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Petition No: CR-2019-003980
Claim No: CR-2019-003966

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES COURT (ChD)

IN THE MATTER OF DERBYSHIRE AGGREGATES LIMITED
AND IN THE MATTER OF D A PAK LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

The Rolls Building
7 Rolls Buildings
Fetter Lane
London, EC4A 1NL

Date: 14/09/2021

THE HON. MR. JUSTICE FANCOURT

- -

Between:

(1) ADRIAN PAUL DENNY FEWINGS	**Petitioner / Claimant**
(2) SUSAN KATHLEEN FEWINGS	**Petitioner**
- and -	
(1) MARTIN POULTER	**Respondents / Defendants**
(2) KAREN BELINDA POULTER	
(3) SAMUEL BROOKES BUCKLEY	
(4) KEVAN BRASSINGTON	
(5) JULIE ANN BRIGHTON	
(6) RICHARD ANDREW BRIGHTON	
(7) DERBYSHIRE AGGREGATES LIMITED	
(8) D A PAK LIMITED	

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MS. LESLEY ANDERSON QC (instructed by **Ward Hadaway LLP**) appeared for the **Petitioners/Claimant.**

MR. SIWARD ATKINS QC (instructed by **Knights PLC**) appeared for the **Respondents/Defendants.**

Hearing dates: 14-18, 21-25, 28, 29 June, 5 July 2021

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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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THE HON. MR JUSTICE FANCOURT

The Hon. Mr Justice Fancourt :

This judgment comprises the following sections:

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I. Introduction

1. Derbyshire Aggregates Limited ("the Company") was incorporated in July 1984 in Great Longstone, Derbyshire, by Adrian Fewings ("AF") and Martin Poulter ("MP"), when they were each aged 26. They had been best friends at school.

2. From the outset of the business they were each 50% shareholders and directors of the Company. The business of the Company was and remains the retail and wholesale supply of aggregates, now principally decorative aggregates. According to the expert evidence that I have heard, the current value of the Company is between £39.2m and £57.9m. AF and MP have, for many years now, been wealthy and successful businessmen.

3. Regrettably, in June 2018, they fell out, irretrievably. The immediate cause was that AF was appointed MBE in Her Majesty The Queen's Birthday Honours. MP did not consider that AF deserved the honour and felt that it brought dishonour on the Company.

4. MP decided that AF must resign as a director of the Company and brought pressure to bear on him to do so. On 20 June 2018, AF signed documentation resigning as a director of the Company and as director of a connected company, DA Pak Limited ("DAPAK") and selling his shareholding in DAPAK to MP for £300,000. AF agreed in principle to sell his shares in the Company to MP. The price was to be an aggregate of £6.6 million for AF's shares and the shares of his wife, Susan ("SF"), who was also a director of the Company. AF left the meeting on the basis that he had to discuss the agreed price with SF.

5. A contract for the sale of AF's and SF's shares at the agreed price was sent to them on 4 July 2018. A week or two after that, AF told an independent contractor working for the Company that he was not minded to sign the contract and was considering his options.

6. In September 2018, solicitors instructed by AF wrote to directors of the Company (other than MP) complaining about an attempt by MP unlawfully to manipulate AF and remove him from the Company, by actions that included extortion and blackmail. The letter called upon the directors to reinstate AF as a director. They refused, and suggested instead that AF transfer his shares in the Company to SF, who remained a director, so that entrepreneur's tax relief could be obtained on a sale of the shares by SF.

7. In due course, AF and SF issued a petition for relief against unfairly prejudicial conduct of the Company's affairs, pursuant to sections 994-996 of the Companies Act 2006, and a separate Part 8 claim seeking to set aside the sale of the DAPAK shares, rectification of the register of DAPAK's shares and a declaration that AF's resignation as director of DAPAK and the Company was void, or voidable. In the petition, apart from the events of 18 and 20 June 2018, events taking place after the resignation of AF are also relied upon as being unfairly prejudicial to AF and SF as shareholders. These are unfair pressure applied to SF to sell her shares at an undervalue; the exclusion of SF from her role as a director of the Company; the termination of benefits payable to AF and SF as directors of the Company; the declaration of a very low dividend for the year ending 30 September 2018; and the payment by the Company of legal fees relating to this dispute.

8. Both claims were tried by me on the dates indicated above. The hearing was in the main in open court, which gave me full opportunity to assess the principal witnesses, but for convenience the evidence of several of the minor witnesses and the evidence of Mr Ferrara was taken in fully remote hearings. AF and SF were represented by Ms Lesley Anderson QC and the respondents and defendants were represented by Mr Siward Atkins QC.

II. The Main Issues

9. Counsel helpfully prepared for the pre-trial review and updated for the trial a list of main issues. In the events that have happened and in the light of all the evidence that I have heard and the way that the trial developed, it is possible to identify shortly the central issues that are determinative of both claims. These are:

    i) Did the Company remain a quasi-partnership up to June 2018 (it being common ground that it was a quasi-partnership from its incorporation until at least 1995)?

    ii) Did MP threaten AF at their meeting of 18 June 2018 or 20 June 2018, or both, with disclosure to Her Majesty's Revenue & Customs or the Derbyshire Police of financial misconduct and non-disclosure by AF in relation to his and the Company's tax affairs, in order to pressure AF into resigning as a director of the Company and DAPAK or selling his shares?

    iii) Did AF resign as a director of both companies and sell his shares in DAPAK because of a threat of disclosure made by MP at either of those meetings, or did AF resign and agree to sell his shares in both companies because he was willing to be bought out and had negotiated a satisfactory price?

    iv) Are any of the additional grounds of unfairly prejudicial conduct established, and if so, is an appropriate remedy an order that the shares of AF and SF be purchased by the directors of the Company or the Company itself at a fair value?

    v) What is a fair, non-discounted value for the combined shareholding of AF and SF in the Company?

    vi) Should the fair value of the shareholding be adjusted to compensate AF for (a) loss of entrepreneur's relief on any capital gain arising, or (b) remuneration, benefits and dividends that should have been paid to AF and SF after June 2018, or (c) because the price agreed for AF's DAPAK shares was below a fair value for those shares?

10. From this relatively short list of determinative issues, it will be apparent that concessions have been made by the respondents in relation to other potential issues in the petition. Thus, the respondents do not dispute that, if it is proved that MP did threaten AF as alleged and that AF resigned because of that conduct, the affairs of the Company were being conducted by MP in a way that was unfairly prejudicial to AF and SF as shareholders of the Company.

11. Further, in those circumstances, the respondents do not dispute that the appropriate order would be for the directors of the Company or the Company itself to buy the shares of AF and SF, and that a fair value would be a value that is not discounted because the combined holding is a minority holding in a private company that cannot be realised on the open market without the consent of the directors. In view of that concession, in relation to the primary ground of conduct on which the petitioners rely, it matters not whether the Company was still a quasi-partnership in June 2018.

12. It also follows that if the primary complaint is proved, the Petitioners succeed in their claim for a buy-out and the additional complaints about conduct after 20 June 2018 will not make a difference to the result.

13. In the event that the improper threat to AF is not proved, or if I conclude that AF resigned for reasons unconnected with MP's threat, the respondents contest each of the other alleged instances of unfairly prejudicial conduct and further dispute that, if any of them is proved, an order to buy AF's and SF's shares is an appropriate remedy. If the court does however see fit to order a buy out on any of these grounds, the respondents again do not suggest that the fair value for the combined shareholding should be assessed on a discounted basis.

14. So far as the additional complaints of unfairly prejudicial conduct are concerned, the petitioners have pleaded that the quasi-partnership ended in June 2018, as a result of the conduct of MP and the other directors. The evidence, to which I will come, was that by 20 June 2018 both MP and AF independently recognised that any relationship of trust and confidence between them had ended. If I conclude that AF resigned for reasons other than any improper threats made by MP, with a view to being bought out of the Company, his status as quasi-partner (if there was still a quasi-partnership) clearly ended at that time.

15. The issue of quasi-partnership can therefore only be of significance in relation to the allegations of exclusion of SF, on the basis that she was still entitled to treat herself as a partner with rights to participate in management of the Company and receive the benefits that were paid to directors. In that regard, the petitioners contend that the respondents cannot rely on MP's and their own wrongful conduct as the basis of an argument that any quasi-partnership with SF had come to an end. The real question, however, is whether SF ever was a quasi-partner with an expectation of participation in management.

III. Factual Background to the Company and DAPAK

16. In July 1984, MP was working for a local aggregates company, Long Rake Spar Co, as a general manager, having originally been appointed a sales manager in 1979. That company was sold in 1984. MP had ambitions of a management buy-out but that came to nothing, and MP's future at Long Rake seemed uncertain. MP's father, John Poulter, suggested that he consider setting up his own company.

17. In July 1984, AF was working night shifts in a clothing factory in Matlock, Patons & Baldwin, having previously worked in the building industry since 1974. He was living in a room that he rented on a farm in Baslow.

18. MP and AF had previously attempted to start a second hand car sales business in addition to their respective employment, but this had foundered at an early stage. Together, and no doubt prompted by MP's experience and unsatisfactory prospects at Long Rake, they formed a plan of setting up a business selling bagged aggregates as an intermediary. An accountant provided some useful guidance and the Company was incorporated and a bank account opened. 50 shares were allotted to each of MP and AF.

19. AF became a director at the outset; MP not until 1986. The reason for that is that MP continued to work for Long Rake's new owners until later in 1985 or 1986 (MP says July 1985) and, while apparently comfortable to seek to attract some of Long Rake's customers to the Company, MP did not want to be overtly connected with the Company. Long Rake knew of his involvement with the Company and, at least initially, did not

seem bothered by it, on the basis that the respective businesses did not directly conflict; but eventually they were bothered, and MP had to choose between them. He chose the Company.

20. Until that point, AF had worked nights at the clothing factory and did some work for the Company during the day. The first office was John Poulter's garden shed, which he allowed them to use. AF slept there too during the day, when he was not working on Company business. AF's responsibility initially was sales. MP worked for the Company in the evening, dealing with paperwork and bookkeeping. After a few months, the Company moved out of the shed into an office in Bakewell and employed Samantha Birds to assist in the office.

21. MP said that he was responsible for teaching AF everything about how to operate the business, because AF knew nothing about it. AF disputes that, but the truth does not matter. Initially, MP took a 55% share of the profits, in recognition of his greater contribution to the success of the business, but by either 1986 (according to AF) or 1988 (according to MP) the profits were shared 50-50. A small salary was paid to each of them.

22. The business did reasonably well from the outset and grew fast. In the first year it had turnover of £40,059, making a profit of £3,368; in the second year £150,463; in the third year, £320,106 and in the fourth year (to March 1988) £543,251.

23. In the first years, the Company was paying another firm, Bleaklow Industries, to bag the chippings that it had ordered and deliver the bags. In 1986, after a search, MP and AF found a suitable site at which they could in future store and bag their own aggregates. This was Arbor Low Works at Youlgrave, close to where MP worked for Long Rake, and previously owned and used by Bleaklow Industries. It remains the Company's primary site to this day. A deal was agreed with the managing director of Bleaklow Industries to buy Arbor Low and MP and AF obtained new banking facilities, including a loan and an overdraft facility. The site was purchased on 8 October 1986.

24. MP and AF then obtained planning permission to build offices and sheds for storing aggregates and bagging equipment and spent days and months through a bitter winter constructing with their own hands the buildings that they needed. MP says that AF's building experience was invaluable here, but maintains that he played the leading role in running the business at the same time. Again, it is unnecessary to decide who led whom because both MP and AF accept that they all worked together and that for the first 10-12 years at least (according to MP) everyone pulled their weight. More employees joined the Company (Karen Colton – who later became Mrs Poulter; Christine Carter as office administrator and Ernie Lees as sales manager; then Kay Chapman and Yvonne Vaines as accounts managers) and turnover and profits grew:

> "Both Ade and I were working around the clock at this time with Keith Shimwell in order to turn ALW into a working site from a derelict tip. This included working all hours building bays and sheds. Because of the money we had borrowed, both our homes were on the line – more members of staff joined the production side and Ade was running the office and administration side and I did everything else"

(MP witness statement, para 25)

25. AF agrees that the work establishing Arbor Low while growing the business at the same time was incredibly hard. He agrees that office and administration was his province and that MP's primary interest was the production side, and that MP did more of the building work. MP states – and it is a consistent theme of his evidence – that every time a new employee started work in the office, AF tended to hand over some of his day-to-day work to the employee. It would be surprising if that did not happen: it is why owners of a developing business employ staff, so that they can spend more time on management. If MP is implying that AF was seeking at an early stage to avoid his share of the work, I do not accept that. I will make some observations later in this judgment about MP's criticism of AF.

26. In 1994, Ernie Lees retired. The turnover had reached £2.5 million and the profit after tax was over £120,000. The Company looked to appoint a new sales manager. MP knew Kevan Brassington ("Kevan") from his time at Long Rake, and AF had been at school with his brother. They invited him to MP's home for a chat and persuaded him to leave Long Rake and join the Company as sales manager. Again, MP said that AF transferred to Kevan a lot of the sales responsibilities and most of his work. That seems surprising if Kevan was a replacement for the previous sales manager, Mr Lees. AF agrees that Kevan had great knowledge about aggregates and was a great asset to the business, but says that he and Kevan worked side by side.

27. The Company acquired the packaging that it needed for its aggregate sales from various companies but principally Excelsior Packaging Ltd in Stoke-on-Trent. Their main sales representative was Richard Brighton ("Dicky"). MP developed a social relationship with Dicky through business contact and, when Dicky expressed unhappiness at the changes in his employer's business, MP suggested that Dicky might set up on his own. The friendship was cemented by an invitation from Excelsior to MP and AF to join a winter shoot in Scotland in late 1996. Owing to Dicky's lack of business experience and capital, by the end of 1996 MP's proposal had become a suggestion that a packaging business might be set up as a division of the Company, funded initially and supported by the Company, but with Dicky running it on a day-to-day basis. There was no separate company initially, just a "bolt on", and DAPAK therefore initially traded on the basis of the Company's credit and was run by the Company's office services and facilities. It was in substance a distinct joint venture between Dicky and the Company but run within the Company.

28. The idea was devised by MP but with AF's support. Both of them attended a meeting with Shorts, the Company's auditors. MP said that after about 12 months, so in the spring of 1998, the business was transferred to DAPAK, which was set up so that it did not become a subsidiary of the Company. Dicky said that this was at MP's instigation, once the DAPAK business had established itself. The new company was incorporated on 16 April 1998. Dicky was to be allotted half the shares and MP and AF one quarter each. However, only MP and AF were appointed directors and only two shares were allotted, one to each of them. AF said that DAPAK remained dormant until June 1999 and that it was not envisaged that he or MP would have much involvement in its day-to-day business. In April 1999, MP and AF resigned as directors, Dicky was appointed the sole director, and shares were allotted in accordance with the proportions previously agreed.

29. AF said that DAPAK commenced trading as a separate company on 1 June 1999 and that in its first 10 months of trading its turnover was £564,394, making a profit after tax of £25,050.

30. DAPAK was housed in the Company's premises to start with, and as it grew it took on its own staff and office functions. MP said that he worked with Dicky to establish DAPAK's business (though more in the role of advisor and confidant, with Dicky doing the leg work) and that at one stage both he and AF had to grant security to a bank to secure DAPAK's overdraft. DAPAK then moved into its own premises in Ashbourne in 2007, at which time it was fully fledged as a separate business.

31. Dicky said that AF never became involved in DAPAK's business and did not take an interest in it. However, he remembered one social event at which he had been explaining DAPAK's business to work contacts, and when he left the table AF told them to disregard what Dicky had said as he (AF) was the owner of DAPAK. Dicky accepted that he has never forgiven AF for slighting him publicly in that way. In evidence, AF said that he and MP were happy to be just shareholders and to let Dicky run DAPAK.

32. Dicky remained the only director of DAPAK until 1 April 2015. At that time, MP, AF and Mrs Brighton (to whom Dicky had transferred some of his shares) were appointed directors. This was purely so that entrepreneur's relief would be available if and when any of them sold their shares in DAPAK.

33. 2015 was a time at which, more generally, AF and MP were considering a future sale of or exit from the Company.

IV. Quasi-Partnership

34. The petitioners' pleaded case is that the Company was and remained at all times until June 2018 a quasi-partnership. They plead that, following the transfer of some of their shares by AF to SF and by MP to Karen Poulter ("KP") on 30 April 2004, the quasi-partnership then existed between the four of them, and that all four reposed trust and confidence in each other in relation to the Company and its business.

35. The petitioners further plead that, following the appointment of Kevan and Sam Buckley ("Sam") as directors of the Company on 22 March 2010, mutual relationships of trust and confidence "developed" between Kevan, Sam and the four shareholders. From some unspecified time following 22 March 2010, there are therefore said to have been 6 quasi-partners, each owing each other equitable duties of fair dealing and full disclosure and subject to an equitable restraint preventing each from excluding any of the others from participation in management without making an offer to buy their shares at fair value.

36. To complete the picture, SF and KP were then appointed directors of the Company on 1 April 2015, and Sam became a shareholder in January 2018. He was allotted a different class of shares (with equal voting rights) that gave him a 10% stake in the equity of the Company. A different class of shares was created so that a distinction could be made between dividends payable to MP and AF on the one hand and to Sam on the other.

37. So far as DAPAK is concerned, the petitioners' case is that it was at all times a quasi-partnership between AF, MP and Dicky.

38. Before the start of the trial, the respondents' pleaded case was that the quasi-partnership in relation to the Company's business terminated on 3 April 1995, when Kevan was first employed by the Company as a sales manager. That appointment was said to reflect the fact that the Company was by then a successful, medium-sized company, and that AF thereupon stepped back from his sales role, except in relation to some smaller accounts.

39. On day 3 of the trial, the respondents applied to amend their case to plead, in the alternative, that the quasi-partnership ended on 22 March 2010, upon the appointment of Kevan and Sam as directors of the Company, and in the further alternative that it had come to an end by the start of 2018, though not as a result of any specified event or change that occurred at or about that time. I granted permission for that amendment, for reasons explained in my ex tempore judgment on that day ([2021] EWHC 1701 (Ch)).

40. As for the alleged quasi-partnership of Dicky, AF and MP in relation to DAPAK's business, the respondents deny that DAPAK was ever a quasi-partnership and contend that AF never had anything to do with DAPAK's affairs, though MP had a close relationship with it.

41. The law on quasi-partnerships was not in dispute before me. The original and clearest exposition is that of Lord Wilberforce in Ebrahimi v Westbourne Galleries Ltd [1973] AC 360, a case involving the just and equitable winding up jurisdiction. His Lordship said at p.379:

> "The foundation of it all lies in the words 'just and equitable' and, if there is any respect in which some of the cases may be open to criticism, it is that the courts may sometimes have been too timorous in giving them full force. The words are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own: that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure. That structure is defined by the Companies Act and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The 'just and equitable' provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.

> It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence - this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members' interest in the company - so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere."

42. Thus, those involved in a limited company's affairs may be subject to personal considerations, sometimes based on express agreement and sometimes on an underlying understanding, that makes it inequitable for them to rely strictly on the articles of association for definition of each other's legal rights. The examples of characteristics of a quasi-partnership given by Lord Wilberforce are just that, not prescribed requirements; but they indicate clearly that the basis of the existence of a quasi-partnership, allowing scope for equity to temper the terms of the company's constitution as regards the rights of the corporators, is a personal relationship between them that depends on mutual trust and confidence. The restriction on transfer of shares is significant because it indicates that an owner is not expected to be able to leave the company and take their equity elsewhere other than by agreement with the other shareholders.

43. It is also common ground between the parties here that a company that starts life as a quasi-partnership may cease to be such, as a result of changes in the way that it is run or in view of the interests of other shareholders. Similarly, a company that was not a quasi-partnership may become one, as a result of agreements reached between the shareholders about the way in which it is to be run. What exactly causes a change from one status to another is less well defined in the authorities.

44. Ultimately, the question seems to me to be whether a company is (or is still) being run on the basis of a personal relationship of trust and understanding between the shareholders, giving each rights and duties (though not necessarily the same rights and duties) that equity will recognise and protect, rather than each exercising their rights as shareholder or director under the terms of the company's constitution. The interposition of directors who are not shareholders may well make a difference, if the expectation of those directors is that they will perform their functions independently, according to the articles of the company; but the existence of a non-shareholder director or directors does not mean that the company cannot be a quasi-partnership. Such a person may well appreciate and adhere to the personal understanding between the other directors and respect it, subject to compliance with the statutory duties that all directors have.

45. It is not the case that a company that exceeds a certain size, whether in terms of its undertaking, turnover or number of employees, cannot be a quasi-partnership. Rather, the size of the company and its internal management structure may have consequences for the way in which its business is run, which in turn may displace the idea that it is run on the basis of a personal relationship of trust and confidence. If a company ceases to be run relatively informally and consensually and instead employs professional managers and is run with proper corporate governance, where decisions are made at board meetings or in committees and general meetings of shareholders hold the board to account, it will be very difficult to say that it remains a quasi-partnership even if the shareholders are not free to sell their shares. If, on the other hand, the business, however large and successful, is run relatively informally on the basis of consensus and trust and confidence between those who are running it, its size will not be sufficient to put an end to the equitable considerations that affect its owners.

46. Although the respondents did not abandon their case that the quasi-partnership ended in 1995, there was, in my judgment, never a factual basis for the assertion that the employment of Kevan as sales manager (to replace a retiring sales manager) put an end to the personal relationship of trust and confidence between AF and MP or the understanding that they would each participate in the management of the Company. No argument in support of the quasi-partnership ending on that date was advanced by the respondents in closing. Nor was there an argument in closing submissions that the quasi-partnership ended in 2010, with the appointment of Sam as sales director. Rather, the respondents submitted that the quasi-partnership had come to an end by the start of 2018 because of two matters: first, a breakdown in the individual relationships between AF and MP, Sam and Kevan; and second, AF no longer being involved in managing the Company's business to any significant extent from about 2015.

