OUTER HOUSE, COURT OF SESSION

[2024] CSOH 3

P887/22

OPINION OF LORD SANDISON

In the Petition of

(FIRST) ADRIAN RICHARD HAWKINS OBE and (SECOND) OTHMAN AKBAR RAFAY

Petitioners

for

an order under Sections 994 and 996 of the Companies Act 2006 in relation to SUSTAINABLE PIPELINE SYSTEMS LIMITED

Petitioners: Ower, KC; Shoosmiths LLP
Respondents: Massaro; Stronachs LLP

19 January 2024

Introduction

Background

[1] By this petition, two shareholders in Sustainable Pipeline Systems Limited ("the Company") seek orders under sections 994 and 996 of the Companies Act 2006, claiming that the Company's affairs have been conducted in a manner that is unfairly prejudicial to their interests as members. The respondents to the petition are the Company itself and its four directors (who are also the whole other shareholders in the Company). The matter came before the court for a diet of proof for determination of the question of whether there had indeed been such unfairly prejudicial conduct, leaving over for later determination if need be the issue of an appropriate remedy for any such conduct.

Relevant statutory provisions

[2] Sections 994 and 996 of the Companies Act 2006, so far as material, are in the following terms:

> "994 Petition by company member
>
> (1) A member of a company may apply to the court by petition for an order under this Part on the ground–
>
> > (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or
> >
> > (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.
> >
> > …
>
> **996 Powers of the court under this Part**
>
> (1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.
>
> (2) Without prejudice to the generality of subsection (1), the court's order may–
>
> > (a) regulate the conduct of the company's affairs in the future;
> >
> > (b) require the company–
> >
> > > (i) to refrain from doing or continuing an act complained of, or
> > >
> > > (ii) to do an act that the petitioner has complained it has omitted to do;
> >
> > (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;
> > (d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;

> (e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly."

Factual background

[3] The Company's business is in the development of new technology for pipeline manufacture, installation and monitoring, and in particular of a pipe product known as the Mobile Automated Spiral Intelligent Pipe (MASiP). It was founded by the respondent Dr Andrew Stevenson, who is a materials scientist. He is the majority shareholder in, and Chairman and Chief Executive Officer of, the Company. Between 2016 and 2019, the petitioners, Mr Adrian Hawkins and Mr Othman Rafay, each invested significant sums in the Company. In March 2019 Mr Hawkins was appointed as a director of the Company. Mr Rafay was not appointed as a director of the Company, but was invited to attend its board meetings until autumn 2020.

[4] Between December 2019 and April 2020, each of the petitioners, together with Dr Stevenson and another respondent, Mr Christopher McCann, invested further sums in varying amounts in the Company. Shares were allotted to each of them in that investment round at a price of £150 per share. In or around July 2020, differences arose between Mr Hawkins and Dr Stevenson about the propriety and utility of the Company applying for a loan of £207,000 under the Coronavirus Business Interruption Loan Scheme (CBILS), resulting ultimately in the resignation of Mr Hawkins from the board. In January 2021, the petitioners were advised that the directors of the Company were proposing to allot further shares to Dr Stevenson and Mr McCann at a price per share of £37. A further such allotment, at a lower price still, was made in 2023.

[5] The petitioners have three main heads of complaint under section 994, although each carries with it a penumbra of associated concerns and is closely inter-related to the others. Firstly, the petitioners complain that they have been excluded from involvement in the management of the Company and have not been provided with the information necessary for them properly to participate in the conduct of its affairs.

[6] Secondly, they complain that they have not been remunerated for their work for the Company, and specifically that a proposed share bonus scheme designed to operate as deferred remuneration for that work was withdrawn, to their detriment.

[7] The third and final group of complaints concerns share allotments. The petitioners maintain that the allotment to Mr McCann in 2020 at the same price they paid in that round was unfair to them, as it allowed Mr McCann to benefit from the progress which the Company had made without being exposed to the same level of risk to which the existing shareholders had been exposed. Further, and more substantively, they claim that they were not invited to purchase shares in the Company at the beginning of 2021 when the board was proposing to make a further allotment to Mr McCann, supposedly as an emergency fund-raising measure. The petitioners claim that the Company had no need to raise cash urgently at that time and that their shareholdings were unfairly devalued and diluted by the allotment which then took place. They say that the further allotment in June 2023 had the same effect.

[8] The petitioners maintain that there has been an irredeemable breakdown in the trust and confidence which they had in the respondents, that they cannot reach agreement for the sale of their shares in the Company in light of the unfairly prejudicial conduct of its affairs which they allege, and that the court's assistance is therefore required.

The evidence

[9] Each of the witnesses provided one or more witness statements and was cross- and re-examined.

Petitioners' case

Adrian Hawkins OBE (66)

[10] Mr Hawkins stated that his working life had been in the welding industry, culminating in the sale in 2019 of the company he had successfully built over the years, Weldability SIF. He met Dr Stevenson in 2014 or 2015 through their mutual involvement in the Hertfordshire Local Enterprise Partnership. He learned that Dr Stevenson had set up the Company to develop a spiral wound pipe using intellectual property licensed by Scottish Enterprise. Mr Hawkins had been asked to assist with potentially suitable welding processes for the pipe, which he had done through Weldability. Ultimately it was determined that a welding process was not required. Mr Hawkins had, however, got to know well the pipe being developed during that project and had been impressed by it. Dr Stevenson had asked him if he would like to invest in the Company, and had provided him with business plans indicating completion of development and commercialisation of the pipe by 2019-2020. He had invested £40,000 in the Company in 2016, and a total of £240,000 over the period 2016-2019.

[11] Dr Stevenson wanted Mr Hawkins to be involved for his business experience in commercialising products and managing people, as well as for his financial investment. He wanted Mr Hawkins to be on the Company's board, but before Mr Hawkins had sold his own company, Weldability, he did not want to take on that responsibility. He joined the Company's board on 28 March 2019 following the sale of Weldability, having previously

been invited to attend board meetings as an observer. After joining the board, Mr Hawkins had wanted to get the Company's pipe product into commercialisation and production as soon as possible, but perceived that Dr Stevenson was more interested in research and development, was not particularly interested in potential markets other than the oil and gas industry, and ultimately wanted to sell on the pipe technology as a project or concept.

[12] Mr Hawkins noted that he was an experienced businessman and had chaired a number of organisations. He had known that in becoming a member of the Company he was taking a risk with his investment, but he was confident in the technology he had seen and got to know while collaborating with the Company. That collaboration had cost Weldability £200,000, resulting in considerably greater loss to him when ultimately he sold that company due to the valuation method applied. He had not read all of the Articles of Association of the Company before becoming a member, but accepted that he had no entitlement in the Articles to be appointed a director, nor to any remuneration. He did not recall signing a Deed of Adherence to the pre-existing Shareholders' Agreement amongst the Company's members, but accepted that he probably had done so and had not negotiated any right to be, or to nominate, a director. He had agreed to amendments to the Shareholders' Agreement in December 2019 without demur. He was aware that members' pre-emption rights could be dis-applied with the consent of the holders of 80% of the issued shares. Dr Stevenson had told him, pre-investment, that no paid management role was available. He had relied on the content of the February 2016 business plan provided to him in deciding whether to invest, and in particular on the experience and knowledge of the Company's directors as reflected therein, but accepted that no guarantees had been given.

[13] He had been friendly with Dr Stevenson, but disagreed with money being spent exclusively on research and development in connection with the oil and gas industry when

progress could also or alternatively have been made in the water pipeline field. So far as his assessment of the other respondents was concerned, Mr Doug Everard appreciated that his shareholding was small in comparison with Dr Stevenson, and so did not challenge him, at least in board meetings. Mr Aqeel Abdullah was a professional diplomat who might raise his eyebrows from time to time in private conversations, but would not rock the boat at board meetings. Mr Christopher McCann's expertise was in venture capital, not in pipe engineering. Some of what had happened, and was being complained of, was the result of Mr McCann's involvement in and influence on the Company.

[14] When the COVID-19 pandemic broke out, the Company was unsure how its business was going to continue. A CBILS loan was suggested, but Mr Hawkins was informed by friends in the banking business that the Company did not qualify for such a loan as it was not trading. However, Dr Stevenson and Mr Everard had insisted that they wanted every director of the Company to sign a form so that the Company's bank, to which application for the CBILS loan was being made, could assess their creditworthiness. Mr Hawkins had told the board that the Company would not get the loan because it was not trading, and that he did not want to sign the form. He was also concerned about bringing in third party lenders, what the loan money was for, and how it would be repaid. At the board meeting on 10 August 2020, Dr Stevenson had explained that he wanted the loan to finance the Company's required contribution to a grant scheme. Mr Hawkins suggested that, if the Company needed money, the shareholders should all invest more in proportion to their existing shareholdings, but Dr Stevenson had ignored that and insisted that if Mr Hawkins did not sign the papers required for the CBILS loan application, he would be in breach of his fiduciary duties to the Company and would have to resign from the board. In these

circumstances, Mr Hawkins had decided to resign. He had not subsequently been invited to return to the board.

[15] After his resignation, he was much less involved with the Company and was made to sit on the sidelines. He was not invited to attend board meetings. He had been offered the role of commercial adviser to the Company, which he accepted, but there were no duties to be performed; it simply permitted his name to be used in documents which gave the appearance of his continued involvement. He began to talk more at this stage with a fellow investor in the Company, Othman Rafay, who shared his concerns about the lack of commercialisation and return on his investment.

[16] In 2019, the Company was paying its executive directors, Dr Stevenson and Mr Everard, but there was no scheme for the remuneration of non-executive directors or shareholders for the work they were doing for the Company. Dr Stevenson told those others that he would create a growth share scheme so their efforts would be rewarded by further share allotments, at a notional value of £21,000 per annum converted into shares valued at a point when major investment was attracted to the Company. Mr Hawkins was persuaded by this idea that the time and energy he was putting into the Company's affairs was being seen as beneficial and that there would be some return on his investment. He was also influenced by it to make his final investment in the Company, which amounted to £40,050, in December 2019.

[17] Mr McCann had then been appointed the Company's financial officer responsible for the proposed bonus scheme, which the board meeting in March 2020 had agreed to progress. Mr McCann had proposed a different share bonus scheme, maintaining that the earlier scheme had proved unworkable for tax reasons. That new proposal was brought to the June 2020 board meeting and agreed. On Christmas Eve 2020, Dr Stevenson had emailed

Mr Hawkins apparently proposing to reduce the notional rate of remuneration for the scheme to £10,000 for all work done to that date, although the details were unclear. Queries about that were referred to Mr McCann, who in turn referred them back to Dr Stevenson. Subsequently the scheme was cancelled entirely, at least for Mr Hawkins.

[18] In around March 2020, Mr McCann had first invested in the Company and had then joined its board. He had been described as a seasoned venture capitalist, specialising in energy and fundraising, and was supposedly tasked with finding a buyer for the Company. He paid the same price for his shares as Mr Hawkins had paid in December 2019, namely £150 per share, which Mr Hawkins was unhappy with as he had been involved at an earlier stage in the life of the Company and had taken a greater risk with his capital. The price of £150 paid by Mr Hawkins had been said by Dr Stevenson to be a 50% discount on the true worth of the shares and was being offered as a reward for existing long-serving shareholders. Mr Hawkins nonetheless accepted that he had waived his pre-emption rights in relation to the investment round of early 2020.

[19] A cash flow spreadsheet presented to the board on 10 August 2020 had suggested to him that the Company had no cash flow concerns in the short or medium terms. At a shareholders' meeting in September 2020, Dr Stevenson had said that there was no reason for investors to introduce further funds as the Company's finances were stable. However, Mr Hawkins was concerned about the Company's financial position and on 3 December 2020 had asked Dr Stevenson by email about the prospect of insolvency. He was told there was no immediate such prospect and that a newsletter would shortly be prepared about the Company's progress and prospects. On 7 January 2021 Dr Stevenson had emailed him mentioning a potential new major investor and stating that the Company urgently needed more cash to make commitments to move forward in 2021. The email stated that

Mr McCann had offered to invest £250,000 cash, provided he could improve his position in the Company to an equity percentage of at least 5%. The price being paid by Mr McCann was £37 per share. No request for investment from others was made. Mr McCann had then invested at a price of £37 per share, which was a 75% discount from the previous price paid by Mr Hawkins and Mr Rafay, who were not advised of the transaction in advance or offered the opportunity of participating similarly in an investment in the Company. Mr McCann's investment was presented as a fait accompli. A form consenting to the disapplication of pre-emption rights had subsequently been sent to Mr Hawkins and Mr Rafay, but neither of them had signed it. Mr Rafay had raised concerns with Dr Stevenson, who had said that an emergency fundraising measure was required because discussions with investors had proceeded much more slowly than anticipated, and that the price being offered to Mr McCann was fair because otherwise he would be paying £200,000 for 1% of the Company's equity whereas Mr Hawkins and Mr Rafay would have paid the same for 5% of the equity. Mr Hawkins had not been asked to invest, and in particular had not been asked to invest on the terms offered to Mr McCann. All shareholders were not consulted equally about the share allotment that took place; Mr Hawkins had been deliberately excluded. Until that point, all members had been asked to invest when money was being sought by the Company. Had he been asked to invest he would have done so. The allotment to Mr McCann had been agreed to by Dr Stevenson, Mr Everard, Mr Abdullah and Mr McCann alone. Since starting these proceedings, a suggestion had been made that Mr Hawkins could invest now at the price paid by Mr McCann, but his faith in the management of the Company had been destroyed by what had happened.

[20] In May 2023 Dr Stevenson had said that the Company was facing insolvency in June, and that Mr McCann was prepared to invest more at a share price of about £7. Mr Hawkins

had also been asked if he wanted to invest at that price, and had requested financial information, but had only been presented with unaudited accounts which raised lots of questions. He had asked for an independent third-party valuation of the Company, but none had been provided. He and Mr Rafay had refused to consent to the disapplication of their pre-emption rights. He wanted the other shareholders to buy his shares at fair value, and thus provide a clean break between himself and the Company.

[21] In cross-examination, Mr Hawkins stated that he was aware of the distinct roles of shareholders and directors in a company. He had been provided with information about where the Company intended to go and had made his investment under the Enterprise Investment Scheme, which brought limited tax advantages. Dr Stevenson and Mr Everard had appeared to be highly credible individuals.

[22] He had taken the Company's 2016 business plan into account in deciding to invest, and relied on the directors' knowledge in assessing and mapping out the future course of the Company, but accepted that it offered no guarantees. As matters turned out, large amounts of money were spent on research and development, but Dr Stevenson had no real interest in involving the Company in actual business.

[23] He had been on friendly terms with Dr Stevenson, but the latter dominated the Company and wanted to keep spending money on research and development when business opportunities were available in the water industry. Mr Hawkins had made his views known to the board, but it wanted to focus on oil and gas pipelines despite the global transition away from such energy sources.

[24] He had offered to invest on a *pro rata* basis with other shareholders in the Company in August 2020, on the basis that the CBILS loan then under contemplation was not taken. No one was interested in that proposal. The Company was not trading and was not eligible

for the CBILS loan. There was no income to enable the Company to pay loan interest. All the Company did was look for financial aid for research and development. It had no customers for its product and thus no means of making a profit. He was willing to invest further so long as no bank loan was taken by the Company. He had resigned from the board on the basis that he was asked to do so by Dr Stevenson because he had refused to sign the documentation which the bank wanted for the CBILS loan application. He was told that he was in breach of his fiduciary duties and should resign. He had no other option. He had been proven to be right about the Company not being eligible for the CBILS loan. After his resignation, he was not invited to board meetings or to rejoin the board. Mr Rafay was no longer invited as an observer either. They both wanted to know where their money was being spent.

[25] At the end of 2020, the Company did not need cash urgently. Dr Stevenson had said as much to him in writing in December. The information document circulated on 18 December 2020 indicated that the Company could moderate its expenditure and continue some sort of operation with help from its shareholders. Mr Everard's cashflow projections had suggested that a loan from Innovate UK, a government-backed entity, would be forthcoming and that the Company would cut its cloth to suit its resources. The Company had always had cashflow issues on the horizon, and there was nothing to suggest that the situation was any different at the end of 2020. However, he accepted that the board might have been in good faith in determining that the Company did need funds then. He would have been prepared to put money into the Company at that time if need be, but was not invited to do so. Mr Everard had not telephoned him to talk about the situation. He had not agreed to waive his pre-emption rights when asked to do so. All shareholders had not been consulted equally about the allotment to Mr McCann. That had been approved at a board

meeting on 29 January 2021 by Dr Stevenson, Mr Everard, Mr Addullah and Mr McCann. Mr Hawkins had made no offer of investment at that point, but he was not afforded a reasonable opportunity to do so. In previous investment rounds, he had always been asked to invest. On this occasion, he and Mr Rafay had been deliberately excluded from participation. Had he been asked on this occasion, he would have invested again. His holding had been diluted by the issue to Mr McCann, as had the holdings of other members. He and Mr Rafay had taken a bigger gamble in investing than Mr McCann had, but the latter had been allowed to invest at the same price initially, and then at a far lower price. That was unfair.

[26] In the 2023 investment round, the board had followed the correct procedure by asking him and Mr Rafay to invest. The price was £7 per share. However, no accounts for the Company had been provided. A valuation and audited accounts had been requested. A balance sheet was provided but various entries were in the wrong place, and no audited accounts were ever forthcoming. He could not comment on what Mr McCann was prepared to pay, or whether the Company needed cash at that point. The board members had been in favour of the allotment. Dr Stevenson, Mr Everard and Mr Abdullah had all agreed to be diluted, but since Dr Stevenson had not spent much on his shares, he might not have been overly concerned about that. Mr Hawkins and Mr Rafay had been diluted without their consent.

[27] The board meeting of March 2020 had agreed to a scheme for remuneration along the lines of the allotment of growth shares to the value of £21,000 for work done to that date. Then Mr McCann had come along and that was said to be unworkable. Mr McCann was asked to draw up a new scheme using the same values. The board meeting of August 2020 set up a remuneration committee, but Mr Hawkins then resigned from the board. He had

been offered the post of commercial adviser to the Company, but that turned out to be a sinecure and he was not actually asked to do any work in that or any other capacity. Mr Rafay and he were sent letters by Dr Stevenson on Christmas Eve 2020 which mentioned the figure of £10,000, but it was not clear whether that was in substitution for or in addition to the figure of £21,000 previously mentioned. Enquiries in that regard had received no answer. The executive directors had been taking large sums of money by way of remuneration by the end of 2020, while at the same time saying that the Company had no need for more cash. Mr McCann was milking the company in terms of acquiring shares at a low price.

