

Neutral Citation Number: [2020] EWHC 2334 (Ch)

Case No: D30MA278  
Petition No: 2874 of 2017

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS & PROPERTY COURTS IN MANCHESTER**  
**BUSINESS LIST (Ch D)**

Manchester Civil Justice Centre,  
1 Bridge Street West, Manchester M60 9DJ  
Date: 28 August 2020

Before:

**HIS HONOUR JUDGE STEPHEN DAVIES**  
**SITTING AS A JUDGE OF THE HIGH COURT**

Between:

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**TARIQ MAHMOOD MALIK** **Claimant/Petitioner**

- and -

(1) **MAHBOOB HUSSAIN JUNIOR**  
(2) **RN RESTAURANT**  
(3) **(STOCKPORT) LIMITED**  
(4) **NUSRAT TARIQ**  
(5) **MIRZA BEGUM**  
(6) **ASAD ALI MALIK** **Defendants/Respondents**  
**USMAN HUSSAIN MALIK**

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**James Mather and Mark Wraith** (instructed by **DTS Law Solicitors, Manchester M19 3NP** and subsequently by **Viceroy Law Solicitors, Manchester M13 0NG**) for the **Claimant/Petitioner**

**Lesley Anderson QC and Tina Ranales-Cotos** (instructed by **Clarion Solicitors, Leeds LS1 2 TW**) for the **Defendants/Respondents**

Hearing dates: 15 – 19, 22 – 25 June, 10 July 2020  
Draft judgment circulated: 20 August 2020  
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**APPROVED JUDGMENT**

This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 10 a.m. on Friday 28 August 2020.

I direct that pursuant to CPR PD 39A paragraph 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

**His Honour Judge Stephen Davies**

**His Honour Judge Stephen Davies:**

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A. [Introduction and summary of decision](#)

1. This litigation arises from a fallout between the owners of an Indian restaurant business.
2. In summary, the facts are that in early 2003 the claimant (“Tariq”) and the first defendant (“Mahboob”) opened a large-scale buffet style restaurant with wedding and banqueting facilities (“the Stockport Road Nawaab”) in what had been a cinema at 1008 Stockport Road in Levenshulme, Manchester (“the Stockport Road property”). They were equal joint owners of the Stockport Road property and equal joint shareholders in the second defendant company (“the Stockport Road company”), through which the restaurant business was undertaken. They were also good friends.
3. A few years later, in 2006, they entered into a formal deed of partnership to regulate their business affairs. Three years after that, in 2009, they each disposed of half of their shares in the Stockport Road company to their respective wives, the third defendant (“Nusrat”) and the fourth defendant (“Mirza”). They also involved the claimant’s two sons, the fifth defendant (“Asad”) and the sixth defendant (“Usman”), in the restaurant business. Asad also married one of the daughters of the first defendant, Atikah.
4. By early 2003 the relationship between the two men and their families had become close, both socially and in business terms.
5. The Stockport Road Nawaab, achieved considerable success and became very profitable, tapping into the demand for large-scale buffet style wedding and other banqueting events, particularly in the South Asian communities.
6. However, according to the defendants, within a few years of the Stockport Road Nawaab opening the relationship between Tariq and Mahboob had become very poor. Apart from Tariq himself, every factual witness from whom I have heard blames him for this. The defendants’ position is that the only reason the business relationship continued was that Mahboob was prepared to forgive and to forget, in circumstances where he was very keen to make a success of the restaurant business and to avoid what he referred to as trouble and strife.
7. The defendants’ case is that it was against that backdrop that in 2007 Tariq executed a power of attorney in favour of Asad which, according to the defendants, allowed Mahboob and Asad to run the restaurant business for the benefit of both families without interference from Tariq.

8. The defendants’ case is that whilst Mahboob was willing to continue with the Stockport Road Nawaab restaurant on that basis he was not willing to enter into any new restaurant ventures with Tariq. That is relevant because in around 2013 a further Nawaab restaurant, which also became very successful, was opened in Perivale, London (the Perivale Nawaab”). This was run by another limited company (“the Perivale company”) in which Tariq, as opposed to Asad and Usman, had no interest or control. However, Tariq did give a formal written guarantee to the bank to support the Perivale company’s borrowings which, he contends, reflects the fact that he had an interest in the Perivale Nawaab.
9. In 2016 there was a final and irreversible falling out between Tariq on the one hand and each of the individual defendants on the other, including his wife Nusrat (from whom he was already estranged) and his two sons Asad and Usman (who supported their mother and enjoyed good relations with Mahboob). The result was that Tariq was removed from his position as a director of the Stockport Road company. The defendants deny that Tariq has, or has ever had, any interest in the Perivale Nawaab or in the Perivale company.
10. Tariq’s removal as director, the defendants’ denial that he has any interest in the Stockport Road company save as a 25% shareholder, the defendants’ denial that he has any interest at all in the Perivale company and various other matters, including a number of other complaints made by Tariq and the assertion in correspondence of a counterclaim against him by the Stockport Road company, are what have led to these proceedings. These proceedings have now culminated in a two week trial followed by this judgment.
11. I begin by setting out in a little more detail, adopting with gratitude and some modest amendment the agreed cast list provided by counsel, the names and the role of the principal actors, personal and corporate, involved in this litigation. Other more peripheral actors are referred to as and when necessary.

| <b>Name</b>                               | <b>Description</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Tariq Mahmood Malik (“Tariq”)</b>      | The Claimant. Father of Asad and Usman. Husband of Nusrat. Alleges that he formed a partnership with Mahboob in 2002. Shareholder in the Second Defendant (“the Stockport Road company”) and director of the Stockport Road company between September 2010 and December 2016. Joint owner, with Mahboob, of the property at 1008 Stockport Road (the “Stockport Road property”) from which the restaurant business (the “Stockport Road Nawaab”), which forms the subject of these proceedings, trades. |
| <b>Mahboob Hussain Junior (“Mahboob”)</b> | The First Defendant. The husband of Mirza, father of Atikah and father-in-law of Asad. Shareholder and director of the Stockport Road company since September 2002. Shareholder of the Perivale company. Joint owner, with Tariq, of the Stockport Road property.                                                                                                                                                                                                                                       |

|                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
|------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>RN Restaurant (Stockport) Limited</b> | The Stockport Road company, the Second Defendant / counterclaimant. Incorporated in August 2002 as Nawaab Restaurant (Stockport) Limited and changed its name in June 2017.                                                                                                                                                                                                                                                                        |
| <b>Nusrat Tariq (“Nusrat”)</b>           | The Third Defendant. Mother of Asad and Usman. Wife of Tariq. Shareholder in the Stockport Road company since 2008.                                                                                                                                                                                                                                                                                                                                |
| <b>Mirza Begum (“Mirza”)</b>             | The Fourth Defendant. Wife of Mahboob. Shareholder in the Stockport Road company since 2008. Former shareholder in the Perivale company.                                                                                                                                                                                                                                                                                                           |
| <b>Asad Ali Malik (“Asad”)</b>           | The Fifth Defendant. Elder son of Tariq. Married to Atikah, daughter of Mahboob. Shareholder in and director of the Stockport Road company since October 2016. Shareholder in the Perivale company.                                                                                                                                                                                                                                                |
| <b>Usman Hussain Malik (“Usman”)</b>     | The Sixth Defendant. Younger son of Tariq. Shareholder and director of the Stockport Road company since October 2016. Formerly a shareholder in the Perivale company. Did not give a witness statement or participate in the trial.                                                                                                                                                                                                                |
| <b>Hassan Akhtar (“Hassan”)</b>          | Brother of Tariq. Former joint owner of the Stockport Road property. Transferred his interest in the property to Mahboob in 2002. The defendants allege that Tariq has caused the Stockport Road company to pay Hassan money for work he did not carry out. Gave a witness statement for Tariq but did not attend trial to give evidence.                                                                                                          |
| <b>R N Restaurant (Perivale) Limited</b> | The Perivale company, incorporated as Nawaab Restaurant (Perivale) Limited in September 2013 and changed its name in June 2017. Owns the restaurant business (“the Perivale Nawaab”) which Tariq contends should be an asset of the alleged partnership between him and Mahboob and/or was an opportunity which should have been pursued through the Stockport Road company, and in respect of which he seeks various relief in these proceedings. |

12. So far as the records filed at the Land Registry and Companies House are concerned the Stockport Road property is jointly owned by Tariq and Mahboob and the accounts shows that the two companies, the Stockport Road company and the Perivale company, operate the restaurant businesses run as the Stockport Road Nawaab and the Perivale Nawaab respectively and in which various of the family members have, or have had, shareholdings and are, or were, directors.

13. However, Tariq's primary case is that there was an overarching partnership (the "Nawaab partnership"), encompassing not only the Stockport Road property and the Stockport Road Nawaab business but also envisaging the opening of further Nawaab restaurants in other cities such as, he says, the Perivale Nawaab. He says that the Stockport Road company was merely a trading vehicle for the Nawaab partnership, which he says was entered into in 2002 and confirmed by a partnership deed which he and Mahboob entered into on 14 April 2006 (the "partnership deed").
14. Mahboob's case, supported by the other individual defendants, is that notwithstanding the existence of the partnership deed there was, on a proper analysis, no legal relationship of partnership between him and Tariq and that their legal relationship was solely as: (i) co-shareholders in the Stockport Road company; and (ii) co-owners of the Stockport Road property. They contend that it is not open to Tariq to ignore the fact that in 2008 Tariq and Mahboob each transferred 50% of their shares in the Stockport Road company to their respective wives, Nusrat and Mirza. In contrast, Tariq contends that this was only ever intended to be a temporary arrangement and not in the nature of an unconditional gift so that they hold their shares for the partnership.
15. The defendants also deny that Tariq has any interest, direct or indirect, in the Perivale Nawaab, whereas Tariq's case is that Mahboob had always represented that he would become the owner of half of the shares of the Perivale company (similar to the position in the Stockport Road company) or, in any event, that the shares would be held for the Nawaab partnership. Tariq contends that Mahboob is anyway liable to account to the Nawaab partnership for the profits he has made in connection with the Perivale company pursuant to his obligations as a partner. Alternatively, he says that even if the court does not accept his case as to the existence of the Nawaab partnership Mahboob plainly breached his duties as a director of the Stockport Road company by diverting the opportunity to pursue the Perivale Nawaab from the Stockport Road company to the Perivale company. In summary, Tariq complains that he has been illegally cut out of the Perivale Nawaab which ought to be treated as part of the wider Nawaab joint venture.
16. In relation to the Nawaab partnership and in relation to his status as shareholder in the Stockport Road company Tariq has complained of his removal as a director of the company, his exclusion from participation in the management of the company and the failure to provide him with financial information about the company. He complains about the way in which the business has been run both before and after his removal as director. Thus, he complains about the treatment of the rental payments made by the company to himself and Mahboob as co-owners of the Stockport Road property. He also complains of the incorporation of and his exclusion from the Perivale company and also that substantial sums were made available by the Stockport Road company to fund the Perivale company. He has also complained that partnership funds appear to have been used to acquire a property in Dubai about which he knows little or nothing. He has complained that since his removal as director of the Stockport Road company the payments previously made to him by way of dividends have been decreased.

17. Various other complaints are made in evidence and were canvassed in the opening submissions produced by Mr Mather and Mr Wraith for the claimant. Ms Anderson QC and Ms Ranales-Cotos for the defendants objected to un-pleaded allegations being ventilated. In response, Mr Mather produced a draft amended Particulars of Claim and a draft amended Petition, seeking to raise: (a) an allegation (relevant to the complaints about the formation of and his exclusion from the Perivale company) that the Nawaab concept was a specific business model which was always specifically agreed as being a partnership asset for wider exploitation; (b) further allegations of unfairly prejudicial conduct in relation to the post-petition conduct of the affairs of the Stockport Road company. After hearing full argument I refused what was in my view an application made at a very late stage and without good cause and one which was capable of prejudicing the defendants in their defence. I did however also rule that the claimant was entitled to raise certain matters in the written opening which in my view fell within the ambit of the existing statements of case.
18. These allegations are, for the most part, vigorously disputed by the defendants. Their position is that Tariq is no more than a 25% shareholder in the Stockport Road company who agreed, voluntarily, to remove himself from management of the Stockport Road company and to pass on that role to his eldest son Asad. They say that Tariq has no formal or informal interest in the Perivale Nawaab business, as he accepted and agreed at the time, and they deny that there is anything wrongful in the way in which it was formed or funded.
19. It is apparent from what I have already said that the relationship between Tariq on the one hand and Mahboob and the other individual defendants on the other has now broken down from a business perspective. Tariq is now separated from his wife and, for the present at least, estranged for all practical purposes from Asad. He asks the court to intervene to allow the relationship to be brought to a proper end, including recognition of what he contends are his valid claims in respect of the Perivale Nawaab and the rental proceeds of the Stockport Road property. He seeks that intervention on two broad bases.
20. The first, advanced in the Part 7 claim, is on the footing of the existence of the Nawaab partnership in the terms he alleges as well as ancillary relevant agreements. In particular, he seeks an order dissolving the partnership under s 35(d) and/or s 35(f) of the Partnership Act 1890 and for all necessary accounts and enquiries to be taken for the purposes of winding up the partnership.
21. The second, advanced on the footing that the court does not accept Tariq's case as to the Nawaab partnership, in whole or in part, is a petition under s 994 of the Companies Act 2006 in respect of his shares in the Stockport Road company. He contends that the Stockport Road company was a quasi-partnership and that its affairs have been conducted by Mahboob in a manner which is unfairly prejudicial to him (this alleged unfairly prejudicial conduct overlapping considerably with the wrongful conduct alleged in the Part 7 claim).
22. The defendants deny that Tariq is entitled to any of the relief sought and invite the court to dismiss the claims and give judgment for the Stockport Road company on its counterclaim

whereby it complains that Tariq caused it to make various payments to himself and to others related to him without proper justification or authority.

23. Those then are the issues which I must determine, which are set out in more detail in the list of issues which the parties have helpfully agreed.
24. The trial took place remotely. The parties sensibly agreed to use the services of a litigation support company known as XBundle, so that I had the benefit of a professionally prepared electronic trial bundle, the relevant pages of which were produced via web link to the witnesses as they gave evidence remotely, as did the interpreter who translated remotely for some of the witnesses, together with a live transcript service also provided by web link to the court and to the parties. The whole process worked extremely well and enabled the trial to be conducted most effectively. I am grateful to XBundle, to the solicitors who co-operated to enable the trial to proceed remotely and to counsel who mastered the technology most efficiently.
25. Significantly, there was no loss of opportunity to see the witnesses as they gave evidence. Indeed, being able to see the witness close up on a screen, with the relevant documentation being easily accessed on the adjacent screen, enabled me to assess their reaction to questions and to compare their oral evidence to their witness statements or contemporaneous documents more easily and, to me at least, more usefully than had they given evidence in person in court and I had to navigate a multi lever arch paper trial bundle at the same time as observing them giving evidence.
26. I had the benefit of extremely helpful written and oral opening and closing submissions from counsel.
27. Having considered the evidence and applied the relevant legal principles I have come to the following conclusions:
  - (1) That there was a partnership between Tariq and Mahboob both in relation to the Stockport Road property and in relation to the business of the Stockport Road Nawaab.
  - (2) Tariq and Mahboob hold their shares in the Stockport Road company as partnership property.
  - (3) Nusrat and Mirza hold their shares in the Stockport Road company as legal and beneficial owners in their own right.
  - (4) The Nawaab partnership should be dissolved and wound up.
  - (5) The unfair prejudice petition fails and should be dismissed.

B. Witnesses

28. I address the factual witnesses first and the expert witnesses second. I heard from Tariq and Mahboob, who were both subject to extensive and intensive cross-examination, from Mirza, Nusrat and Asad, from Mr Mirza, a mortgage introducer, who was closely involved in a

number of the relevant events both in his capacity as such and also whilst acting as an informal conciliator, and finally from Mr Nawaz the principal of the accountancy practice T Nawaz & Co Ltd (“Nawaz & Co”) which acted for the Stockport Road company, the Perivale company as well as Tariq, Mahboob, Nusrat and Mirza.

29. There are a significant number of factual disputes between Tariq on the one hand and the defendants and their witnesses on the other. Many of these disputes are not directly relevant to the issues which I have to determine. However, there are a number of important factual disputes which I must resolve. As to these, I bear in mind what was said by Leggatt J about the fallibility of human recollection in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) and *Blue v Ashley* [2017] EWHC 1928 (Comm), but I also bear in mind the need to make factual findings on the basis of all the evidence, as explained by the Court of Appeal (Floyd, Henderson and Jackson LJJ) in *Martin v Kogan* [2019] EWCA Civ 1645 at [88].
30. In this case I must delve into the detail of events dating from the early 2000’s in hotly disputed circumstances and where the strong feelings of the claimant and the personal defendants makes it difficult to regard their evidence as either dispassionate or neutral. To a lesser extent the same is true of Mr Mirza and Mr Nawaz as the two seemingly independent witnesses called by the defendants, because they have both rather taken against Tariq. That does not make the court’s task any easier in this case.
31. Fortunately, there is a considerable amount of valuable contemporaneous documentary evidence, including transactional documents, company financial records, tax returns, bank statements and the like. There are also contemporaneous records made by Mr Mirza and by the solicitors who acted for the parties in relation in particular to the partnership deed, Gordons of Bradford.
32. However, it would be wrong simply to rely on these documents in isolation and without reference to the witness evidence. In particular, Tariq, Mahboob and Asad, whilst admitting that they had signed certain documents, asserted that they did not understand their meaning or effect. Tariq does not have a good command of English, written or oral, and needed documents and questions translating. Mahboob and Asad can both read, speak and understand English but are not legally qualified. Nusrat and Mirza both acknowledged that they live traditional lives with no experience of legal, business or financial matters. Where witnesses do not have a good command of English and/or where they do not have a clear understanding of matters of business law and practice, such as the difference between a legal partnership and a limited company, there is always a risk of misunderstanding or confusion. In all these circumstances I should proceed with caution before reaching clear conclusions based on an implicit assumption that their knowledge and understanding of these documents at the time would have been the same as mine is now.
33. I also have to remind myself that the contemporary records of the solicitors may have been made in circumstances where the solicitors in question (who have not been called to give



evidence) may not always have fully understood or appreciated the nature or the detail of the agreements or understandings reached between the parties.