47. The appointment of Sam as a director was nevertheless a significant landmark in the history of the Company. By that time, its business had grown very substantially (turnover in the region of £10 million and a profit after tax of £630,000); both AF and MP saw the need for an experienced manager to run the commercial side of the Company's affairs. The appointment was also, to a degree, the result of AF and MP (then both aged 52) looking forward to a time when they might step down from day-to-day management of the Company, and a need to be able to pass its affairs on to other capable hands in due course. For that reason, Kevan was appointed an operations director, on the production side, at the same time as Sam was appointed a commercial director to work on the sales and office functions side. Both became statutory directors of the Company on 22 March 2010.

48. Sam had previously been employed as a manager at a company in the Tarmac group and had considerable experience. Both AF and MP had known Sam for some years before he was employed by the Company. AF said that he first met him on business, then at social events. MP had had business involvement with him. Sam was selected at a meeting between AF, MP and Kevan: his was the one name each of them suggested as being suitable for the job. His selection and appointment was therefore both an exercise of the personal relationship basis on which the Company was run and a perpetuation of it, in that both AF and MP knew and trusted Sam before he came to the Company.

49. Both AF and MP praised Sam for the effect that he had in expanding and modernising the business of the Company. MP said that he put a lot of new practices in place. MP

once again said that AF gave up more or less everything at that point and mainly sat back. He said that the increase in sales and profit was "all due mainly to Sam and Kev under my direction and vision for the future". MP said that:

> "Ade still ran a few functions which were not critical such as the insurance, the telephones, liaising with the bank and Shorts … he also registered a trademark for us in 2013 for 'Derbyshire Specialist Aggregates', the Trademark was not his idea, he was just to register it … He sat back more, so I asked him to look after health & safety which can be a steady job but involves organisation, leadership and motivation to visit all 5 sites and reinforce the system that we had …
>
> I would say that bar a few fringe activities, I ran the company single handed until Sam came in as a fantastic joint director with a passion. That turned a corner, I no longer consulted or informed Ade of all business matters, if he was there, he could see or ask at any time for information but he hardly did. We (the management team) would hold meetings together and with other key members of staff but Ade would not be there. Ade would never ring into the office when he was out and about like the rest of us, nor would be email or text to see how things were going or what orders were coming in or what problems were occurring. Sam, Kev and I did all the time but Ade did not for 30 years."

50. To support MP's argument that AF did nothing of importance, other than arrange the social events (principally shoots) in which the directors of the Company participated, and of which there were many, Mr Atkins prepared a schedule of all emails in the chronological trial bundle relating to various aspects of the affairs of the Company, of which AF was either the sender or a recipient. The different aspects were: operational; strategic; social; customers/suppliers and insurance/H&S/Shorts/Deans/Other. This was, he said, prepared by the respondents' solicitors, though there was no evidence about how the exercise was carried out.

51. The schedule (assuming that it is reliably prepared and that emails are correctly allocated to a category) shows various things. First, that the number of emails of which AF was either the sender or a recipient grew very substantially from the period 2009 to 2012 (when there were relatively few) to 2013 to 2016 (when there were significantly more in aggregate) to a much larger aggregate number in 2017 and 2018. Second, that the proportion of emails involving AF relating to operational or strategic matters diminished over time, progressively from 2009 to 2012 to 2013 to 2016, and then very substantially in the years 2017 and 2018, when there were hardly any operational and strategic emails. Third, that there were from 2013 onwards a substantial number of emails in each of the categories: social, customers/suppliers and insurance/H&S/Shorts/Deans/Other (Deans supplied IT services to the Company). The largest number in each of those years was for insurance/H&S/Shorts/Deans/Other but a significant number of emails in each of the years 2016-2018 related to customers/suppliers. As Ms Anderson pointed out, there are necessarily limitations to such an exercise: there was no comparison with the number of e-mails in each category that were sent or received by MP; and there were very many documents disclosed in the litigation, including emails, that were not put into the chronological bundle.

52. Mr Atkins pursued his theme that AF simply dropped out of involvement in the operational and strategic affairs of the Company from about 2015 by referring to particularly important Company matters that were the subject of email traffic, *e.g.* drafts and a final working version of a 3-year business plan prepared by Sam for the period from 2018 to 2021; discussions about diversifying the business into resins; plans to start the resins business; and emails relating to changing the structure of the business, all in the period 2016 to 2018. There was an all-day meeting in 2018 to decide whether the Company should reposition itself to sell directly to retailers of aggregates rather than to their suppliers. AF was not at the meeting or involved in the exchanges that preceded it. He was generally not in attendance at quarterly management meetings from 2016 onwards and by 2018 was not being sent management accounts. Many emails passing between Sam and MP were not copied to AF. MP and Sam both said that AF was no longer involved because he was no longer interested in running the business, only in the money that it produced for him. AF insisted that he continued to be involved in significant parts of the Company's affairs and suggested that emails might not have been copied to him because he was in the office much more regularly than MP was, and so could be spoken to directly.

53. The respondents also relied on two organisation charts prepared by Sam, one in December 2012 and one in November 2017. The first shows production staff reporting to MP and other staff, including Sam, reporting to AF. The second shows all staff in each department reporting to MP and Sam, as "managing directors", with AF set apart as chairman and no one reporting to him.

54. AF's case is that he had only stepped back to a limited extent, in accordance with discussions and agreement with MP reached in the period between 2013 and 2015, and that he continued to have significant involvement in the Company's affairs. He was the director who had responsibility for its banking, insurance and accountancy requirements. He continued to handle a number of important customer accounts, either personally or together with Kevan. He did indeed spend significant time organising social, sporting and charitable events for the Company or its directors, but this was an important aspect of the way that the Company did business, in terms of promotion and maintaining strong personal bonds with important suppliers and customers, in the UK and abroad.

55. The discussions about stepping back from day-to-day management were, first in 2013, that MP and AF would not work on Fridays; and then in 2014, following a period of ill-health that MP had suffered and his diagnosis as diabetic, that they would reduce the number of days they would each work. AF said that MP had suggested this and that he (AF) indicated that he was not ready to reduce his days yet; MP's evidence was that he announced at the 2015 Christmas party that he was going to take time off and would be handing over duties to Sam and Kevan, but that by mid-2016 his condition had stabilised and he was able to work 2 or 3 days a week, maintaining contact with staff during the other days when he was out of the office. In addition to reduced working weeks, both MP and AF had regularly taken time off for some years. MP went on shoots for up to 60 days a year; AF a significant number too, but not as many as MP.

56. It was therefore the case that both MP and AF had sought to reduce the amount of time they spent working for the Company. AF did so to a greater extent than MP, as it turned out. I find that AF had for a number of years wanted to sell the Company, in order to realise his stake. He obtained valuations of the Company in 2015 with a view to

persuading MP to cash in. He was however happy to be involved with the Company to a more limited extent, looking after the matters that he enjoyed looking after.

57. MP, despite his Christmas 2015 announcement, did not step back as was originally envisaged. It turned out that he found it difficult to let go of the business and wanted to continue with it. He also felt strong enough to do so, after a period of ill-health. In view of the Company's financial success at that time, it is understandable that MP chose to remain closely involved. However, AF cannot fairly be criticised for standing back in the way that it was originally agreed that both of them would. MP's criticism of AF for doing significantly less for the Company than he previously had done, from 2015 to 2018 is largely misplaced. If anything, AF stood back in the way that had been envisaged, or perhaps a little more, and MP hardly stood back at all beyond the 4-day week that had been agreed in 2013. There was nevertheless a real difference that emerged from about 2015: AF wanted to sell up and withdraw his investment in the Company; MP wanted to continue working (though not full-time) as a director, continuing to oversee its success.

58. In my judgment, the evidence of MP and Sam was exaggerated in relation to AF's alleged lack of continuing involvement in the Company's business. It was clear, first, from the evidence of Kevan, that AF retained greater involvement with customers than MP said (MP had suggested continued involvement in a few minor accounts only). Then, under skilful cross-examination by Ms Anderson, MP flatly contradicted the evidence he had given in chief (quoted in [49] above) that AF only had a few non-critical responsibilities for the Company's business: he accepted that they were all critical. It appears that what he might have meant was that none of them was comparable to the role that he himself played in running the Company's operations with Sam and Kevan on a day-to-day basis. It seems to me that AF continued to perform important functions, which he had always performed for the Company, and, importantly, that MP and Sam continued to trust him to perform those important functions, even though they did not make great demands on his time. I accept AF's evidence that he came into the office 2 or 3 days a week, but I also accept the evidence of Sam that he was often only there for a short time, or was often dealing with personal matters rather than Company business. I also consider that it is churlish of the respondents to criticise AF for spending a lot of time organising social and sporting events. Although AF very much enjoyed this role, it had always been part of the way that the Company had done business and MP in particular benefited from it.

59. What is even more noteworthy is that at no stage did MP, Sam or Kevan suggest to AF, formally or informally, that he was acting wrongly by failing to do more, or that he was letting the Company down. The only occasion when MP took issue with anything that AF was doing was in relation to the treatment of personal expenses, in April 2018. MP sent a text indicating that he wanted to talk about those matters, which MP explained related to costs incurred on a trip to the Monaco grand prix that year and probably other matters. The treatment of expenses paid by the Company had by then become a major irritation to MP because he considered that AF went beyond the informal understanding that they had always had that personal expenses for AF, MP and their wives only, but not for other family and friends, could be put through the books of the Company. MP said that on other occasions he complained about AF's treatment of expenses, but I am not persuaded by that assertion. There is no other evidence to support it, and I consider that MP's memory is likely to have been affected by the intense focus on financial

depredations in the run up to the 18 June 2018 meeting and which have assumed great prominence in this case since that meeting. What is clear is that MP, Sam and Kevan did not criticise AF at the time for reducing his level of commitment to the business. That is doubtless because they knew that it had been understood from about 2014 that both MP and AF intended to step back and allow Sam and Kevan to assume greater responsibility, and because it suited them for AF's role to be reduced. Although in the event MP chose not to step back to the same extent, that was his choice.

60. I do accept the respondents' evidence and argument that, from about 2015 until 2018, AF largely stood back from strategic and operational matters and left (in the main) Sam, Kevan and MP to steer the ship and plan for the future. AF was very much less involved and, by 2018, hardly involved at all. He did however continue to have certain areas of the Company's business for which he was responsible, to the exclusion of the other directors, and he had some suppliers and customers that he continued to attend to. It was in 2014 that Sam and MP agreed with AF that they would be joint managing directors and AF would be chairman of the Company. It was thus by agreement that their roles and degree of involvement changed from that time.

61. As to the claimed dissipation of trust and confidence in AF as a quasi-partner, there was no occasion on which MP, Sam or Kevan raised any such matter with AF. The respondents and the witnesses called on their behalf almost all make serious allegations against AF for his personal conduct. He is alleged to have behaved in a vulgar and venal way, making shows of his wealth, only being interested in having more money, and being tactless to both staff and business associates in the way that he flaunted his lifestyle and success. These allegations may be true – I find that they are at least partly true – and AF acknowledges that he publicly humiliated SF by the personal affairs that he was conducting. None of these are attractive personal traits, and I accept that MP, who appeared much more restrained in his tastes and personality, found them increasingly distasteful and no longer regarded AF as a friend or someone that, away from business, he or his wife would choose to spend time with. KP clearly felt the same.

62. But there was no indication to AF from MP, Sam or Kevan that they were concerned about his ability to conduct the Company's affairs, or any criticism of what he did, other than a complaint that is now made (but was not made at the time, in 2015) about failure to carry out an adequate health and safety audit. (Dicky was very critical of AF's failure to attend properly to the documents incorporating DAPAK, but that was long before the period now in issue.) In short, it suited MP, Sam and Kevan by 2018 to exclude AF from operational and strategic matters and it suited AF not to be involved. He clearly trusted them to run the Company and they apparently trusted him to attend to the important (or even, as MP accepted, critical) matters that he dealt with on behalf of the Company. Although they may increasingly have regarded AF's personal behaviour with distaste, that is not the same as a loss of trust and confidence in business matters. Quasi-partners do not need to be friends.

63. The other matter on which the respondents rely for the termination of the quasi-partnership is the growth in the size of the Company and its staff (in excess of 50 by 2018), and the development of more sophisticated management of its affairs. They argue that, under the influence of Sam, the business was run on a much more professional basis, not on the basis of a personal relationship between AF and MP. It was, however, unclear what this professional management amounted to, other than the

daily involvement (and from 2015 the joint managing directorship) of someone who had the experience of having worked for a large corporate. There is evidence that the company's business became better documented, beyond the essential bookkeeping and annual financial statements of previous years. From 2016 to 2018, Sam worked on a 3-year business plan, which the Company had never previously had, but it never got beyond a basic draft, and MP was unimpressed by it or the need for it. MP explained that he worked by keeping the details of the business in his head and that he had (and pursued) his instincts for how the business should develop. The Company had no external debt, other than trade and other business creditors, so its financial affairs were relatively uncomplicated, despite the size of the turnover.

64. It is also notable that the Company was run entirely informally, with the one exception of an annual meeting with the external accountants, Shorts, which AF organised and attended with MP. The directors had no service agreements. There were no board meetings, annual general meetings or agendas for meetings, and no formally appointed sub-committees of the board. Where a board resolution was needed, *e.g.* to approve the annual financial statements, the Company's lawyers provided the necessary paperwork. When a company meeting was required to approve the creation of a new class of shares, in January 2018, the paperwork followed the informal agreement by a number of days and was backdated to the day of the decision that AF and MP had made.

65. Not everything was done by agreement and discussion because AF trusted MP and Sam to run the Company and Kevan was only working on the production side of the business, with which AF had never had much involvement. It is a testament to the business acumen of MP and Sam that, working in the way that they did, they increased the turnover from about £10 million to about £15 million between 2010 and 2015, and then significantly higher after that. A considerable amount of that increase was attributable to the success of the online business that was set up in about 2008. Each of MP and AF played some part in setting it up, though MP claimed that AF did nothing of substance.

66. Until January 2018, the only shareholders in the Company were MP, KP, AF and SF. As I have already explained, KP and SF were in reality only holding their shares in accordance with MP's and AF's wishes, for reasons of financial planning, and never sought to exercise their rights as shareholders. Until 2018, their dividends were paid to their husbands. They later became directors of the Company for tax planning reasons only and never played any part in running the Company (except that KP said that on occasion she signed something as a director, though only when directed by MP to do so). Neither KP nor SF had any understanding of their responsibilities or role as a director of the Company. SF had no understanding of the Company's business affairs and, over the years, had relied on AF to tell her about what was happening. KP too had no real understanding of business matters: she had previously worked as a secretary in the Company, but when she married MP she stopped working.

67. In those circumstances, neither the ownership of shares by KP and SF nor their appointment as directors had any effect at all on the character of the Company or the way that it was run – they were part-owners of the Company only because AF and MP arranged their ownership in that way, in accordance with accountants' advice. The Company remained a quasi-partnership between MP and AF, with SF and KP being in reality nominal directors and shareholders. SF and KP were not quasi-partners, but their nominal shareholdings did not prevent the Company from being a quasi-partnership between AF and MP.

68. The appointment of two new directors of the Company in 2010 could have affected the character of the Company, had there been a system of corporate governance appropriate for a company of its size. But the Company continued to be run informally, despite better practices introduced by Sam. Sam and Kevan did not act independently as directors at any stage. MP and AF remained the only owners (with some of their shares held in the names of their wives) and they remained involved in running the Company. Kevan had already established a personal relationship with both AF and MP by 2010, and Sam (who joined the Company on the basis that he was known and trusted by both of them) soon did so. The Company, after 2010, was run by the four of them, on the basis of close personal associations between them and in accordance with the understandings and expectations that MP and AF had about the way that the company worked. There were no formalities. In Sam's early years, his role was played with a considerable degree of deference to MP and AF as the owners of the Company; in more recent years, with more independence. But there were still no formalities before June 2018, save for the resolution needed to create Sam's new shares and the annual financial statements.

69. Kevan said that he did not feel like a partner in the business. He has never been allowed to have shares in the Company, so that is unsurprising. But he has worked closely with AF, MP and Sam running the business. Sam did become a shareholder in 2018, and to a degree that reflected the position that he had already assumed in running the company alongside its owners. It was also to reward him for his achievements and incentivise him for the future.

70. The closeness of the relationship between the four of them is illustrated by the way that they shared out cash payments that were made by two customers (ResinDrives and Classic Stone Driveways) between 2008 and 2018. This practice originated in dealings between AF and ResinDrives in about 2008. At that stage, the part cash payments in relatively modest amounts were shared between AF and MP. After about 2016, the cash paid became much more substantial and Sam and Kevan were each given a small share of each payment. The practice spread to include payments made by Classic Stone Driveways. The cash was not declared in the Company's books or by the individuals who received it in their tax returns. As a result of events in June 2018, the matter (along with other improper payment of personal expenses of AF and MP by the Company) has now been declared to HMRC. The unpaid tax and penalties have been paid, and an HMRC investigation is underway. The amount of cash payments that the respondents have declared is £220,300. [*if figures for what AF declared and what improper expenses were declared were in evidence, please supply the correct figures*]:

71. Each of AF, MP, Sam and Kevan must have understood that the receipt and concealment of the cash payments was unlawful avoidance of tax. The payments were made by the customers to one of the four of them and then shared out by that person in envelopes delivered to the other three. Each of them must have been aware that at any time any one of them could have implicated the others in serious misconduct by making a voluntary declaration to HMRC. Yet, implicitly, each trusted the others not to do so, and trusted the person who had received the cash from the customer to share it out in the agreed proportions. Each of MP, Sam and Kevan accepted in cross-examination that they trusted AF and trusted each other not do disclose to anyone in authority what had been going on.

72. This wrongful conduct, which only ended at the beginning of 2018, itself demonstrates the strength of the personal relationships between the four directors, on the basis of which the Company's affairs were run. It shows the extent to which they trusted and had confidence in each other in running the Company's affairs. This was also noted in MP's memo to the staff of the Company that was circulated on 18 June 2018:

> "We grew the business through some very tough times to the great company we have today. I have always regarded the efforts we both made to be the best we could do with a high degree of trust, honour and commitment to the company and not to the individual, until now."

73. When Sam was allotted shares in the Company in January 2018, he became in the fullest sense a quasi-partner in the Company, if not already such, by dint of his ownership stake and the understanding that he had with AF and MP about his personal involvement in running the Company alongside them.

74. Whether Kevan was also effectively a quasi-partner despite not owning shares is a question that does not need to be answered to decide the issue of whether by January 2018 the Company had ceased to be a quasi-partnership. In my judgment it had not. The shares taken by SF and KP made no difference to the character of the Company, nor did the appointment of Sam and Kevan as directors. The relationship of trust and confidence between AF and MP in relation to the conduct of the Company's affairs continued until June 2018 and also involved Sam and Kevan. The significant success and growth of the Company's business did not change the way that the Company was run, even though AF's active role became smaller, partly by agreement and partly by acquiescence, as Sam's role increased.

75. It is common ground that, as a result of what happened between MP and AF in June 2018, the Company ceased to be a quasi-partnership at that time. In my judgment, it did not cease to be a quasi-partnership before then.

76. DAPAK was set up to take the packaging part of the business out of the Company, to be run principally by Dicky, but with AF and MP retaining a stake in the business as they had provided the capital and support to start it. It was not set up on the basis that each of AF, MP and Dicky would be partners in managing the business. Dicky depended on MP for advice about the business, but it was independent of the Company and in time was in substance Dicky's business. The Company was one of its main customers.

77. For there to have been a quasi-partnership between Dicky, AF and MP, AF and MP must have owed duties of loyalty, good faith and disclosure to Dicky, as their quasi-partner. That would have created a potential conflict between AF's and MP's duties to each other in respect of the business of the Company and their duties to Dicky in respect of DAPAK's business. It is therefore unlikely that DAPAK was operated in that way, unless Dicky were wholly subservient to AF and MP's wishes, which was manifestly not the case. In my judgment, DAPAK was not a separate quasi-partnership at any stage: it was originally run as a division of the Company's business and then as a separate company, in which AF was never intended to have any management role. There was no relationship of trust and confidence between Dicky and AF in relation to the affairs of DAPAK. Dicky did refer to AF as a business partner, but that was because

AF had a shareholding in DAPAK, not because of any involvement in running that company's affairs. MP gave Dicky much advice and took an interest as an investor and interested party, but subject to that Dicky ran the business of DAPAK as his business.

V. MBE

78. AF and SF both said that, on several occasions when they listened on the radio to the announcement of the New Year and Birthday Honours, they shared a joke that one year AF ought to be awarded an honour, in view of the good that the Company had done for employment in Derbyshire. In 2016, SF decided (without telling AF at that stage) that she would try to nominate him. Ironically, this was relatively shortly before she found out about the affair that AF had been conducting and they separated. To SF's credit, she continued to progress the application. She took advice from Awards Intelligence, a firm that sells assistance in making credible applications for honours. She attended a meeting in Buxton with a woman from that firm, Jo Spence ("Jo") and persuaded Sam to attend an initial meeting. This was necessary because SF knew very little about the nature of the Company or its success story, save for the financial benefits that it had brought her and AF.

79. When informed by SF of the proposal, Sam informed MP. Neither of them took it seriously, believing that AF had done nothing to deserve an honour and that the application could not succeed. However, Sam did agree to attend the meeting in Buxton, and at the meeting he agreed to provide Jo with further factual information about the Company's business and AF's role, which he then did. I find that Sam did not tell MP that he had provided this supportive information. He was not willing to say to SF that he would not support the application, and he did support it, to a limited extent, but he was equally unwilling to let MP know that he was doing so.

80. SF did not approach MP herself to ask for his support. Jo did and MP declined to support the application. To her surprise, SF had difficulty in getting someone else to support it, so she eventually mentioned the problem to AF and asked for his suggestions. AF did not approach MP about it. The application form was completed with information provided by Sam, SF and her daughter, Lisa, and from such other sources as were available. AF says that he was copied into a draft application form but that he did not look at it, as he was too busy with the traumas of his affair and the breakdown of his marriage. I do not accept that evidence. I find that AF did provide some information that was used in preparing the application form. The form describes AF as the founder and Chief Executive Officer of the Company. That was not strictly correct: AF was a joint founder and the chairman. AF accepted in evidence that the description and other information in the form could not have come from SF or Lisa, and I accept that Sam would not have described AF as the CEO of the Company. SF was unable to explain where it had come from. The description can only have come from AF himself.

