Neutral Citation Number: [2021] EWHC 3441 (Ch)

Case No: CR-2020-CDF-000025

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

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

Date: 21 December 2021

Before:

HIS HONOUR JUDGE KEYSER QC
SITTING AS A JUDGE OF THE HIGH COURT

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Between:

(1) ANGELA MAHONEY **(2) BLUE TRANSPORTATION LIMITED** **(3) BLUE VEHICLES LIMITED**	**Claimants**
- and -	
(1) PETER JOHN RENWICK **(2) SCOTT PAUL MAHONEY** **(3) PREMIER CARS DRIVERS ASSOCIATION LIMITED**	**Defendants**

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- -

Mr Christopher Boardman QC (instructed by **Hugh James**) for the **Claimants**
Mr Daniel Burgess (instructed by **Geldards LLP**) for the **Defendants**

Hearing dates: 4, 5, 6, 7 and 8 October 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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HIS HONOUR JUDGE KEYSER QC

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 2 p.m. on Tuesday 21 December 2021.

JUDGE KEYSER QC:

Introduction

1. The dispute in the present case concerns a taxi business in Cardiff called Premier Cars ("the Business").

2. The Business was formerly owned and carried on by Premier Cars (Cardiff) Limited ("PCCL"). When PCCL ran into financial difficulties, the decision was taken to form new companies to take over the Business and its assets. This was done; the new companies are the second and third claimants, Blue Transportation Limited ("BTL") and Blue Vehicles Limited ("BVL") (together, "the Blue Companies").

3. The first claimant, Mrs Angela Mahoney, is the sole member and a director of each of the Blue Companies. The first defendant, Mr Peter Renwick, and the second defendant, Mr Scott Mahoney, are directors both of the Blue Companies and of the third defendant, Premier Cars Drivers Association Limited ("PCDA"). PCDA is a not-for-profit company limited by guarantee; it plays a tangential role in the proceedings and I shall say a little more about it later in this judgment.

4. Mrs Mahoney asserts that she holds her shares in the Blue Companies not only legally but beneficially and that as the sole member she has, since the commencement of the case, passed resolutions appointing additional directors and empowering her to bring proceedings in the name of the companies. She complains that Mr Renwick and Mr Scott Mahoney have wrongfully excluded her from the management of the Blue Companies and filed documents at Companies House recording her resignation as a director of each of those companies. Mrs Mahoney and the Blue Companies also assert that the Business and its assets are owned by the Blue Companies, and they complain that Mr Renwick and Mr Scott Mahoney have sought to divert the Business elsewhere, first by wrongly asserting that the assets of the Business are the property of a third party, Mr Simon Moxham, and second by seeking to carry on the Business through PCDA.

5. The defendants' case is that in the summer of 2019 an agreement was made between Mrs Mahoney, Mr Renwick, Mr Scott Mahoney and Mr Moxham, by which the shares in the Blue Companies would be held as to 45% by Mrs Mahoney, as to 45% by Mr Moxham (who would invest capital in order to acquire his shares), and as to 5% each by Mr Renwick and Mr Scott Mahoney by way of incentive and reward. Mr Renwick and Mr Scott Mahoney would be the directors and would manage the companies; Mrs Mahoney would have no involvement in the management of the companies but would receive regular reports from the directors via Mr Moxham. Although this agreement was never embodied in formal documents, the parties intended that it be immediately effective and acted on that basis. Therefore, although Mrs Mahoney is in law the sole member of BTL and of BVL, she holds her shares on the trusts of the agreement; and it was appropriate to file a notice of her resignation as a director. PCCL's assets, by which the Business is carried on, were bought not by the Blue Companies but by Mr Moxham personally in anticipation of completion of the agreement; therefore Mrs Mahoney must either abide by the agreement or accept that the Blue Companies have no assets and no business.

6. I am grateful to Mr Christopher Boardman QC and Mr Daniel Burgess, counsel respectively for the claimants and for the defendants, for their submissions.

Narrative

7. PCCL was incorporated in 1998. It was owned by two holding companies, the shares in which were held equally by Mrs Mahoney's husband, Mr Tim Mahoney, and by Mr Mark Scott. Mr Tim Mahoney was a director of PCCL and he was the founder and driving force of the Business. Mr Scott's role was that of an investor; he played no active part in the Business. PCCL carried on business latterly at premises at Unit 10, Wroughton Place, Ely, Cardiff ("Unit 10"), which it held under a lease dated 25 November 2009 for a term expiring on 28 September 2018 subject to a right to renew. It also had a lease of adjacent premises, "Unit 9", which it occupied as a garage for motor repairs and maintenance.

8. Initially, PCCL had direct contractual relationships with its self-employed drivers. However, in November 2016 PCDA was incorporated as a not-for-profit company limited by guarantee and run for the benefit of the self-employed drivers. One of the drivers, Mr Steven Russell, was the sole director, sole subscriber and sole person with significant control. Thereafter, PCCL paid PCDA rather than the self-employed drivers directly, and PCDA paid the drivers. PCDA operated a radio room and call centre from premises that it leased; its costs and expenses were met by contributions from the drivers. PCCL retained ownership of the goodwill of the Business and the other assets, including the fleet of vehicles. PCCL also employed a small number of drivers for use in respect of special accounts.

9. In about 2016 Premier came into dispute with Her Majesty's Revenue and Customs ("HMRC") regarding a contested liability for Value Added Tax. In this connection, Premier sought advice from Mr Moxham who was known to Mr Scott. Mr Moxham, though not a party to the proceedings and not a witness at the trial, is central to the narrative and to the issues to which it gives rise, and he merits an introduction.

10. Mr Moxham is an accountant and, currently, the shareholder with significant control of Merlin Paul Limited, an accountancy company based in Shifnal, though his main residence is now in United Arab Emirates. He was previously a director of a company called Hiflex Limited. Following an investigation into his conduct as a director of Hiflex, he signed a voluntary undertaking, under the Company Directors Disqualification Act 1986 ("CDDA"), not to act as a director of a limited company for a period of four years from 4 May 2012. On 1 June 2012 Mr Moxham was granted leave to continue to act as a director of another company, BMI Hose (UK) Limited, upon a number of conditions. One condition was that BMI Hose would make all payments due to HMRC on time; another condition was that Mr Moxham would use his company credit card only for legitimate business expenses. In February 2013 BMI Hose entered administration owing about £575k to creditors, of which £385k was owed to HMRC. Thereafter Mr Moxham gave an undertaking under CDDA that he would not, for a period of 12 years from 13 January 2015, be a director of a company, act as a receiver of a company's property, or in any way, whether directly or indirectly, be concerned or take part in the promotion, formation or management of a company without the leave of the court. The matters of unfitness recorded in this

latter undertaking—admitted by Mr Moxham only for the purposes of the undertaking and matters pertaining to his disqualification—included the following: that between 14 October 2012 and 12 January 2013 he used his company credit card for transactions apparently for his personal use in the total sum of £39,390, which included £29,800 to a bookmaker; and that, after BMI Hose had entered into administration and stopped trading, he caused the company to pay £36,000 to him.

11. Because Mr Moxham is central to the defendants' case in these proceedings, it was to be expected that he would give evidence. Indeed, he signed a substantial and detailed witness statement in August 2021 and has been closely involved in the preparation and direction of the defendants' case. However, it became apparent that he was wholly unwilling to give evidence at trial, in any circumstances. At the commencement of the trial I refused the defendants' application to rely on his witness statement as hearsay evidence.

12. In January 2018 PCCL was the successful tenderer in a procurement exercise for the provision of taxi services for South & West NHS Wales Health Boards and Trusts. The contract ("the Hospitals Contract") was for a 3-year term until January 2021, with an option to renew, and was one of PCCL's most significant assets. However, the award of the Hospitals Contract was the last really good news PCCL received.

13. On 1 July 2018 Mr Tim Mahoney died after a long illness. His shareholding in PCCL (via the holding companies) passed to Mrs Mahoney. Mrs Mahoney had previously had no significant involvement in the Business; she had supplied and embroidered staff and drivers' uniforms (she had previously had her own unincorporated embroidery business) but she had never worked in the office and had no involvement in the management or affairs of PCCL or any other company. However, on 13 August 2018 she was appointed as a director of PCCL (the other directors were Mr Renwick, Mr Scott Mahoney, and Ms Alison Parry), and from that time she began to work in the office. Mrs Mahoney says that her day-to-day role was to manage the administrative staff, while Mr Renwick was responsible for IT, accounts and contracts, and Mr Scott Mahoney managed the radio room. There is some dispute between the parties as to the amount and importance of the work that she actually did, but it is unimportant and I need not resolve it.

14. By the beginning of 2019 PCCL had conceded defeat in its dispute with HMRC. Advice was taken from Mr Moxham and, through him, from an insolvency practitioner, Mr Glyn Mummery, of FRP Advisory, whom Mr Moxham had first introduced to PCCL as long ago as 2017. PCCL's problems went beyond the immediate dispute; it would shortly become apparent that it had significant unpaid tax liabilities, which could not be met. The decision was made that another corporate structure would be established, through which the Business could be continued.

15. On 5 March 2019 the directors, Mr Moxham and Mr Mummery had a meeting with PCCL's solicitor, Mr Andrew Bound, a partner in Berry Smith LLP, at PCCL's offices. Mr Renwick confirmed in evidence that Mr Moxham and Mr Mummery led the meeting. Mr Bound's attendance note of the meeting, which provides the best evidence of what was said, includes the following passages that explain the position:

> "They are basically in financial difficulties. Has not paid the VAT and corporation tax. … They seem to have all agreed

> that they are going to pre-pack it and use Premier Logistics [one of PCCL's holding companies] for that. …
>
> Mark [Scott] is chasing for his money. … They are talking about buying all the assets before it goes into liquidation or administration and getting funding to do that. They need to do that as they need to move the hospital contract across before it goes into any form of insolvency practitioner [sic], then it would go into liquidation or administration and then we would buy the goodwill in the name and do name swaps at that point. …
>
> They reckon the business is viable going forward. It makes £500,000.00 per annum. It is just that it is paying all these dividend amounts to Mark and it has an historic VAT problem that it has never got out of. Apparently the VAT are pushing them now and have a charge over some of the assets so it is coming to a head. …
>
> The second thing they are thinking about is that they were going to go to Mark and make him the offer of £150,000.00 of the life policy monies that Angela has got and 20% of the NewCo going forward. I have said, legally, there is no need to do that but morally they may want to but they just need to think it all through.
>
> We then had a separate conversation where Angela was of the view that running NewCo was not where she wanted to be. Simon reckons that he could find someone who may come along and buy the pre-pack vehicle for about £1 million and that is where Angela thinks she wants to be and that seems to make sense to me."

16. On 8 March 2019 BTL and BVL were incorporated by Berry Smith as private companies limited by shares. It was intended that BTL should take over the taxi operations and that BVL should acquire the fleet of vehicles by which the car-hire side of the Business was run. A third company, Blue Executive Limited ("BEL" or "Blue Topco") was incorporated on 10 May 2020 as a potential holding company for BTL and BEL. Mrs Mahoney was the sole subscriber to the Memorandum of Association and the sole member of each of the three companies, and she was the only person registered as a person with significant control of the companies. She, Mr Renwick, Mr Scott Mahoney and Ms Parry were the directors. (Ms Parry resigned in October 2019 and plays no part in the dispute.)

17. Mrs Mahoney's evidence was that around that time in 2019 she envisaged that, once the Business had been transferred to a new company, she would look to find an investor who would buy it. The course of her cross-examination did not lead to perfect clarity on the question whether, at that time, she envisaged the possibility of parting with only part of her interest; however, I think that the tenor of her evidence was that she was contemplating a sale of her entire interest, not merely part of it. I accept her evidence.

18. As Mr Renwick accepted in cross-examination, at this time there was no suggestion of Mr Moxham becoming involved as an investor in the Business or shareholder in the company that owned it.

