Neutral Citation Number: [2021] EWHC 1405 (Ch)

Case No: D30MA278

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: 26 May 2021

Before:

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

Between:

TARIQ MAHMOOD MALIK **Claimant/Petitioner**

- and –

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

James Mather and Mark Wraith
(instructed by **Viceroy Law Solicitors, Manchester M13 0NG**) for the **Claimant**
Lesley Anderson QC and Tina Ranales-Cotos
(instructed by **Clarion Solicitors, Leeds LS1 2 TW**) for the **First to Fifth Respondents**
The Sixth Defendant was present but not represented

Hearing dates: 27 - 29 April 2021
Further written submissions dated 5, 7, 12 and 14 May 2021
Draft judgment circulated 18 May 2021

APPROVED JUDGMENT
ON TAKING OF FINAL ACCOUNT

This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII. The date and time for hand-down is deemed to be 10 a.m. on 26 May 2021 2021.

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

1. This judgment resolves certain issues in dispute between the claimant ("Tariq") and the first defendant ("Mahboob") on the taking of the final account consequential upon the dissolution and winding-up of the partnership which previously existed between them. The trial and this judgment follow on from the trial which took place and the judgment which was handed down last year, addressing the substantive disputes which had arisen between the two men as the primary owners of the Stockport Road Nawaab, an Indian restaurant business based in Levenshulme, Manchester.

2. In my previous judgment, available on Bailii under neutral citation [2020] EWHC 2334 (Ch), I held that Tariq succeeded in his primary case that there was a partnership between himself and Mahboob, which included both the Stockport Road property which was leased to the restaurant business and the Stockport Road company which ran the restaurant business, on the basis that the two men held the Stockport Road property in partnership and the shares in the Stockport Road company as assets of the partnership. However, I also held that as from 2009 Tariq and Mahboob effectively divested themselves of 50% of the shareholding in the Stockport Road company to their respective wives, so that they held 50 of the 100 issued shares on trust for the partnership and Nusrat and Mirza held 25 each of the remainder for themselves absolutely. I also held that Tariq's claims and complaints in relation to a second restaurant in Perivale, London, run by the families through a separate company, were not made out.

3. I was also satisfied that the relationship between Tariq and Mahboob had wholly broken down and that it was 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. Finally, and separately, I held that the unfair prejudice petition brought by Tariq against the defendants in relation to the Stockport Road company failed.

4. For ease of reference I set out a revised version of the summary of the principal individuals and companies involved in the dispute which appeared in my previous judgment and who are still relevant to this judgment.

Name	Description
Tariq Mahmood Malik (“Tariq”)	The Claimant. Father of Asad and Usman. Husband of Nusrat. 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.
Mahboob Hussain Junior (“Mahboob”)	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. Joint owner, with Tariq, of the Stockport Road property.
RN Restaurant (Stockport) Limited	The Stockport Road company, the Second Defendant / counterclaimant. Incorporated in August 2002 as Nawaab Restaurant (Stockport) Limited and changed its name in June 2017.
Nusrat Tariq (“Nusrat”)	The Third Defendant. Mother of Asad and Usman. Wife of Tariq. Shareholder in the Stockport Road company since 2008.
Mirza Begum (“Mirza”)	The Fourth Defendant. Wife of Mahboob. Shareholder in the Stockport Road company since 2008.
Asad Ali Malik (“Asad”)	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.
Usman Hussain Malik (“Usman”)	The Sixth Defendant. Younger son of Tariq. Shareholder and director of the Stockport Road company since October 2016. Did not give a witness statement or participate in the original trial. Was previously represented by the same solicitors as the other defendants but on 7 April 2021 his new solicitors, Buckles LLP, served a notice of change.

5. I also repeat the summary of the essential facts, including my findings in the first judgment, which are that in early 2003 Tariq and 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 Stockport Road company, through which the restaurant business was undertaken. A few years later, in 2006, they entered into a formal deed of partnership to regulate their business affairs, which replaced the previous informal partnership which I found already existed between them in relation to the Stockport Road property and in relation to the Stockport Road company. 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.

6. 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.