34. In addition to the contemporaneous records made by Mr Mirza, which I do find largely reliable, having been made by a financial adviser with no particular loyalty at the time to either man, there are also a number of handwritten notes made by another of Mahboob's daughters, Mehmoona, which record what Mahboob had told her later (in around 2007) about incidents involving Tariq and Mahboob from 2003 to 2005. I place some reliance on these as notes made closer to the events in question than the witness statements but not very much weight, since they are clearly written at a time when the relationship between Tariq and Mahboob had already markedly deteriorated.
35. In the circumstances I have attempted to steer the right path between the danger on the one hand of deciding this case solely on the basis of the documents and my (necessarily imperfect) assessment of the inherent credibility of the respective accounts and the danger on the other of treating this as a jury trial where my assessment of who is the more credible witness overall is the principal determinant of where the truth lies.
36. With that lengthy excursus I turn now to the individual witnesses.
37. I am unable to place any reliance on the uncorroborated evidence of Tariq. He was an unimpressive and unreliable witness from start to finish who was willing to say whatever he thought suited his case. He had verified the Particulars of Claim and had also verified his witness statements which were written in English, despite having little or no understanding of written English. The contents of these documents had not been formally translated for him before he verified them. When he was taken to parts of the statements of case, witness statements and other documents prepared by his previous solicitors, Pinsent Masons, which did not suit his case, he suggested that they were mistaken because they had used a translator who had made many mistakes. He had not however made any attempt to have them properly translated so that he could correct any errors and he had not sought to correct any errors in any of his witness statements in his examination-in-chief. I was unable to accept his explanation as to these discrepancies.
38. As to his oral evidence, even making every allowance for the difficulty of recalling events going back many years, for the passions caused by the business and family fallout, for the fact that he does not and did not have the command of written and spoken English that the other principal witnesses did, and for the difficulty of giving evidence through an interpreter, he was a hopelessly partisan and unreliable witness who would say whatever he felt was in his best interests, regularly contradicting himself in the process. When pressed with some inconvenient prior statement or some contradictory statement or document he tended to attempt to evade the question by answering a completely different question or, when pressed, to accuse all and sundry of lying or misleading him or making up documents.
39. Tariq's brother, Hassan, had produced a brief witness statement and was scheduled to attend but did not do so without any good explanation. I do not consider that I can place any real

weight on his witness statement given its conflict with the contemporaneous documentary evidence.

40. Tariq also relies on the witness statement of Mr Shahid Amin Minhas, a Pakistani businessman, formerly resident in Dubai, and a friend of Tariq. He was involved in the purchase of a property at Al Qusais, Dubai (“the Dubai property”). He did not attend trial, as indeed he had intimated in his witness statement. The defendants do not object to his statement being introduced as a hearsay statement on the basis that the weight to be given to his statement would be a matter for the court.
41. The other chief protagonist, Mahboob, was significantly more impressive and more reliable than Tariq, although as I have explained that is a rather low base from which to start. His evidence was also partisan or otherwise unreliable on a number of occasions, so that I do not accept his evidence on all points and treat it with some circumspection. The same is true of Asad, who, despite his culture of familial respect for and obedience to his father, had clearly decided that Tariq’s behaviour, particularly towards Nusrat and in putting in jeopardy the continued success of the family in connection with the Nawaab business, had crossed the line beyond what was acceptable.
42. Nusrat and Mirza both gave evidence with the assistance of the interpreter. Their evidence was relatively limited. They were both prepared – I am satisfied – to exaggerate to a significant extent the amount of time and effort they expended on the Stockport Road Nawaab restaurant business when pressed on whether they had provided services commensurate with their salary, since it was plain that they had undertaken little if any work for the business and that they were only paid salary as a tax saving device. In the circumstances I find it difficult to place any great weight on their uncorroborated oral evidence.
43. As I have said: (a) I am satisfied that I can place a large measure of reliance on the contemporaneous records of Mr Mirza and Mr Nawaz; but (b) whilst I can also place some reliance on their oral evidence as professional men with no direct axe to grind, I must be cautious when considering their uncorroborated evidence on key issues, because it is obvious that they too have ended up having little or no respect for Tariq as compared to Mahboob and this has affected the reliability of their evidence, particularly in relation to events which occurred some time ago.
44. Although Mr Mirza told me early on in his cross-examination that he did not forget anything, remembered everything and did not need to read anything to refresh his memory, I hope he will not be offended if I express some polite scepticism as to that evidence in the light of the quality of his recollection on some important matters.
45. So far as Mr Nawaz is concerned, I accept that - as he told me - he did not tend to get involved in the normal bookkeeping and accounting work. It follows that he was unable to assist on the detail of matters relating to the tax and accounting work undertaken by his firm and I was not convinced that he has as good a recall of the detail of events occurring many years ago as he professed when giving evidence.

46. Given the conclusions I have reached it is unnecessary and probably inappropriate for me to express any views as to the evidence of the respective experts, especially since it is possible that they may both have to give evidence in relation to the partnership accounting exercise, save only to say that they were – and no-one has suggested to the contrary – suitably qualified, competent and careful witnesses who had worked co-operatively to reach a large measure of agreement so as to assist the court.

C. [Relevant legal principles](#)

47. This case involves the application of established legal principles to the particular facts of the case, so that it is sufficient for me to summarise the relevant principles and only to address in more detail particular points where it is necessary to do so in order to deal with points of dispute which are directly relevant to my decision.

*The formation of a partnership*

48. A partnership is the “relation which subsists between persons carrying on a business in common with a view to profit”: s1(1) Partnership Act 1890. It is necessary therefore to have (1) a business; (2) carried on in common; (iii) with a profit motive.

49. Co-ownership of property does not of itself create a partnership, even if the co-owners share profits made by the use of the property: s.2(1) Partnership Act 1890. The relationship between the co-owners must be a business relationship.

50. The relationship between members of any company does not amount to a partnership: s.1(2) Partnership Act 1890. However, the business of a partnership may be carried on using a corporate entity as an operating vehicle without the existence of a partnership being called into question. A partnership is not prevented from coming into existence by the fact that the parties intend that their business will, in due course, operate through a corporate entity; the parties may envisage that there will be a partnership unless or until the corporate entity is established. At that point, if the entire assets and operation of the partnership are transferred to a corporate entity in which the partners are shareholders, it may be appropriate to infer that the partners have mutually agreed to determine or dissolve their partnership. Alternatively, the circumstances may justify an inference that the partnership is continued on the basis that its sole business has become the operation of and the receipt of distributions from the corporate entity.

51. Where there is an intention from the outset to enter into business through a corporate entity, acts preparatory to setting up that entity are unlikely to indicate the existence of an interim partnership. Even if there is no such intention, the acts relied upon must demonstrate that the parties have done enough to be found to have commenced the joint enterprise in which they had agreed to engage. Neither a mere agreement to establish a partnership nor the setting up of

a partnership makes the parties partners; there must also be an actual carrying on of a business with a view of profit.

52. Where there is no agreement in writing the intention of the parties must be ascertained from their words and conduct. The fact that the parties have, or have not, expressly used the words “partners” and/or “partnership” is not determinative.

*The effect of the partnership deed*

53. Where, as here, it is admitted that the parties entered into a written partnership agreement, and there is no case advanced to the effect that the agreement is invalidated by some legally relevant factor such as mistake or duress or misrepresentation, then the partnership agreement takes effect according to its terms as properly construed, even where one party claims not to have read or understood the nature, terms or effect of the agreement.
54. So far as the process of construction of written partnership agreements is concerned, there are no special rules applicable to the construction of such contracts; the rules to be applied are the same as those to be adopted when construing written contracts generally, which are well-established. Regard must always be had to the relevant factual matrix in which the written contract was executed and the agreement is to be construed by reference to the parties’ objectives so far as revealed from the contract and the relevant factual matrix. However, the relevant factual matrix does not include the negotiations which preceded the agreement or the private intentions or beliefs of the parties.
55. There is some dispute between the parties as to the extent to which the defendants can seek to argue that, notwithstanding that the terms of the partnership deed appear to constitute a valid partnership agreement, in fact they do no such thing. As the claimant’s counsel submit, the position is authoritatively stated by the Supreme Court in *Autoclenz v Belcher* [2011] UKSC 41, in which Lord Clarke, giving a judgment with which all of the other members agreed, stated that the principles which applied to ordinary commercial contracts are clear and are different from those which may apply in the context of employment contracts. The position in relation to ordinary written commercial contracts is that the parties are bound by the written terms and may not rely upon or seek to imply inconsistent terms, nor may they claim that a written term does not accurately reflect what was agreed, unless they can fulfil the criteria for obtaining rectification (which is not claimed here). Whilst it may also be argued that the transaction between the parties was a sham, to do so it must be shown that the parties had a common intention that the contract was not to create the legal rights and obligations which it gave the appearance of creating: *Snook v London and West Riding Investments Ltd* [1967] 2 QB 786.
56. There is no basis in my judgment, whether in case law or in principle, for suggesting that the principles applicable to employment contracts may also be applied to partnership contracts, or at least a partnership agreement such as that entered into in the present case where there is nothing akin to an employment contract.

57. It is common ground from what I have already said that a partnership deed which is not acted upon in any way cannot by itself create a partnership where there is none. That is a different proposition from the further principle, which is not in dispute, that subsequent events are immaterial to the construction of a contract. It is also common ground from what I have already said that the mere fact that the agreement describes itself as a partnership agreement or purports to record the prior existence or the formation of a partnership cannot necessarily be conclusive. However, extrinsic evidence cannot be admitted to contradict or vary the express written terms of the contract.
58. In their written opening the defendants' counsel made two specific submissions which I need to address.
59. First, at [86], that the execution of a partnership deed will not operate to create a partnership from the date of the deed if the external evidence clearly shows that there is no partnership in fact: *Dickenson v Gross* (1927) 11 TC 614 at 620.
60. Second, at [87], that a statement in a partnership agreement to the effect that a partnership has existed from a date preceding the execution of the agreement itself cannot in law operate retrospectively. At best it may accurately reflect the past position, but if in fact there was no partnership during that period such a statement in the agreement cannot retrospectively alter the situation: *Waddington v O'Callaghan* (1931) 16 TC 187 at 197. Thus in *Saywell v Pope* (1979) 53 TC 40 at 51 a partnership agreement signed in June 1975 which stated that the partnership commenced in April 1973 was held to be of "little assistance" in establishing the existence of a partnership at the earlier date, see also *Lindley & Banks* at section 10-42.
61. In their closing submissions the claimant's counsel submit that *Dickenson v Gross* is simply an illustration of a case which was found to be a sham transaction. I agree with that submission. In that case a farmer entered into a partnership deed with his sons and submitted tax returns on the basis of a partnership, but accepted that he had done so solely to save tax and that the deed had been set on one side and disregarded. The Revenue concluded that no partnership had been created and its decision was upheld by Rowlatt J, who observed (p. 620) that the Revenue:
- "have not used the word "fictitious" and they have not used the word "sham" but I think they have put it even more clearly. They say: "the facts here were not a partnership although there was a bit of paper in the drawer, which if the facts had been according to it, would have shown there was a partnership".
62. As to *Waddington v O'Callaghan* (1931) 16 TC 187, that was another tax case where Rowlatt J expressed the position at p. 197 thus:
- "When people enter into a deed of partnership and say that they are to be partners as from some date which is prior to the date of the deed, that does not have the effect that they were partners from the beginning of the deed. You cannot alter the past in that way. What it means is that they begin to be partners at the date of the deed, but then they are to take the accounts back to the date that they mention as from which the deed provides that they shall be partners. There

is no sort of doubt at all that that is the only effect which such a deed can have. No deed can alter the past, but of course, it is quite possible that before the deed was executed the partners may in point of fact have been carrying on business in partnership which would give rise to partnership accounts and which would give rise to partnership liabilities and so on; and when the deed is executed and said to relate back to an earlier period, that means that the provisions of the deed as to the partnership rights and partnership accounts shall supersede the rights which have accrued under the partnership which de facto had existed before the date of the deed. All that is perfectly clear and perfectly simple.”

63. *Saywell v Pope* (1979) 53 TC 40 at 51, a decision of Slade J, is to similar effect, the judge emphasising the difference of approach as applied to the position of: (a) the parties and a third party, in that case – as in the previous cases – the Revenue; (b) the parties themselves, where Slade J observed that a statement in a partnership agreement that a partnership existed from a certain date “may well bind all parties, as between themselves, to take their accounts and to assume all other obligations on the footing that they have been partners from the stated date”, adding that “it cannot, however, operate actually to make them partners from the stated date, if they were not in truth partners.”
64. It follows, in my view, that it is perfectly possible for parties to agree as between themselves to treat themselves as having been partners from an earlier date than the date of the agreement, but that such agreement cannot establish that in law there was in fact and in law a partnership from such date so as to bind third parties unless there actually was a prior partnership during that earlier period. It cannot operate actually to make them partners from the stated date if they were not in truth partners at that time.
65. Moreover, as the claimant’s counsel submitted in closing, when contracting parties have, in their contract, agreed that a specified state of affairs is to form the basis on which they are contracting or is to be taken, for the purposes of the contract, to exist, the effect of such “contractual estoppel” is that it precludes a party to the contract from alleging that the actual facts are inconsistent with the state of affairs so specified in the contract: *Chitty on Contracts* 33<sup>rd</sup> ed, at 4-116, citing *Peekay Intermark Ltd v Australia and New Zealand Banking Group Ltd* [2006] EWCA Civ 386.

#### *Partnership property*

66. A question may arise as to whether or not particular assets, such as the Stockport Road property or the shares in the Stockport Road company, became partnership property under the partnership deed if there was no pre-existing partnership or they were not already partnership property. Whilst that is primarily a question of construction of the partnership deed counsel for the defendants referred me to a number of cases which they submit are of some relevance.
67. The first is the decision of the Privy Council in *Singh v Nahar* [1965] 1 WLR 1412, where the landlord of business premises contended that the tenant had breached the covenant against assignment in the lease by entering into a partnership deed in relation to the business carried on

from there which, whilst making no reference to the lease, provided that “the capital of the partnership shall consist of the net value of the stock-in-trade book debts and other assets of the business”. It was held that the partnership deed could not be construed as constituting an assignment of the lease to the partnership since if, under the deed, the tenancy was being assigned to the partnership, one would expect to find some clearer provision to that effect. That decision in my view is simply a decision on its own facts. It does not in my judgment establish or support the general principle contended for by the defendants, that where there is an agreement the courts will construe it strictly before including a doubtful asset as being partnership property.

68. The second is the decision of Harman J in *Miles v Clarke* [1953] 1 WLR 537 in which, in the context of an informal partnership at will where no specific agreement was reached as to whether particular assets owned by one incoming partner to be used by the partnership would become partnership assets, it was said that “no more agreement between the parties should be inferred than is absolutely necessary to give business efficacy to that which has happened”. I accept this statement of principle, which is not controversial. I will address its application to the particular facts of the instant case in due course.
69. The third, *Khan v Khan* [2006] EWHC 1477 (Ch), is a decision of Hart J which, whilst containing a masterly analysis of complex dealings between two brothers and their wider families in the context of a partnership dispute, does not appear to me to establish any particular principle of law which is relevant to this case.

*The transfer or allotment of shares in a company for no consideration*

70. This issue is relevant to the effect of: (a) Nusrat and Mirza becoming owners of shares in the Stockport Road company of equal number to those held by Tariq and Mahboob, without having provided any consideration; and (b) Nusrat having subsequently transferred two of her shares to Asad and Usman.
71. Tariq’s case is predicated upon the first transaction having occurred by means of a transfer by each of himself and Mahboob of one half of their shares to Nusrat and Mirza respectively, whereas the defendants contend that it occurred through the allotment of further shares direct to each of the four parties. This difference is relevant because it is the claimant’s counsels’ primary submission that a voluntary transfer of property to another for no consideration gives rise to a resulting trust of the property unless there is evidence that the transferor intended to make a gift to the transferee or unless the presumption of advancement applies (in which case a resulting trust arises only if there is evidence that the transferor did not intend to make a gift to the transferee). They submit that both the presumption of resulting trust and the presumption of advancement can be easily rebutted (see *Westdeutsche Landesbank Girozentrale v Islington LBC* [1996] AC 669 at 708A, and, in relation to the presumption of advancement, *Pettit v Pettit* [1970] AC 777 at 814: “*These presumptions or circumstances of evidence are readily rebutted by comparatively slight evidence*”).

