of the word "fraud" at s. 281(3) as is the tort of deceit. The purpose of s.281(3) as a qualification to s. 281(1) is to prevent a person from using the process of bankruptcy or invoking his bankruptcy and discharge therefrom as a medium for becoming free from debts and liabilities resulting from his actual dishonesty. In other words, s. 281(3) is an anti-avoidance and preservative provision aimed at continuing the rights of a creditor who has been defrauded by the bankrupt. Thus, "fraud" as the gateway to the application of s. 281(3) and a route through the barrier imposed by s. 281(1) is not satisfied by establishing "fraud" in the equity sense ("against conscience" or "unconscionable"). To pass through the gateway and remain on the road to recourse against the discharged bankrupt, a creditor must prove "fraud" in the common law sense; this is not to be understood as restricting access only to bankruptcy debts founded in the tort of deceit, but rather as a reference to debts tainted by actual dishonesty.'"

171. The claimants rely on section 281(3) of the 1986 Act as the ground on which they are entitled to judgment against Mr Keates despite his discharge from bankruptcy in 2020.

Unlawful means conspiracy

172. Unlawful means conspiracy is committed "where two or more persons combine and take action which is unlawful in itself with the intention of causing damage to a third party who does incur the intended damage. It is not necessary for the injured party to prove that causing him damage was the main or predominant purpose of the combination, but that purpose must be part of the combiners' intentions." See *Clerk & Lindsell on Torts*, 23rd edition at para 23-105; cited with approval from an earlier edition by Supperstone J in *Baxendale-Walker v Middleton* [2011] EWHC 998 at [60]. "[K]nowledge of the unlawfulness of the means employed is not required for unlawful means conspiracy": *Racing Partnership Ltd v Done Bros Ltd* [2020] EWCA Civ 1300, [2021] Ch 233, *per* Arnold LJ at [139]; see also [140]-[144]; and, in agreement on this point, *per* Phillips LJ at [171].

173. Provided that a defendant is party to the combination, it is not a requirement of his liability that he be the one who takes the unlawful action: *Barclay Pharmaceuticals Ltd v Waypharm AP* [2012] EWHC 306 (Comm), *per* Gloster J at [222].

174. In *Kuwait Oil Tanker Co SAK v Al Bader* [2000] EWCA Civ 160, [2000] 2 All ER (Comm) 271, the Court of Appeal (Nourse, Potter and Clarke LJJ) said:

> "111. A further feature of the tort of conspiracy, which is also found in criminal conspiracies, is that, as the judge pointed out (at p 124), it is not necessary to show that there is anything in the nature of an express agreement, whether formal or informal. It is sufficient if two or more persons combine with a common intention, or, in other words, that they deliberately combine, albeit tacitly, to achieve a common end. Although civil and criminal conspiracies have important differences, we agree with the judge that the following passage from the judgment of the Court of Appeal Criminal Division delivered by O'Connor LJ in *R v Siracusa* (1990) 90 Cr App R 340 at 349 is of assistance in this context:
>
> > 'Secondly, the origins of all conspiracies are concealed and it is usually quite impossible to establish when or where the initial agreement was made, or when or where other conspirators were recruited. The very existence of the agreement can only be inferred from overt acts. Participation in a conspiracy is infinitely variable: it can be active or passive. If the majority shareholder and director of a company consents to the company being used for drug smuggling carried out in the company's name by a fellow director and minority shareholder, he is guilty of conspiracy. Consent, that is agreement or adherence to the agreement, can be inferred if it is proved that he knew what was going on and the intention to participate in the furtherance of the criminal purpose is also established by his failure to stop the unlawful activity.'
>
> Thus it is not necessary for the conspirators all to join the conspiracy at the same time, but we agree with the judge that the parties to it must be sufficiently aware of the surrounding circumstances and share the same object for it properly to be said that they were acting in concert at the time of the acts complained of. In a criminal case juries are often asked to decide whether the alleged conspirators were 'in it together'. That may be a helpful question to ask, but we agree with Mr Brodie that it should not be used as a method of avoiding detailed consideration of the acts which are said to have been done in pursuance of the conspiracy.
>
> 112. In most cases it will be necessary to scrutinise the acts relied upon in order to see what inferences can be drawn as to the existence or otherwise of the alleged conspiracy or combination.

> It will be the rare case in which there will be evidence of the agreement itself. …"

175. For the purposes of the tort of unlawful means conspiracy, the unlawful means may certainly include the commission of a tort against the claimant. The commission of a crime may also be a sufficient unlawful means, "provided that it was objectively directed against the claimant": *Revenue & Customs Commissioners v Total Network SL* [2008] UKHL 19, 2008] 1 AC 1174; *JSC BTA Bank v Ablyazov (No. 14)* [2018] UKSC 19, [2020] AC 727, at [11]. In *Ablyazov (No. 14)* the Supreme Court was not required to consider, and reserved its position on the question, whether for the purposes of the tort of unlawful means conspiracy the unlawful means could include breaches of civil statutory duties, torts actionable at the suit of third parties, or breaches of contract or fiduciary duty. So far as concerns breaches of contract or fiduciary duty, the two areas of concern have been (i) the position where the duties have been owed to a third party rather than to the claimant and (ii) the relationship between, on the one hand, liability for unlawful means conspiracy and, on the other, liability for the tort of inducing breach of contract or accessory liability in equity. The first of these issues does not arise in this case, though the second does. The generality of cases at first instance had accepted that breach of contract and breach of fiduciary duty were sufficient unlawful means, at least when the relevant contractual or fiduciary duties were owed to the claimant: see, for example, *Aerostar Maintenance International Ltd v Wilson* [2010] EWHC 2032 (Ch) at [170]-[172]. The decision of the Court of Appeal in the *Racing Partnership* case, where the relevant unlawful means involved breach of a contract with a third party rather than with the claimant, must be taken to have established for the time being that breach of contract is a sufficient unlawful means. In the circumstances the position must be regarded as the same in respect of breach of fiduciary duty.

176. Unlawful means conspiracy is a tort of intention. The requisite intention is that the defendants, directing their unlawful conduct towards the claimant, should have known in the circumstances that injury to the claimant would ensue. See *Ablyazov (No. 14)* at [13]-[14], referring to the *Total Networks* case and to the judgment of the Supreme Court of Canada in *Canada Cement LaFarge Ltd v British Columbia Lightweight Aggregate Ltd* [1983] 1 SCR 452.

Fiduciary duties

177. In the course of his well-known discussion of the nature of fiduciary duties in *Bristol and West Building Society v Mothew* [1998] Ch 1, Millett LJ said at 18:

> "A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations. They

> are the defining characteristics of the fiduciary. As Dr Finn pointed out in his classic work *Fiduciary Obligations* (1977), p. 2, he is not subject to fiduciary obligations because he is a fiduciary; it is because he is subject to them that he is a fiduciary."

178. In *Children's Investment Fund (UK) v Attorney General* [2020] UKSC 33, [2020] 3 WLR 461, Lady Arden at [44] said: "[I]t is generally accepted today that the key principle is that a fiduciary acts for and only for another. He owes essentially the duty of single-minded loyalty to his beneficiary, meaning that he cannot exercise any power so as to benefit himself." She continued:

> "45. So the distinguishing obligation of a fiduciary is that he must act only for the benefit of another in matters covered by his fiduciary duty. That means that he cannot at the same time act for himself."

179. The fiduciary obligations of a director to his company are now largely given statutory force in the Companies Act 2006; the following provisions are relevant for present purposes:

> "172 *Duty to promote the success of the company*
>
> (1) A director of a company must 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 …"
>
> "175 *Duty to avoid conflicts of interest*
>
> (1) A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.
>
> (2) This applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity)."
>
> "176 *Duty not to accept benefits from third parties*
>
> (1) A director of a company must not accept a benefit from a third party conferred by reason of—
>
> (a) his being a director, or
>
> (b) his doing (or not doing) anything as director.
>
> (2) A 'third party' means a person other than the company, an associated body corporate or a person acting on behalf of the company or an associated body corporate.

> (3) Benefits received by a director from a person by whom his services (as a director or otherwise) are provided to the company are not regarded as conferred by a third party.
>
> (4) This duty is not infringed if the acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
>
> (5) Any reference in this section to a conflict of interest includes a conflict of interest and duty and a conflict of duties."

These provisions are to be understood and interpreted in accordance with section 170:

> "170 *Scope and nature of general duties*
>
> (1) The general duties specified in sections 171 to 177 are owed by a director of a company to the company.
>
> …
>
> (3) The general duties are based on certain common law rules and equitable principles as they apply in relation to directors and have effect in place of those rules and principles as regards the duties owed to a company by a director.
>
> (4) The general duties shall be interpreted and applied in the same way as common law rules or equitable principles, and regard shall be had to the corresponding common law rules and equitable principles in interpreting and applying the general duties."

180. In *Towers v Premier Waste Management Limited* [2011] EWCA Civ 923, Mummery LJ, with whom Wilson and Etherton LJJ agreed, referred to these sections of the 2006 Act and said:

> "7. What are the equitable principles and duties that apply to the facts of this case and are available for the interpretation and application of the general statutory duties?
>
> 8. Lord Cranworth LC in *Aberdeen Railway Co v. Blaikie* 1 Macq 461 at 471 explained how potential conflicts of interest are to be avoided by those who are committed as directors to be loyal to the company:
>
> > 'And it is a rule of universal application, that no one, having such duties to discharge, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting, or which possibly may conflict, with the interest of those whom he is bound to protect. So strictly is this principle adhered to, that no question is

> allowed to be raised as to the fairness or unfairness of a contract so entered into.'

9. In *Boulting v Association of Cinematograph, Television and Allied Technicians* [1963] 2 QB 606 at 636 Upjohn LJ said that the principle has nothing to do with establishing that the director is guilty of fraud or corruption. In the case of a company director the principle recognises the primacy of the interests of the company which he is trusted not to betray. Thus a company is entitled, in the words of Upjohn LJ, 'to the undivided loyalty of its directors.' We have been reminded by counsel for the appellant that Upjohn LJ referred to the rule as being a broad and flexible one to be fashioned according to changing circumstances and to be applied with common sense and realistically: see pp 636 and 638. That approach to the formulation and the application of the principle does not, however, undermine the strict nature of the liability enshrined in the principle where it applies. The rationale and the justice of the principle lie in its strict regard for the protection for those interests potentially at risk from a director who does not give his undivided loyalty to the company.

10. Thus a director's liability for disloyalty in office does not depend on proof of fault or proof that a conflict of interest has in fact caused the company loss: *Foster Bryant Surveying Ltd v Bryant* [2007] EWCA Civ 200. A director's potential conflict of interest may arise, for example, in connection with a business opportunity. If a director obtains the opportunity for himself, he will be liable to the company for breach of duty regardless of the fact that he acted in good faith or that the company could not, or would not, take advantage of the opportunity.

11. As explained by Lord Russell of Killowen in *Regal (Hastings) Ltd v Gulliver* [1967] AC 134 at 144 the liability of a fiduciary to account for the profit made by use of his position

> '…in no way depends on fraud, or absence of bona fides; or upon such questions or considerations as whether the profit would or should otherwise have gone to the plaintiff, or whether the profiteer was under a duty to obtain the source of the profit for the plaintiff, or whether he took a risk or acted as he did for the benefit of the plaintiff, or whether the plaintiff has in fact been damaged of benefited by his action. The liability arises from the mere fact of a profit having, in the stated circumstances, been made. The profiteer, however honest and well intentioned, cannot escape the risk of being called upon to account.'

12. Equity's response of strict liability to account for breach of a fiduciary duty is similar whether the liability is triggered by an

> event which breaches the loyalty duty, or the 'no conflict principle', or the 'no profit principle.'"

181. Consistently with this approach, it is immaterial whether or not, if it had been aware of it, the company would have taken the opportunity that was exploited by the director: *Bhullar v Bhullar* [2003] EWCA Civ 424, *per* Jonathan Parker LJ at [41]. That equitable principle is now enacted in section 175(2) of the 2006 Act. In the same case, at [30], Jonathan Parker LJ said that the "only qualification" that was required to Lord Carnworth's formulation of the "no conflict principle" was the one mentioned by Lord Upjohn in *Boardman v Phipps* [1967] 2 AC 46 at 124:

> "The phrase 'possibly may conflict' requires consideration. In my view it means that the reasonable man looking at the relevant facts and circumstances of the particular case would think that there was a real sensible possibility of conflict; not that you could imagine some situation arising which might, in some conceivable possibility in events not contemplated as real sensible possibilities by any reasonable person, result in conflict."

182. The director's duty, now contained in section 172 of the 2006 Act, to act in what he in good faith considers to be the best interests of the company may in certain circumstances require that he disclose to the company actions that he had taken which were themselves in breach of duty to the company: *Item Software (UK) Ltd v Fassihi* [2004] EWCA Civ 1244; cf. *Wey Education Plc v Atkins* [2016] EWHC 1663 (Ch), *per* HHJ David Cooke sitting as a Judge of the High Court, at [144]-[146]. In *The Governor and Company of the Bank of Ireland v Jaffery* [2012] EWHC (Ch), Vos J had to consider the scope of the duties owed by the first defendant, who was formerly a senior executive at the Bank. He said at [301]:

> "The third duty [that is, the duty of the first defendant to disclose his own wrongdoing] is supported by paragraph 65 of the decision of Peter Smith J in *Hanco ATM Systems Limited v. Cashbox ATM Systems Limited* [2007] EWHC 1599 (Ch), where he held that it was clear law that an employee who owes fiduciary duties (whether a director or not) owes a duty, as part of those fiduciary duties, to disclose his own wrongdoing to his employer. The scope and extent of this duty could depend on the precise circumstances, but in the case of a clear commercial conflict of interests, it seems to me to be right to say that such a conflict must be disclosed."