[28] In re-examination, Mr Hawkins stated that the original remuneration scheme had been approved by the board in March 2020 and all that remained to be settled were the mechanics of how it was going to work. Then a new scheme was introduced by Mr McCann in June. At the August board meeting, Mr Hawkins had been pressurised to sign the CBILS loan application documents. He was not prepared to do that, and decided that he had to resign. It was his decision.

Othman Akbar Rafay (40)

[29] Mr Rafay, a cyber security management consultant, said that he knew the respondent Mr Everard through a school association and became aware that he was working for the Company. He was attracted by the Company's innovative pipeline and decided to invest in it. His friend Mr Abdullah, an Omani diplomat, had decided at the same time also to invest. Neither knew Mr Hawkins at that time. His decision to invest was based on business plans showing a 5-year plan to full commercial implementation and sales. Similarly, before he invested further in December 2019, Dr Stevenson had produced a presentation suggesting

that commercial sales would start in 2021-2022 and that there had been turnover of £527,000 in 2017-2018 and £750,000 in 2018-2019. He had only realised recently that what was being talked about were government grants, not money generated by selling products. The presentation had valued the Company at £50 – 100 million at that point. He had invested a total of £240,000 in the Company; £40,000 in 2016; £80,000 in the course of each of 2018 and 2019; and £40,000 at the end of that year.

[30] Mr Rafay confirmed that he was an experienced businessman and that he was aware that his investment in the Company would be attended by some degree of risk. Before investing, he had looked through the Company's Articles to some extent and had paid a lawyer to go through them and see if anything stood out. He had expected the information given in the 2016 business plan to be accurate. He had talked about the Company with Mr Everard to some degree over a few months before investing. He had also understood that he had no right to remuneration under the Articles, and that there was no restriction on the allotment of shares by the board. He believed that he had adhered to the Shareholders' Agreement in force at the time of his investment. He had signed the revised such Agreement in December 2019, and indeed had taken legal advice on it. He was aware that the holders of 80% of the issued share capital could decide to disapply pre-emption rights.

[31] Once a member of the Company, he had come to appreciate that Dr Stevenson was very much in charge. Mr Abdullah might privately disagree with Dr Stevenson, but would always end up siding with him. Mr Rafay was invited to observe board meetings despite not being a director. He did not work for the Company on a daily basis, and was not involved in its routine management.

[32] He had not known Dr Stevenson until he invested in the Company. He found Dr Stevenson challenging to deal with from time to time. Although Mr Everard was easier

to deal with, it was Dr Stevenson who had the power in the Company and was in charge. Originally, the shareholding in the Company had been split 90% to Dr Stevenson and 10% to Mr Everard. When he, Mr Hawkins and Mr Abdullah first invested in 2016, it was based on an enterprise value of the Company of £2 million. In subsequent fundraising rounds, all shareholders were invited to invest. Just before Mr McCann's introduction as a shareholder, Mr Hawkins and Mr Rafay were significant minority shareholders, with a stake of just under 6.1% each, with Mr Stevenson on 73.9%. After Mr McCann's investment of £200,000 in the first quarter of 2020, he held around 1% of the share capital, resulting in a dilution for Mr Hawkins and Mr Rafay to just under 5.7%, representing a potentially significant reduction in the value of their holdings. Presently, the Company's shareholdings were: Dr Stevenson - 70%; Mr Everard - 6.6%; Mr McCann - 6.5%; Mr Hawkins - 5.7%; Mr Rafay - 5.7%; and Mr Abdullah - 5.5%. Investors had put a total of £1.27 million into the Company, and it had received several times that amount in government grants.

[33] He had understood that he had no right to be a director. He was offered a directorship when he first invested, but did not wish to take up the offer as he was thinking about setting up his own cyber security consultancy and wanted to keep his corporate interests separate. He had been told that the door would always be open. Dr Stevenson had invited him to every board meeting as an observer and he would provide a lot of advice and comments. He had expected that situation to continue.

[34] He had not been involved in the discussions Mr Hawkins had had with Dr Stevenson about the CBILS loan. Dr Stevenson had said that Mr Hawkins was not playing ball and the board would have to force him to resign. Mr Hawkins had been looking for an income stream from the water industry, but that idea had been dropped by the board for reasons unknown to Mr Rafay. After Mr Hawkins resigned from the board,

Mr Rafay was no longer invited to observe board meetings, with no explanation given by Dr Stevenson. He had attended after the September 2020 board meeting virtually, not having been invited to come in person. Mr Everard had told him that Dr Stevenson and Mr McCann did not want him to attend. He ceased to receive board meeting minutes and was given very little information about the Company's performance and financial situation, despite telling Dr Stevenson that he wanted to be involved. His relationship with Dr Stevenson and the other directors had broken down because Dr Stevenson had stopped providing him with information or giving him the full picture about the Company and its business.

[35] As Mr Rafay was doing a lot of work for the Company by 2020, Dr Stevenson had said that he wanted to provide a reward in the form of a bonus share scheme which would pay out when there was free cash flow in the Company. Although he was not actively involved in the Company's management, he had worked for it on an *ad hoc* basis. He was referred to as an adviser. The original suggestion had been that Mr Rafay and Mr Hawkins would be given £21,000 worth of growth shares linked to performance for the work they had done to that date, so at an exit point those shares could be worth a lot more. At the next board meeting, no one had any objections, so the matter was sent to the Company's accountants to implement it. Then, in July 2020, he was told that there was to be a change from growth shares to a share bonus scheme. On Christmas Eve 2020, the number being mentioned had become £10,000, which he had assumed was in addition to the £21,000 already offered. Dr Stevenson had terminated the scheme without telling him and wanted to put some other scheme in place to which he had not agreed. When lawyers were instructed in connection with the matters which had come to form the subject matter of the

present litigation, discussions on the subject had ceased. He had ultimately received nothing by way of remuneration.

[36] In the second half of 2019, Dr Stevenson had indicated that a US company called Prime Natural Resources was intending to make an investment in the Company of about £17.5 million and was looking to purchase shares at £500 per share. He had offered to give the current shareholders in the Company an opportunity to invest at a 50% discount which would only be available to them, so that they could purchase at £150 a share instead of a notional price of £300. Mr Rafay thought it best to top up his investment then, before the share price increased, and had invested £40,000 in December 2019, as had Mr Hawkins.

[37] A few months later, Mr McCann, who was a friend and business colleague of Dr Stevenson, was allowed to invest at £150 per share even though he was not already an investor. Mr Rafay had asked for an explanation from Dr Stevenson, but did not receive one that he thought satisfactory. That seemed to change the whole dynamic of the Company, with Dr Stevenson asserting control and Mr Hawkins ultimately resigning from the board. Mr Rafay had signed a waiver of his pre-emption rights when Mr McCann became a member of the Company. He had no issue with Mr McCann becoming a member; his issue was with the price he paid for his shares. Mr McCann had not been on the same journey as Mr Hawkins and himself, nor taken the same risks, but he still got the supposedly advantageous price of £150 per share. When he had put that objection to Dr Stevenson, he was just told that it was what it was, and that a business plan was a work of fiction. He did not feel valued as a shareholder after that, but rather offended and insulted.

[38] In January 2021, Dr Stevenson had allotted shares to Mr McCann and himself at £37 per share. The first Mr Rafay had heard of this was when Mr Everard told him about it in the course of a telephone call in early January. That the Company supposedly needed

money came as a surprise. In a discussion paper for the June 2020 board meeting there had been a table and graph showing the Company's milestones and its enterprise value as it hit those milestones. That noted that the value of the Company was £60 million, equating to a share price of £437 per share. In July 2020, an investors' newsletter had said that Prime Natural Resources was still interested in the Company. In August 2020, the Company had provided a cash flow document which said that under the worst-case scenario, in January 2021, the business would have over £232,000 in cash. On 9 August 2020, a business plan gave the Company's valuation as $60 US million. On 3 December 2020, by email, Mr Hawkins asked Dr Stevenson if the company would still be solvent in 6 months and had been told that there was no immediate prospect of insolvency and that management would prepare a newsletter on the Company's progress and future prospects. On 18 December 2020, Dr Stevenson issued an update to shareholders dealing with funding, stating that two equity investors were in talks about initial investment, and mentioning that a UK-based venture capital trust investor might invest at a valuation of £15 million, give or take about £5 million subject to due diligence. There was nothing in that update to show that there was an urgent need for cash, and no request for Mr Hawkins or Mr Rafay to invest further. Mr Rafay raised concerns about the apparent share devaluation with Dr Stevenson, but most of his questions were ignored and he had been told that the discounted price had been given in order to be fair to Mr McCann. Mr Rafay would have been prepared to invest further so long as that was *pro rata* with other shareholders. He had invested in 2016 thinking that the Company was worth £2 million. He did not accept that the Company had a need for cash at the end of 2020. The cash flow forecasts in the latter half of 2020 suggested that if external funding was not won, cash burn rate could be reduced for several months and then shareholders would be approached. In fact, at the end of 2020 the burn rate had been

increased and a 7-day period for fundraising had been imposed unnecessarily. The Company's bank statements showed that remuneration to Dr Stevenson and Mr Everard had increased towards the end of 2020, just when they were saying that the Company needed cash. Mr Everard had telephoned him and told him that the board was going to allot shares to Mr McCann at a price of £37 per share, and that that price had been fixed between Dr Stevenson and Mr McCann, the latter of whom he described as being opportunistic. There was no justification for the devaluation from an inferred valuation of £60 million in June 2020. At the August 2020 board meeting, he and Mr Hawkins had offered to invest more in the Company on a *pro rata* basis with the other shareholders, but that was not taken up. The shareholders were not consulted, treated equally, or asked to invest; Mr Everard had told him that the deal with Mr McCann was done, and that had resulted in an 18% dilution of Mr Rafay's holding in the Company.

[39] In May 2023, Mr Rafay and Mr Hawkins had been told through their solicitors that the Company needed more investment and that Mr McCann had offered to invest based on a valuation of the Company of £1 million. However, Dr Stevenson's valuations of the Company had varied widely over time and so they had asked for an independent valuation which Dr Stevenson had said was a waste of resources, even though he and Mr Hawkins had offered to pay half the cost. Dr Stevenson had provided some management account information to his solicitors, but it had not formed an adequate basis for investment.

[40] In cross-examination, Mr Rafay stated that his investment had been on the basis of the Enterprise Investment Scheme, which gave limited tax benefits. He had seen the 2016 business plan for the Company and, while he knew it was subject to review, expected the information in it to be accurate. He had agreed to the revised Shareholders' Agreement in December 2019, and thought he had had legal advice about it.

[41] Mr Everard had 10% of the Company when Mr Rafay became involved, but it transpired that he did not have as much sway in its affairs as Mr Rafay had previously thought. Dr Stevenson controlled things. Mr Everard could form his own views, but in the end would side with Dr Stevenson. Mr Abdullah was a friend whom Mr Rafay saw two to three times a month. In private, he would agree with Mr Rafay about the Company's affairs, but ultimately would also side with Dr Stevenson. Mr McCann was someone of independent mind.

[42] After becoming a member of the Company in 2016, he had been invited to board meetings and Dr Stevenson would call him from time to time in order to ask his opinion about things. He had told Dr Stevenson that he would like to become a director at the right time, and had maintained that position until 2019. Mr McCann had become a member of the Company in March 2020 and Mr Rafay had agreed to waive his pre-emption rights on that occasion. He had not spoken to Mr McCann about his views on the share price issue which arose at that time. He did not know Mr McCann well; Dr Stevenson described him as a friend, had known him since 2007, and trusted and respected him.

[43] When he invested in 2016, he thought the Company was worth £2 million. He did not accept that the Company had a need for cash at the end of 2020. The cashflow forecast circulated on 18 December 2020 suggested that the rate at which the Company was going through cash could be reduced and then shareholders might be approached. Dr Stevenson had told Mr Hawkins earlier that month that there was no need for money. In fact, the Company started spending more money towards the end of 2020, to pay the executive directors and more staff. Nonetheless, the cashflow forecast suggested that, even on the worst-case scenario, money would not be a problem until April 2021. That situation did not justify fundraising over a 7-day period in January. In early January, Mr Everard had

telephoned him and told him, before the relevant board meeting on 7 January, that it was a done deal that the board was going to accept an offer of investment from Mr McCann at a price of £37 per share, that price having been fixed between Mr McCann and Dr Stevenson. In June 2020, it was being said that the value of the Company was £60 million. As late as December of that year, it was being said that venture capital investors were interested in the Company. There was no justification for a devaluation of the share price to £37. Everyone should have been treated equally. In previous investment rounds, existing members had been approached and asked for further investment. On this occasion, there had been no prior consultation and Mr Rafay was reduced to asking questions after the decision to accept Mr McCann's offer had been made in principle by the board. The deal was said by Dr Stevenson to be fair to Mr McCann, but he was given preferential treatment and that was not fair to Mr Rafay and Mr Hawkins. Mr Rafay's holding had in consequence been diluted by 18%. At the board meeting in August 2020, Mr Rafay and Mr Hawkins had indicated that they would be prepared to make further investment on a *pro rata* basis, but in December they were not asked to invest.

[44] In the 2023 investment round, the Company had asked Mr Rafay, through solicitors, whether he wanted to invest. He and Mr Hawkins had asked for the Company balance sheet and financial statements. They had no data on which to make an investment decision. They wanted an independent valuation, as the share price had varied so widely. They offered to pay half the cost of the valuation, but Dr Stevenson refused, saying it was a waste of time and resources. The price per share being asked for in 2023 implied a valuation of the Company of only £1 million, which made no sense when it was worth twice that in 2016 without all the progress that had meantime been made. He wanted to protect his investment in the Company. The 2023 round had diluted his holding. Others had also been

diluted, but Dr Stevenson had not put in as much as Mr Hawkins and Mr Rafay, and Mr Everard had received his shares for nothing.

[45] Mr Rafay had not been involved in Mr Hawkins's discussions about the CBILS loan. He simply wanted matters sorted out. There had been a disagreement amongst the members of the board, but it had not reached boiling point. Mr Hawkins had wanted the Company to diversify into water pipelines, and Dr Stevenson seemed to think that that was a good idea, but it was dropped for some reason unknown to Mr Rafay. He had suggested an Initial Public Offering based on hydrogen pipelines, which would also have been a cheaper option than oil and gas, but Dr Stevenson did not want to lose control of the Company. Mr Everard had told him that Dr Stevenson and Mr McCann did not want him to attend the September board meeting.

[46] In relation to remuneration, Dr Stevenson had said that a scheme would be put in place if there was free cash in the Company. In March 2020 a mechanism was suggested to reward him and Mr Hawkins for their investment in December 2019 and for the work they had done to that date. At the March board meeting, no one had any objections to it, so the matter was sent to the Company accountants to implement it. It was described as an "offer" in other conversations and was to reward them so that the Company did well. Further proposals had been laid before the board in the summer of 2020. On Christmas Eve that year Dr Stevenson had sent him a further proposal, but it was unclear whether this was in addition to or in substitution for what had previously been discussed. That never became clear. After Mr Hawkins and Mr Rafay engaged lawyers, communication with the other directors was undermined.

[47] In re-examination, Mr Rafay said that the initial remuneration proposal involved £21,000 worth of shares, and everyone was in agreement with that. Even after Mr McCann

revised the scheme, that was the sum being talked about as annual remuneration. The August board meeting had established a remuneration committee to develop the implementation details of the scheme. Then Dr Stevenson had forced Mr Hawkins to step down from the board. Mr Rafay was not actively involved in the management of the Company, but did work for it on an *ad hoc* basis. He and Mr Hawkins were referred to as "advisors". He was never invited to a board meeting after Mr Hawkins had resigned, although he had told Dr Stevenson that he wanted to be involved.

[48] When Dr Stevenson replied in December 2020 to the enquiry made by Mr Hawkins as to the solvency of the Company over the next 6 months, Mr Rafay had seen the reply and thought that it meant the Company was fine for that period. The cashflow forecast of 18 December 2020 had mentioned various sources of funds, and indeed a £900,000 loan had been secured in February 2021.

[49] The balance sheet provided in 2023 suggested that the Company was worth £5 million at that stage, even though the shares were being sold at a price which implied a value of £1 million. He and Mr Hawkins had been asked to invest in 2023, unlike in 2021.

Respondents' case

Aqeel Malallah Abdullah (68)

[50] Mr Abdullah stated that all of the decisions made by the board of the Company, of which he was a member, had been taken in line with its constitutional arrangements and with solicitors' advice. He had always voted on board decisions on the basis of what he thought was in the best interests of the Company. He had been a friend of Mr Rafay when they both invested in the Company. Board decisions were made after debate and hearing different opinions from the board members, who would vote according to their own

opinions. He had seen nothing to suggest that Dr Stevenson and Mr McCann had acted together to do down Mr Hawkins and Mr Rafay.

[51] Dr Stevenson had told him that Mr Hawkins had not been forced off the board, but that it was his own choice to leave. Mr Hawkins had never told him that he felt he was being forced off the board, and was surprised to hear such a claim. He was aware of no attempt to force Mr Hawkins from the board. He had made good contributions to the Company and to board discussions; no one wanted him to leave.

[52] There was no share bonus scheme for him or any of the other shareholders or directors of the Company. As a non-executive director of the Company, he had received no remuneration. The discussions in 2020 about a possible share growth scheme had come to nothing.

[53] In January 2021, he knew that the Company needed a cash injection to survive. Dr Stevenson, Mr McCann and Mr Everard had told him that, and also that Mr Hawkins and Mr Rafay had not offered to invest. Offers to invest had been received from Mr McCann and Dr Stevenson. Mr Rafay's subsequent questions about the allotment had been answered by Dr Stevenson. Accepting the offers from Mr McCann and Dr Stevenson made in January 2021 was, in his opinion, in the best interests of the Company. It caused his own shareholding to be diluted by the same amount as those of Mr Hawkins and Dr Stevenson (0.3% each), but the investments were necessary for the Company to survive.