72. In contrast, if there was an allotment of further shares as opposed to a transfer of existing shares, then no such presumptions would apply and the question as to the status of Nusrat and Mirza's ownership of their respective shares in the Stockport Road company would depend solely as to the circumstances in which they came to own them and as to what was said or agreed as between Tariq and Mahboob, Tariq and Nusrat and Mahboob and Mirza respectively.
73. The claimant's counsel submit that even in such circumstances the position as a matter of partnership law is that since Mirza received her shares through Mahboob and as a volunteer, Mahboob is liable to account to Mr Malik for the benefits she receives as well as those he receives. They rely upon *Woodfull v Lindsley* [2004] EWCA Civ 165 at [27]. That however is a reference to a part of the judgment of Arden LJ in that case in a very different context, where she held that a partner who was liable to his fellow partners for wrongful exploitation of a partnership opportunity was liable to account for the full benefit received by the company through which the opportunity was secured notwithstanding that it was equally owned by his wife as a volunteer. That does not appear to me to provide any authority for the submission apparently made which, as I understand it, is that since on the claimant's case the shareholding in the Stockport Road company was a partnership asset then, since Mahboob had procured a gift to Mirza of her 25% interest in that company, he ought to be liable to account to Tariq for the benefit she receives from that interest. In my view Arden LJ was referring to the extent of the partner's obligation to account and not to a consensual dealing by two partners with partnership property. If I find that Tariq and Mahboob had both agreed to divest half of their respective interests in the Stockport Road company to their wives for tax saving purposes, and did so without qualification or reservation, then Tariq cannot subsequently contend that Mahboob ought to be treated for the purposes of the partnership as if he had not done so.

*Misuse of partnership property, name or business connection and wrongful competition with partnership business*

74. Section 29 Partnership Act 1890 provides:
- “Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name, or business connexion”.
75. Section 30 Partnership Act 1890 provides:
- “If a partner, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm, he must account for and pay over to the firm all profits made by him in that business”.
76. As counsel for the claimant submit, s.29 is of wider application than s.30 because s.29 extends to any use of the partnership property, name and business connection and, thus, includes goodwill and the opportunity and advantage to which that goodwill gives rise. In contrast, s.30



only applies where the partner has carried on a business which competes with that of the partnership business.

77. However, as counsel for the defendants submit, there is no liability under either section if the other partners consent to the conduct in question.

*Partnership dissolution and winding up and bars to relief*

78. Although Tariq seeks a dissolution of the partnership under s.35(d) Partnership Act 1890 (in summary, where the court is satisfied that the defendant's conduct relating to partnership business is such that it is not reasonably practicable to carry on in partnership), he also seeks a dissolution under s.35(f) (in summary, where the court is satisfied that the circumstances render it just and equitable that the partnership be dissolved) on the simple basis that it is evident from the undisputed facts that the relationship between the partners has completely broken down.
79. Tariq also seeks the usual consequential order for the winding up of the partnership under the provisions of the Partnership Act 1890. It is common ground that such winding up will, if ordered, take place subsequent to this trial and judgment. I was invited by counsel for the claimant to make certain findings in relation to certain issues relevant to the winding up which have been investigated as part of the pleaded cases and evidence heard and submissions made at this trial and I will do so to the extent which I consider it to be just and proper to do so.
80. The defendants have also pleaded defences to the effect that Tariq is barred by laches and acquiescence from seeking any relief in respect of the partnership because he voluntarily ceded his participation in the partnership to Asad. It is common ground by reference to the decision of the Court of Appeal in *Jones v Stones* [1999] 1 WLR 1739 that the elements of those defences are: (1) encouragement or allowance (knowingly or unknowingly) of a party to believe something; (2) to his detriment; (3) in circumstances where it would be inequitable for the party then to assert his strict legal rights.

*Unfairly prejudicial conduct*

81. Section 994(1)(a) Companies Act 2006 provides that:
- “A member of a company may apply to the court by petition for an order under this Part on the ground that the company's affairs are being or have been conducted in a manner which is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself)”
82. In closing submissions counsel for the claimant made a number of points relevant to the way in which the case under s.994 was put by Tariq in closing submissions which are not contentious and which I set out below. Given the way in which the case was pleaded, my ruling on the claimant's application to amend and the limited case as advanced by the claimant under s.994

in closing submissions I do not need to address the law in relation to quasi-partnership companies or in relation to the previously pleaded or adverted to complaints of exclusion from management, failure to pay dividends or use of company funds to fund the defence of the unfair prejudice petition.

- a. The court will not adopt a technical or legalistic approach to what constitutes the affairs of the company but will look at business realities (*re Coroin* [2012] EWHC 2343 (Ch) at [628]).
- b. “Unfairness” and “prejudice” are separate requirements that both need to be established (*Re Sunrise Radio* [2010] 1 BCLC 367, [4]).
- c. Conduct may be ‘unfair’ without being unlawful. A concise summary of six relevant principles appears in *Grace v Biagioli* [2005] EWCA 1222, at [61]:

*“(1) The concept of unfairness, although objective in its focus, is not to be considered in a vacuum. An assessment that conduct is unfair has to be made against the legal background of the corporate structure under consideration. This will usually take the form of the articles of association and any collateral agreements between shareholders which identify their rights and obligations as members of the company. Both are subject to established equitable principles which may moderate the exercise of strict legal rights when insistence on the enforcement of such rights would be unconscionable;*

*(2) It follows that it will not ordinarily be unfair for the affairs of a company to be conducted in accordance with the provisions of its articles or any other relevant and legally enforceable agreement, unless it would be inequitable for those agreements to be enforced in the particular circumstances under consideration. Unfairness may, to use Lord Hoffmann’s words, “consist in a breach of the rules or in using rules in a manner which equity would regard as contrary to good faith”: see p. 1099A; the conduct need not therefore be unlawful, but it must be inequitable;*

*(3) Although it is impossible to provide an exhaustive definition of the circumstances in which the application of equitable principles would render it unjust for a party to insist on his strict legal rights, those principles are to be applied according to settled and established equitable rules and not by references to some indefinite notion of fairness;*

*(4) To be unfair, the conduct complained of need not be such as would have justified the making of a winding-up order on just and equitable grounds as formerly required under s. 210 of the Companies Act 1948;*

*(5) A useful test is always to ask whether the exercise of the power or rights in question would involve a breach of an agreement or understanding between the parties which it would be unfair to allow a member to ignore. Such agreements do not have to be contractually binding in order to found the equity;*

*(6) It is not enough merely to show that the relationship between the parties has irretrievably broken down. There is no right of unilateral withdrawal for a shareholder when trust and confidence between shareholders no longer exist. It is, however, different if that breakdown in relations then causes the*

*majority to exclude the petitioner from the management of the company or otherwise to cause him prejudice in his capacity as a shareholder”.*

- d. A breach of fiduciary duty by the directors is likely to amount to unfair conduct. In *Re Tobian Properties Ltd* [2013] BCC 98, Arden LJ (with whom Aikens LJ and Kitchin LJ agreed) held (at [22]) that:

*“One of the most important matters to which the courts will have regard is thus the terms on which the parties agreed to do business together. These are commonly found in the company’s articles. They also include any applicable rights conferred by statute. In addition, the terms on which the parties agreed to do business together include by implication an agreement that any party who is a director will perform his duties as a director. Primary among these duties are the seven duties now codified in sections 171 – 177 of the Companies Act 2006... Six out of seven of these duties are fiduciary duties, that is, duties imposed by law on persons who exercise powers for the benefit of others. Non-compliance by the respondent shareholders with their duties will generally indicate that unfair prejudice has occurred”.*

- e. It follows from the absence of any requirement that the conduct be unlawful that it is irrelevant, in assessing fairness, whether the conduct complained of has been approved or ratified under s. 239 of the Companies Act 2006 by the other members of the company. In *re Saul D Harrison plc* [1995] 1 BCLC 14, Hoffmann LJ confirmed that a petitioner could assert a claim under the predecessor of s. 994, even though a derivative action in respect of a breach of directors’ fiduciary duties might be unavailable to him due to the principle of majority rule<sup>1</sup>:

*“But the fact that the board are protected by the principle of majority rule does not necessarily prevent their conduct from being unfair within the meaning of [s 994]. Enabling the court in an appropriate case to outflank the rule in *Foss v Harbottle* was one of the purposes of the section”.*

- f. The courts take a wide view of the concept of “prejudice”. In *re Coroin Ltd* [2012] EWHC 2343 (Ch), David Richards J held that:

*“Prejudice will certainly encompass damage to the financial position of a member. The prejudice may be damage to the value of his shares but may also extend to other financial damage which, in the circumstances of the case, is bound up with his position as a member... A disregard of the rights of the member as such, without any financial consequence, may amount to prejudice falling within the section”.*

- g. Prejudice includes cases where “the value of [the member’s] shareholding has been seriously diminished or at least seriously jeopardised” (*re Bovey Hotel Ventures Ltd* (1981) (Unreported), quoted in *Hollington on Shareholders’ Rights* at 7-68.

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<sup>1</sup> [18c – 18d]

h. In *Re Elgindata* [1991] BCLC 959, Warner J held that the misapplication of the company's assets for the benefit of the directors and their associates was inherently unfairly prejudicial to the minority shareholders, despite that there was no serious diminution in the value of their shares. Justifiable loss of confidence in the probity of the company's management is prejudice in itself (see *Hollington on Shareholders' Rights* at 7-76).

83. Given my conclusions in relation to the partnership claim and the basis for the s.994 petition as advanced above I do not need to lengthen this judgment by referring to the authorities on petitioner misconduct.

84. Nor do I need to address the law in relation to whether a share purchase order would be appropriate or as to the question of discount for minority shareholding is concerned. Nor do I need to determine the issue which was ventilated as to whether the valuation should take any account of the ongoing coronavirus pandemic and, if so, on what basis and how.

D. **[The evidence and my findings](#)**

|     |                                                                                    |           |
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D.1. **[A partnership from the outset?](#)**

85. Whilst, given my findings below in relation to the partnership deed, it would be possible to pass over this issue entirely or at least address it very shortly, since the issue was very fully investigated in evidence and in submissions and since it is at least on one analysis, of some relevance to the construction of the partnership deed I will address it in some detail. Nonetheless there is no need to trawl through the background to the genesis of the relationship. It is sufficient to record that:

(a) Mahboob moved to the UK from Pakistan when he was 15 years old and, having worked his way up through a number of jobs, from 1988 onwards began to open and to run a number of restaurants under the Nawaab name. The first was in Bradford and subsequent restaurants elsewhere in northern England and also in tourist locations in Spain. He did so in an informal partnership with two other men to whom he was

distantly related, a Mr Mahboob Hussain Senior (“Senior”) and a Mr Ishaq. The three men used the services of Mr Mirza to obtain finance for the acquisition of property and to obtain loans and they used the services of Mr Nawaz and his firm for their accounts.

- (b) Tariq began his life in Pakistan, where he was involved as a director of one or more family businesses together with his father and his three brothers. In late 1999, when he was already 46 years old, he moved to the UK with his family.
- (c) Tariq and Mahboob became friendly through the introduction of Senior and another man known as Ayub. By December 2001 the friendship had developed sufficiently that a marriage was arranged between Asad as Tariq’s eldest son and Atikah as Mahboob’s daughter and Tariq and his family were living with Mahboob at his house.
- (d) In February 2000 Tariq purchased the Stockport Road property with his brother Hassan for £260,000. Although he said that his intention from the outset was to open a restaurant and wedding venue I do not accept this evidence and prefer that of Mr Mirza, whose services he used through the introduction of Mahboob and Senior, that his intention was to acquire a commercial property from which he could obtain rental income, which is what he did. Tariq and his brother obtained a loan from the Yorkshire Bank to acquire the property.
- (e) I am satisfied that when the existing principal tenant of the Stockport Road property surrendered the 25 year lease in 2001 Tariq and Mahboob entered into discussions, along with Senior and Ishaq, about renovating the Stockport Road property and converting it into a large restaurant which had the potential for becoming a buffet style wedding and banqueting venue. I am satisfied that this was Mahboob’s concept but that the venture would only have been feasible because the premises were suitable for that purpose and because it was understood that by all four combining their resources and experience they could make a success of the venture.
- (f) There was an initial meeting in December 2001 attended amongst others by Mr Mirza, who produced a note for his own purposes which he updated as events progressed and which I accept as reliable. The note describes the structure of the proposed arrangement under which Mahboob, Senior and Ishaq would buy out Hassan’s half share in the equity, take over half of the ongoing loan repayments and fund half of the expected £300,000 refurbishment costs, with Tariq providing the remainder. Mr Mirza was involved because it was envisaged that he would be asked to obtain finance to enable the scheme to proceed.
- (g) Relatively shortly afterwards Senior and Ishaq decided not to proceed further with the project, leaving Tariq and Mahboob to go it alone. It is clear that Tariq had little or no other option, since he needed to find a way in making the premises income-producing, and Mahboob was determined to realise his ambition.

86. However, Mr Mirza experienced difficulty in raising the necessary finance from Yorkshire Bank as the existing funder. Mahboob had a similar lack of success with his existing bankers,

NatWest Bank. He did, however, have sufficient funds to make the first of a number of payments to Tariq and Hassan on 7 February 2002 which he says, and I accept as I explain later, were payments towards the agreed share of the purchase price of his half interest in the Stockport Road property.

87. By May 2002 Mahboob had obtained further funding from HSBC Bank. On 2 May 2002 a business current bank account was opened in their joint names “t/a Nawaab Restaurant”. I shall refer to it as the joint current account. The bank statements show that it was used on a frequent basis from 14 May 2002 onwards and was permitted to become increasingly overdrawn. I have no doubt it was used from mid May to fund the beginning of the refurbishment works which were required; there is no other sensible explanation for its use over that period and, in his second witness statement, Mr Nawaz at [29] confirmed that the joint current account was used for expenditure on the restaurant. I also have no doubt, despite Mahboob’s denials, that he must have told HSBC that this account was the account which he and Tariq would use for their restaurant business and that there was no reference to a limited company being involved at this point.
88. On 5 July 2002 Mahboob obtained a £50,000 personal loan, secured on his house, which he used – as I find later - to pay Tariq and Hassan the final instalment to acquire his interest in the Stockport Road property from Hassan.
89. On 15 July 2002 the two men secured a joint loan of £220,000 from HSBC, which they used to discharge the remaining loan liability to Yorkshire Bank and to pay the balance into the joint current account which continued to be used to provide funds for refurbishment. Further funds were transferred into the account from time to time over the next few months to ensure that the overdraft was kept within limits and as at 1 December 2002, which is the last date on the available bank statements in this time period, the account was c. £133,000 overdrawn.
90. In the meantime, on 29 July 2002, Hassan’s interest in the Stockport Road property was transferred to Mahboob, ostensibly as a gift (although that was clearly not the case). From that time onwards Tariq and Mahboob held the Stockport Road property for themselves as tenants in common.
91. Two weeks previously, on 10 July 2002, company formation agents had produced and subsequently submitted an application for the registration of the Stockport Road company under the name Nawaab Restaurant (Stockport) Limited. After some delay the company was duly incorporated on 29 August 2002 with both men owning 1 share each and Mahboob being the sole director and Tariq being the company secretary.
92. The genesis of the decision to incorporate a limited company is unclear. Mr Nawaz said in his witness statement that he was not involved in the decision to incorporate. Mr Mirza said in his witness statement that he understood that the business had been set up as a limited company at the time it was set up. However he did not profess to have had any direct involvement in this or knowledge of the detail and, later in his statement (in the context of the partnership deed), he said that since he was neither an accountant nor a lawyer he did not profess to understand these

matters. Neither have any contemporaneous notes which might assist. There is no relevant correspondence passing between the two men or third parties such as the bank which sheds any light on matters.

93. Mahboob said in his principal witness statement that whilst he could not remember specific occasions matters were discussed “we were both aware that this company structure was financially beneficial to us both in terms of taxation and limited liability, a key feature for me, certainly, given the success that I enjoyed to that point and the risky but exciting nature of this enterprise”.
94. In cross-examination he agreed that there had been no discussion about whether the business was to operate through a partnership or a company at the early meeting in December 2001. He suggested that he had told Tariq in early 2002 that they should form a company to minimise the risk and that Tariq had agreed. I accept that a discussion along these lines took place but I do not accept that it occurred in early 2002 instead of around early July 2002, for reasons I shall explain later.
95. In his principal witness statement Tariq said that it was always agreed that the business would be an equal partnership, initially between himself and his brothers as to 50% and Senior, Ishaq and Mahboob as to the other 50% and subsequently as between himself and Mahboob. He said at [17] that:
- “In 2002, Mahboob and I were agreed after numerous conversations that; the partnership business would operate under the name "Nawaab Premier" from the Property and include restaurant and provision of wedding venue; that the Property would become property of the partnership; that when any opportunity became available the partnership business would be expanded to London by obtaining premises in London providing restaurant services and a wedding venue similarly to the "Nawaab Premier"; and that a company would be incorporated as a vehicle for operating the business(es) of the partnership.”
96. He also said in this section of his principal witness statement that Mahboob agreed to pay Hassan £250,000 for his share in the Stockport Road property but that Mahboob had failed to pay any of that agreed amount.
97. He was cross-examined about these assertions. In short, I am unable to place any reliance on this important part of his evidence for the following reasons.
- (a) His evidence about the use of the name Nawaab Premier was obviously wrong and taken from the subsequent reference to that name in the partnership deed 2 years later. There is no contemporaneous evidence of the use of that name at the time or subsequently. His evidence about expansion into London is also plainly wrong, since there is no evidence of any discussion let alone activity in that respect until over 10 years later, in circumstances where when in 2004 there was discussion about opening another business venture that was in Bradford. I am satisfied that the London suggestion was made purely opportunistically by Tariq in his witness statement in an attempt to bolster his case in relation to the Perivale Nawaab.