183. In a commercial context, fiduciary duties are largely confined to settled categories of relationship. In *Secretariat Consulting Pte Ltd and others v A Company* [2021] EWCA Civ 6, [2021] 4 WLR 20, Coulson LJ, with whose judgment Males LJ and Carr LJ concurred, said:

> "40. Fiduciary duties normally arise in certain settled categories of relationship, such as between a trustee and a beneficiary, or a solicitor and his client or the agent and his principal. It is exceptional for fiduciary duties to arise other than in those settled

categories: see Leggatt LJ in *Sheikh Al Nehayan v Kent* [2018] EWHC 333 (Comm) at [157]. Whilst fiduciary duties may exist outside such established categories, the task of determining when they do is not straightforward because there is no generally accepted definition of a fiduciary. In the same case at [159], Leggatt LJ said:

> '159. Thus, fiduciary duties typically arise where one person undertakes and is entrusted with authority to manage the property or affairs of another and to make discretionary decisions on behalf of that person. (Such duties may also arise where the responsibility undertaken does not directly involve making decisions but involves the giving of advice in a context, for example that of solicitor and client, where the adviser has a substantial degree of power over the other party's decision-making: see Lionel Smith, "Fiduciary relationships: ensuring the loyal exercise of judgement on behalf of another" (2014) 130 LQR 608.) The essential idea is that a person in such a position is not permitted to use their position for their own private advantage but is required to act unselfishly in what they perceive to be the best interests of their principal. This is the core of the obligation of loyalty which Millett LJ in the *Mothew* case [1998] Ch 1 at 18, described as the "distinguishing obligation of a fiduciary". Loyalty in this context means being guided solely by the interests of the principal and not by any consideration of the fiduciary's own interests. To promote such decision-making, fiduciaries are required to act openly and honestly and must not (without the informed consent of their principal) place themselves in a position where their own interests or their duty to another party may conflict with their duty to pursue the interests of their principal. They are also liable to account for any profit obtained for themselves as a result of their position.'

41. An argument that has arisen in some of the authorities is whether there is a fiduciary relationship because there is a high degree of mutual trust and confidence between the parties. However, Leggatt LJ was at pains to point out at [163] that the existence of trust and confidence is not sufficient by itself to give rise to fiduciary obligations. He went on at [165] to emphasise the particular kind of trust and confidence that was characteristic of a fiduciary relationship. He said it was 'founded on the acceptance by one party of a role which requires exercising judgment and making discretionary decisions on behalf of another and constitutes trust and confidence in the loyalty of the decision-maker to put aside his or her own interests and act solely in the interests of the principal.'

> 42. Although we were referred to a number of other authorities on the question of fiduciary relationships, such as *Glenn v Watson* [2018] EWHC 2016 (Ch) and *Ranson v Customer Systems* [2012] EWCA Civ 841, they did not seem to me to add anything material. I note that this court in *Ranson* at [25] – [26] also stressed the importance of the terms of the contract in identifying whether there is a fiduciary relationship, a point picked up by the learned editors of *Jackson and Powell on Professional Liability*, 8th Edition, at paragraph 2-146."

184. In particular, an employee who is not a company director in the proper sense will commonly owe fiduciary duties to the company if he is entrusted with the company's property and relied upon to deal with it for the company's benefit: *Reading v The King* [1949] 2 KB 232 at 236.

Dishonest assistance

185. The three requirements for liability in equity for dishonest assistance are (i) a breach of trust or fiduciary duty, (ii) assistance by the accessory in the breach, and (iii) dishonesty in the assistance on the part of the accessory. In this context, acting dishonestly "means simply not acting as an honest person would in the circumstances. This is an objective standard. … Thus for the most part dishonesty is to be equated with conscious impropriety": *Royal Brunei Airlines v Tan* [1995] AC 378 at 389. The defendant has the requisite state of mind if he deliberately closes his eyes and ears, or deliberately refrains from asking questions, lest he learn something he would rather not know, and then proceeds regardless: *ibid.*; *Otkritie International Investment Management Ltd v Uromov* [2014] EWHC 191 (Comm) at [78]. It is not necessary for accessory liability that the defendant knew the details of the primary wrongdoing; it suffices that he knows that he is assisting the primary wrongdoer to do something he is not entitled to do: *Otkritie* at [77].

Knowing receipt

186. A defendant will be liable in equity for knowing receipt where the following conditions are satisfied: (i) there has been a disposal of the claimant's assets in breach of fiduciary duty; (ii) the defendant has beneficially ("for his own use and benefit") received either those assets or their traceable proceeds; (iii) the defendant's state of knowledge regarding the assets received is such as to make it unconscionable for him to retain the benefit of the receipt. See *El Ajou v Dollar Land Holdings Plc* [1994] 2 All ER 685; *Bank of Credit and Commerce International (Overseas) Ltd v Akindele* [2001] Ch 437.

Contractual duties

187. The primary source of an employee's duties to his employer is the contract of employment. In addition to the express terms of the contract, the employee is subject to various implied terms. One of these is that the employee will serve the employer with fidelity and in good faith. This is not itself a fiduciary duty. (The starting point for determining whether an employee owes fiduciary duties to the employer is itself the contract of employment.) See *Ranson v Customer Systems Plc* [2012] EWCA Civ 841, [2012] IRLR 769.

188. As to whether an employee has a duty to report his own or another's misconduct, I am content to cite the following passage from the judgment of Lewison LJ, with which Pill and Lloyd LJJ agreed, in *Ranson v Customer Systems Plc* [2012] EWCA Civ 841:

> "45. In *Sybron Corp v Rochem Ltd* [1984] Ch 112 Stephenson LJ said:
>
> > '…there is no general duty to report a fellow-servant's misconduct or breach of contract; *whether there is such a duty depends on the contract and on the terms of employment of the particular servant*. He may be so placed in the hierarchy as to have a duty to report either the misconduct of his superior, … or the misconduct of his inferiors, as in this case.' (Emphasis added)
>
> 46. What goes for the reporting of misconduct of fellow employees must apply with at least equal force to reporting one's own misconduct.
>
> 47. In *University of Nottingham v Fishel* [2000] ICR 1462 the University argued that: '… the employee's duty of loyalty and good faith obliged Dr Fishel to inform the university that he was being paid for his outside work. The argument then is that, had the university been aware of the opportunity to do outside work, it would have sought to do it itself.'
>
> 48. Elias J rejected that argument. He said: 'In my view the premise is wrong. I do not think that as a general principle an employee is bound to inform his employer if and when he is doing outside work in breach of his contract.'
>
> 49. In amplifying his reasons he referred to: '… the well established rule in *Bell v Lever Brothers Ltd* [1932] AC 161 that employees are not obliged to disclose their own past misconduct or breaches of contract.'
>
> …
>
> 54. I would endorse the general principle as stated by Elias J in *Fishel*.
>
> 55. That is not to say that an employee can never have an obligation to disclose his own wrongdoing; but any such obligation must arise out of the terms of his contract of employment. …"

Main Claim: Strand 1: Biomass Business Opportunities

189. This claim relates to what is said to be Mr Keates' conduct in exploiting biomass business opportunities that came to him as a director of Zenith and as a result of the

relationship that he formed with Mr Bundock after Zenith and Biosol had entered into the Biosol Contract. The relevant facts appear from the foregoing narrative. From May 2017 until February 2018 Mr Liddell and Uniserve UK were actively discussing with Mr Davies and Mr Bundock a proposal to produce renewable energy by means of biomass boilers at sites across the country, beginning with Uniserve UK's Paisley site but potentially extending to other sites. However, in mid-July 2017 Mr Keates began to explore the possibility of a similar venture at the Farm and at other sites. By the end of the month he had mentioned that possibility to Mr Bundock, Mr Davies, Mr Read and Ms Coury, and the proposal was being described as a venture between Spring Logistics (which, as I have explained, I find to have meant at the initial stage Mr Keates, Mr Bundock and Mr Davies) and DT & CI Burrows. All the individuals I have mentioned well knew, as I find, that Mr Keates was engaging in this venture on his own behalf and not on behalf of Zenith or the Uniserve Group. By October 2017, when Spring Logistics had become a limited company and Spring Renewables was incorporated as a quasi-partnership among Mr Davies, Mr Bundock and Mr Keates, a distinct though related venture at Resolven was underway. No business venture involving Mr Keates was ever brought to Mr Liddell's attention.

Mr Keates

190. Mr Keates was a director of each of the claimant companies. As such, he owed to them the statutory and fiduciary duties set out above. In summary, he owed to each company: a duty to act in good faith in the best interests of the company; a duty to avoid a situation where there was a real possibility that his interests might conflict with those of the company; a duty not to act for his own benefit or obtain a personal profit without the informed consent of the company; and a duty not to misapply the assets of the company, to which he stood in a position analogous to that of a trustee.

191. Mr Keates was also employed by Zenith. His written contract of employment dated 14 October 2015 contained the following provisions in clause 3:

> "You undertake to work to the best of your ability and to use your best endeavours to promote, develop and extend the Employer's business and interests and that of any other company in the Group.
>
> The Employer requires the highest standards from you in your performance at work and your general conduct and in particular you must:
>
> • be diligent, honest and ethical in the performance of your duties and during working hours devote the whole of your time, attention and abilities to them;
>
> • do your best to promote the interests of the Employer and any other company in the Group;
>
> • render your services in a professional and competent manner in willing co-operation with others and at all times conform to the reasonable directions of your supervisor;

> …
>
> You must not, without first obtaining the prior written consent of your line manager, take up any other employment or hold any office or directly or indirectly be interested or involved in any capacity in any other business, organisation, entity or occupation whilst working for the Employer.
>
> …
>
> You must notify your line manager immediately of:
>
> …
>
> • any plan you have which could reasonably be considered to relate to activity which is in breach of a duty or lawful obligation to the Employer; or
>
> • any circumstances where there is a reasonable suspicion that a colleague is materially breaching a duty or lawful obligation owed to the Employer or any other company in the Group including any of the obligations which you have which are referred to in this agreement), or is not observing rules and/or procedures for the proper conduct of the Employer's business; or
>
> • any competitor (or its employees, directors or officers) approaching you or any colleague where there is any influence to breach employment obligations owed to the Employer."

192. Zenith alleges that the contract of employment also contained a number of implied terms. I need mention only two. First, in my judgment the contract contained the implied term that Mr Keates would serve Zenith with fidelity and good faith. Second, it is alleged that, having regard to the express terms of the contract, to Mr Keates' status as managing director of Zenith, and to the fiduciary duties that he owed to Zenith, the contract contained an implied term that Mr Keates would disclose to Zenith and Uniserve UK (that is, to Mr Liddell, who was his line manager) any actual or threatened wrongdoing, misconduct or breach of duty by himself or any colleague. It seems to me that this obligation is properly to be considered an incident of the express terms of the contract; however, if that were wrong, then I should accept that such an obligation was implicit in the contract.

Mr Read

193. Mr Read's contract of employment dated 19 January 2016 was with Uniserve UK rather than with Zenith. It contained express terms identical to those in the contract of Mr Keates as quoted above.

194. The contract contained an implied term that Mr Read would serve Uniserve UK with fidelity and good faith.

195. Uniserve UK also contends that Mr Read's contract contained implied terms (i) that he would disclose to Uniserve UK and to Zenith all that he knew about any actual or threatened wrongdoing, misconduct or breach of duty by himself or a fellow employee and (ii) that he would disclose to Uniserve UK and to Zenith all that he knew about matters relevant to the tasks entrusted to him, even if such disclosure would reveal breaches of his own individual duties or obligations. Again, I would consider these obligations to be properly incidents of the express terms of the contract. If that were wrong, in particular in the case of an obligation to disclose engagement by Mr Read personally in an activity that was in breach of his duties to Uniserve UK, I should consider that there was an implied obligation to make such disclosure.

Miss Horsley

196. It does not appear that Miss Horsley had a written contract of employment with Zenith. I accept that there was an implied term of her contract of employment that she would serve Zenith with fidelity and in good faith. It was an incident of that obligation that she must not misapply the assets of the company. However, I do not regard it as helpful to attempt to ramify the implied term into other distinct contractual terms, as the re-amended particulars of claim seeks to do; I do not accept that Miss Horsley's contract contained an implied term obliging her to disclose her own or others' wrongdoing; and I do not accept that Miss Horsley's—with respect, fairly lowly—involvement in the financial affairs of the company imposed on her any fiduciary duties.

Mr Newnes

197. Although there are no proceedings against Mr Newnes or his estate, his position is relevant. As a statutory director of Zenith from November 2015 until his death, he owed to Zenith the same fiduciary and statutory duties as did Mr Keates. He also owed implied contractual duties to serve Zenith with fidelity and in good faith and not to misapply the assets of the company. (I am not aware of any written contract of employment for Mr Newnes, though I should think it likely that he had one in substantially similar terms to that of Mr Keates and Mr Read.)

Breaches of duty by Mr Keates and Mr Read

198. Mr Keates' involvement, for his own purposes, in the business opportunities concerning the installation of biomass boilers (the Farm, Tenby and Ammanford, in association with Mr Davies and Mr Bundock) and the operations at Resolven (both on his own account via Spring Logistics and in conjunction with Mr Bundock and Mr Davies, first personally and thereafter in quasi-partnership via Spring Renewables) was in clear breach of his fiduciary and contractual duties to Zenith and his fiduciary duties to Uniserve UK. So too was his failure to inform Mr Liddell of his own wrongdoing and that of Mr Newnes and Mr Read. Mr Newnes' conduct was in breach of his fiduciary duties to Zenith, because in acting for the Spring businesses and in failing to report Mr Keates' activities he did not act in good faith in the best interests of the company and because (as appears more clearly below) he misapplied the assets of the company.