19. When BTL and BVL were incorporated, bank accounts were opened in their names, and in April 2019 Mrs Mahoney introduced a total of £29,000 as working capital. In the absence of financial documents, it is difficult to know precisely what scale of business the Blue Companies carried on thereafter. On the one hand, in the summer of 2019 Mr Moxham was confirming that PCCL remained profitable (see below). On the other, the witnesses confirm that from about April 2019 there was a *de facto* transfer of PCCL's taxi operations to BTL and of its car hire operations to BVL; this was recognised in the conduct of PCCL's subsequent administration. Certainly, in June 2019 the Hospitals Contract was novated to BTL (see below), and in October 2019 a contract with Infopoint Limited for the provision of taxi services, though originally prepared in the name of PCCL, was entered into by BTL.

20. On 11 June 2019 Mrs Mahoney met with Mr Moxham. Mr Moxham told her that valuers instructed on behalf of PCCL, ITC Valuers Limited ("ITC"), had valued the assets of its Business at £350,000. I accept Mrs Mahoney's evidence that she never saw any documentation to support that or any other valuation and that she simply accepted what Mr Moxham told her. Disclosed emails show that a draft report had been sent by ITC to Mr Moxham on 22 May 2019. They also show that Mr Moxham forwarded the draft report to Mr Renwick and Mr Scott Mahoney on 7 November 2019. However, the defendants have not disclosed the report in these proceedings. The available evidence suggests that ITC had not valued the assets at anything remotely like the figure mentioned by Mr Moxham.

21. Later that day, 11 June 2019, in the light of her meeting with Mr Moxham, Mrs Mahoney spoke further to Mr Bound. Details of the conversation appear from his attendance note, to the following effect. The valuers had said that the Business was worth £350,000. Mrs Mahoney was unwilling to invest any further money in the Business, and she did not want to be involved in the day-to-day running of the Business. "Simon has offered to come up with the £350,000 for 50% of the Company, then run it, and he would control Scott and Peter, perhaps give them 5%, but change how they work, Angela would go. … He is also saying to her she can have an ongoing salary …" Mrs Mahoney said that she was "looking to be a passive investor" and that she was attracted by the prospect of a monthly salary without having to do much work for it, together with 50% ownership of the company. There was agreement that Mr Moxham represented Mrs Mahoney's only realistic option. A note of caution was sounded, however:

> "She raised it and I said I did agree with her, you have to wonder quite how it got to this stage, and was this part of Simon's plan. I said we will never know, and also there are concerns about being in business with him going forward, but you would have that risk with any partner, and realistically, given where we are now, if he knows you can't come up with the £350,000, if he wanted to cut her out of any deal with the liquidator now, he probably could and speak direct with Scott and Peter who run the business. It is a risk in terms of you are then in business with him, you can document some of it and

> have some protections, and he had said she should speak to me and then we will document it, so that makes sense, but I understand the overall concern."

22. In cross-examination, Mrs Mahoney said that it was incorrect to state, baldly, that in June 2019 she was unwilling to put any further money into the Business. She had been considering the matter on the basis of the figure of £350,000; she was certainly unwilling to make a further investment of that sort of amount. However, if she had known that the actual cost of PCCL's assets would be only about £65,000, as proved to be the case, she would have been willing to purchase them herself. There is a risk of hindsight in these circumstances. However, I accept that Mrs Mahoney's unwillingness to invest in June 2019 arose specifically in the context of what Mr Moxham told her about the price of the assets. I accept also that, if she had known their true cost, she would have considered the matter differently and might—it is impossible to say, would—have been willing to advance the necessary funds personally.

23. By a Deed of Novation executed on 19 June 2019, the Hospitals Contract was novated to BTL. This had been a priority of PCCL's directors, for fear that the presentation of a winding up petition by HMRC would cause NHS Wales to terminate the contract. Mr Renwick's email to NHS Wales on 19 March 2019 and Mrs Mahoney's substantially identical letter of the same date, which initiated the discussions leading to the novation, stated that corporate restructuring was being implemented, and novation of the Hospitals Contract was being sought, in the light of Mr Tim Mahoney's death and upon advice from PCCL's accountant. The text of those documents had been provided by Mr Mummery. As Mr Renwick candidly accepted in cross-examination, the text was misleading: the real reason for seeking the novation was not Mr Tim Mahoney's death but PCCL's insolvency, and this was not disclosed because of the obvious concern that NHS Wales might refuse to novate the Hospitals Contract if it knew the real reason. It is also material to note that the effective date of the novation was 31 December 2018, which meant that BTL and not PCCL would take the benefit of any outstanding debts owed to PCCL under the Hospitals Contract. Although Mr Renwick said that NHS Wales was a generally prompt payer, it is very probable that the effect of this arrangement—unbeknown to NHS Wales—was to divert a significant amount of money away from an insolvent company.

24. On 20 June 2019 Mrs Mahoney, Mr Renwick, Mr Scott Mahoney and Mr Moxham met at the Hilton Hotel in Cardiff. Mr Moxham advised that it was necessary to move the Business to BTL and that he had obtained a valuation of the Business. Mrs Mahoney's evidence was that Mr Moxham mentioned a figure of £390,000—rather different from the figure she had mentioned to Mr Bound some days previously—and that he did not produce a valuation or explain how it had been arrived at. It was agreed that advice should be taken from Mr Bound.

25. On 16 July 2019 Mrs Mahoney and Mr Moxham met with Mr Bound at the latter's office. The best evidence of what was discussed at the meeting is Mr Bound's attendance note of the same date and the long email sent by Mr Bound to Mrs Mahoney and Mr Moxham on 18 July 2019.

26. The attendance note was not sent to any of the persons involved; it was private for Berry Smith's file. It referred to the intention to have a pre-pack liquidation of PCCL and continued:

> "The plan seems to be that the Premier business will be split into two for the purpose of the pre-pack.
>
> a) the taxi business will come over to Blue Transportation;
>
> b) the vehicles are then rented out and will come across to Blue Vehicles.
>
> They have also got a company called Blue Executives Limited. They are not going to use that now, what they will do instead is make that the top company, that will then hold the shares in the other two Blue companies. … What they want us to get involved in is putting the right structure in place for this Blue Topco and its two wholly owned subsidiaries.
>
> We talked around that, the following points:
>
> a) the shareholding split is going to be 45% Simon and he is going to put in the necessary sum of £450,000? to enable the relevant Blue company to buy the assets from Premier, because that is what the liquidator is saying is due. Angela keeps 45%, then each of Scott and Peter get 5% as an incentive for them to run the business.
>
> b) the plan would be that Peter and Scott would be the directors.
>
> c) In the Shareholder Agreement we would have reporting arrangements, where they would report back to Simon, who would then report to Angela. Angela is very much a sleeping shareholder at that point. There would be a list of key veto points and I think both shareholders need to be involved in that arrangement, so it gives Angela some protection.
>
> Angela is going to be paid an ongoing salary of £2,000 per month, and she is going to get a dividend of £2,000 per month, she gets that, she doesn't turn up, we might call her company secretary.
>
> Simon wants the class of shares to be the same, he does not want alphabet shares, so if Angela is getting £2,000 per month, He is going to get £2,000 per month and accrue it to come out and then Peter and Scott will get the same on a pro rata basis.
>
> d) Peter and Scott will need directors service agreements.
>
> e) They are looking at having life policies in place if one of them dies, there are policies in place the company pays for.

f) Good leaver and bad leaver to apply for Peter and Scott.

g) Standard pre-emption to apply for everyone else. Valuation set by an independent valuer, unless they agree.

h) They plan to sell it at some stage, but nothing to be built into the documentation on that.

i) Normal shareholder and Articles of Association arrangement, but very much tailored for this more reporting issue.

j) Ability for Angela and Simon to appoint more directors to swamp Peter and Scott if required. I think that needs to be individualised to both Angela and Simon.

k) We need to sort out the share capital of this company.

l) Alison [Parry] is apparently going to resign from Premier before they do the TUPE across. She will also need to come off the directorship for the various new Blue companies that have been established. If she does not come off there, we need to look at forceably [sic] removing her. They are hopeful of getting that resolved, but I need to refer to it in my covering note to them.

Our role will be acting for the Blue company, not acting for the individual shareholders. We will explain the meaning and effect of the documentation, but we are not acting for one individual shareholder against another. We made that clear in the meeting and I will reiterate it in the letter.

Next Steps

a) I will send a draft letter to Simon and Angela as the key shareholders, setting out how the arrangements work.

b) Once they are happy, I will send the same note to all four of them.

c) Once they are happy and go with the fee, we will then prepare the relevant documentation, which is going to comprise of a shareholder agreement, Articles, director's service agreement and possibly subsidiary Articles. We will also deal with the relevant shareholder and directors' resolution to sort all of this out.

d) We will prepare a meaning and effect letter explaining all of the documentation and getting that around to all of the shareholders.

I have stressed all of this should be in place before they move the Premier business into the Blue companies.

> It seems to be that Peter and Scott are not paying anything for their shares. Simon is going to put £450,000 in for his 45% to enable Blue to have the money to do the deal.
>
> Legally, all of that works, but we just need to flag it up with them in the documentation and make sure there is no tax issue or flag it to them that they need to think about the tax issue.
>
> We talked all of that through, then Peter and Scott joined the end of the meeting and they confirmed that they are happy with all of this.
>
> We talked about good leaver/bad leaver, we talked about how the position of them running the business would operate and the reporting arrangements, they seem on side with that.
>
> I did talk through the fact that, obviously Angela is going is now going from 100% of Premier to 45% of this new company, however, they have found themselves in this position, Premier is now, I am told, having to go into liquidation, and Blue needs £450,000.
>
> Angela doesn't want to put in her own money, raising the money would be difficult with a disengaged director base, so Simon coming on board and incentivising the other two directors seems to be the right thing to do based on where they currently are, but it is not ideal. It is the best of where they currently are at this point in time."

27. The email was sent to Mrs Mahoney and Mr Moxham but not to Mr Renwick or Mr Scott Mahoney.

- The introductory parts of the email included the following:

  > "As promised, I am writing to set out my thoughts on what documentation is necessary to cover the points we discussed on Tuesday. I am also going to give an indication of potential legal fees. I said I would send this to the two of you for your comments. Once you are happy with it, I will then issue it to all of the four shareholders, to effectively set out a road map on the way forward."

- The Business was to be transferred to the Blue Companies; it was hoped that this would be done within four to eight weeks. BTL would acquire the taxi business, BVL would acquire the taxis, and BEL would be the holding company. The transfer would be dealt with by "the liquidator" (that is, of PCCL) and such professionals as the liquidator instructed.

- Berry Smith would attend to the documentation regarding the new corporate structure, including a shareholders' agreement.

- "You instructed us that each of the companies should be set up on the basis that Peter and Scott will be the directors. The shareholding in the Blue top company [BEL] will be 45% Angela, 45% Simon, 5% Peter and 5% Scott.

  Simon will be receiving his 45% for making an investment into the Blue Topco, to enable it to fund the acquisition of the businesses for Premier. In due course, it would be helpful if you could let me know the figure that Simon is providing, so I can build that into the documents. …

  We have a slightly unusual situation here, in that Scott and Peter will run the Blue companies. They will be the two directors. Simon and Angela will not be directors. They will have the ability in the future to appoint directors if necessary, in their role as substantial shareholders, but that is not the intention.

  The plan is that Peter and Scott will run the business, but, at least on a monthly basis, they will report back to Simon on all aspects of the business. Simon will then keep Angela regularly updated. That reporting arrangement is over and above the usual position and rights of everyone as a shareholder of the business. …

  There will be [in the shareholders' agreement] a list of key decisions, which can only be taken with the consent of all the shareholders. This gives clarity to all concerned, Peter and Scott know that they run the business, but there will be certain key decisions upon which they will need to get the consent of Simon and Angela."

- Berry Smith would attend to the documentation regarding the new corporate structure, including a shareholders' agreement, service contracts for the directors, and a contract for Mrs Mahoney's employment by BEL as company secretary.

- The final substantive section of the email read:

  "If you would like us to proceed on this basis, I would be grateful if you could let me know. If you have any comments on the above then please say. If not, Abbie will re-issue this note to all four of you.

  Once you all confirm you are happy for us to proceed on this basis, I will then start preparing the documentation once I get back from my holiday."

28. The main part of the meeting involved only Mrs Mahoney and Mr Moxham. Mr Renwick and Mr Scott Mahoney joined the others for a short time at the end of the meeting, when Mr Bound summarised in outline the main points that had been discussed, though he did not mention everything. In cross-examination Mr Renwick

acknowledged that there was not much certainty in what had been mentioned: the matters were discussion points, not an agreement, and he made no promise to stay on in the company.