81. The application form was sent off in November 2016. Sam's and MP's belief that nothing could possibly come of it was shaken when, in March 2018, someone from the secretariat tried to contact AF at work and left a message that it was to do with his MBE application. From that time, MP and Sam were aware that there was at least a possibility that AF would be awarded an honour in June 2018.

82. AF was asked by letter dated 1 May 2018 to confirm that he would accept the honour, if offered. Naturally, he accepted. The news was embargoed until the eve of The

Queen's official birthday. At the time, AF and MP were on a trip to Spain with others, to visit a quarry with one of the Company's suppliers and then take its owners on a fishing trip off the coast of Spain. The evening before the return to the UK, MP was unwell in bed and AF told another colleague that day that his award would be announced the next day. AF did not tell MP about it until they were driving back from Manchester airport to the Peak District late in the evening of the following day. He did not want to have to tell MP because he sensed that his reaction would not be positive. He only told MP when he did because the car radio carried the news of some prominent honours that had been awarded. AF said "I'm on that [list] tomorrow"; MP replied: "what for?". AF said "services to business and the community in Derbyshire", provoking from MP the retort: "what a load of bollocks", or similar words. There is a minor difference between AF and MP as to whether AF agreed that it was "bollocks" that he had been honoured, and whether MP asked how AF had got the award, but it is common ground that nothing further was said between them during the journey.

83. The official announcement stated that the honour was conferred on AF as founder and CEO of the Company, for services to industry and charity. AF was, naturally, delighted and proud that he had received an honour. MP went to his home in France for up to a week to consider what to do. On 13 June 2018 he sent AF an email asking if he could come to the Company's offices at 9am on Monday, 18 June 2018 for a meeting. The email did not say what the meeting was about, nor did AF enquire. On his own admission, MP had been planning his response to the award and was preparing for a confrontation with AF.

84. The events that followed were not, in my judgment, solely about the award of the MBE, though MP was deeply offended by various aspects. First, the misdescription of AF, which implied that the Company was his company and its success was due to his efforts. Second, the fact that neither MP nor his father's assistance in establishing the business were acknowledged. Third, by a risk, as he saw it, that the Company's suppliers and customers who knew AF would regard the award as a joke. Beyond all this, the MBE was seen by MP as a suitable pretext for getting AF out of the Company.

VI. The Meetings on 18 and 20 June 2018

(i) The disputed events

85. References to dates in this part of the judgment are to 2018, unless otherwise stated.

86. What MP planned and delivered on 18 June was an attack on AF's integrity and position as a director of the Company, which was calculated to pressure him into agreeing to resign as a director (and as a director of DAPAK). I consider that MP calculated that once AF had walked away from the business, MP would be well placed to buy out AF's and SF's interests at an attractive price. AF had no idea of what was going to happen, though he must have realised (and I consider that he knew all along) that MP was put out by the fact that he had been honoured. As a result of the lack of notice of the meeting on 18 June, he was wholly unprepared to deal with the confrontation that MP created.

87. No one other than MP and AF was present at the meeting on 18 June, though Sam was involved in discussion with MP before the meeting and with AF and MP after it. The evidence of MP about what was said at the meeting differs significantly from AF's version. Given the relative paucity of documents relating to what happened, it is not easy to determine the truth about what was said. SF and Kevan both had some contact with AF in the aftermath of the meeting but their relevant evidence is limited. In order to find the facts relating to the 18 June meeting, it is necessary to consider what happened at a further meeting between MP and AF on 20 June, just two days later. There is less in dispute between MP and AF about the events of 20 June, and a third person – Antonio Ferrara ("Antonio") – who worked part time for nearly two years as a financial consultant for the Company, was present, by arrangement. Antonio had been tasked by MP immediately after the 18 June meeting to prepare the appropriate company documents to formalise the resignation of AF from his directorships and the sale and purchase of AF's shares in DAPAK, which had been agreed at the 18 June meeting. Antonio liaised with the Company's solicitors between the two meetings to produce the necessary forms for signature.

88. What is principally in dispute between AF and MP is whether, at the 18 June meeting, MP threatened AF that if he did not resign as a director of the Company and DAPAK immediately, MP would disclose to HMRC or the Derbyshire Police, or both, that AF had for years been taking cash payments from the Company's customers and having expenses paid by the Company and not declaring them to HMRC. AF accuses MP in terms, in his witness statement, of blackmailing him into resigning in this way, as well as making other attacks on his integrity and threatening to have the MBE revoked. In one sense, disclosure of the cash payments would be an odd threat to make, because MP himself was as vulnerable to enforcement in respect of the improper payments as AF was, having benefited equally and not having disclosed them. However, the events of 20 June show that MP was indeed prepared to allow some light to be shone on those matters, which could bring prosecution on his own head and those of Sam and Kevan, in an attempt, as he claimed, to clean up the Company, because he disclosed the wrongdoing openly to Antonio at that meeting. The question is not whether the threat alleged to have been made on 18 June to pressure AF into resigning was a clever one to make, or a credible one, or even whether MP would have followed through with the threat if AF had called his bluff: the question is whether the threat was in fact made and whether AF agreed to resign because of it.

89. MP denies having made any such threat on 18 June but accepts that on 20 June he caused Antonio to read out to AF a draft email to HMRC and the Police making disclosure of the financial wrongdoing of AF and himself. He says that that was for the purpose of initiating a clean-up of the Company.

(ii) The principal witnesses

90. It is convenient at this stage to make some observations about the principal witnesses, whose evidence bears to varying degrees upon the truth of what happened on 18 and 20 June. The main witnesses on behalf of the petitioners were AF and SF. The main witnesses on behalf of the respondents were MP, KP, Sam, Kevan, Dicky and Antonio.

91. AF was a somewhat hesitant witness, who was not always forthcoming in his answers to questions. There were a number of questions that he was unable to answer because he could not remember what had happened. Despite his claim that he had a good

recollection of the detail of events, I am not satisfied that that is so. I formed the view that he was very clear about the generality of what had happened in the meetings of 18 and 20 June 2018, but not reliable about the small detail or the order of events. This is not wholly surprising if, as he said, his head was "in bits" as a result of the treatment he received.

92. There are aspects of AF's evidence where I am satisfied that he is wrong in his recollection, in particular that he told Kevan about a blackmail attempt and that he did not make a counter-offer for the sale of his DAPAK shares and was unwilling to sell those shares. I am also satisfied that, on certain matters, AF did not tell me the whole truth, namely the reason why he was not copied into business emails in 2017 and 2018 and that he did see and have input into the MBE application. These latter matters are concerning because they affect his credibility as an honest witness.

93. I approach his evidence with caution, given the admitted dishonesty in his financial dealings, the matters referred to above, and evidence that he was willing to act behind people's backs and conceal matters from them, in particular his attempts to prepare the ground for a sale of the Company in about 2015. I also do not accept his answer to my question whether others' evidence of his being inebriated or drunk at social occasions was a fair image of him. He said "Not at all", which is plainly not the case. I find that he is (or was) a heavy drinker, and when drunk sometimes conducted himself in an inappropriate way towards Company employees and business associates. But I do not consider that he was a wholly untruthful witness or someone whose evidence I can properly reject as being wholly unreliable.

94. None of AF's behaviour – which MP, Sam and Kevan never raised with AF as a matter of complaint or concern in relation to his role in the Company -- means that AF deserved to be pressured into resigning as a director, and the respondents do not suggest that it did, save that MP maintains that it was in part AF's lies to obtain an MBE and lies about personal expenses that caused him to ask for AF's resignation.

95. SF had nothing to do with the affairs of the Company and understood very little about its business. She was and remains (to a degree) loyal to AF, even after their marriage broke down in 2016. She was an extremely nervous witness who clearly wanted to be anywhere but the courtroom. This was not because she had anything to hide, but because she found all the events relating to her failed marriage and AF's removal from the Company extremely upsetting. Although the respondents criticised her for not being frank about making a recording of a telephone discussion with MP on 22 October 2018, I accept her explanation for this, namely that she was rather ashamed of her inability to understand complex matters relating to the Company and her shareholding and needed to be able to listen again and did not want to reveal that to others. I found SF to be a truthful witness, though her involvement in the critical events of 18-20 June was minimal and limited to a meeting and exchange of texts with AF in the evening of 20 June and morning of 21 June.

96. MP was taciturn throughout the evidence that he gave. He seemed unwilling to use more words than were essential to answer questions put to him. This was in marked contrast to the rather conversational tone of his witness statement. I was initially inclined to attribute this apparent reluctance to engage to his reserved character, but I am persuaded that this is not the real explanation for two reasons. First, MP's unwillingness to be forthcoming in his answers to even quite general questions was, as

I observed, a matter of surprise and some frustration to Mr Atkins, which conveyed to me that this was not the same MP that Mr Atkins had previously seen in consultation. Second, KP and Sam, who followed MP into the witness box, were also unwilling to be drawn into providing further information about events unless that was unavoidable. The general, concerted approach appeared to me to be to avoid giving a full (or in some cases, any) answer to the question if possible, and if impossible to give the briefest of answers, without risking too much by way of detail. Each of these witnesses made an oath or affirmed that their evidence would be the whole truth, but I am satisfied that, in the case of each of them, that was not what I received.

97. MP's evidence about the meetings of 18 and 20 June was largely based on written notes that he said that he had made later on each of those days. His account of making the notes was not challenged. The notes are of some assistance, however they do not purport to be a full record of what was said. They are more in the nature of a reflective document, containing MP's thoughts after the event, and some self-justification, as well as detailed reference to what happened at the meetings. Mr Atkins pointed out, correctly, that these notes were made at a time before AF had made any allegation of blackmail to the Company's directors and so are not likely to have been skewed in order to rebut that allegation. But the notes were made by MP in full and recent knowledge of exactly what he had said to AF at the meetings and what AF had done in response, and so, if AF's allegations about what happened at the meetings are correct, it would not be surprising if a different account appeared in the notes.

98. MP too is vulnerable to the criticism that he has acted dishonestly in relation to cash payments received from customers and expenses passed through the books of the Company. He tried to distance himself from both, on the basis that AF was principally responsible for the receipt of cash payments and his (MP's) expenses were more limited in extent than AF's. He tried to persuade me that he had been unhappy about the cash payments for some time and that he had brought them to an end in 2017, but was forced to accept that a further payment was received in 2018. He also had no proper explanation, in my judgment, for his failure to comply with the Court's Order of 12 February 2020 to provide by way of further information full particulars of each and every cash payment received by him, AF, Sam and Kevan from the Company's customers that was not put through the books of the Company. The reply was provided in a statement of the respondents' solicitor, signed with a statement of truth, to the effect that as far as the respondents were aware the only customer involved was Resindrives.co.uk Limited. MP knew full well that a second customer, Classic Stone Driveways Limited, was also involved. This inaccuracy was pointed out by the petitioners' solicitors and resulted in an amended reply being filed over 3 weeks later.

99. MP's explanation for this was that once AF's voluntary disclosure of the wrongful cash payments had been made to HMRC, Sam went to see the two customers implicated in the matter to explain and apologise. Threats to harm AF – who was identified as the source of the information that HMRC had – were allegedly made at a second meeting that Sam had with a director of Classic Stone Driveways. MP said that in order to protect AF, MP caused his solicitors (unwittingly) to omit the name of that customer in the first reply. How a reference to its name in a reply sent to AF's own solicitors would cause AF to be at any greater risk was not explained, but MP said that he thought that it was the right thing to do. It was rather, it seemed to me, an attempt to protect the

Company's relations with a customer or possibly protect the remaining directors from the risk of harm, if the reply ever became public knowledge.

100. There is a further aspect of MP's as well as KP's, Sam's and other witnesses' evidence to which I must allude at this stage, because it bears upon the reliability of MP's evidence in particular. All three witnesses had a good deal to say about AF's character and conduct in general. MP's witness statement was an unusually bitter, sustained and in large part gratuitous attack on another person's character. KP's and Sam's statements also contained gratuitously vindictive comments. Whatever AF's personal failings, which may have been many and to some of which I have already drawn attention, the degree of vilification in MP's witness statement is remarkable, and other witnesses go out of their way to criticise AF, sometimes gratuitously. AF and MP conducted a successful business together for 34 years and at no stage in their business relationship was there an occasion on which either criticised the conduct of the other, as MP and Sam accepted. There were, according to several witnesses, some audible arguments over the years, but it would be remarkable in a business environment over such a period of time if there were none.

101. The conclusion that I draw is that the personal criticisms of AF have been greatly exaggerated by the respondents in an attempt to besmirch AF's character and lead the Court to conclusions that the Company had long since ceased to be a quasi-partnership, because there was no remaining trust and confidence between AF and MP; that MP had wholly legitimate grounds on which to criticise AF for his conduct and honesty on 18 June and did not make any greater threats; and that AF's account of what happened on 18 and 20 June is a fabrication with a view to further lining his pockets.

102. I therefore approach MP's evidence with considerable caution.

103. KP's evidence was not of any real materiality in relation to the events of 18 and 20 June and it is unnecessary for me to say much more than I have just said about the reliability of her evidence. She was defensive throughout and evidently understood that she should say as little as possible. I do not feel able to rely on her evidence.

104. Sam made an apparently detailed witness statement extending to 158 paragraphs, but in the course of his cross-examination it became clear that there were significant and serious omissions. His statement refers to the start of MP's meeting with AF on 18 June 2018 and his countersigning of AF's resignation note and the gathering of the staff to be told of AF's departure, but says nothing at all about his exchanges with AF on that day or his meeting with MP. Nor was he willing to say anything about it in cross-examination: he consistently blocked any inquiry with simple assertions that "Adrian had resigned", "I was not at the meeting" and "it was not my place to ask …". The most he was willing to venture was that it was a shock to him that AF had resigned. When he eventually acknowledged that he did have a meeting with MP at that time, he would say no more than that MP told him that AF had resigned and that MP was going to see his father's grave. I have no doubt that Sam was not telling me the full truth about what happened that day. Sam was the joint managing director of the Company. He had a right to know and, being an astute businessman, he would have wanted to know.

105. Neither did Sam give me truthful and complete evidence about his understanding of the effect of the agreement that the Company would buy back AF's and SF's shares for £6.6 million. He said that he gave no further thought to it, whereas in fact he knew that

the effect was that his shareholding would have increased to 18% as a result, albeit MP wished to reduce this to 15% by buying back some shares. So Sam stood to benefit financially from the purchase of 45% of the Company's shares for £6.6 million (the experts' views being that the Company was then worth between about £30 million and £44 million).

106. Sam struck me as an able businessman with enormous loyalty to MP and the Company, but without a strong affinity for the truth where it might get in the way of business interests. He too was involved (though only for the years 2015-2018) in the dishonest receipt of cash benefits and he too caused or allowed the respondents' solicitors to make an untruthful response to the Court's Order to provide further information about the cash benefits. The observations that I have made previously about these matters apply to him.

107. I will therefore treat the evidence of Sam with caution.

108. Kevan was bluff and straightforward in the way that he gave his evidence. It is of more peripheral relevance to the events of 18-20 June. He received a visit from AF after the resignation and farewell to the staff on 18 June, but was not otherwise directly involved. His witness statements contains the same selective and exaggerated treatment of AF's role in the Company as the rest of the respondents' witness statements, and certain phrases used in his statement ("What a mockery of the whole award system it was …") are plainly not the words of the witness himself.

109. In the witness box, he was short in his answers and he did not give as full an answer to many questions as he might have done, but I attribute this mainly to his character and in part to concern about what he might reveal that could be harmful to the Company. Kevan appeared still to be bemused at his appointment in 2019 as a member of the Company's board's sub-committee on dividends and remuneration. In some of the answers to Ms Anderson's questions, he gave, I consider, a fairer picture of the involvement of AF with the Company's business between 2010 and 2018 than his witness statement does. Kevan too is tarnished by his involvement in the cash payments wrongdoing and the misleading of the court in the reply to the order to provide further information (he too said that he thought he was doing the right thing), and for those reasons – and because he is understandably breast-high with MP and Sam in wishing to see off these claims – I do not feel I can wholly rely on his evidence. Rather like Sam, he claimed to have spoken at some length to AF on 18 June but with nothing of any substance to recall. In my judgment, he either does not remember much about it or he is unwilling to say what happened on that day.

110. Dicky Brighton was a very different personality from Kevan: opinionated, assertive and pleased with himself. He clearly has and had a visceral dislike of AF as a business colleague, since the occasion in 2008 on which AF had talked slightingly of Dicky's involvement in DAPAK in front of AF's friends. He was not always objective in what he said but appeared to have a clear and strong recollection of events that he was willing to talk about. By contrast, he seemed to have little recollection of the conversation that he had with MP on 18 June, except that MP told him that AF had agreed to sell his shares in DAPAK for £300,000 and that it was going to be signed up on 20 June. He said that MP did not tell him about the circumstances of the meeting and that he did not ask. Dicky had the clear impression that MP and AF were his business associates, not

friends, but he also had respect for MP's views and was grateful for his support. He described AF as the social secretary and said it was a standing joke between all of them.

111. Antonio was an entirely different kind of witness. Clearly disinterested, fair, and doing his best to remember accurately what happened on 20 June 2018, but at the same time being careful not to stray beyond the facts and speculate or express opinions. He said that had become uncomfortable with what he learned about the Company's financial affairs at that meeting and later decided that he no longer wished to work as a consultant for it, though the parting was amicable. He stopped working for the Company in January 2019. He seemed to have an equal regard for AF and MP as owners of the Company, for which he worked one day a week, and he clearly had no axe to grind or preference for one or other party.

112. He explained that he prepared his own witness statement, amending a first draft that had been provided to him because he understood that his evidence might be important in this case and he was not happy with the way that the first draft was expressed. He seemed to have a good recollection of events, subject only to a period which he described as 5-10 minutes after MP asked him to read out the draft email in the meeting with AF on 20 June, when he was so distracted and shocked by what he read that he was not able to concentrate on the conversation between AF and MP that then followed.

113. I have no hesitation in accepting the honesty of Antonio's evidence and, subject to minor points, the accuracy of his recollection. The fact that Antonio was plainly a truthful and conscientious witness does not mean that he was accurate about every point in his evidence, but – save where contradicted by other reliable sources or inherent likelihood – I consider that his evidence is much more likely to be accurate about the events that he witnessed on 20 June 2018 than the evidence of AF or MP.

114. I am therefore faced with the difficulty that, in relation to the important events of 18 June, I have no direct evidence of what was said on which I feel that I can confidently rely. It is therefore necessary to consider the rival accounts in the light of the reliable evidence that I have about what happened at the meeting two days later, the documents (very limited though they are) that relate to the events, the uncontroversial facts about events that occurred before, during and after the meeting on 18 June, the way that the participants conducted themselves after the meetings and the inherent likelihood of one or other account being the truth.

115. <u>(iii) The undisputed facts</u>

116. There are many facts about the events surrounding the meetings on 18 and 20 June that are uncontroversial. I will describe those and then consider the evidence of Antonio about what happened on 20 June.

117. MP retreated to his house in France the week before these meetings to contemplate for some days what he was going to do and to plan a "confrontation" with AF, to use his word. Before he left, on 9 June 2018, he spoke to SF on the telephone, told her that the MBE created problems for the Company, and SF expressed regret and said that she would have stopped the application if she had known that it would cause difficulties. MP reported this to Sam as "She feels sorry now she has done it really believed all the stories she got back from Ade that he ran Derby Aggs".

118. MP said nothing to AF about what he was thinking. AF was sent a text by MP on Wednesday, 13 June, asking for a meeting at 9am on Monday 18 June, to sort out some urgent matters, to which AF agreed. Sam received a phone call from MP on the Sunday, asking him to meet MP in the office at 8am the following morning. AF had no idea at all about what was coming, nor could he easily have foreseen it, despite knowing that MP was not at all impressed by the award that AF had received.

119. One other thing that MP had been pondering that week was whether a mistake had been made in the payment of dividends the previous year. Unusually, two distributions to shareholders of £1million in aggregate had been made 9 months apart, but within the same financial year. MP was at one stage concerned that there might have been a fraud perpetrated on the Company, as he could not remember having agreed that. (There had of course been no board meeting or sub-committee meetings and were no minutes relating to the dividends.) Antonio proposed on 14 June 2018 "re-characterising" the second dividend in the year 2017-18 as a loan and then using it to pay a dividend the following year.

120. Sam described MP's attitude to him at the 8am meeting on 18 June as "aggressive". MP wanted to get to the bottom of Sam's involvement in the honours application and award. During the meeting with Sam, MP gave him a handwritten note to staff and asked him to type it up and circulate it to the staff. The note (which was circulated that morning, as MP had requested) told the staff that following AF's MBE award and the listing of AF as the founder and CEO of the Company, MP wanted to outline the true story of its history. The note then recited AF's homelessness in the 1980s, MP's parents' assistance in housing AF and setting up the business (which was said to be MP's idea), and MP's provision of the first two customers of the business. It then made the statement set out in [72] above.

121. AF arrived in time for the meeting and went into the boardroom with a cup of coffee. MP was already there. It is common ground that MP first spoke about the MBE and asked for an explanation. It is also common ground that MP raised the question of the expenses of participation in a charitable event at the Casa Hotel in March 2018 and a family Christening in March 2017 being put through the books of the Company by AF, and that matters became heated. It is common ground that MP asked AF to resign from the Company and that AF went outside for a time, between 15 and 30 minutes, to think about it. On his return, AF then wrote out his own resignation statement, at MP's request. It was in the form of a letter to the Company and said:

> "DEAR MARTIN,
>
> After much Thought, I have taken The very difficult decision to step down as chairman of DERBYshire Aggregates Ltd, To enable Me to Follow other business opportunities
>
> I wish the company much success in the Future.
>
> Yours,
>
> Adrian" [sic]

What else was said between MP and AF is keenly disputed.