199. Mr Read's conduct was a breach of his contractual duties towards Uniserve UK, because from at least July 2017 he knew that Mr Keates was pursuing a venture of his own and was using both him and Mr Newnes to work in furtherance of it, yet he continued to work on behalf of Mr Keates and failed to inform Mr Liddell of what he

knew. He acted in this way because, although he had no direct and immediate stake in the biomass projects, he thought that they would provide him with a good career opportunity in the future.

Conspiracy

200. The claimants allege that Mr Keates, Mr Read, Mr Bundock, Biosol, Spring Logistics and Spring Renewables (and Mr Davies, against whom all claims have been settled) were party to an unlawful means conspiracy.

201. The unlawful means are said to be (i) the breaches of contract and of fiduciary duty by Mr Keates, (ii) the breaches of contract by Mr Read, and (iii) Mr Newnes' breach of fiduciary duty by assisting Mr Keates in the pursuit of the biomass opportunities. All of those matters are capable of being unlawful means for the purpose of the tort of conspiracy and all are established on the evidence.

202. The claimants contend that the combination is to be inferred from the parties' conduct. The individuals involved knew that the pursuit of the biomass business opportunities was a course of action that would and did involve the diversion of the time and efforts of Mr Keates, Mr Read and Mr Newnes from their functions within the Uniserve Group. I accept this contention. Mr Read and Mr Bundock and, of course, Mr Keates knew very well that the biomass business opportunities were not being pursued for the benefit of the Uniserve Group or with Mr Liddell's knowledge. Their knowledge is to be attributed also to Biosol, Spring Logistics and Spring Renewables, which were the corporate entities through which the opportunities were exploited. These defendants must necessarily have known that the course of conduct that they were pursuing involved breaches of the obligations of Mr Keates, Mr Newnes and Mr Read to the Uniserve companies as employees or directors of them. It is impossible that they believed that what Mr Keates, Mr Read and Mr Newnes were doing was a legitimate part of their business activities for Zenith or the Uniserve Group.

203. As for the requisite intention to harm the claimants, it is not suggested that the defendants were motivated by a desire to harm them. However, it is submitted and I accept that the defendants to the conspiracy claim intended to cause loss to Zenith. In circumstances where their course of action involved the use of the time and efforts of Mr Keates, Mr Read and Mr Newnes, each of whom was actually or ostensibly working for and employed by Zenith (Mr Read always used a Zenith email address), it must have been obvious to the defendants that loss to Zenith was likely to ensue: quite apart from any observable consequence as regards Zenith's profit and loss account, the diversion of the energies and efforts of senior employees was liable to result in a loss to the company.

204. As to whether quantifiable loss has in fact been caused by the combination, see further below.

Dishonest Assistance

205. Zenith and Uniserve UK allege that Mr Read, Mr Bundock and Biosol have dishonestly assisted Mr Keates in his breach of fiduciary duty to them. As has already been explained, it suffices for this purpose that that the accessory knows that he is assisting the primary wrongdoer to do something he is not entitled to do, even if the specific

nature of the primary wrongdoing is not known. Mr Read and Mr Bundock clearly had this knowledge in respect of the diversion of Mr Keates' time and energies away from the business of his employer. In my judgment, their conduct was equally clearly dishonest, in accordance with the objective test explained in *Royal Brunei Airlines v Tan.* Indeed, both men appreciated that their conduct was dishonest; this is evidenced by their failure to say anything about the biomass business opportunities to Mr Liddell and by their untruthful evidence given in these proceedings to try to extricate themselves from liability. The questions what if any loss has been suffered and what if any remedy ought to be granted are addressed below.

Misuse of claimants' assets in connection with the pursuit of biomass opportunities

206. The basic allegation here is that, in pursuing the biomass business ventures and the operations of the Spring Companies, and in breach of his contractual and fiduciary duties to the claimants, Mr Keates made wrongful use of the claimants' money and assets. I shall deal with the specific allegations of misuse and misappropriation one by one.

207. Agco Payment

1) In August 2017 Mr Keates obtained finance for Spring Logistics from Agco Finance to fund the acquisition of a farm tractor. It appears that the tractor was used at the Farm.

2) On 25 August 2017 Mr Newnes caused Zenith to make to Agco Finance a payment of £87,840, with payment reference "Spring", in respect of this finance. Further payments were made by Zenith to Agco Finance thereafter. Spring Logistics has reimbursed Zenith for one of its payments. However, it has not reimbursed it for the initial payment of £87,840 or a subsequent payment of £12,605.96.

3) Mr Keates' defence confirms that the tractor was acquired for Spring Logistics on hire purchase. It says that it was intended that Spring Logistics would make the payments to Agco Finance (or reimburse Zenith if, as happened, Zenith made the payments) and that matters were left unresolved after Mr Newnes died and Mr Keates was suspended. "The tractor was sold in 2018 and all outstanding finance was repaid by the ninth defendant, Spring Logistics (UK) Ltd."

4) Accordingly Spring Logistics is liable to pay to Zenith the full amount of the payments not so far reimbursed, namely £100,445.96.

5) The reamended particulars of claim aver: "It is to be inferred that these payments were made with the knowledge of Mr Keates … for the benefit of Spring Logistics and/or the Spring Companies. The payments did not relate to the business of Zenith and were a misapplication of the assets of the company and a dishonest and fraudulent breach of Mr Keates' contractual and/or fiduciary duties." There is no direct evidence that Mr Keates knew of and approved the payments from Zenith to Agco, but it is overwhelmingly probable that he did so, as (a) he was managing director of Zenith, (b) he was sole shareholder in and a director of Spring Logistics, (c) he was the person who

initiated the involvement with the Farm, (d) he made the application to Agco Finance for finance for the tractor, and (e) he worked closely with Mr Newnes and had involved him in the affairs of Spring Logistics. Even if Mr Keates intended that Spring Logistics would reimburse Zenith for the payments it made, it was plainly dishonest of him and Mr Newnes to procure payments from Zenith for a venture in which it was not involved. Accordingly I consider that Mr Keates has personal liability for the sum of £100,445.96 on the basis that it was a payment made by Zenith by reason of his breach of contract and breach of fiduciary duty; and I find that this is a liability resulting from his actual dishonesty and is accordingly preserved by section 281(3) of the Insolvency Act 1986.

208. Payment to DT & CI Burrows

1) On 13 March 2018 Mr Keates instructed Ms Catherine Watkins of Zenith's Accounts Department to make a payment of £20,000 to DT & CI Burrows and to classify it as a payment on account. This she did.

2) Mr Keates' defence admits the payment. It continues:

> "It was not in connection with any personal interest of the First Defendant but because the First Defendant had been made aware that Mr Newnes had. for a period prior to his death been assisting DT and Cl Burrows with their accounts. During the course of such assistance it appeared that he had arranged for a payment to be made to Zenith by DT and Cl Burrows in the sum of £20,000 which the First Defendant could not reconcile and which appeared to have been paid in error or wrongly. It seemed that the sum was due to be repaid to DT and Cl Burrows and accordingly the First Defendant instructed such repayment to be made on the basis that it Zenith should not have received the sum of £20,000."

3) There is no evidence to support Mr Keates' contention. Further, as Mr Duggan and Mr Goodfellow point out, the figure of £20,000 is the same as the figure mentioned in Mr Read's email of 31 July 2017 as being the annual payment to be made by Spring Logistics to DT & CI Burrows for the management of the facility at the Farm.

4) In the circumstances, I find that the payment was a dishonest misapplication of Zenith's moneys in breach of Mr Keates' contractual and fiduciary duties.

209. Low Loader Trailer

1) On 7 September 2017 Zenith entered into a 5-year lease of a low loader trailer at a rental of £798.10 per month. The lease was signed by Mr Southern, but I find that he was instructed to sign it by Mr Keates, who told him that it was required to move "combines" (combine harvesters), and that Mr Keates had arranged the lease with the finance company (the owner) before Mr Southern signed it. The low loader was at the Farm when it was collected from there by

Kemball on 15 March 2018. Mr Southern's evidence was that Zenith and Kemball used the low loader on only about a dozen occasions, for the purpose of moving tractors. In his witness statement, he asserted that Mr Keates caused Zenith to procure the low loader trailer so that it could be used to transport a wood chipping machine to any location where Biosol would be cutting down trees. In his oral evidence Mr Southern confirmed that he knew nothing about the purpose for which the low loader was required, save what he was told by Mr Keates. Although the low loader trailer was returned to the owner in September 2018, the evidence is that early termination of the lease is not permitted and that Zenith has continued to incur the charges under the lease, which will amount to a total of £9,577.20.

2) Mr Keates' defence averred that the low loader trailer was ordered by another director of Zenith (presumably, Mr Southern) for the purposes of the claimants' business and was used by all of the claimants. It was used once by Spring Logistics. It was not based at the Farm; it was merely taken there to be collected by the claimants.

3) I have already found, on the balance of probabilities, that this trailer was not acquired for or used in connection with the Biosol Contract. It seems to me to be likely, also, that Mr Keates wrongly led both Mr Southern and Mr Boardman (witness statement, paragraph 11(vi)) to believe that the low loader was being used for the Biosol Contract and that he did so in order to conceal the true nature of its use. I am not clear what that use was: it was probably mainly at the Farm and was for the direct or indirect benefit of Mr Keates. I find that the acquisition and subsequent use of the low loader trailer was a deliberate and dishonest misuse of Zenith's money and assets and breach of his fiduciary duties.

4) Some allowance ought to be given for the use that was made of the trailer by the claimants. On the basis of the very limited evidence to assist, I consider that the appropriate credit is the equivalent of twelve days of the charge-out fee as invoiced by Zenith to Biosol.

210. <u>Diesel</u>

1) The complaint is that on 10 October 2017 Mr Keates instructed Kemball to deliver 5,000 litres of red diesel to the Farm, ostensibly for Zenith, although the delivery did not relate to the business of Zenith. The cost of the diesel, £2,492 exclusive of VAT, was reimbursed to Kemball by Zenith.

2) Mr Keates' defence stated that Spring Logistics intended to reimburse the claimants for the cost of the diesel and that indeed £2,150.73 was paid by Spring Logistics to Zenith on 16 November 2017, "which was believed to be in relation to the repayment of this item." No documentary evidence has been provided in support of this assertion. The payment and receipt do not appear on the disclosed bank statements of Spring Logistics and Zenith. Mr Stone's evidence was that Zenith has no record of such a payment. I find that the payment by the claimants for the diesel was a dishonest appropriation of their moneys by Mr Keates, in breach of his contractual and fiduciary duties to Zenith and Kemball. Mr Keates is liable to Zenith for the cost of the diesel. As the misappropriation was dishonest, the liability survives his discharge from bankruptcy.

3) The defence of the Spring Companies adopts the contents of Mr Keates' defence on this matter. Accordingly Spring Logistics accepts that the diesel was obtained for it and ought to be reimbursed by it. Therefore it is liable to pay Zenith £2,492.

211. Taxi Fares

1) Zenith complains that from 11 December 2016 until 4 April 2018 Mr Keates used his corporate credit card to pay for taxi fares "to and from Sandridgebury Farm (or locations within the nearby vicinity)" at a cost of £853.51. Zenith says that these journeys were unrelated to Uniserve business and that it is to be inferred that they were connected with the biomass business opportunities he was exploring with Mr Davies and Mr Bundock. There is a detailed breakdown of the journeys in Annex 4 to the re-amended particulars of claim; that is useful, in showing the addresses where the journeys commenced and ended, but I shall not mention its detail here.

2) I do not find that this allegation has been proved. Mr Keates' defence provided an explanation of the expenses in terms of the use of his home, near the Farm, and a nearby public house by directors, employees and associates of the claimants, who would also use his Uber account. The claimants dispute this and observe that it is unsupported by evidence. However, the claimants' own case on this point seems to me to rest on simple assertion that the journeys were illegitimate and has something of the air of trawling for additional complaints to lay at Mr Keates' door. The schedule of journeys in Annex 4 contains 29 entries. Of these, ten pre-date the meeting between Mr Keates and Mr Bundock (1 April 2017) and a further eight pre-date Mr Keates' meeting with Mr Jamie Burrows at the Farm on 23 July 2017. This undermines the credibility of the schedule as a record of journeys made in furtherance of a conspiracy in respect of the biomass projects. Although it remains possible that Mr Keates was making improper use of taxis for his own purposes, I do not find this to have been proved.

212. IT Services

1) On 6 March 2018 Zenith paid £3,376 to Qwerk Digital Limited ("Qwerk"). It says that this payment was for work done by Qwerk on the new website of Spring Renewables (though Qwerk's invoice was addressed to Spring Logistics) and that it was arranged and authorised by Mr Keates and Mr Newnes. It points to email exchanges between those two men in February 2018, after which on 5 March 2018 Mr Newnes wrote to Mr Keates, "I was going to suggest paying from zenith & sorting once spring cashflow sorted".

2) Mr Keates' defence to this allegation adopts the contents of the defence of Spring Logistics and Spring Renewables, which states:

> "It appears that on the 6.3.18 Zenith made a payment to Qwerk of £3376 which appears to be in relation to services provided to the tenth defendant. Because of Mr Newnes' untimely death some 4 days after such payment, the ninth and tenth defendants have received no information from Zenith in relation to such

> payment. The ninth and tenth defendants seek evidence of such payment in order to verify the position and will take action accordingly once the information is provided."

3) No payment has been received from Mr Keates, Spring Logistics or Spring Renewables, although disclosure has been given in respect of the payment made by Zenith.

4) As Zenith's payment was for services provided by Qwerk to Spring Renewables, that company is liable to reimburse Zenith in the sum of £3,376. I am not satisfied that the primary liability for the debt lay with Spring Logistics.

5) I find that the payment by Zenith was made with the knowledge and approval of Mr Keates and constituted a breach of his contractual and fiduciary duties to Zenith. Further, it was plainly dishonest to use Zenith to make payment for liabilities of Mr Keates' personal business ventures, even if (as may perhaps have been the case) it was intended to make repayment in due course. Therefore Mr Keates is also liable for the sum of £3,376 and his liability survives his discharge from bankruptcy.