29. Mr Bound gave evidence at trial. When questioned on the point, he was unequivocal that no concluded agreement was made at the meeting on 16 July 2019. That is consistent with his own record of the meeting.

30. In her affidavit sworn on 22 July 2020 in support of an application for an interim injunction, Mrs Mahoney explained the proposed shareholdings in BEL as follows:

> "Simon said that he thought a cash investment of approximately £360,000 might be required, but I did not understand why the business would require investment at this level and made clear that I did not have that kind of money. Simon said that he would be willing to invest a substantial sum into BEL, with the ultimate intention that the Blue Companies could be sold at a profit. We discussed the possibility that, upon Simon making a significant investment in BEL, the shareholdings in the Blue Companies could be altered so that BTL and BVL might become wholly owned by BEL and Simon and I might hold 45% each and the remaining 10% would be split between Scott Mahoney and Peter Renwick as an incentive for them to have continued input into the day to day running of the business as directors (they had not previously been shareholders of Premier)."

31. In fact, Mr Bound's "road map" was not sent out to Mr Renwick and Mr Scott Mahoney and he was not instructed to draft the documentation, although on a number of occasions he chased the matter up with Mr Moxham. Mrs Mahoney's evidence was that shortly after Mr Bound's email of 18 July 2019 Mr Moxham told her that as PCCL was still making a profit there was no urgency to move forward. "Simon made no further mention of making an investment into the business and nothing was agreed to move forward with our discussions" (affidavit, para 32). I accept that evidence.

32. According to Mr Renwick and Mr Scott Mahoney, Mrs Mahoney stopped going into the office after the meeting with Mr Bound. According to her, however, she continued to go in for some months until the atmosphere in the office became uncomfortable (see below), though she did not go in every day. On this issue, I prefer Mrs Mahoney's evidence.

33. Meanwhile, Mr Moxham had been negotiating with Bibby Financial Services ("Bibby") with a view to securing a line of credit for BTL. On 24 September 2019 Bibby wrote to Mrs Mahoney to confirm an offer for a factoring facility with a funding limit of £300,000. As Mr Moxham explained to Mr Scott's solicitors, in the course of some rather tetchy correspondence concerning Mr Scott's position as a creditor of PCCL, this financing was "a lift and drop from Investec [PCCL's book-debt financier] to Bibby Financial Services", and the "SPV [i.e. BTL] will need to purchase the Goodwill from the Liquidator."

34. On 22 November 2019 HMRC presented a winding-up petition against PCCL and PCCL stopped trading. As I have already mentioned, it is unclear on the basis of the available documentation to what extent the Business had latterly been carried on by PCCL and to what extent by the Blue Companies.

35. The winding-up petition put paid to Mr Moxham's original plan as outlined to Mr Scott's solicitors. He now came up with an alternative plan, namely to defeat the winding-up petition by putting PCCL into administration. On 28 November 2019 Mr Moxham sent an email to Mr Renwick and Mr Scott Mahoney, telling them that he was "hoping to buy Investec out tomorrow if you guys are happy." The intention was to create a transaction giving rise to a supposed subrogation to Investec's rights as a secured creditor. On 2 December 2019 Mr Moxham sent an iMessage to Mrs Mahoney: "Nothing happened today, should be tomorrow. I have lent blue transportation £70,000 to buy out Investec." The advance proved to be a little more than that: on 10 December 2019 Mr Moxham sent a further iMessage: "I have lent the Company £80,000 in total so far." Advances in that latter sum—£50,000 on 2 December 2019 and £30,000 on 3 December 2019—are shown on BTL's statement of account with Santander Bank, which also shows that on 3 December 2019 £67,179.37 was paid out of that account to Investec. On 4 December 2019 Investec confirmed: "You can now satisfy our Debenture at Companies House—your facility with us has now ended." (That confirmation was given in an email to Ms Parry, with an email address in the form "@premiercars". The terms of the email suggest to me the likelihood that Investec did not realise that the payment was coming from a different entity from PCCL.)

36. Mr Renwick confirmed in cross-examination that Mr Moxham made a loan to BTL and that it was BTL that paid Investec. He did not know the basis on which Mr Moxham claimed to have been subrogated to Investec's rights as a secured creditor of PCCL.

37. At all events, proceedings on the petition were automatically suspended when on 14 January 2020 Mr Moxham appointed Mr Mummery and Mr Paul Atkinson as joint administrators of PCCL, pursuant to paragraph 14 of Schedule B1 to the Insolvency Act 1986. The joint administrators' Proposals dated 9 March 2020 asserted: "Simon Moxham personally discharged the liability owed to the secured creditor, ICSN [Investec], of £67,179.37 in December 2019, therefore becoming a subrogated secured creditor."

38. The joint administrators' Proposals envisaged that the objective in paragraph 3(1)(c) of Schedule B1 (realising property in order to make a distribution to one or more secured or preferential creditors) would be achieved, but that it would not be possible to achieve the objective in paragraph 3(1)(a) (rescuing the company as a going concern), because the Business had "effectively … been sold", or paragraph 3(1)(b) (achieving a better result for the company's creditors as a whole than would be likely if the company were wound up without first being in administration), because of the extent of its liabilities. Of relevance to the impossibility of rescuing Premier as a going concern is the following passage on page 2 of the Proposals:

> "On 22 November 2019, HMRC issued a petition to wind up the Company and the business ceased to trade on this date. Following negotiations with an investor, Simon Moxham, the

> directors obtained a valuation of the business and assets, which were effectively sold with operations and all staff transferred to Blue Transportation Limited (BTL), a connected company of which AM [Mrs Mahoney], SM [Mr Scott Mahoney] and PR [Mr Renwick] are all directors."

39. The joint administrators identified as one of the key matters to be undertaken by them: "Reviewing and finalising the sale of the Company's Goodwill and assets to BTL and collection of the sale proceeds". Section 2 of the Proposals recorded that terms had been agreed with BTL for the purchase of Premier's assets: goodwill at £10,895 (compared to a valuation of £50,000 for a sale to a willing buyer and a valuation of nil on a forced sale); and unencumbered vehicles at £51,955, tools and machinery at £1,150, and office furniture and equipment at £1,000 (in each case, their full value on a sale to a willing buyer). The section said:

> "The Administrators intend to instruct solicitors, AMB Law, to prepare sale and purchase agreements to facilitate the completion of the sale of the Company's business and assets to BTL".

I note the following points. First, in considering the prices to be obtained for PCCL's assets the joint administrators were relying on the valuation received from ITC. There is no documentation to support a figure of anything approaching £350,000 for the value of the assets, which was a figure mentioned by Mr Moxham to Mrs Mahoney. According to the joint administrators' Proposals, ITC valued PCCL's assets in their entirety at £104,105 on a sale to a willing buyer and at only £41,040 on a forced sale. Second, the joint administrators' Proposals state explicitly that agreement for the sale of the assets had been reached with BTL; there is no mention of Mr Moxham buying them. Third, the joint administrators' Progress Report dated 6 August 2020 recorded that the assets had been sold at the prices mentioned in the Proposals and that payment in full had been received, though it did not mention the identity of the purchaser. Fourth, there is no evidence that formal documentation was ever executed or even prepared.

40. The defendants seek to rely on an email dated 3 February 2021 from FRP Advisory to Geldards LLP, who act for the defendants, which states:

> "As far as the Administrators are aware, in 2019, prior to our appointment the directors obtained a valuation of the business and assets, which were effectively sold with operations and all staff transferred to Blue Transportation Limited. We have not received a copy of this sale agreement.
>
> The Company entered into Administration on 14 January 2020 and the remaining assets (goodwill, motor vehicles and office equipment) were marketed for sale by our instructed independent agents. The assets were subsequently sold to Mr Moxham in his personal capacity late April 2020.
>
> Please note that the Administration came to an end on 12 January 2021.

> As such, we are not prepared to provide a copy of our working files as we do not believe the Administration has any relevance to the litigation."

The following points may be noted regarding that email. (1) It was in response to Geldards' email of the same date, which requested a copy of the joint administrators' working files in respect of PCCL's administration. (2) Both Geldards' email and the reply were copied not only to Mr Renwick and Mr Scott Mahoney but also to Mr Moxham. (3) Geldards' email had not asked anything at all about the sale of assets. It is therefore striking that the response, while refusing production of the files on the grounds of irrelevance, dealt specifically with the sale of the assets. (4) The paragraph dealing with a sale by PCCL to BTL prior to the administration is factually inaccurate: there had been a novation of the Hospitals Contract but no sale and purchase of assets, though the assets had been used by the Blue Companies as the Proposals had noted. Even the sale alleged by the joint administrators must have excluded goodwill, which the joint administrators say was sold in the administration. (5) The joint administrators did not offer—and, presumably, they were not further asked—to provide documentation relating to the sale of the assets in the administration, although they clearly thought that matter sufficiently relevant to comment on it in the email. (6) The claim that the assets were sold to Mr Moxham personally is contrary to the contents of the joint administrators' Proposals and unsupported by any other documentation. (7) The defendants did not adduce or apply to adduce evidence from the joint administrators. In the circumstances, I attach no weight to the assertion in the email that Mr Moxham bought the assets personally.

41. Mrs Mahoney's evidence, which I accept as being substantially correct in this respect, was that after the Blue Companies had been set up, and in particular after Alison Parry resigned as a director on 16 October 2019, Mr Renwick and Mr Scott Mahoney increasingly excluded her from involvement in management decisions affecting the Business and made her working life difficult. At Mr Moxham's suggestion, she first attempted to deal with the matter by coming into the office only for the weekly directors' meeting. When she found that the directors' meetings were being held before their scheduled time, so that she missed them, she again discussed the matter with Mr Moxham, who suggested that she leave the day-to-day running of the business to Mr Renwick and Mr Scott Mahoney; he would receive regular reports from them and would meet regularly with her. However, because Mr Moxham spent half his time in Dubai the updates proved to be infrequent.

42. The situation deteriorated in the early part of 2020. First, in early January 2020 Mrs Mahoney noticed that her weekly wage had been reduced from £1,381 to £383, without any prior consultation with her. She spoke to Mr Renwick, who said that Mr Moxham had decided that her salary would be reduced, though she would continue to receive her dividend payments of £500 per week. She contacted Mr Moxham and told him that she would not accept this reduction, but he told her that it was all that BTL could afford. Second, in February 2020 her company car, which had formerly been her husband's and had been taken over by BTL, was repossessed because BTL had stopped making the finance payments for it. Mrs Mahoney suggests that the repossession was planned by Mr Renwick, Mr Scott Mahoney and Mr Moxham, because it happened on the day after she had, by agreement, delivered it into BTL's custody for repairs: she believes that they agreed a date for repossession with the

finance company after first agreeing when she could bring the car in for repairs, and I think it probable that she is correct in this belief. Third, in early March 2020 BTL stopped paying her the dividend payments; again, this had not been discussed with her, and she had received no warning that it would happen. (It should be noted that, although referred to as "dividends", these payments were simply regular remittances akin to additional salary. The requirements for the declaration of dividends were never observed.)

43. On 31 March 2020 Mr Renwick sent an email to Mrs Mahoney, asking her to sign a declaration whereby she would agree to be furloughed on the basis that she would receive 80% of her normal pay under the Government's Coronavirus Job Retention Scheme but that BTL would not be able to pay the balance of her salary. Mrs Mahoney spoke to Mr Renwick by telephone and, according to her, he assured her that BTL would pay the remaining 20% of her salary but asked her to return the declaration nevertheless. She did not return the declaration; her evidence was that she suspected she was being tricked. Mr Renwick's evidence was that the decision to send the declaration to Mrs Mahoney, as well as to all other staff considered to be not crucial to the running of the Business, was taken by him after speaking to Mr Scott Mahoney and taking advice from Mr Moxham.