- (b) When asked, he was unable to say when it was agreed that there should be a partnership. When pressed, he referred in some detail to 2004 when solicitors were first instructed to produce the partnership deed. When he realised the implications of this answer for his case that there had been an oral agreement in 2002 he backtracked but was still unable to be any more specific as to what had been agreed in 2002 and when and in what circumstances. His statement that it was agreed that a company would be incorporated as a vehicle for operating the partnership business is, I have no doubt, something inserted by lawyers rather than his own evidence. When he was asked about this he claimed that he did not know about the company and that he was an illiterate person, inconsistently with his evidence that he had already been involved with a number of successful businesses and had been a director of a family business in Pakistan. When asked again he said that he did know that a company was being set up. When the point was returned to on day two of his evidence he backtracked again, saying that he did not know who was a director or even what a limited company was.
- (c) His evidence about the £250,000 was also obviously wrong. Apart from the inherent implausibility that Mahboob would have agreed to pay £250,000 for a half share in a property which had been acquired for only £260,000 only a year previously, that evidence is completely inconsistent with Mr Mirza's contemporaneous note which records that Mahboob was to pay £63,200 for Hassan's share and take over the half share of the ongoing loan repayments.
- (d) His evidence about the non-payment was also obviously wrong. Apart from the inherent implausibility that Hassan would have taken no action over an extended period to obtain payment of what was due to him and the absence of any contemporaneous evidence to support the assertion, Mahboob has been able to produce four cheques which are consistent with his paying the amount recorded by Mr Mirza as being payable. Although Tariq claimed that the largest cheque was a repayment of monies owed separately by Mahboob to him: (a) there is no evidence of that; and (b) it is unlikely to be sheer coincidence that Mahboob would pay and Tariq would accept this payment in the same month as Hassan transferred the Stockport Road property to Mahboob, especially when Mahboob had to re-mortgage his home to be able to pay this sum. Whilst it is true that it was made payable to Tariq rather than to Hassan I do not regard that as significant given the closeness of the relationship between the two brothers (and the fact that, as discussed below, in 2004 Tariq executed a deed of trust declaring that he held his share in the business on trust for his brothers and nephews). Although Hassan had given a witness statement supporting Tariq's account it was lacking in detail and he was not called to give evidence on his witness statement without any good reason being offered.

98. Tariq's witness evidence was that Mahboob had told him that he had also been appointed as director and that it was not until 2010 that he found out he was not in fact a director but only company secretary. Mahboob denies this and says that he was told by the company formation agents that a company needed a secretary and a director and gave no thought to who should



take which role. Whilst I accept Mahboob's evidence that this was not deliberate I am satisfied that it does indicate that the company formation was driven by Mahboob with Tariq simply agreeing and without any real discussion as to how it would work in legal or practical terms.

99. On 24 September 2002 a business current account was opened with HSBC in the name of the company. It was first used on 30 December 2002, when monies were paid into it, and it immediately became an active account, consistent with the evidence of Mahboob, which I accept, that the restaurant opened in early January 2003.
100. Rather unhelpfully the bank statements of the joint current account and the Stockport Road company current account between late 2002 / early 2003 and July / August 2005 are missing. However, overall the picture is reasonably clear that it was the Stockport Road company current account which was being used for the trading activity of the Stockport Road company throughout this whole period and there is no indication that the joint current account was being used for trading purposes. So far as the joint current account is concerned, the bank statements from August 2005 onwards reveal that the only regular income into the account was a weekly payment of £2,500, which was being paid from the Stockport Road company current account.
101. In terms of accounting treatment, the accounts for the period from 29.8.02 to 31.7.03 as prepared by Nawaz & Co, as well as those for subsequent periods, provide little assistance other than to show that the Stockport Road Nawaab restaurant business was being treated as being undertaken by the Stockport Road company rather than by Tariq and Mahboob as a partnership. There is also a schedule prepared by Nawaz & Co which records how in the p/e 31.7.03 and subsequently expenditure on the Stockport Road property was treated as expenditure of the Stockport Road company and thus as additions to fixed assets.
102. The tax returns submitted by Tariq record that his income was derived from his employment as a director of the Stockport Road company, from dividends received from the Stockport Road company and from "profit from UK land and property". It is clear from the equivalent statements of rental income and expenditure produced by Nawaz & Co in relation to the Stockport Road property that the profit from UK land and property relates to the rental income received from the Stockport Road company (and from a shop and a radio antenna also situated on the property).
103. I am unable to accept Tariq's evidence that he had no involvement in or knowledge of these documents and how his income was treated. I accept the evidence of the other witnesses that Tariq would attend meetings with Mr Nawaz in relation to matters relating to the financial affairs of the business and his own financial affairs and had sufficient interest in and ability to comprehend financial matters and documents to have a reasonable understanding of what was being discussed. Insofar as he suggests that he was simply a passive presence at these meetings I reject that suggestion. Thus Tariq undoubtedly did sign company documents relating to the Stockport Road company, including his consent to act as company secretary in September 2002. It was apparent when he was referred to the schedule prepared by Nawaz & Co that he had no obvious difficulty in understanding financial information such as company accounts. Moreover, there is evidence in the form of a note from Mr Mirza dating from 2007,

in the context of a proposal for Tariq to buy out Mahboob, that Tariq wanted to undertake the business going forwards through a limited company. Since it is no part of Tariq's evidence that something had happened between 2002 and 2007 through which he came to know about limited companies for the first time I am unable to accept that throughout this period he did not know about the existence of the Stockport Road company or that the Stockport Road Nawaab business was to be carried on through the Stockport Road company.

104. Until 2008 there was no formal agreement setting out the terms under which the Stockport Road company was occupying the Stockport Road property. However, it is clear that the £2,500 per week being paid into the joint current account from the Stockport Road company current account from at least August 2005 was referable to rental payments being made by the Stockport Road company to Tariq and Mahboob.
105. Those then are the circumstances in which the Stockport Road Nawaab came to be opened and in which Tariq and Mahboob operated the business.
106. I must now determine the competing cases as to whether or not it was agreed that the two men should operate in partnership in relation to the whole business venture, both the acquisition and use of the Stockport Road property for the restaurant business and other letting, and the carrying on of the Stockport Road Nawaab restaurant business, as Tariq contends, or in co-ownership in relation to the Stockport Road property and as co-owners of the company in relation to the Stockport Road Nawaab, as Mahboob contends.
107. I am satisfied that from December 2001 onwards Tariq and Mahboob had agreed in a general sense to become partners in relation to the Stockport Road property and the Stockport Road Nawaab, initially with the others and then by themselves. I am satisfied that nothing was discussed or agreed over this initial period to the effect that it should all be done through a company. The defendants' counsel submitted that it was inconceivable that the two men would enter into a risky commercial venture without taking steps to limit their liability. That submission however implies that this is something to which they addressed their minds at this early stage. I do not accept that this was the case from the start. Tariq in my view, and indeed as Mahboob said, had no particularly strong view either way. Mahboob had always previously been perfectly willing to conduct his business via an informal partnership with Senior and Ishaq. He was reasonably confident that he could make a success of the business venture and indeed referred to Tariq as his partner on a number of occasions. There is no compelling reason to conclude that until early July 2002 the question of the company had ever been considered let alone discussed or agreed.
108. However, nothing concrete could be done to drive the project forwards until finance, both in terms of Tariq's acquisition of Hassan's interest in the Stockport Road property and in terms of the necessary refurbishment, was available.
109. In my view it follows that the critical questions are when and in what circumstances the discussions and agreement in relation to opening and using the joint current account for refurbishment took place and when and in what circumstances the discussions and agreement

in relation to incorporating and using Stockport as a vehicle for the restaurant business took place.

110. Thus the crucial period was from around early May 2002, when Mahboob secured finance and when the joint current account was opened and started to be used, to around mid-July 2002 when the joint loan account was opened, when Hassan's share was transferred to Mahboob and when the company formation agents were instructed.
111. Although I am having to do my best on incomplete and unsatisfactory evidence, I am satisfied on the balance of probabilities that there were two separate sets of discussions and agreements, the first taking place prior to early May 2002, in the context of Mahboob securing finance and the two men opening and then using the joint current account to start refurbishment works, and the second taking place in around early July 2002, in the context of the joint loan being obtained and when, I am satisfied, the decision to incorporate was taken and implemented. I am satisfied that the discussions and agreements took place in two separate stages because if everything, including the decision to form the company, had been agreed before early May 2002 there is no reason why the company should not have been formed at that stage. If that had been agreed at that stage it would have made sense for the current bank account and the loan facility to have been obtained in the company name with both men acting as guarantors, which would of course have provided precisely the same security for the bank.
112. I am satisfied on the balance of probabilities that the decision to incorporate Stockport was taken in around early July 2002 at a time when the two men were becoming increasingly aware of the financial risk they were taking, given that the loan was being taken out in personal names and the joint current account overdraft was increasing in order to fund the refurbishment works. I am satisfied that there was some discussion, probably sparked by a suggestion from someone else, that they could limit their overall liability by operating the restaurant through a company and by opening a separate company bank account once the restaurant had opened. I do accept that neither Tariq nor Mahboob wanted to take on the risk of unlimited personal liability in relation to the restaurant business. That is consistent with the handwritten note made by Gordons solicitors at the meeting on 9 November 2004, to which I refer below. However equally it is clear that this was not such a driving factor as made them transfer their bank borrowing into a company account.
113. It follows that the essential questions are first whether the state of affairs which subsisted from early May 2002 to early July 2002, when the further discussions and agreement took place, and August 2002, when the Stockport Road company was incorporated, establish that an informal partnership came into existence at that time and, if so, second what if anything was the effect of the subsequent discussions and agreement and incorporation of the company and subsequent operation of the restaurant business through the company thereafter.
114. As to the first question, in my judgment the evidence is sufficient to demonstrate that an informal partnership did come into existence at that time. All of the essential ingredients of a partnership were present. Tariq and Mahboob had agreed to go into business together with a view to owning the Stockport Road property, using it to run the Stockport Road Nawaab

restaurant business and to obtain rental income from other lettings. I am satisfied that they regarded themselves as partners in a general sense in a business venture on that basis. They had opened a joint current bank account which they were actively using for the first stages of the development of the partnership business and had decided to obtain a joint loan facility as well. It is true that the restaurant business was not trading, but actual trading is not an essential pre-condition for a partnership to exist. They had not already agreed that the business, whether the whole of the business or solely the restaurant business, was to be owned by or operated through a limited company. That two-month period was sufficient in my judgment for the state of affairs to be more than merely a transitory state of affairs at a time when there was nothing more than an uncertain inchoate understanding.

115. As to the second question, in my judgment there is no basis for a finding that this informal partnership was brought to an end by subsequent developments. There is no evidence that the two men expressly considered, let alone decided, that their relationship as partners was brought to an end, in whole or in part, by the formation of the Stockport Road company and its operation of the restaurant business.
116. It is not the case that the Stockport Road company was ever intended to or did take over the whole of the business in which they were engaged, since it did not include the management and rental of the Stockport Road property. The joint current account and the joint loan account remained in being. Thus, there can be no question of an implied dissolution on the basis that the whole of the partnership business including its assets was being transferred to the company.
117. I have considered carefully whether or not it can be inferred from all of the circumstances that the two men had effectively agreed to hive the restaurant part of the partnership business completely out of the partnership and into the Stockport Road company.
118. I accept that the opening of the company current account and its subsequent operation, as well as the subsequent treatment of the restaurant business in the company accounts, the statements of rental income and expenditure, and the personal tax returns, all as prepared by Nawaz & Co, are powerful pieces of evidence in support of such a conclusion.
119. However, in the absence of any evidence that these were considered decisions, taken at a meeting with Mr Nawaz or anyone else at which the implications were explained, I am not in the end persuaded that they are sufficient to reach such an inference. The opening and operation of the company account proceeded in tandem with the continued operation of the joint account and the loan account which were used, according to the evidence to which I refer later, for a mixture of personal and company purposes. No attempt was made to close those accounts or to separate them clearly from the company current account or any newly opened company loan account. The treatment of the business in the accounts, rental statements and tax returns are consistent with Nawaz & Co taking it upon itself to draw up such documents on the basis of individual property ownership and company operated restaurant business. The fact that the two men had no reason to question this approach is not sufficient in my view to prove that a hive out took place.

120. In my judgment it is a more plausible inference from these facts that the two men intended to continue to own the whole business as partners but for the company to operate the restaurant business on behalf of the partnership. That could be achieved without any difficulty by the two men holding their shares in the Stockport Road company as partnership assets. That could be done without formality. In the end, it seems to me that this conclusion is more consistent with the absence of any express discussion or agreement about how the company would interface with the existing personal business relationship. In the absence of any such discussion or agreement it is more appropriate to infer that this is what the parties intended than to infer that they intended to hive off the restaurant business from the partnership and, on balance, I am satisfied that this is what happened.
121. I consider that this conclusion is consistent with the tenor of the instructions given by Mahboob and Mr Nawaz to Gordons in 2004, to which I refer below. It also explains why it never occurred to anyone from 2004 onwards to query why a partnership deed was being drawn up and entered into, which on its face covered the Stockport Road Nawaab restaurant business, if all involved at the time believed that there was no partnership in that respect and that the restaurant business was owned entirely by the separate limited company, rather than simply being operated through that company.

D.2. Effect of the 2006 partnership deed

122. Having regard to the principles discussed in section C above I must be careful not to have regard to impermissible evidence, particularly pre-contractual material not forming part of the admissible factual matrix, when construing the partnership deed. However, since the evidence was fully explored at trial, and since some of it is of some relevance to other matters, I shall refer to it before deciding to what extent it is in fact relevant.
123. In addition to the file notes, letters and drafts produced by Gordons solicitors Mr Mirza also took a note of the first meeting on 9 November 2004 and of his involvement in subsequent events. Whilst I do not entirely discount the evidence of the witnesses I am satisfied that in this respect, where what happened is reasonably well documented by independent professionals and where the protagonists have reason to give an account of events over 15 years ago which accords with their current interests, the contemporaneous documents are a far surer guide to the truth, notwithstanding that there are – as I accept – some errors in those records.
124. The starting point is to ask why Gordons solicitors were instructed to draft a partnership deed in November 2004.
125. Tariq's case and evidence is that the partnership deed was entered into at the suggestion of Mahboob and Mr Mirza to cement a recent agreement between Tariq and Mahboob that they should be business partners for life. I reject this explanation as being unsupported by any evidence and contrary to the other evidence, which I do accept, about the rocky state of the relationship between the two men even at that stage.

126. However, he also gave a second reason, which was to ensure that everything was properly recorded in case of untimely death, and which was precipitated by the untimely death of one of his brothers. I accept that this was an important reason. It is clear from the file notes made by Gordons of the initial instructions that Tariq had a pre-existing informal partnership with his brothers to the effect that they all had an equal share in their respective assets and that one reason for wanting a formal record of this was that their<sup>2</sup> respective interest in Tariq's UK assets was to be formalised so that there could be no dispute in the event of his death.
127. A particular impetus for this decision was that in October 2004 Tariq and Mahboob had, with the assistance of Mr Mirza, jointly acquired commercial premises at Cooksmill in Bradford. The plan, according to Tariq, was to open a further Nawaab restaurant there. According to Mahboob, the plan was also to use the premises to make and sell Indian chilled food products to supermarkets and other customers. Whilst it does not really matter either way, I accept that using the premises to make and sell food was part of the plan. It is common ground that the property was never used for either purpose and was sold relatively soon after its purchase. I am satisfied that this was primarily because a good offer had been made to purchase the premises rather than because Mahboob had already decided that he could no longer be involved in any further projects with Tariq, although I accept that difficulties between the two men in relation to the operation of the Stockport Road Nawaab had already surfaced.
128. The defendants' case and evidence is that by this stage there had already been a number of serious disagreements between Tariq and Mahboob about what Mahboob perceived to be Tariq's tendency to interfere in the business over and beyond his agreed role and to cause problems with staff and suppliers. Although Mahboob tended to avoid confrontation and to seek compromise, he had approached Mr Mirza who had suggested to both men, who had both agreed, that the way forwards was to formalise the relationship between the two men in some form of written agreement.
129. Although Tariq denied that these complaints about his behaviour were well founded, I am satisfied that they were, since the evidence of the personal defendants is corroborated by Mr Mirza and by Mr Nawaz and also by the notes made (albeit subsequently) by Mehmoona, which give convincing examples of Tariq's conduct. I also accept that Mr Mirza had indeed presented obtaining a formal written agreement as a way of formalising the relationship between the two men to avoid damaging conflict for the future.
130. It is also clear that Mahboob separately needed legal advice at this point because he was in the process of retiring from his existing partnership agreement with Senior and Ishaq and a draft retirement deed had been produced on which he needed to take independent legal advice.
131. I am satisfied that it was in those circumstances that Mr Mirza approached his existing contact, Mr Chamberlain at Gordons, and arranged for Mahboob to receive advice about the draft retirement deed and for what is described in the first file note of 5 November 2004, produced

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<sup>2</sup> More precisely, the interests of his remaining brothers and the sons of his deceased brother.

by Ms Powell of Gordons following a telephone conversation with Mahboob, as a “partnership deed very simple” to be drawn up between Mahboob and Tariq “his partner” where Tariq “is holding his 50% share in this partnership on trust for people who aren’t resident in the UK”.