213. The claimants seek to recover the moneys set out above (paragraphs 206 to 212) from Mr Read, Mr Bundock and Biosol on the basis that, although it is not suggested that the misappropriation of assets by Mr Keates was a matter of agreement with them, the losses were occasioned by (1) their participation in an unlawful means conspiracy with Mr Keates involving him acting in breach of his fiduciary duties or (2) their dishonest assistance in respect of the misappropriations. I reject this claim. The misappropriations were not unlawful means that these defendants combined or conspired to use, to the harm of the claimants, to further their ends. They were quite separate wrongs committed by Mr Keates, without (as I find) the combination or the assistance of these defendants. Mr Duggan and Mr Goodfellow relied on the undoubted principles that damages are "at large" in a conspiracy claim and that, in claims for dishonest assistance and conspiracy, it is inappropriate for the court to attempt to assess the precise causative significance of a particular defendant's involvement. In the latter respect they relied on the judgment of the Court of Appeal in *Grupo Torras SA v Al-Sabah* [2001] CLC 221 at [119], approving the comment of the trial judge (Mance J) that

> "the requirement of dishonest assistance relates not to any loss or damage which may be suffered but to the breach of trust or fiduciary duty. The relevant enquiry is . . . what loss or damage resulted from the breach of trust or fiduciary duty which has been dishonestly assisted. In this context, as in conspiracy, it is inappropriate to become involved in attempts to assess the precise causative significance of the dishonest assistance in respect of either the breach of trust or fiduciary duty or the resulting loss.'"

These principles and that dictum are undoubted, but in my judgment they are not in point. The effect of the claimants' case is that, if A and B conspire with C to harm D by the use of unlawful means (namely, C's breach of fiduciary duty to D by joining with them in a business competing with D's business), A and B are liable for damages

in conspiracy and for equitable compensation for dishonest assistance for any further breach of fiduciary duty committed by C to enable him to join with them in the business, even if they knew nothing of it and did nothing to assist it. So, for example, if A, B and C are each to contribute capital to their new venture, A and B will be liable in conspiracy and in dishonest assistance if C makes his contribution by stealing from D, even though they knew nothing about such theft and never contemplated it. The claimants produced no authority in support of such a startling contention, nor do I know of any. In the present case the misappropriations were not the unlawful means agreed on in the combination, and Mr Read, Mr Bundock and Biosol did not assist in the misappropriations, far less do so dishonestly.

Main Claim: Strand 1A: Loss of profits

214. I have chosen to deal here, as a discrete part of the claim, with matters that are advanced by the claimants under the heading of consequential loss. It is the largest, but also the least acceptable, part of the claims advanced in these proceedings.

215. The claimants contend that, as a consequence of Mr Keates' "deliberate failure to devote appropriate time and attention towards [their] business" (schedule of loss, paragraph 14), they have suffered loss of profits in excess of £1.9 million, as set out in the expert report dated 25 September 2020 of Mr Andrew Conti, a chartered accountant. They claim to recover these lost profits from Mr Keates on the basis of his "deliberate breaches of duty" and from Mr Read, Mr Bundock, Biosol, Spring Logistics and Spring Renewables "as losses caused by their participation in an unlawful means conspiracy regarding the Biomass Business and/or the Proposed Biomass Development and the causal impact which this had on Mr Keates' failure to comply with his duties."

216. The particular instances of Mr Keates' alleged deliberate failure to devote his attention to the claimants' business are not relied on as causes of action; rather they are said to be consequences of and caused by the unlawful means conspiracy. Thus nothing is said about them in the re-amended particulars of claim; there is simply a plea in paragraph 102 that:

> "As a result of the defendants' wrongdoing described above [that is, all the wrongdoing complained of in the consolidated proceedings], the claimants have suffered loss and damage. Full particulars of loss and damage will be provided by way of a schedule following disclosure and updated before trial, but will be claimed under the following heads:
>
> …
>
> 102.2 Loss of profit to date and continuing hereafter, which would have been generated by each of the claimants, but for the defendants' wrongful conduct, currently estimated in the sum of £1,913,988 in respect of all the claimants. The claimants aver that Mr Keates and Mr Newnes deliberately disregarded their duties to further the interests of the claimants and that this has very

> substantially impacted the profits/losses of the claimants that would otherwise have been achieved."

217. Mr Conti's report is useful, inasmuch as it draws together information provided by the claimants and contains some arithmetic. I do not see that it provides any further assistance in the case; there is no positive component of expert opinion that advances consideration of the issues. I refer to his report for ease of exposition and because the claimants' schedule of loss relies on it for particulars of the damages claimed. Mr Conti was instructed to prepare an expert report on the loss of profits suffered by the claimants "by reason of those of the defendants employed by the claimants engaging in an unlawful means conspiracy" (report, paragraph 1.3). Such losses expressly did not include the specific matters dealt with below under Strand 2 and Strand 3. The assumed basis of the report was the claim set out in the amended particulars of claim, including the allegations of unlawful means conspiracy, breach of contract, breach of fiduciary duty, dishonest assistance and knowing receipt (report, paragraph 2.21). Mr Conti was instructed "that, as a result of the defendants' wrongdoing, the claimants have suffered losses estimated by them to exceed £5,736,251" (report, paragraph 2.22). Having analysed the claimants' historical financial performance, Mr Conti expressed the view that a "top down" approach, by for example applying an appropriate measure of gross profit to the volume of assumed lost sales, would not in the present case "yield an acceptably reliable result" (report, paragraph 4.4). Accordingly, he said that, at the risk of under-estimating the relevant loss of profit, he had adopted a "bottom up" approach:

> "I have sought to identify from the claimants' management specific instances where Mr Keates's failure to devote the appropriate time and attention to the claimants' businesses caused disruption and/or loss and to quantify those as best I can based on the information available to me" (report, paragraph 4.5).

Accordingly, he set out the seven instances of misconduct that are discussed below. It is to be noted that he did so because "the claimants' management" had identified these as instances where Mr Keates' lack of attention to the claimants' business caused loss.

218. This part of the claim is fundamentally misguided. Each of the seven matters relied on is an instance of Mr Keates acting (so it is alleged) negligently: with one possible exception (which is no longer pursued), they are not cases of him deliberately doing something detrimental to the claimants; rather he performed his activities for the claimants in a manner that is said to have been careless on account of him "taking his eye off the ball" (an expression used more than once in the claimants' submissions). This might perhaps have grounded a claim against him for breach of his contractual duty to exercise skill and care, but any such claim would have had to be pleaded and proved in the normal manner and would now be precluded by Mr Keates' subsequent bankruptcy and discharge. His (alleged) negligent breaches of contract have, one would think, nothing to do with the other defendants. The claimants try to get round this by referring to Mr Keates' (alleged) breaches of duty as "deliberate". The two most obvious problems with that are, first, that they were obviously not "deliberate" in any meaningful sense but at most negligent and, second, that they have not been relied on as independent causes of action. The claimants then try to implicate the other defendants by saying that Mr Keates' alleged failures are the consequence of and caused by the unlawful means conspiracy, albeit that they are not relied on as themselves the

unlawful means that they combined to use (and, being instances of alleged negligence, could not possibly be so) and that they have not been pleaded. Even on its face that is untenable, because it seeks to make the other defendants liable for supervening (unpleaded) torts committed by another outwith the scope of the conspiracy and because it mischaracterises Mr Keates' conduct complained of as a deliberate (which here must mean the same as dishonest or fraudulent) breach of duty. But the effort fails for the more basic reason that no factual causative link is established between the conspiracy and any of the matters relied on. Now I turn to the instances relied on.

219. *(1) Provision of warehouse management services to Homebase*

1) This is dealt with in paragraph 93(i) of Mr Liddell's statement and in paragraphs 4.10 to 4.19 of Mr Conti's report. In brief summary, Zenith contracted with Homebase to provide warehouse management services under an "open book" contract. In April 2019 Homebase (so it is said) repudiated the contract. An "open book" contract ought not to have left Zenith with any losses. However, the complaint (unpleaded, as are all these matters) is that Mr Keates failed to finalise a written contract with Homebase and permitted Zenith to take occupation of the warehouse premises before formal leases were executed. This is said to have resulted in loss to Zenith, because it was left with liabilities under the leases after Homebase repudiated the contract. The losses are said to amount to £1,298,050; though this is subject to recovery under an as yet undisclosed settlement agreement reached between Zenith and Homebase.

2) On the basis of the evidence in these proceedings, especially in the absence of pleadings, it is hard to make much sense of this allegation. There is no reason for thinking that the leases were taken on unreasonable terms. The complaint appears to be that, when the leases were taken, the formal contract with Homebase had not been executed. But it is Mr Liddell's own case that Homebase was in repudiatory breach of contract when it walked away in 2019, and a claim (on an unknown basis and for an unknown amount) was compromised in a settlement agreement (on unknown terms).

3) Anyway, the allegation is manifestly contrived. The agreement with Homebase was in late January 2017. The two warehouses were occupied in January and February 2017. The leases were executed in March 2017. The first meeting between Mr Keates and Mr Bundock was on 1 April 2017. The conspiracy did not commence until the summer of 2017. Even as a simple matter of fact, the claimants' case that there was a causal connection between the conspiracy and the Homebase losses is obviously wrong. Mr Liddell's suggestion that, but for the conspiracy, Mr Keates might have remedied the position was both feeble and devoid of meaning, because (a) it rests on saying that, though Mr Keates' original failure had nothing to do with the conspiracy, his subsequent failure can be inferred on the balance of probabilities to have done so and (b) it has not been revealed in these proceedings what the problem to be remedied might have been.

220. *(2) Grey Technology Ltd ("GTech")*

1) This is dealt with in paragraph 93(ii) of Mr Liddell's statement and paragraphs 4.20 to 4.28 of Mr Conti's report. The complaint relates to another "open book"

warehousing agreement. Mr Liddell asserts that, "Mr Keates in negotiating the contract failed to account for the stamp duty on the lease resulting in a loss to Uniserve UK of £136,100 as Uniserve UK provided the services to GTech."

2) Among the problems faced by this head of claim are the following. (a) The letter of intent, signed by GTech in November 2017, was issued by Mr Read. (b) The party to the "open book" contract dated 4 May 2017 was Uniserve Limited, and the party to the lease was Uniserve Holdings Limited, neither of which is a claimant. (c) The contract was signed by Mr Liddell, not by Mr Keates. (d) The only reason for linking this matter to Mr Keates is Mr Liddell's evidence that Mr Keates was responsible for all negotiations in respect of warehousing; so now it appears that any sub-optimal outcome is to be attributed to deliberate misfeasance by Mr Keates. (e) The contract appears to be sufficient to impose a liability for the stamp duty on GTech: it is unclear why it should have avoided such a liability. (f) Because this matter, like the others, is not a pleaded allegation of wrongdoing, there is no evidence of how negotiations were conducted or of what advice was received from lawyers or others. (g) There is no sufficient reason to infer that any shortcoming of the negotiations and the agreement with GTech had anything to do with the conspiracy.

221. *Revolution Beauty Limited ("Revolution")*

1) This is dealt with in paragraph 93(iii) of Mr Liddell's statement and paragraphs 4.29 to 4.38 of Mr Conti's report. This again concerns a contract for the provision of warehouse management services. The contracting party is named as Uniserve Group Limited, but it is said that the correct party was in fact Uniserve UK. (As no dispute concerning identity is said to have arisen, this does not seem to be important.) The contract is dated 16 May 2018, but it is referred to as being dated 16 May 2017 and I do not know the true date (the contractual commencement date was 16 October 2017). Mr Liddell states that the services have been provided for a number of years. Mr Liddell complains that Mr Keates failed to ensure that the contract fees were at market rate and failed thereafter to renegotiate the rates or terminate the agreement with a view to finding a customer who would pay market rates. The losses are said to be £307,529.

2) Again, this head of claim does not get off the ground. The contract was made either before any conspiracy between Mr Keates and the other defendants or five weeks after he had been suspended for gross misconduct. There are no details whatsoever to show what part he played in the negotiations for the contract, or how the prices were arrived at, or what advice was received. There is no evidence to show any connection between this this head of claim and the pleaded allegations in the case. This is simply another instance of attempting to recover moneys on no good grounds.

222. *(4) Deficient gates at the Tilbury site*

1) The allegation is that Mr Keates was responsible for overseeing the design and installation of the main gates at Uniserve's Tilbury site, that these were deficient and unsafe, and that as a result the claimants have suffered loss, which was shown in the schedule of loss as £25,796.

2) The claimants abandoned this head of claim in closing submissions, on the basis that it "engages the question of responsibility for design and installation work" and is thus of a different character from the other heads. In fact, the claim in respect of the gates suffers from the same defects as the other heads of claim. When Mr Stone was cross-examined on this matter, he suggested that Mr Keates may have engaged an unsuitable contractor for the design and installation of the gates. There are, of course, no pleaded allegations or evidential bases for that suggestion. And there is no basis for connecting that matter with this case.

223. *(5) Vehicle Trackers*

1) This is dealt with by Mr Liddell (statement, paragraph 93(iv)) and Mr Conti (report, paragraphs 4.43 to 4.46). The allegation is that in January 2018 Mr Keates placed an order for 316 trackers for Kemball's fleet, even though there were only 277 vehicles in the fleet. This is said to have resulted in a loss to Kemball of £18,291.

2) All the usual objections apply equally to this head of claim. In addition I note the following. (a) The order was actually placed by Mr Southern. (b) The reasons for the order for the precise number of 316 trackers have not been identified. It is unconvincing to say that Mr Keates again took his eye off the ball (closing submissions, paragraph 357), because some arithmetic clearly lay behind the order and Mr Southern's evidence was that he had already attended to trackers on the Zenith fleet, so he clearly applied his mind to these matters and must (if the claimants' case is right) be supposed to have taken his eye off the ball just as much as did Mr Keates. (c) There is no evidence of what became of the 39 trackers that are said to have been surplus to requirements.