44. On 6 April 2020 Mrs Mahoney (AM) asked Mr Moxham (SM) for a telephone conversation. When they still had not spoken on 8 April, there was an exchange of WhatsApp messages between them, which included the following:

> "AM Hi Simon. Please can you tell me if my money has been sorted. xx
>
> SM You should have received £5,000 yesterday. As I have clearly said you can't have a dividend. I'm looking at the income coming into the business today/tomorrow. We have [to] do what is legal and fair. We can't send the business into bankruptcy. I will find a solution just give me some time please.
>
> AM Please can you phone me. You said we would speak today. We are equal partners and at no point had anyone told me anything. We made an agreement together on my wages etc. And I have already dropped [a] huge amount. I really don't think as an owner I should have to drop anymore. Can you alter it as a wage then please not a dividend then.
>
> SM Simple[:] go bust. Why should you take double money for doing nothing and I take nothing, now I am annoyed. [Next message] How dare you speak to me like that.
>
> AM I know your (sic) under a lot of pressure Simon. We should be speaking on the phone properly. I am very hurt and upset you don't speak to me. I only find out when things out (sic) when things bounced in my bank.

> You advised me to do it this way[;] this is my living wage this is what I live off. … [Next message] Why are you treating me like this [?] I haven't done anything wrong.
>
> SM Angela, your (sic) not the only human on the planet. I'm busy and not available to talk. You do better out of this than me by a long stretch. I lent the business £80,000 to save it. Did you? Run the company yourself and I look forward to receiving my £80,000 along with all of my costs to date.
>
> AM Why are you being like this with me [crying emoji]?
>
> SM You started this with your demands. I have been nothing but kind to you. I think you should consider your position. I can't work with some[one] who only wants their own way to the detriment of others. I wish you well but I am no longer going to be involved. I resign, I will speak to the directors later and tender my resignation.
>
> [After further brief messages from Mrs Mahoney] … [Y]ou have had to realise if you[r] business has no income you can't take from it. You haven't even considered the £4,000 which has to be paid to Mark to protect you. I found you £300,000 which you didn't know about. My decision is final.
>
> [After further brief messages from Mrs Mahoney] … I don't have to report to you at all, and certainly not daily. I am the most financially exposed. Quite frankly none of you would have anything, if it wasn't for what I did, and for the fact that I gave my word to your wonderful husband. I don't like this situation and I don't condone somebody getting something at the cost of a brand new business and the livelihoods of all of the taxi drivers, staff and their families. So it's better I leave it with you all to sort out."

After a couple of further, plaintive messages from Mrs Mahoney, Mr Moxham blocked her as a contact.

45. On 14 April 2020 Mrs Mahoney attended at BTL's offices and told Mr Renwick that she wanted to return to work. Mr Renwick told her to return the following day, when Mr Scott Mahoney would be present, to discuss matters. Later that day Mr Renwick told her that she should attend instead on 16 April. When she did so, Mr Renwick and Mr Scott Mahoney handed to her a long letter from Mr Moxham dated 11 April 2020, which they said had already been sent by post and email, though she had not seen it previously. (I accept Mrs Mahoney's evidence on these matters.) The letter explained that BTL could not afford to pay dividends to Mrs Mahoney. It explained

why she had been furloughed. It said that the management of the company was a matter for the directors, not for her as a shareholder. It said that she had alienated the directors. Mr Moxham complained that, while Mrs Mahoney had received a total of £21,618 in dividends and salary in a four-month period, he had received nothing. He said: "A partnership is one of trust and respect. You are not happy, and I have lost total respect for you. So, it is now fair to say this partnership, through share ownership of the Limited Company[,] needs to come to an end." Mr Moxham said that in 2017 he had had the opportunity to acquire Mr Scott's 50% (indirect) shareholding in PCCL for £360,000. He referred to PCCL's financial problems in 2018, culminating in HMRC's winding up petition, and continued:

> "At this point you had lost everything.
>
> I then lent Blue Transportation Limited £80,000 so that it could trade and have working capital.
>
> Premier Cars (Cardiff) Limited went into Administration.
>
> We agreed to buy the Company out of Administration on the basis the [scil. that] Peter Renwick and Scott Mahoney were give[n] 5% each if [scil. of] the Company. They run it as they have the experience.
>
> The business still needs to be purchased out of Administration which was valued in May 2019 for circa £325,000.
>
> In 2017, I could have purchased 50% of the business for £325,000.
>
> Now, I have agreed to pay Mark £360,000 as per Tim's wishes, I have invested a further £80,000 for working capital, and potentially need to invest a further £325,000 for a business that has failed after 25 years. So now it will cost me £765,000 to purchase 45%. That is more than double for a smaller percentage of the action. Simply I am not that stupid.
>
> Meanwhile my other 45% partner is complaining she can't have a £1,000 a week, and I should have nothing.
>
> This is a business that now is about 16% of what it was. So, its value has fallen by around £1.2m.
>
> So, my offer is I will pay you on similar terms to Mark £360,000 (£4,000) per month [scil. '(£4,000 per month)'] to buy you out in your entirety, so that my total cost is £1.1m for 90% of the business, the remaining 10% will be Peter & Scott's.
>
> If you don't agree to this, I will foreclose on the £80,000 outstanding and no body [sic] will have anything. …

> If you do not prepare to make a counteroffer or accept my offer within 7 days, then I will recommend to the Directors they should cease to trade and close the doors as they will be personally liable for trading a company insolvent."

46. After reading that letter, Mrs Mahoney obtained the statements of BTL's account with Santander Bank for the period from 24 December 2019 to 20 April 2020. These showed that in that period Mr Moxham had received payments of £1,250 per week, as well as an additional net sum of £83,400. Despite what he had twice said to Mrs Mahoney, he had already received repayment of the moneys he loaned to BTL, as well as receiving large regular payments.

47. On 24 April 2020 Mrs Mahoney changed the registered office of BTL to her home address.

48. On Tuesday 28 April 2020 Mr Renwick and Mr Scott Mahoney did several things at Companies House. First, they changed the registered office of BTL back to the company's premises at Unit 10. Second, in respect of each of BTL and BVL, they filed a form TM01 showing that Mrs Mahoney's appointment as a director had terminated on 18 July 2019. Third, in respect of each company they filed a form PSC04 (change of individual person with significant control), showing that, although Mrs Mahoney held 75% or more of the voting rights and had the right to appoint or remove a majority of the board of directors, with effect from 18 July 2019 she held more than 25% but not more than 50% of the shares in the company. Fourth, they changed the pin code for online registration, thereby preventing Mrs Mahoney from making new entries in respect of the companies. I have no doubt that these steps were taken on Mr Moxham's advice and at his instigation.

49. On Saturday 2 May 2020 two forms AP01 were filed in respect of PCDA, stating that Mr Renwick and Mr Scott Mahoney had been appointed as directors on 1 May 2020. A PSC01 filed at the same time recorded that Mr Renwick had become a person with significant control of PCDA as being a member of a firm with significant influence or control over the company. The sole existing director and shareholder, Mr Russell, remained in office but subsequently resigned in August 2020, when he also ceased to be a person with significant control of PCDA.

50. The appointment of Mr Renwick and Mr Scott Mahoney as directors of PCDA is noteworthy. That company is a not-for-profit association incorporated for the purpose of handling payments to the self-employed drivers. The articles of association provide that the purposes of PCDA are "that each of its members may earn a deserved success through his or her efforts in delivering car hire and taxi services … ('the Services') … to protect, represent and promote the interests and secure the living standards and welfare of those engaged in providing the Services", and that "the Company's income and property shall be applied solely towards the promotion of the Objects and shall not be paid or transferred … by way of dividend, bonus or otherwise by way of profit". The fact that control of PCDA was now being taken by those with, at the time, majority control of BTL's board of directors indicates at the least the likelihood of a blurring of the distinction between the functions and activities of the two companies. In cross-examination, Mr Renwick accepted that he had placed himself in a position of a conflict of interest.

51. On 20 May 2020 Berry Smith wrote on behalf of Mrs Mahoney to Mr Renwick and Mr Scott Mahoney, seeking answers to numerous questions including an explanation for Mrs Mahoney's purported removal as a director of BTL. Mr Renwick and Mr Scott Mahoney each replied, separately but in identical terms, attaching Berry Smith's email of 18 July 2019 to Mrs Mahoney and Mr Moxham and stating that Berry Smith had a conflict of interest. I am satisfied that Mr Moxham drafted the letters.

52. When Berry Smith refused to accept that they had a conflict of interest, on 29 May 2020 Mr Renwick and Mr Scott Mahoney responded further, again separately but in identical terms. The response, by email, threatened a complaint to the Law Society. It said:

> "Your Client, your Firm, and us as Directors all know that whilst she was not the only Shareholder, and in-fact she owns 45% of the Shares and the other 45% is held by Simon Moxham and 5% further are held by us both. This agreement was made in your offices with your respected partner Andrew Bound. Based on this agreement many transactions have taken place, in fact even further transactions were undertaken to safeguard jobs and the brand of the failed Premier brand.
>
> …
>
> The Directors met to discuss the email from 'The Investor' [i.e. Mr Moxham] on the 16th April 2020, which your client attended. She denied receiving this email. Your file notes will clearly see when your firm was contacted, so we believe this [is] one of many acts of her dishonesty.
>
> …
>
> On the 24th April your client declared she owned 100% of the Shares and changed the Registered Office of all the 3 business addresses to her own residential address. This was without the knowledge or consent of the Directors or the Shareholders. This is despite her not arriving for work or investing a penny into the new venture since the demise of Premier.
>
> For protection of the Staff, Customers, Suppliers and the Investor, a Board meeting was held on the 28th April 2020 to dismiss your client for dishonesty and her abandonment. The bank was informed, and the attached board resolution was signed. If your Client attended the meeting on the 21st April 2020, she would have known the intention of the majority of the Shareholders.
>
> …
>
> Simon Moxham ('The Investor') has advanced the various business[es] a total of £497,802 to the various Companies. He has also acted as our Accountant / Management Consultant /

> Personal Adviser to the Mahoney family for over 5 years. Any monies repaid to him will either be in settlement of the Companies (sic) debt to him, or for his personal services or agreed disbursements.
>
> In addition to this Simon Moxham has been repaying a debt to Mark Scott at the rate of £4,000 per month, on behalf of your Client. This was because your Client was not trusted to meet her late husband's wish, to repay this debt. She had already flittered away (sic) a life policy of £300,000 which she knew nothing about.
>
> …
>
> Your Client did have sight of the valuation [scil. of PCCL], as this is when she realised that she couldn't meet with the financial demands of a pre-pack.
>
> The Company didn't go ahead with the purchase of Premier as it was not in funds to do so.
>
> The use of the 'Premier' brand is not a concern of your client or indeed you. You neither own it nor have paid for it.
>
> The contract with NHS Wales Share Services Partnership [i.e. the Hospital Contract] previously held by Premier was moved to Blue Transportation with full knowledge of your client. This was a part of the restructure of the 'Blue Group'. This contract is no benefit to the Companies, as Blue Transportation Limited only acted as an agent for 300 self-employed Taxi drivers. No consideration was received or paid."

53. The email attached a resolution dated 28 April 2020 for the removal of Mrs Mahoney as a director of BTL. The metadata for that document show that it was created on 28 May 2020. However, metadata from Merlin Paul Limited's computer shows that an original version of the same document was created there on Monday 4 May 2020, a few days after Mr Renwick and Mr Scott Mahoney had filed documents at Companies House.

54. On 2 June 2020 HMRC issued a P45 in respect of Mrs Mahoney leaving work with BTL on 22 May 2020. The case advanced by the defendants has been—at least, sometimes—that Mrs Mahoney was dismissed from her employment on 22 May 2020 on account of misconduct.

55. Mrs Mahoney instructed her current solicitors, Hugh James, in place of Berry Smith. Thereafter, she examined the website for BTL, www.premiertaxis.net. She found that the website showed only the trading name, Premier, but not any mention of the company name, and that on 20 May 2020 a Privacy Notice had been added, which stated:

> "Premier is an established local company. Our registered address is Unit 10 Wroughton Place, Cardiff, CF5 4AB. Co Reg No 10463516. Tel. …"

That is the company registration number for PCDA, not for BTL. The defendants say that the inclusion of PCDA's registration number was simply an error.