[54] In 2023, the Company had further cash difficulties and Mr McCann had offered to make a further investment. Mr Hawkins and Mr Rafay had refused to make a further investment after being offered the opportunity of doing so. The board had approved the investment from Mr McCann, along with a smaller investment from Dr Stevenson, on 22 June 2023.

[55] In cross-examination, Mr Abdullah stated that he received no remuneration as a non-executive director of the Company. There was no scheme for such remuneration. Extensive discussions about the possibility of such a scheme had taken place, but had not come to any resolution. He was friends with Mr Rafay and Mr Hawkins, but did not always discuss matters with either of them before board meetings. He had known in January 2021 that the Company needed cash to survive. Dr Stevenson, Mr Everard and Mr McCann had made that clear. Dr Stevenson and Mr McCann had invested then for the sake of the Company. He had been told that Mr Hawkins and Mr Rafay had not offered to invest, but had no direct knowledge of the matter of what offers might have been made, either at that time or previously.

[56] Mr Hawkins had not been forced to resign from the board in August 2020. He had gone of his own free will. Dr Stevenson had told him so.

[57] In re-examination, Mr Abdullah stated that the board had never approved any non-executive director remuneration scheme, so far as he was aware. He was aware that a disagreement about applying for a CBILS loan had arisen between Mr Hawkins and the rest of the board in August 2020, but had no recollection of any wider concerns on the part of Mr Hawkins. There had been no attempt to remove Mr Hawkins from the board; Mr Hawkins had never told him that he felt he was being forced off, and he was surprised to hear that that was apparently his current position. Mr Hawkins had made a good contribution to the Company and there was no reason to get rid of him.

[58] He had no knowledge of Mr Hawkins ever having been given lesser or different information about the Company’s affairs than himself. That the Company needed cash in early 2021 was something that the other directors had told him, and he had no reason to doubt them.

Ian Douglas Everard (63)

[59] Mr Everard stated that he was a Fellow of the Energy Institute and had worked in a variety of companies, holding positions including Chairman, CEO, Managing Director, Operations Director, business development, technical and commercial leadership roles in the private, public and third sector.

[60] He had been introduced to the pipeline technology that was now being developed by the Company when he was working as Interim Commercialisation Director of ITI Energy, a subsidiary of Scottish Enterprise. In that role he was responsible for taking the research-led projects in their portfolio into the commercialisation phase. He had proposed and implemented a search for a suitably qualified Commercialisation Champion for the pipeline technology and Dr Stevenson had formed the Company to take on that role in 2010.
Mr Everard had completed his interim assignment at ITI Energy and had left to undertake other management consultancy jobs. A couple of years later, Dr Stevenson had invited him to join the board of the Company, which he did in December 2012. Since then, they had been working together to bring the technology through the design, development and proving stages to market. The Company had received around £3.7 million of public funding and investment of approximately £1.4 million, which had allowed it to validate the technology, create a supply chain, employ a viable team and procure a site to get ready for potential customer visits.

[61] His current role at the Company was as Chief Operating Officer responsible for the site operations, contracts, procurement, human resources, bid management, finance and quality, and health and safety. He and Dr Stevenson were the two executive directors of the Company. He owned approximately 6% of the Company shares.

[62] The business plans which Mr Hawkins and Mr Rafay had supposedly relied upon in making their investments in the Company had made it clear that they were reasonable estimates of likely progress, but depended on assumptions about revenues and investment. Mr Hawkins was well aware, as an experienced businessman, that no investment was without risk. Mr Everard had spent 6 months discussing the technology with Mr Rafay, and his investment had been managed and recorded by the Company's lawyers. It was always clear that this was a start-up company developing technology into a conservative industry and that there was no certainty about outcomes.

[63] The first round of investment involving Mr Hawkins and Mr Rafay was in 2016, when the share price was agreed by negotiation and based on a valuation of the Company of £2 million. For subsequent rounds of investment the executive directors developed a milestone-based CAP Table approach to show their view of how value was being enhanced within the Company as a result of technology development. This was discussed at board meetings but always on the understanding that it was an internal view of value, which would then be subjected to negotiation with potential investors.

[64] Mr Everard and Dr Stevenson had worked together to try to engage with and secure UK and US venture capital, which exercise had demonstrated the need for more specific prototyping, testing, accreditation and site work prior to commercial sales. They had been unable to obtain UK venture capital funding due to the early stage of development of the pipe. Mr Everard had always spoken freely at board meetings and offered his thoughts, regardless of whether Dr Stevenson, or any other shareholder, had a viewpoint that did not align with his own. All decisions by the board, including those relating to the acceptance of investment offers, had been made to serve the best interests of the Company. The Board had

always borne in mind fairness to the shareholders and any decisions made which might serve to dilute any shareholder's interests had been taken very seriously.

[65] During 2020 the Company had attracted the attention of a Houston-based investor, Prime Natural Resources, Inc., and was in discussions about a possible investment. With the advent of COVID-19 restrictions, that prospect had failed, although Prime Natural Resources had subsequently issued Letters of Interest to the Company on 15 October 2021 and 18 November 2022.

[66] Once Prime Natural Resources had paused their investment interest in 2020, the Company was left in a potentially precarious position and in June of that year he had been asked to investigate the possibility of a CBILS loan of £207,000 from the Company's bank, the Clydesdale, bringing it to the board for an initial decision at the August 2020 board meeting. Whilst he had had some indicative terms from the bank, he was unable to progress the matter without actually making an application. The bank required a form setting out personal information to be completed for each director. All of the directors except Mr Hawkins had agreed to supply their information. There was no question about the Company's legal entitlement to apply for the CBILS loan. It was a two-stage application process and the bank had already confirmed that the Company was eligible for the loan, based on preliminary information that Mr Everard had supplied. At the board meeting on 10 August 2020 Mr Hawkins did not agree with the majority decision to continue to pursue the loan, and on the same day confirmed that he would not sign the required bank form. Mr Hawkins had resigned from the board the next day. The application had been made to the bank but was declined by it on 21 September 2020. That was following a bank Credit Committee review that was only sought after the second stage of the formal application, and which could not be completed until the directors' information was provided. Mr Everard

and Dr Stevenson had provided multiple cashflow forecasts showing different scenarios demonstrating both the requirement for cash and how it was intended to use it. A larger loan application to the UK Government entity Innovate UK was also declined but a subsequent second application to it for a loan of £900k was successful in March 2021 and had been drawn down over the next 12 months.

[67] Mr Hawkins had resigned after disagreeing with the decision of the rest of the board to apply for the CBILS loan in August 2020. He had not been forced to resign. Dr Stevenson had advice that obstructing the decision of the board put Mr Hawkins in a difficult position. He accepted that Mr Hawkins felt that he had been forced to resign, but that was not the case. The offer Mr Hawkins had made to invest at that time had been conditional on Dr Stevenson investing correspondingly. After his resignation, Mr Hawkins had not been invited to rejoin the board, and Mr Rafay had also ceased to receive invitations to attend the board.

[68] A share bonus scheme to remunerate Mr Hawkins and Mr Rafay for their contributions to the Company had been discussed and explored but tax advice had not been favourable. It was never put in place for any of the directors or shareholders. Mr Everard stated that he was currently the Chief Operating Officer of the Company, and had been on the board since 2012. Until about mid-2020, the bulk of his remuneration had come through his service company. Research and development grants were structured so as to allow him to be paid that way. Once he began working for the Company effectively full-time in 2020, Mr McCann had expressed some doubts about the tax treatment of such remuneration, and he had changed to payment via the Company payroll. The rate of payment was determined by the remuneration committee (composed of Mr McCann and Mr Abdullah, with Dr Stevenson as a non-voting member); it was about £2,000 per month pre-tax for corporate

administration. His remuneration (and that of Dr Stevenson, to some extent) had increased in the second half of 2020, but that largely reflected his standard amount plus further sums due to him in consequence of a contract with Innovate UK.

[69] In the run up to the share issue in 2021, the Company had been suffering from an immediate call on cash resources. That was something it had faced periodically, as Mr Hawkins was aware. At the end of 2020, the Company needed to know that it had the cash available to make the medium-term commitments which its contracts required. Mr Hawkins had enquired about the Company's solvency in December 2020, but that was not the issue; it was cash flow for development in the medium term. Perhaps Dr Stevenson's response to the enquiry had been too precise. Mr Hawkins had not been asked to invest at the start of 2021, but he had not been prevented from investing either. The same went for the other existing shareholders. It was not possible to pester existing shareholders to invest further, and it was not thought that Mr Hawkins was interested in investing further. All of the investment processes had started with informal discussions, and only when the potential offer basis had been clarified to a degree had the formal process then kicked in, and had been run using the advice of the Company's solicitors. An analysis of the Company's cashflow position provided in advance of the board meeting of 10 August 2020 and discussed at the meeting ought to have demonstrated how precarious that .position was. An email had been sent to the board members on 7 August noting that the attached cashflow spreadsheet showed four scenarios:

> "a base case assuming two innovate projects and some operator income but no investment, the same case with investment, a worst-case scenario of no innovates, no immediate income and cash burn reduced to an absolute minimum and an intermediate case where only 1 Innovate project and half the operator income comes in and investment delayed to Dec 2021."

The notes to the scenarios clearly indicated that cash was extremely tight and that there was a real need for further funding, whether by investment or loan or both. They read as follows:

> "Without any further contract wins in 2021 and without any further investment and no CBILS loan the company will run out [of] cash on this model in March 2021. With the CBILS loan the company can survive through to January 2022 with relatively low-key operations focussed on completing the accreditation documentation to get the next level of DNV endorsement but the constructability trials would not be started until there was at least £200k from Pipeline operators or some other contract source. On any of the scenarios it is desirable to have the CBILS loan to bridge the gap caused by COVID."

In the event, one of the Innovate grant bids included in the August 2020 scenarios was won, so the worst case was avoided, but the Company still had to contribute £43,000 of its own funds. A further communication to members on 18 December noted that further investment from shareholders would be needed. The price Mr McCann offered, and which was accepted, was relative to the position of the Company at the time in question. It had been open to Mr Hawkins and Mr Rafay to offer to invest at that same price and therefore avoid any dilution. The effect of the investment round in early 2021 was dilution of all shareholders except Mr McCann (given he was the one principally making the investment). Mr Hawkins and Mr Rafay had been diluted by 0.3%, Mr Everard by 0.4% and Dr Stevenson by 3.2%. There never was a market value for the Company's shares. Prices could be related to the Company's value should possible large-scale investment being discussed at the time take place, but such investment never came. He had not been happy with the shares price offered by Mr McCann at the start of 2021, but it was the only offer on the table and the Company needed the cash, so there was little option but to take it.

[70] Due to personal circumstances in mid-2021, Mr Everard chose to raise some capital by offering some of his shares in the Company to the other shareholders. Only Mr McCann

made an offer, and in May 2021, Mr Everard sold him 1,386 shares at a price of £26.70 per share, which was based on the average price Mr McCann had paid for investing in the Company to date over two rounds, discounted for the fact that there would be no Enterprise Investment Scheme tax reliefs or benefits available to him in respect of those shares.

[71] In cross-examination, Mr Everard stated that he had been remunerated between 2012 and 2020 for his work as chief operating officer and executive director of the Company by way of charging professional fees to the Company's grant-funded projects via his service company, Woodlands Power Limited, at a rate of approximately £2,000 per month. Those rates were more than a start-up company could typically have afforded. The Company could not have met payroll commitments during periods when it had no revenue. By mid-2020, his work for the Company was becoming more full-time in nature than previously, and Mr McCann had raised a concern that charging fees via a service company was no longer proper in those circumstances. Thereafter, he was remunerated for corporate administration via the Company's payroll.

[72] Mr Hawkins had resigned from the board after declining to complete the forms required by the lending bank in connection with the CBILS loan that the board had agreed should be applied for in August 2020. Mr Hawkins was against the making of any loan application at all. He was not forced to resign. He would have told Mr Everard had there been any discussions with Dr Stevenson in which he had been pressurised to resign. All that Dr Stevenson had said was that he had advice that the fiduciary duties of board members put Mr Hawkins in a difficult situation. Mr Hawkins had offered to make a further investment in the Company, but it was conditional on the majority shareholder, Dr Stevenson, investing correspondingly. That offer had not been ignored, but it had not been taken up either. Mr Hawkins had not been asked to rejoin the board after the failure of

the CBILS loan application. Nor had Mr Rafay been further invited to observe board meetings. It was untrue that Mr Everard never disagreed with Dr Stevenson in public; they sometimes disagreed both in private and at board meetings (although he could not immediately think of any specific example of the latter).

[73] Mr Everard agreed that the Company's bank statements showed that payments of £1,600 net of tax had been made to himself and Dr Stevenson in May, June and July 2020, which had slightly increased in August. In September, Dr Stevenson had received a reduced amount, while he had had the usual amount. In October, November and December 2020 Mr Everard had received £4,080, £4,760 and £4,760 respectively. He had received about £10,000 in December, £3,920 of which he believed to be travel expenses. The increased payments had been due to work charged to a project the Company was working on. There had never been a remuneration scheme for non-executive directors. An initial growth share scheme had been abandoned. A revised bonus scheme had been devised by Mr McCann in June 2020 and sent to a remuneration committee for the details to be ironed out and to be brought before the September board meeting. By that time Mr Hawkins and Mr Rafay had ceased to be involved in the management of the Company.

[74] The Company had had £150,000 in its bank account in July 2020, dropping to £130,000, £105,000, £65,000, £65,000 and £15,000 respectively in each subsequent month of the year. In January 2021, £150,000 had been paid in. By that stage the Company urgently needed to make commitments for the grant-aided project it was engaged in, and had to know that the requisite cash would be available to it. In December 2020, Dr Stevenson had told Mr Hawkins that there was no immediate prospect of insolvency. That had been a very precise statement - perhaps too precise, since there was still a need for cash in order to enable the development work of the Company to proceed, as the cash flow statements

provided to members since August had made clear was a real prospect should hoped-for external investment not be secured.

[75] Mr Hawkins and Mr Rafay had been asked to waive their pre-emption rights on 7 January 2021. In common with other shareholders, they had not been asked to invest, but neither had they been told that they could not do so. They had not been pestered to invest. Mr Everard had telephoned them both at the time, but had not said that what was happening with Mr McCann was a "done deal". The deal with Mr McCann was a fair one and the Company was in a difficult position. He knew that his was the only offer on the table. It was a "take it or leave it" situation. Dr Stevenson had negotiated with him and was reluctant to make the deal, but Mr Everard thought it was the best available. Mr Hawkins and Mr Rafay had bought shares in December 2019 at £150 each, a 50% discount on a notional valuation associated with a large institutional investment, but there was no market value for the Company's shares. In January 2021, Dr Stevenson might have been curt in responding to Mr Rafay's enquiries about the allotment to Mr McCann, but there was a real cash flow problem which had to be solved. The context was that Mr Hawkins had not been demonstrating any commitment to the Company and was not interested in further investment.

[76] In re-examination, Mr Everard stated that he had voted to accept Mr McCann's offer because the Company desperately needed funds in order to be able to fund its contribution to work in respect of which it would in due course receive grant aid. He was not happy with the price, but the Company needed the cash. The investment offer which Mr Hawkins had made in August would have required a *pro rata* contribution from Dr Stevenson, which was not a credible offer. Mr McCann's offer had required some further investment from Dr Stevenson, but was not a requirement for a *pro rata* contribution. Mr Hawkins and

Mr Rafay had their own views as to how the Company's business should proceed, leading to the resignation of the former, but decisions had to be made by the majority shareholders.

Christopher McCann (76)

[77] Mr McCann stated that he was a Chartered Accountant with experience over many years in corporate finance and private equity enterprises. He had known Dr Stevenson since 2003 and was introduced by him to the Company in January 2020. He had been impressed by the potential for the pipe but appreciated that the development timescale would be lengthy, capital requirements high and technical risk considerable. The oil and gas industry was also a conservative market that was going to be difficult to break into. It was correct that he and Dr Stevenson enjoyed a friendly business relationship, but they were not personal friends outwith that context.

[78] Mr Hawkins had been focused on quick sales and had little understanding of the regulatory process and the procedures that oil and gas companies would follow. His suggestion that the Company should explore opportunities for use of the products for water so that it could start generating an income was looked into, but it was ultimately decided that the Company's limited resources should be focused on the oil and gas industry. Dr Stevenson wanted commercial sales, as he was well aware that without sales, the business could not raise the major funding that it required for full commercialisation. However, he was also very aware of the regulatory and other procedures that required to be followed and he had a realistic approach to commercialisation.

[79] There had never been a remuneration scheme agreed for non-executive directors or advisors of the Company. That remained the position. When he became a director of the Company, he was asked to consider a scheme for such remuneration. He was of the view

that the Company could not afford to pay remuneration in cash, but designed a contingent bonus scheme which would only pay out when the Company could afford it, ie when it was generating free cash flow of at least £5 million per annum. Draft Heads of Terms for such a scheme were accepted in concept by the board, subject to getting tax advice and a formal legal agreement. Before those conditions could be implemented, Mr Hawkins resigned from the board and Mr Rafay ceased co-operating with it. The scheme would have been costly and would have absorbed valuable management time. In view of that, the scheme was abandoned and Mr McCann and Mr Abdullah continued to work as non-executive directors without payment. Mr Hawkins and Mr Rafay had in effect withdrawn their labour and had no contract of employment, so they were owed no remuneration.

[80] He became a shareholder in the Company in March 2020, taking advantage of the tax benefits of the Enterprise Investment Scheme. At the end of June 2020, he joined its board as a non-executive director and took a particular interest in the financial side of the business. When he was introduced to the business, there were two major factors which affected the pricing of the shares he bought. Firstly, the investment round had already commenced and existing shareholders had committed funds at a price of £150 per share, which capitalized the business at around £20 million. Secondly, Dr Stevenson had received a visit from Prime Natural Resources, a substantial US investor which indicated that it was prepared to consider an investment of £20 million at a capitalization of £60 million. He had seen the 2020 - 2025 business plan but primarily relied on his confidence in the management team and the pipeline technology. Accordingly, he invested £199,950 to acquire 1,333 Ordinary Shares in March 2020 under the EIS scheme. He would never have considered paying double the price in comparison with other investors in the 2020 round. He had never seen a

situation where a new investor agreed to pay a higher price in a single investment round compared to existing shareholders.