132. Although both Mahboob and Mr Mirza attempted to suggest that this was a misunderstanding by Ms Powell, and that these instructions were not given by Mahboob, I am satisfied that they were given by him and that this reflected Mahboob’s contemporaneous belief that he and Tariq were – putting it colloquially rather than legally – already partners together and that he wanted the relationship formalised by the production of a partnership deed.
133. On 9 November 2004 Tariq, Mahboob, Hassan and Mr Mirza attended Ms Mathers, the fee earner to whom the matter had been passed, who produced a handwritten and also a typed-up file note of the meeting. It is clear that the name “Nawaab Premier” was mentioned at the meeting as well as the name “Nawaab” in the context of the Stockport Road Nawaab. I am satisfied that the Nawaab Premier name was something which Tariq in particular was keen to use on the basis that the Nawaab name was seen to have a value but that it would be helpful to differentiate between its use by Tariq and Mahboob on the one hand and Senior and Ishaq on the other. I accept that Mahboob was less enthusiastic about the addition of the word Premier however he did, I am satisfied: (a) instruct Gordons to register it as a trademark as a precaution; (b) not object when Gordons was instructed that this would be the name of the partnership business going forwards. However, as it transpired, and as Tariq agreed in cross-examination, Mahboob got his way in that the Nawaab Premier name was never actually used by the Stockport Road Nawaab either at this time or subsequently, albeit that some stationery bearing that name was produced.
134. The instructions given at the first meeting as recorded by Ms Mathers were to the clear effect that Tariq and Mahboob were currently equal partners. Ms Mathers was instructed that the Stockport Road property was jointly owned by Tariq and Mahboob and that the Stockport Road Nawaab was “also incorporated under [the Stockport Road company]”. The handwritten note states: “Trading company liability reason everything owned partnership”. This, in my judgment, establishes that the instructions given at that meeting were that everything, including the Stockport Road property and the Stockport Road Nawaab business, was owned by the partnership, notwithstanding that the Stockport Road company was being used as the operating company for the Stockport Road Nawaab restaurant business in order to limit the two men’s liability for its debts.
135. Although in cross-examination Mahboob sought to give the impression that he was no more than an observer at this meeting, since according to him what was being discussed did not really concern him as opposed to Tariq and his brothers, I do not accept this evidence. At this stage the initial intention was to have one partnership agreement between Tariq, Mahboob and the brothers, rather than a separate trust deed, so that its contents plainly did concern him. Further, even on his case one reason for instructing solicitors was to obtain some written agreement which would formalise and thus hopefully improve the relationship between himself and Tariq. Finally, given that Mr Mirza had limited knowledge of the detail of how the

business operated and that Tariq was unable to speak English and had less involvement with and knowledge of the organisational structure of the business, in my judgment these instructions can only have come from Mahboob.

136. It is clear from the file note that Ms Mathers did not see the existence and position of the Stockport Road company as a problem which would require any further transactional work, such as a separate shareholders agreement, advising instead that the brothers as incoming partners could simply be given shareholdings in the Stockport Road company in accordance with their partnership shares in the partnership by issuing new shares in the company.
137. As would be expected, Ms Mathers used a draft standard form of partnership deed which was to be amended or added to in accordance with answers given in response to a partnership checklist which she went through at the first meeting. One particular point which she noted was that “each partner could be involved in businesses other than that of the partnership even if those businesses competed with the partnership.” It can be seen from the various drafts of the partnership deed that clause 17.1 of the standard form, which would have prevented partners being involved in businesses other than that of the partnership, was deleted in accordance with these instructions. I will need to consider in due course the legal effect of this deletion, in circumstances where the partnership deed does not contain any express permission to compete.
138. It is clear from the file note of a conversation between Mr Nawaz and Ms Mathers on 17 November 2004 that Mr Nawaz was concerned that having one partnership agreement where the brothers were all partners, was not what had been agreed previously and risked the bank asking for security from the brothers. Mr Nawaz also confirmed the role of the Stockport Road company, explaining that:
- “... the company, whilst it did not currently own many assets, the business was being run through it and it would in time own various assets of the business. He believed there was 100 shares 50/50 between Mr Hussain and Mr Mahmood and it was to remain this way with Mr Mahmood holding his shares in trust [for the brothers].”
139. As I have said, this is consistent in my judgment with Mr Nawaz believing that the partnership owned the business, which was only being run through (i.e. operated) by the Stockport Road company.
140. It is apparent from the file note that Mr Mirza subsequently confirmed what Mr Nawaz had said and that this led to Ms Mathers confirming that she would draft a separate declaration of trust as between the brothers in addition to a partnership deed as between Tariq and Mahboob separately.
141. The declaration of trust was executed on 30 December 2004. It is an agreement between Tariq and his brothers to which Mahboob is not a party. Accordingly, it is of no direct relevance to the position as between Tariq and Mahboob. It is only of note in that it separately identifies the assets the subject of the trust as being Tariq’s interest in the partnership, his interest in the Bradford property and his shares in the Stockport Road company. It does not expressly define the partnership assets. Thus, it does not expressly identify the Stockport Road property as an



asset of the partnership, nor does it expressly state that the shares in the Stockport Road company are partnership assets. It follows in my view that its provisions are not inconsistent with either parties' case.

142. The declaration of trust was entered into without significant delay because it was uncontroversial as between Tariq and his brothers. In contrast, the conclusion of the partnership deed became protracted. Initially this was because Mr Nawaz wanted to speak to Mahboob, who was abroad for some time, before providing information to Ms Mathers. Subsequently it was because Mr Nawaz and then Mr Mirza were not responding to Ms Mathers' communications over considerable periods of time.
143. I am also satisfied that once the trust deed was executed the impetus to conclude the partnership deed faded to some extent. As well as Mahboob's absence abroad Tariq wished to consult his brothers about the terms of the partnership deed.
144. It is unnecessary to refer to the detail of the first draft of the partnership deed or the various amendments made to it, save to note the following:
- (a) The recital and clause 2, upon which Tariq places reliance and which are considered below, were in the draft from the outset.
  - (b) Clauses 6 and 8, which provided specific figures as to the value of the partnership capital and the agreed monthly drawings, were added to the first draft on instructions which, consistent with my findings as to the meeting of 9 November 2004, I am satisfied can only have come from, or at least been approved by, Mahboob.
  - (c) Clause 11.2, dealing with the management and control of the partnership affairs, was amended twice, first to give Mahboob sole management (save for certain important specified matters), and then second to remove that amendment, so that all matters required the agreement of both. Having considered the evidence relating to these changes, including that of Mr Mirza, I am satisfied that the first amendment was proposed by Mr Mirza so as to achieve Mahboob's objective of letting him get on with the running of the Stockport Road Nawaab and to avoid continuing interference by Tariq and thus disagreement between the two men. However, it is clear that Tariq and possibly his brothers objected to it and that Mahboob, having been made aware of this by Mr Mirza, did not press for its inclusion given that opposition. I am unable to accept Mahboob and Mr Mirza's evidence on this particular point that Mr Mirza took this important decision without reference to Mahboob because he believed from Mahboob that he was entitled to do so; that in my view is simply implausible and not supported by any independent or documentary evidence.
145. Despite his denials, Mahboob was plainly involved in the ongoing process, discussing matters with Ms Mathers and with Mr Mirza and Mr Nawaz. This undermines his case and his evidence that he was not involved or interested and that he signed the partnership deed without reading it. It is possible, I accept, that he did not trouble to read the partnership deed, relying on his advisers for that purpose, but I have no doubt that he was aware that it was a legal

document which recorded the terms of his business relationship with Tariq and that it was in the form of a partnership agreement.

146. The partnership deed was eventually executed on 14 April 2006. It contains the following provisions of direct relevance to this case, where MH is Mahboob and TM is Tariq.
147. The Recital states that: “MH and TM wish to carry on business as an Indian restaurant under the title of Nawaab Premier ("the Business") in partnership together upon the terms and conditions contained in this Agreement in continuation of the business carried on by MH and TM in partnership under the same name”.
148. This is clearly significant, in that the partnership is stated to be the business of an Indian restaurant and not, for example, solely the business of property letting.
149. The partnership is simply defined as “the partnership formed by the partners under this agreement”.
150. Clause 2.1 states that: “The Partners shall be and become partners in the Business with effect from the date of this Agreement in continuation of the business previously conducted by MH and TM under the same name”.
151. Thus, it is not intended that the partnership deed is to effect a change in the pre-existing partnership business.
152. Clause 3.1 states that “The Business shall be carried on under the firm name of Nawaab Premier and the principal place of business shall be at 1008 Stockport Road, Levenshulme, Manchester M19 3WN and/or at such other place or places as the Partners may from time to time agree ("the Premises").”
153. Clause 3.2 states that “The Premises shall continue to be held by MH and TM as Partnership property and the cost of all rent, rates, repairs and insurance and other outgoings and expenses relating thereto or to any other property acquired for the purpose of the Business shall be borne by the Partnership”.
154. Mahboob contends that these provisions are factually inaccurate in at least two important respects. He says that they had not in fact carried on business under the Nawaab Premier name nor had they reached a firm decision that they would do so. Whilst I agree, the origin of this error is explained above and occurred at the first meeting of 9 November 2004 at which both men were present. The misdescription in the name of the partnership business has no relevance to the validity, construction or effect of the partnership deed.
155. He also says that – unlike the declaration of trust – the provisions make no reference to the existence of the Stockport Road company or to the shares in the Stockport Road company or to the Bradford premises. Again, I agree. The absence of any reference to the Bradford premises is simply explained by the fact that by this time it had been sold. The absence of any reference to the Stockport Road company or its shares is not so simply explained. However, in the absence of any suggestion or evidence to the effect that any express instructions had been

given in this respect that is a point which is relevant to the construction of the partnership deed rather than some express agreement as to what the partnership assets comprise.

156. In that regard it is to be noted that there is no clause which purports to specify the partnership assets on an exhaustive basis. As well as clause 3.2, clause 5.1 stated that: “All the professional and business equipment and office and other equipment and fittings in or about the Premises and used for the purposes of the Business including the assets of the business previously conducted by MH and TM shall be assets of the Partnership and shall belong to the Partners equally”.
157. Clause 6, entitled “Capital”, states that: “The capital of the Partnership as at the date hereof is £6,000,000 and it shall be deemed to have been contributed by and belong to the Partners in equal shares”. This is a significant provision in my view. As I have said, the value was inserted into the partnership deed after the first draft was produced. There is no contemporaneous documentation to indicate who provided it. In my judgment it can only have come from either Mahboob or Mr Nawaz. It could not have been thought to relate only to the value of the Stockport Road property, acquired for only £260,000 6 years earlier, with no evidence of any substantial increase in value in the intervening period. In his witness statement Mr Nawaz said that a valuation of £5M for the company appeared to have been worked out at the time of the partnership deed. Mahboob said that this was the accounts department’s valuation, by which in my view he meant Nawaz & Co. This valuation is consistent with a note prepared by Mr Mirza of discussions in 2007 where Mahboob was stating that he was willing to sell his interest in the business to Tariq for £2.5M and where a valuation of £5M was also referred to.
158. In my judgment this reference to the partnership capital being £6M is only explicable on the basis that it includes the value of the Stockport Road Nawaab as a business. The only basis for including the value of that business as partnership capital was on the basis that the partnership owned the business as a partnership asset. Since Tariq and Mahboob owned the shareholding in the Stockport Road company as the operating company that can only have been on the basis that they held the shares as assets of the partnership. It is clear in my judgment that an informed reader of the partnership deed, having the knowledge which the parties had as to the ownership of the Stockport Road property, the incorporation of the Stockport Road company and its operation of the Stockport Road Nawaab, could only have read the partnership deed on this basis.
159. It is legitimate to ask why, if such was the case, Gordons did not draft the partnership deed to state expressly that the shareholding in the Stockport Road company was a partnership asset. Whilst this can only be speculation, in the absence of evidence from the solicitors in the form of witness evidence or a file note, the most plausible explanation is that given the difficulty in extracting clear, comprehensive and reliable instructions from the clients and their representatives over an extended period the drafter thought it more prudent not to seek to define the partnership assets specifically so that Gordons could not subsequently be criticised if, for any reason, the terms of the partnership deed were later relied upon by the Revenue in a

manner adverse to the interests of Tariq and Mahboob. One can see that Gordons would have been concerned that a positive statement in the deed to the effect that the partnership was the true beneficial owner of the entire shareholding in Stockport might have adverse tax consequences.

160. Be that as it may, the most significant point in terms of the construction of the partnership deed is that, in the absence of an exhaustive definition of the partnership assets, on a proper construction of the document the combination of the contents of the recital and clauses 5 and 6 read in their factual matrix demonstrate that the business of the Stockport Road Nawaab was a partnership asset and that this was on the basis that the shares in the Stockport Road company were held by Tariq and Mahboob as partnership assets. In the circumstances I am satisfied that on a true construction of the partnership deed the shareholding in Stockport was indeed included as a partnership asset.
161. I reach that conclusion without reference to the references in clauses 2 and 5 to the partnership being in continuation of the previous partnership business and to the partnership assets including the assets of the previous partnership business. Since I have already found that the previous informal partnership included the Stockport Road Nawaab restaurant business as carried out through the Stockport Road company and that Tariq and Mahboob held their shares in the Stockport Road company as assets of the partnership then it follows in my judgment that the partnership deed did not on its true construction purport to effect any alteration in that regard so that the shares in the Stockport Road company remained partnership assets for such purposes.
162. The defendants have also contended that the partnership deed was simply “set to one side and disregarded”. It remains unclear to me what is meant by this. It is an expression which appears to have been taken from the tax cases discussed above. However, the partnership deed was a legally effective contract which, as I have held, in fact reflected the previous position. It is true that even after the partnership deed was entered into Nawaz & Co continued to produce accounts for the Stockport Road company and property income and expenditure statements for Tariq and Mahboob, which show a continued separation between the Stockport Road Nawaab restaurant business as being operated by the Stockport Road company and the Stockport Road property being co-owned. Whilst there was no attempt to produce partnership accounts, nonetheless this treatment is not diametrically inconsistent with position under the partnership deed as I have found it to be.
163. Mr Nawaz went into some considerable detail in his witness statement to explain the tax consequences of disposing of the assets of the Stockport Road company to the partnership, however in my view that evidence missed the point. There has been no evidence from him or anyone else to the effect that the tax treatment would have been any different or less favourable to Tariq and Mahboob had the revenue from letting the Stockport Road property and the dividends received from the Stockport Road company been treated and taxed as having been received as partnership income as opposed to income of the two individuals not operating in partnership.

164. Moreover, the execution of the power of attorney in the terms to which I refer below is in my view only consistent with a recognition of the continued existence of the partnership as governed by the partnership deed. Since this was obtained at Mahboob's instigation, in an attempt to resolve the continuing problems between himself and Tariq in relation to what he believed was Tariq's interference in the running of the Stockport Road Nawaab, and was intended to be for his benefit to remove that interference, it is difficult to see how he can say that the partnership deed was simply disregarded after its execution.
165. I should also deal with the separate point as to the deletion of the clause permitting competition. The claimant's counsel submit that since the partnership deed as executed does not include any provision permitting the partners to carry on a business competing with that of the partnership it is irrelevant that there was a prior agreement as recorded in the file note that competition was allowed, which explains the deletion of the clause which forbade involvement in any other business. They say that this is so because reference to such prior agreement reached during negotiations is not admissible to the construction of the partnership deed. I agree with this analysis in relation to the construction of the partnership deed. However that does not, in my judgment, prevent the separate oral agreement which I am satisfied was made and recorded in the file note as amounting to a valid consent under s.30 Partnership Act 1890, regardless that it was not expressly recorded in the partnership deed itself.

D.3. [Effect of the 2007 power of attorney](#)

166. Although the parties disagree about the circumstances in which the power of attorney was entered into on 10 September 2007, there is no dispute that it was entered into and neither party denies that it was effective according to its terms. As so often in this case, both parties seek to cherry-pick what they like about the power of attorney but to ignore those aspects of it which are inconvenient to their broader case.
167. The power of attorney was drafted by Gordons and, referring back to the partnership deed, provided that Tariq appointed Asad as his attorney "with full power to exercise all rights in relation to the Business [defined, consistently with the partnership deed, as "the business of an Indian restaurant carried on by the Partnership under the title or firm name of Nawaab Premier"] and the Partnership, as Asad in his absolute discretion saw fit", including "doing all deeds, instruments and acts in Tariq's name insofar as may be done in his capacity as a partner".
168. The power was irrevocable unless and until written notice of termination was given by Tariq. It is common ground that Tariq did not seek to revoke this power of attorney until the final breakdown of the relationship in September 2016. Although Tariq retained certain rights to direct Asad to do certain specified things and although Tariq agreed to undertake certain specified things should Asad not do so, there is no suggestion or evidence that these rights were ever exercised either at all or in any way relevant to this case.