224. *(6) Undercover security at Tilbury*

1) In paragraphs 4.47 to 4.51 of his report, Mr Conti says that an undercover operative was engaged to work at the Tilbury site for eight weeks at a total cost of £24,094, which included £3,786 for hotel costs for the operative, who did not live locally. In distinction from the foregoing heads of claim, there is here an implication that the cost was incurred not merely unnecessarily or carelessly but deliberately inappropriately, because Mr Conti records that he was instructed that the company that employed the undercover operative was run by a friend of Mr Keates.

2) The claimants no longer pursue this head of claim.

225. *(7) Acquisition of trucks from Gullivers*

1) This is dealt with in paragraph 93(v) of Mr Liddell's statement and in paragraphs 4.52 to 4.58 of Mr Conti's report. The allegation is that in February 2017 Mr Keates placed an order for trucks from a leasing company, Gullivers, at unnecessary cost, despite having a more cost-effective alternative to hand. The loss to Kemball is said to be £127,422.

2) Apart from the other objections to this head of claim, it relates to an order placed well before Mr Keates and Mr Bundock met or any conspiracy was formed.

Main Claim: Strand 2: Misappropriation of assets involving other defendants

226. This part of the claim does not have to do with the biomass business opportunities. It concerns allegations that Mr Keates misapplied the claimants' assets for the benefit of other persons. All of the heads of claim in Strand 2 are directed against Mr Keates. Claims are also made against Mr Read, Miss Horsley and Mr Claridge.

Payments to "DC Driving Services"

227. This head of claim is advanced against Mr Keates, Miss Horsley and Mr Claridge. It relates to payments made by Zenith to Alfred Properties Limited, which is a company owned by Mr Claridge. The total sum of these payments from 9 October 2015 (when Uniserve UK bought Mr Keates' shareholding in Zenith) until 18 April 2018 is £85,866.14 inclusive of VAT.

228. The evidence concerning the payments was as follows. Each month Miss Horsley would raise an invoice from DC Driving Services; she did this from a template on her computer. The invoices showed that the payments were in respect of "drivers" and included VAT. A purchase order would then be raised and the expense claim placed on the Sage accounting programme. Mr Newnes would then approve the payments. The evidence of Ms Makos was that these payments were always "made in the 'subbies run' regardless of Zenith's cash position as the payment would be paid seven days after the end of the month and this ensured Mr Claridge was paid regularly." Ms Makos's evidence was that Miss Horsley told her that the payments were in fact payments in respect of interest on a loan that Mr Claridge had made to Mr Keates. She said that, after Zenith was bought by Uniserve UK, Mr Newnes commented that the payments could not continue and that Mr Claridge had been paid back "tenfold". In answer to questions in cross-examination, Ms Makos said that she had first become aware of the existence of the loan from Mr Claridge in about 2010 or 2011.

229. Mr Keates' defence stated as follows in respect of this matter:

> "l8. … The First Defendant's position is that payments were lawfully made to DC Driving Services in the period from 2011 to 2018. DC Driving Services is the trading name of a business run by Mr Derek Claridge. Mr Claridge had lent sums in the order of £130,000 to Zenith (not the First Defendant), in or around 2009 and at a time when the First Defendant was the sole shareholder of Zenith. From around 2011 DC Driving Services were repaid monthly in respect of the loan from 2011. For accounting purposes the repayments were recorded by the method of DC Driving Services raising invoices to Zenith. The First Defendant cannot provide any more specific information without access to management accounts for the relevant period. Further, as Mr Newnes dealt with making and recording the relevant repayments the First Defendant does not know how he recorded them in the accounts of Zenith."

230. Mr Claridge's defence denied that he had ever run a business in the name of DC Driving Services and denied that he had ever received payments that had been wrongfully made.

231. Neither Mr Keates nor Mr Claridge gave evidence. The case put by Mr Keates in cross-examination of the claimants' witnesses was that Mr Claridge made a loan pursuant to a "gentleman's agreement", which I take to mean that it was undocumented. The case put by Mr Claridge was that he had nothing to do with the creation of any invoices and knew nothing of them but had simply received regular repayments in respect of a loan to Zenith. In his closing written submissions (which are not evidence, but to which I have regard) Mr Claridge affirmed that case: he gave a substantial loan to Zenith when it was in need of money; the loan was to be repaid over a period of time; the internal workings of Zenith's accounts department were not known to him and he had no involvement in any internal fraud; he had never had a business connected with driving or transport; he simply received repayments in respect of his loan.

232. It is clear that the payments were falsely recorded within Zenith as a payment to DC Driving Services. There was no such business and the payments were not made in respect of any services. The very fact that the payments were described in a false manner indicates that there was an intention to conceal their true nature, whatever that may have been.

233. There is no evidence that Mr Claridge knew of the way in which the payments were being recorded within Zenith. The DC Driving Services invoices did not come from him, and the payments were not made to an entity or account in that name. However, it is very probable that he knew that their true nature (whatever that might have been) was not being properly recorded.

234. There is no direct evidence of the making of the loan by Mr Claridge. However, Mr Keates' defence asserts that a loan was made. His defence puts the date of the loan as being 2009 or thereabouts. The only payments that have been identified in respect of the advances of the loan come from an account in the names of different persons (which may be explicable) and are in 2008. Zenith was not incorporated until April 2010. This suggests that the loan was made either to Mr Keates personally or to ZLL (see paragraph 6 above). ZLL entered insolvent liquidation in 2011.

235. A document dated 20 March 2012 and headed "Zenith Logistics Limited[:] Nominal Activity—Excluding No Transactions" lists transactions on "Directors Loan—P Keates (PK3)" in respect of the period 7 July 2008 to 4 December 2010. It includes four credits, totalling £115,000; of these, three are marked "DC" and one is marked "DK Loan". The total debits (all of them marked DC) are £64,400, leaving a balance of £48,600. A schedule produced by Zenith at Annex 7 to its closing written submissions identifies the total payments made to Alfred Properties Limited. The following points emerge from the schedule:

- The total sum of the payments made by ZLL, Zenith and potentially related parties to Alfred Properties Limited from 29 September 2008 was £272,872.09.

- The total amount paid by ZLL and Zenith up to the date of Zenith's acquisition by Uniserve UK (September 2015) was £136,280.95, which was already in excess of the amount of the loan as documented (£115,000) or as alleged (£130,000).

- A further sum of £53,125 was paid to Alfred Properties Limited by companies said to be connected to ZLL or Zenith before 2013. I am inclined to ignore this, as the basis for considering these payments to be relevant is unclear to me.

- The total amount paid by Zenith after its acquisition by Uniserve was £85,866.14 (i.e. the amount now claimed).

- Therefore the total amount paid by ZLL and Zenith to Alfred Properties Limited is some £222,000.

- The last payment made by Zenith to Alfred Properties Limited was on 9 March 2018. The payments ceased when Mr Newnes died. Not only were no further payments made: there is no evidence that any further payments were requested or that any enquiry was made as to why the payments had stopped.

236. I find and hold as follows:

1) Mr Claridge made a loan in 2008 to Mr Keates.

2) The loan was not Zenith's liability.

3) Further, the amount of the loan had been repaid before Uniserve UK acquired Zenith. In the absence of any evidence to the contrary, there is no basis for finding that there was interest on the loan.

4) The payments made by Zenith to Alfred Properties Limited were made without any proper reason (which is why they were falsely shown in Zenith's books) and were made at the instigation of Mr Keates.

5) Mr Keates' actions in causing the payments to be made were dishonest and in breach of his contractual and fiduciary duties to Zenith. Accordingly he is and remains liable for the amounts of the payments.

237. The case against Mr Claridge is put on the basis of knowing receipt (re-amended particulars of claim, paragraph 98) and, rather vaguely, unlawful means conspiracy (re-amended particulars of claim, paragraph 100). (Whether it might more simply have been put on the basis of unjust enrichment is not something that falls for consideration.) On the basis of the facts as I find them to be, I consider that Mr Claridge's knowledge was such that it is unconscionable that the benefit of the payments be retained. He must have known that there was no legitimate reason for him to be in receipt of payments from Zenith, in circumstances where (i) any loan he had made was to a different party and (ii) it had been repaid long since. As a matter of strong probable inference, I find that Mr Claridge knew that Mr Keates was causing Zenith to make payments for which it was not liable and to which he was not entitled.

238. I have considered the question whether the claim has been properly brought against Mr Claridge rather than Alfred Properties Limited. On the facts of the case, I hold that it has. Mr Claridge is the sole owner and director of that company. There is no suggestion that the company, which carries on business in building and property development, has any involvement in matters relating to the payments: it did not provide services or make any loan. Therefore I conclude that it received the payments simply as agent or nominee

of its owner, Mr Claridge. See *Prest v Petrodel Resources Ltd* [2013] UKSC 34, [2013] 2 AC 415, in particular *per* Lord Sumption JSC at [32]-[33].

239. For these reasons I hold Mr Claridge liable for these moneys on the basis of knowing receipt.

240. Zenith also claims the moneys from Miss Horsley, on the bases of breach of contract, breach of fiduciary duty, dishonest assistance, and unlawful means conspiracy. As I have explained above, I do not consider that Miss Horsley was a fiduciary and I regard her contractual obligations as being limited to those generally found in employment contracts. The question is whether her involvement in the payments to Mr Claridge were (i) a breach of her duty of fidelity and good faith or (ii) a dishonest assistance of the breaches of fiduciary duty by Mr Keates (and Mr Newnes) or (iii) pursuant to a combination to which she was a party. On an assessment of the evidence as a whole, I conclude that it was not. The payments were instigated by Mr Keates and approved by Mr Newnes. Miss Horsley was a relatively junior employee; there is no evidence that she had any control over the payments or exercised any judgement in respect of them or did anything in respect of them beyond a purely administrative function in respect of the paperwork. The fact that the DC Driving Services invoices were printed from a template on her computer does not itself indicate that she had anything other than a purely ministerial role in the payments. Further, the evidence of Ms Makos in respect of what appear to have been no more than casual remarks by one accounts employee to another does not persuade me that Miss Horsley was being dishonest in carrying out her instructions by company directors. On inference from the facts as they appear on the evidence, I do not find that Miss Horsley was party to any combination with Mr Keates or Mr Newnes to harm Zenith by unlawful means.

241. Accordingly, I hold Mr Keates and Mr Claridge liable for the claimed amount of £85,866.14.

242. Mr Duggan and Mr Goodfellow have raised the question of the VAT component of this sum. Because Zenith made the payments on the basis that they were for services, it included VAT on its invoices. I am informed that it has claimed the VAT back. One possible way of dealing with the matter is to deduct the amount of the VAT from the judgment sum. That, however, would leave Mr Claridge with a payment to which he was not entitled. Mr Duggan and Mr Goodfellow suggest that Zenith might be required to undertake to repay the VAT element to HMRC following recovery from Mr Keates and Mr Claridge. At present, that suggestion appears to me to be a good one: it will repair a (wrongful, though inadvertently wrongful) deprivation of moneys from HMRC; it will restore Zenith to the position it ought to have been in; and it will remove any benefit wrongfully received by Mr Claridge. I am willing to receive further submissions on this point when the terms of my order come to be finalised.

Container transport

243. This is a claim by Zenith against Mr Keates and Mr Claridge. The facts are relatively simple. In 2017 Mr Keates arranged a container to ship goods for Mr Claridge from Felixstowe to Detroit. The purchase of the container cost £1,380, which Mr Keates paid on his Uniserve UK credit card. The shipping of the container cost £5,824 and was invoiced to and paid by Zenith.

244. Mr Keates' defence stated that the container "was ordered for Mr Claridge and initially charged to Zenith on the basis that Zenith would be repaid by Mr Claridge. The first defendant understands that Mr Claridge made payment to Zenith by way of a cash payment to Mr Newnes." In his disciplinary hearing, too, Mr Keates stated that Mr Claridge had paid Mr Newnes in cash. Mr Claridge's defence stated: "I paid for the transport of property to America."

245. Mr Keates and Mr Claridge did not give evidence. The claimants' witnesses said that they had no knowledge of a cash payment.

246. I find that Zenith paid the moneys for the purchase and transportation of the container for Mr Claridge, that he was liable to reimburse Zenith for those moneys (as indeed he does not dispute), and that he did not reimburse Zenith. My reasons are as follows:

1) There is no positive evidence of reimbursement.

2) My conclusions generally as to Mr Keates' dishonesty and specifically as to the "DC Driving Services" issue lead me to view the claim that reimbursement was made with circumspection. Nevertheless, I bear in mind that an adverse conclusion in one respect does not mandate a similar conclusion on a different point, and that there is always a possibility that the claimants, having seen what they regard as dishonesty in one matter, have been too quick to see it elsewhere.

3) There is no good explanation why Mr Claridge could not simply pay for the container himself, directly. I do not know why Uniserve should be introduced into the matter.

4) The claim to have made a cash repayment is unconvincing on its own terms. First, if the charge were to be passed on to Mr Claridge, one would expect that an invoice would have been issued. There is no such invoice. Second, a payment of several thousand pounds would more usually be expected to be by transfer or, possibly, by cheque. Third, there is a tension with the case that Mr Keates and Mr Claridge advanced in respect of the "DC Driving Services" issue: if Zenith had a liability to pay Mr Claridge £3,000 each month (which is what was being paid until Mr Newnes died), it is implausible that Mr Claridge should have repaid several thousand pounds for the container—the obvious thing to do would be to set the money against Zenith's liability.