[81] During the course of 2020, efforts to raise capital from UK and US sources proved fruitless due to the perception that the business was at too early a stage to merit investment. Towards the end of 2020 it was clear that the Company was approaching a liquidity crunch and the business was facing insolvency in early 2021. Government-funded grants or loans were potentially available, but would take more time to get than the Company had. He considered that the market for early-stage investment in the business was non-existent, and that he had a choice either to cut his losses, or provide additional capital to give the business a chance of survival. He made clear to Dr Stevenson that any further investment from him would be on hasher terms than before, and that other existing shareholders should have the right to avoid dilution. In the event, no other shareholder except Dr Stevenson offered to invest. Mr McCann invested £250,009 at a price of £37 per share for 6757 shares. The procedure followed was the one specified in the Shareholders' Agreement. Mr Hawkins and Mr Rafay raised no objections to the share issue at the time. There was nothing to stop them or the other shareholders making an offer of investment at the same time. They were told of the financial position of the Company and the terms of the offer Mr McCann was making. They made no offer. Dr Stevenson was unhappy that the share price had dropped, but was realistic about the situation. The suggestion that Mr Hawkins and Mr Rafay would have been prepared to invest further at that stage was only made during the litigation, not before. In truth, it was apparent that they were no longer interested in supporting the Company with fresh capital in early 2021.

[82] The Company had still not raised external capital. It was facing insolvency again in 2023. Mr McCann stepped in again with a £125,000 investment, as had Dr Stevenson

with £20,000. An identical procedure for raising this capital was used as had been the case in the earlier non-controversial fundraisings. Mr Hawkins and Mr Rafay raised no objection to the procedure and could themselves have participated in the fundraising, but chose not to do so.

[83] In cross-examination, Mr McCann stated that the valuations of the Company which had been stated from time to time in connection with potential institutional investment were high estimates, would have been subject to a great deal of due diligence, and would probably not actually have been achieved. The Company's business plans had been drawn up in good faith, but no one could foresee the future. The capital requirement of £10 million or so which the plans had envisaged being raised had never been met, so their goals were never achieved.

[84] He recognised Dr Stevenson as someone who had built a complex business in the past and had faith in the Company's management team, more so than in the valuations in the business plans. He had initially invested £199,950 for 1,333 shares at a price of £150 each. Dr Stevenson had told him that Mr Hawkins and Mr Rafay thought that he should have paid a higher price than them, but he had not discussed the matter with them. He considered it fair that he should pay the same price as them in the same allotment round.

[85] By the end of 2020 and the start of 2021, the Company was facing a deepening liquidity crisis which looked as if it might come to a head in March or April 2021. It was unable to take a UK Government grant because of the need for it to make an upfront financial contribution to the work which the grant would have facilitated. The Company might have had to be mothballed to avoid insolvency. Institutional investors did not want to buy into the Company because they thought its development work was at too early a stage and posed too high an investment risk. A document circulated to all shareholders on

18 December 2020 had included a cash flow forecast prepared by Mr Everard from which the situation clearly appeared, and which had been accompanied by a suitable narrative. In these circumstances he was prepared to invest further in the Company, but only on tougher terms than before. There was no point in a formal valuation of the Company at that stage, but he had a value of £5 million in mind as being the level at which he would be willing to buy further shares. That would reflect the difficulties which the Company was facing. He had driven the share price in the transaction, and the board had had no real choice but to accept that. It appeared that he was the only one willing to put in further substantial sums at that time, which disappointed him. He did not wish to damage the Company's prospects by paying too low a price for more shares. His purchase had resulted in no more than trivial dilution to the other members' shareholding proportions, well below the proportion which the Stock Exchange regarded as material in the case of listed companies. Although he could not say exactly what the other shareholders had been told, they had been informed about the board's intention to accept his investment offer on 7 January 2021, which was tantamount to being a signal to them that they could offer too. He was also aware that Dr Stevenson had told Mr Rafay on 14 January that he was welcome to make an investment offer, and Mr Hawkins had been told the same. There were only six shareholders in the Company, and all had had everything explained to them equally. The transaction had been an acceptable rather than particularly good one for Mr McCann; the share price had subsequently fallen and no one else, other than Dr Stevenson, had made a further investment. The Company remained extremely fragile and was surviving rather than flourishing.

[86] In relation to remuneration for non-executive directors, no scheme had ever been agreed. He had been in favour of a scheme which would reward work for the Company but

which would have no impact on its cash position. The scheme initially drawn up had turned out, upon accountancy advice being rendered, to be incompatible with the retention of the tax benefits of the Enterprise Investment Scheme under which the shareholders' investments had been made, and was thus unworkable. He had drafted a further scheme which had been presented to the board and was due to be discussed and possibly approved at its September 2020 meeting. However, by that time Mr Hawkins had resigned from the board and there had been a deterioration in relations with him and Mr Rafay. There was little to no prospect of them being convinced to do work which would have qualified for remuneration under the draft scheme, and it was decided to drop it. It would have involved the performance of specific roles and tasks. Attending or observing board meetings was not qualifying work. Mr Hawkins did not understand the degree of regulation which would be encountered in the oil and gas field and the degree of development of the pipe which would be required to enter that market. He wanted to take the Company in a completely different direction, to the water pipeline market, but that was not what most of the board wanted. It had become clear that the board was not going to be able to work effectively with Mr Hawkins or Mr Rafay. The resignation email sent by Mr Hawkins had referred to an offer of investment he was supposed to have made, but Mr McCann was unaware of any such offer. An offer of remuneration had been made by Dr Stevenson to Mr Rafay on Christmas Eve 2020 but nothing had come of it.

[87] He did not understand the position taken by Mr Hawkins, that he had somehow been asked to pledge his own credit in connection with the proposed CBILS loan to the Company; all that the Bank wanted was a routine identity check in respect of each of the directors, and by refusing to go along with that, Mr Hawkins was effectively vetoing the board's decision to apply for the loan. Overall, he had had little exposure to Mr Hawkins in

connection with the affairs of the Company, and did not know how useful he had been to it, although he acknowledged that Mr Hawkins had had a successful business career and on that account might well have had a contribution to make.

[88] The process adopted for the 2023 share allotment was the same as had been adopted in 2021. Advice had been taken from the Company's lawyers on each occasion, and the litigation was underway by 2023.

[89] In re-examination, Mr McCann stated that his offer to invest in January 2021 was not conditional upon obtaining at least a 5% holding in the Company as a result of the allotment then, although he did regard that as a desirable outcome for him.

Dr Andrew Stevenson (75)

[90] Dr Stevenson stated that he was a Chartered Engineer and Chartered Physicist, and had worked as an industrial scientist, businessman and inventor. The Company had been founded to develop an innovative approach to pipeline manufacture, installation and monitoring, using intellectual property developed and patented by Scottish Enterprise. He had incorporated the Company in late 2010 as sole director and 100% shareholder in order to develop a working prototype and raise investment finance. He was sole director and shareholder until Mr Everard joined the Company as an unpaid director in December 2012 and became a shareholder in 2015. A Shareholders' Agreement had been developed by the Company's lawyers and entered into between himself and Mr Everard on 25 August 2015. The Company had only a single class of shares. Mr Hawkins and Mr Rafay signed a deed to adhere to the Shareholders' Agreement on 17 December 2019.

[91] He had met Mr Hawkins in 2014 through Hertfordshire Local Enterprise Partnership Board and became aware of his company Weldability SIF. Around 2015, Mr Hawkins had

expressed interest in making an investment in the Company. The Company and Weldability had partnered in two successful bids for Innovate UK funding in 2016/17. Mr Rafay had been introduced to Dr Stevenson by Mr Everard and Mr Abdullah had been introduced via Mr Rafay.

[92] A business plan was prepared in February 2016 and was reviewed as part of various other documentation and discussions, prior to the investments in the company by Mr Hawkins, Mr Rafay and Mr Abdullah. The business plan and discussions had made it very clear that the Company was a high-risk venture with no guarantee that targets would be met, and that it would have no immediate revenues. The 2016 business plan for the Company was carefully prepared by Dr Stevenson and Mr Everard to the best of their knowledge at the time.

[93] The investment process followed for each investment round was set out by the Company's legal advisors. All shareholders were notified of an investment offer received and given the opportunity to make their own offers. Mr Abdullah and Mr Rafay each invested £20,000 in June 2016, with Mr Rafay also paying a £4,000 option fee. Mr Hawkins had invested £40,000 in September 2016, and Mr Abdullah and Mr Rafay had further invested £80,000 and £20,000 respectively around September and October, with further investments in March and April 2017 of £20,000 and £80,000 respectively. Mr Hawkins made further investments of £20,000 in October 2017 and £60,000 in November 2018. By the end of that "Round 1" investment, by November 2018 Mr Hawkins, Mr Rafay and Mr Abdullah had each invested £120,000 at the same Company valuation of more than £2 million. After that round, Dr Stevenson held 100 of the shares in the Company, being 77.5%. Mr Everard held 11 of the shares, being 8.5%. Mr Rafay, Mr Abdullah and Mr Hawkins each held 6 shares, being 4.7%. At a share price of £20,000 this total of

129 shares valued the Company at £2.58 million. Mr Abdullah had invested a further £80,000 in June 2018, Mr Rafay £80,000 in November 2018 and Mr Hawkins £80,000 in April 2019. They each purchased a further two shares at a price of £40,000 each. This brought the total number of shares issued to 135 and at a share price of £40,000 the Company valuation would be £5.4 million. At this stage they had each invested a total of £200,000. They each held 8 shares, being 5.9% of the equity in the Company. The price per share was dramatically higher at this stage because subsequently, on 17 December 2019, the original £0.01 Ordinary Shares in the Company had been converted to £0.00001 Ordinary Shares.

[94] Under the Shareholders' Agreement there was no right for Mr Hawkins or Mr Rafay to participate in the management of the Company in any way. They were invited to participate in board meetings but there was never any expectation that they would participate in the day-to-day management of the Company. Only Mr Everard and Dr Stevenson ever worked full time in the business. Mr Hawkins and Mr Rafay were invited to join the board to monitor how investment funds were spent at closer proximity than from the distance of annual accounts and reports, but initially both declined. After Mr Hawkins sold Weldability he accepted the invitation to join the board in March 2019. Mr Rafay never became a director but was invited to attend board meetings as an observer. After Mr Hawkins joined the board, he became progressively more aggressive in board meetings and tended to behave as if he was a majority owner and not a minority investor. He did not really want to enter in board debate about decisions or accept a majority decision. That became an increasing problem. He became particularly adamant that the Company should stop development work and start sales, but industry feedback was that more development was needed. In July 2020 a strong difference of opinion about loans as a

finance instrument emerged between Mr McCann and Mr Hawkins. The former thought that they were a useful way of financing the company that reduced the need for equity investment and the latter was very strongly opposed to any form of loan. There was a majority board decision in favour of seeking a loan, but Mr Hawkins became quite belligerent in his insistence that it should not be applied for. The Company's bank required directors to complete identity check forms before they would issue the terms of loan or give a decision on eligibility. Mr Hawkins refused to provide that information. In effect he obstructed the application to the bank despite the majority board decision to proceed. Eventually at a board meeting on August 10 all directors other than Mr Hawkins were in favour of proceeding with a CBILS loan application. Following this decision Mr Hawkins noted via email to the other directors that on the advice of his accountant and solicitor he was declining to sign the form required by the bank. He submitted his resignation the next day by email. That resignation was accepted. Dr Stevenson still wanted to keep Mr Hawkins involved in the business as he felt that his sales skills could be a good asset. He offered Mr Hawkins a position as commercial advisor, which he accepted. However, no agreement was reached on what his responsibilities would be or what the remuneration would be for his services. Dr Stevenson did not ask Mr Hawkins to resign from the board; rather, Mr Hawkins issued a resignation letter the day after he was outvoted at a board meeting and refused to comply with a reasonable request to provide identity information to the Company's bank. Dr Stevenson accepted his resignation, but did not request it. It was true that Dr Stevenson was contemplating asking Mr Hawkins to resign unless his behaviour could become more constructive, but in the event he resigned voluntarily, which was a disproportionate reaction to being asked to complete simple documentation. After the resignation of Mr Hawkins, Mr Rafay never tried to attend a board meeting. He had been

influenced by Mr Hawkins and had become increasingly critical of the Company. He declined an invitation to attend the September 2020 board meeting in person. After March 2021, when solicitors acting for Mr Hawkins and Mr Rafay made unreasonable demands for remuneration that had never been agreed, the board chose not to invite him to further meetings as there was no real reason to do so.

[95] There was no agreement to remunerate the board for taking office as directors nor for their work in that respect. Mr Hawkins, through Weldability, did partner the Company in two Innovate UK projects and was offered a marketing opportunity for Weldability in Oman in January 2018. Mr Rafay and Mr Abdullah had also been involved in marketing events in Oman on the Company's behalf. Around 2016, Dr Stevenson formed the view that if a shareholder took a more active role in the company than just attending board and other intermittent meetings, then a way to remunerate him should be found. He suggested this in informal discussion with all shareholders. The suggestion had led to a lot of discussion to find a tax efficient scheme but there never was a conclusion and no remuneration scheme had ever been finalised or set up for shareholders. Neither Mr Hawkins nor Mr Rafay had ever worked in the business on any regular basis and no roles or responsibilities had ever been agreed with them.

[96] There was no particular process entered into to arrive at the share value or a Company value. There would be an initial price proposed and a negotiation between the prospective investor and other shareholders if there were differing views on what the share price should be for that particular investment round.

[97] In January 2020 a director of a US investment firm said that it was interested in making an investment of £20 million to commercialise fully the technology for the US market. Such an investment would have meant that the Company would have been

properly capitalised for commercial exploitation - a full team could be recruited, all tests and trials completed and a fleet of pipe-making machines commissioned for a credible market entry. The Company could also be properly marketed internationally. The optimism generated by this interest led to a further investment round in late 2019 and early 2020 at a valuation of £20 million, in order to encourage a share price negotiation with a venture capital investor to start at a valuation of £60 million. That was never an actual valuation of the Company determined through any valuation process or by reference to any particular metric. It was an indication of a possible starting point for negotiation with a venture capital investor wanting to make a major investment in the Company.

[98] The shares were subdivided in 2019 after which Mr Hawkins, Mr Rafay and Mr Abdullah each held 8000 shares. Mr Hawkins and Mr Rafay each invested around £40,000 for 267 shares in December 2019. Dr Stevenson invested £100,000 for 666 shares and Mr McCann invested around £200,000 for 1333 shares in March 2020. The valuation of the Company used for this investment round was £20.2 million. This came about because the board was aware that the minimum investment level of the US investor was £20 million and it would likely want to have 25% of the Company equity. That would mean a valuation of £80 million, and it was thought that a previous round with a new experienced investor like Mr McCann, who had run a large venture capital company, would encourage such a high valuation to be offered. After that investment round the shareholdings in the Company were: Dr Stevenson 73.2%; Mr Everard 8.0%; Mr Hawkins and Mr Rafay 6.0% each; Mr Abdullah 5.8%; and Mr McCann 1.0%.

[99] During 2020 the COVID-19 pandemic limited the ability to continue with site testing and no progress was made in discussions with the potential US investor. Mr McCann did make several introductions to potential investors but these did not lead to an investment.

Mr Hawkins did not offer to invest at the board meeting on 10 August 2020. Had he done so, Dr Stevenson would have welcomed such an offer. A proposal to invest from Mr Hawkins at that stage would, however, have been a complete change of attitude from him. In September 2020 new Innovate UK project funding was won. The Company would find it difficult to find the 30% contribution which was required. A board meeting was held on 30 September, followed immediately by a shareholder meeting which was attended by Mr Hawkins and Mr Rafay. A shareholder report on progress since 2016 was produced and it was made clear that the Company needed funds. During early December 2020 Dr Stevenson was engaged in email correspondence with Mr Hawkins, with the latter asserting that the Company was at risk of insolvency, but making no offer to invest. Dr Stevenson stated that there was no immediate prospect of insolvency because at that stage the Company did have the funds to meet its obligations as they fell due, and Dr Stevenson was aware that he had some cash that he could provide to the Company if needed. A letter from Dr Stevenson to Mr Rafay dated 15 December 2020 had left open to Mr Hawkins and Mr Rafay an opportunity to offer to invest. Around mid-December 2020, Mr McCann had said to Dr Stevenson that he wanted to improve his percentage shareholding position in the company but not at the previous high share price. He made an offer towards the end of December. By the end of 2020 the Company was in danger of not meeting the Innovate UK contract requirements. The lack of funding became more acute and although there was no immediate prospect of any formal insolvency because there was no debt, development work would have had to have stopped and the technology would have had to be mothballed. That would have spelled the end of the company's aspirations.

[100] By January 2021, the cash situation had continued to become more acute. On 1 January the Company's current account had only around £15,000 in it. There were

supplier and payroll payments amounting to around £21,000 required by the end of January and the cash flow forecast showed around £150,000 due to be paid out by the end of March. Dr Stevenson transferred funds to the Company to address the immediate issues and in anticipation (from prior discussions) that further investment would soon come from Mr McCann. Dr Stevenson deposited £25,000 on 7 January, £10,024 on 11 January and a further £15,000 on 14 January.

[101] Mr McCann had specified his investment offer as conditional on Dr Stevenson investing what he could alongside him. On 7 January 2021 an emergency board meeting was held to discuss his offer and the cash situation, and to agree on the share price suggested. All directors agreed that it was in the best interests of the Company to accept the investment offer made by Mr McCann and supplemented by Dr Stevenson. An investment letter was issued by email to all shareholders the same day. Enclosed with the letter was a shareholder consent form. Mr Hawkins and Mr Rafay had not made any investment offer during December. The 7 January letter was intended both as a notification and as an invitation to them to make an investment offer. It said that the board had met and approved the offer and since the directors held more than 80% of the Company shareholding it also said that the requisite approval for the disapplication of pre-emption rights had been met. The letter stated a 7-day deadline for a response because Mr McCann's investment was urgently needed and it was not possible to let the investment round drag on as it had done in 2016 and 2017. Mr Hawkins and Mr Rafay had always been slow to make any investments they offered. No offer was forthcoming from them. They could have offered to invest at any point. As shareholders they had the right to offer investment *pro rata* to their percentage holding and further funding offers would have been welcome. Minority shareholders could not be allowed to block an investment which was approved by the

requisite majority, and could not dictate the share price. Mr Hawkins had made no specific offer to invest since 2019, when he offered and invested £40,000. At no time during 2020 or 2021 did either Mr Hawkins or Mr Rafay give any indication that they wanted to invest further in the Company. As at January 2021 and thereafter they had no intention of investing and made no offer to invest.