169. It follows that, in relation to the partnership which I have found existed, for a period of some 9 years from September 2007 to September 2016 Asad was entitled to exercise all rights in relation to its subject matter as he saw fit.
170. It also follows, given my findings as to the inter-relationship between the partnership and the Stockport Road company that Asad was entitled to exercise such rights in relation to the Stockport Road Nawaab restaurant business, including all rights in relation to that business so far as conducted by and through the Stockport Road company. It follows in my judgment that Asad had the right to exercise the rights which Tariq had in his capacity as shareholder in and director of the Stockport Road company.
171. In relation to the dispute as to the circumstances in which the power of attorney was entered into, it is relevant only insofar as it offers a useful example of the unreliability of the evidence of Tariq and, to a lesser extent, Mahboob and Asad and insofar as I need to address a claim by the defendants that Tariq had given Asad similar rights earlier in 2006, albeit not in formal written form.
172. As to the former, the parties were unable even to agree as to their respective roles and responsibilities in and contributions to the Stockport Road Nawaab. It was in this regard that the positions adopted by the parties changed according to the point they were trying to make.
173. For example in the letter which Tariq's then solicitor produced at the meeting on 1 December 2016, when the decision was taken to remove him as director of Stockport, he described himself as "integral to the running of the business", saying that he had "worked there in my capacity as a director and shareholder almost every day since it opened, until I was recently suspended by the other directors. I have worked in the kitchen and restaurant, dealt with suppliers, managed the purchase of stock, managed the employees of the business and also acted in a customer facing role over the years".
173. When this was put to him in cross-examination he said that this was a mistake which had not been picked up through the translator who had been used at the time, because his evidence was that Mahboob had always dealt with employees and had retained control over cash, only providing him with enough cash to pay suppliers in advance. I reject this explanation, not least because in his supplementary witness statement he had made a similar statement at [20] which he did not correct before giving evidence. I have no doubt that he did have access to cash and, as revealed when he wrote cheques to himself and took the company ledgers in 2016, knew where the company cheque books and financial records were kept and had access to them.
174. Although he denied that he knew how much was in the bank accounts in order to be able to write cheques I am unable to accept that explanation as it is inconsistent with the roles he performed, his access to these records and his understanding of business and financial affairs. It is also inconsistent with the clear evidence that the agreement from the outset was that Tariq and his family members who actively worked in the business, including over the years Asad and Usman as well as his son in law Qaisar, would deal with and have responsibility for the financial side of the business. I accept the evidence of Mahboob, Asad and Mr Nawaz that

Tariq would attend meetings with Mr Nawaz in order to discuss and agree their business accounts and tax returns.

175. Indeed, one of the allegations also made by Tariq, although withdrawn in closing submissions, was that the defendants failed to provide him with financial information. Although withdrawn, I consider it briefly as it is a useful example of the unsatisfactory nature of the way in which Tariq has advanced his case in what I regard as a wholly opportunistic manner.
176. In his pleaded case he complained that this failure started from 2010. However, as was put to him in cross-examination, in 2010 he had unilaterally changed the registered office of the Stockport Road company to his home address, which clearly indicated that he had no difficulty in taking steps in relation to the business affairs of the Stockport Road company when he wished to do so. When this was put to him Tariq suggested that Mahboob had done this and persuaded him to sign the relevant form without his understanding what he was doing. I reject that suggestion as wholly implausible and an off-the-cuff attempt in cross-examination to avoid dealing with a difficult point. In his principal witness statement he changed his case and said that the failure started in 2016. When challenged with the discrepancy he said that he received less information after 2010 and none after 2016. Again, that was clearly just an attempt to explain an obvious inconsistency in his evidence.
177. However, the defendants were also guilty of inconsistency. For example, one complaint made by Mahboob and Asad was that Tariq had unreasonably interfered in the running of the business and harmed it as a result. They complained about his unilateral implementation of a “no alcohol” policy which, they said, discouraged many existing customers who were not observant Muslims from continuing to patronise the restaurant. However, that complaint was inconsistent with their evidence (and indeed their positive pleaded case in the IP litigation referred to below) that one of the reasons for the success of the Nawaab restaurants, both the Stockport Road Nawaab and the Perivale Nawaab, was its attraction to observant Muslim families precisely because of its no-alcohol policy.
178. Returning however to the point at issue, insofar as relevant I accept the defendants’ case and evidence that Tariq did not significantly change his behaviour after entry into the partnership deed and the disagreements and conflict continued. Mr Mirza has produced a number of notes of meetings in 2007 which record that he was seeking to mediate an agreement under which either Mahboob would sell his share in the business to Tariq or vice versa. It is clear that Tariq was unwilling to agree to either proposal. I am satisfied that in the end he agreed to provide the power of attorney because he was persuaded that this was the only way for him and his family to continue to benefit from the continued success of the Stockport Road Nawaab.
179. However, this chronology also leads me to reject the defendants’ case as to the earlier oral agreement in 2006. Whilst I note that this issue was not expressly addressed or denied by Tariq in his witness evidence, I also note that when Mahboob was asked about it in cross-examination he stated in terms that nothing had been agreed orally in 2006 about the running of the business in similar terms to the power of attorney. I am also satisfied that the existence of such an agreement is completely inconsistent with the entry into the partnership deed at

around the same time and is not referred to in any of the contemporaneous evidence. Mr Mirza's note of the meeting on 22 July 2007 does not suggest that it was being said that Tariq had agreed to leave the running of the business to Asad a year ago but had reneged on the promise. Given my findings in relation to the extent of the power of attorney this conclusion does not however affect my findings one way or another.

D.4. [Effect of the 2009 issue or transfer of shares to Nusrat and Mirza](#)

180. It is common ground that in 2009 Nusrat and Mirza became the legal holders of shares in Stockport for no consideration.
181. It is pleaded by Tariq that Mahboob requested that he transfer half his shares in Stockport to Nusrat on the basis that he would do likewise as regards Mirza and that it would have no effect on their equal ownership and control of the partnership and, on that basis, he did so. It is pleaded that in such circumstances Nusrat and Mirza hold their shares for the partnership. Tariq did not plead a case as what, if anything, he discussed or agreed with Nusrat or what Mahboob discussed or agreed with Mirza nor did he plead the precise legal basis for the legal consequence alleged.
182. It is pleaded by the defendants that this suggestion originated from Tariq for tax saving reasons and that it was discussed and agreed at a meeting at which Tariq, Mahboob, Asad and Mr Nawaz were present. It is also pleaded that there was no share transfer and that additional shares were allotted so that each of the four owned a 25% shareholding.
183. The defendants also plead that the effect of this issue of shares was to rescind or terminate or dissolve any pre-existing partnership between Tariq and Mahboob there may have been.
184. As noted, there is an issue as to whether the agreed outcome was achieved by way of transfer of shares, as Tariq contends, or by issue and allotment as the defendants contend. I am satisfied that it was done by issue and allotment. The original annual return signed by Mahboob on 9 January 2009 records that there were still only 2 issued shares held by Tariq and Mahboob as to one each. The amended annual return signed by Tariq on 1 June 2009 shows the issued shares having increased to 100 held by the four as to 25 each. Whilst it is, I accept, theoretically possible that the further 98 issued shares were issued to Tariq and Mahboob equally and that they then transferred 25 each to their wives, that seems unnecessarily complicated and inherently implausible if the only reason for this issue was, as I am satisfied it was, to achieve the intended outcome of all four becoming equal shareholders.
185. It is unnecessary for me to resolve whether it was Tariq's or Mahboob's idea to approach Mr Nawaz to discuss ways and means of reducing their tax liability. There are some inconsistencies in both of their accounts. What is common ground is there was a meeting with Mr Nawaz on 23 May 2008 and that the end result was that it was agreed that Nusrat and Mirza would each become owners as to 25% of the company shareholding and hence receive and be taxed upon 25% of the dividends paid by the company, which would result in an overall tax



saving on the basis that Nusrat and Mirza could set off their tax allowances against tax payable on the dividends they received.

186. The principal issues which I must resolve are first whether or not Mahboob made the representations alleged and second, if so, with what consequences.
187. As to the first, in cross-examination Tariq said, inconsistently with his pleaded case, that Mahboob had represented that the transfer was just on a temporary basis to save tax. As his counsel accepted in closing submissions, a temporary transfer would not, if properly declared to the Revenue, save tax. Only an unconditional transfer of the shares would achieve that effect.
188. I am not satisfied that Mahboob made either the pleaded representations or the further representation adverted to by Tariq in his evidence. There is no independent or contemporaneous evidence to support either version. There is no obvious reason why Mahboob should have been so keen to persuade Tariq to take this step.
189. Mr Nawaz said, and I accept, that the suggestion that tax could be saved in this way came from him in response to a request for advice as to how the tax payable by the two men could be reduced. It follows that it cannot have been the case that Mahboob would already have made representations to Tariq in relation to this suggestion and nor is there any reason for thinking that he would have done so subsequently. It is inherently improbable that Mr Nawaz would have made or endorsed any such suggestion and he was not cross-examined on that basis.
190. There is no suggestion that there was any such agreement so far as Nusrat and Mirza were concerned and, indeed, in cross-examination Tariq accepted that Nusrat was not obliged to transfer the shares back to him if she did not wish to do so. Mr Mather cross-examined both Nusrat and Mirza as to what precisely had been said to them. Their initial answers were to the effect that they were told that 25% of the shares in the company had been put into their name. Mr Mather suggested that this was different to being told that the shares were given to them, but in my judgment there is no difference of any substance and no basis for a submission that the transfers were only conditional or that they knew and agreed that they should hold the shares on trust for their husbands. Even if that had been a case available to the claimant on the pleaded case and the evidence, I am bound to say that I would regard it as a clear case of illegality. Applying the principles in *Mirza v Patel* [2016] UKSC 42, if two men decide to transfer shares to their wives to save tax and do save tax as a result for an extended period which could not have been saved had it been declared to the Revenue that the shares were held on trust then I see no reason why the court should allow one of the two men to succeed on a trust claim simply because it is now more convenient to claim ownership of the shares again.
191. In the circumstances I am satisfied that Nusrat and Mirza hold their shares in the Stockport Road company absolutely and beneficially and free from any contrary interest or qualification or reservation.
192. However, I am also satisfied that it had no effect so far as the existing partnership between Tariq and Mahboob is concerned. It simply meant that instead of holding 100% of the shares

in the Stockport Road company on trust for the partnership they held only 50% of the shares on trust for the partnership. There is no basis for considering that this disposal of half of only one of the assets of the partnership, albeit the most valuable asset, could impliedly operate as a dissolution of the partnership or as a hiving off of the entire shareholding out of the partnership. It is important to inject some reality into this argument. No-one expected this transaction to have any effect at all other than to save some tax. There was no need for the partnership to be amended in any way to achieve this effect. Mr Nawaz did not suggest that the partnership deed needed any consideration or any revision or that any other document was required.

193. I should also record that there was never any suggestion that Nusrat or Mirza ever played any active part in the management or control of the Stockport Road company or the business. Mahboob agreed in cross-examination that there were no shareholders' meetings from 2009 to 2016 at which payment of dividend or any other matters were discussed. Mirza agreed in cross-examination that Tariq and Mahboob were both running the Stockport Road Nawaab business and that all she knew was what was going into her bank account. Nusrat agreed that until 2016 she never got involved in the company in any way. It is plain that Nusrat and Mirza were sleeping shareholders who were content to delegate all decision-making authority to their husbands (and, in Nusrat's case, her sons Asad and Usman).
194. I do not criticise them in any way for this. They were not obliged to volunteer to take an active role. However it would in my judgment be wrong to allow either Tariq or Mahboob or the Stockport Road company as a corporate entity to rely on the absence of consent from them as shareholders to conduct by Tariq or Mahboob which was consented to or acquiesced in by the other, in circumstances where I am satisfied that they had quite happily delegated whatever rights and powers they had as shareholders to their respective husbands to exercise on their behalf. This is relevant to my consideration both of Tariq's claim in respect of the Perivale company and to the Stockport Road company's counterclaim both as addressed below.

#### D.5 [Other issues](#)

195. In this section I address briefly various matters canvassed in the statements of case, evidence and submissions which are of some relevance and I make such findings as are necessary or appropriate.

#### *The operation of the joint current account, loan account and lease arrangements*

196. It is common ground that there was no formal lease in place until 2008, but that from at least August 2005 until December 2008 £2,500 per week was being paid from the Stockport Road company current account to the joint account which relates to rent.
197. On 24 February 2008 Tariq, Mahboob and the Stockport Road company entered into a formal lease, which was drawn up by Mir & Co solicitors, under which Tariq and Mahboob as

landlord and the Stockport Road company as tenant entered into a 5 year lease at an annual rent of £260,000 per annum subject to periodic upward review. The bank statements record that the Stockport Road company has paid this weekly amount of £5,000 from its current account into the joint current account as from December 2008.

198. However, confusingly, the rental income and expenditure statements for the y/e 5 April 2003 to y/e 2018 record that in the y/e 2005 to y/e 2008 £52,000 p.a. was received, which is obviously less than the £2,500 per week (£130,000 p.a.) revealed by the bank statements. In subsequent years the statements record only £78,000 p.a. as received, which is obviously less than the £5,000 per week (£260,000 p.a.) revealed by the bank statements and consistent with the lease.
199. As to the latter period, it was Mahboob's evidence that the lease was effectively a device to secure a large business loan by showing a substantial rental income being received and that it was agreed between Tariq and himself that in fact the rent would be a more realistic £78,000 p.a. or £1,500 per week. According to him, this was done in order to put sufficient funds into the joint current account to service the loan.
200. Mr Nawaz said in his second witness statement that both the payments on account of dividends and the rental payments were credited to what he referred to as a directors' loan account ("DLA") maintained by the Stockport Road company. I must confess that I am not entirely clear as to why payments made by the Stockport Road company in respect of rent due to Tariq and Mahboob should be credited to a DLA. Nonetheless it appears that what was credited was £78,000, consistent with what Mahboob says was the revised agreement, and that Tariq and Mahboob have declared and been assessed for tax on that basis.
201. On the basis of this evidence from Mahboob and supported by Mr Nawaz it appears that Tariq and Mahboob (I say nothing as regards Mr Nawaz) have knowingly deceived the bank over an extended period by falsely representing that the rent payable under the lease and the rent actually paid were both higher than was the true position. However, on the same basis at least the Revenue has not been deceived. On Tariq's case the position would be the other way around. Neither position is attractive.
202. Nonetheless and on balance, and given that I am satisfied that Tariq signed off the relevant accounts and returns knowing how matters were being dealt with and not as a result of any misrepresentation by Mahboob or anyone else, I prefer the defendants' case and am satisfied that the position in relation to the rent payable is as recorded in the statements of rental income and DLA and as declared to the Revenue. However, there is no basis in my judgment, pleaded or otherwise, for concluding that the lease itself is a sham which ought to be disregarded so that I find that the true position is that the lease applies save that the figure of £78,000 is to be substituted for the figure of £260,000.
203. I have already referred to the joint current account opened in May 2002. It appears to have continued to be used after January 2003 when the Stockport Road company current account started to be used and up to February 2019 and possibly beyond. Mahboob's evidence was that this was a company account and not a partnership account. This evidence is supported by Mr

Nawaz, who says that it has always been treated as a company account. On the basis that this is how the account has been treated and how returns to the Revenue have been prepared I accept that this is the true position.

204. I reach the same conclusion in relation to the various loans obtained by Tariq and Mahboob from July 2002 onwards. In particular, Tariq's pleaded case referred to a loan account opened in February 2008, when Tariq and Mahboob obtained a loan of £1.8 million from HSBC. The loan account records the borrower as being "Mr M Hussain & Mr T Mahmood t/a Nawaab Restaurant" and the funds were paid into the joint current account. Tariq's pleaded case was that this was for the purpose of assisting with improvements to the Stockport Road premises and restructuring existing borrowing of the partnership. The defendants admit that the loan was obtained with improvements to the Stockport Road premises and restructuring of borrowing in mind (although that of the Stockport Road company and not the partnership). The Stockport Road company's accounts for the year ending 31 July 2008 record bank loans totalling £1,857,291 as a liability of the company.
205. Again, the evidence of Mr Nawaz was that all of these loans were always treated as being used by the Stockport Road company for the benefit of the Stockport Road Nawaab business and accounted for and declared to the Revenue accordingly. On the same basis as before I accept that this accurately reflects the true position as between the parties to this litigation (whilst accepting, as the claimant's counsel say, that this cannot of course bind the bank).

#### *The Dubai property*

206. Although this featured in the statements of case and the agreed list of issues and was explored in the witness statements and, to an extent, in oral evidence, in closing submissions the claimant's counsel confirmed that since Tariq does have a documented interest in the Dubai property he no longer required any specific relief in relation to that property.
207. It follows that I only need to refer briefly to this issue, since the way in which Tariq approached this issue was deeply unsatisfactory and one of the reasons why I have felt unable to accept his unsupported evidence.
208. It was pleaded by Tariq that in about May 2008 and without his contemporary knowledge or consent Mahboob purchased jointly with Mr Minhas the Dubai property by way of a payment of around £936,000 sterling equivalent and, he infers, used partnership funds to do so, relying upon a payment from the partnership current account to Mr Minhas of £465,000 which he inferred was a payment in respect of the Dubai property. The inference from his pleaded case and his first witness statement was that Mr Minhas was not previously known to him.
209. The defendants pleaded that to the contrary it was Tariq who informed Mahboob and Asad that he wanted to move to Dubai, and to purchase the Dubai property in order to build a restaurant on the ground floor and flats and offices above it, that Mr Minhas was a longstanding family friend of Tariq and that it was agreed that Tariq could make use of some of the surplus from

the £1,800,000 loan provided by HSBC to provide the £650,000 he needed to fund this investment. They pleaded that in fact £620,000 was provided from the Stockport Road company's current account and £10,000 from the partnership current account and that this total of £630,000 was reflected in the Stockport Road company's accounts as an investment of that company. They plead that it was only because Tariq fell ill that, at his request, Mahboob travelled to Dubai in place of Tariq to sign the documentation for the acquisition of the Dubai property on around 18 May 2008. In short, they contend that Tariq was not only involved from the start in this transaction but that it was his idea from the outset.