56. In an affidavit sworn on 22 July 2020 in support of an application for an injunction, Mrs Mahoney stated that she had learned that the garage premises at Unit 9 had been locked up for some months and that the drivers were being directed to a different garage. The two mechanics employed by BTL (the defendants say one of them was in fact employed by PCDA) had been furloughed and had become shareholders of a newly incorporated company, Cardiff Coast Cars Limited ("CCC"), of which one of them was the sole director and both of them were the persons with significant control. A screen shot from the Facebook account of the other mechanic advertised that the business of CCC was "coming to cardiff [sic] soon"; that page had been "liked" by Mr Renwick and by Mr Russell. Mrs Mahoney gave evidence that in July 2020 BTL's vehicles were being serviced at different premises, formerly those of First Auto Engineers Limited, which had been dissolved in 2018, and she gave reasons for believing that CCC was trading from those premises. Perusal of the records at Companies House shows that on 1 August 2020, one week after service of Mrs Mahoney's affidavit on Mr Renwick and Mr Scott Mahoney, the director of CCC resigned and both mechanics ceased to be persons with significant control of CCC. No new directors or persons with significant control were recorded. CCC has since been dissolved.

57. In her witness statement dated 2 August 2021 Mrs Mahoney gave evidence that she had received information that Unit 10 had been emptied of all its contents and vacated in September 2020, that the offices had been relocated, and that the ramps and other contents from the garage at Unit 9 were held in storage. In his witness statement, also dated 2 August 2021, Mr Scott Mahoney confirmed the closure of the garage unit ("to protect the health and safety of the staff members") but did not mention the closure of the offices. The defendants' witness statements were silent as to any developments regarding Unit 10. Neither Mr Renwick nor Mr Scott Mahoney was able to explain why he had omitted to mention it in his witness statement. (The defence and counterclaim, signed on 6 November 2020, actually affirmed that the Business was operating from Unit 10.) The oral evidence they gave at trial was to the effect that Unit 10 had been vacated in September 2020, though a reduced rent was being paid (apparently because of existing telephone lines associated with those premises), and that a lease had been taken of other premises in Cardiff. The new lease is in the name of PCDA, which is also paying the rent. Mr Renwick said that this was a mistake; the lease ought to have been in BTL's name, and BTL ought to be paying the rent.

58. Mr Moxham introduced Mr Renwick and Mr Scott Mahoney to Geldards, who have acted throughout these proceedings for them and for PCDA. The correspondence in the case leaves me in no doubt but that Mr Moxham has had greater involvement in the conduct of the proceedings than merely as a witness. On 21 July 2020 Geldards sent to Hugh James a copy of a letter of the same date, which they had prepared to send to Berry Smith. That letter identified Geldard's client as BTL, although the prior correspondence from Berry Smith had been addressed to Mr Renwick and Mr Scott Mahoney personally, and it purported to "set out our client's position and that of Mr

Moxham, which he has communicated to us." The letter asserted that Mr Bound's email of 18 July 2019 recorded a binding agreement, and continued in a significant passage:

> "If there has been any irregularity with the paperwork, such as a failure by Mrs Mahoney to execute stock transfer forms or a failure by the Company to give the necessary notice of its meetings, the answer is now to put in place the proper paperwork to give effect to the parties' agreement and the intentions of the majority directors and shareholders. Will Mrs Mahoney now cooperate by executing the relevant stock transfer forms and agreeing to any necessary resolutions to achieve this end?
>
> As your client will be aware, it was Mr Moxham personally, and not the Company, who purchased the Premier Business out of administration. He did so on the basis of the agreement to which reference has already been made and with the intention of contributing those assets into the Company, in exchange for the shares in the Company which it was agreed would be issued or transferred to him. All parties then proceeded on the basis of their agreement and treated as having been done what it had been agreed would be done. In the months following the purchase of the Premier Business, the parties proceeded on the basis that the shareholdings in the Company were as had been agreed and the Premier Business was treated as though it were an asset of the Company.
>
> The logic of your client's denial of the parties' agreement is that she remains a 100% shareholder in the Company, but it is also the logic of that denial that the Premier Business is an asset of Mr Moxham and not of the Company. If your client contends that the Company owns the Premier Business but that the shareholdings in the Company are not as agreed between the parties, how does she say that result came about? By what means legally did the Company acquire the Premier Business? There has been no paperwork to effect a transfer of the Premier Business to the Company.
>
> Our client's position and the position of Mr Moxham is that the aforesaid agreement is binding and that all parties must now cooperate to rectify any deficiencies in the paperwork and to comply with any formalities necessary to give effect to the agreement. We are told by Mr Moxham that should your client continue to contend that there is no binding agreement as aforesaid, he is content to contribute the Premier Business into a new company which will by [scil. be] wholly owned by him. We assume that this is not your client's wish, though we would be grateful for your confirmation. It is certainly not our client's wish as it would leave the Company with no meaningful or

> valuable assets and our client is of the view that in that circumstance it would not be a going concern."

59. On 21 July 2020 Mrs Mahoney, as sole member of BTL and of BVL, passed a number of ordinary and special resolutions, which included: the setting aside of notice of her resignation as a director and, if necessary, her reappointment as a director; the appointment of three new directors; and directions to Mr Renwick and Mr Scott Mahoney to act only in accordance with resolutions of the board of directors and not on the instructions of Mr Moxham, and not to dispose of or deal with the companies' assets without the authority of the board.

60. On 29 July 2020 Mrs Mahoney passed further resolutions authorising her to bring claims in the name of and for the benefit of BTL and BVL against Mr Renwick and Mr Scott Mahoney or any third party to enforce the terms of the articles of association and to obtain relief for any breach of duty.

61. In the absence of what she considered sufficient assurances from Mr Renwick and Mr Scott Mahoney that they would respect the resolutions (and in the face of Geldards' assertion on 22 July 2020 that they did not act for Mr Moxham "but clearly would need to liaise with him"), Mrs Mahoney commenced proceedings and applied for interim injunctions. On 3 August 2020 I granted an injunction restraining Mr Renwick and Mr Scott Mahoney from acting on the instructions of Mr Moxham in the management of BTL or BVL. They also gave undertakings in respect of dealings with the companies' assets and the provision of information to Mrs Mahoney.

62. Subsequently, BTL and BVL were joined as additional claimants in the proceedings and PCDA was joined as an additional defendant.

The pleaded case

63. The amended particulars of claim advance three categories of claim:

1) A claim by all three claimants against Mr Renwick and Mr Scott Mahoney for declarations (i) that Mrs Mahoney is a director and the sole member of BTL and BVL and (ii) that the resolutions passed on 21 and 29 July 2020 are valid, and for an injunction restraining them "from acting on the instructions of Mr Moxham, dealing with the assets of the Companies without the written authority of the first claimant or the board and/or giving instructions to Santander Bank without the authority of the first claimant or one of the New Directors [i.e. those appointed by the resolutions on 21 July 2020]";

2) A claim by BTL and BVL against all three defendants for various heads of relief, which in summary are: (i) a declaration that BTL and BVL own the Business and its assets; (ii) an account of the assets of the Business received by or for the benefit of the defendants; (iii) a declaration that any assets so received are held by the defendants on trust for BTL and BVL and an order for their delivery to the companies; (iv) damages, equitable compensation, or an enquiry as to loss and damage suffered by BTL and BVL;

3) A claim by BTL and BVL against PCDA for dishonest assistance in breach of duty by Mr Renwick and Mr Scott Mahoney and for knowing receipt of their assets.

64. Mr Burgess complained about what he said was a failure of the amended particulars of claim to particularise allegations of serious misconduct including dishonesty. In doing so, he echoed the defence and counterclaim (drafted by other counsel), which repeatedly asserted that allegations in the amended particulars of claim were unparticularised and liable to be struck out. However, the defendants made neither a Part 18 request for further information nor an application for an order striking out some or all of the amended particulars of claim. If, for all its protestations, a party is content to proceed to trial on the basis of the existing pleadings that it faces, it is rather hard to take seriously its complaints at trial that allegations made against it are not properly pleaded. And I am satisfied that the defendants knew the case they had to meet. On the other hand, I do accept that the fashionably discursive manner in which the amended particulars of claim were drafted made it unnecessarily difficult to identify or summarise the precise grounds of the claims. Those grounds appear from the pleaded narrative, which covers essentially the material set out above. It is said that Mr Renwick and Mr Scott Mahoney have managed the Business on the basis of what they were told or instructed by Mr Moxham, that they have wrongfully purported to remove Mrs Mahoney as a director, and that they have not regarded or respected her rights as the sole member of the companies or the resolutions that she has passed in that capacity. It is also said that they have acted directly against the financial interests of the companies by asserting Mr Moxham's entitlement to beneficial ownership of the assets of the Business, by making unwarranted payments to Mr Moxham and to themselves, and by diverting business and apparent ownership of the companies' assets to CCC and PCDA. PCDA, as controlled by Mr Renwick and Mr Scott Mahoney, is said to have been a vehicle for assisting them in their breaches of duty and for receiving assets which they knew belonged to BTL and BVL.

65. The defence and counterclaim rested heavily on the assertion of an "Agreement", as follows:

- The Agreement was an oral agreement made on or around 16 July 2019 at the Hilton Hotel in Cardiff between Mrs Mahoney and Mr Moxham, who was acting on his own behalf and on behalf of Mr Renwick and Mr Scott Mahoney (paragraphs 3(a) and 9).

- The principal terms of the Agreement were set out in Mr Bound's email of 18 July 2019. In summary: BVL and BTL would be owned by BEL; the shares in BEL would be owned as to 45% by Mrs Mahoney, as to 45% by Mr Moxham, and as to 5% each by Mr Renwick and Mr Scott Mahoney; Mr Moxham's shares were to be issued in consideration for his investment of the money required to acquire PCCL's Business and assets and to provide working capital for the Business; Mr Renwick and Mr Scott Mahoney were to be the directors of BTL, BVL and BEL and would report regularly to Mr Moxham, who in turn would keep Mrs Mahoney informed; Mrs Mahoney would have a salary of £24,000 p.a. and would be the company secretary but would not be involved in the management.

66. The defence and counterclaim avers that, although no documents were executed to give formal effect to the Agreement, all parties acted on the basis of it from July 2019. The following extracts from the pleading neatly encapsulate the central contentions of the defendants.

> "10. The parties then proceeded on the basis of the Agreement, as follows:
>
> (a) From around July 2019 onwards, Mrs Mahoney ceased to be involved in the management of the Blue Companies and ceased to attend the premises of the business. Messrs Renwick and Mahoney managed the Blue Companies.
>
> (b) On 22 November 2019, Mr Moxham discharged a liability of Premier to its secured creditor, Investec and thereby became a subrogated secured creditor and the holder of a charge over the aged debt of the business.
>
> (c) On 15 January 2020, Premier entered into administration. In or around April 2020, Mr Moxham agreed to purchase the assets, business and vehicles of Premier from the administrators. Mr Moxham paid ITC Valuers (who received the money on behalf of the administrators of Premier) on or around 22 April 2020.
>
> (d) No stock transfer forms or other documents were ever executed to give effect to the shareholdings in the Blue Companies described at paragraphs 9(a) and (b) above. Nevertheless, the parties proceeded as though effect had been given to those ownership interests and dividends were paid to the parties out of the profits of the business in accordance with the shareholdings agreed.
>
> (e) Mr Moxham never transferred title in the business, vehicles or other assets of Premier purchased in the administration to any of the Blue Companies. Nevertheless:
>
> > (i) the vehicles were treated as though they were owned by BVL …;
> >
> > (ii) the business and other assets formerly belonging Premier were treated as though they were owned by BTL …; and
> >
> > (iii) Mr Moxham advanced approximately £117,500 to meet the working capital needs of the business, which was received into banks accounts in the name of BTL.
>
> …

> 12. The Defendants' primary position … is that the parties must cooperate to carry out the necessary formalities to give effect to the Agreement, including the issue of shares and the transfer to the relevant Blue Companies of the business, vehicles and other assets of Premier which were purchased in the administration. Failing this, the Defendants are entitled to (and counterclaim for) an order against Mrs Mahoney for specific performance of the Agreement.
>
> 13. Alternatively, if (which is denied) there was no binding Agreement, then Messrs Renwick and Mahoney are not entitled any shares in the Blue Companies. It also follows, however, that the Blue Companies have no right to the business, vehicles and other assets of Premier which were purchased by Mr Moxham in anticipation of the parties giving effect to the Agreement. The Claimants plead that the business, vehicles and other former assets of Premier are now the assets of BTL and/or BVL, but they give no coherent account of how that came to be the case in circumstances where the Claimants deny the Agreement."