[102] The position of those not investing was actively considered and despite the 7-day notice issued on 7 January, the board minute accepting Mr McCann's investment was not actually signed until 29 January, specifically to give Mr Hawkins and Mr Rafay time to respond and make their own investment offers, as they saw fit. The board position remained that either or both of them could avoid dilution by offering to invest on the same terms as the others investing then. That offer had been repeated and rejected. The same terms remained available to all shareholders.

[103] On 13 January Mr Rafay expressed concern that the share price had gone down. Dr Stevenson replied, repeating that Mr McCann's offer was the only one received and stating that any shareholder was free to make an offer of investment. Mr McCann deposited £250,009 on 15 January as his investment. Mr McCann expected Dr Stevenson to invest in the Company alongside him to show confidence in the future, so the latter agreed to convert funds he had loaned into equity investment at the same share price as paid by Mr McCann. There was little room for negotiation about the share price as Mr McCann was very clear what he was prepared to offer and Dr Stevenson was not in a strong position, there being no major investor on the horizon. Dr Stevenson did not think that the implied £5 million Company valuation was unfair in the circumstances.

[104] After the January 2021 investment round the shareholdings were: Dr Stevenson 70%; Mr Everard 6.6%; Mr Hawkins and Mr Rafay each 5.7%; Mr Abdullah 5.5%; and

Mr McCann 6.5%. The effect of that round on the percentage shareholdings was as follows: Dr Stevenson - 3.2%; Mr Everard - 1.4%; Mr Abdullah, Mr Hawkins and Mr Rafay each - 0.3%; Mr McCann - +5.5%. In March 2021 the Company's financial position was substantially improved by winning a £900,000 Innovate UK loan repayable over 7 years with a repayment holiday.

[105] In 2023 the Company had suffered further setbacks which were more serious in financial terms than in 2021. It had exhausted the £900,000 loan from Innovate UK and had to pay quarterly interest and also repayments in 2024. The company had however got closer to the possibility of commercial sales. A new business plan had been prepared. There had to be a further emergency investment round. Mr McCann was the only shareholder offering to invest. His investment offer was at a very much lower valuation that considerably diluted Dr Stevenson's share position, but he could see no alternative as no other shareholder had offered to invest. Mr Hawkins and Mr Rafay had had an ongoing opportunity to offer to invest since becoming shareholders, and that remained the case. The shareholders were a small group which was in frequent communication. There was no need to develop specific formal invitations. Nevertheless, express invitations to offer to invest had latterly been made to Mr Hawkins and Mr Rafay, with an indication of willingness to allow them to invest at the same price as the last round. That offer had been declined. A new business plan had been prepared, but the Company's financial position remained extremely worrying and it might not long survive.

[106] In cross-examination, Dr Stevenson stated that he had founded the Company in 2010 after Scottish Enterprise had spent £3 million on development costs. Mr Everard had been a shareholder since 2012 and a director since 2015. He and Mr Everard remained the only

executive directors of the Company. There was a separate management board for the day-to-day operation of the Company.

[107] The pipeline would require to have a Technology Readiness Level grading of 9 under the US Department of the Environment scale before it could be sold for use in the oil and gas industry. When the petitioners joined the Company, it was somewhere around 2, 3 or 4 on that scale and was presently at about 7. There had been no commercial sales to date.

[108] The petitioners had been invited to become directors of the Company when they first invested, as was fair and common practice. Each had initially declined, but had been observers until Mr Hawkins joined the board after selling Weldability.

[109] In the 2019 investment round, the share price made available to individual angel investors was £150, which was 50% of the notional price at which the shares would then have been marketed to institutional investors, although there were none of the latter. When that investment round began, there had been no interest from Mr McCann, and Mr Hawkins and Mr Rafay had only put in £40,000 each out of a total requirement by the Company for cash of £300,000. It was only after that that Mr McCann had come forward to invest in the round.

[110] The Company had prepared documents for circulation to potential investors which set out its potential if it got adequate funding, but in the event it had had to survive with drip funding, which had prevented it achieving that potential.

[111] In relation to the remuneration of the non-executive directors, Mr Hawkins had good sales skills and Mr Rafay had IT skills. Dr Stevenson thought it fair to explore whether they could work usefully for the Company and have some remuneration for that. There had been a whole series of discussions but no conclusion was ever reached. The first scheme which had been developed, in about March 2020, was abandoned when the Company's

accountants advised that it was incompatible with the Enterprise Investment Scheme under which investments in the Company had been made. When COVID-19 had come along, meetings had become virtual and that had had an unfortunate effect on relationships between the Company's members. When Mr McCann had joined the board, he was asked to produce an alternative remuneration scheme. That had been developed and discussed at the August 2020 board meeting, being remitted for final decision to the September meeting, by which time Mr Hawkins had, after becoming increasingly aggressive, resigned from the board. Dr Stevenson had written to Mr Hawkins and Mr Rafay on Christmas Eve 2020 making an offer of remuneration in respect of their work to that date, in order to bring the matter to a conclusion and keep shareholders supportive, but that offer had never been accepted. No tax or legal advice had ever been obtained in relation to an alternative scheme to that first conceived and then abandoned.

[112] Mr Hawkins had resigned after refusing to sign an identity check form in respect of the proposed CBILS loan application. He had not opposed the making of the application at the relevant board meeting, but had unexpectedly resigned the next day. Dr Stevenson had reluctantly accepted that resignation. The post of commercial adviser to the Company had been offered to him, which would have allowed him to benefit from any remuneration scheme which might subsequently have been set up. Mr Hawkins had not been told to sign the bank form or resign by Dr Stevenson, nor otherwise forced to resign; he had engineered the whole situation himself. He was against further development work being done. That was a legitimate position to take, but was not favoured by the majority of the board.

Mr Hawkins had made no definite offer to invest in the Company since late 2019, when he invested £40,000. Dr Stevenson was desperate for investment, but all Mr Hawkins did was

say that he had cash to invest and talk in vague terms about potential investment without coming forward with a specific offer.

[113] Mr Hawkins and Mr Rafay had been invited to join in a virtual meeting after the board meeting in September 2020, and had done so. Thereafter, no invitations to attend or observe board meetings had been issued to either of them. They were hostile, so there seemed little point in issuing such invitations. Had Mr Rafay asked to be invited, he would have been. Reports to shareholders about the Company's financial position had been made in October and December 2020, making it clear that money was needed and giving them the opportunity to consider their positions. By 18 December 2020, in particular, it was clear that the Company needed money to service a grant it had secured, and could not make the necessary commitments without further investment. It became apparent around then that institutional investment was not going to be forthcoming in the short term. Dr Stevenson was anxious not to put pressure on anyone to invest and did not positively ask anyone to do so. There was, however, an open invitation to offer to invest within the Shareholders' Agreement. Every member had the same opportunity to invest as every other member. Email exchanges with Mr Hawkins in December 2020 had been aggressive and insulting on his part. Given the hostility which Mr Hawkins had manifested, Dr Stevenson did not expect him to make an offer. Mr McCann's investment offer, which he had indicated was available in principle in December 2020, had unlocked the Company's ability to function in 2021. The board had decided to accept Mr McCann's offer of investment and close the investment round within a 7-day period in early 2021 because of the Company's history of extended such rounds. Dr Stevenson did not want his shareholding to be diluted, or for the share price to be depressed to the level Mr McCann was prepared to pay, but the Company needed money and Mr McCann's offer was the only one on the table. The institutional

investors being wooed at that time had not come forward with terms - had they done so, he would have preferred to deal with them. They had been talking about far higher valuations for the Company, in a range between £15 million and £60 million. Mr McCann's presence on the board was attractive to institutional investors because of his experience. It was fair to accept his offer of investment, and the board had decided to do so. The board included the holders of 80% of the issued share capital of the Company, which was what was needed to dis-apply pre-emption rights. Mr Rafay had raised queries about the board's proposal to issue shares to Mr McCann and the Company's need for money had been made clear to him. The same, accurate, information had been given to all the shareholders. Mr Hawkins and Mr Rafay had no interest in further investment. The allotment to Mr McCann diluted them very little, and they did not have to provide cash that they did not want to invest. The board had not formally approved the share allotment to Mr McCann until 29 January 2021, to give time for any issue raised by members to emerge and be dealt with. Neither Mr Hawkins nor Mr Rafay had agreed to waive their pre-emption rights, although their consent was not required given that the holders of 80% of the issued share capital of the Company had agreed. Advice had been taken from the Company's solicitors as to how to proceed, and the Company had been advised that it was safe to do what it had then done. When solicitors acting for Mr Hawkins and Mr Rafay had raised complaints in March 2021 about the share issue to Mr McCann, Dr Stevenson had offered to re-open the share round at the same price as had been afforded to Mr McCann, but that offer had not been taken up; rather, Mr Hawkins and Mr Rafay had said that they were not interested in investing at any price.

[114] In re-examination, Dr Stevenson stated that Mr Hawkins had suggested that he might invest further capital in August 2020 on a *pro rata* basis with the other shareholders, but no actual offer had actually been made. Mr Hawkins had said that he would not be

willing to invest further if bank borrowing was used, and his antipathy to further development of the pipe made no sense, as a developed product was what institutional investors and the market wanted. Relations with Mr Rafay were not that good, although he remained more professional than Mr Hawkins. He had never asked to join the board, despite being asked on several occasions. Once Mr McCann joined the board, there was a suitable number of directors for the Company.

[115] As to remuneration, neither Mr Hawkins nor Mr Rafay had made a significant contribution to the Company, although Mr Rafay's organisation of a seminar in Muscat, and the assistance of Mr Hawkins (through Weldability) to enable the Company to get and exploit a grant had been moderate such contributions.

Petitioners' submissions

[116] On behalf of the petitioners, counsel moved the court to sustain their fourth plea-in-law to the extent of finding that the Company's affairs had been conducted in a manner unfairly prejudicial to their interests, and to fix a hearing thereafter to determine further procedure.

[117] The powers afforded to the court in terms of section 994 were wide and flexible: *In re Macro (Ipswich) Ltd* [1994] 2 BCLC 354 at 404. In order to succeed in persuading the court that an order should be made in terms of section 996, the petitioners required to establish that the Company's affairs were being conducted, or had been conducted, in a manner that was unfairly prejudicial to them at least, or that an actual or proposed act or omission of the Company was such that it would be so unfairly prejudicial. The court required to consider the commercial realities of the individual case, and its determination would depend upon

the facts of the particular case, and upon its assessment of whether or not the conduct in question was, or had been, sufficient to warrant the granting of an order.

[118] The test was an objective one. Bad faith did not need to be established, nor did it have to be shown that any wrongdoer acted with the intention of causing prejudice to the aggrieved shareholder. Fairness was to be judged according to the commercial relationship between the parties, which was governed by the Company's articles of association and the Shareholders' Agreement entered into between the parties.

[119] The key applicable principles were set out in the speech of Lord Hoffmann in *O'Neill* v *Phillips* [1999] 1 WLR 1092, [1999] BCC 600. The concept of fairness had to be applied judicially and the content which was to be given to it by the court had to be based upon rational principles. The context and background were especially important. The manner in which the affairs of a company might be conducted was tightly regulated by rules to which the shareholders had agreed. However, the exercise of strict legal rights might be restrained if that exercise would be contrary to good faith. A member of a company would not ordinarily be entitled to complain of unfairness unless there had been some breach of the terms on which he agreed that the affairs of the company should be conducted. There would nonetheless be cases in which equitable considerations would make it unfair for those conducting the affairs of the company to rely upon their strict legal powers. Thus unfairness might consist in a breach of the rules or in using the rules in a manner which equity would regard as contrary to good faith. Reference was made to *Grace* v *Biagioli & Others* [2005] EWCA Civ 1222, [2006] BCC 85, per Patten J at [60] - [61].

[120] The conduct complained of had to be both unfair and prejudicial. The components were distinct: *Re Saul D Harrison & Sons plc* [1994] BCC 475, [1995] 1 BCLC 14 at 31. Unjustifiably excluding the petitioners from management decisions, or taking such decisions

in secret or without informing them could amount to unfair prejudice: *Robertson, Petitioner (No. 1)* 2010 SLT 143; *Re I Fit Global* [2013] EWHC 2090 (Ch), [2014] 2 BCLC 116. Prejudice was not confined to financial prejudice: *In Re Coroin* [2012] EWHC 2343 (Ch) per David Richards J at [630]. Allotting further shares in the company in order to dilute a minority shareholder's shareholding was a classic example of unfairly prejudicial conduct.

[121] The evidence of Mr Hawkins and Mr Rafay should be accepted as credible, reliable and supported by the contemporaneous documentary evidence. It should be preferred to the evidence of the petitioners.

[122] In relation to the respondent witnesses, Mr Abdullah was seeking to assist the court, but much of his evidence was a second-hand account of what others had told him about relevant events. Mr Everard was credible but his evidence about the circumstances of the resignation of Mr Hawkins was also largely hearsay. Mr McCann should not be regarded as credible or reliable. He was acting in his own self-interest and was keen to dismiss the contribution of the petitioners to the Company. He dismissed the valuations placed on the Company by the executive directors as being plainly wrong. He acted in his own interests in orchestrating his further investment in the Company in January 2021, having no regard to the effect of that investment on the petitioners. He accepted that he was effectively the one "running the show, and setting the share price". Similarly, the court should find that Dr Stevenson was neither credible nor reliable. He refused to accept, in the face of clear, contemporaneous documentation to the contrary, that he repeatedly told the petitioners one thing, whilst doing another. He repeatedly sought to gloss or read words or meaning into documents. He refused to accept the plain meaning of the words in the documents which he himself had drafted, which he presented to the petitioners, and upon which they relied. His position in relation to seeking investment from existing shareholders was odd. He

repeatedly referred to not wanting to "put pressure" on existing shareholders, when in fact he simply did not ask them to invest, or offer them the opportunity to do so.

[123] In relation to that aspect of the petitioners' case concerning the issue of shares to others, the acceptable evidence clearly established that the petitioners were brought on board to benefit the Company, both by way of financial investment and for their expertise. They did their best to assist. They invested in the Company in good faith and sought to assist its development, attending board meetings and providing advice to the board. They did so on the basis of information provided to them by the executive directors, Dr Stevenson and Mr Everard. That information (which included investment opportunity documents and reports to shareholders, as well as emails from the executive directors) suggested that the Company was developing well, meeting its milestones and generating interest, or potential interest, from institutional investors at very substantial valuations. In late 2020, no information was given to the petitioners which suggested that there was a need for "emergency" funding. On the contrary, Dr Stevenson confirmed by email to Mr Hawkins on 7 December 2020 that there was no immediate prospect of insolvency. The cash position at that time was not as poor as the respondents now maintained. There was no need for the "emergency" fundraising in early January 2021 (or at least no need for such fundraising on such a short timescale) whereby Mr McCann was allowed to invest at a price of £37 per share, and from which the petitioners were excluded. The earlier offer made by Mr Hawkins further to invest in the Company had been ignored. The issue of shares to Mr McCann in January 2021 at a price of £37 per share was both unfair and prejudicial to the interests of the petitioners. They were not offered the opportunity to invest on the same terms.

[124] The documentary material before the court supported the petitioners' position on the unfairly prejudicial nature of the share issue to Mr McCann in January 2021. The board meeting of 25 October 2019 had approved valuations for the Company for the purposes of institutional investment at £25/30 million for 2019 and £50/60 million for 2020 (in the latter case after successful manufacturing field trials) and approved the issue of shares to existing shareholders before the end of November 2019 at a 50% discount to the price implied by the valuation for 2019 (ie £150 rather than £300). The petitioners had invested at the £150 price. An investment opportunity document for the Company dated 30 October 2019 described Mr Hawkins as a member of the board of the Company and as an angel investor in it. The value of the Company for the purposes of institutional investment was stated as being £50 million-£100 million, with tenfold returns possible. It went on to suggest that the Company had reached a stage of technical development of the pipe justifying a current valuation of £60 million, implying a price of £437 per share.

[125] On 1 July 2020 Dr Stevenson had emailed the other pre-existing shareholders confirming that Mr McCann had been permitted to invest at the "agreed share price for this round", ie £150, despite the fact that that price had previously been said to represent a 50% discount for existing shareholders, which he was not. An email sent by Mr Hawkins to the other shareholders in the Company intimating his resignation from the board stated that he had offered to invest cash in the Company at his current level of stock holding, but that that offer had been ignored in preference to seeking external bank funding. On 2 December 2020 Mr Hawkins emailed Dr Stevenson asking for an assurance that the Company would be "solvent in six months' time as the cash flow runs out and we run out of runway". The next day Dr Stevenson responded, stating: "There is no immediate prospect of insolvency and management will prepare an in-context newsletter in the timescale indicated on the

companies progress and future prospects." The exchange had continued, but nowhere in it was there any mention of any alleged need for emergency fundraising. A report had been made to shareholders on 18 December 2020, containing a cashflow forecast which stated that the Company was in discussions with more than one potential new equity investor and anticipated new equity finance of £2 million in the first quarter of 2021. It also referred to loan and grant income. It did not mention any need for emergency fundraising.