210. When challenged on his account Tariq suggested, in my judgment wholly unconvincingly, that again the fault lay with the translator used by his previous solicitors. He admitted that, wholly contrary to the gist of his pleaded case, he had visited Dubai with Mahboob and Asad and seen the plot before the purchase took place. He also admitted that he knew Mr Minhas as his neighbour in Pakistan and as his close friend and he subsequently admitted that they each paid each other money for reasons which he was unwilling to elucidate. His complaint when pressed in cross-examination appeared to be that he had not been involved in or consulted about the decision to purchase the plot. However, I reject that evidence, in circumstances where it is wholly implausible that Mahboob, Asad and Mr Minhas as his close friend would seek to cut him out of this transaction in this way. He then accepted that he was happy for the Dubai property to be acquired by the Stockport Road company as an investment and his complaint appeared to mutate into a belief that the property had been transferred into Mahboob's personal ownership, an allegation for which there is no evidence and is inconsistent with its treatment in the Stockport Road company's accounts as one of its assets.
211. In my judgment there appears to have been no basis for making any allegation in relation to the Dubai property and the fact that the case as advanced was both wrong and misleading, as was Tariq's evidence on the point, without any credible explanation, was damaging to my assessment of his credibility.
213. Again however, and insofar as it matters, I am satisfied that the Dubai property is accurately recorded as an asset of the Stockport Road company.

#### D.6 [The Perivale Nawaab](#)

214. I now turn to the opening of the Perivale Nawaab and the formation of the Perivale company as its operating company.
215. The company documentation shows that the Perivale company was incorporated on 17 September 2013. Initially the four equal shareholders were Mahboob, Asad, Usman and Mahboob's son Mohammed Waqaas, and the three directors were Mahboob, Asad and Usman. It will be observed that the effect was that the two families had an equal shareholding in the new venture. Whilst subsequently the shareholdings have changed, until July 2016 that equal split was retained (on the basis that Atikah is identified with Asad as her husband). Since July 2016 Mahboob and Mohammed Waqaas have held 70% of the shares reflecting, as I

understand it, the fact that Mahboob is now effectively based in London and running the Perivale Nawaab.

216. Tariq was never made a shareholder in the Perivale company nor was he appointed as a director of that company. He did however give a guarantee to secure £500,000 of the Perivale company's borrowing.
217. The Perivale Nawaab opened subsequently, apparently in June 2014. It was located in the old Hoover building in Perivale and called the Nawaab and its business model was similar, if not identical to, the Stockport Road Nawaab. For completeness I should record that both the Stockport Road Nawaab and the Perivale Nawaab are now called the 'Royal Nawaab' as part of a compromise of IP litigation to which reference was made at trial. This involved Mahboob, Asad, Stockport and the Perivale company as claimants and Senior, Ishaq, Hassan, another of Tariq's brothers and another man and a limited company as defendants. The claimants complained that the defendants were misusing the claimants' intellectual property rights in connection with the Nawaab name and logo in connection with a Nawaab restaurant business which they had opened in Birmingham.
218. The Stockport Road company made a number of payments for the benefit of the Perivale Nawaab. According to the 'running account' exhibited to Mr Nawaz's statement, at the end of the financial year ending 31 July 2014 the Perivale company owed the Stockport Road company £991,939.24. These payments were treated as inter-company loans with no suggestion that any provision for interest was made or that interest was paid or that any security was required or provided. Although this was a matter of complaint in his pleaded case, in cross-examination Tariq admitted and indeed positively asserted that he agreed that these payments should be made. He also accepted that there was a full record of the payments made by the Stockport Road company to the Perivale company.
219. According to the defendants these monies have been repaid and in fact that as at y/e 2017 the Stockport Road company owed the Perivale company some £87,000, according to the updated balance produced by Mr Nawaz with his witness statement. According to the accounts for y/e 2019, which were only produced during the course of the trial, the balance in favour of the Perivale company is now £247,670.
220. Tariq's pleaded case is that in around early 2014 Mahboob informed him of a plan to operate a restaurant and wedding venue from premises in London under the Nawaab name but using a separate company, effectively mirroring the structure as regards the Stockport Road Nawaab. He said that Mahboob persuaded him to enter into a joint guarantee for a lending facility to the Perivale company of £500,000 from HSBC bank on the basis that he would be a 50% owner of the Perivale company either directly or through the partnership and, on that basis, he agreed to and did do so, providing the guarantee in February 2014. He said that he never consented to Mahboob being involved in the Perivale Nawaab other than for the benefit of the partnership. He pleaded that he had only recently become aware of the payments made from the Stockport Road company for the benefit of the Perivale company which of course is wholly inconsistent with his evidence under cross-examination.

221. The defendants' pleaded case is that Mahboob did not speak to Tariq about the Perivale Nawaab until a meeting on 25 May 2014, which took place at the Stockport premises and which was attended by Tariq, Mahboob, Asad, Usman and Mr Nawaz. At that meeting Tariq was told explicitly that he would not be involved in the Perivale Nawaab and would have no interest in the Perivale company or its business given that Mahboob had previously made clear to Tariq that he could no longer work with him and was not prepared to work with him in this new venture. Their pleaded case is that Tariq did not argue and that he agreed to provide the guarantee only in order to assist his sons in this new business venture.
222. Under cross-examination Tariq accepted that the meeting took place, but contended that he had asserted that he did have an interest in the Perivale Nawaab. He had to accept, however, that there was no record of his having asserted any such interest until 2017.
223. Asad's evidence was that he had discussed the Perivale Nawaab project with Tariq in around August 2013 and had asked him to provide a guarantee to enable him and Usman to become shareholders and directors in the business which it was always understood could not and would not involve Tariq because of the breakdown of his relationship with Mahboob. His evidence was that Tariq agreed this but that subsequently started to contend that he did have an interest in the venture which is what led to the meeting in May 2014 where he said Tariq did accept that he had no such interest.
224. Consistent with this Mr Nawaz confirmed that before the meeting he had been telephoned by Tariq complaining that he was not being shown any bank statements in relation to the Perivale business and it was as a result of this that the meeting was arranged and why he attended. Mr Nawaz's recollection was that Tariq did not say anything at all to contradict the clear statement by Mahboob, supported by Asad and Usman, that Tariq was not and would not be accepted as a participant in the Perivale Nawaab business.
225. Having considered the evidence I have no doubt that the defendants' evidence and case is to be preferred. Their evidence and their case is entirely consistent with it being agreed that Tariq should have no involvement in any way with this new venture on the basis of his previous conduct and the agreement which had resulted in the power of attorney being entered into, in circumstances where his wider family financial interest would be satisfied by his two sons having a 50% shareholding and being directors. That is the explanation for his agreeing to provide a guarantee.
226. It is inherently unlikely in my judgment that Mahboob, Asad and Usman could have thought they could exclude him from any formal interest or role in the new venture and still persuade him to provide a formal guarantee by deceiving him about the interest he would have in the new restaurant and new company. He would be bound to find out eventually, sooner rather than later if they were intending to exclude him from involvement or reward, and they must have known that his response would be predictably furious but also unpredictable in its consequences. The only sensible alternative explanation is that they steeled themselves to tell him that he would have no involvement or interest on the basis that he would be mollified

because his sons would – as he would see it – be running the business on his behalf as head of the family and in that way he, or at least his family, could still share equally in the profits.

227. I am satisfied that Tariq agreed to this proposal on that basis. Even so, it is clear that he was unable to resist interfering. It appears that matters came to a head in around August 2015 when, after he visited the Perivale Nawaab and told staff that he owned the business, he was challenged by Mohammed Waqaas and, not being supported by his sons, departed not to return. It is to be noted however that there is no evidence of his complaining about this at the time. The fact that he did not make any formal complaint or involve solicitors is powerful support in my view for my conclusion that he knew and accepted that he had no right or interest to justify his doing so.
228. I am prepared to accept that the Perivale Nawaab did obtain a benefit from the use of the Nawaab name and the reputation of the Stockport Road Nawaab when it opened, in that I would accept that some members of the South Asian community who had visited or heard of the good reputation of the Stockport Road Nawaab may well have passed on their good opinions to other members of the community who had become aware of the opening of the Perivale Nawaab and were considering whether to visit it or book a function there. Such is reasonably clear from the way in which Mahboob and Asad put their case in the IP litigation. However, there is no convincing evidence that this benefit is or has been anything more than relatively modest and short-lived. The Nawaab name is not unique to the Stockport Road Nawaab and neither the partnership nor the Stockport Road company, unlike Mahboob, has ever had any registered trademark as regards the Nawaab name. There is no suggestion or evidence that the Stockport Road Nawaab ever used the Royal Nawaab name before the Perivale Nawaab opened. Without pretending to be an expert, I think it unlikely that any continuing connection with the Stockport Road Nawaab explains the success of the Perivale Nawaab, as opposed to the consistent quality of implementation of what is now a fairly common business concept which, whatever the position in 2003, was by 2014 in no way unique to the Stockport Road Nawaab.
229. I also do not accept that as a matter of fact there was any meaningful competition as between the Stockport Road Nawaab and the Perivale Nawaab. They are restaurants in different cities some 200 miles apart. It cannot seriously be suggested that they compete for the same custom. They would obviously appear to anyone visiting both to be restaurants operating along similar if not identical lines and with the same name, so as to indicate some connection between them, but that is to do with name and reputation rather than competition.
230. In closing submissions the claimant argued that since the scope for opening restaurants carrying on a similar business to the Stockport Road Nawaab is limited it follows that opening the Perivale Nawaab limits the scope for the partnership or the Stockport Road company to open a similar restaurant in the Greater London conurbation. However: (a) on the basis of my findings there is and never has been any prospect of Mahboob opening another restaurant with Tariq, whether through the partnership or the Stockport Road company, so the submission founders on the fact that there never was any prospect of that ever happening; (b) there is no



convincing evidence that opening the Perivale Nawaab would damage the prospects of opening a similar restaurant in other parts of the Greater London conurbation.

231. Moreover, to the extent that the Perivale Nawaab has benefitted from the name and reputation of the Stockport Road Nawaab or, contrary to my findings, has been in some way competitive with the Stockport Road Nawaab, I am satisfied on the evidence that Tariq plainly consented to this on a fully informed basis and in the expectation that a benefit would thereby be conferred directly upon his sons and indirectly on himself and his wider family. In legal terms, this is an effective consent as much in his capacity as director of and shareholder in the Stockport Road company as in his capacity as partner with Mahboob in the wider partnership.
232. In relation to the partnership I am also satisfied that both partners had already consented in 2004 to the other being engaged in a competing business. In relation both to the partnership and to the Stockport Road company I am also satisfied that even if Tariq had not expressly consented it was sufficient that the opening and operation of the Perivale Nawaab through the Perivale company was undertaken by Asad who, in such circumstances, had the power to authorise such conduct insofar as Tariq's consent was required under the power of attorney. Although counsel for the claimant submitted that Asad could not possibly have given consent under the power of attorney, given the harm to Tariq and the benefit to himself, in my judgment that is wrong given my findings as to the reality in terms of the extent to which such opportunity was really available to the partnership and the minimal extent of any competition, but in any event that would have been a matter for Tariq to take up with Asad rather than an answer to the effectiveness of the consent.
233. Further, and insofar as it is contended by Tariq that this consent in relation to the Stockport Road company is ineffective because it was not secured at a formal meeting of directors or approved by the shareholders at a properly convened and regulated general meeting, I reject that complaint. Nusrat and Mirza never became directors of the Stockport Road company and, as I have found, they were quite happy for Tariq and Mahboob to act on their behalf in relation to all aspects of their role as shareholders. Indeed, I accept that they were both aware of and perfectly happy with the planned opening of the Perivale Nawaab as a separate venture to that of the Stockport Road Nawaab. That is obviously so in relation to Mirza, as Mahboob's wife, but I am also satisfied that it was so as regards Nusrat, given that it benefitted her two sons and that Tariq was willing to go along with it. In the circumstances, the *Duomatic* principle is engaged, given the consent or the acquiescence, express or inferred, directly or delegated, of both directors and all four shareholders.
234. Finally, and even if that was not so, since so far as the company is concerned I am dealing with a s.994 unfair prejudice petition, as opposed to a derivative breach of fiduciary duty claim by the Stockport Road company against Mahboob as its director, the court must consider the position from a wider perspective. Whilst a breach of fiduciary duty by a director in majority control may often amount to unfairly prejudicial conduct, it does not necessarily do so, and nor does it follow that the court would always grant buy-out relief as a result. Here, in circumstances where I have found that Mahboob and Asad secured Tariq's informed consent to

the establishment of the Perivale Nawaab as a separate venture to be owned and operated by a separate limited company, where there was never any prospect of them doing so through the Stockport Road company and no evidence that it has suffered any actual loss as a result, there is no proper basis for considering that this amounts to conduct unfairly prejudicial to Tariq such as to merit the grant of buy-out relief under s.996.

235. So far as the use of the Stockport Road company's funds by the Perivale company is concerned, as I have said Tariq's evidence under cross-examination was that he agreed that this should take place. Whilst that was of course in the context that he was contending that he had been told he would have an interest in the Perivale business, nonetheless that was his evidence. In contrast, in his oral evidence Mahboob said that, whilst he had agreed with Asad that the Stockport Road company should make a loan to the Perivale company, he had not asked Tariq on the basis that so far as he was concerned he did not need to do so given the power of attorney.
236. Mahboob was asked about the repayments. He appeared to suggest that there was a combination of direct payments from the Perivale company's bank account to the Stockport Road company's bank account together with other payments by the former of amounts owed by the latter to builders and suppliers and that payments had been effected either by him or by Asad. He said that the payments had been made by cheque and that all payments had been documented. He said that nothing had been paid in cash. He said that by July 2017 most of the monies had been repaid and at that point he introduced £50,000 of his own funds to the Stockport Road company to enable it to pay a tax liability. It did not appear to me that he had much direct knowledge of any of this, repeatedly insisting that it was all documented and could be explained by the accountants.
237. Mr Nawaz was able to confirm the general approach taken by his firm when producing the annual accounts, which was to look at individual invoices at year end to see which related to the Stockport Road Nawaab and which related to the Perivale Nawaab and then to allocate them accordingly and, where invoices for one had been paid by the other, record that accordingly in a schedule which would show the inter-company account, which was updated on a regular basis and which he produced. He explained that the Perivale company had made substantial payments for the Stockport Road company in y/e 2017 because a substantial refit had taken place at the Stockport Road Nawaab.
238. For my own part, whilst initially I struggled to understand why the Perivale company should repay monies owed to the Stockport Road company by paying its debts directly, as opposed to simply transferring monies direct from the Perivale company account to the Stockport Road company account, in the end it did not seem to me that it was possible to conclude that a reconciliation undertaken by accountants working from invoices and bank statements as source materials was likely to be unreliable. If the payments had been made in cash against undocumented transactions then I would have been more likely to have been suspicious, but that does not appear to be the case. Moreover, it is difficult to see why Asad and Usman in particular should have been willing to go along with a dishonest plan to inflate the amount of

these payments, which would have the effect of reducing the profitability of the Stockport Road Nawaab which was the restaurant with which they were most involved, and why Nawaz & Co should have been willing to go along with this plan, when very little of obvious benefit to anyone would be achieved by such conduct. Accordingly, insofar as I need to make a finding about this, I am satisfied on the balance of probabilities the figures produced by Nawaz & Co are accurate.

239. In any event, I am not persuaded that causing the Stockport Road company to advance substantial sums to the Perivale company, regardless of whether interest should have been paid or the risk of default, was itself unfairly prejudicial conduct. Even if it was: (a) an award of such interest as ought to have been paid would be sufficient; (b) the risk of default has been avoided by the subsequent repayment; (c) even if there had been no subsequent repayment that would not justify buy-out relief under s.996.
240. There was some discussion in oral closing submissions as to whether it was right for me to make a final determination as to the state of the inter-company account which might be binding for any purposes beyond the petition. On any view I could not make a determination binding as between the Stockport Road company and the Perivale company, the latter not being a party to this litigation. When I remind myself as to the pleaded case, there is no pleaded issue on the petition as to whether or not the monies paid by the Stockport Road company for the Perivale company's benefit had been repaid. That does not figure either on the agreed list of issues. Thus, insofar as relevant at all, it could only be relevant as to the issue addressed above, viz the exercise of the discretion as to what if any relief would have been appropriate under s.996.
241. Given my findings, the partnership has a 50% interest in the Stockport Road company, so that the value of the Stockport Road company is an issue which may figure in the taking of the account. Counsel for the claimant submitted that it would not be right to make a determination of this issue binding for that purpose, given that there had been no disclosure of the underlying documents. Counsel for the defendants submitted that the claimant could always have asked for disclosure. In the end I am not persuaded that I should make a finding binding for the purposes of any account, because such was not within the scope of the pleaded case or agreed list of issues. That is particularly so given that the position has now moved on since the evidence adduced at trial due to the late production of the y/e 2019 accounts during the course of the trial, which allowed the claimant's representatives insufficient time to consider or address them.