67. Paragraph 35 of the defence and counterclaim avers that Mrs Mahoney resigned as a director of BTL and BVL in accordance with the Agreement. It admits that she remains legal owner of the entire issued share capital of both companies, but it states that by reason of the Agreement, specifically enforceable against her, her voting rights are limited to 45% and she has no right to appoint the majority of the board of directors. Inconsistently, however, paragraphs 50 and 55 of the defence and counterclaim admit the resolutions passed by Mrs Mahoney on 21 and 29 July 2020. I understand the pleading, read as a whole, to admit the validity and efficacy of the resolutions but to aver that by passing them Mrs Mahoney was in breach of the Agreement.

68. Paragraph 65 of the defence and counterclaim denies that PCDA has received any goodwill of BTL or BVL or any assets of either company other than cash that was paid and received in accordance with the normal business arrangements between the Business and PCDA.

69. By their counterclaim, Mr Renwick and Mr Scott Mahoney claim a declaration that the Agreement is valid and binding and an order for its specific performance.

Discussion

70. I shall consider the issues under the following headings:

1) Membership and management of BTL and BVL

2) Ownership of the assets of the Business

3) The Agreement

4) Claims against the defendants

(1) Membership and management of BTL and BVL

71. This can be dealt with shortly.

72. The defendants admit that Mrs Mahoney is the sole member of BTL and BVL.

73. It is expressly admitted in the defence and counterclaim that Mrs Mahoney was entitled, as sole member, to pass the resolutions that she passed in July 2020. That admission was correctly made. It is unnecessary for me to refer to the relevant provisions of the articles of association.

74. It follows that the current directors of BTL and BVL are Mrs Mahoney, Mr Renwick, Mr Scott Mahoney, and the three further directors who were appointed in July 2020.

75. The current compositions of the boards of directors and the persons with significant control of the two companies are not shown on the documents filed at Companies House. This must be rectified promptly.

76. In my view, Mr Boardman was correct to say that the defence rested on the fundamental misconception that the alleged Agreement overrode the duties of the directors under the articles of association and the Companies Act 2006 ("the 2006 Act"). It would not have done. See *National Westminster Bank plc v Inland Revenue Commissioners* [1995] 1 AC 119, 126, *per* Lord Templeman; *Erkerle v Wickeder Westenstahl* [2013] EWHC 68 (Ch), *per* Norris J at [17]-[24]. I think the defence rests also on a further misunderstanding that became apparent in the course of Mr Scott Mahoney's evidence at trial, when he candidly acknowledged that he had not understood that holding the office of director did not in itself give him authority to conduct a company's affairs but that authority was vested in the board.

77. As I shall explain below, I reject anyway the contention that there was an Agreement as alleged. Mrs Mahoney owns her shares beneficially, not just legally.

(2) Ownership of the assets of the Business

78. As the lengthy quotation from the defence and counterclaim in paragraph 66 above shows, the defendants' case is that Mr Moxham owns the assets of the Business and that they will only become the beneficial property of BTL and BVL if the Agreement is specifically performed. It is necessary to address that issue squarely. (Other questions about Mr Moxham's involvement are addressed separately below.)

79. I am mindful that Mr Moxham has not been joined as a party to these proceedings and has not given evidence. He has, however, had full opportunity to give evidence and has shown himself adamant in his unwillingness to do so. As for the fact that he is not a party, I observe that not only has he not sought to be joined but the defendants, who seek to enforce an agreement said to have been made by him (and which, on their own case, would require him to part with valuable assets in exchange for a shareholding in the Blue Companies) also did not seek to join him, though they had a statement from him. Further, it is clear that Mr Moxham has been closely involved in the management and direction of the defendants' case in these proceedings. It was he,

I am sure, who wrote the response of Mr Renwick and Mr Scott Mahoney to Berry Smith in May 2020. It was he who put them in touch with Geldards. When Geldards put forward their (or, as they would have it, BTL's) case on 21 July 2020, they also put forward Mr Moxham's case. When it was put to Mr Renwick in cross-examination that Mr Moxham had been assisting in the defence of the claim, he replied that Mr Moxham had been involved throughout. Though a little coy, that answer was truthful.

80. As for the sale of PCCL's assets by the joint administrators, the position is equally clear. There had been a *de facto* transfer of the assets to BTL and BVL in the spring of 2019 and that was formalised in 2020 in accordance with the joint administrators' Proposals. In his witness statement, Mr Scott Mahoney said that Mr Moxham "purchased PCCL's assets, i.e. the vehicles, from the administrators" (paragraph 70). Mr Renwick's statement was to the same effect (paragraphs 82 and 83). However, neither man was able, or apparently willing, to seek to justify that contention in the course of cross-examination. Mr Renwick's evidence was that Mr Moxham's function was to do no more than negotiate the price to be paid by BTL to formalise the *de facto* transfer to the Blue Companies that had already taken place: his function was to acquire the assets for BTL. He said that he had no basis for saying that Mr Moxham had personally acquired the assets; the only explanation he could give for the contents of his witness statement was that Mr Moxham had said that he owned them and he and Mr Scott Mahoney had accepted what he said. The only contrary evidence (if it can be called that) is the email dated 3 February 2021 from FRP Advisory; I have already said enough about that (paragraph 40 above).

81. If indeed Mr Moxham did purport to make some agreement with the joint administrators that transferred the assets to him personally, he holds those assets on a bare trust for BTL. The evidence, including that of the defendants themselves, shows that in his dealings with the joint administrators regarding PCCL's assets Mr Moxham was an agent of BTL. If, instead of acquiring the assets for BTL, he instead acquired them personally, he holds them on trust for his principal. See *FHR European Ventures LLP v Cedar Capital Partners LLC* [2014] UKSC 45, [2015] AC 250, at [5]-[8] and [33].

(3) The Agreement

82. The defendants' case as to the making of the Agreement has been something of a movable feast.

83. In emails dated 29 May 2020 to Berry Smith, written in identical terms and almost certainly drafted by Mr Moxham, Mr Renwick and Mr Scott Mahoney alleged that the Agreement "was made in your offices with your respected partner Andrew Bound". Berry Smith replied on 2 June 2020 to the effect that the discussion with Mr Bound had been "as to a potential future structure of the shareholding of the Company" and that Mr Bound had not received any instructions on putting this "roadmap on the way forward" into effect. At that point, the contention that the Agreement was made at Mr Bound's office was dropped.

84. The pleaded case of Mr Renwick and Mr Scott Mahoney, as set out in the defence and counterclaim dated 6 November 2020, is that the Agreement was made orally at the Hilton Hotel on 16 July 2019 between Mrs Mahoney and Mr Moxham, who was

acting on his own behalf and on theirs. Every aspect of the case so pleaded has now been abandoned: the meeting at the Hilton Hotel was on 20 June, not 16 July 2019; all four persons were at the meeting, not just Mrs Mahoney and Mr Moxham; and no agreement was made.

85. The defendants' case mutated at trial into (in one of its iterations) a version of the earlier contention: that the Agreement was made at the meeting with Mr Bound at Berry Smith's offices on 16 July 2019 and that its terms are recorded in Mr Bound's email of 18 July 2019. There are several major problems with the case as so stated.

1) The least of the problems is that the details of the Agreement as now alleged are not pleaded. In his closing submissions, Mr Burgess orally sought permission to amend, though no draft was provided. If I had thought that there were any purpose in an amendment, or that it were justified by the evidence, I would have been inclined to permit an amendment to alter the place and date of the alleged oral contract and the persons present when it was made, despite the lateness of the amendment.

2) The case advanced at trial is bold. In answer to my questions, Mr Burgess confirmed that he was asserting that, at the meeting on 16 July 2019, a binding legal contract was made, which immediately imposed on Mr Moxham a contractual obligation to pay to the joint administrators whatever price was necessary for the acquisition of PCCL's assets. (What if any obligations it is supposed to have imposed on Mr Renwick and Mr Scott Mahoney has never been made clear.) This is inherently implausible, and the evidence shows that it is false.

3) Mr Bound's email does not purport to record a binding agreement.

4) Mr Burgess did not even put to Mr Bound that a binding agreement was made at his offices. That is understandable, as Berry Smith's correspondence had long since made his position clear. However, when Mr Boardman put the question directly to Mr Bound, Mr Bound was unequivocal that no binding agreement was made at the meeting on 16 July 2019. Mr Renwick and Mr Scott Mahoney both accepted in evidence that no binding agreement was made. Mrs Mahoney's evidence was the same.

5) There is thus no evidence at all that any contract was made at Mr Bound's office.

6) This is not merely to say that there was an agreement between the parties but that it was "subject to contract". The matter had not proceeded that far. Mrs Mahoney and Mr Moxham had a provisional roadmap, of which they had shared the gist with Mr Renwick and Mr Scott Mahoney, but there was a great deal to work out before an agreement could be made; it was not merely a case of reducing a concluded agreement to a binding form. As well as a group structure for the Blue Companies, including Blue Topco, there would have to be a Shareholder Agreement to regulate the relations of all shareholders and an Employment Agreement for Mrs Mahoney. The financial requirements of the new companies were still not known. It was expected that all parties would take their own legal advice before anything was finalised. There was no more

than a mutual understanding of the outline of the structure that a future agreement might have.

86. Mr Burgess put the case on the basis that the attendance note of 16 July 2019 identified what he called three "core terms— namely (i) Mr Moxham would have 45% of the shares in return for investing the money required to acquire PCCL's assets; (ii) Mr Renwick and Mr Scott Mahoney would be the directors and would each have a 5% shareholding; (iii) Mrs Mahoney would have a 45% shareholding and a salary but would not be involved in management—whereas the other parts of the agreement required further working out. He submitted that the parties' conduct showed that they intended to be bound by these three core terms without bothering with any formalisation of the arrangements. The conduct was that set out in paragraph 10 of the defence and counterclaim (see paragraph 66 above)

87. There are several reasons why this further attempt to recast the case does not avail the defendants.

1) If the case rests on an oral contract made on 16 July 2019, it is untenable for reasons already given.

2) Analysing the points enumerated by Mr Bound as "core terms" and other terms seems to me to be arbitrary. The attendance note does not make that distinction. Nor do any of the witnesses. Of course, one can easily do as Mr Burgess did in cross-examination of Mrs Mahoney and distil an essence or gist of what was under discussion. But that is not the same as identifying "core terms" that can or were intended to operate without the others. It is simply to show that, before anyone can get down to the devil in the detail, it is necessary to know the broad outline of the end in view. There is no justification for supposing that there was a binding agreement on any terms at all on 16 July 2019, which all those present deny.

3) No subsequent agreement has been pleaded, but that turned out to be what Mr Burgess was arguing for. He valiantly said that paragraphs 9 and 10 of the defence and counterclaim asserted an agreement made by words and conduct. They do not. Paragraph 9 squarely alleges an oral agreement (whenever and wherever made). Paragraph 10 alleges that the parties acted on the basis of the (oral) agreement. The case now being advanced is either (1) that the (currently unpleaded) meeting with Mr Bound included a binding agreement as to "core terms" and a mere roadmap as to other terms, or (2) that the non-contractual discussion at Mr Bound's office led to a subsequent contract, presumably implied by conduct, on some but not all of the terms discussed with Mr Bound. Version (1) of the case is untenable. Version (2) would require an amendment of the defence and counterclaim, giving particulars of how the Agreement was made. This is a much more significant amendment than merely changing the date and place and personnel of the oral agreement already pleaded. I am not prepared to entertain any such amendment, because (a) it is far too late for such a substantial amendment, (b) the proposed amendment would lack merit, and (c) for reasons set out below the entire case being advanced by Mr Renwick and Mr Scott Mahoney on the basis of the Agreement is futile. At this point, I shall only say a little more about (b).

4) Such specious plausibility as mention of "core terms" might have depends on ignoring or downplaying the requirement for an equity investment—not a loan—by Mr Moxham. Mr Burgess chose to downplay this by pointing to the uncertainty as to the amount of the investment that would be required. Certainly, the figures were variable: mention was made of £350,000, £390,000 and, in the attendance note of 16 July 2019, £450,000. But the critical point was that the figures being talked of were of a magnitude that required an external investor and they have proved to be entirely false.