[126] On 7 January 2021 a special board meeting had taken place, the minute of which disclosed that, in order to address the funding needs of the business, the board had agreed to close an investment round as quickly as possible at a price which was left blank in the minute, to invite shareholders to waive their pre-emption rights, and to see if any further offers would be forthcoming within 7 days. Mr Hawkins and Mr Rafay were not in attendance at the meeting and were unaware of any investment round. Neither had been asked whether they wished to invest further in the Company. On the same day Dr Stevenson had emailed all shareholders stating that the Company urgently needed cash to make commitments to move forward in 2021 and attaching a letter from the board which indicated that Mr McCann had offered to invest £250,000 cash provided he could improve his position in the Company to an equity percentage of at least 5%, that he was performing the important role of finance director unpaid, and that it seemed fair that he should be at a similar shareholding level to other shareholders, which in effect meant offering him shares at a lower price than previously. It further stated that the board considered the lower price to reflect current market value and that Dr Stevenson would also be contributing some further funds on the same basis. It noted that the board agreed that it was in the best interests of the Company to proceed on that basis and that if the consent of the holders of at

least 80% of the shares in the share capital of the Company was obtained, a board meeting would be held to approve the contemplated issue and allotment of shares.

[127] Mr Rafay had posed certain questions about this proposal to Dr Stevenson on 13 January 2021, to which he had responded. He had stated that the low share price proposed was an emergency fundraising measure and was designed to be fair to Mr McCann. It served to confirm that the offer of investment to Mr McCann at £37 per share was unfairly prejudicial to the interests of the petitioners. The offer was designed to be fair to Mr McCann, not to them. They were not asked to invest at a price of £37 per share. Mr Everard confirmed that the board had decided not to include the petitioners in the January 2021 fundraising round. The minutes of the Board meeting on 29 January 2021 confirmed the allotment of shares to Mr McCann and Dr Stevenson. Finally, the Company's bank statements for the latter part of 2020 and January 2021 disclosed that the Company's cash position was not as dire as Dr Stevenson had suggested.

[128] The next aspect of the petitioner's case concerned exclusion from management. The court should conclude that Mr Hawkins was pressured to, and did, resign as a director of the Company as a result of the actions of Dr Stevenson. Following his resignation, neither petitioner was invited to attend board meetings, on the basis of a deliberate decision by the remaining directors to exclude them. It follows that, from August 2020, both petitioners were excluded from involvement in the management of the business of the Company. Mr Hawkins was a director of the Company until he resigned on 11 August 2020. Having Mr Hawkins on the board was a benefit to the Company, and his credentials were used to boost the Company's profile. He was forced to resign, having been put under pressure from Dr Stevenson to do so, given that he was not prepared to sign the paperwork requested by the Company's bank in connection with the proposed application for a CBILS loan.

Mr Hawkins was aware that non-trading companies were not entitled to apply for such a loan. The loan application was later made, and rejected. It follows that the position in respect of the loan application taken by Mr Hawkins was correct. He was not invited to rejoin the board once notice of the rejection of the application was received by the Company. He was offered by Dr Stevenson, and accepted, a role as a commercial adviser to the Company. That suggested that his role was viewed by Dr Stevenson as integral to the development of the Company. The evidence of Mr Hawkins was that he felt that this would be a continuation of his role in the Company, with a different name.

[129] Mr Rafay was invited to, and did, attend meetings of the board of directors as an observer. After Mr Hawkins resigned as a director, Mr Rafay was no longer invited to attend board meetings. The roles of the petitioners in the Company were clearly viewed as sufficiently important and time consuming to justify the offer of remuneration made to them.

[130] The final aspect of the petitioners' case concerned the failure of the Company to remunerate them for work done by them, despite an agreement having been reached that such remuneration would be provided. Each of the petitioners was offered remuneration in the form of growth shares in the Company, which shares were not issued. That had been agreed upon by the board, who later approached accountants who raised issues with the scheme.

[131] The minutes of the board meeting on 25 October 2019 recorded that it had been agreed to consider the grant of share options for directors undertaking specific tasks in line with milestones. Subsequently, Dr Stevenson had emailed Mr Rafay stating that the Company planned to implement a growth share scheme for non-executive directors in recognition of their contribution to the Company, and proposed that growth shares

of £21,000 in value (at a price of £150 per share) would be issued when the scheme was established. The minutes of the board meeting on 24 March 2020 noted that it had been resolved to commission the Company's accountants to develop a growth share scheme along the lines suggested. However, it became apparent on advice from the accountants that the growth share scheme was unviable due to adverse interactions with the Enterprise Investment Scheme, and Mr McCann had drafted a substitute share bonus scheme which was circulated by Dr Stevenson on 25 June 2020 after the June board meeting. That scheme was said to have the purpose of replacing normal non-executive director fees with a deferred payment. At the board meeting held on 10 August 2020 it was resolved to set up a remuneration committee to frame implementation details for the scheme, once it had been put into terms drafted by lawyers, for recommendation to the September meeting.
Mr Hawkins took from that resolution that the offer made by way of remuneration had been accepted as proposed, and would be implemented. On 24 December 2020 Dr Stevenson had written to Mr Rafay offering him £10,000 by way of units in the deferred bonus scheme in respect of his services to the Company to the end of 2020.

[132] In these circumstances, the petitioners moved the court find that they had suffered unfair prejudice, to uphold their fourth plea-in-law to the extent of finding that the Company's affairs had been conducted in a manner unfairly prejudicial to their interests, and to fix a hearing thereafter to determine further procedure.

Respondents' submissions

[133] On behalf of the respondents, counsel submitted that only a limited number of factual issues were in dispute between the parties. On such issues, the evidence of the respondents should be preferred. Both of the petitioners were frustrated with the direction

of the Company as determined by the majority of the board. Both were experienced businessmen and expected their views to be taken seriously. They did not like being in the minority. Mr Hawkins clearly had substantial disagreements with the respondents, and that had led him to overstate his position on occasion. Mr Rafay had a narrative which he wished to convey in his evidence, regardless of the questions he was asked. That led him, too, to overstate his position from time to time, as when he asserted that he might still have been willing to invest in the Company in 2023 after commencing these proceedings asking to be bought out of it. Both petitioners appeared to have retrospectively rewritten history in their own minds in order to advance their case. For example, both gave evidence that they were unhappy about Mr McCann joining the Company as a shareholder in the terms that he did, but on 1 March 2020 both had signed a document confirming their agreement to it. Both of them had similarly overstated what had been said to them in the correspondence about remuneration.

[134] The respondents, by contrast, had sought to address all the questions put to them, and made concessions when appropriate to do so. Their evidence demonstrated a degree of self-reflection, and indeed willingness to accept where things could have been done differently, which was notably absent from the petitioners' evidence. The absolutist position of the petitioners was to their detriment. The court ought to conclude that the Company was being run by experienced businessmen, each of whom brought different perspectives and skills to the board.

[135] As to the applicable law, a concise summary had been given by Lord Tyre in *Gray* v *Braid Group (Holdings) Ltd* [2015] CSOH 146 at paras [22] - [24]. It was emphasised that the petitioners had to establish both prejudicial and unfair conduct - *Gray* at [22]. The concept of fairness had to be applied judicially and the content given to it had to be based on rational

principles and viewed in context - *O'Neill* at p 1098. Something that was unlawful, such as by being in breach of the Articles of Association, was not necessarily unfair - *Gray* at [23]. Reference was also made to *West Coast Capital (Lios) Ltd* [2008] CSOH 72 at para [19] and to *Bailey* v *Cherry Skip Hire Ltd* [2022] EWCA Civ 531 [2023] BCC 1 at para [24]. A shareholder signed up to management of a company lawfully by the directors in accordance with its Articles of Association and any shareholders' agreement. This was not a quasi-partnership company, or a company where there was a relevant underlying relationship of trust and confidence amongst the members.

[136] The critical issue in this case was the allotment of shares by the directors. The starting point was that the allotment of shares was a lawful thing for the directors to do. Section 550 of the 2006 Act authorised the directors of a company to allot shares, subject only to restrictions in a company's Articles of Association.

[137] The written agreements governing the relevant rights of members of the Company could be summarised as follows: Dr Stevenson and Mr Everard had entered into a Shareholders' Agreement in 2015. Both petitioners signed Deeds of Adherence to that Agreement when they became members in 2016. The Company adopted new Articles of Association on 17 December 2019, and both petitioners signed the written resolution adopting the new Articles on that date. On the same date the then members of the Company entered into a deed varying the Shareholders' Agreement.

[138] Clause 2.2 of the 2015 Shareholders' Agreement required each shareholder to use his reasonable endeavours to promote and develop the business to the best advantage of the Company. Clause 4.1 of that Agreement entitled Mr Everard to appoint one director to the board of directors for as long as he had 5% of the issued share equity of the Company. No other shareholder had similar rights. The December 2019 variation made certain changes to

that provision, but did not alter the fact that it was only Mr Everard who had this right. Clause 5.1 of the Agreement provided that certain matters were "Reserved Matters" requiring the prior written approval of shareholders holding at least 70% of the issued equity share capital. Those "Reserved Matters" included both increasing the amount of the Company's issued share capital, and establishing any share option, bonus or incentive scheme of any nature for directors or employees. Clause 6.1 provided that the Company was to be supervised and managed by the board. Clause 9 imposed certain restrictions on the transfer of shares. Clause 16 provided that the terms of the Agreement were the entire terms agreed between the parties and that no other representations or assurances had been relied upon. Clause 19 provided that the parties did not intend the creation of a partnership.

[139] Clause 2.2(b) of the 2019 variation to the Shareholders' Agreement disapplied the right which Mr Everard had previously enjoyed to veto any waiver of pre-emption rights. The parties agreed by way of clause 2.1 in the 2019 variation that other than insofar as expressly varied the 2015 Shareholders' Agreement remained in full force and effect.

[140] Article 4 of the 2019 Articles provided that the minimum number of directors was two. Article 8(10)(c) provided that a director with an interest in a transaction was still entitled to vote, provided that the interest was declared to the board. Article 10 made provision for the allotment of further shares. Article 10.2 provided that if the Company proposed to allot any shares, it first had to offer an allotment to all shareholders on the same terms. Article 10.2 was however subject to Article 10.6, which provided that:

> "The provisions of articles 10.2 and 10.3 shall not apply to the issue and allotment of equity securities made with the prior written consent of the holders of at least 80% of the issued share capital of the company for the time being and the issue and allotment of such equity securities shall be at the disposal of the directors who may allot, grant options over or otherwise dispose of them to any persons at those times and generally on the terms and conditions they think proper."

Article 12 made provision for how shares could be sold and at what price.

[141] This was, accordingly, a case where there was a detailed series of contractual provisions governing the circumstances in which the directors were entitled to allot shares. If those provisions were followed, that ought to be the end of the matter. There was a presumption that directors exercising such a power did so *bona fide*: *Charles Forte Investments Ltd* v *Amanda* [1964] Ch 240 per Willmer LJ at p 253 - 254 and Danckwerts LJ at p 260 - 261, affirmed in *Village Cay Martin* v *Acland* [1998] BCC 417 at 424. The court would not ordinarily review the decisions of directors on questions of management of the company, such as raising finance, or on matters of commercial judgement, if arrived at in good faith: *West Coast Capital (Lios) Ltd* [2008] CSOH 72 at [19]. There was no evidence of bad faith in this case.

[142] No case was stated that there had been any breach of the terms of the Company's constitution or Shareholders' Agreement. The petitioners agreed to a variation of the terms of their contractual relationship with the Company and other members in December 2019 without seeking to negotiate different terms. The Company was admittedly not a quasi-partnership, but rather consisted of shareholders who were experienced businessmen and investors (a point which was said to be "very important" by Lord Hoffmann in *O'Neill*). The reasonable expectation of the parties was that they would abide by their legal obligations, but nothing more. The petitioners would require to show that actions which they could not have reasonably envisaged at the time the parties re-negotiated their commercial relationship in December 2019 had occurred and amounted to unfair prejudice.

[143] At a high level, the point could be made that the dispute was about the direction of the Company. The petitioners felt that there needed to be a quicker route to commercialisation. The majority of the board disagreed. That disagreement, exacerbated by

the reduced opportunities to have discussions in person to resolve issues as a result of COVID-19 in 2020 - 2021, came to a head in around August 2020 when Mr Hawkins resigned from the board. That was exactly the sort of disagreement that required to be resolved on a board: it was not the sort of disagreement that entitled the petitioners to a remedy under the 2006 Act. It was always known to the petitioners that they were investing in a high-risk business venture that might or might not make a return.

[144] The primary ground of complaint of the petitioners was that their shareholdings had been devalued and diluted unfairly by way of the January 2021 allotment, without any proper or commercial rationale. However, the decision to allot shares in 2021 was one taken unanimously by the board on 29 January 2021. It was to allot a further 8,109 shares (6,757 to Mr McCann and 1,352 to Dr Stevenson) in return for an investment of £250,009 from the former and £50,024 from the latter. The effect of that allotment was to dilute the holdings of all shareholders with the exception of Mr McCann. The petitioners were not singled out for treatment to their prejudice, and the extent of the dilution was 0.3% each, which was *de minimis*. The directors exercised their right to allot the shares by disapplying the pre-emption rights in accordance with Article 10.6 of the Company's Articles of Association, just as the petitioners had agreed could be done just over a year earlier in December 2019. Article 10.6 of the Articles expressly disapplied the obligation on the directors of the Company first to approach the petitioners to see whether they wished to invest on the same or similar terms. There was no obligation on the directors to consult with the petitioners, nor to approach them inviting investment. Nonetheless, the petitioners were told about the proposed investments from Dr Stevenson and Mr McCann immediately after the board met on 7 January 2021. The petitioners were both experienced businessmen and did not need to be told that they could make an offer to invest at the same, or better, terms than were being

offered by those individuals. However, in an email to the petitioners on 13 January 2023, Dr Stevenson expressly told them that if they wished to make an offer, that would be considered by the board. They made no offer. Had they done so, it would have been taken seriously. The respondents decided that it was in the best interests of the Company to accept the offers of investment made by Dr Stevenson and Mr McCann. There was no evidence that they acted in bad faith in doing so, and indeed in evidence both petitioners distanced themselves from any such suggestion. It was not the role of the court to decide whether the decision had an acceptable commercial rationale, as matters of commercial judgment were to be left to the directors of the Company.

[145] In any event, the 2021 allotment had to be understood in its context. There had been a deterioration in the relationship between Mr Hawkins and Dr Stevenson in particular, and Mr Hawkins had become disillusioned with the Company, as could be seen from the tone of his communications in the latter half of 2020. There had also been a deterioration in the relationship between Mr Rafay and Dr Stevenson. Neither petitioner was in a position where he wanted to invest further money in the Company in early 2021, and Dr Stevenson had no reason to suppose that either of them did. The petitioners had offered no positive evidence of what they were willing to invest and on what terms. They had not established that they had been deprived of an opportunity that they would otherwise have taken up. In those circumstances there was no unfairness to them.

[146] In any event, there had been no prejudice. The petitioners did not wish to invest, and the value of their investment was improved by the development of the Company's technology enabled by the 2021 investment round. The Company in any event subsequently offered to allot further shares to the petitioners at the price paid by Mr McCann in January 2021, but the petitioners declined that offer. Nor was it the case that Mr Hawkins

had made offers to invest which had been rebuffed by the respondents. As Mr Hawkins stated in his resignation email of 11 August 2020 and in a follow-up letter of 21 August, any further investment from him was conditional on all shareholders investing in proportion to their shareholding and on the Company not taking on further loan funding. In replying to the resignation email on 14 August, Dr Stevenson had noted that he was happy to discuss further funding proposals on the same terms as Mr McCann had invested in March. Mr Hawkins had accepted that he made no subsequent offer to invest.

[147] As to the commercial rationale for the decision taken in January 2021 (with which the court should not concern itself, that being properly a matter for the directors), Mr McCann considered that the Company was approaching a liquidity crunch in late 2020 and saw his choice as being one of deciding whether to invest more to keep the business alive, or effectively lose his investment. Without further investment, the risk was that the Company would have to be mothballed. In order to access an available government grant worth £800,000, the Company would require cash flow to meet costs whilst payment of that funding was awaited. Mr McCann explained that the decision on how much to offer for the shares was his. He explained that his investment was based on calculating a notional value of the Company which was considerably lower than that at which he had invested in March 2020, and roughly in line with what he understood the petitioners had invested for. External investment had not materialised. Dr Stevenson was unhappy about the share price being offered by Mr McCann but felt he had no choice but to recommend it to the board and ultimately took the view it was fair. Mr McCann insisted that Dr Stevenson should invest something, but his shareholding in the Company was still diluted as a result of the allotment. Mr Everard considered that it was in the Company's best interests to accept the offer from Mr McCann, notwithstanding that it diluted his own interest by 0.4%. He

explained that the Company needed to know that it had funds in place to make commitments to third parties, even although it would later receive grant income, as the Company would need to meet outgoings in the first instance, and would only recoup them around 3 months later. Each of the respondents explained how difficult it was to value a start-up company which had no sales revenue. The likely need for further investment in the Company in early 2021 was not news to the petitioners. Mr Everard had explained that there was detailed discussion about the Company's finances, and the fact that a crunch point would be reached in early 2021, at the August board meeting. He had provided detailed financial information to each of the parties, including the petitioners, on 7 August 2020. That information indicated, in short, that the Company could have cashflow problems around the start of 2021. Similar views had been expressed at the meeting in September attended virtually by the petitioners. The terms of the communications from Mr Hawkins to Dr Stevenson in early December 2020, enquiring about the Company's solvency, made it clear that the petitioners were aware of financial difficulties. Dr Stevenson was able to advise that the Company was not at risk of insolvency, but that was not the same as saying that it was in a good financial position. That the Company needed cash was again reiterated in information sent to shareholders on 18 December 2020, including a cashflow statement showing the Company's costs as a figure printed in red and greater than the income unless new equity investment of £2,000,000 was obtained in the first quarter of 2021. The text specifically noted that some members of the board had indicated they could cover further investment if the need were to arise. The petitioners could have been in no doubt that this was a company in need of cash to be able to grow.

[148] On the issue of being involved in the management of the Company, the petitioners' status as shareholders neither conferred any right of participation in management nor made

it inequitable for the other shareholders to refuse to admit them to management absent an understanding that the shareholder would be concerned in management: *Baker* v *Potter* [2004] EWHC 1422 (Ch), [2005] BCC 855 at [90] - [91]. It was not in any event unfair if a petitioner voluntarily withdrew from management: *Maresca* v *Brookfield Development and Construction Ltd* [2013] EWHC 3151 (Ch) at [38].