122. The note was countersigned by Sam, who was not present at the meeting but who was asked by MP to witness the resignation. AF had a conversation with Sam and Sam went into MP's office to speak to him, before returning and countersigning the resignation letter.

123. AF then made a statement to the staff of the Company present in the Arbor Low offices at that time and then shook MP by then hand.

124. There was a discussion, either before or after the statement made to the staff, about MP buying AF's shares in DAPAK. A price of £300,000 was agreed. It was agreed that the formalities would be dealt with at a further meeting on the morning of Wednesday 20 June, when Antonio would be present and the sale of AF's and SF's shares in the Company could be discussed. This had been raised in the meeting but no conclusion reached.

125. MP then went to visit his father's grave. AF left and went to visit Kevan at the Ryder Point quarry site, which is remote from the Arbor Low site.

126. Later that day, Sam and then MP spoke to Antonio on the telephone. Sam told him about the resignation of AF. MP asked Antonio to prepare paperwork to formalise AF's resignation as a director of the Company and DAPAK, and a contract for the sale of his shares in DAPAK. MP asked Antonio to come to a further meeting with AF on Wednesday morning to deal with the formalities and discuss the sale of shares in the Company.

127. MP also sent an email to a friend, Simon Pashley, who knew AF from shoots that they had all been on. It said: "Adrian has of this mornings going resigned from the company. Any shooting should still be ok for this season only."

128. Antonio got in touch with Knights solicitors, later that afternoon to request appropriate documents by Wednesday morning. At 5.08pm, Lisa Bridgwood from Knights emailed Antonio referring to an "irreconcilable breakdown of shareholder relations". She had also clearly been instructed that there would be a buy-back of shares in the Company and that Sam's holding was to be kept to 10% and described this re-structuring as "likely to be more complicated".

129. Knights sent the requested draft documents at about 5pm on Tuesday. Lisa Bridgwood's email pointed out that if AF resigned prior to transferring his shares in the Company he would lose any entrepreneur's tax relief "and as such he may not want to do this in the cold light of day". Antonio forwarded this email to MP, highlighting the warning about entrepreneur's relief as "something to consider".

130. Also on Tuesday 19 June, MP sent AF a text "Do you know what his is all about?". AF replied later in the day:

> "I know I have been a complete arse and wish I had never heard of MBE
>
> I thought acceptance of the MBE would be good PR for the company.

> I never wanted to upset you or anyone else with this. I have always had the company at heart, it has been my life for the past 34 years.
>
> Sue and the family thought it would be good to apply without my knowledge.
>
> I am so sorry that accepting the MBE has upset you the way it has."

That olive branch was firmly snapped by MP's prompt reply:

> "Ok we can now have a proper chat and I hope this is going to be a new start for you as the way you were going had no future and friends.
>
> When you realise what really matters around you you can maybe change direction and get fulfilment in a different way.
>
> There are things other than money.
>
> Antonio has the dap papers for pm tomorrow."

131. AF, MP and Antonio met at some time in the morning on 20 June 2018. DAPAK was addressed first. AF signed the contract to sell his shares and the resignation documents. The DAPAK resignation letter was witnessed by Antonio. Before there was any discussion about the price for AF's and SF's shares in the Company, AF denied that he had resigned as a director of the Company and this annoyed MP. MP later handed Antonio his iPad with a draft email written on it and asked Antonio to read it out to AF. Antonio read the start of it to AF. The draft email was addressed to HMRC and Derbyshire Police and explained to them that there had been financial improprieties at the Company involving cash payments. What else was said at that time is disputed.

132. MP then required AF to resign by signing formal documents. AF went outside for a smoking break, again for up to 30 minutes. He came back in and tried to negotiate a price for his shares in the Company, but MP would not negotiate a price until AF had signed the resignation forms. AF then signed and a discussion took place about a price. It started with an offer of £4m from MP. Then £6m was suggested and Antonio pointed out that allowing for tax of 10% (with the benefit of entrepreneur's relief) a price of £6.6 million would leave AF with £6m in his hands.

133. AF "agreed" a price of £6.6m subject to his having to discuss it with SF. The signature of AF resigning as a director of the Company was purportedly witnessed by Sam, though he was not at the meeting.

134. AF went to see SF on the evening of 20 June 2018. Later that evening, she sent him a Whatsapp:

> "Lovely to see you Ade. You look really well. <u>I'm still in shock very much about Martin's behaviour. Just can't believe it.</u> What a dreadful end to all your hard Work over the pasted years. I feel

> absolutely gutted that such a special exciting experience of gaining your M.B.E as caused this…." (*emphasis added*)

135. The next day, 21 June SF sent a further Whatsapp to AF:

> "I really feel perhaps I shouldn't of gone a head with the M.B.E. Ade. Up-setting people. I honestly wouldn't of even thought of doing it if I had known of nonsense. So sorry."

to which AF replied:

> "It is not your fault that Martin was so jealous about the MBE. And I can't believe he would have reported me, him, SAM and Kev for things. It obviously made him so jealous. I saw something in him that I have never seen before and I don't think we could have worked together in the future. I love the thought that I was given an MBE and I am very proud of it, thank you for putting the application in for me …..(*emphasis added*)
>
> I have made you a promise about not divulging anything about your finances. All people need to know is that I have retired from Derby Aggs and sold my shares back to the company."

136. It appears that Antonio had a meeting with Shorts on 21 June, following which he sent them an email asking for the authentication codes for DAPAK at Companies House and saying:

> "There are some changes (quite significant) to both companies that I need to inform you of. These are currently extremely sensitive and thus I apologies for not mentioning them during the meeting. Once everything has gone through, I will shed some light." (*emphasis added*)

137. On 22 June, Knights emailed MP about completion of the purchase of AF's DAPAK shares, noting that the transfer form had been dated prior to completion, which they assumed had not yet taken place, and stated:

> "If the form has been dated in error we will either need to get the form re-signed or attempt to manuscript amend the date. In the circumstances I understand, however, that it might not be feasible to have this form re-signed by Adrian."

They also emailed AF confirming that the various documents he signed would be registered at Companies House and asking him to confirm his bank details for payment of the agreed price for the DAPAK shares. On the same day, Antonio sent AF a letter enclosing a P45 and stating that the various benefits that AF had enjoyed as a director would end from 30 June 2018. AF replied to Knights on 25 June providing details of his account at Coutts.

138. On 25 June it appears that Simon Pashley received MP's email of 18 June (see [120] above) and he asked whether AF had resigned from the Company or from the Snelston

shoot, to which MP responded that he had gone from the Company. Pashley replied, asking to "know the score sometime when the dust has settled", which produced the following response from MP:

> "You will like it, lots of drama, pressure and ultimately getting what you set out to do. You had it last time when we met when you said I ran da and ade sat back, the mbe for business was the final straw so I went to France for a week for matters to develop on the day he got it then came back with a mission as I had known for 2 years sue had paid a company to get it for him and if he got it that would be wrong.
>
> So high noon at 9am Monday and by 10 he had resigned (officially retired)
>
> Just sorting shares but I run it without sharing.
>
> Might still be friendly socially that's up to him but some nice stories re his girlfriend you might like!"

139. On 28 June, AF emailed a financial consultant at Mattioli Woods and told him that he was planning to retire from the Company on 1 August and was thinking of investing £1.5 to £2 million for a regular income paid quarterly. He wanted to know what products were available and what return he would get.

140. From 27 June onwards, MP started to contact SF by text about the sale of her shares. He said to her that AF could not sell without her shares and offered Antonio to explain her options. He added that AF had just received £300,000 into his bank account with a cheque for another £155,000 in the post (this related to the balance on AF's director's loan account with DAPAK). On 28 June, MP texted SF that AF's resignation had made her position as a director awkward and that SF could either sell her shares with AF's or keep them, but pointed out that if the sale of shares was delayed there could be adverse tax consequences. SF did not attend a meeting with Antonio, as MP had suggested, and on 4 July she received two emails from Antonio enclosing a contract for the sale of her shares for £1.98 million, spread over three years. SF did not engage and left the country for a prolonged holiday in Florida, where MP continued to text her, implying that her position as a director was in jeopardy and that she should consider selling shares while she was a director.

141. At the same time as a contract had been sent to SF, Antonio sent one to AF. AF did not reply but Antonio later contacted him by phone, when AF said that he was not progressing the sale and was considering his options. Antonio said this was probably a week or two after the email of 4 July, so about the middle of July.

142. On 20 August, AF and SF received a letter providing notice of a general meeting of the Company on 21 September to consider a resolution to remove SF as a director of the Company with immediate effect. The meeting was later cancelled, while negotiations between the parties continued, so that the opportunity of SF selling shares while still a director of the Company remained available.

143. AF made a request of HMRC in August or early September 2018 to make voluntary disclosure of the financial wrongdoing under its Contractual Disclosure Facility. That was reported to Sam and Kevan in a letter from Stewarts dated 6 September 2018, who had by then been instructed by AF. The letter set out AF's case that he had been blackmailed by MP on 18 and 20 June (including an allegation that on 18 June MP explained to AF the email to HMRC and the Police that he had on his iPad and threatened to send it unless AF resigned, and an allegation that MP caused Antonio to read out the email at the 20 June meeting) and required his reinstatement as director of the Company. Knights replied on behalf of the Company on 13 September 2018, rejecting the allegations of blackmail and explaining that a draft email to HMRC and Derbyshire Police was prepared and read to AF but that AF took no issue with it and it was not sent. The letter asked for voluntary disclosure of the communications AF had had with HMRC and said that the Company and MP were more than happy to become involved in any investigation.

144. In October 2018, Shorts were commissioned to provide a valuation of the Company and of AF's and SF's shareholdings, no doubt with a view to settlement negotiation and/or the making of an offer by the Company.

145. AF did not provide details of his disclosure to HMRC, though Knights repeatedly pressed for it. In November 2018 at the Grouse and Claret public house, MP and Sam met AF to seek further information about his disclosure to HMRC and to tell AF about the reaction of Classic Stone Driveways to the news that AF had made disclosure of improper cash payments. It was also an occasion on which there was a discussion about the value of his and SF's shareholdings, based on the valuation that Shorts were preparing (a final draft is dated 28 November 2018, valuing the Company at £28.8 million and AF's and SF's combined holding at £8.74m, on the basis of a 32.5% minority holding discount).

146. On 23 November 2018, Sam emailed Knights saying:

> "We understand that Adrian has contacted HMRC regarding his use of company money for building work on his own property.
>
> <u>Martin is now looking to have a clean sheet should things progress to a full legal process.</u>
>
> <u>Can you suggest someone from Knights that can Advise Martin on how to progress please</u>?" (*emphasis added*)

Knights replied:

> "We have been having a chat about this internally and it seems that rather than a lawyer at this stage Martin is better instructing someone who can liaise with the Revenue on his behalf, and then to the extent that there has been any wrong doing this is more likely to be included in any penalty by the Revenue rather than by way of formal legal process against Martin.

> I've used Mitten Clarke on a similar matter before and the relevant contacts there would be Rebecca Thorley … and Michael Burgess ……."

147. Following that advice, Sam, MP and possibly Kevan too met Mr Burgess and Ms Thorley of Mitten Clarke on 29 November 2018.

148. On 10 December 2018, Sam wrote to AF enclosing Shorts' final valuation. The letter stated that the Company had also engaged Mitten Clarke, and that they had expressed the opinion that Shorts' valuation was overstated, and that the value of the Company was about £24.5 million and a 45% shareholding worth £7.45 million. The letter states that Mitten Clarke suggest that the value will be damaged by the effect of two customers being involved in the HMRC action, as well as fines, penalties and overdue taxes; and that the negative impact of the HMRC action could be greater, having regard to reputational and operational implications.

149. On 21 January 2019, Knights wrote to Stewarts saying that the Company and the remaining directors would be making their own submissions to HMRC, and they criticised AF for not revealing what he had disclosed. In fact, the voluntary disclosure by the Company, MP, Sam and Kevan was not made until 18 or 19 February 2019. This included the cash payments received from Resin Drives and Classic Stone Driveways over the period 2010 to 2018.

150. On 4 February 2019, Knights made an open offer on behalf of the Company, MP and Sam to buy AF's and SF's shares for £9 million, to be paid by an initial instalment of £3 million and then £1 million each year for 6 years. The offer was not accepted.

151. Those are the uncontentious facts surrounding the central issue of what was said by MP at the 18 and 20 June 2020 meetings. In view of the conclusions that I have already expressed about the reliability of AF, MP, Sam and Antonio as witnesses, I start with Antonio's account of the meeting that he attended.

<u>(iv) Antonio's evidence about the 20 June meeting</u>

152. Antonio made a witness statement and was cross-examined at length by Ms Anderson, during which he was taken in more detail through the events of 20 June, with focus on the correct sequence of events on that day. Antonio said that when Sam spoke to him on 18 June he was upset and shocked by what had happened that morning, but said that it might perhaps be for the good of the business to have "engaged" directors. That was, presumably, a suggestion that AF had become "disengaged".

153. Antonio's evidence about 20 June, as it stood following the end of his oral evidence, was as follows:

    i) He understood from MP that there had been a breakdown in relations between MP and AF on 18 June, as a result of which AF had resigned, and that the resignation and sale of AF's shares in DAPAK was to be documented on 20 June. He also understood that there was to be a discussion about the sale back to the Company of AF's shares in the Company. Antonio was anxious about participating in the meeting but went along, as instructed. His instinct was to

see if the two directors could be reconciled, as he knew that they had been together for such a long time.

ii) On the morning of the meeting, he bumped into AF outside his ground floor office, by the coffee machine. The discussion they had was relatively short, but AF told him his side of the story and that MP had taken issue with the MBE. AF said that he had had legal advice from a top firm in Leeds to the effect that he had not resigned as a director, only as chairman of the Company.

iii) The meeting took place in the board room later that morning. The atmosphere was tense. There was some initial disagreement between them – Antonio did not follow what it was about, it seemed to be about historic matters. He then played his peacemaker card, only for it to be rejected by both sides. MP said that there had been a long build up to the breakdown and that he could no longer work with AF. AF said that, given what had happened, he could not work with MP. There was then some "bickering" between them, and AF repeated to MP what he had already told Antonio, namely that he had only resigned as chairman, not as a director. This irritated MP (Antonio said that if MP said that he was angry then so be it, but "assertive" was the word that Antonio would use to describe MP's conduct) and there was further "bickering" and animosity between them, followed by an awkward silence.

iv) The sale of the DAPAK shares was then mentioned, and AF seemed happy, even keen, to conclude that matter, so the documents were signed. That was resolved without hesitation.

v) MP and AF then continued arguing. MP said that he wanted AF to resign and AF said he did not want to resign. There was another awkward silence and then MP typed something on his iPad. He said that he had had enough of AF's fraud and deceit and that he wanted to clean up everything by putting right their financial irregularities. Antonio was not aware of any such irregularities. MP pushed the iPad to Antonio saying "Can you please read that out and read who it is to?" The typed email was 15-20 lines long, maybe shorter. MP maybe had it pre-typed – Antonio saw MP doing something on his iPad but it was maybe only unlocking it and opening a document – he was not sure whether MP typed the document there and then.

vi) Antonio then read out the typed document and had only read about 3-4 lines before AF interrupted him. Antonio was shocked by what he read but did not understand the detail. The document was about cash payments received from customers and personal expenses put through the Company by AF and MP in the past. What Antonio read evidently struck a chord with AF and he appeared panicked by it. There was then forceful argument between the two of them. Antonio was in shock for 5 to 10 minutes and was unable to say what exactly was said between MP and AF in that period. There was then another awkward silence.

vii) MP then said that if AF was not going to resign he was going to call a board meeting to call on him to resign for improper behaviour and lying about expenses, and he listed some examples of misconduct by AF.

viii) AF then said that he wanted a break and he went out for half an hour or so.

ix) When AF came back in the focus was on the price for AF's shares. MP repeated that he wanted AF to resign and AF said that he wanted to know what he would get for his shares if he resigned. MP refused to discuss price until AF had resigned and AF wanted to discuss the price first. This went on for a while, and MP would not move. AF gave way and signed the letter of resignation and the form TM01 and gave them back to Antonio. Antonio saw no signs of stress at this moment and, as far as he could see, AF did not feel under pressure to sign the papers. He felt that AF could have continued not to resign if he had wanted to.

x) There was then a discussion about price. It was on the basis that the Company would be buying AF's and SF's shares. MP offered £4m. AF laughed and said that they were worth much more. Negotiations reached a point where MP had offered £6m but AF wanted £8m. At that stage, Antonio pointed out that with allowance for 10% tax with entrepreneur's relief, a payment of £6.6m would allow AF to walk away with £6m. He added that some of the Company's surplus cash was on term deposit, so might not be available immediately, but as they were all short term deposits the delay would not be long. AF was happy with £6.6m on that basis and said he would talk to SF about it.

xi) Antonio said that he saw no sign of stress or pressure on AF to make the agreement and his main concern appeared to be how soon he could get the money.

xii) After the meeting, AF asked Antonio for the name of a good IFA and what type of return he could expect from investing that much money. Sam then called him into a meeting with MP to discuss what would happen to the shareholdings if AF and SF stuck with the agreement that had been reached, so they went through that and it was agreed that the Company would also buy back some of Sam's shares, so that Sam's overall shareholding stood at 15%.

154. Following 20 June, Antonio set about obtaining the necessary documentation from Knights to record the intended share sale. He sent Lisa Bridgwood that evening a spreadsheet, saying that it had been agreed with AF but that SF was yet to agree, but hoped that they would get the go ahead the next day. The spreadsheet showed that the Company was to buy all AF's and SF's shares in instalments, with £4m being payable on 1 August 2018, a further £1.6m on 1 August 2019 and a further £1m on 1 August 2020. This priced the 5,000 shares at £1,320 per share. It was also to buy 228 shares from Sam for £440,000 (about £1,980 per share) with the consideration payable in 2018 and 2020. (As a matter of arithmetic, Sam was therefore to be paid a price exactly 50% higher than AF and SF were to be paid.)

155. Antonio said that he thought that the proposed dates of the instalments to be paid to AF and SF were a mistake and that what was intended was instalments a month apart, to allow for the monies to be taken off deposit. I find that he was wrong about that. As the instalment dates for Sam's consideration show, it was intended to spread the cost of the shares over a 2-year period, but this had never been discussed or agreed with AF at the meeting. It was being imposed unilaterally.

156. Later on 20 June, Antonio told Lisa Bridgwood that it was a priority to process the TM01 to remove AF as a director, and that discussions were taking place to remove SF too. What is evident from the email traffic following 20 June is that Antonio (acting on behalf of the Company) was keen for matters to be completed as soon as possible, and that there appeared to be a recognition that until the deal was concluded AF might change his mind and the matter was sensitive.

AF's evidence about the June meetings

157. AF said that at the meeting on 18 June, MP questioned him directly about the MBE, the Casa event and the Christening, and that he challenged him about whether there were any customers or suppliers present at Casa. AF said that he did not lie and told MP who was there. MP sat at the table with his iPad and said that he had an email to Derbyshire police and HMRC, admitting to the two of them taking cash out of the business over a period of time and not declaring it, and that he would send it if AF did not resign. AF said that MP did not show him the email but gave him the "gubbins" of what was in it, by which I understood him to mean the gist of it. MP then said that AF had a choice: if he resigned, MP would not send the email. AF said that he told MP that it would be crazy to send the email, as it would implicate him, Sam and Kevan too, and that MP said that he would pay their fines and did not care about the consequences. MP said that he was going to send the email as it would result in AF's MBE being revoked, and this was all that he cared about. AF said that he said that he would give the MBE back, but MP said that it was too late, as it had come to the attention of the press. MP then told him to go away and come back in a few minutes to write his resignation.

158. AF said he went out of the building to smoke and his head was "in bits" – "I was in total shock and shaking like hell. I couldn't comprehend what was happening or why Martin was threatening me". He then came back in, after 15 minutes or so, and MP told him that he would write out his resignation; that he would then call all of the staff together and AF would explain that he had decided to use his MBE to move on and do other things; and that he would then shake MP's hand in front of the staff. MP said that if AF did all those things, that would be the end of it and he would not send the email. AF said that he did not think that he had any choice but to comply with MP's demands. He said that he was concerned about the prospect of criminal prosecution, in view of a previous HMRC investigation into the Company.

159. AF then signed the resignation letter and took it to Sam:

> "I told Sam what had happened. Sam appeared flabbergasted. He said he couldn't believe it, that what Martin was doing was ridiculous and that he felt sick to his stomach. He said he would go and have a word with Martin. I hung around in the boardroom waiting for Sam. Sam came back with my resignation letter, which he had countersigned (Sam's signature being below mine on the letter). He said that Martin wasn't for changing his mind. Sam said that Martin kept saying that he was doing it for his dad and banging his chest."

AF confirmed in cross-examination that he told Sam about the blackmail.

160. AF did not consciously write that he was resigning as chairman, it was just that that was the title that he had used of late. He then addressed the staff and said that he had decided to retire so that he could follow a different path with his MBE, and then shook MP's hand. He went outside for another smoke, and Keith Shinwell came out to him to ask what had gone on, but AF would not tell him. Then he went back into the boardroom and MP raised the issue of AF's shares in both companies, saying that he would have to sell them. AF said he resisted, but MP said that he had no option and that MP would send the email if he did not sell, and that he would refuse to vote for any dividend going forward to starve AF of any income. MP then offered £250,000 for the DAPAK shares; AF said that they were worth more than that; MP then offered £300,000. MP also said that he would give AF £4m for his shares in the Company, and AF said that that was far too low. MP said that they would speak further about that on Wednesday, when Antonio would also be present. After MP left (according to Sam, to see MP's father's grave), AF sat at his computer and wrote and sent an email to the staff of the Company to say goodbye. AF felt that he could not tell them what MP had done.

161. AF denied that he obtained legal advice before the 20 June meeting. He said that he spoke to a solicitor at Elliot Mather LLP for one minute and 29 seconds, as recorded on his phone bill, but otherwise did not speak to a lawyer before the meeting.