5) There is no doubt that the parties did conduct themselves, in some respects, in line with what had been discussed with Mr Bound. That, however, does not establish the existence of a contract; it simply shows the direction in which they expected matters to proceed. It is certainly not the case that matters proceeded in accordance with the discussion with Mr Bound, as can be noted by reference to the sub-paragraphs in paragraph 10 of the defence and counterclaim. As to (a), I do not accept that Mrs Mahoney ceased to attend the premises or to be involved in management from July 2019. She had never had the central role in management that Mr Renwick and Mr Scott Mahoney had, but she continued to come in and play her own part until later in the year, when she increasingly found herself frozen out. As to (b), this was not a part of the alleged Agreement, and it is also inaccurate. Mr Moxham advanced money to BTL, which then discharged PCCL's secured debt. Although the loan was eventually dealt with informally, written communications between Berry Smith and Mr Renwick in November 2019 show that there were discussions concerning the grant of a debenture to Mr Moxham to secure a 5-year loan to BTL for the purpose of buying PCCL's assets and providing working capital for the Business. Mr Renwick agreed in cross-examination that there was no talk of an equity investment by Mr Moxham and that the payment of PCCL's debt to Investec had nothing to do with the discussions in July 2019. Further, BTL repaid Mr Moxham's advance in its entirety at an early stage. As to (c), this again was not part of the alleged Agreement and is also inaccurate. The discussions with Mr Bound concerned a pre-pack liquidation of PCCL, not an administration. The assets had already been subject of a *de facto* transfer to the Blue Companies in or about April 2019—before the discussion with Mr Bound—and it was no part of any agreement or of Mr Moxham's instructions that he would buy the assets personally. As to (d), I think that it is correct to say that Mrs Mahoney did at times express herself, and presumably also thought, in terms of the proposed division of shareholdings. But this seems to have been in anticipation of the implementation of the roadmap. There was no binding contract and steps were not taken to implement the roadmap before the relationships broke down. I see no basis for the assertion that dividends were paid out "in accordance with the shareholdings agreed." As to (e): the treatment of the assets as belonging to the Blue Companies had nothing whatever to do with the alleged Agreement; it related to the *de facto* transfer that had already occurred before the meeting with Mr Bound, though he appears not to have known of it. The alleged advance of £117,500 for working capital was neither required by nor consistent with the matters recorded by Mr Bound.

6) Further, the conduct mentioned in paragraph 10 does not have any particular reference to the core terms that are now said to be contractually binding. The one exception to this is the allegation concerning dividends; that, however, is not supported by the evidence.

88. Even if the defendants had proved the Agreement they allege, it would not have availed them. Mr Burgess properly accepted in his closing submissions that he was unable to seek an order for specific performance, even if the Agreement were proved, because Mr Moxham is not a party to the proceedings.

89. Indeed, Mr Moxham has never sought to enforce the alleged Agreement. Quite the contrary: his messages on 6 April 2020 and his letter dated 11 April 2020 represent a renunciation of the Agreement, if it existed. Had he sought to enforce the alleged Agreement, he would of course have had to deal with the problems, first, that he grossly misled Mrs Mahoney as to the moneys required to buy PCCL's assets and, second, that he did not make an equity investment into BTL but simply advanced money.

90. There are other reasons why specific performance would not have been granted at the suit of Mr Renwick and Mr Scott Mahoney, even if Mr Moxham had been a party to the proceedings. First, neither of them gave any consideration for the alleged Agreement. Mr Burgess said that their continuance as directors constituted consideration. In the absence of any commitment to remain as directors, I doubt that. But even if there were consideration technically, I should not consider it to be of any value. Second, specific enforcement of a contract alleged to have been recorded in Mr Bound's email of 18 July 2020 would require the construction of detailed terms and provisions—in a shareholders' agreement, in an employment contract, in constitutional documents for the group of companies—that had never been agreed. This shows that any alleged contract was far too uncertain to be suitable for a decree of specific performance. (Of course, what it really shows is that there was no contract.) Third, the conduct of Mr Moxham, Mr Renwick and Mr Scott Mahoney regarding Mrs Mahoney's position as director and employee would probably constitute a repudiation of the Agreement and, anyway, almost certainly count strongly against the grant of specific performance.

91. Mr Burgess submitted that it would nevertheless be appropriate to make a declaration as to the Agreement. If I had found the Agreement proved, I should not have been attracted to such a course, both because the defendants had failed to join a centrally important party to the Agreement in these proceedings and because I agree with Mr Boardman that a declaration would be either wholly pointless or an attempt to achieve specific performance through the back door. When asked, Mr Burgess was unable to propose any appropriate terms of declaration.

92. It follows that the counterclaim of Mr Renwick and Mr Scott Mahoney fails.

(4) The claims against the defendants

93. In paragraphs 60 and 61 and points (1) and (2) of the prayer in the amended particulars of claim, the claimants seek declarations that Mrs Mahoney is a director and the sole member of the Blue Companies and that the resolutions she passed in July 2020 are valid. They are entitled to those declarations.

94. In paragraphs 60.4 and 61 and point (6) of the prayer, the Blue Companies seek a declaration that they own the assets of the Business. As they do indeed own those assets and Mr Renwick and Mr Scott Mahoney have actively denied that ownership, they are entitled to that declaration.

95. In paragraph 60.2 and 61 and point (3) of the prayer, the claimants seek an injunction restraining Mr Renwick and Mr Scott Mahoney from (a) acting on the instructions of Mr Moxham, (b) dealing with the assets of the Blue Companies without the written authority of Mrs Mahoney or the board of directors, and (c) giving instructions to Santander Bank without the authority of Mrs Mahoney or one of the new directors appointed in July 2020. These restrictions mirror those in the resolutions passed by Mrs Mahoney on 21 July 2020. As Mr Renwick and Mr Scott Mahoney have clearly acted on the instructions of Mr Moxham, sought to exclude Mrs Mahoney from involvement in the Blue Companies, and breached their duties to the Blue Companies in several respects, the injunctions are appropriately granted.

96. The particular breaches of duty alleged by the Blue Companies against Mr Renwick and Mr Scott Mahoney ("the Directors") are set out in paragraph 62 of the amended particulars of claim:

> "62.1 By acting on the instructions of Mr Moxham in the promotion, formation and/or management of the Companies, the Directors have assisted Mr Moxham to breach the terms of his Disqualification Undertaking, failed to act independently, failed to promote the success of the Companies and failed to exercise reasonable skill and care.
>
> 62.2 By excluding the First Claimant from the management, denying her rights as a director and sole member of the Company and refusing to comply with the Resolutions, the Directors have failed to act in accordance with the Companies' constitution, failed to promote the success of the Companies, failed to avoid conflicts and failed to exercise reasonable skill, care and diligence.
>
> 62.3 By denying the Companies' interest in the Business and its assets and advancing Mr Moxham's alleged and competing claim to ownership of the goodwill, vehicles, book debts, contracts, furniture and equipment, the Directors have failed to exercise their powers for proper purposes, failed to promote the success of the Companies failed to avoid conflicts and failed to exercise reasonable skill, care and diligence.
>
> 62.4 By directing the affairs of the Third Defendant, changing the website to claim that the Third Defendant is the owner and/or operator, transferring sums to the Third Defendant's bank account other than to pay drivers and using the Third Defendant to receive other income, employ other staff and make other payments, the Directors have failed to act in accordance with the Company's constitution, failed to exercise their powers for proper purposes, failed to promote the success

> of the Companies, failed to avoid conflicts and failed to exercise reasonable skill, care and diligence.
>
> 62.5 By closing the Premises, ceasing to operate the workshop and permitting the Mechanics to incorporate CCC and service vehicles of the Companies, the Directors have failed to act in accordance with the constitution, failed to promote the success of the Companies and failed to exercise reasonable skill, care and diligence.
>
> 62.6 By using the Companies to obtain loans and make payments to Mr Moxham, to themselves (other than in respect of their wages), to their respective companies and to various life insurance companies, the Directors have failed to act in accordance with the constitution, failed to exercise their powers for proper purposes, failed to promote the success of the Companies, failed to avoid conflicts and failed to exercise reasonable skill, care and diligence.
>
> 62.7 By failing to cooperate with, respond to correspondence from, provide information and documentation requested by and provide a true, accurate and full account of the Companies to the First Claimant, the Directors have failed to act for proper purposes, failed to promote the success of the Company, failed to avoid conflicts and failed to exercise reasonable skill, care and diligence."

97. I shall say something about those particulars in turn.

(i) Acting on Mr Moxham's instructions

98. Mr Scott Mahoney admits that he has known of Mr Moxham's disqualification since 2018. Although Mr Renwick denied in cross-examination having known of Mr Moxham's disqualification before Mrs Mahoney applied for an injunction in July 2020, I do not accept that evidence. His answers to further questions, taken with the contents of his affidavit dated 29 July 2020, indicate the probability that he learned of the disqualification while Mr Tim Mahoney was alive, or at least shortly after his death. In the course of questioning, Mr Renwick seemed eventually to accept that he must have known of Mr Moxham's disqualification.

99. For the purposes of this case, Mr Moxham's involvement in the promotion or formation of the Blue Companies does not seem to me to be important. However, there can be no doubt at all that he has been actively involved in the management of the Blue Companies. This is evident all the way through the narrative, even though Mr Moxham has remained to some extent in the background. Some examples illustrate the position. It was Mr Moxham who took the decision to reduce Mrs Mahoney's salary (paragraph 42 above). It was he who "advised" that she be furloughed (paragraph 43). The decision to remove her so-called dividend was made by him (paragraphs 44 and 45); Mr Renwick accepted this in cross-examination. As for the purported removal of Mrs Mahoney as a director, I am satisfied that it was Mr

Moxham who drafted the letters referred to at paragraphs 51 and 52 above and who produced the false resolution referred to at paragraph 53 above.

100. Attempts by Mr Renwick and Mr Scott Mahoney to portray Mr Moxham as merely the accountant, having no say in management, have no credibility at all. Further, the defendants' insistence in these proceedings—on his say-so—that Mr Moxham is the owner of the assets by which the Blue Companies carry on their activities sits ill with their claim not to act on his instructions. It is noteworthy that in these proceedings the defendants have given no disclosure of any written communication of any sort passing between them and Mr Moxham since April 2020.

101. As both the defendants' evidence and Mr Moxham's own witness statement in these proceedings make clear, there is an attempt to justify Mr Moxham's involvement in two ways. One is to say that he spends much of his time in Dubai and has little or no direct contact with the companies' staff. That is irrelevant. The other explanation is to say that Mr Moxham is merely a (purported) shareholder and financier of the Blue Companies, to which he provides professional financial advice. Three comments may be made on this latter explanation. First, it entirely fails to reflect the level of influence and control that, as I am quite satisfied, is manifest in all strategic decisions relating to the companies. Indeed, it is hard to think of a more obvious way in which the directors could acquiesce in Mr Moxham's involvement in management of the companies than by allowing him to assert his ownership of the assets used in their business. Second, as well as being incredible in the light of the narrative set out above, the claim is falsified by the assertion in Mr Moxham's witness statement—accepted by Mr Renwick in oral evidence—that the Blue Companies owe him £1,250 a week (£65,000 per annum) for his consultancy and advisory services—not, be it noted, as salary or by way of dividend—even though no accounts have actually been produced by the Blue Companies and Mr Moxham holds all accounting records (see below). Third, it entirely ignores the wide scope of the prohibition in the disqualification undertaking. See *Mithani: Directors' Disqualification,* Division V, Chapter 2, para [48] and the cases there cited.

(ii) Exclusion of Mrs Mahoney

102. The purported removal of Mrs Mahoney as a director of the Blue Companies was a breach of duty by Mr Renwick and Mr Scott Mahoney. Mrs Mahoney was not lawfully removed as, nor did she otherwise cease to be, a director of BTL or BVL in 2019 or 2020. The defendants have not admitted this, but their stance has been inconsistent, and the position is clear. The notice filed at Companies House rests on the basis that Mrs Mahoney resigned as a director when the Agreement was made, and the defendants have sometimes advanced precisely that case. However: (a) there was no Agreement; (b) the alleged Agreement would not itself effect or constitute a resignation; (c) the defendants have at other times accepted that Mrs Mahoney remained a director after 2019—that was accepted in terms by Mr Renwick in the course of his evidence, and it is the premise of the purported resolution removing her as a director on 28 April 2020.