[149] Mr Hawkins had not been excluded from the management of the Company. He was on its board and concerned in its management until he resigned on 11 August 2020. His resignation email should be taken at face value. In it, he explained the reason for his decision to resign, which stemmed from a fundamental disagreement with the other members of the board as to the direction of the business. He had repeated his position that he chose to resign in his email to Dr Stevenson of 3 December 2020. He was not forced off of the board; rather, he was asked to comply with the majority decision. That was his obligation in terms of Article 3.3 of the 2019 Articles. Mr Rafay had never been concerned in the management of the Company. He was invited to attend board meetings for a period. There was no legal right to attend board meetings as an observer. He had been invited to join the board on several occasions by Dr Stevenson but chose not to accept. Mr Hawkins did not ask to rejoin the board after his resignation. Mr Rafay had not asked to join the board at any stage.

[150] On the issue of remuneration, the petitioners had no right to receive a financial reward in respect of the capital they invested in the Company. There was no evidence that the Company had distributable reserves to enable a dividend to be paid to shareholders. It ought to have been apparent to the petitioners that they were investing in a start-up company. If it became a profitable company, the petitioners would at that stage receive a financial reward for the investment of their capital. No right to remuneration had been

provided for in the Articles or in the revised Shareholders' Agreement agreed in December 2019. No specifics were given as to what work the petitioners were supposed to have done which would entitle them to remuneration. No role had ever been agreed for them. They were obliged under the Shareholders' Agreement to use reasonable endeavours to promote and develop the business, with no expectation of receiving remuneration.

[151] There had been discussions amongst the parties in 2020 about creating a scheme which might provide financial reward for past work and to incentivise future work for the Company. In particular, on 3 March 2020 Dr Stevenson had emailed Mr Rafay noting that the Company planned to implement growth shares for non-executive directors. He set out a proposal which was intended to be agreed in principle at the next board meeting. He noted that the purpose of the scheme was to motivate towards future objectives and contributions as well as the past, and observed that he was discussing the proposed scheme with lawyers and tax accountants. On 24 March 2020, the board resolved to commission the Company's accountants to develop a growth share scheme. However, the advice received meant that such a scheme was not viable, as it would harm the Enterprise Investment Scheme relief for all parties, and it was unanimously agreed not to continue with it. In June 2020, Mr McCann had been commissioned to consider a different scheme that could work. On 24 June, he had prepared a discussion document, setting out a scheme that could apply to non-executive directors. Mr Rafay would need to have become a director to qualify for the scheme, and Mr Hawkins would need to have remained a director, or else specific roles would have had to have been agreed with them. The purpose of the scheme was to incentivise future contributions. On 1 July 2020 Dr Stevenson had explained to the petitioners that any scheme would need to be drawn up by lawyers and approved by the board. At the board meeting on 16 August 2020 it had been noted that a draft had been requested from lawyers and

would be discussed at a subsequent board meeting. It was resolved that Mr McCann should set up a committee to work on implementation details. Mr Hawkins had resigned from the board shortly thereafter, and would thus no longer qualify for the scheme. Mr Rafay had never joined the board. There never had been a scheme. Following the deterioration in the relationship between the parties, there was no realistic possibility of the petitioners doing further work for the Company and there was no need to put in place a benefits scheme for them. The petitioners had not been singled out for special treatment. Neither Mr Abdullah nor Mr McCann received any remuneration from the Company or participated in any reward scheme. Only Dr Stevenson and Mr Everard, who worked in the Company full time and were the executive directors, and the Company's other employees, were remunerated. There had been no attempt to particularise what precisely the petitioners contended they were required to be remunerated for.

[152] In conclusion, the petitioners had clearly reached the stage where they wished to withdraw their investment from the Company. They disagreed with how the respondents were managing the Company and no longer felt valued. However, that was different from being the victims of unfair prejudice. A route to exit from the Company was set out in the Articles. The petitioners were trying to use the mechanism of these proceedings to attempt to leverage a more advantageous exit from the Company than would otherwise be available to them or any other member. There was no proper basis to make a finding that the respondents had been managing the Company in a way which was unfairly prejudicial to the petitioners.

Decision

Witnesses

[153] I had no difficulty in accepting the evidence of all the witnesses in the case as generally credible and reliable in relation to matters of primary fact. Where differences in their testimony appeared, those differences were plainly either the result of varying perspectives being brought to bear on the significance of those facts, on matters of hypothesis, or on issues of no materiality, directly or indirectly, to the resolution of the points in dispute.

[154] So far as could be determined from the relatively brief period which they each spent giving evidence, all of the members of the Company brought unique attributes and personalities to their joint enterprise. A basic understanding of those features assists in understanding how events played out as they did and stand now where they do.

[155] Dr Stevenson is at heart a scientist, and would prefer to devote himself as much as possible to the technical aspects of the Company's progress rather than micro-managing the difficulties of various other kinds which present themselves from time to time in matters corporate. Absent his efforts, it is difficult to see that the Company would have advanced remotely so far as it has in the development of its pipe technology. It should not be thought, however, that his scientific bent entails any very significant degree of unworldliness. Further, he is a polite and gentlemanly individual who expects similar standards from those with whom he deals. He has a tendency to express himself, at least in writing, in a manner which is susceptible to misunderstanding, at least by those who do not share his mindset, though I would reject any suggestion that his propensity for mild ambiguity is a deliberate choice on his part.

[156] Mr Everard is an accomplished company administrator and a man of patent and complete honesty. His abilities admirably complement the technical skills of Dr Stevenson and he can retain a balanced view of people and events, and maintain relationships, in circumstances where others might find that difficult. I formed the impression that, although he might find it unseemly to engage in public disagreement with Dr Stevenson, he would in no way be inhibited in expressing his views clearly and persuasively in private. He is not merely Dr Stevenson's cipher.

[157] Mr McCann is an experienced accountant and has evident skills in the corporate finance and venture capital fields. He appears to approach issues predominantly from the standpoint of financial analysis. That can give rise to a very business-like manner which at times may appear brusque and better suited to more impersonal corporations than the Company. His capacity for understanding points of view with which he disagrees, and demonstrating patience with those who espouse them, seems somewhat limited. These features mean that he is someone for whom those who cross him might readily form a firm dislike.

[158] Mr Abdullah has valuable connections in those echelons of Omani society which will be useful in the marketing of the Company's pipe in the oil and gas industry in that Sultanate at the right time. I found his evidence the least useful of all the witnesses, not because he was remotely seeking to be unhelpful, but firstly because he appeared to take a less acute interest in the affairs of the Company than others, and consequently tended only to be able to relate matters at some remove from first hand, and secondly because diplomacy for him seemed to be more a calling than merely a profession.

[159] Mr Hawkins is a self-made man with considerable and very well-founded confidence in himself and his own abilities. He has been an extremely successful businessman, with all

that that entails, and has also contributed most valuably to the public interest. His manner can at times be rather bluff, but remains very personable. The suggestion that he is used to being at the head of a business, and therefore may find it trying to be merely a cog in a larger wheel, has some traction. It does not take the benefit of hindsight to appreciate that he and Mr McCann would be likely to form a volatile mix.

[160] Mr Rafay is an intelligent and articulate individual with a background in complex IT issues. He is thoughtful and measured in his actions and communications. Naturally enough, he takes a keen interest in his substantial investment in the Company and the matters likely to affect its value. His alignment with Mr Hawkins is by no means the result of the exertion of any influence on him, but is the product of his own careful consideration of what he wants from his investment in the Company.

[161] In addition to the combination of talents just described being available to the Company, its pipeline technology appears, once it has been developed to the necessary extent, to have the prospect of changing radically the markets which it enters and thus to be extremely valuable. That the Company's potential worth is so high has been both a prime driver for the attraction of the private investment which it has enjoyed and equally a cause of the disagreements which have led to the current dispute.

The law

[162] The law in relation to section 994 of the 2006 Act is not controversial and only a few remarks need to be made about it in the context of this case. It is not suggested that any of the actions complained of by the petitioners amount to breaches of the provisions of the Company's Articles of Association or of the Shareholders' Agreement. It is equally not contended that the Company is a quasi-partnership, at least in the sense that that word is

used in the context of applications of this sort. It was submitted on behalf of the respondents that the combination of those circumstances resulted in the prospect of the Company's affairs having been conducted in an unfairly prejudicial manner being more theoretical than real. I do not accept that submission; while in the abstract those circumstances are not particularly conducive to a finding of unfair prejudice, the question must always be whether conduct prejudicial to the interests of the petitioners was, objectively viewed, fair or equitable in the particular context against which it occurred. While it is true that the Articles and Shareholders' Agreement do not forbid what is said to amount to unfair prejudice in this case, nor do they mandate it. In such circumstances a close examination of what is said to have happened, how and why, is necessary before any conclusion can be reached as to the presence or absence of unfairly prejudicial conduct. That examination, as has often been remarked, must be conducted along rational lines and proceed by reference to criteria apt to inform a decision on the equities of the situation, for example by asking whether like circumstances have received the same or similar treatment, or whether clearly-based understandings or expectations inherent in the nature of the parties' relationships as members of the Company have been observed or departed from. Often a shorthand indication to the fairness, or otherwise, of particular conduct may be found by asking whether the respondents would be likely to have regarded it as fair had it been done to them rather than by them. Finally, although it may be tempting in the course of the analysis to split the notion of unfair prejudice into its constituent parts of unfairness and prejudice, it is important to remember that the statutory concept is a unitary one and that to draw artificial distinctions between its two ingredients risks distorting it unnecessarily and unhelpfully. Against that background, each of the petitioners' complaints may be examined in turn.

Exclusion from management, etc.

[163] Neither petitioner had any right in terms of the Articles of Association or Shareholders' Agreement to be involved in any particular way, or at all, in the management of the Company, and each accepted that in the context of these proceedings. Nonetheless, each was offered a place on the board of directors when he made his initial investment in 2016. Dr Stevenson accepted in his evidence that the making of such an offer to investors in the position of the petitioners was, in his opinion at least, fair and common practice in comparable companies. Neither petitioner immediately accepted the offer of a place on the board, but Mr Hawkins did so after the sale of Weldability in 2019 and Mr Rafay was habitually invited to observe, if not technically to participate in, the business of the board until autumn 2020. The board meeting in August 2020 was the last attended by Mr Hawkins and observed by Mr Rafay. Although each was invited to, and did, join the members of the board virtually after completion of the board meeting in September that year, neither was present at, observed or participated in the meeting itself. Thereafter neither was invited to play any role, even as an observer, in the business of the board, or otherwise to take part in the management of the Company, although it may be noted that neither actually made any request to be allowed to do so.

[164] Dealing firstly with the complaint of Mr Hawkins about exclusion from participation in the management of the Company, the obvious hurdle which he faces is that, in point of form at least, that came about because of his own resignation from the board. I accept the submission for the respondents that someone who resigns, at least if truly voluntarily, from the role which he maintains he should still be fulfilling in the management of a company, has no claim to have been treated in an unfairly prejudicial manner because he no longer

occupies that role. That places the focus on whether Mr Hawkins did indeed voluntarily resign as a member of the board, or whether his resignation was in effect forced upon him. One does not require to look further than the evidence of Mr Hawkins himself in order to resolve that issue. He stated that he had not been forced out, but rather had decided to resign after Dr Stevenson told him that he would be in breach of his fiduciary duties to the Company if he continued to refuse to sign the papers preliminary to the application for the CBILS loan which the majority of the board wished the Company to make. That account of events fits with the terms of his resignation email and with my assessment of the robustness of his character. I do not accept - as Mr Rafay maintained - that Dr Stevenson was determined to force Mr Hawkins to resign from the board. Nor do I accept Dr Stevenson's view that Mr Hawkins himself engineered the situation which led to his resignation by making an entirely unnecessary fuss about the CBILS paperwork. Mr Hawkins genuinely did not wish his name to be associated in any way with a loan application by the Company in circumstances where he believed - on easily comprehensible grounds - that it would be unable to make the necessary repayments and thus fall into default. That was a quite reasonable point of view and I do not find it easy to see that his refusal to be associated with the application in such circumstances would have put him in breach of his fiduciary duties or his obligation in terms of the Shareholders' Agreement to use his reasonable endeavours to promote and develop the Company's business to its best advantage. Mr Hawkins was, by mid-2020, already very discontented with what he perceived as the extremely slow progress being made by the Company towards market and thus revenues, and it was becoming increasingly clear to him that his views on that subject were not going to prevail on the board or amongst the Company's members, particularly since Mr McCann had, earlier in the year, joined both bodies. The spat (for in truth it is difficult to see it as anything more) about

the CBILS paperwork was the final straw, the occasion rather than the cause of his resignation. Put another way, it was the lack of sympathy which Mr Hawkins had for the direction of the Company which the majority of the board had determined to take at both macro and micro levels which caused him to resign. A voluntary resignation from the board consequent upon a disagreement with reasonable business strategies favoured by the majority of the board cannot give rise to a complaint of unfairly prejudicial exclusion from the Company's management. Nor can Mr Hawkins, having voluntarily resigned from his role on the board, in equity require the provision to him of some alternative (and presumably lesser) role in the management of the Company. His claim to have been the object of unfairly prejudicial conduct by way of exclusion from the management of the Company fails.

[165] Turning to Mr Rafay, his situation is quite different. Until August 2020, he had a standing invitation to attend the Company's board as an observer, and indeed had been asked whether he wished to become one of its members. The invitation was then withdrawn and the question of his joining the board has not subsequently been raised. When asked to explain why invitations to observe the board had ceased to be issued to Mr Rafay, Dr Stevenson stated that Mr Rafay's solicitors had issued unreasonable demands on his behalf in connection with the subject matter of the present litigation, particularly in relation to his claim to be entitled to remuneration. However, that correspondence did not begin until well into 2021, and thus cannot be accepted as an explanation for the withdrawal of the invitations from and after September 2020. Another explanation advanced by Dr Stevenson was that it became appropriate to draw a clear line between members and directors in the conduct of the Company's affairs. Whatever the abstract merits of that proposition, there is no hint in the contemporaneous material of such a consideration having

been entertained at or around the relevant time, and certainly nothing of the sort was communicated to Mr Rafay. It appears to me to be a subsequent rationalisation of a decision taken on different grounds. The practically inevitable inference to be drawn from the evidence was that Mr Rafay was seen by the remainder of the board as being under the influence, if not entirely in the orbit, of Mr Hawkins, and the voluntary departure of the latter from the board was seen as an opportune moment to exclude the latter as an observer. I accept that there may be circumstances in which someone who has, by settled practice, been a long-standing observer of a board may for one reason or another come to present such difficulties to its smooth operation as to make it fair to withdraw his invitation to observe. In the present case, however, one cannot identify anything particular said or done by Mr Rafay which would justify the conclusion that he fell into that category, and all that the respondents could say was that he was in some undefined sense "hostile" to them, an allegation which seemed to me not to represent anything more than a (true) claim that, in the strategic matters which divided them and Mr Hawkins, he tended to side with the latter. While I accept that an observer of a board has no particular status in law, has no vote on board resolutions, and otherwise participates in its business only to the extent permitted by its members, observer status undoubtedly confers certain practical advantages for an investor in a company, not least the opportunity to understand the detail of the board's discussions and the reasons for its decisions, along with the dynamics of its operation, in a way not otherwise available. No doubt these considerations formed at least part of the reasons why Mr Rafay was offered, and accepted, the opportunity to observe the board in the first place. The withdrawal of his invitation to do so represent a material detriment to his interests as a member of the Company.

[166] I do not consider that the members of the Company, if asked about the issue in the abstract and before the events of autumn 2020, would have considered it fair as amongst themselves that observer status and its concomitant advantages should be withdrawn from one of their number who had done nothing whatsoever to disrupt the operation of the board and who continued to be entirely civil and reasonable in his relations with its members, simply because he had aligned himself with a minority view as to the direction in which the Company should be taken. In any event, I do not consider that any fair-minded and objective observer of the Company's affairs would conclude that the withdrawal of observer status in such circumstances was an equitable measure to take. Nor do I accept the suggestion that it was up to Mr Rafay to ask for his invitations to be continued if he wished; he did not require to ask to be invited before September 2020 and in any event I do not accept Dr Stevenson's evidence that the invitations would have been renewed on request; they ceased for a reason and that reason (Mr Rafay's perceived closeness to Mr Hawkins) would in my view have prevailed over any such request. It follows that I accept that Mr Rafay has been the object of unfairly prejudicial conduct by the withdrawal of his invitations to attend the Company's board meetings as an observer.

[167] The question of whether it would be unfairly prejudicial to Mr Rafay to decline any request made by him actually to join the Company's board, given the offers previously made to him in that regard, remains an open one. He has made no such request, and so cannot yet have suffered any unfairly prejudicial treatment by its being refused. It suffices to say for present purposes that many of the observations made and reasons given in connection with the withdrawal of his observer status might well read over relatively easily to the context of a refusal of any request he might make to join those of his fellow minority investors who do enjoy a seat on the board.

Remuneration

[168] The sequence of events concerning the deferred remuneration schemes considered from time to time by the board emerged very clearly from the evidence. Dr Stevenson conceived (in 2019, before Mr McCann's involvement with the Company) that those directors of the Company who were not receiving remuneration, namely all the directors except himself and Mr Everard, might be incentivised and rewarded by having a scheme which would remunerate them for work done by them for the Company beyond attendance at and participation in board meetings. At least some of the rationale for that idea seems to me to have been to assuage the growing concerns of Mr Hawkins and Mr Rafay that returns on their investment would remain elusive if the Company continued its slower than anticipated road to commercialisation and revenue creation. Since the Company had no cash to fund such a scheme, the remuneration would have to be deferred until such time as it did, and so the focus was on a scheme which used shares as a proxy for cash until that time was reached. The first scheme, which concerned itself with growth shares, was abandoned when the Company's accountants pointed out its incompatibility with the Enterprise Investment Scheme under which the relevant members had made their investments. By that stage in mid-2020, Mr McCann had joined the board. He was tasked with, and did, produce an alternative scheme dealing with bonus shares. That was approved in principle by the board at its August meeting, and the matter was due to be sent for approval by the Company's solicitors and accountants before proposals for its implementation were to be brought before the September meeting for final approval. However, immediately after the August meeting, Mr Hawkins resigned as a director of the Company and Mr Rafay in effect became *persona non grata* to the board on account of its

perception of his association with Mr Hawkins. In these circumstances, as Mr McCann most candidly explained, the rationale for continuing with a scheme which would be costly in both tangible and intangible resources to the Company ceased to exist, as those who might benefit from it had been reduced to Mr McCann himself and Mr Abdullah, neither of whom was particularly interested in those potential benefits. A decision was made not to proceed with the scheme which had been agreed in principle in August, so no legal right to participate in any such scheme or draw benefit from it ever came into existence. The matter appears still to have troubled Dr Stevenson somewhat, since as late as Christmas Eve 2020 he wrote, rather unexpectedly, to Mr Hawkins and Mr Rafay, offering them each a reduced, one-off bonus share allocation worth £10,000 to cover everything done by them for the Company to the end of that year, which offer neither accepted. The question is thus whether the Company's unilateral withdrawal of the contemplated remuneration scheme and its failure to provide some such other scheme from which Mr Hawkins and Mr Rafay might have drawn benefit constitutes unfairly prejudicial conduct.