5) On 13 March 2018 someone from Uniserve UK's accounts department asked Mr Keates by email, "There is a entry on your August Barclaycard for 1st Containers for £1380.00, can you let me know what this is as I have no idea where to put it?" He replied, "We purchased a container to store fleet oils and ludes etc in Tilbury." If the transaction were legitimate and reimbursement had been obtained, there would have been no need for a false explanation.

247. I hold that Mr Keates is liable for these moneys, on the basis that in breach of contract and fiduciary duty he caused the claimants' moneys to be paid for the benefit of a friend. I find that his actions in this regard were clearly dishonest. Therefore the liability survives his discharge from bankruptcy.

248. Mr Claridge is liable to reimburse the claimants for these moneys, because he accepts that he was liable to do so and I find that he has not done so.

Miss Horsley's expenses

249. Zenith claims to recover from Miss Horsley £18,970 that it says was paid to her between September 2016 and March 2018 as expenses but did not relate to any legitimate business expense. It also claims the same amount from Mr Keates. The monthly payments in question are identified in the schedule that is Annex 6 to the re-amended particulars of claim.

250. Miss Horsley simply made a general admission of £25,000 in respect of all claims against her but did not file a defence dealing with the specific claims. Mr Keates' defence said that the payments had been agreed between Miss Horsley and Mr Newnes and that he relied on Mr Newnes in this regard "as the arrangement was suggested by him and managed by him. The first defendant accepted Mr Newnes' advice that this was a cheaper option for Zenith than paying Ms Horsley an increased salary. The first defendant did not specifically authorise or arrange the payments".

251. Neither Miss Horsley nor Mr Keates gave evidence. However, Zenith relies on what Miss Horsley said in her disciplinary hearing on 5 June 2018, to the following effect. After Mr Keates left the home they shared in 2014, she became unable to afford to maintain the house and their children. She told Mr Keates that he had to assist her, and he said, "Leave it with me. I'll speak to Colin." Mr Newnes then told her to make expenses claims. She was unhappy about this, as she knew that it was not the right thing to do. However, she knew that a monthly deduction was being made from Mr Keates' salary and believed this was by way of reimbursement for the additional money she was receiving from Zenith. Eventually, in August 2017, she told Mr Newnes that the arrangement ought to stop, as the maintenance of the children was Mr Keates' responsibility and not Zenith's, and she asked why they could not just stop the roundabout way of taking the money by way of deduction from Mr Keates' salary. At that point she was told that the deduction had nothing to do with her expenses: it was repayment of a loan that Uniserve had made to Mr Keates.

252. It is clear that Miss Horsley was not entitled to the expenses she was receiving. She admits as much. As against her, the matter is dealt with by the judgment that was entered against her on 6 December 2019.

253. Mr Keates' defence, taken by itself, is cryptic. It refers to an "arrangement" but does not explain what that was; it merely says that the use of expenses was cheaper than increasing Miss Horsley's salary. This "explanation" and the use of what were obviously false expenses claims indicate that there was more to the "arrangement" than Mr Keates has acknowledged. By itself it is enough to show that Mr Keates was knowingly approving false expenses claims, whether or not he troubled himself with the details. That is dishonest conduct and amounts to breach of his contractual obligation of good faith and fidelity and to dishonest breach of fiduciary duty. I find that the matter goes further and that Mr Keates was in fact acting in this manner for his own personal gain, because he was using Zenith's expenses system to discharge his own responsibilities as well as to assist his former partner. Accordingly I hold him liable to Zenith for the amount claimed.

Fuel cards

254. The allegation is that Mr Keates and Miss Horsley acted together to provide fuel cards, paid for by Zenith, to people who were not entitled to them. This part of the claim is particularly unsatisfactory, because the pleaded case, the witness evidence and the closing submissions do not cohere.

255. Mr Keates' defence on this point states as follows:

> "[P]rior to the acquisition of Zenith by Uniserve UK, fuel cards had been supplied to staff who were not in full time employment but who contributed to Zenith's business as a reward for some staff and their families. Cards were also provided as part payments for consultancy services supplied to Zenith. It is denied that this was a wrongful practice and it is averred that it was a legitimate way of rewarding staff and business associates either by way of enhanced salary and benefits packages and/or as a marketing expense. The cards were managed by Mr Newnes and Paul Southern and the First Defendant was not kept fully informed as to their actions and decisions in relation to cards."

256. Mr Claridge's defence states:

> "The fuel card / telephone account was given by Mr Keates and/or Mr Newnes for continued financial support given by me to the company."

257. On the evidence before me, I reach the following conclusions.

1) The fuel cards for Mr Claridge were in the sum of £3,295.19. There was no legitimate reason for him to be given or to receive this benefit from Zenith. This was, as Mr Duggan and Mr Goodfellow suggest, a case of giving a "freebie" to a friend of Mr Keates.

2) The fuel cards for Miss Horsley were in the sum of £848.53. On the current, meagre state of the evidence relating to the cards, their use and her employment, I do not consider it proved that this was an illicit benefit, though it may have been.

3) The fuel cards for Miss Horsley's sister were in the sum of £927.35. She was not employed by Zenith and this was an improper use of its assets. (The claimants have been unable to identify the amount of the benefit conferred on Miss Horsley's mother.)

4) Fuel cards for Mr Keates (one of them also for Ms Coury) were in the sum of £10,556.71. Mr Keates' defence does not set out a justification for his receipt of fuel cards, and it is clear from the terms of his contract of employment that he had no entitlement to that additional benefit.

5) The fuel card for Mr David Flatman was in the sum of £12,255.54. The evidence establishes almost nothing concerning this man. In his disciplinary

hearing Mr Keates said that he had approved a fuel card for Mr Flatman because he was "doing introductions for us". Zenith contends that there are no documents to support this benefit or to establish any link between the costs incurred on the fuel cards and the value of any services provided. However, Zenith's complete failure to provide meaningful evidence regarding this part of the case leaves me doubtful as to what to make of it. I do not find this allegation proved.

6) The total sum of what I find to be illegitimate expenditure on fuel cards is £14,779.25. I find that Mr Keates knew and approved this illegitimate expenditure, even if the details were dealt with by Mr Newnes, and that it constituted a dishonest breach of his contractual and fiduciary duties to Zenith. Therefore he is and remains liable for this amount.

7) Zenith claims to recover from Mr Claridge £3,295.19, being the benefit he received. The claim appears in a somewhat muted form in paragraphs 88 and 89 of the (very convoluted) re-amended particulars of claim, though it is not carried over into paragraph 98 where it might have been expected. It also appears in the schedule of loss and damage dated 12 March 2021, though without specification of its legal basis. In my judgment, the facts set out in paragraphs 88 and 89 of the re-amended particulars of claim (namely, receipt of benefits to which there was no entitlement) and the averment that Mr Claridge is liable to account for and to repay sums received is sufficient to ground a claim in unjust enrichment. I hold Mr Claridge liable to pay £3,295.19 on that basis.

8) Grounds of liability are established against Miss Horsley in respect of her sister's fuel card. I am not persuaded that any proper basis of liability has been established in respect of the fuel cards of Mr Keates and Mr Claridge. Miss Horsley's liability falls within the judgment that has already been entered against her. (I remark at this point that I am doubtful how causes of action in respect of which a judgment has been entered can be pursued against the judgment debtor in any event. However, on the facts of this case it is unnecessary to explore questions concerning the merger of a cause of action in the judgment.)

Mobile telephone for Mr Claridge

258. Zenith claims from Mr Keates and Mr Claridge the costs incurred in respect of a mobile telephone that was provided to Mr Claridge. Although it has been unable to identify the full cost to it of the provision of the telephone, it identifies two bills (one in 2015, the other in 2018) in the sum of £1,244.73.

259. Mr Claridge's response to the claim against him has been set out above: the telephone account was given by Mr Keates and/or Mr Newnes for continued financial support given by Mr Claridge to the company. Mr Keates' defence (paragraph 61) justifies the provision of the telephone to Mr Claridge as being "part of an agreement with him as he had supported Zenith's business as stated above."

260. As in the case of the fuel cards, there was no legitimate reason for Mr Claridge to receive this benefit. Mr Keates is liable to pay the sum of £1,244.73 on account of his dishonest breach of contract and of fiduciary duty in misapplying Zenith's assets in this

manner. The claim against Mr Claridge is advanced on the basis of knowing receipt (re-amended particulars of claim, paragraph 98) and I find that he is liable on that basis. The pleaded facts would also, I think, justify recovery on the ground of unjust enrichment.

Company cars used by Mr Read

261. This is the subject matter of the Read Claim, discussed above.

262. In my judgment, Mr Keates is equally liable for the costs incurred in respect of the cars used by Mr Read, on the basis that his approval of the use of the cars was a dishonest breach of his fiduciary duties to the claimants and of his contractual duties to Zenith.

Company cars used by Mr Keates and others

263. Clause 12 of Mr Keates' contract of employment provided for an annual car allowance of £10,800 "for use in the performance of your duties under this agreement".

264. The claimants make the following complaints against Mr Keates in respect of his own use of cars:

1) He and, especially, Ms Coury used a Range Rover HSE that was leased by Zenith from July 2015 for 36 months at a cost of £36,788.

2) He or his former girlfriend, Miss Ross, used a BMW motor car that was leased by Zenith from 22 March 2017 to 6 June 2018 at a total cost of £12,693.60 plus a further £2,092.90 for repairs.

3) He used his company credit cards to make two payments, each of £3,000, on 20 January 2018 in respect of a Range Rover HSE that was leased personally by him. One of these payments was on a Uniserve UK credit card; the other was on a Kemball credit card.

265. In respect of the Zenith Range Rover HSE, Mr Keates admits using the car but states (defence, paragraph 48) that it "predated" his contract of employment, which is dated 14 October 2015. The use of the vehicle by Mr Keates or Ms Coury continued until at least January 2018, however, when she incurred a penalty for speeding while driving the car. I am satisfied that the use of the car after 14 October 2015 was an illegitimate benefit taken by Mr Keates when he knew that he was not entitled to it. It constituted a misappropriation of Zenith's assets and a dishonest breach of his contractual and fiduciary duties. I shall be glad to receive a proper quantification of this head of claim from Zenith in due course.

266. In respect of the BMW motor car, there is evidence that Miss Ross used the car on occasions; however, the extent of her use is entirely unclear, and it also appears that the car was used by others. The state of the evidence does not justify any award under this head of claim.

267. In respect of the two credit card payments, Mr Keates' case (defence, paragraph 49) is that he made only a single payment of £3,000, on his Kemball credit card, and that the payment was to be recorded on his "staff advances account" and was recouped by deductions from his salary on 31 January 2018 and 28 February 2018. On the basis of

the documentation I find that Mr Keates made two payments, in a total sum of £6,000, and not a single payment of £3,000 as he claims. Mr Stone's evidence was that the claimants have "no record" of either payment being recorded on Mr Keates' staff advances account. However, I am not satisfied that Mr Keates' claim to have repaid £3,000 through deductions from his salary is wrong. The claimants have not addressed that contention. I hold that Mr Keates is liable for the second payment, which (as he has denied making it) he does not claim to have repaid. I find that his receipt of the benefit of this payment was a dishonest breach of his fiduciary duties to Uniserve UK and that he remains liable to that company for £3,000.

Hospitality

268. Zenith contends that Mr Keates has dishonestly arranged for it to make payments for four trips that were not legitimate business expenses. It seeks recovery from him and also, in respect of one of the trips, from Mr Read and Mr Claridge.

269. Mr Keates' general response (defence, paragraph 56) is that hospitality was a legitimate business activity, providing a benefit for staff and fostering good relations with suppliers, customers and associates. However, he provides some further responses in respect of specific trips. As he did not give evidence at trial, his explanations lack the support of direct witness evidence.

270. Paris: February 2016

1) This was a trip to a Six Nations rugby match. The cost to Zenith was £7,430, which covered tickets for the match, travel on Eurostar, and accommodation and hospitality in Paris. Mr Stone's evidence is that this was not a legitimate business expense and would have required Mr Liddell's authorisation.

2) Mr Keates' defence (paragraph 57) does not specifically aver that this was a business expense. The case there set out is, rather, that the cost of the trip was charged to his loan account pursuant to Mr Newnes' advice. This is not supported by the documents that have been produced in evidence. However, in his Part 18 further information Mr Keates maintained that this trip (like all other trips save for the next one to be mentioned) was known of and approved by "the board".

3) Despite Mr Keates' unsatisfactory explanation, I am not satisfied that the charge of the trip to Zenith was a dishonest action on Mr Keates' account. Zenith gives the impression of having hunted assiduously for things to lay at Mr Keates' door. This is understandable. However, as a result of Mr Keates' intervening bankruptcy Zenith has simply stuck an allegation of dishonesty onto every single allegation made against him. In many cases I think that this is reasonable. But when it comes to hospitality some further particulars should properly have been provided to show that this was not, after all, an honest but inappropriate use of corporate hospitality.

271. LA: March 2016

1) The case is different in respect of this trip, which was taken by Miss Ross (Mr Keates' former girlfriend) and her son and was paid for by Zenith at a cost of £2,850.

2) Mr Keates' pleaded case (defence, paragraph 57) is that "the trip to LA was arranged before the acquisition by Uniserve UK and at a time when the first defendant was the sole shareholder of Zenith." I reject that case. An email exchange on 4 March 2016 shows that Mr Keates was making the booking at that time. In his Part 18 further information Mr Keates acknowledged that the trip was a personal one but said that he had provided receipts to Mr Newnes, "who allocated them to business or personal expenses and sought repayments from the first defendant accordingly as therein set out." In fact, as I find, the money was not repaid.

3) The matter goes further, however. The email sent by Mr Keates to his contact at the travel company reads, so far as material:

> "It would be good if you could act for me on booking hotels in LA as I can then loose this through the company as marketing. (Not worried about VAT).
>
> Hayley will be travelling with her son to LA so hence the need for twin rooms. Would it possible for you to give her a call today and discuss hotels. She has been looking and has some options. You can then invoice me!! x."
>
> (The response informed Mr Keates that the cost would be £2,850.)