#### D.7 [The counterclaim](#)

242. The pleaded case is that Tariq, in breach of his duties as director of the Stockport Road company from September 2002 to December 2016, caused or allowed it to make three categories of payment without proper justification or authority.

- (a) Payments to himself of £3,400 per week in excess of the agreed £2,600 drawings on account of dividends and rental income from 1 November 2013 to 14 September 2015, totalling £326,400.
- (b) Payments to 6 of his family members as wages for work which was not carried out from 14 August 2006 to 30 November 2014, totalling £331,610 plus £23,376 VAT, with the lion's share of £147,583.40 plus £78,000 in weekly cash payments over that whole period going to his brother Hassan.

243. In his pleaded defence to the counterclaim Tariq:

- (a) contended that it was agreed that the drawings of £2,600 on account of profits from the partnership would be permitted, as would further payments on account in relation to rental payments from the Stockport Road premises.
- (b) admitted that he owed a duty as a director of the Stockport Road company from September 2002 (in fact it is now clear that he was not a formally appointed director of the company until September 2010).
- (c) required the defendants to prove their case as to the payments on the basis that he did not have access to the company financial records and also that he caused or allowed them.
- (d) contended that the family members undertook work, as did family members of Mahboob, and that Mahboob knew and approved of the payments made to them which were in the Stockport Road company's interests.

*Payments to Tariq*

244. As to the payments to Tariq, it is common ground that as from September 2015 there was an agreement that Tariq and Nusrat could be paid £4,000 per week as could Mahboob and Mirza. The dispute is as to whether or not this was because at that point Mahboob had discovered that Tariq was taking £6,000 per week when he was only entitled to take £2,600 in accordance with the agreement. Tariq denied ever having taken the £6,000. Although there is no documentary proof of his having done so the defendants' counsel submitted that if it was paid in cash and disposed of in cash then it would not be surprising if there was no such documentation.

245. In his witness statement Mahboob referred to Tariq having told him that he needed more money from the Stockport Road Nawaab business and demanded £10,000 per week. He said that he told Tariq that the business could not afford this and, eventually, a figure of £6,000 was reached. He said that whilst he did not agree to this amount being taken he felt that he had no choice because Tariq would force his son-in-law Qaisar who worked in the business to give it to him anyway. He said that he understood that this was only a temporary arrangement and that it was when he discovered in September 2015 that it had been continuing it was agreed that the amount should be reduced to £2,000 per week per shareholder whilst sustainable.

246. Asad's evidence was to similar effect but he did say that Mahboob had agreed, albeit reluctantly, that Tariq could receive £6,000 per week. Significantly, in my judgment, he confirms that this was around the time when work started on the Perivale Nawaab and, thus, when the Stockport Road company's funds were being used to fund those works.
247. Mahboob was cross-examined on the basis that his own evidence showed that he had agreed, if reluctantly, to Tariq receiving £6,000 per week at least temporarily. He was also cross-examined on the basis that his own evidence was that he had become aware in March 2014 that there was insufficient cash for him to receive the agreed £2,600 and yet he had done nothing until September 2015. Mahboob claimed that he was unaware in March 2014 that the cash shortage was due to Tariq's excessive drawings, but I am unable to accept that explanation. It is inconceivable in my view that he would not have asked Asad or Qaisar as those in charge of the Stockport Road company funds and that they would not have told him had he not asked.
248. Tariq gave evidence and Mahboob was cross-examined on the basis that Mahboob had himself received payments above and beyond the agreed amounts. I did not find Tariq's evidence convincing. He referred to entries in the Stockport Road company bank account which recorded regular payments of £2,600 to Mahboob marked as salary. When it was put to him that these were obviously the agreed payments on account of dividend which had simply been mislabelled, he then changed his case and suggested that Mahboob had received the same amount as cash as well.
249. Mahboob was cross-examined by reference to petty cash vouchers where he and his wife had signed receipts for £2,000 cash. He denied that these were additional to the direct debit payments, explaining that they were required by Tariq as proof of receipt albeit that the payments were being made by direct debit. Whilst surprising, that explanation appears more plausible than that Mahboob should attempt to obtain twice as much as had been agreed and as was being paid to Tariq and that he should also produce signed evidence to that effect. The suggestion that the direct debit payments could have been concealed because the Stockport Road company had moved onto online banking and Tariq did not have access to online records appears unconvincing.
250. Reference was also made in cross-examination of Mahboob to the absence of any specific complaint about this in the letter written by Mahboob to Tariq, although obviously drafted by lawyers on his behalf, on 14 October 2016 in which he set out a large number of complaints, including the other matters the subject of this counterclaim. He had no real answer to this. The complaint was not made until March 2017, in response to Tariq's letter of claim, where it was asserted as a counterclaim which would be made if a claim was made.
251. Reference was also made to the absence of evidence from Qaisar to prove or disprove the position one way or another.
252. In my judgment the Stockport Road company has not made out its case on these payments. The evidence is confused and confusing. Whilst I accept the evidence of Asad that Tariq did indeed receive these additional sums I am not satisfied that this was not with the informed

consent or acquiescence of Mahboob. Since I am satisfied that Mahboob had agreed to the request and knew that the payments were continuing, and since on Mahboob's evidence Tariq proceeded on the basis that he had to secure Mahboob's agreement to this very substantial increase, I do not accept that Mahboob felt that he had no choice but to agree. I am satisfied that he agreed on the basis that at that time the Stockport Road company was also providing substantial funds to the Perivale company which both Tariq and Mahboob saw as effectively Mahboob's project. I am satisfied that Mahboob reluctantly agreed to the £6,000 being paid to Tariq to prevent him from making difficulties in relation to the Perivale Nawaab. I am satisfied that the reason why he took no steps to object in March 2014 was because the Perivale Nawaab was still not open and funds were still required, so that he did not want to upset the apple cart. I am satisfied that it was only in September 2015 that he finally decided that the time was right to re-open the issue and to reach, as he did, what he then saw as a more equitable result on the basis that the Perivale company had by then already been making substantial repayments to the Stockport Road company in respect of the sums advanced.

253. In the same way as with Tariq's claim in relation to the Perivale Nawaab I am satisfied that the *Duomatic* principle is engaged. Whilst I have some sympathy for Mahboob in having to deal with Tariq as someone who clearly was extremely difficult and who it was doubtless easier to accommodate than to confront, I do not accept that Mahboob as a fellow director and equal shareholder, having decided for his own purposes to acquiesce at the time, can now, many years later, cause the Stockport Road company to make a counterclaim against Tariq on the basis that it was a breach of his duty as a director of the company to propose and to accept such payments. Nor do I accept that it is open to the Stockport Road company to rely on the absence of consent from Nusrat and Mirza in circumstances where, as I have already found, they had delegated all matters as regards their position as shareholders to their respective husbands.

254. Finally, it is worth observing that insofar as these payments were made as advances on account of dividend they are, as it seems to me, only properly reclaimable if and insofar as it is established that the amounts paid exceed the dividend declared and payable to the relevant shareholder in each year. The Stockport Road company has not, to my knowledge, sought to plead or present a case against Tariq on such basis. Since the defendants have referred to, and Mr Nawaz has given evidence about, the fact that Tariq's DLA is apparently overdrawn, the more appropriate way for this claim to have been made would have been to make a claim against Tariq in relation to his DLA so that all outstanding claims and cross-claims could have been adjudicated at the same time. The Stockport Road company, having chosen not to do so, has to live with the consequences of making this claim on this basis, which is that this counterclaim fails.

#### *Payments to family members*

255. Tariq's position is that these family members worked in the business and were paid for the work which they did. However the defendants' counsel contend that it is noteworthy that Tariq has never, since October 2016 when this complaint was first made and despite a number of

requests, provided full details of the roles undertaken by these family members and nor has he obtained witness statements from those persons. When he was asked why not, he was unable to provide any satisfactory explanation. He admitted that he had not asked them for a statement.

256. Tariq was cross-examined by reference to Asad's witness statement, where Asad said that Tariq had instructed Nawaz & Co to add these relatives to the payroll and that Tariq would then receive cash on the basis that he would then pay these relatives direct, notwithstanding that they had either done no work or, if they had done work on a few separate occasions, had been paid in cash on the day. Tariq disputed this.
257. When Mahboob was cross-examined it was unclear how much he knew at the time of these payments. He said that he was aware of Tariq paying Hassan £1,000 per week in cash on some occasions. He also said that he left staffing and payment matters to Asad and Qaisar. He suggested that he was largely unaware of these payments or that the relatives had been added to the payroll until later and that this was because both Asad and Qaisar, who were aware, were too scared of Tariq to tell him. However, in his witness statement he had said that he had questioned some of these payments at the time and that Tariq had assured him that he would sort it out, but did not do so. In cross-examination he said that he did not make an issue of it because he did not want to create more problems with Tariq.
258. Asad was cross-examined with reference to a letter which he had signed in August 2006, ostensibly as director of the Stockport Road company, to the effect that Hassan was a full-time employee of the business. He said that he signed it without reading it because his father asked him to do so, not because it represented the truth as he understood it. I am satisfied that he did read what was a very short letter. I am also satisfied that he was satisfied that he could sign such a statement without exposing himself to risk of criminal liability, albeit I note that he was not a director of the Stockport Road company at the time. He did say in his witness statement that Hassan had never carried out any "substantial work" for the Stockport Road Nawaab and "tended to simply hang around with Tariq", which in my view is consistent with Hassan carrying out at least some work for the business in some role, no matter how little and how poorly.
259. In my view all of this evidence is consistent with Hassan being genuinely employed, albeit on the basis of what was effectively a sinecure. I am also satisfied that both Mahboob and Asad knew of and – perhaps reluctantly – agreed to his being employed on this basis and took no steps to bring it to an end. In the context of the family dynamic this is not particularly surprising, since under the declaration of trust Hassan was a partner, albeit a sleeping partner, in the partnership business. Although the amounts are far greater and the circumstances are different, in my view there is no difference in principle between Hassan having this role and Nusrat and Mirza also being employed and received a not insignificant salary on the basis of a sinecure. In such circumstances I do not think that it is now open to the Stockport Road company to seek to hold Tariq responsible to repay these sums. Again, in my judgment, the *Duomatic* principle applies and, insofar as relevant (since this arrangement pre-dated the transfer of

shares to Nusrat and Mirza) it is not open to the company to seek to rely on the absence of express assent from them.

260. I am also not satisfied on the balance of probabilities that Hassan received £78,000 in cash on top of the salary he is recorded as receiving from the company. There is no hard evidence to this effect, and it is inconsistent in my view with the way in which matters were generally recorded one way or another.
261. As regards the other family members it is true that there is no written evidence of employment such as there is with Hassan and it is also true that Asad's evidence is that only Gul and Bilal ever did any work and then very little and they were paid in cash. However, what I am unable to accept is that Mahboob knew little or nothing of this. On the company's case these payments were made over periods extending to 8 years. These individuals were openly on the payroll for that period, receiving substantial amounts. The relevant individuals at Nawaz & Co were plainly aware of this. It is inconceivable in my judgment that over this extended period Mahboob was not made fully aware of the extent of this and either agreed with or acquiesced in it taking place, albeit no doubt to keep the peace.
262. The reality is that this was a two-family enterprise. On the defendants' case Tariq misused his position by arranging for the Stockport Road company to employ family members and to pay them when in fact they were either never actually employed or only worked minimal hours. However on my findings Mahboob as the representative of the other family knew that this was happening and decided not to object until after the final falling out and the other members of Tariq's family with ownership and control of the company took his side against Tariq. Nusrat and Mirza, insofar as they had a role in this from 2009 onwards, were happy to abdicate all responsibility to their husbands. There were no other directors or shareholders who had any interest in whether these family members should have been employed at all, or paid at all, or if so how much and over what period. In the circumstances I do not consider it equitable for the other side of this battle to dredge up these matters as a means of seeking to reduce what is otherwise due to Tariq on the basis of his interest in the company as partner and/or as shareholder.
263. Accordingly, I reject this counterclaim as well.

### *Conclusion*

264. It follows that I dismiss the counterclaim as a whole.

### E. Conclusions

265. Tariq succeeds in his primary case that there was a partnership between himself and Mahboob which included both the Stockport Road property and the Stockport Road Nawaab business, on the basis that the two men held the Stockport Road property and the shares in the Stockport Road company as assets of the partnership. However as from 2009 Tariq and Mahboob effectively divested themselves of 50% of the shareholding in the Stockport Road company, so



that they now only hold 50 of the 100 issued shares on trust for the partnership and Nusrat and Mirza hold the remainder for themselves absolutely.

266. I am satisfied that the relationship between Tariq and Mahboob has wholly broken down and that it is just and equitable to make an order for the dissolution of the partnership and for the partnership to be wound up and for a final account to be taken.
267. However, the partnership does not have any claim, whether against Mahboob or otherwise, in relation to the establishment of the Perivale Nawaab or the incorporation of the Perivale company or the operation of the Perivale Nawaab through the Perivale company.
268. Furthermore, the way in which the relationship between the partnership and the Stockport Road company has been recorded in the company's accounts and in the rental statements and tax returns prepared by Nawaz & Co accurately reflects the true position in respect of the ownership of assets such as the bank accounts and the Dubai property and in respect of the payments made in respect of the Stockport Road company's occupation of the Stockport Road property.
269. It follows, it appears to me, although I will hear argument on the point, that the final account process ought only to require a valuation of the Stockport Road property and of the partnership half share in the Stockport Road company.
270. The petition fails and must be dismissed.
271. So far as the way forward is concerned, there are a number of important points to be made.
272. The first is that the parties have now spent a considerable amount of time and money litigating this dispute. They ought to be able to resolve their differences as regards the accounting process, on the assumption that the most sensible way forwards is obviously for the some or all of the individual defendants to buy out Tariq's interest in the partnership assets. However, if they are unable to do so in a sensible time window which the court would obviously allow for ADR to take place, then it is unlikely that the court would be willing to approve directions or costs budgets which permitted the parties to engage in a protracted or heavily contested final account process.
273. As matters currently stand it seems to me that all that would be needed is provision for further evidence as follows:
- (a) First, a single joint expert valuation report on the open market value of the Stockport Road property. It is possible that the valuer may need to consider the open market value assuming no lease in respect of the Stockport Road Nawaab and assuming the 2008 lease with the Stockport Road company save as to the rental payable which should in accordance with my previous findings be the amount recorded in the company accounts.
  - (b) Second, supplemental expert forensic accounting evidence and any necessary further disclosure and witness evidence in relation to the valuation of the 50% partnership interest in the Stockport Road company on the basis that the only points which require to be addressed are: (a) any issues arising out of the treatment of the inter-company loan accounts and the directors loan accounts on the basis of my findings in this action and on the basis of the most recent 2019 company accounts and management accounts for the y/e 2020; (b) any issues arising out of the short term, medium term and long

term impact of Covid-19 on the restaurant sector in general and the Stockport Road Nawaab in particular.

274. As regards (b), during the trial I have already received written and oral expert forensic accounting evidence in relation to the value of Tariq's shareholding in Stockport. Such evidence was directed to the buy-out claim under the petition and not to the account claim under the partnership action. In closing submissions there was some discussion as to whether it would be appropriate for me to make any findings in relation to such evidence, whether binding or merely indicative, if that was not necessary having regard to my findings in relation to the issues of liability in relation to the partnership action and the petition, and in circumstances where the petition was always a fallback to Tariq's primary case in relation to the partnership. Moreover, there had been debate at the PTR and at trial as to whether, if I found for Tariq on the petition, I should permit the defendants to adduce further evidence in relation to the effects of Covid-19 before making a final finding in relation to valuation. I said that I would reflect on both matters and address them in this judgment.
275. Having regard to my findings and having given these matters consideration, my conclusions are as follows:
- (1) I should not make any final determinations as to the value of Tariq's shareholding in the Stockport Road company, given the dismissal of the petition.
  - (2) I do not consider it appropriate to make any indicative non-binding findings on the point, because I consider (as stated above) that further evidence from the same experts is required in relation to issues relevant to the valuation of the partnership 50% interest in the Stockport Road company and I do not think it desirable or even helpful for me to give non-binding indications in relation to the evidence I have already heard in such circumstances.
  - (3) I do however consider it appropriate for the claimant to have the opportunity of raising questions as to the inter-company accounts and the directors loan accounts, given the issues and evidence ventilated in this case as to their reliability, and for the defendants to have the opportunity of raising the impact of Covid-19 as a matter plainly relevant to the valuation of the partnership interest in the Stockport Road company as at the current time (without deciding at this stage one way or another to what extent, if at all, it is to be taken into account).
  - (4) However, given the concerns I have previously raised about the cost and length of this round 2 exercise, this further round of evidence must be tightly controlled and strictly proportionate. Thus I would expect the claimant's advisers, in good time before the procedural hearing which will be required once this judgment is handed down, to clearly identify what if any further documents they seek and what if any further issues they wish to address in witness evidence, for the defendants' advisers to respond and for costs budgets to be produced in relation to the competing alternatives so that I can determine what directions to give.
  - (5) I would also expect the respective advisers to give advance consideration to ADR and, in particular, when and how best it should be undertaken to give the greatest prospect of success.