162. In cross-examination, AF was challenged about his suggestion that MP had threatened to report him to the Police and HMRC unless he resigned. He accepted that it appeared that what MP cared most about was getting the MBE revoked, and was asked why MP would then offer not to make a report of the financial wrongdoing if AF resigned. AF accepted Mr Atkins' suggestion that it did not make sense but confirmed that MP did not positively say that he would not go after the MBE if AF resigned. He said it was clear that MP wanted him out of the business. He said that MP did not mention calling a general meeting of the Company and did not say that there would be no dividend that year because they had had a double dividend the previous year.

163. AF was also challenged that his account of the negotiation for the sale of the DAPAK shares did not make sense: if MP was blackmailing AF and saying that AF had no option but to sell, why would MP increase the price that he was offering? AF maintained that it was MP who increased the offer, not him, and that he did not make a counter-offer. AF said that he would not have sold his shares in DAPAK but for the blackmail. AF said that when he went to see Kevan he told him about the threat of the email to the Police and HMRC and about the blackmail. This was not in his witness statement. AF also said that he thought about calling the Police, but did not because he did not know what to do. This was not in his witness statement either. He thought he would try to get his head round things and then get some decent lawyers to fight his case.

164. AF's account of the meeting on 20 June was that he arrived shortly before 9am and went straight to the boardroom. He said he dealt with the DAPAK documentation as he thought he did not have a choice. After that, MP offered £4m for the shares in the Company and AF said "no chance". Then:

> "Martin responded that I had no choice; I was not part of the company any more because I had resigned as a director and had no say in anything. I corrected Martin and said that, actually, I had only resigned as Chairman, not as director. This was a bit of

> a stroke of luck. I had not intentionally drafted the resignation letter in this way. Rather it occurred to me when Martin said that I had already resigned as a director."

165. It was at that point, AF said, that MP opened his iPad and passed it to Antonio to read the draft email. He said that MP said that if he did not agree to resign MP would send the email. He went out for a smoke and when he came back in, he signed the papers to resign because he did not think he had a choice. MP then increased his offer for the shares to £6m and AF said that was not enough. Antonio then suggested £6.6m and MP said that he would not offer more, and that if he did not agree to sell there would be no sale of the business and no dividends. AF agreed to speak to SF about the price offered. He then said:

> "Before I left the boardroom, Martin asked me whether I knew why he had acted in the way that he had. I said I didn't. He then wrote on a slip of paper which he passed across the table to me. It said '*John Poulter without whose help and assistance Derbyshire Aggregates would not be here'*."

166. After leaving the Company's offices, AF stopped his car and wrote an email to himself (at 12:11pm). It explained that the MBE should be seen as an accolade for all involved in the Company and his great friend MP, and that he wished to take the opportunity to thank MP and everyone else who had been part of the great success story of the Company, who were all amazing people. AF said that he thought of sending this email to all staff as a last ditch attempt to placate MP. He met SF later that day and explained what MP had done. His son, Johnnie, advised him that even if he agreed a figure for the shares, MP could still blackmail him in the future, and therefore he should come clean to HMRC.

167. In cross-examination, AF said that saying that he had only resigned as chairman was a "complete bluff", the point possibly came to him during the meeting and he felt it was a very strong point, and that he still felt under pressure to sign the DAPAK documentation because of what had happened at the previous meeting. He said that Antonio did not look shocked about the email that he was reading out.

MP's evidence about the June meetings

168. MP said that after discussing with Sam his involvement in the MBE process, MP gave Sam a handwritten note and asked him to type it out, to give to staff as soon as possible. MP then found the expenses receipts for AF's events at the Casa hotel and the Monsal Head Christening. MP said that AF did not seem to want to talk about his MBE and went red and stayed silent. He accused AF of being a liar for saying that he had had no input into the terms in which the MBE application was made, and said that the award was fraudulent. He said that he then challenged AF about whether there had been any customer or supplier at the Casa event and that AF lied and said that there had been, whereas Kevan had told him the contrary. MP said to AF "you are a disgrace and not fulfilling any of your duties as Chairman" and asked him to say whether he was going to accept the MBE or not.

> "Daft bugger said 'I must accept it, the Prime Minister has personally chosen me for this award' 'OK' I said, 'it is clear your

> position as Chairman of DAL is untenable, we can no longer work together'. I said 'you haven't done anything constructive at work for years, the rest of us have worked flat out to succeed and all you have done is take money, abuse the expenses agreement we had and show contempt for the feeling of staff … You have wanted to sell the business for several years and retire and go around the world with your new girlfriend and you should'."

169. MP said that he gave AF two options: to step down on an amicable basis, or he would tell the staff that they had fallen out and start formal proceedings "to call an EGM of shareholders to vote on your removal as a director of DAL and do everything in my power to get you removed and expose the sham of the MBE." MP said that AF's first thought was "what about my shares", and that he said that he would buy him out. AF responded: "you haven't got the money" and MP said that he would find it somehow. MP said that he told AF that he wouldn't vote for a dividend for the 2018-19 year as there had been a double one the previous year. This account appears to be based on MP's note of the meeting that he prepared later in the day. MP denied that there was any mention of an email to HMRC or any discussion about the shares in the Company at this meeting.

170. MP said that after AF went out for a smoke he came back in and after some general chat about what each wanted to do AF said "OK, I will resign", before asking about the DAPAK shares and saying, in response to MP's offer of £250,000, "give me 300K and you can have them". They then discussed the retained dividends in DAPAK. There was then agreement that they should meet again, on 20 June, with Antonio, to sort out the paperwork and discuss the sale of the shares in the Company. MP said that AF asked him to call the staff together as he wrote out his resignation by hand.

171. MP says that on his way out of the boardroom he asked Sam to go in and witness AF's signature; that Sam was shocked but went in to do it, and that after AF had left Sam said that he was shocked but agreed it was a good thing for the Company.

172. MP explained his text to AF on 19 June as implying that by standing by the descriptions of his position given to the honours people and the newspapers, AF had belittled the help MP's family had given AF and John Poulter's help in starting the Company. He said that AF's apologetic reply got his back up again because AF was lying and trying to put the blame on SF.

173. MP said that on 20 June AF was late arriving and that Antonio told him before the meeting that AF had just told him that he had had legal advice and had only resigned as chairman, not as director. He said that when AF came into the room they started discussing a few things and AF mentioned the legal advice, and that the conversation then changed to DAPAK and the paperwork was dealt with. "All Ade wanted to know what when he would get the money". After that, they talked about the Company and AF again said that he had not resigned as director and was not going to sign a resignation form. MP accepted that made him angry and tensions were high.

> "I said again I would take it to a vote of shareholders to remove him for not performing properly and for the expenses if he did not see sense in the circumstances and resign, at the same time I

> had been typing out on my iPad a simple draft email message. I do not use computers much and the only way I know to type out a message is on the email screen; I don't use any other programme. The message was headed 'HMRC/Inland Revenue/Police' but I did not have any email address for either just simply the above. The message said as far as I can recall: *I wish to inform the authorities that myself Martin Poulter and Adrian Fewings have for some time received cash from customers not declared and wish to put the matter right £400K.* I passed my email to Antonio who read it out ……
>
> I was sick of what he had done and I was also sick of what we as a company had done. I blamed him for it all because it was his idea in the first place. I had stopped the cash payments at the end of 2017 after a struggle taking them and tried repeatedly to stop Ade spending company money on himself, which clearly hadn't stopped but there were all the other things with the expenses which were outside the expenses agreement that we had reached, which built up to this. So, I said again, I would start formal proceedings with proof given of his incompetence lies and fraud and all the stuff I had found out like the MBE …..
>
> So I told Antonio in front of Ade to tell the authorities and we would hold a full audit and make our amends with HMRC and any other authorities necessary to clean up the company, and I wanted Antonio to know as he would have no alternative but to reveal this and we would make it right."

174. According to MP, AF then said that he was not happy and that MP was going to involve everybody, whereupon MP said that he was sorry but that he couldn't do this anymore and the Company was going to be put right. AF then had a smoking break and came back in and asked how much he would get for his shares. MP told him that he would not discuss that until AF had resigned. There was a temporary stand-off, then AF said "ok, where do I sign?" After signing, there was a negotiation:

> "I started at £4 million. Ade wasn't impressed, he clearly wanted more, so I went to £6 million. Antonio explained that with tax an offer of £6.6 million would result in nett £6 million for the Fewings' shares at 45% of the company. I agreed and Ade said ok he would go and see Sue and sort it out. That I thought was his acceptance of the figure."

175. MP said only the following in his witness statement about the steps taken after 20 June 2018 to clean up the Company by making disclosure to the authorities:

> "Having taken advice from Shorts and Mitten Clarke, I have contacted HMRC and Sam, Kev and I have repaid all amounts outstanding on the cash payments and interest and penalties due and also payments by DAL on the corporation tax and VAT due on the sales that did not get recorded."

He also said that on 29 November 2018 Sam, Kevan and he visited Mitten Clarke to discuss the cash payments, and then arranged to see AF in the Grouse and Claret to compare notes about disclosure.

176. In cross-examination, MP accepted that AF was disadvantaged by not knowing what the meeting on 18 June was about. He said that the conversation was to be about the MBE and expenses and that he expected AF to fight his corner and lie about the expenses, but he said that he had never previously asked AF to repay any expenses that were wrongly claimed. He said that there had been a discussion in April 2018 about the expenses for the Monaco trip, at which he asked AF to stick to the agreement that they had and not claim expenses for other family members.

177. MP confirmed that he had his iPad with him in the meeting on 18 June, but did not draft the email to HMRC and the Police until during the meeting on 20 June. He said that although he wanted AF to resign, it was AF who mentioned the shares, not him. When AF came back in from having a smoke, the mood was relaxed "it was a nice end to a meeting" and AF readily agreed to resign. He was not "in a state". MP claimed that he could not remember what he told Sam about what had happened. But MP did accept that Sam had come in to see him and that he had been patting his chest (over his heart) and saying that it was a very emotional moment. He denied that he said to Sam that he was doing it for his dad, as AF said that Sam told him. He said that he was the one feeling emotional, not AF. MP said that the discussion about DAPAK and Company shares was before AF announced his resignation to the staff, not afterwards. AF was very happy to sell his DAPAK shares. There was no discussion about a price for the shares in the Company on 18 June, but AF made it plain that he wanted to sell them, so the meeting on 20 June was arranged.

178. MP explained (though this was not in his witness statement) that he thought on 18 June that he could not possibly buy out AF's shares because the cost would have been millions, but that by the time of the meeting on 20 June Antonio had explained to him that there was a way of buying them through the Company.

179. As for the meeting on 20 June, MP said that AF came into the meeting and was quite aggressive, asserting his legal advice and starting an argument. MP accepts that he was upset when he heard that AF was going to rely on legal advice to say that he had not resigned as a director. He said that AF made it very clear that he was not going to sign a resignation document. He did not use the draft email as a threat to AF but as a way of starting the clean up of the Company. He told AF that he would go to an EGM to sort the matter out: that was definitely discussed before the iPad was passed to Antonio, though MP accepted that he did not know at that stage what was necessary to convene an EGM. When he passed Antonio the iPad, that was the start of initiating disclosure to HMRC and coming clean about the wrongdoing.

180. He was then asked why, following the meeting, he waited until the end of November 2018 to start the process of engaging Mitten Clarke to make disclosure to HMRC. He said (though none of this was in his witness statement) that Antonio said that he would not deal with it and that he (MP) raised it in a meeting with Shorts on Monday the next week, telling them that there had been a fraud of up to £400,000. Shorts said "some time way after" that that the Company needed to get all the information together and put it down on the current's year's tax return and in the Company's accounts for that year. He said that Shorts (Howard Freeman) later phoned to say they were not

comfortable dealing with it themselves. When pressed, he said that this was not weeks but months later. He said that Howard said that they needed more time to consider their position; they later called again to say that they were comfortable to remain the Company's accountants. MP said that this was not in his witness statement because he did not see it as relevant. Asked why he did not progress the disclosure faster, he said that there was no urgency about it and by disclosing the wrongdoing to Antonio the process was started, "the fuse was lit. That was it, the process was going through".

Sam's evidence about 18 and 20 June 2018

181. Sam described MP's aggressive behaviour in their meeting on 18 June and said that he had "prepared evidence about the untrustworthy behaviour of Adrian". By that he later explained that he meant MP's note for circulation to staff about the true origins of the Company. He said that a meeting took place between MP and AF and that "during the day it became clear that Adrian had resigned". He said that he was shocked at the speed of events, but that knowing that AF wanted to sell up "all appeared ok to me". He said that he was asked to witness the resignation letter and AF signed it freely and appeared comfortable with it all. He said nothing in his evidence in chief about a conversation with AF or a conversation with MP.

182. Describing AF's return to the office on 20 June, he said only that following the meeting AF appeared to be happy with the outcome, and that as far as he was aware there was no discussion about the removal of AF as a director, and he subsequently understood from MP and Antonio that AF had left "in a good place with an agreement to sell his shares to DAL at a value of £6.6 million". There was very little more than these bare bones in Sam's witness statement.

183. In cross-examination, Sam said that AF was bitter about his getting a 10% shareholding in the Company, because AF thought that he was going to sell some shares to Sam, whereas in fact new shares were allotted with Sam paying only the nominal value of them. He said that AF was tolerated, he was not doing very much and did not get in the way. He thought that his decision to join the Company in 2010 showed "natural business acumen".

184. Sam denied that AF had come out of the meeting on 18 June and told him what MP had said. He said that AF came out and told him that he was resigning. He said that that was a surprise, and he did not think a lot about the consequences of his resigning. He was unwilling to comment about what he thought beyond the fact that he was surprised. He would not say that he was concerned about what had happened: all he would say was that AF had resigned so far as he was concerned. There was nothing to cause him concern. When he went to see MP he asked him what had happened. MP said that AF had resigned. Sam asked no follow up question, he said. MP said that he was going to see his father's grave. Sam had not had any conversation with MP about his father. He could not explain why there was no retirement party for AF.

185. In answer to my question what Sam said to AF when he resigned, Sam said that there were only some very brief exchanges, he said that he was surprised, and there was no time to sit down and chat because of the paperwork. Then AF made his announcement and left. Sam said that he did not ask AF why. He confirmed that not a lot was said between him and MP following the resignation meeting. Sam did not ask him why AF had resigned: it did not seem to be an appropriate time to sit down and challenge him.

Sam did not understand anything on 20 June about where the £6.6 million was going to come from, but he assumed that it would come from the business. Sam said that he did not know if MP had the money to pay. His understanding of the Company funding the purchase came from Antonio. Sam never got to understand fully how it was to be funded before it was going to happen.

VII. Conclusions on the blackmail allegation

186. The allegation made by AF is a serious one. Before finding the allegation proved, I should require cogent evidence in support of it. Cogent evidence does not necessarily mean reliable first-hand evidence of what was said: it may be a combination of direct and circumstantial evidence, inference from the undisputed facts and inherent likelihood, and inference from the way in which the parties gave evidence. The totality of the evidence must nevertheless be persuasive, though the standard of proof remains the balance of probability. This judgment is not concerned with whether a criminal offence was committed: I must decide whether MP probably made the threats that AF alleges were made to him on 18 or 20 June.

187. As previously stated, I am quite satisfied that MP, KP and Sam did not tell me the whole truth about what happened on 18 and 20 June. It was clear to me from the way that they each gave their evidence about these events (and in KP's case, from her evidence generally) that they must have decided to say as little as possible about the events on those days, other than what had been carefully crafted in their witness statements. In Sam's case, what was written in his witness statement about those events was remarkably little. A very few further details were drawn like teeth in cross-examination and still, by the end of it, I am confident that I was not given the full picture. MP and Sam appeared concerned to prevent more detail emerging; KP took care to avoid accidental disclosure of what she knew by only answering in a proper way those questions that she felt sure were innocuous.

188. I have to exercise caution about AF's evidence, for the reasons that I have already given, and so I am unable simply to prefer his account of what happened and decide the matter on that basis, without further analysis. There are aspects of AF's account that I am satisfied are wrong, on any view, such as his attempt to persuade me that he had not been marginalised in the business by 2018, his denial that he was pursuing valuations of the Company behind MP's back in 2015, and the suggestion that he did not look at the MBE application or have any input into it. Fortunately, the evidence of Antonio gives me a reliable place to start in assessing the events of 20 June. By relying on the undisputed evidence (of which there is a substantial amount), the evidence of Antonio (save where proved to be inaccurate), the documentary evidence of what happened after 20 June 2018 and the inherent likelihood – in the context of that evidence – of MP's and AF's accounts being true, I am able to reach clear conclusions about what probably happened.

189. There is no dispute that MP passed his iPad to Antonio during the meeting on 20 June and asked Antonio to read it. Antonio said that the draft email was 15-20 lines long, maybe shorter, and that he had only read out 3-4 lines before AF interrupted and challenged MP about the subject-matter. The evidence was clear that, at that stage of the meeting, MP was angry and making forceful points to AF, that AF was arguing with him, and in general the meeting was heated, though with awkward silences at times. MP does not use a computer, only an iPad. His only means of typing on the iPad is use

of the email messages function. (I can take judicial notice of the fact that messages typed as emails can be saved as drafts.)

190. Before the meeting on 18 June, MP had written in manuscript the message that he wanted to be sent to all the staff and he asked Sam to type it up and send it. After each of the meetings on 18 and 20 June, MP wrote in manuscript his reflections on the meetings that had taken place. MP evidently prefers writing by hand to typing. The evidence in the trial bundle of various emails that MP sent shows that they are generally quite short and to the point and are not the work of someone with strong word processing skills.

191. Antonio said that on 20 June MP opened his iPad and typed something, but he accepted that it could have been his accessing a document, and that he was not sure whether MP typed the email or not; it could have been pre-typed.

192. Even assuming that the draft email was in fact somewhat shorter than 15-20 lines, as Antonio said that it might have been, I am unable to accept MP's evidence that he typed from scratch an email of that approximate length, addressing it to HMRC and the Derbyshire Police, and describing types of financial wrongdoing in the middle of a heated meeting, or that it would have occurred to him then, for the first time, that he should come clean to HMRC and the Police about what had happened, thereby implicating himself, Sam and Kevan too. On his own account of the 20 June meeting, there had been no discussion about financial wrongdoing at the Company – that occurred on 18 June. The problem that was facing MP on 20 June was that AF was declining to sign a formal resignation as a director of the Company and clearly wanted to negotiate a price for his shares first. What MP needed was pressure to cause AF to sign formal resignation documents, not to start a process of disclosure to HMRC and the Police of financial wrongdoing in the Company over the previous 10 years or so.

193. I cannot accept that MP, who had no great typing skills and who was agitated and upset, was sufficiently focused and detached, in the middle of a row about whether AF had resigned, to type an email of that length and content during the meeting. His suggestion in cross-examination that the email was abbreviated and short is clearly wrong, as Antonio said that he had only read 3 or 4 lines before AF interrupted him. If MP had typed a longer email in the meeting, there would have been a long silence while he typed at his iPad and Antonio would have remembered that clearly. I therefore find that the draft email was written some time before the meeting.

194. On MP's account of the meeting on 18 June, an amicable decision had ultimately been reached and AF had voluntarily written out his resignation note and chosen to announce his resignation to the staff. Terms had been agreed for the sale of AF's interest in DAPAK and a meeting on 20 June had been agreed in order to discuss terms for the sale of his and SF's shares in the Company, and to sign formal documents. There was no reason (on his account) for MP to fear that AF would change his mind, or for a process of cleaning up the Company to be started at the meeting on 20 June. Indeed, if - as MP suggested - AF had been happy to sell at a negotiated price, raising the disclosure of previous misconduct to HMRC and the Police would have been counter-productive. Although Knights had advised that, in the cold light of day, AF might not want to resign, that was concerned with the timing of the resignation and the sale of AF's shares, to protect his ability to claim entrepreneur's tax relief. If that issue had been raised it could easily have been dealt with by agreement.

195. There would therefore, if MP's account of 18 June is correct, have been no reason for him to prepare an email to HMRC and the Police after the 18 June meeting. MP said that Antonio told him before AF joined the 20 June meeting that AF had had legal advice to the effect that he had not resigned as a director. That would have caused MP to think at that stage that there might be an issue about resignation, though I consider it more likely that MP would have seen it as a negotiating gambit (as indeed AF accepted that it was – "a complete bluff"). If the email had been composed only that morning, before AF joined the meeting, MP might have been expected to say so, but he did not.

196. In my judgment, it is therefore probable that MP composed the email before the 18 June meeting. It is clear on MP's own evidence that he had spent days in France ruminating and planning for a confrontation. On his return to the UK he set about assembling the ammunition that was needed for the confrontation. I find that he was infuriated by the award of the MBE and would willingly have caused it to be revoked, if he easily could have done. However, his predominant aim was to get AF to leave and resign as a director of the Company and DAPAK. The issue of the MBE could be used to that end.

197. As Mr Atkins accepted, MP did not want AF to collect his MBE as a director, chairman, or other officer of the Company. MP must have known that AF would not give up the honour and, as he told me, he did not want AF to remain a director even without the MBE. His approach was more subtle than merely to fight to get the honour withdrawn: it was to use the threat of the honour being removed from AF, and public disgrace, to induce him to resign. I also consider that acquisition of AF's shares in the Company was a secondary part of the plan, which probably moved faster than MP had expected. I find that MP's primary motive was not to remove AF's shares at a knock down price but to rid himself of AF as someone involved in running the Company. It is notable that MP's email to Simon Pashley on 25 June, after both meetings, referred to "*lots of drama, pressure and ultimately getting what you set out to do*" and "*just sorting shares but now I run it without sharing*". Being able to run the Company without AF was the key point for MP. I asked MP what was the pressure to which he referred in that email. Most improbably, he said that he was not sure to what that might have been referring.

198. I find that what happened on the morning of 18 June was not just a meeting where one of the participants was taken by surprise: it was an ambush and had been planned as such. MP's intention was to put AF so far on the back foot, by making serious allegations of improper conduct against him, that AF would feel that he had nowhere to go and would agree to resign. The ammunition that MP had prepared included dishonesty in the application for an MBE (of which MP was convinced but the proof of which was tantalisingly out of reach at that stage); abuse of Company expenses by AF, in particular the family Christening in March 2017 and the Casa charity dinner in March 2018, both of which had been paid for by the Company; and the threat of publicity in relation to these matters. It also included a threat to disclose the cash payments.