4) I find that this was a deliberate and dishonest misuse of company moneys to pay for a trip for a personal acquaintance. Mr Keates was thus in dishonest breach of contract and of his fiduciary duties to Zenith and is liable to pay £2,850.

272. <u>Hong Kong: April 2017</u>

1) This is the trip to the Hong Kong Rugby Sevens, previously mentioned. The total cost paid by Zenith was £49,320. Zenith says that the only person who reimbursed it for the cost of his attendance on the trip was Mr Davies. It seeks to recover the full amount of its expenditure from Mr Keates. It also seeks to recover from Mr Read and Mr Claridge the costs of their respective attendances (£5,740 each).

2) Mr Keates' defence (paragraph 58) states that the trip was attended by other directors, including Mr Newnes, Mr Southern and Mr Read, and that Mr Newnes collected payments from those who attended; these payments were either by bank transfer or by cash.

3) Mr Read's defence (paragraph 4.2) states: that he went on the Hong Kong trip on the understanding that this was by way of a reward to employees within the business; that he had no reason to doubt that Mr Keates had the authority to organise the trip and invite him; that while in Hong Kong he and others met Mr Liddell and discussed business with him; and that his own time in Hong Kong

was interrupted by work commitments and was cut short by a need to return home early to attend to business matters. Mr Read gave written and oral evidence to the same effect.

4) Mr Claridge's defence asserts that he paid for his attendance on the trip.

5) I think it probable that employees of Zenith, including Mr Southern (against whom no claim is made) and Mr Read, were led to believe that the trip was a legitimate benefit being given by way of a "thank you". There is no particular reason why they ought to have thought this suspicious or improper. I reject the claim against Mr Read for reimbursement on the ground of knowing receipt. Similarly I reject the claim in conspiracy.

6) I do not accept the claim by Mr Claridge and Mr Keates that the former paid for his attendance on the trip. Mr Keates has said that the payment was in cash. Mr Claridge says that it was by cheque; however, the cheque he relies does not seem plausibly to be related to payment for the trip. As I have observed in a different connection, if (as he claims) Mr Claridge was entitled to regular payments from Zenith for financial assistance, it is unlikely that he would have paid further money over to cover the cost of the trip. In the circumstances, I consider that the trip was an improper benefit conferred by Mr Keates on his friend at the expense of Zenith. I also consider that Mr Claridge is liable to pay for his attendance on the trip on the basis of knowing receipt: as he claims to have known that payment was required, he is not in a position to deny that it was improper of him not to pay or that he did not know that Mr Keates was not entitled to confer this benefit on him.

7) I accept the evidence of Mr Liddell that Mr Keates told him that those attending the trip had paid their own way. I therefore find that he knew that he was not entitled to confer this benefit and that he acted dishonestly in doing so, in breach of his fiduciary duties. Zenith accepts that Mr Davies paid for his share of the cost, but it appears that no one else did. Mr Southern confirmed that he had not paid personally. I hold, therefore, that Mr Keates is personally liable to reimburse Zenith for the costs of the trip, save for the costs attributable to Mr Davies.

273. Twickenham: April 2018

1) This head of claim relates to Mr Keates' attendance, along with several other people, at a rugby match at Twickenham on 7 April 2018. The cost of this event to Zenith was £2,700. Zenith alleges that Mr Claridge was one of those who attended at its expense.

2) In his defence, Mr Keates states (paragraph 59) that attendance at the event was to have been a marketing/network event for Zenith staff and suppliers, but that this did not go ahead because of Mr Newnes' death; instead, the tickets that had already been purchased were used by others, from whom he would have obtained payment if he had not been suspended three days later. Mr Claridge, for this part, denies that he attended.

3) I do not find it proved that Mr Claridge attended this event. Mr Liddell's evidence that he did so ("I believe") is vague and the source of his belief is not stated.

4) However, I do not accept Mr Keates' defence. Mr Liddell's evidence was that the Uniserve Group had a box at Twickenham for the event, by reason of its sponsorship of Bath Rugby Football Club, but that Mr Keates turned down an offer to attend in the company box but instead arranged a box for himself and friends at Zenith's expense and told Mr Liddell that he would be attending in his personal capacity and at his own expense. I accept Mr Liddell's evidence. I find that Mr Keates was entertaining himself and others at Zenith's expense, without any legitimate ground for doing so, and that he is liable to reimburse Zenith for his dishonest breach of fiduciary duty in respect of the misapplication of Zenith's assets.

Swann Inn

274. Within this second strand of the Main Claim, Zenith includes a claim against Mr Keates and Miss Horsley to recover £3,000 that was paid by it to the Swann Inn, a public house run by Mr Keates' sister. This is entered in Zenith's books as a loan but has not been repaid. Zenith contends that the loan was an improper application of its moneys. It claims also from Miss Horsley on the basis that she "was responsible for managing the finances of the Swann Inn and it is to be inferred shares responsibility with Mr Keates" (re-amended particulars of claim, paragraph 93.1).

275. Mr Keates' defence (paragraph 6.3) makes no admissions to this allegation, denies that the payment was a misapplication of Zenith's assets, and avers that the payment represented a legitimate business expense.

276. I find that Mr Keates is liable to pay this sum to Zenith. No plausible explanation for the loan has been advanced and, in the absence of evidence, I can think of none. I conclude that this was a dishonest use of Zenith's moneys for purposes personal to Mr Keates, in breach of his contractual and fiduciary duties.

277. However, I do not find that Miss Horsley's responsibility for this payment has been established or is reasonably to be inferred.

<u>Main Claim: Strand 3: Misappropriation of assets by Mr Keates alone</u>

Superstaff loan

278. The allegation in paragraphs 30 to 32 of the re-amended particulars of claim is as follows. On 11 April 2013 Superstaff Limited ("Superstaff"), a company in the business of supplying agency workers, paid £150,000 to Zenith, which paid out the entire amount on the same day to Twenty Four Seven Recruitment Limited ("Twenty Four Seven"). The receipt of the money was described on Zenith's nominal ledger as "PK Loan". After Uniserve UK acquired Zenith, between 4 December 2015 and 30 September 2017, Zenith paid a total of £220,000 to Superstaff. These repayments did not relate to any contractual obligation of Zenith. It is to be inferred that the receipt of

£150,000 was a loan for Mr Keates' personal benefit and that the payments made by Zenith to Superstaff were also for his personal benefit and were a dishonest misapplication of Zenith's funds.

279. In paragraph 17 of his defence, Mr Keates denies any wrongdoing and states a case that is not easy to understand in every respect. First, the loan of £150,000 was made by Superstaff to Zenith to enable Zenith to pay money it owed to Twenty Four Seven. That is clear enough. "Second, in respect of a variable balance for the supply of agency staff described as the Trade Balance and noted as in the sum of £127,722.72 in the loan agreement dated 10.7.15. The loan agreement was dated 10 July 2015 and provided for weekly repayments. … The terms of the loan agreement provided for monthly payments to be made, and to the best of the first defendant's knowledge and understanding those were the payments made by Zenith to Superstaff. … Further, as the sole shareholder at the time that the loan was agreed, the first defendant in his capacity as shareholder was able to ratify the transaction in any event."

280. I reject this head of claim. In their closing submissions Mr Duggan and Mr Goodfellow refer to some matters that they suggest strengthen the inference that the payments to Superstaff and Twenty Four Seven were not in respect of genuine obligations of Zenith. While I note the points made, I do not find them greatly impressive. The claim really comes down to the assertion that Zenith has not found documentary evidence that it had any obligation to Twenty Four Seven in 2013 and the inference, supported by the entry "PK Loan", justifies the inference that Mr Keates was using the company for his own purposes before he sold it to Uniserve UK and continued to do so after he had sold it. Although there is plenty of evidence of Mr Keates' dishonesty, I have not been persuaded that it is right to draw the inference in this case. It is every bit as likely that Mr Liddell's determination to pursue to the uttermost those whom he considers to have defrauded his companies has led to some claims, including this one, to be advanced without adequate grounds.

Mr Keates' expenses

281. The claimants claim to recover from Mr Keates a total of nearly £60,000 for expenses it is said he wrongfully claimed. Apart from £246.82 claimed by Kemball, the claim is made by Zenith.

282. In his defence (paragraphs 38 to 43) Mr Keates denied any wrongdoing and said that he could not provide a detailed response without full disclosure from the claimants. He said that all expense claims were submitted to and approved by Mr Newnes. He said that he and Mr Newnes had agreed that a variable monthly sum would be deducted from Mr Keates' salary "on account of sums owed by the first defendant to the claimants by way of loan and/or expenses." In the period 29 February 2016 to 28 February 2018 these deductions amounted to £24,400. In addition, he paid further ad hoc amounts "based upon Mr Newnes' calculations of what was due to Zenith by the first defendant."

283. That defence, which was unsupported by evidence at trial, is unimpressive on its face. It is known that deductions were made from Mr Keates' salary in respect of loan repayments. However, if expenses claims were properly made and were approved for payment by Mr Newnes, it is unclear why regular or ad hoc deductions should have been made as alleged. Further, although the defence promised a detailed response after disclosure had been given, no such response was made.

284. The first item is £9,074 for expenses claimed by and paid to Mr Keates in respect of transactions that he had paid for with his Uniserve UK credit card. The transactions are itemised in the table at Annex 6 to the claimants' closing written submissions. I allow this head of claim. As it involves claims for expenses that had not been incurred, because the claimants had paid directly through the credit card, and in the light of Mr Keates' other conduct, I am satisfied that the expenses claims were dishonest. Therefore Mr Keates' liability survives his discharge from bankruptcy.

285. The second item is £5,750 in respect of two payments by Zenith to Mr Keates: £2,500 on 16 January 2017, and £3,250 on 12 June 2017. The payments were arranged by Mr Newnes. Mr Stone's evidence was that the claimants had been unable to match the payments to any expense claim or to find any documents that would justify the payments. There is clearly reason to suspect that the payments were dishonestly made and received, but I am not satisfied that the inference is secure and I reject this head of claim.

286. The third item is a sum of £44,813.83 for non-business-related expenses; these are itemised in an 11-page schedule that is Annex 5 to the re-amended particulars of claim (revised, with page references, in the 22-page schedule at Annex 5 to the claimants' closing submissions). Mr Stone's evidence was that none of these expenses were business-related. In many cases, that seems obvious from the descriptions (for example: dentists, cosmetics, groceries, Amazon Marketplace bookshops). There is a significant amount of expenditure in Hong Kong; this was not a legitimate expense, for reasons already indicated. Other entries could in theory relate to work-related expenditure (for example, office supplies and a large number of entries for bars and restaurants); however, the evidence of Mr Stone is that these were not work-related, and I accept his evidence in the absence of any contrary evidence or even counter-schedule from Mr Keates. I accept Zenith's case that the expenses listed in Annex 5 were wrongly claimed. I also accept and find that the wrongful claiming of these expenses was dishonest and that the liability to reimburse Zenith survives Mr Keates' discharge from bankruptcy.

287. The fourth item is a claim by Kemball for £246.82, being the sum in which Mr Keates used his Kemball credit card to pay for flights with Ryanair, which Mr Stone states were personal flights. I accept that these flights were wrongfully and dishonestly charged to Kemball and that Mr Keates is liable to reimburse their cost.

Staff advances account

288. Zenith claims from Mr Keates payment of £54,413 in respect of the balance due on his staff advances account, a loan account repayable on demand. Paragraph 94 of the re-amended particulars of claim avers that the balance due on the account as at the date of Mr Keates' dismissal was £43,413 but that it has transpired that the account had been credited with periodic repayments in the total sum of £11,000, which however had also been credited to the balance due from Mr Keates on a separate and specific loan.

289. The evidence of Mr Stone was that Zenith was the only company within the Uniserve Group to operate a staff advances account and that, because the finances of Zenith were dealt with separately from those of the other Group companies, its operation only became known more widely after Mr Newnes' death. Ms Watkins gave evidence that the account operated to enable employees to request advances of money for particular

purposes and that repayment would be obtained by deductions from the relevant employee's monthly pay.

290. I accept Zenith's case as to the state of the account, but I reject its claim. What was originally a simple claim in debt has been amended—as has every other claim against Mr Keates—to plead dishonesty. What is now said is that the staff advances account "was not operated by other companies in the Uniserve Group and was operated by Mr Keates in deliberate and flagrant disregard for his duties to Zenith." But the fact that such accounts were not used elsewhere does not mean that it was wrong to operate it within Zenith, and Zenith's own evidence confirmed that it was used by other employees, not just by Mr Keates. The amended case continues: "It is to be reasonably inferred from his other conduct in respect of Zenith's assets that Mr Keates never held any genuine intention of repaying the sums outstanding in full and so acted dishonestly when accruing sums of the said account, in fraudulent breach of his contractual and/or fiduciary duties." Mr Duggan and Mr Goodfellow rely on the fact that Mr Keates did not cross-examine Mr Stone, who stated (second witness statement, paragraph 15) that he believed "that given Mr Keates' other conduct in respect of Zenith's assets he never held any genuine intention of repaying the sums outstanding in full, and so acted dishonestly when accruing sums on the said account." However, I do not regard Mr Stone's expression of personal opinion as admissible or helpful on the issue in question. Although the reasons why that opinion might be held are not hard to see, I am in this respect not persuaded that the inference ought to be drawn.

Miscellaneous payments

291. Zenith claims reimbursement from Mr Keates in respect of a number of miscellaneous payments that it says he dishonestly caused it to make. I shall give the relevant paragraphs in the re-amended particulars of claim. Mr Keates' defence stated generally that these payments were legitimate business expenses; it promised a more detailed response after discovery but not has been received.