[169] It is true that matters might have turned out differently despite the resignation of Mr Hawkins from the board in August 2020. The role of commercial adviser to the Company which he was offered immediately after his resignation from the board might have transpired to have had some actual responsibilities and involved him in substantial work for the benefit of the Company. Mr Rafay could have become a non-executive director, or the proposed scheme tweaked to enable him to take benefit from it despite not being on the Company's board. It might even be thought that these things <u>should</u> have happened had a rather more balanced view been taken of the circumstances of the resignation of Mr Hawkins and the position of Mr Rafay thereafter, and that it was in some sense at least unfair to them that they did not happen, although the row about share

allotment which broke out in January 2021, the details of which are yet to be related, would probably have made such an outcome difficult to say the least.

[170] However, the essential point is that there was nothing inherent in their capacity as members of the Company, or in the relationships which had been established amongst those members, which gave Mr Hawkins or Mr Rafay any equitable right or interest to have established a remuneration scheme in which they could participate. They had no good reason, whether as members or otherwise, to expect that Dr Stevenson would wish to initiate a remuneration scheme in the first place, would have had no valid ground for complaint had the board decided not to accept in principle either of the schemes (or indeed any scheme) put before it for approval, and likewise have no basis in law or equity to maintain that the ultimate decision to discontinue plans for a remuneration scheme from which they might have taken some benefit had matters taken a different course, was unfairly prejudicial to their relevant interests. Such a scheme was at no point anything more than a possible benefit which the Company might have decided to confer or withhold as it saw fit. The petitioners' claim to have been unfairly prejudiced by the decision which was in fact made cannot succeed.

Share allotments

[171] When Mr McCann became a member of the Company in March 2020, he was allowed to purchase his shares at the price of £150 each. That vexed Mr Hawkins and Mr Rafay, who understood that that price was reserved for existing shareholders, and was a discount of 50% on the "true" price of the shares. Their belief that the shares had a true price at all, and that the supposed discount was available only to existing members, had their source in what had been said by or on behalf of Dr Stevenson, notably a board minute

of 25 October 2019. In fact, in the context of a company which not only had sold no product, but had no product to sell, and whose value lay almost entirely in intellectual property which had yet to be shown to be capable of any material degree of commercialisation, the shares were never at any point truly worth more than what someone was prepared to pay for them. From time to time the board issued business plans or investment opportunity documents which in various ways talked up the Company's prospects and thus its apparent value. These documents were issued in good faith in the various contexts in which, and for the various purposes for which, they were produced, but in the event the Company never attracted the institutional investment which would have allowed it to develop the pipe in the manner and at the speed which it wished, and the potential capital values which such development might have inferred were never made real. As to the "discount" for established investors, Dr Stevenson explained that he had been contrasting the price which was being asked from individual investors in that investment round with the entirely notional price which would have been asked from large institutional investors (had there been any) wishing to buy into the Company. I accept that that was what he meant, but also that Mr Hawkins and Mr Rafay genuinely and reasonably understood that the distinction being drawn was between existing and new investors of whatever stripe, and felt themselves aggrieved by the introduction of Mr McCann to the Company at the same share price as they had paid in that round. Ultimately Mr Hawkins and Mr Rafay were asked to, and did, consent to Mr McCann's introduction to the Company on the terms proposed. It follows that this particular matter cannot properly now form the subject of complaint on their part. Its significance lies in the fact that when the Company next allotted shares to Mr McCann in January 2021 at what Mr Hawkins and Mr Rafay considered to be an unduly advantageous price, that was perceived by them as a blow upon an established bruise.

[172] There is a great deal of further context to the share allotment to Mr McCann in January 2021. Firstly, at or around the time of the August 2020 board meeting, Mr Hawkins had indicated that he would be prepared to invest further in the Company as part of an exercise in which the other shareholders would equally invest *pro rata* to their existing shareholdings. This would have provided funds to the Company by a means alternative to the CBILS loan which was then being contemplated. However, that proposal was regarded by most of the board as unviable because it would have involved Dr Stevenson, as by far the majority investor, introducing a correspondingly larger sum of money than every other investor put together, and it was at least doubtful whether he would be able to do so. Matters were not advanced to the stage where any specific sums or possible share prices were discussed. Instead, a mild argument almost immediately broke out between Mr Hawkins and Dr Stevenson when the latter implied that Weldability had gained considerable advantage from its association with the Company. Mr Hawkins resented that suggestion and demanded an apology for it, which he did not get.

[173] Mr Rafay's evidence was that he made an offer to invest along with Mr Hawkins on the same terms. That was not clearly recalled by others or vouched by the documentary evidence available, but I accept his own evidence that that is what happened. Although no funds were raised in consequence of these offers, the significance of them was that they left Dr Stevenson and Mr Everard, at least, convinced of the proposition that Mr Hawkins and Mr Rafay were not interested in further investment in the Company other than, possibly, on *pro rat*a terms which Dr Stevenson would find difficult to impossible to meet.

[174] Secondly, throughout the last quarter of 2020, the Company issued a series of communications to shareholders setting out its developing financial position. As often in its history, it was running out of money to fund the research and development activities which

the board wished it to keep up. The communications, which culminated in a newsletter dated 18 December 2020, indicated if read moderately closely that the Company hoped to receive institutional investment, grant and loan income, but that if it did not, it might well run out of cash to continue its activities, at least on their existing scale, in the early months of 2021. Early in December 2020, and presumably in response to the content of the communications issued prior to that date, Mr Hawkins had emailed Dr Stevenson and asked whether there was a risk of the Company falling into insolvency in the following 6 months or so. Dr Stevenson had replied that there was no such risk, but the email chain (into which the other members of the Company were copied) continued with various exchanges in the course of which Mr Hawkins expressed himself towards Dr Stevenson in a sarcastic and mildly rude manner. Even though the tone of the conversation was not such as greatly to upset anyone of ordinary sensibilities for very long, it cemented the view on the part of Dr Stevenson and Mr Everard that Mr Hawkins entertained a hostile attitude to the Company and its management. Mr Rafay played no active part in the exchanges.

[175] Matters stood thus when, in the course of December, Mr McCann offered to invest further in the Company with a view to enabling it to continue to operate as the board wished and to increase his own shareholding to around 5% of the shares in issue. He was willing to invest around £250,000 and the extent of the augmentation of his shareholding which he wished to achieve by way of that investment resulted in a price per share which he was willing to offer of £37. He also wished Dr Stevenson to put some further funds of his own into the Company, although nothing amounting to anything remotely close to the sum which a *pro rata* investment by him would have entailed. Although Dr Stevenson was not happy with the share price brought out by the proposed transaction, he felt that he had little option but to accept the proposal if the Company was going to be able to continue with its

planned development trajectory. The proposal was accordingly brought before the board (consisting of Dr Stevenson, Mr Everard, Mr Abdullah and Mr McCann) on 7 January 2021 and accepted in principle. Unlike the process on previous occasions on which the Company had sought investment from existing members, only the members of the board were aware of the proposal reasonably in advance of its acceptance, and the members not on the board (ie Mr Hawkins and Mr Rafay) were not asked whether they wished to invest as well. The evidence of Mr Everard, which I accept, was that the failure to involve Mr Hawkins and Mr Rafay in the potential investment opportunity was not the result of inadvertence, but of a deliberate decision to leave them out of the process. Although part of the rationale for that decision was a genuine belief on the part of Dr Stevenson and Mr Everard that Mr Hawkins and Mr Rafay had no interest in investing further in the Company, at least on viable terms, I find that another part was a tacit view on the part of Dr Stevenson, at least, that the Company would do better without any increased involvement on their part, in any event if the sums necessary for its progress could be obtained elsewhere.

[176] Mr Everard contacted Mr Rafay and also, I find, Mr Hawkins by telephone on the day of the board meeting and just before it was held, to inform them of what it was going to do. A letter to similar effect was sent to them, as to all members, later in the day by Dr Stevenson. He asked them to waive their pre-emption rights and to consent within a seven-day period to the proposed allotment to Mr McCann. No express invitation was at that stage issued to them to make any investment offer of their own, despite the possibility of such offers having been contemplated and noted in the minute of the board meeting. All of this came as an unwelcome surprise to Mr Hawkins and Mr Rafay, since they had understood from the correspondence between Mr Hawkins and Dr Stevenson in early December that the Company had no immediate need for funds and would, if necessary,

scale back its planned activities in 2021 if money became very tight. That was, of course, not quite what Dr Stevenson had said when he indicated that there was no immediate prospect of insolvency, but again it was an available and reasonable overall inference from what was said. On 13 January 2021 Mr Rafay put by email a series of pertinent questions to Dr Stevenson about the proposed allotment, which the latter answered. The other members of the Company were copied into the correspondence. Mr Hawkins and Mr Rafay were ultimately informed that they were free to make any investment offer which they wished, although the communication again fell rather short of an invitation to do so. In the event, they neither waived their pre-emption rights, consented to the allotment to Mr McCann, nor made any offer of their own. On 29 January (the matter having been delayed beyond the 7-day pause originally proposed by the board to give Mr Hawkins and Mr Rafay the opportunity to do what they saw fit) the proposed allotment was made to Mr McCann (along with that to Dr Stevenson). Mr Hawkins maintains that he would have made an investment offer had he been asked to do so at the same time as Mr McCann. Mr Rafay says the same, although in his case it would, according to him, have been an offer to invest *pro rata* with the other members.

[177] Does that sequence of events amount to conduct of the Company's affairs in a manner unfairly prejudicial to Mr Hawkins and Mr Rafay? I accept first of all that the board had a proper reason to seek further investment at the start of 2021. Most of the potential funding sources to which it was looking at that stage had either come to nothing or were still uncertain. It had secured a government grant from Innovate UK, but in order to access those funds in due course it required in the short term first to be able to enter into (and have the means to pay for) various contractual arrangements to enable it to perform the activities which the grant arrangements required it to undertake. I do accept that there was no

absolute necessity for the Company to choose to take that path; it could (as had been hinted in the shareholder communications in the last quarter of 2020) have decided instead to wind down and mothball its operations and await the coming of more auspicious overall financial circumstances. However, it had not undertaken in any sense to its members that it would take any such course of action, and once the opportunities offered by the award of the grant had presented themselves, it was an entirely reasonable course of action by the board to seek the internal funding which would enable the Company to take advantage of them. I accordingly reject any suggestion that Mr McCann's investment offer was taken up without any good reason for the Company to have accepted any such offer.

[178] However, in not informing the members of the Company as a whole that funds were to be sought, and inviting them all to make such offers as they saw fit, the board departed from what had occurred on all previous occasions on which internal funding had been sought. In doing so, it acted in a way which was contrary to the reasonable expectations which its previously consistent course of action had created amongst its members as a whole. Although Article 10.6 of the Company's Articles of Association disapplies the default rule provided by Article 10.2 that any proposed allotment should be offered to all shareholders on the same terms, if the holders of at least 80% of the existing issued share capital provide their prior written consent, it says nothing about informing members of a proposed allotment and enquiring whether they are interested. Whether it was fair not to do so in any particular situation depends on the close examination of all the circumstances already described.

[179] Having identified that the Company would benefit from further funding, the board had no good reason not to ask Mr Hawkins and Mr Rafay whether they were interested in putting up some or all of those funds on the same basis as (or even on a different basis from)

that proposed by Mr McCann. Its failure to do so constituted an inequitable difference in treatment amongst members who considered, and were entitled to consider, themselves in this regard to have the same status, rights and interests as every other member. The fact that Mr Hawkins and Mr Rafay were perceived not to be interested in further investment did not result in it being fair not even to ask them whether in fact they were, and if so on what terms. Dr Stevenson maintained that he did not want to pester members into providing more money to the Company, but a single communication explaining the position and asking whether a member was interested in investing further can hardly be so described. Equally, the very short period originally afforded for Mr Hawkins and Mr Rafay to respond to the proposed allotment to Mr McCann (said to have been selected to avoid a protracted period of vacillation on the part of members as to whether to invest) was not justified by the exigencies of the situation, as its subsequent extension without apparent detriment to the Company's interests demonstrated. There was nothing intrinsically unfair about the board's decision ultimately to accept Mr McCann's investment offer, but the manner in which it chose to go about doing so, though not contrary to the express provisions of the Articles or Shareholders' Agreement, was nonetheless unfair in the sense driven at by section 994 of the 2006 Act.

[180] In order to justify the intervention of the court, however, the conduct of the Company's affairs which is complained of must meet the composite statutory test of being unfairly prejudicial to the interests of the petitioners. In this context, that means that either or both of Mr Hawkins and Mr Rafay must establish on a balance of probabilities that their position as members of the Company is in some material sense worse than it would have been had the unfairness which has been identified not occurred. I do not accept the respondents' submission that the fact that the holdings of other shareholders were diluted to

a similar or even greater degree in comparison to those of Mr Hawkins and Mr Rafay means that they were not relevantly prejudiced by the allotment to Mr McCann. Similarly, the fact that the Hawkins/Rafay dilution, viewed in terms of the proportion which each of their holdings bore to the entire issued share capital of the Company, was relatively small, does not persuade me that it falls to be viewed as *de minimis*. Viewed in terms of the proportion of the holdings themselves which the dilution effected, it was material, particularly in the context of a company with an extremely high potential future share price. However, since the problem with what happened in the conduct of the Company's affairs was not the fact of the allotment to Mr McCann, but the manner in which that allotment was approached, the fact and size of the petitioners' consequential dilution is not in the first instance the proper object of an enquiry into any prejudice suffered by them. Rather, the question is whether the petitioners' ultimate position would be different, and if so materially worse, had a fair allotment process been adopted.

[181] I do not consider that, had Mr Hawkins and Mr Rafay been informed in advance of the board's wish to raise further shareholders' funds at the end of 2020 or the start of 2021, and of Mr McCann's offer, and been expressly invited to consider whether they wished to participate in a fundraising round at that stage, that matters would today stand any differently from how they do. The giving of such intimation and the making of such an invitation would, no doubt, have resulted in all the questions which were asked by Mr Rafay on 13 January 2021 being asked (and answered) rather earlier than in fact occurred, but I do not accept that it would have resulted in Mr Hawkins or Mr Rafay making any offer to invest on terms reasonably acceptable to the board. So far as Mr Hawkins was concerned, he had already expressed serious misgivings about the strategic direction in which the board was guiding the Company, viz. further research and development designed to make the

pipe fit in due course for marketing to the oil and gas industry. His views on that subject had been a, if not indeed the, material factor in his resignation from the board in August 2020. The continuation of that strategic direction was precisely why further funds were being sought by the board in January 2021 and I do not accept that that would have been a direction which Mr Hawkins would have been prepared to support with further funds of his own, whether at the share price being discussed with Mr McCann or otherwise. Since August 2020, relations between Mr Hawkins and Dr Stevenson in particular had further deteriorated, as evidenced by the rather ill-tempered correspondence between them about Weldability and the prospect of the Company's insolvency which took place in August and early December 2020 respectively. Even had Mr Hawkins been prepared in January 2021 to explore further the prospect of an investment round *pro rata* with other members which he had mooted in general terms in August 2020 (which I doubt), Dr Stevenson for one would not have been able to contribute his required share, Mr McCann would probably not have been prepared to invest in a round which did not see his percentage holding increase significantly from the 1% he then held, and the board would have been justified in refusing such a proposal as an unworkable means of raising the funds which the Company needed. Finally, I observe that, had Mr Hawkins truly been interested in further investment in the Company in January 2021, he was eventually offered (albeit rather later than would have been appropriate) the opportunity to make such proposal as he saw fit in that regard, even if that still fell short of a positive invitation. He made no offer, and I do not consider that an earlier positive invitation would have made any difference to his decision in that regard. The disrespect which he saw (with some justification) as inherent in the board's failure to issue him with such an invitation to invest may well not

have improved the situation, but it did not make the difference between a willingness and an unwillingness to invest on his part.

[182] In relation to Mr Rafay, although his antipathy to the direction in which the board was taking the Company was less well-established than in the case of Mr Hawkins, and the froideur which existed between him and the board by January 2021 emanated from it rather than from him, his own evidence was that then (as in August 2020) he would have been willing to invest further in the Company only on a *pro rata* basis. For the reasons already noted, that sort of approach would have been unlikely to have raised the funds which the board considered that the Company needed at that point and would have been reasonably rejected by it. Again, the fact that Mr Rafay was belatedly asked to make such offer as he saw fit and made none tells against the claim that any invitation made just a little earlier would have been favoured with a more positive response. In conclusion, then, in relation to the January 2021 share allotment to Mr McCann, although Mr Hawkins and Mr Rafay were treated unfairly in the respect already described, ultimately the conduct of the Company's affairs complained of was not prejudicial to their interests as members, and their complaint under section 994 in this connection fails.

[183] No separate issue arises in relation to the 2023 share allotment. Although this litigation was by then well underway, and parties were at arms' length and corresponding through solicitors rather than directly, Mr Hawkins and Mr Rafay were asked appropriately whether they wished to invest, but after due consideration declined to do so. Neither the process nor the ultimate allotment was attended by any element of unfairly prejudicial conduct.

Conclusion

[184] The case shall be put out by order for discussion of what further procedure or orders, if any, may be required in light of the content of this opinion.