199. MP had obtained confirmation from Kevan before the meeting on 18 June that there had been no customer or supplier of the Company present at either event; he obtained the invoices for the cost of those events from the Company's files. The financial wrongdoing of AF over cash payments, the detail of which MP knew well, suffered from the disadvantage that MP, Sam and Kevan were all equally complicit in it (although MP continued to maintain that AF was primarily at fault and had instigated it). Apart from any charge of hypocrisy that might be levelled against MP, that

disadvantage would be reduced if MP only threatened to report the wrongdoing and did not intend to do so.

200. There was no evidence that MP had discussed his proposed cleaning up of the Company with Sam or Kevan at any time before 18 June 2018 and I find that he did not do so. Further, I do not consider that he would have disclosed the cash payments to anyone outside the Company without telling Sam and Kevan of his intention. Although MP regarded the Company as principally his, the relationship between MP and Sam was a close one. I have found that the Company was run at all relevant times on the basis of trust and confidence between the four male directors. It would be very surprising indeed if MP had decided to start the process of disclosing financial wrongdoing without telling them about it. That would have risked destroying the relationship of trust and confidence between MP, Sam and Kevan and would have been contrary to the way that the three of them conducted business.

201. Yet that is exactly what MP says that he did, on 20 June 2018. He says that he deliberately disclosed the financial wrongdoing to Antonio as a first step to going public about the wrongdoing, and that he instructed Antonio to tell the authorities. When AF pointed out that this would implicate all four of them, MP said that he was sorry about that but that he had had enough. Antonio does not support MP's evidence that he was instructed to report the matter and I consider that that is an embellishment that MP has added to his evidence to add credibility to it. As I shall shortly explain, Antonio did not report the Company or its directors for financial wrongdoing and neither did MP until late November 2018, by which time AF had already made voluntary disclosure to HMRC implicating MP and the Company.

202. MP's evidence in his witness statement about the steps taken to clean up the Company after 20 June 2018 was exiguous: see [175] above. A little more detail emerged in cross-examination, including that he had reported the matter to Shorts the following Monday and Shorts took significant time to advise, first, that they would not be the right firm to make the disclosure on behalf of the Company, and second that, despite the matters admitted, they would continue to act as the Company's accountants. Remarkably, nothing in writing between MP, Sam or Antonio and Shorts relating to these important matters was disclosed.

203. The suggested timeline for Shorts deciding that they could not act seems to me to have been calculated to fill the otherwise unexplained gap between 20 June and late November 2018. I do not accept that it would have taken Shorts "months, not weeks" to let MP know that they would not be able to assist the Company to put matters right. It is also most improbable that Shorts would not have written to the Company in connection with a matter that seriously affected their own position as the Company's accountants. I cannot accept MP's explanation of Antonio having refused to make a report (which was not in his witness statement or supported by Antonio), or that this matter was not included in his witness statement because it was irrelevant, or that the matter of cleaning up the Company was not urgent and did not need to be pursued actively. In an attempt to explain why he did nothing more, MP said that "the fuse had been lit" and more did not need to be done because he had disclosed the matter to Antonio; but that is not a credible explanation in view of his own evidence that Antonio had refused to make a report.

204. The conclusions that I reach are that MP did not disclose the wrongdoing to Shorts following the meeting on 20 June and probably not for some substantial time afterwards. Relations between MP and Antonio became awkward following the events of June 2018 (Antonio did not elaborate on this) and he indicated to MP at the end of 2018 that he would stop working for the Company. It was clear from what he did say that he felt uncomfortable as a result of what had happened in the meeting on 20 June. It is likely that MP's non-disclosure following the June meetings contributed to his unease.

205. In my judgment, MP decided to make full disclosure for two reasons. First, AF had already made disclosure of his wrongdoing in August 2018, which inevitably implicated MP and the Company. I consider that AF did this because his then solicitors said that they would only act for him if he did make disclosure. Second, MP knew that it would be necessary to come clean if he was going to contest the legal proceedings ("*Martin is looking to have a clean sheet should things progress to a full legal process*"). As that email from Sam dated 23 November 2018 ([146] above) shows, this issue was raised for the first time in late November 2018 and it was Knights, not Shorts, who recommended Mitten Clarke.

206. I find that MP had no intention of going public and "cleaning up the Company" in that way when he caused Antonio to read out his draft email. There was no reason for him to do so at that time, although I accept that he was glad that the wrongdoing had come to an end in January 2018 and did in general terms wish the Company to be "clean". MP would not have made any disclosure of financial wrongdoing outside the Company without first agreeing that course with Sam at least, and probably Kevan too. I also consider that, had MP had the intention that he claimed, the draft email would have been preserved, or sent to Antonio, or some other document would have been created summarising what needed to be disclosed to HMRC. No such document was disclosed by the respondents. I consider that MP assumed that Antonio would not make a report to HMRC without his agreement. As events showed, that was not a miscalculation. Antonio did not in fact take the initiative in making disclosure, although he told me that he would have done so if the Company did not make disclosure. MP only made disclosure because he had to, and before he did so he went to the trouble of meeting AF at the Grouse and Claret in an attempt to make sure that their stories were consistent.

207. I accordingly conclude that MP was not telling the truth in saying that he asked Antonio to read out the email at the 20 June 2018 meeting because he was heartily sick of the fraud and wrongdoing and wanted to clean up the Company. I do, however, accept Antonio's evidence that at that time MP said something like that. MP said it because, in a meeting with Antonio present, it was the only pretext for introducing the email. I find that AF is probably mistaken in suggesting that MP repeated the threat expressly in the 20 June meeting. What Antonio understood by the reading of the email and MP's comment would have been different from what AF understood.

208. As previously stated, I find that the draft email was prepared before the 18 June meeting, as part of the ammunition that MP had ready for the confrontation in order to apply pressure to AF to resign. Including the Police as intended addressees of the email is itself revealing: it carried with it an implied threat of possible prosecution, rather than just making financial recompense to HMRC.

209. The remaining question is whether MP did refer to the email on 18 June and make a threat to send it to HMRC and the Police if AF did not resign. The rival accounts of that meeting are very different. There may be some genuine differences of recollection, *e.g.* as to whether discussion about the price for the DAPAK shares took place after the resignation speech or before it. But there could not be a failure of recollection about whether MP threatened AF at that meeting that if he did not resign MP would report him to HMRC and the Police. Nor is it credible that either AF or MP has confused the two meetings.

210. MP said that the need to remove AF had been building up over some time and that recent events were the final straw. However, the MBE did matter to MP: he accepts that he asked AF whether he was going to accept it or not. Only when AF said that he had to accept it did MP, on his account, tell AF his position was untenable and give him the options of agreeing to step down or face formal proceedings "to call an EGM of shareholders to vote on your removal as a director of DAL and do everything in my power to get you removed and expose the sham of the MBE." MP accepted that this would involve publicising to the staff the fall-out between them.

211. Although MP was genuinely aggrieved by the MBE, it is clear that it was being used as a pretext to apply pressure to AF to resign as director. MP was in an aggressive mood and was set on a confrontation. He had prepared the email to be used, and AF did not concede early in the meeting such that its use became unnecessary. I consider that it is probable that the draft email was referred to in the 18 June meeting in substantially the way that AF described in his evidence. AF's evidence about the main events of that day is broadly accurate, as demonstrated by his evidence of Sam's going to see MP about the resignation and what Sam then told AF about MP's reaction (see below at [217]).

212. The draft email contained a clear threat not only of risk to AF of prosecution (though the force of this threat was somewhat reduced by the concomitant risk of prosecution of MP too) but also, more specifically, that publicity of wrongdoing by AF would result in the MBE being taken away and public disgrace. I find that MP did not on 18 June give AF a choice between going quietly and facing an EGM with exposure of his expenses abuses and other failings as a director, but that he did give AF a choice between going quietly and exposure of serious financial wrongdoing to the Police and HMRC. I do not consider that MP would have used the term "EGM". The Company had never had an AGM, let alone an EGM, and MP accepted that he did not know how to go about convening one.

213. I find it understandable that AF described his head as being "in bits" when he went out to smoke, and that he was not able to think clearly about what he should do. That would be the natural reaction of anyone, even an experienced businessman, to a verbal attack of the kind that MP had launched without warning and the threats that had been made. I consider that AF was given no real choice about resigning and was told by MP, as AF recalls, that he would write out his resignation when he came back after the smoking break and would announce his departure to the staff. MP was, in my judgment, a stronger and more resolute character than AF and was fully prepared to see through the confrontation to achieve what he set out to gain, as his email to Simon Pashley ([138] above) a week afterwards confirms. AF was not sufficiently robust to resist and did not feel able to call MP's bluff on the threat that had been made.

214. However, AF was able to give thought to the financial implications. That is because money is and was a big issue for him. He wanted to know what would be done about his shares. He had no interest in DAPAK in any real sense and was perfectly willing to sell those for a proper price. This probably took MP by surprise: MP would not have focused on the DAPAK shares because their value was relatively small. I find that MP offered a round £250,000 for them and that AF counter-offered £300,000, which MP accepted. This was an easy source of ready cash to AF and he was financially astute enough to remember in addition the dividends that had been credited to his director's loan account. AF did not offer to sell his shares in DAPAK under duress: he was perfectly willing to realise some ready money in that way.

215. I find that AF did ask about his shares in the Company, which was clearly a much more important issue, and MP said that he would buy them. AF pointed to the high value of the shares and said that MP did not have the ready cash to pay for them. I consider that it is likely that MP offered to discuss that further at a meeting on 20 June. He would have had in mind the need to execute formal company documents and he needed time to think about how AF's shares might be acquired.

216. AF was then required by MP to write out a letter of resignation. MP specified that Sam should "witness" the letter and that AF should announce his "retirement" to the staff. The stipulation that AF should shake MP's hand before leaving rings true. These steps were intended by MP to try to cement the resignation before it could be formally documented. MP would have realised that, given what had happened, there was a risk of AF reflecting on events and changing his mind or seeking legal advice.

217. Having written his resignation letter, AF took it to Sam. I find that AF did tell Sam the gist of what had happened in the meeting, including the threat to reveal the wrongful cash payments. It would be natural for him to have done so, particularly as AF had realised the implications for Sam and Kevan of MP's threat. Sam was indeed flabbergasted (and "upset and shocked" as Antonio described him), not merely shocked at the speed of events, and he went to speak to MP, as AF described. It is a telling detail that AF's account of Sam coming back and telling him that MP said that he was doing it for his father and banging his chest over his heart was supported by MP's own account (first, through Mr Atkins in cross-examination of AF, and then in MP's own evidence), though MP's explanation for this gesture was rather that he was rubbing his chest because it was an emotional experience. I find that this detail supports the accuracy of AF's recollection of the critical events on 18 June.

218. Sam denied that he had had any conversation with MP about his father on this occasion and was plainly reluctant to volunteer any detail about the conversations he had with AF or MP on that day. There was, in my judgment, an attempt by MP and Sam to keep under wraps as much as possible of what happened on 18 June. I consider that Sam and MP had a more detailed discussion than either of them is now willing to accept, and that MP probably persuaded Sam to overlook what he had been told by AF, to countersign the resignation letter and to tell AF that there was no question of a change of mind. It is highly likely that Sam and MP also discussed at some stage that day the buyback of AF's shares and the impact that it would have on Sam's holding (the email from Knights to Antonio later that afternoon supports the fact that such a discussion probably took place), though neither Sam nor MP gave evidence about such a discussion.

219. After the meeting on 18 June and before the meeting on 20 June, AF reflected in detail about what had happened. He said that he could not sleep. He attempted to apologise to MP for causing him pain, which in the circumstances was generous. AF thought at one stage about trying to get legal advice, though this went no further than a very short conversation with a lawyer at Elliott Mather, which was clearly not long enough to get detailed advice. Antonio and MP both said that AF told them on 20 June that he had obtained advice about his resignation. I accept AF's evidence that he did not obtain detailed advice, but I find that he told Antonio and MP that he had. AF had realised that he had only signed his letter of resignation as chairman and it occurred to him that he might therefore not have agreed to resign as a director. I do not accept AF's account that this came to him suddenly during the meeting on 20 June. Instead, AF said that he had been so advised by a top firm in Leeds. He did so in order to give himself a negotiating position in relation to the price for his shares in the Company. I find that AF did not really intend to get himself reinstated in the Company. He realised that this was practically impossible in view of what had already happened. What was left for him was the price for his shares. He intended – as was played out at the 20 June meeting – to refuse to resign unless MP agreed a good price for his shares. However, he recognised that the argument that he had only resigned as chairman was calling MP's bluff.

220. Between the end of the meeting on 18 June and the start of the meeting on 20 June, MP had made plans to buy out AF and SF. As a result of MP's conversation with Antonio at about lunch time on 18 June, Antonio contacted Knights. By 5.08pm, Lisa Bridgwood at Knights had understood that there was to be a Company buy back of shares and that there should be a re-structuring to keep Sam's holding at 10%. I find that Antonio must have advised MP at lunchtime that day (or possibly before the meeting started) that the Company could buy back its own shares. The Company, as both knew, was sitting on a large amount of cash and had no structural debt.

221. On the basis of Antonio's evidence, I accept that on 20 June 2018 AF confirmed that he could no longer work with MP, in view of what had happened, and MP said that he could not work with AF. What had happened was clearly a reference to what had been said and done on 18 June. The DAPAK documents were signed without debate. AF was not interested in remaining part of DAPAK and was content with the price that had previously been agreed (which the valuation evidence now shows to have been a fair price at that time). He resigned from DAPAK willingly and sold his shares willingly.

222. AF refused to sign formal documents resigning as a director of the Company. Antonio recalls that AF held his ground on this, and MP decided as a result to use the draft email. From MP's perspective, the critical issue was to get AF to sign the formal resignation documents. This time, in front of Antonio, he chose not to issue a threat to AF. MP asked Antonio to read the email to AF, knowing that the draft email would cause AF to remember the threat, even if the email was said by MP on that occasion to be about cleaning up the Company. Antonio, who I find knew nothing about what had been said by MP on 18 June, understood the email to be about coming clean to HMRC. There was no express threat to AF on this occasion but a threat was nonetheless implicit and was understood as such by AF. On this occasion, I find that MP said to AF that his choice was to resign or MP would take the question of AF's removal as a director to the board of the Company (not to an EGM).

223. After a break, AF tried again to obtain clarity about the price before he signed the resignation forms. But MP would not move and so, in the end, he had to sign first and take his chance. He would not have done that but for the threats that had been made. Although AF was willing in principle to sell his stake in the Company, he would not have resigned until a satisfactory price had been agreed. AF resigned from the Company because he knew that he had no real option: he could no longer work with MP and he could not be bought out without resigning. The main reason why he could no longer work with MP was the attack that MP had mounted against him on 18 June and the threats that had been made.

224. The threat from MP was not one that he intended to carry through, for reasons that with the benefit of hindsight and with calm, detached analysis seem obvious. But, in my judgment, AF believed it was a credible threat. Antonio described him as appearing panicked when the email was read. In that respect, MP successfully called AF's bluff.

225. Having signed the resignation forms, MP then made an offer of £4 million. He knew that this was far too low, but described it in his evidence as an opening bid, *i.e.* it was a starting point for negotiation. Neither MP nor Antonio said that AF made a counter-offer, though Antonio said that at a later stage it became apparent to him that AF wanted £8 million. MP said that AF laughed at the £4 million, making it obvious that it was far too low. I accept AF's evidence (which is consistent with MP's and Antonio's) that it was MP who first increased his offer to £6 million. When Antonio saw that there remained a gap between what MP was willing to offer and what AF wanted, Antonio suggested £6.6 million. Both MP and AF indicated agreement in principle on that figure.

226. Both MP and Antonio say that AF left on 20 June "in a good place" or words to that effect. I accept Antonio's evidence that AF asked him for advice about investment. AF wanted lots of money and he had been able to do a quick deal, subject to SF's agreement, that would provide him with a large amount of money within a relatively short time. There had been no discussion about tranches of payment spread over 2 years, only an indication that some of the money might be deferred for a few months. I find that AF was not entirely unhappy with the sum agreed, though he wanted more. But he had had to resign and had not been able to use his resignation as a lever, in the way that he had hoped. By resigning, he had lost his negotiating position. I am satisfied that he would not have done so, before negotiating a satisfactory price, but for the events of 18 June.

227. Reflecting about the matter later, AF realised that he had been put in an unfair position and, as a result, been unable to obtain a fair price for his (and SF's) shares. The valuations that he was aware of were the recent valuation of the Company that had been done to put a value on Sam's shares, £15 million for the Company as a whole, though that was "artificially low" (*i.e.* the lowest value that could have appeared plausible to HMRC had they investigated the value put on Sam's gifted shares), and an article that Shorts had provided to him that showed that a similar business had been acquired at a value in the region of £40 million, though there was probably significant synergistic value included in that. The expert witnesses considered that the value in June 2018 was between £30.8m and £44.8m. So, with the benefit of hindsight, £6.6 million for 45% of the Company's shares was a very low price for a sale of AF's and SF's shares to the Company, even allowing for a minority discount.

228. Mr Atkins submitted that MP's account of the 18 June meeting was more credible than AF's account, which was inherently unlikely and made no sense in view of several important agreed facts, and that it was not supported by contemporaneous documents. The respondents' case was that AF willingly agreed a price at the meetings because he wanted to leave the Company and realise his investment, but then later regretted his decision and decided to try to get a higher price by issuing the Petition, making invented allegations of blackmail.

229. Mr Atkins submitted, first, that the allegation of blackmail is implausible because it would have left MP in as much trouble as AF. Also, since MP was supposedly determined to get the MBE revoked, compliance by AF with the demand would mean that MP would not achieve that aim. The alleged blackmail was therefore illogical and implausible. As I have already explained, the threat was a bluff by MP: he was counting on AF not disbelieving it entirely, and his primary concern was not revocation of the MBE but removal of AF from the Company. AF might have called MP's bluff in relation to the threat to report, but on 18 June AF was sufficiently affected by MP's conduct, including the threat, that he considered that he had no real option and resigned. The fact that he later made voluntary disclosure to HMRC, for different reasons, does not mean that the threat did not affect his decision at the time. The absence of perfect logic or credibility in the threat does not mean that it was not made.

230. Second, Mr Atkins submitted that AF's case has MP bidding against himself for the price of the DAPAK shares and the shares in the Company at a time when there was a blackmail threat, which he said was not credible. But the threat made by MP was not in relation to the share price: it was in relation to the consequences of not resigning as a director, which was MP's main concern. Further, MP's own evidence (not only the petitioners' case) had him increasing his bid from £4 million to £6 million on 20 June without AF having made a counter-offer. AF's account of the bidding for the DAPAK shares is inaccurate: AF did make a counter-offer on that occasion.

231. Third, MP would not have shown the draft email to Antonio if he had been intending to blackmail AF with it. I have found that MP was sufficiently confident that Antonio would not report it in any event, which he did not. Further, MP knew AF very well. I consider that MP knew that AF would not coolly and logically see through the weakness in the implied threat.

232. Fourth, if MP was willing to blackmail AF, he would have done so again between the end of July 2018, when it was clear that AF was not going to complete a deal at £6.6 million, and September 2018, by when AF had made voluntary disclosure to HMRC. The weakness with this argument is that MP was only using the threat in order to secure his primary objective: the removal of AF as a director of the Company. MP was more relaxed about agreeing a price for the shares thereafter, as he knew that he would have the whip hand over a minority shareholder without representation on the board.

233. Mr Atkins then relied on a number of contemporaneous documents that he submitted support MP's account of what happened at the June 2018 meetings. I comment on them in the following sub-paragraphs:

    i) *Email MP to Sam 9 June 2018*: this is said to support a belief in MP's reliability as a witness, relating to what was said in the car, but I consider that MP simply based his evidence of what was said in the car on the email, not on his

independent recollection. It is in any event a minor detail unconnected with the main factual dispute.

ii) *MP's notes of the meetings*: these contain no reference to threats to make disclosure to HMRC and the Police unless AF agreed to resign, and it is said that MP had no reason to fabricate the content. These notes are, however, not just a record of events but also contain reflections on the part of MP following the meetings. They do not purport to be an accurate record of what had been said at the meetings, and I consider that the content has, to some degree, been influenced by MP's reflections at the time of writing them. Although no allegation of blackmail had been raised on AF's behalf at the time that the notes were written, it is hardly surprising if MP did not include in his notes threats of this nature that were made to AF.

iii) *The fact that MP did not have a typed letter of resignation ready for AF, and the terms in which the handwritten letter of AF is written*: I do not consider that MP wanting AF to write out his resignation in his own hand points to a conclusion that there were no threats or bullying at the meeting. I accept that the terms of the letter as written are rather more balanced that one might have expected, but do not consider that to be a strong pointer, given that on any view MP had acted in a bullying and aggressive way whether or not it was accompanied by threats. Indeed, MP's own note of the meeting on 18 June records a threat to provide information to the "chancellery" to question the validity of the MBE.

iv) *Email AF to staff 18 June 2018*: this is said to be more consistent with a state of contentedness on the part of AF. I accept that it is more balanced and generous than one might have expected, but do not consider this to be a strong point, given that on any view MP had acted in an upsetting and bullying way towards AF. The email did give me cause to consider carefully whether MP could have issued the threat that AF alleges at the meeting, but I consider that the letter was meant as an expression of warm feelings towards the staff and so it does not support a conclusion that MP's account of the meeting must be accurate.

v) *Text message AF to MP 19 June 2018*: there is no hint of any blackmail the previous day. However, this was an attempt on the part of AF to hold out an olive branch and see whether reconciliation was possible, so it is unsurprising that AF does not rehearse all that he considered wrong about the meeting.

vi) *Email exchange with Knights on 25 June 2018*: AF writing apparently content with the receipt of money for his DAPAK shares. I have found that AF was perfectly happy to cash in his interest in DAPAK regardless of resignation from the Company, so this exchange says very little about whether AF was content with his resignation from the Company and his agreement to sell his shares in it.

vii) *Email exchange with John Kelly (personal financial advisor) on 28 June 2018*. Mr Atkins says that the £1.5 to £2 million to be invested was the proceeds of the sale of the shares in the Company, but AF denied this when asked about it: he said that it was the proceeds of his pension pot. It does however show AF making financial arrangements against the background of the agreement to sell his shares for £6.6 million, and therefore may imply that by 28 June he had not

become very unhappy with what he had agreed for his shares in the Company. If so, that does not provide much of a clue about whether threats were made to induce AF to resign as a director, though it does suggest that AF had not by this date resolved to seek to undo what had happened. I do not consider that that provides a reliable clue about what did happen on 18 June.

viii) *Email exchange AF/Gill Stockton and Julie Fry about continuing mobile telephone provision*. This too is said to be indicative of AF not having been forced out of his business by blackmail. In my judgment, it is a further indication that at that time AF was not very unhappy about his prospects in the future, but it says nothing about what happened over a week previously.

ix) *Transcript of conversation between SF and MP on 22 October 2018*: a long and warm conversation between them, which contains no mention of threats or blackmail, and SF appears to agree with MP that the MBE was "one big fat lie". I deal with this in the next main paragraph, which addresses a document that Mr Atkins accepted gave some measure of support to AF's version of events.