292. First, on 23 March 2018 Zenith paid a personal tax liability of Mr Keates in the amount of £2,732 (paragraph 93.8). He had asked Ms Watkins to make this payment. This was clearly not a legitimate business expense. In the course of the disciplinary hearing Mr Keates acknowledged that this was a personal liability and said that it ought to have been entered on his loan account. If I thought that this was simply a matter of the Accounts department failing to show the payment properly as a debit against Mr Keates' account, I should not be persuaded that it amounted to dishonesty. However, the documents indicate that Mr Keates required that the tax demand be paid and failed to respond to a request from Ms Watkins as to how it ought properly to be treated. I infer that Mr Keates was in breach of his contractual and fiduciary duties to Zenith and that, in this respect, the proper inference is that he was dishonestly seeking to misappropriate Zenith's money. Accordingly he is liable for this amount.

293. Second, there are payments of £1,000 on 20 January 2016 and £600 on 2 June 2017 that were not entered on the staff advances account (paragraph 93.2). Mr Stone stated (second statement, paragraph 12) that the payments "appear to be a misappropriation of Zenith's assets." However, the fact that the payments do not appear in the staff advances account does not mean that they represent misappropriations (the first payment has the reference "PK Exp" on Zenith's bank statement, which appears to

show that it related to expenses), and Mr Stone's bald assertion does not persuade me that the moneys were misappropriated.

294. Third, there is a payment of £950 to Mr Keates on 26 April 2017 (paragraph 93.5). Mr Keates requested this payment in an email to Mr Newnes copied to Kimberley Hammond of Uniserve Group), in which he said that he had paid £950 in cash to get "subbies" (subcontractors) to attend Uniserve's premises at Tilbury. In Part 18 further information Mr Keates stated that the payment was in respect of work to the floor and other matters at the premises. Mr Stone states that the claimants have no record of such work having been carried out. I do not regard that as sufficient evidence to justify a finding of fraud or dishonesty, when Mr Keates did in fact give an explanation at the time.

295. Fourth, in April 2016 there was a payment of £1,150 to "Oliver". This was requested in the same email to Mr Newnes and Ms Hammond. Again, Mr Keates' case in Part 18 further information was that this was a payment to a contractor (Mr Charles Oliver) who had worked at the claimants' warehouse. Mr Stone's evidence is that the claimants have no record of such work having been carried out. My conclusion is the same as for the preceding head of claim.

296. Fifth, there is a payment of £800 to Ms Coury on 1 June 2016 for a "consultancy fee" (5 hours at £160 per hour), pursuant to her invoice dated 15 May 2016 addressed to Mr Keates (paragraph 93.3). In his Part 18 further information Mr Keates stated that this was in respect of marketing advice provided by Ms Coury. Mr Stone's evidence was that the claimants "are not aware of Ms Coury ever having given or been required to give such advice." Precisely whose knowledge is in question is unclear, as are the efforts to enquire into the matter. I do not find this to be an adequate basis for an allegation of fraud or dishonesty.

297. Sixth: "On 21 July 2017 a payment of £4,100 was made to C&J Chapman by Mr Newnes that did not relate to Zenith's normal business activities. It is to be inferred that this was done at Mr Keates' request" (paragraph 93.6). Mr Stone's second witness statement said: "The claimants have been unable to discern what this payment related to but the payment would not have related to Zenith's normal business activities." I find that a wholly inadequate basis for the proposed inferences (a) that the payment was made at Mr Keates' request and (b) that he was acting dishonestly.

Damages for wasted management time

298. The claimants claim against the remaining defendants (that is, excepting Ms Coury, Mr Davies and Spring Farm) jointly £281,500 for damages in respect of wasted management time resulting from the need to investigate and address the wrongdoing complained of. That sum comprises the following figures, drawn from the claimants' witness statements:

- Mr Liddell: £250,000 (1,000 hours at £250 per hour)
- Mr Stone: £24,000 (200 hours at £120 per hour)

- Mr Southern: £3,600 (80 hours at £45 per hour)
- Mr Boardman: £1,500 (30 hours at £50 per hour)
- Ms Watkins: £1,500 (60 hours at £25 per hour)
- Ms Makos: £900 (60 hours at £15 per hour).

299. Mr Liddell's evidence (statement, paragraph 15) was that he had spent what he estimated to be "the equivalent of 750-1000 hours (full time) on commissioning and overseeing investigations into the wrongdoing, compiling and reviewing relevant documents and correspondence, attending internal meetings, reviewing and reconsidering the legitimacy of all business decisions made by Mr Keates and Mr Newnes, and developing and implementing strategy to mitigate the claimants' losses arising out of the wrongdoing, including instructing HFW throughout this litigation." He stated that the time so spent "could otherwise have been more productively devoted to furthering the business of Uniserve UK (and other companies in the Uniserve Group)." In cross-examination Mr Liddell confirmed that the figure for hours spent was his best estimate and that he had included the time he had spent instructing the claimants' solicitors, though not the time spent attending the trial. He said that he did not keep time sheets.

300. Mr Stone stated (first statement, paragraph 97) that his involvement had included interviewing employees, carrying out the disciplinary processes, obtaining information and providing it to the claimants' legal advisers to progress the claim, reviewing information from various sources that was required in order to pursue the claim, and liaising with the claimants' legal advisers. In oral evidence he explained that the hourly rates claimed for the various persons mentioned above were based on his own assessment. He referred to an independent investigation report that had been obtained; apparently this attracted legal privilege, because Mr Stone was at pains not to waive that privilege.

301. Mr Southern stated (statement, paragraph 25) that he estimated that he had spent the equivalent of ten full days of working time in investigating the extent of the wrongdoing, mitigating the claimants' losses, and assisting with the pursuit of the claim. Mr Boardman stated (statement, paragraph 16) that he estimated that he had spent the equivalent of three or four full days of working time in assisting the claimants to understand the services provided by Zenith to Biosol and in responding to Biosol's position (i.e. in these proceedings). Ms Watkins and Ms Makos did not themselves deal with their expenditure of management time.

302. Issues of this kind were considered by Gross LJ (sitting as a Judge of the High Court) in *Borealis AB v Geogas Trading SA* [2010] EWHC 2789 (Comm), [2011] 1 Lloyd's Rep.482, where there was a claim for €135,748 for amounts paid to the claimant's own employees and managers as a result of the defendant's breach of contract. Gross LJ said at [147]:

> "It was common ground that the relevant principles appear from the following passage in *Aerospace Publishing v Thames Water Utilities* [2007] EWCA Civ 3; [2007] Bus LR 726, per Wilson LJ at [86]:

> 'I consider that the authorities establish the following propositions. (a) The fact and, if so, the extent of the diversion of staff time have to be properly established and, if in that regard evidence which it would have been reasonable for the claimant to adduce is not adduced, he is at risk of a finding that they have not been established. (b) The claimant also has to establish that the diversion caused significant disruption to its business. (c) Even though it may well be that strictly the claim should be cast in terms of a loss of revenue attributable to the diversion of staff time, nevertheless in the ordinary case, and unless the defendant can establish the contrary, it is reasonable for the court to infer from the disruption that, had their time not been thus diverted, staff would have applied to activities which would, directly or indirectly, have generated revenue for the claimant in an amount at least equal to the costs of employing them during that time.'
>
> See too, *Al Rawas v Pegasus Energy* [2008] EWHC 617 (QB); [2009] 1 All ER 346, esp. at [22] – [23]; and *4 Eng Ltd v Harper* [2008] EWHC 915 (Ch); [2009] Ch 91, esp. at [40]."

303. In the present case this head of claim gives rise to several difficulties; in particular, the following:

1) In respect of each employee or director, the hourly rates claimed are estimates without any documentary support. I do not doubt Mr Stone's honesty and would not disregard his estimates. But I have to treat them with caution.

2) The figures for the total time spent by each employee or director are not supported by any time-sheets, diaries or other documentation. They are by their nature likely to be impressionistic estimates.

3) There is no breakdown of the time spent by the named individuals. This results in at least two problems. First, there is no way of telling how much of the time spent, or what proportion of the time spent, related to particular claims: for example, how much of it related to the Biosol Claim, how much to the conspiracy part of the Main Claim, and how much to Mr Keates' personal misconduct. (Mr Boardman is a partial exception to this problem, as he appears to have been solely concerned with the Biosol Claim.) Second, there is no way of telling how much of the time spent by a given individual, or what proportion of that time, related to the pursuit of the litigation itself. As to this latter point, the evidence mentioned above shows that at least a large part of the time relied on by Mr Liddell, Mr Stone, Mr Southern and Mr Boardman related specifically to the pursuit of the litigation rather than to addressing business issues resulting from the matters complained of.

4) The only direct evidence of significant disruption to the Uniserve business relates to Mr Liddell's time. It may perhaps be inferred that substantial diversion of the activities of senior managers and directors would also be

disruptive to the business; the inference is less compelling in the case of more junior staff.

5) The Uniserve Group is a very large and diverse business. Zenith, to which most of these proceedings relate, is only one part of it. Mr Liddell himself refers to the fact that diversion of his time is liable to affect the Group generally, not just the claimants.

304. The dilemma is obvious. On the one hand, it is likely that the matters complained of in this litigation have resulted in the need for senior personnel to spend time identifying and addressing problems. It is also possible that this has diverted them from more productive activities. On the other hand, I can see no rational way in which the time in question and its value can be quantified or, if quantified, apportioned as among the different causes of action or attributed to the different claimants or distinguished from time spent on litigation.

305. The application of the *Aerospace Publishing* principles is in each case dependent on the facts and evidence. The court must strive to be realistic and, in most cases, to use a broad brush. However, it must have a rational and evidence-based ground on which to make an award of damages; it cannot just pluck figures out of the air. In the *Borealis AB* case, Gross LJ was able to use common sense and the broad brush to conclude on the evidence before him that the claimant had suffered a loss of at least €75,000. Similarly, in *Azzurri Communications Ltd v International Telecommunications Equipment Ltd* [2013] EWPCC 17, HHJ Birss QC (as he then was) was able to identify a loss to the claimant of £24,550.91. In the present case, however, I have found myself unable to identify any loss properly recoverable by any of the claimants. There is a difference between a broad brush and pure arbitrariness.

306. Mr Duggan and Mr Goodfellow invite me in the alternative to give directions for an inquiry as to damages. I shall not do so. The claimants have advanced a head of damages at trial and ought not to be allowed a second chance to prove it if the first one fails.

307. The result of these decisions is that, although I have found an unlawful means conspiracy to have existed, I make no award of damages in respect of it. This causes me no unease. Although damages are "at large" in a conspiracy claim, that does not mean that it is axiomatic that damages have to be awarded for every combination to use unlawful means. The claimant does still have to prove pecuniary loss, even if the court must be prepared to use a broad brush. In theory, the claimants in this case could have proved that they suffered losses of profits; in fact, however, they advanced a spurious claim in that regard. They could also have recovered damages in respect of wasted management time, but these would have to be proved in such a manner as enabled the court to make an award that, even if broad-brush, was at least rational and principled. This they have failed to do.

<u>An order for account</u>

308. In paragraph 103 of the re-amended particulars of claim, the claimants seek an account of the profits that the defendants have derived from breaches of fiduciary duty and any

accessory liability in respect of such breaches. (See also paragraph 104, claiming that any such profits or their proceeds are held on constructive trust for the claimants.) In their closing submissions the claimants reserved their position in this respect until after judgment had been given.

309. I am prepared to hear further submissions on this matter at the hearing that will be necessary to deal with the terms of the order and consequential matters. Subject to that, however, and in the hope that it will be of some assistance to the parties in considering their positions, I make two observations. First, an account of profits will generally be ordered against a fiduciary who has breached his fiduciary duties. However, quite apart from any other consideration, I wonder whether any purpose could be served by such an account in the case of Mr Keates. Second, in the case of an accessory the court has a discretion to refuse an account. Factors relevant to the exercise of the discretion are likely in the present case to include (a) whether there is much likelihood of identifying profits of which the misconduct was the effective cause, (b) whether the claimants have established that they themselves would have exploited business opportunities that were the matter of the breach of fiduciary duty—as to which, on the facts, my finding is in the negative—and (c) whether the taking of an account would in the circumstances be disproportionate. I do not at present think it likely that an account would be ordered.

Conclusion

310. There will be judgments in accordance with the detailed decisions set out above. In summary of the main points:

1) On the Biosol Claim, there will be judgment for Zenith for the full amount claimed, subject only to the deduction of the charges in respect of the low loader trailer.

2) On the Read Claim, there will be judgment for Zenith against Mr Read for £34,912.42.

3) On the Main Claim:

- There will be money judgments against Mr Keates for his dishonest breaches of contract and of fiduciary duty in respect of the various instances of the misuse and misappropriation of the claimants' moneys and assets as detailed above.

- There will be money judgments against Mr Claridge in respect of his receipt of money payments (the DC Driving Services matter) and his receipt of benefits in respect of the shipping container, fuel cards and a mobile telephone.

- There will be no award of common law damages for conspiracy or equitable compensation for dishonest assistance against Mr Read, Mr Bundock, Biosol, Spring Logistics or Spring Renewables. If the request for an order for an account in respect of breach of fiduciary duty or dishonest assistance is pursued, I shall consider what is said.

- There will be a nominal but no substantial award of damages against Mr Read for breach of his contract with Uniserve UK.

- There will be an award of equitable compensation in favour of Zenith against Spring Renewables for the knowing receipt of diesel and IT services.

- There will be no further judgment against Miss Horsley.

311. The precise terms of the order, including any question of equitable accounting if that matter is pursued, and all consequential matters will be addressed at a further hearing. My present intention is that this will be listed for one day in court, with a page-limit of 5 pages on any written representations. I am willing to consider any written requests that those parties who are not legally represented may attend the hearing by video-link.