103. As regards the alternative contention that Mrs Mahoney was removed as a director by resolution of the board, I make the following findings: (a) there was no board meeting as alleged; (b) the document recording the purported resolution was created afterwards, by Mr Moxham and at his instigation; (c) if there were a board meeting, it

was invalid as Mrs Mahoney was not given notice of it. The purported removal of Mrs Mahoney as a director constituted a breach by Mr Renwick and Mr Scott Mahoney of their duty to act in accordance with the company's constitution (section 171 of the 2006 Act). It was also a breach of their duty to act in good faith to promote the success of the companies for their member (section 172). As it is strongly probable that Mr Renwick's and Mr Scott Mahoney's actions were done at the direction of Mr Moxham, they also were a breach of the duty to exercise independent judgment (section 173).

104. The purported termination of Mrs Mahoney's employment was similarly wrongful on the part of Mr Renwick and Mr Scott Mahoney. The justification they advance for, namely her refusal to abide by the Agreement, is untenable.

(iii) Denial of ownership of assets

105. Mr Renwick and Mr Scott Mahoney, though directors of the Blue Companies, have advanced and maintained the false case that PCCL's assets were acquired and are owned by Mr Moxham personally, not by the Blue Companies. As Mr Renwick admitted, the only basis on which they did so was that Mr Moxham told them to do so: they have acted merely as mouthpieces for Mr Moxham. Their conduct in this regard has been clearly contrary to the interests of BTL and BVL and constitutes a breach of their duties to act in good faith to promote the success of the companies for their member (section 172 of the 2006 Act), to exercise independent judgment (section 173), and to exercise reasonable skill, care and diligence (section 174).

(iv) Use of PCDA

106. In May 2020 Mr Renwick and Mr Scott Mahoney amended the Premier website to show that the operating company was PCDA. They say that this was a simple mistake. I do not believe them. It would have been a very strange mistake to make. It also coincided with them becoming directors of PCDA, which had a quite different function from the Blue Companies. Although the "mistake" was pointed out in Mrs Mahoney's affidavit sworn in July 2020, it was not corrected until August 2021. Shortly after the amendment of the website, the premises formerly occupied by the Blue Companies at Units 9 and 10 were vacated and new premises were taken. The new premises are in the name of PCDA. That too is said to be a mistake. I do not believe that either. It is noteworthy that the email sent by Mr Renwick and Mr Scott Mahoney on 29 May 2020, by which date they were the majority directors and persons with significant control of PCDA, not only claimed that BTL had no assets and owed a large amount of money to Mr Moxham, but also asserted that BTL had taken the novation of the Hospitals Contract only "as an agent for 300 self-employed Taxi drivers", which presumably means as agent for PCDA.

107. In my view, the evidence justifies the inference that there has been a deliberate effort by Mr Renwick and Mr Scott Mahoney to divert the Business away from the Blue Companies as a way of defeating Mrs Mahoney's claims: one device has been the assertion that the assets are owned by Mr Moxham; another is to bring the operations of the Business within PCDA rather than the Blue Companies. It is highly unlikely that Mr Renwick and Mr Scott Mahoney have devised this tactic by themselves. It is far more likely that Mr Moxham is behind it.

108. Between April 2020 and August 2021 inclusive, BTL has made payments to PCDA in excess of £1.5m. Of course, the relationship between the operations of the companies means that large and regular payments are to be expected. However, Mr Renwick confirmed that, as between BTL and PCDA, there was no formal agreement and no inter-company account. He said that he did not know how anyone would be able to ascertain the state of the account between those companies on the basis of the paperwork.

(v) Closure of the Premises

109. The position regarding the premises at Units 9 and 10 is not wholly clear. It appears that after PCCL went into administration the lease was assigned to BTL. However, the rent was being paid by PCDA. The closure of Unit 9 has been justified on grounds of health and safety, which I have understood to mean the wellbeing of staff during the prevalence of Covid. That justification is unpersuasive, because vehicles would still require maintenance and repair and no evidence has been adduced to show that Unit 9 was inherently more unsafe than other premises. The incorporation of CCC, coupled with its demise almost immediately after Mrs Mahoney had drawn attention to it, makes it more likely that the real reason had to do with the attempt to divert business from the Blue Companies.

110. It appears that Unit 10 has been retained at a reduced rent, but the operations of the Business have been moved to other premises in the name of PCDA. I have already remarked on this.

(vi) Improper payments

111. I shall deal shortly with this allegation. It is impossible to explore adequately the financial dealings of, and with the assets of, the Blue Companies, because there is total inadequacy of documentation (see below), and I shall not attempt an analysis. It is, however, possible to identify a number of matters of concern, which involve at least some instances of breach of duty.

112. The case advanced by the defendants, and supported by Mr Moxham in his witness statement, is that BTL is liable to pay Mr Moxham £1,250 a week for his advisory services as an accountant. In his witness statement dated 2 August 2021 Mr Renwick stated, at paragraph 27, "PCDA pays Simon Moxham £1,250 a week for his consultancy services, invoiced via Merlin Paul." In his oral evidence, Mr Renwick said that Mr Moxham's entitlement (as he understood from Mr Tim Mahoney) had been to 30% of the savings in tax, payroll costs and accountancy costs that were achieved by following the advice he gave to PCCL and reorganising the Business by transferring the drivers and staff from PCCL to PCDA. When he was asked about the payments of £1,250 a week, he said that these were intended to approximate to 30% of the savings. He also said that he believed the payments were being made by PCCL; he did not know what PCDA was paying. It did not seem to me that Mr Renwick had much idea of the basis on which Mr Moxham was receiving £1,250 a week. His purported understanding rested on what Mr Tim Mahoney had told him of an oral agreement. He did not explain how the savings were to be calculated or how, if payments of £1,250 a week were simply approximations, there was to be reconciliation and adjustment.

113. More importantly, Mr Renwick was unable to explain how it was that Mr Moxham was still receiving payments of £1,250 a week in August 2021, nearly five years after PCDA was incorporated, or why any obligation to make the payments had continued after PCCL had gone into administration. In particular, the basis of the payments as explained by Mr Renwick provides no justification at all for the payments being made by BTL. And there is no apparent reason from April 2020—when the dispute with Mrs Mahoney really became open—the payments stopped being made by BTL and were thereafter made by PCDA, which does not appear to have any obligation to Mr Moxham and certainly not on the basis explained by Mr Renwick. It may be that BTL has been making payments to PCDA to cover the payments to Mr Moxham, but this is uncertain because it is impossible at present to ascertain the state of account between BTL and PCDA.

114. Mr Moxham continued to be paid in full by BTL and thereafter by PCDA until at least August 2021. Mr Renwick explained that this was because the payments were not dividends: Mr Moxham had explained that it was only dividends that could not be paid. As Mr Moxham would well know that the so-called dividends to Mrs Mahoney were nothing of the sort, that is no explanation.

115. The reality is simply that Mr Renwick and Mr Scott Mahoney make the payments that Mr Moxham tells them to make. According to the bank statements, by the end of August 2021 BTL had received a total of £166,500 from Mr Moxham and had paid to him a total of £318,800. In the course of his cross-examination, Mr Renwick said that payments made to Mr Moxham had been made because he asked for them. This again shows Mr Moxham's control over the management of BTL. I note that, when Mr Moxham was complaining to Mrs Mahoney in April 2020 that he had paid £80,000 to BTL and received nothing back, while she had been receiving moneys from the company, he had in fact been repaid.

116. In June 2020 Mr Renwick and Mr Scott Mahoney caused BTL to pay to each of them a sum of £3,500 in addition to their salaries. Mr Renwick explained that this was for holiday pay for the previous year; thus it could be paid, as it was not by way of dividend. However, the entitlement to holiday pay was against PCCL, not BTL. It was improper to use BTL's funds to pay moneys that had been due from PCCL.

117. BTL's money has also been used to pay for life assurance policies for Mr Renwick, Mr Scott Mahoney and Mr Moxham, though not for Mrs Mahoney. In cross-examination, Mr Renwick could not explain why there was a policy for Mr Moxham and accepted that, if there were policies for the other two directors, there ought to have been one for Mrs Mahoney. The payments, which were not in the company's ordinary course of business, were made without lawful authority of the board and thus in breach of the directors' duty to act in accordance with the company's constitution. I do not consider that payments for life assurance policies for directors were inherently improper, and the fact that policies were taken out for two directors does not necessarily mean that a policy ought to have been taken out for Mrs Mahoney. In my judgment, however, payment for a life assurance policy in respect of Mr Moxham, who had no standing in the management of the company, was improper and a breach of the duties to exercise reasonable skill and care and independent judgment.

118. It has transpired that the defence of the present claims has been funded out of BTL's moneys. Mr Renwick explained this on the basis that the defence of the claim could not have been funded in any other way. This is an improper use of company moneys.

(vii) Failure to account

119. Neither BTL nor BVL has filed accounts (as required by section 441 of the 2006 Act) or provided them to Mrs Mahoney (as required by section 423), although the first accounts, made up to 31 March 2020, were due to be filed by 8 March 2021. Each company is subject to an active, though suspended, proposal to strike it off the register.

120. On 19 August 2020, Geldards wrote to Hugh James in response to requests for the production of documents regarding the companies' activities. In respect of the request for "management or other accounts, corporation tax records and VAT returns", Geldards stated: "None of this information is available because of COVID-19, but the clients can confirm that revenue for BTL was circa £765,000 for the period December 2019 to March 2020. BVL had a revenue of £264,439 for the financial year ended 31 March 2020." The documents still had not been produced, when on 4 March 2021 Geldards confirmed that they had finally received from Mr Moxham access to the necessary platform for the accounting records of the companies. Despite this, as at trial, no SAGE accounting records or management accounts or VAT returns had been disclosed. Only the bank statements had been produced.

121. In evidence at trial, Mr Renwick said that he did not know whether the Blue Companies were trading profitably. At no time since the Blue Companies started trading had he seen any management accounts or financial summaries, and he had no idea whether SAGE records had been compiled. The only documents relating to the Blue Companies' financial performance that he had seen were the bank statements.

122. The position, therefore, is that any accounting records sufficient to show and explain the Blue Companies' transactions and to show the financial position of those companies (as required to be kept by section 386 of the 2006 Act) have been and remain with Mr Moxham and have never been held by or even seen by Mr Renwick and Mr Scott Mahoney, though they admit and purport to have control over them. In addition to the apparent breach of Mr Moxham's undertaking not to be concerned in or take part in the management of a company, and the collusion of both directors in that breach, there is in my judgment a wholescale dereliction of responsibility by both directors in breach of their duties under sections 171, 172 and 173 of the 2006 Act.

123. At paragraphs 63 to 67 of the amended particulars of claim, the Blue Companies claim an account from all three defendants. Mr Burgess submitted that it was incumbent on the claimants to prove their loss, if any, now. However, in my judgment the Blue Companies are entitled in the circumstances to an account from the directors who have breached their duties, treated the assets belonging to the companies as the assets of other persons, and failed to give any proper account of their management of the companies. The third defendant is controlled by Mr Renwick and Mr Scott Mahoney and through their agency has both acted in a manner consistent with usurpation of the Business of the Blue Companies and received large amounts of money in respect of which it is currently unable to give a proper explanation.

Conclusion

124. The claimants are entitled to declarations, as prayed, that Mrs Mahoney is a director and the sole member of BTL and BVL, that the resolutions she passed in July 2020 are valid, and that the new directors appointed by those resolutions are validly appointed.

125. It is just and convenient to grant an injunction restraining Mr Renwick and Mr Scott Mahoney from acting in respect of BTL and BVL on the instructions of Mr Moxham or at all without the authority of the board of directors.

126. BTL and BVL are entitled to a declaration that they own the Business and its assets.

127. I shall order that the defendants and each of them give an account of their dealings with the assets of the Business since 14 January 2020, being the date of the appointment of joint administrators of PCCL.

128. The claim for an enquiry will be adjourned.

129. The counterclaim will be dismissed.