234. Late on 20 June 2018, AF went to see SF at her home. He said that he told her what MP had done and that she was shocked. She said that AF told her on that occasion how MP had threatened him with disclosing the cash in hand payments that he, AF, Sam and Kevan had received to the Police and HMRC if AF did not retire, and that MP was trying to buy their shares for an amount that AF thought was too low. After AF's departure, SF sent him a text saying "still in shock very much about Martin's behaviour. Just can't believe it". AF's response the following day was as set out in para [130] above ("I can't believe he *would have reported* me, him, Sam and Kev for things"). That clearly implies that MP had threatened to make a report and the use of the conditional perfect tense implies that this will now not happen, as a result of something that had happened. Mr Atkins suggested that the use of the conditional perfect tense might only be a form of common hyperbole, using that tense to emphasise something that has happened or is happening. However, that does not explain why AF would have been saying that MP did report or was reporting them (it was too soon for AF to know whether he was going to do so), and it would be a most unnatural usage if AF were speculating about whether MP *was going to* report them in future. The more natural reading is that AF had told SF that MP had threatened to report them unless he did something. Unsurprisingly, AF was not asked in cross-examination about what he told SF when they met or what his text meant. In any event, I have found SF to be a reliable witness and I accept her evidence of what AF told her on 20 June.

235. The point that Mr Atkins then makes, by reference to the telephone conversation on 22 October, is that if SF had understood that MP had done something very wrong (which she confirmed was her understanding from AF), it was surprising that she did not raise this with MP when she spoke to him at length 4 months later. Her explanation for that is that she thought they would sort the matter out and that it was "work business, it was never anything to do with me". I accept that explanation, odd though it may seem to 21st Century metropolitan ears. Both the Poulter and the Fewings families were thoroughly old-fashioned in their demarcation between the husband's work and the wife's family role. Further, I find that SF was by nature timid and very much overawed by MP and I do not consider that she would have thought it right to challenge him about anything, even though by that time they had some common ground in their complaints about AF's conduct.

236. Mr Atkins also relied on the evidence that AF was keen to dispose of the Company, in order to obtain cash, and submitted that this makes it more likely that he willingly agreed to sell his shares in the Company. I accept that AF was keen to realise his investment, though a sale of his shares to MP or the Company had never been discussed. That fact does not make it inherently likely that AF would resign as a director before agreeing a price to sell his shares. Indeed, it would be unbusinesslike to do so: entrepreneur's tax relief would be lost, as would AF's negotiating position. In the event, that is what he was forced to do, as regards his interest in the Company.

237. Mr Atkins also relies on the fact that AF made disclosure of the wrongdoing to HMRC, when he says that he resigned in order to avoid disclosure. The reasons for disclosure variously given by AF in his evidence were: it was the right thing to do; it would prevent further blackmail; and his solicitors required it before they would act for him. The real reason for the disclosure made is clearly the latter. I am concerned that AF said in his witness statement that there were other reasons and I do not believe that he made disclosure because he thought that it was in any event the right thing to do. However, in view of the truth about this, it is not surprising that he made disclosure when he did, despite having been instinctively concerned to avoid it in June 2018 when he was not well advised. The true explanation also demonstrates that the threat about wrongdoing was at the forefront of the instructions that he gave to his solicitors, Stewarts, in or about August 2018. The first solicitors' letter may have been a little extravagant in using the word "extortion" but it also said "blackmail" in terms, and in his witness statement AF did not shrink from making that allegation. I consider that it is inherently unlikely that AF would risk all, by issuing a petition alleging blackmail in terms when no such threat had been made, in order to seek to increase a price willingly agreed, as the respondents have alleged, or by continuing with the claim after a higher offer of £9 million had been made. That is particularly so in circumstances in which the respondents were not alleging that there was a binding agreement for £6.6 million.

238. The arguments advanced by Mr Atkins were skilfully and cleverly constructed, but for the reasons that I have given they do not persuade me that MP's version of the events of 18 June is the truth. Indeed, I find that MP's account of the two meetings attributes to AF conduct that is inherently improbable. On his account, AF, faced with a threat of having his misdemeanours (other than the cash payments) taken to a board or shareholders' meeting with a view to removing him as a director, agreed to resign as director and leave the Company without having either sold his shares or reached an agreement on price. It is implausible that AF would have done so, in a rush, without obtaining proper advice and, as a result of doing so, losing the benefit of entrepreneur's relief on the eventual sale of his shares in the Company and his negotiating position on the price. It is hard to see how MP would have had any moral case at a general meeting to remove AF for misconduct, given MP's involvement in similar wrongdoing in relation to expenses being put through the Company's books. The members of the Company could not have used their voting majority to remove AF without making him a fair offer for his shares. The levers that caused AF to do what he did were the risk of publicity of fraud and loss of his MBE.

Summary of factual conclusions

239. Having considered matters in the round and bearing in mind the need for cogent evidence and my concern about some aspects of AF's evidence, I am satisfied on a balance of probability that:

i) On 18 June 2018, MP, in seeking to pressure AF to resign as a director of the Company, made a threat that he would report financial wrongdoing by AF, MP, Sam and Kevan unless AF resigned as director;

ii) AF was influenced by that threat and other conduct of MP at the 18 June meeting to sign a resignation letter as chairman of the Company and to explain to the staff of the Company that he was retiring and leaving the Company;

iii) AF was content in any event to resign as director of DAPAK (which had no practical consequence of any kind for him) and sell his shares for a price of £300,000, which was willingly negotiated with MP and was a fair price at the time;

iv) On 20 June 2018, MP caused Antonio to read out a draft email to HMRC and the Police and, by doing so, made a further implied (but not express) threat to AF about the consequences of not signing formal resignation forms as director of the Company;

v) AF was influenced by the threats made on 18 June and 20 June into formally resigning on 20 June 2018, prior to negotiating a price for his shares in the Company;

vi) AF was not in fact influenced by any threat in executing resignation forms as a director of DAPAK on 20 June 2018 and entering into a contract to sell his shares in DAPAK, which he was willing to do;

vii) AF was not directly influenced by any threat in agreeing in principle a price of £6.6 million for his and SF's shares in the Company because no threat had been issued in that regard, but he had been forced to negotiate a price for those shares from a position of disadvantage, after resignation as a director of the Company.

240. The effect of my findings is that the respondents accept that MP has thereby conducted the affairs of the Company in a way that is unfairly prejudicial to the interests of AF and SF as shareholders, and that the appropriate remedy is an order that either the directors or the Company buy the shares of AF and SF at a fair price. A fair price is one without any discount for the size of the holding and the restrictions on disposal.

241. The claimants' claim in the related proceedings, alleging that the resignation of AF as a director of DAPAK and the sale of his shares in DAPAK to MP were void or voidable, and seeking associated relief, fails on the basis of the findings that I have made. AF does not seek reinstatement as a director of the Company on the basis that his resignation was void or voidable, only the relief sought in the Petition. The claim in the related proceedings is therefore dismissed.

VIII. The other grounds of unfair prejudice alleged

242. My conclusions on the principal ground of unfairly prejudicial conduct on which the petitioners rely and the agreed relief that follows means that the other grounds relied on

are not material to the outcome of the petition. I will however give my reasons briefly for either rejecting or upholding those various grounds.

(i) Exclusion from management

243. The next ground relied on was exclusion from management of AF and SF after 20 June 2018. Since AF resigned from the Company under duress and not voluntarily, he was entitled to be treated (or formally reinstated) as a director, although the petitioners accept that in any event the quasi-partnership had been determined at that stage. It is difficult therefore to see how AF had a right as a shareholder to continue to be a director of the Company, though he was prima facie entitled to be reinstated as director subject to the Company in general meeting voting to remove him. The allegations of exclusion of AF from management add nothing to the ground that is already proved. If, on the other hand, I had found that there had been no threat in the nature of blackmail and/or that AF had voluntarily resigned as a director of the Company, he would have no further right to be involved in its management.

244. So far as the exclusion from management of SF is concerned, she was never involved in management of the Company and was not a quasi-partner with a right to be involved in management. When, as a result of Stewarts' involvement, there was an attempt to require the Company fully to involve SF in its day-to-day business as a way of trying to assert AF's continuing rights, no one was more surprised than she. She was nevertheless for the time being (and is still) a director of the Company and had a right to be given proper notice of meetings of the directors, and papers, or notice of any business of the Company to be decided informally instead of at a board meeting. Both AF and SF as minority shareholders had a right as such to expect their remaining director (SF) to be permitted to act effectively as a director, regardless of the fact that she had never done so before.

245. There is a succession of events that were originally relied on by the petitioners, but many of the smaller matters were not pressed in their closing submissions, either in writing or orally. The general complaint, however, is that SF was not permitted to be involved as a director. The respondents contend that, at least with effect from the start of the 2019/20 year, she was given every opportunity to attend management meetings (which were held on a weekly basis, for convenience) and board meetings but chose not to do so. The reality is that SF had no interest in being involved in management of the Company and, even if invited to properly called board meetings, would not have attended. Her "interest" and "right" to attend and participate was being asserted by Stewarts on behalf of their principal client, AF. This was, I conclude, being done partly as a means of enabling AF to have up to date information about the Company's affairs (see *e.g.* the request by letter dated 20 December 2018 for the provision at a board meeting of a comprehensive update on the Company's performance since June 2018), for possible advantage in the litigation that was about to start, and partly in order to try to generate further unfairly prejudicial conduct on which AF could rely, for the same reason. The respondents for their part recognised the risk of this and sought to act vis-à-vis SF in such a way as to stay on the right side of the line, pending resolution of the dispute. There is accordingly something rather artificial about the complaints that SF was not being treated as a director should be, and something artificial about the way that the Company acted to accommodate her.

246. The first matter relied on was an attempt by MP to persuade SF to sell her shares, for an appropriate part of the price agreed with AF on 20 June 2018. This was therefore an attempt to buy SF out of the Company altogether rather than exclude her from management. On 28 June 2018, MP started sending texts to SF seeking to ascertain whether she would sell her shares. There were twenty or more such texts during the following weeks, whereas MP had never previously texted her at all. MP suggested that she meet Antonio to understand what her options were, and pointed out that there might be adverse tax consequences if she did not act soon. That was because MP was planning to call a meeting to have SF removed as a director (which was first notified to her on 25 July 2018). On 4 July 2018, Antonio sent SF a draft contract (at the same time as one was sent to AF), with instalment payments spread over 2 years.

247. I find that MP had determined to remove SF as a director and wanted, if possible, to have her shares bought at the same time as AF's shares were being bought. Until late July 2018, MP did not know that AF was refusing to proceed with the agreed sale. Since SF had never acted as a director of the Company and was not qualified to do so, there was (independently of the improper removal of AF) nothing objectionable about removing her as director in accordance with the articles, provided that her ability to make use of entrepreneur's tax relief was not prejudiced. It was for that reason that SF had been made a director in the first place and why MP sought to persuade SF to take advice and move relatively quickly; however, SF was not willing to engage and went to Florida for a lengthy holiday. In the event, the general meeting of the Company to vote on SF's removal as director was cancelled.

248. The petitioners sought to characterise the exchange between MP and SF as the use of insidious pressure to force SF to sell her shares. Had there been no insidious pressure on AF to resign, the conduct of MP would not now appear in that light. MP was expecting AF (and wanted SF if possible) to sell at the agreed price. Although MP was clearly conducting the affairs of the Company in seeking to agree the purchase of SF's shares – because the Company itself was going to buy them – I do not consider that the conduct could be characterised as unfairly prejudicial in itself. The conduct takes it colour from the conclusion that AF acted under duress in resigning. It is part of MP's attempt to clear the Fewings out of the Company, though to be fair to him he had no *animus* against SF at all and his texts did offer SF the option of remaining a shareholder. Until December 2018, when SF too instructed Stewarts to act for her, MP regarded SF as more of an ally than an opponent and he did not consciously act unfairly towards her. The removal of SF as a director would only be unfairly prejudicial to AF and SF as shareholders on the basis that AF had been wrongly removed as director and SF was therefore, for the time being, the only means that AF had of influencing the Company's business affairs.

249. The next matter relied upon is the failure of the directors of the Company (to whom Stewarts wrote on 6 September 2018) to reinstate AF and provide his benefits package, which had been ended in June 2018. This ground of complaint succeeds because the primary ground relating to the removal of AF succeeds. Had AF resigned voluntarily, there would be nothing in this complaint.

250. The next matter is the Company's refusal to act in accordance with SF's notice dated 20 December 2018 exercising her right to convene a directors' meeting. Of course, this was being done, as the Company well knew, on instructions given by AF; SF herself had no interest in convening a meeting. Nevertheless, as a director, she was entitled to

convene a meeting. The notice proposed resolutions to confirm or reappoint AF as a director and the reinstatement of his benefits package, and other matters relating to the conduct of the Company's business while the dispute between AF and MP was being carried on. By letter dated 7 January 2019, Knights rejected the call for a meeting. When Stewarts insisted that the meeting would take place, Knights indicated that the directors of the Company were not available on the proposed date, that SF had no right to attend the Company's premises at all, and that access to the office would not be given. Later, they wrote again reserving rights (including the possibility of criminal prosecution) if an attempt was made to gain access.

251. The Company and its remaining directors were wrong to refuse to hold the meeting that SF had required in accordance with its articles. It was wholly inappropriate for Knights to write making the implied threats that they did. Sam at least attempted to draw the sting, by texting SF telling her that she was always welcome to attend the office, by arrangement.

252. The refusal to abide by the Company's articles was manifestly conduct of its business in a way unfairly prejudicial to some of its shareholders; however, as the respondents submitted, the resolutions would have been outvoted at any meeting that had been duly held. SF did not in any event understand what it was she would have had to do at the meeting and might not have attended. Accordingly, it would not be appropriate to grant relief on that ground, even though it is established.

253. Up until that time – about mid-January 2019 – the Company had not sought to involve SF in any way in the conduct of its affairs. This was understandable in that SF had never played any part and had no understanding of its affairs. The exclusion of SF included her non-invitation to a meeting on 19 December 2018 to approve the accounts for the year ending 31 March 2018. However, characteristically, the Company held no board meeting and accepts that the accounts were approved only by certain directors (in former years, this had been done informally by AF and MP). The annual accounts were, as a matter of law, the responsibility of the whole board, but could not have been approved by the board because SF was not involved. The accounts were therefore not approved by the board. No particular prejudice is shown to have been caused to AF or SF as a consequence, however, and so no relief should be granted on that account.

254. The next matter of complaint is the dividend that was declared in January 2019. SF said that she received a letter dated 21 January 2019 containing a cheque and minutes of a meeting of MP, Kevan and Sam, purporting to be a committee appointed by the board of the Company, in which Kevan and Sam ("the quorate members of the Committee") resolved to pay a dividend of £8 per ordinary share and £236.2142 per A ordinary share. Sam, Kevan and MP (voting 55% of the shares) then signed a resolution of the members approving the dividends. SF complained (through Stewarts) about the amount of the dividend, and that she had never been given notice of a board meeting to constitute a committee of the board to deal with dividends. Accordingly, the petition says, the dividend is void.

255. Before the petition was issued, the Company sought to remedy any deficiency of the committee's decision. A board meeting was called for 25 April 2019. SF accepts that she was given notice of it but did not attend. The board ratified the recommendation of the committee retrospectively. That dealt with any procedural irregularity about the committee recommending the dividend, but the petitioners have pursued separate

points, namely that the proposed low dividend on the ordinary shares was a breach of duty on the part of the directors, which could only be ratified by the Company in general meeting: s.239 Companies Act 2006. I will deal with that argument separately, below, under the next heading.

256. If the recommendation of the 2019 dividend was not in substance conduct unfairly prejudicial to AF and SF, the procedural mishap with the appointment of the committee cannot substantially have prejudiced the petitioners. I therefore conclude that there is nothing in the procedural complaint that amounts to unfairly prejudicial conduct or that would justify a remedy.

257. Various other procedural matters are relied upon, such as short notice or inadequate papers for proposed board meetings that did not in the event happen. There is no merit in these complaints. SF was in reality being used by AF and Stewarts as a puppet, to make procedural complaints about meetings that she had no interest in attending. It was not put to MP or Sam that they as directors were deliberately withholding information from SF in order to prejudice her ability to participate. The Company did arrange regular management meetings in order to accommodate SF becoming involved with the Company's affairs, but she did not attend any. Eventually, after protest by Sam at her failure to attend or send her apologies, SF confirmed that if Sam did not hear from her he could assume that she was not attending. Sam and MP both confirmed that the management meetings were discontinued from March 2020, when the Covid pandemic lockdown started.

(ii) Deprivation of financial benefits

258. The issues raised under this head are:

i) AF's benefits as director of the Company;

ii) SF's benefits as director of the Company;

iii) Low dividend in 2019 and no dividend in 2020

259. AF was paid modest remuneration as a director of the Company and received generous benefits in kind. Previously (but not in the year to 31 March 2018) that had included a discretionary pension contribution. None of the directors had service contracts and so any remuneration and benefits paid to them was no more than a presumed entitlement based on what had been done in previous years.

260. AF's benefits package was ended with effect from 30 June 2018. He did in fact leave the Company at that time. His removal was wrongful. Had he not been wronged, he would have continued to be paid by the Company until a fair offer to buy him out had been made. From September 2018 it was clear that AF was seeking reinstatement as a director, but MP, Sam and Kevan declined.

261. In my judgment, the removal of benefits from AF was only unfair because his removal as director was unfair. If he had retired voluntarily, he could have had no expectation of continued benefits, other than as a shareholder. This complaint therefore adds nothing to the principal ground of his forced resignation and would not exist if AF had not resigned under duress.

262. SF was a director at all times, but not involved in the management of the business of the Company. She was not a quasi-partner with any expectation of remuneration as a director. The evidence was that she was paid a one-off discretionary pension payment in the year 2017/18 but no further payment was made. It is likely that this payment was made because it suited AF to have benefits paid to SF in that way in that year. There was no regular payment of such a sum to SF. In any event, SF only received those benefits as a director, not as a shareholder, and so the non-payment of pension contributions in 2018/19 cannot be relevant conduct of which SF can complain.

263. As for the non-payment of substantial dividends in 2019 and 2020, it is common ground that MP said on 18 or 20 June 2018 that he would not support the payment of a dividend the following year, but disputed whether he said that this was because of the "double dividend" paid the previous year. I do not accept that the reason given in the meeting was the double dividend. Non-payment of a dividend was raised because it was a further incentive to AF to resign and be bought out. In January 2019, the Company was sitting on very large accumulated profits, out of which a "usual" dividend of £1 million could easily have been paid. A significant dividend was paid to Sam in order to provide him with the cash out of which to pay the tax on the gift of his A ordinary shares (in effect, the dividend made it a tax-free gift). The dividend of £8 per ordinary share was very low: it amounted in aggregate to £80,000 to that class of shareholders instead of £1 million (or £900,000).

264. There was of course no entitlement to a dividend of a particular size: nothing had been agreed between the shareholders to that effect. There can be good business reasons for declaring a much lower dividend than usual in a particular year. MP's evidence in his witness statement was that the main reason for the lower dividend was the fact that there had been large dividends in the previous year, so a lower dividend would be paid with a view to "see if we could declare a further one at year end". In cross-examination he said that "we assumed we needed to keep the money in the business to pay Adrian and Sue off". Those are two different explanations.

265. I do not accept the first explanation that MP gave. There was no reason to act in that way and the Company did not in fact declare a higher dividend at year end, when it was able to do so. There were in my judgment two reasons for the low dividend: first, MP wanted to apply more pressure to AF to agree to sell his shares. The Company was about to make (in February 2019) a considered offer to pay £9 million, spread over 6 years, for the Fewings' combined shareholding. MP must have expected that that offer or something close to it would be agreed. Second, payment of a substantial dividend before then would only gift AF further money that the Company would otherwise retain, and payment could potentially impact on the ability of the Company comfortably to pay the £9 million. The fact that no dividend at all was paid in the following year underscores those conclusions.

266. Had the committee reasonably considered that the Company needed to retain an extra £1 million in order to meet other expenditure, that exercise of discretion could not have been challenged, even if the effect was to leave the shareholders short of funds for a year or more. However, it did not reasonably so consider. Non-payment in order to apply pressure on a shareholder to agree a price is clearly a breach of duty on the part of the directors.

267. As for the second reason, in some circumstances it might be necessary or appropriate for a company to retain funds in order to buy back shares. That could not of itself be improper because it might be beneficial to shareholders to sell shares rather than receive a dividend. However, the Company did not need to keep back £1 million in order to be able to buy the Fewings' shares, even at a price of £9 million. It had very substantial cash reserves and was continuing to generate large cash profits. At that stage, it was not anticipated that the Company would need substantial capital investment in order to maintain its earnings. The Poulters could even have left their share of the dividends on loan to the Company and so only about £500,000 would have had to be taken away from its cash reserves by declaring the "usual" dividend.

268. I am satisfied that the reason a larger dividend was not paid was because MP did not want to give AF more money in any form, and in order to apply pressure on the Fewings to agree a price that was acceptable to the Company. That was a breach of the directors' duty to act in good faith and for proper purposes and was conduct of the Company's affairs that was unfairly prejudicial to AF and SF.

(iii) Payment of legal and other fees

269. I can deal with this matter quite shortly.

270. At one stage it appeared to the petitioners that the Company was wrongly funding the other respondents' litigation against the petitioners.

271. The Company was indeed meeting legal and other bills in the first instance but, in the event, those bills that are properly attributable to this litigation have now been paid by MP. That was achieved by a process of debiting the sums to his director's loan account, then actual repayment by MP. There was ultimately no dispute but that that was what happened.

272. In practice, therefore, the Company gave MP a short-term loan. Given the way that the Company's affairs have been conducted since its creation, I am unable to conclude that that is conduct unfairly prejudicial to its shareholders, and even if it were no remedy would be appropriate in relation to it.

IX. Valuation

273. On the basis of my findings of conduct unfairly prejudicial to AF and SF, it is accepted that I should order the directors of the Company, alternatively the Company itself, to purchase their shares at a fair price, without a discount for the fact that the holdings are minority holdings or for lack of marketability of the holdings under the Company's articles. AF has a 31.5% holding and SF a 13.5% holding, together amounting to 45%.

274. I heard evidence on value from two expert witnesses, Mr Anthony Chapman of BHP LLP, who was called by the petitioners, and Mr Kevin Haywood Crouch of BDO LLP, who was called by the respondents. There is a substantial degree of agreement between them on the right approach, in the circumstances that apply, to valuing the Company

and the shareholdings as at the date of trial (or as close thereto as they could manage). There is no dispute about the right valuation date. The witnesses also addressed the value of the Company as at June 2018, though ultimately these values were not material. Both witnesses seemed to me to be admirably well qualified to give expert opinions on the valuation issues and I am satisfied that they were both doing their best to assist the court. There were nevertheless some differences of approach and judgement between them.

275. The expert witnesses agreed that they were not in a position to value the Company on an income basis, because of the absence of proper business projections, documentary records and cash flows, and that the appropriate valuation method for the Company is to take a multiple of adjusted average earnings before interest, tax, depreciation and amortisation (EBITDA) in the years before the valuation date (which produces the "enterprise value" of the Company), to which should be added net cash or debt (to produce the "equity value").

276. Further, the experts agreed at the time of their initial reports and their joint statement that the right average EBITDA figure to take was £5 million. The only areas of disagreement at that stage were the right multiplier (or 'years purchase') to apply to £5 million, to determine the enterprise value of the Company, and the amount of the Company's 'free' cash balance that should be added to calculate the equity value. However, in late preparation for trial, Mr Chapman claimed to have identified an error in Mr Haywood Crouch's workings, as a result of which Mr Haywood Crouch made a correction that led to a reduction in his EBITDA figure to £4,600,000. There are therefore three issues in dispute that I must resolve.

277. Logically, the first is whether the right EBITDA figure to take is £5 million or £4.6 million. Although the experts did originally agree on £5 million, they got there by different routes. Mr Chapman took a simple average of earnings for the years 2017 to 2020, whereas Mr Haywood Crouch took a weighted average of adjusted earnings for the two accounting years ended 31 March 2018 and 31 March 2019 and the annualised results of the 21-month period ended 31 December 2020. Both approaches included the markedly different trading results for the nine months ending 31 December 2020.

278. In so doing, Mr Haywood Crouch and Mr Chapman both assumed that an approved purchase by the Company of a new property (Old Coal Yard) and the acquisition of a larger than usual quantity of stock were going to complete, whereas in fact both proposed purchases fell through. The question then arose what adjustments should be made for this change. Also, in the joint statement, Mr Chapman pointed out that there was a simple error in Mr Haywood Crouch's weighting of the 21-month period ending 31 December 2020 (2x instead of 1.75x). Mr Haywood Crouch accepted that error, and the adjustment reduced his weighted average EBITDA to £4.6 million. Accordingly, Mr Haywood Crouch prepared a supplemental report shortly before the trial, which included an adjustment to equity value taking account of both the Old Coal Yard and stock purchases and the weighting factor. These had the combined net effect of increasing his valuation of the Company from £36.9 million to £39.2 million.

279. Prompted by Mr Haywood Crouch's supplemental report, the petitioners then produced a substantial supplemental report from Mr Chapman. This was unexpected, given the vehemence with which the petitioners had objected to Mr Haywood Crouch's first draft supplemental report, but the respondents did not seek to prevent reliance on it. The

report includes some 'updating' of earnings assessments, based on the most recent trading data, and led Mr Chapman to say that the fair maintainable earnings figure could in fact be as high as £7.6 million, which is significantly higher than the figures that the experts had agreed in their joint statement. I am not persuaded at all by this belated approach: it seems to me to be highly speculative and imprudent as a basis for valuing the Company, placing too much weight on the exceptional trading results for the 9-month period up to December 2020.

280. Ms Anderson challenged Mr Haywood Crouch on the basis that he had made a further arithmetical error in the way that he calculated the increase in value attributable to the weighting factor. I do not consider that Mr Haywood Crouch did make that error: what he did was indirectly to allow a lower weighting (0.75x) for the final nine months up to 31 December 2020 as a single step, by applying a weighting of one to the figure for 9 months' earnings. However, albeit not an arithmetical mistake, I am not persuaded that that kind of further subjective adjustment is appropriate in an exercise of calculating a weighted average.

281. I therefore consider that the original adjusted EBITDA of £5 million is the right maintainable earnings figure to take.

282. The next issue is the number of years' purchase. Here the experts are not significantly apart: Mr Chapman takes 8.6 as his multiplier and Mr Haywood Crouch 6.8. Mr Chapman derives his figure from a small number of comparable listed companies (analogues) and comparable transactions that he has selected. He said that it was important to look at both; to make adjustments for differences between the analogues and the subject company; and to re-base them to a March 31 year end, for accuracy of comparison with the Company.

283. In selecting his analogues from listed companies, Mr Chapman explained that he was looking for characteristics that have some relevance to the Company, whether in terms of activities, customers, demand profile or supply chain, using the Standard Industry Classification code. So, although Travis Perkins, one of the chosen analogues, was a "massively bigger company" than the Company, as Mr Chapman put it, he considered that the fact that it supplied products into the same sector gave it some commonality with the Company - some "shared business drivers". What mattered to him was how the market assessed the quality of earnings that was inherent in a business exposed to that sector. He was not aiming to find the perfect analogues but companies with some comparability, and that was the case even if the selected analogues also had many different lines of business. The process of averaging the analogues' multipliers would even out the bumps.

284. In fact, Mr Chapman only had 4 analogues in his basket, with a range of multiple from 8.79 to 26, having excluded the clear outliers. He identified Marshalls as being the company that was most comparable to the Company in certain respects, but Marshalls had an implied multiplier of 26 for the year in question. He accepted that it was not ideal that there were so few. Mr Chapman pointed out that, having selected them, he ended up with an average multiplier for them of 11.7 and Mr Haywood Crouch had an unadjusted multiplier of 13.0 - which is similar – but that it is then necessary to make adjustments for the differences, and in particular to adjust for illiquidity of unlisted shares, size and "specific risk". Mr Chapman accepted that if Marshalls were excluded as an outlier, the effect mathematically would be to reduce his adjusted average

multiplier derived from the analogues from 8.6 to 7.5, though that figure would then also have to be considered in the light of the multipliers derived from the comparable transactions.

285. Having obtained an average figure for the multiplier in this way, taking into account listed analogues and transactions, Mr Chapman then adjusted the figure by making an overall deduction of 25% for size and specific factors relating to the Company. That discount, he explained, was the same that he applied on valuing the Company at June 2018, where he was able to do a reconstructed discounted cash flow exercise, to give a more accurate assessment. He applied the same 25% discount as at the trial date. By that means he arrived at his discounted multiplier of 8.6.

286. In then looking at comparable transactions, Mr Chapman accepted that he would look for something closer to the profile of the Company. The figures taken by Mr Chapman are nevertheless an average of companies that have some similarity, in certain respects, but are not close comparables. The average figures derived from that data would have produced a higher multiple, but Mr Chapman did not think it prudent to uplift the figure derived from the analysis of his listed analogues.

287. Mr Haywood Crouch did not consider Mr Chapman's analogues or Market to Market comparable transactions to be properly comparable to a niche company like the Company: he concluded that they had exposure to more varied markets, which provided a degree of resilience to earnings that the Company lacks, and were mostly many orders of magnitude larger. Mr Haywood Crouch could not satisfy himself that there is a sufficient number of sufficiently comparable listed companies and private transactions to be able to derive a reliable average, and he did not make use of listed analogues in his valuation approach, except in a limited way. That was to track the change in multiples in six listed companies in the construction sector over the period June 2018 to December 2020 (7%) and apply that same increase to his own assessed multiplier as at June 2018. His approach at June 2018 involved the selection of corporate indices that he considered to be closest to the character of the Company. These were the BVB Insights index, which is sector-specific and from which he used the "Industrials: Construction and Engineering" index, producing a multiple of 6.6x for 2018 (no figure being available for 2020), and the UK200 Group SME Valuation Index, which is non-sector specific and gave multiples of 6.2x for November 2017 and 6.0x for November 2020.

288. So, instead of the few comparables used by Mr Chapman that are fairly comparable to an aspect of the Company's business, Mr Haywood Crouch has taken a broader average derived from two indices producing an averaged multiplier of 6.4x for 2018, for what Mr Haywood Crouch accepted was a greater range of companies that may or may not be comparable. He recognised that the average deal size in the UK200 index (£3.4 million to £4.1 million) was smaller than the value of the Company, and in order to include the much larger outliers in the figure derived from that index he used the mean multiple, which was significantly higher than the median.

289. As a kind of back check against his conclusion (or as he preferred to call it, an observation or illustration), Mr Haywood Crouch looked to see what kind of discount from the listed comparators used by Mr Chapman was implied in his valuation, and the result was about 47% (whereas Mr Chapman applied a discount for size and specific

risk of only 25%). He considered that discount of 47% to fall acceptably within an expected range of discount of 25% to 50% for a company like the Company.

290. Mr Chapman criticised Mr Haywood Crouch's figure of 6.8x as being practically at the bottom of the range produced by his indices, which he considered to be too pessimistic, given the significant recent upturn in earnings of the Company. Mr Haywood Crouch on the other hand considered that those results were already factored into the EBITDA average to a greater degree by Mr Chapman's simple averaging approach, and that to build an allowance for growth into the multiplier was too generous and verging on double counting the optimism about the future. Mr Haywood Crouch was inclined to think that, given the absence of prudent forecasting and management information on the Company's financial affairs, together with the Company's view that the results for 2020 will prove to be exceptional and not be sustained, a multiplier towards the bottom of the range is appropriate.

291. Although both experts' approaches strike me as reasonable approaches to determining a multiplier, on balance I favour the approach and opinion of Mr Haywood Crouch on this issue, for essentially the reasons that he gave. Relying mainly on four listed comparators, one of which might be regarded as an outlier and none of which were truly comparable, and then making a subjective and ultimately unspecific deduction of 25% for size and specific risk, as Mr Chapman did, strikes me as a rather thin basis for a conclusion that 8.6 is the appropriate multiplier, albeit Mr Chapman also had reference to a higher figure produced by the Market to Market transactions that he selected. I consider that any purchaser of the Company would look towards the bottom of the range of appropriate multipliers because the adjusted EBITDA figure is already substantially influenced by the exceptional trading figures for April to December 2020, and the prospect of that level of trading being maintained in future years was really speculative, particularly without further investment by the Company in capacity, which the Old Coal Works would have provided.

292. I also consider that, as Shorts pointed out in 2015, an informed purchaser would find significant deficiencies in the bookwork and records of the Company, which would naturally lead it to be somewhat sceptical about the resilience of the Company's earnings. There was no evidence that the absence of proper documentary records, cash flows and projections was remedied, and since there were no steps taken to market the Company since 2018 there would have been no reason to do so. The evidence of Sam about MP's reaction to the 2018-2021 business plan and MP's control of the Company suggest that it would not have been remedied.

293. I therefore consider that a multiplier of 6.8 should be applied to the adjusted EBITDA figure of £5 million to provide an enterprise value of £34 million.

294. The final issue is how the Company's cash reserves should be treated. In principle, the net cash position should be added to the enterprise value of £34 million, to give the equity value of the Company's shares. The cash is an asset of the Company for which a purchaser will pay, provided that the cash can be removed from the Company without affecting its enterprise value. In the experts' joint statement, the position is that Mr Chapman has included cash of £14.9m, based on more recently available figures for the Company up to the end of February 2021, and Mr Haywood Crouch included cash of £8.552m, derived from a cash balance of £15.612m in the December 2020 management accounts.

295. The difficulty lies in identifying what is the net cash position. (Mr Chapman did not like the expression "surplus cash" because, he said, that was a term of art for accountants and had a slightly different meaning; nevertheless, that is in untechnical terms what is sought to be identified.) Specifically, it is the net cash assets held by the Company that will not be needed as part of the company's working capital to sustain in future a fair maintainable earnings figure of £5 million per annum. Another way of describing the same thing is any part of the cash assets that has been temporarily liberated from the business, when the amount invested in stock and debtors is temporarily lower than the usual amount as compared with the amount of creditors that the Company has. (The position may of course be the reverse, but in those circumstances the amount of cash held by the Company will have been temporarily reduced.) Any part so identified should clearly be deducted from the cash balance at the valuation date, as it is already included in the enterprise value of the Company.

296. Mr Chapman helpfully explained that the question at issue is not the same as asking "what cash might the Company need to use from time to time during the year, in order to be able to conduct its business?" What is to be identified is, rather, the amount of the cash balance, if any, that is part of the cash required to be regularly used by the Company, as distinct from cash that may need to be injected for a time and will then be repaid as "surplus" later in the year.

297. Mr Chapman considered that the Company's monthly management accounts showed that the working capital varied at between about £1.5 million and £3 million during an average year, but that at all times the company was sufficiently 'liquid'. He considered that there was no evidence that any of the cash sum of about £14.9m was needed as part of the Company's working capital (that is to say that fair maintainable earnings of £5m p.a. could be achieved even if all of the £14.9m were extracted from the Company).

298. Mr Haywood Crouch deducted a working capital cash requirement of £6 million and a further corporation tax creditor of £1.06 million from the available cash held by the Company. He explained that it was not possible without the benefit of hindsight to say exactly what amount of net cash was "surplus" at a current valuation date. He assessed the position in March 2018 and applied the same answer to 2021, however he accepted in cross-examination that he had only derived the sum of £6 million from an opinion expressed at that time by Antonio, in a presentation on a proposed employee ownership trust, that only £2 million of about £8 million cash was "surplus". Mr Haywood Crouch said that he thought that that was the best evidence in March 2018 and that he applied the same figure to a 2021 valuation ("KHC has again deducted a working capital cash requirement of £6m as he has done for his valuation as at 20 June 2018") (Joint Statement, para 9.16).

299. Mr Chapman said that it was unclear from Antonio's March 2018 document in what sense he was saying that £2 million was "surplus". He further explained that use for working capital is only one use of cash: it is also required for investment, for growth and to support a decision to reduce profitability, or to increase the Company's inventory. It was put to Mr Haywood Crouch that as at March 2018 there might have been a requirement for cash of about £1.5 to £3 million, and he said that one had to bear in mind that the position of the Company was changing over time. That seemed to me to sit uncomfortably with the use of a figure of £6 million which was someone else's opinion as at March 2018.

300. I agree that the £2m surplus cash reference in Antonio's document is opaque: he was not asked about it in evidence. The reference appears on a page summarising the trust proposal from a shareholder's perspective and reads: "Assumes £2 million surplus cash would be available each year. Currently close to £4million pre capital expenditure." This was prepared to illustrate how a trust might fund acquisition of the Company for about £40m. In my judgment, this does not begin to support an argument that £6m was considered by the Company or even by Antonio to be required to support the then EBITDA figure for the Company, without growth. Equally, I consider that the amounts not distributed as dividends from time to time cannot be regarded as an adequate assessment of what cash was required as working capital. Prudence, the avoidance of unnecessary taxation, and possible expansion of the business might all be reasons for retaining larger than usual amounts of cash in the Company. I therefore reject Mr Haywood Crouch's case for a £6 million deduction for working capital.

301. The Company's positive working capital balance fluctuates between £1.5m and £3m during its annual business cycle. In their valuation of the Company dated 28 November 2018, Shorts expressed a tentative view that up to £2 million of the net cash might be required as working capital. In my judgment, some allowance should be made for the likelihood that, as at the date of trial, some part of the net cash balance may represent part of the working capital of the Company. Mr Chapman's approach was too purist in asserting that he has seen no evidence that this is the case, given the acknowledged difficulty in assessing the current position with working capital without the benefit of hindsight. I therefore allow £1.5 million for additional working capital as a deduction from the net cash balance.

302. As for the allowance of £1.06 million for corporation tax liability, the issue here between the experts is whether that is an abnormal liability. If so, it is common ground that it should be deducted. I accept Mr Haywood Crouch's evidence (in the experts' joint statement, para 9.21) that the £1.06 million represents the excess over the on account payments made by the Company based on previous years' tax liability, and accordingly there is no question of this sum including tax on normal profits. It is common ground that the Company enjoyed exceptional revenue growth (and profits) during the 9 month period ending 31 December 2020. Whether that level of trading can be sustained remains to be seen: there do appear to have been some particular reasons for it linked to the Covid pandemic. There are good reasons for a prudent conclusion that that level of trading will not be able to be sustained, at least without substantial capital investment. In those circumstances, viewed in the light of the evidence as it currently stands, the corporation tax liability should be regarded as abnormal and so should be deducted from the net cash position.

303. Taking the most recent net cash position spoken to by Mr Chapman of £14.9 million, there is therefore to be deducted £2.56m in aggregate, leaving net cash of £12.34m to be added to the enterprise value of £34 million. The equity value of the Company is therefore £46.34 million, of which the Fewings' combined 45% holding is worth £20,853,000.

X. End adjustments

304. The final issue is whether any of the three adjustments contended for by the petitioners should be made to that value. None of these points were developed in the petitioners'

opening or closing submissions, but they are pleaded and Mr Atkins addressed them in the respondents' closing submissions, and so shall I.

305. The three matters pleaded are:

i) An uplift in the price to reflect the loss by AF of the more beneficial tax rate (enterpreneur's relief at 10% instead of the current CGT rate) that would have applied if his shares had been sold when they were still directors of the Company;

ii) An uplift to reflect the remuneration, benefits and dividends that ought to have been paid to AF and SF since June 2018; and

iii) An uplift equal to the difference between the fair value of AF's shares in DAPAK and £300,000.

These adjustments are stated to be required in order to reverse the matters of unfair prejudice complained of.

306. (i) *Tax relief lost*. AF would only have obtained the benefit of the lower tax rate on sale of his shareholding if he had sold the shares as a director of the Company. The circumstances in which he would have done so, but for the unfairly prejudicial conduct of the Company's affairs, were not explored in evidence. It is equally uncertain what price AF might have been able to negotiate if he had sought to sell his shares while a director of the Company. If it had happened, it is likely that it would have happened in 2018. At that time, the expert valuers considered that the equity value of the Company was between £30.8m and £44.826m, valuing AF's 31.5% holding without discount at between £9.7m and £14.1m. On the basis of the lower multiplier that I have held to be appropriate, the figure that I would have reached would have been much nearer £9.7m. AF's 31.5% holding at the date of trial is valued at almost £14.6m. AF has therefore derived significant benefit from the later valuation date, as a result of the improvement in the Company's trading results when he was not involved in management. He would not have derived this benefit if a fair price based on 2018 values had been offered for his shares while he remained a director.

307. Given the uncertainty about what would have happened in 2018 and the significant increase in the value of AF's shares, I consider that to make an adjustment for the loss of the opportunity to obtain entrepreneur's relief would overcompensate AF. The appropriate remedy for unfairly prejudicial conduct is a matter of discretion, not entitlement. In my judgment, an order that AF's shares be bought out at valuation based on 2021 values, without any discount, is sufficient and appropriate to remedy the prejudice that he suffered.

308. (ii) *Financial benefits foregone*. Had AF remained a director of the Company after June 2018, it is likely that he would have continued to receive remuneration and benefits. I consider that higher dividends would also have been declared but for the removal of AF as director. However, he would not have received any of these advantages if a fair offer for his shares had been made and accepted in 2018. If a fair offer were made but not accepted, MP and Sam would have been entitled to use their votes in general meeting to remove AF as a director. Further, AF did not in fact work as a director and bear the responsibilities for which he would have been paid during the

period 2018-2021. He was free to conduct other business interests or enjoy his retirement. In those circumstances, I do not consider that an award of remuneration and benefits for those years is appropriate or necessary to remedy the prejudice that AF suffered as a shareholder.

309. In relation to the missed dividends there are two further points. First, it is not possible to determine what the board's committee would in the counterfactual world have decided to recommend as dividends in the years 2018/19 and 2019/20. Second, those further dividends would have been paid out of the Company's accumulated profits, which were principally in the form of its cash reserves, thereby diminishing the amount of cash held by the Company in 2021. Save for the £2.56m that I have held represents working capital and an abnormal creditor item, the cash held is fully reflected in the equity value of the Company and hence in the value of AF's shareholding. AF cannot be awarded both a price for his shares reflecting the cash held by the Company in 2021 and compensation for dividends that would have been but were not paid in 2019 and 2020.

310. (iii) *Price agreed for DAPAK shares.* In view of my conclusion that AF willingly sold his DAPAK shares for £300,000, which was a fair value in June 2018, this claimed adjustment cannot succeed even if it the claim were otherwise sound in principle.

311. (iv) *Summary*. Accordingly, there will be no adjustment to the value of £20,853,000 and that is the price that must be paid for the petitioners' shares.