7. However, within a few years of the Stockport Road Nawaab opening the relationship between Tariq and Mahboob had become very poor. Against that backdrop in 2007 Tariq executed a power of attorney in favour of Asad which allowed Mahboob and Asad to run the restaurant business for the benefit of both families without interference from Tariq.

8. In 2016 there was a final and (what appeared at trial to be an 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 immediate result was that Tariq was removed from his position as a director of the Stockport Road company. The end result was this litigation.

9. Having found as summarised in paragraphs 2 and 3 above, I observed 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 company. I stated that, since the parties had already 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 was obviously for some or all of the individual defendants to buy out Tariq's interest in the partnership assets.

10. I stated that it appeared that all that would be needed was provision for: (a) a single joint expert valuation report in relation to the Stockport Road property; (b) supplemental expert accountancy evidence and any necessary further disclosure and witness evidence in relation to the valuation of the 50% partnership interest in the Stockport company, on the basis that the only points which required to be addressed were: (i) any issues arising out of the treatment of the inter-company loan accounts and the directors loan accounts; (ii) 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.

11. As regards (ii), I had already received written and oral expert accountancy evidence in relation to the value of Tariq's shareholding in the Stockport Road company. Such evidence was directed to the buy-out claim under the petition and not to the account claim under the partnership action. I agreed with the parties that I should not make any final determinations as to the value of Tariq's shareholding in the Stockport company, given the dismissal of the petition, but should allow the parties to adduce further evidence, including expert evidence, in relation to the limited issues identified as above. Given the concerns I raised about the cost and length of the final account exercise, I stated that this further round of evidence should be tightly controlled and strictly proportionate, and I would expect Tariq's advisers, in good time before the procedural hearing to give directions to clearly identify what if any further issues they wished to address.

12. At the procedural hearing which took place in October 2020 the parties agreed with my suggestions and I made an order substantially along the lines I had suggested. No further issues were identified by either of the parties as requiring resolution.

13. Provision was made for the parties to attempt to resolve their remaining differences by ADR, but a mediation proved unsuccessful.

14. It was only in his witness statement made in January 2021 that Tariq identified for the first time in open communication that he did not wish to sell his share of the partnership assets to Mahboob or to the other defendants (at this stage not identifying Usman separately) and that he would prefer to have the Stockport Road property sold on the open market, with him and Mahboob as well as any other interested party being able to make offers. In those circumstances one of the issues which the parties agreed I needed to determine was the issue as to what order should be made in respect of the partnership assets and, in particular, whether they should be sold to the highest bidder, with both partners being permitted to bid for them, or whether Tariq's interest should be compulsorily sold to Mahboob at a valuation to be determined by the court.

15. More happily, the parties were able to agree the disputed issues in relation to the directors' loan accounts and the net indebtedness as between the Stockport Road company and the Perivale company which had featured in the earlier litigation. Further, the single joint expert valuer had produced valuations of the Stockport Road property: (a) in the sum of £1.8 million, assuming it was subject to a lease on the terms of the existing lease to the Stockport Road company (but - as I had found at trial - with the rent payable thereunder being £78,000 pa as declared to HMRC, as opposed to the £260,000 stated in the lease[1]; and (b) in the sum of £2 million, assuming vacant possession. Pre-trial, neither party took issue with these valuations or the assumptions underpinning them, although at trial a significant issue arose with which I shall need to deal in some detail below.

16. It appeared therefore that the only other disputed issue was the true value of the Stockport Road company. This was addressed by the two accountancy experts who had been able to reach a

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[1] Inserted, I found, with the intention of inducing the bank to lend Tariq and Mahboob funds on the basis that the rental would provide sufficient income to repay the loan instalments.

large measure of agreement as to the appropriate approach to valuation and as to the figures. However, there remained some significant disagreements, particularly as to the impact on the valuation of the Covid-19 pandemic which has, of course, greatly affected the hospitality sector generally.

17. Moreover, it was Tariq's case at trial that the very existence of this dispute and hence, it was submitted, this uncertainty as to the valuation of the Stockport Road company, was a factor which very much militated against making a buy-out order as sought by Mahboob.

18. I have heard evidence over two days and closing submissions on the third day, having already had the benefit of written submissions from Ms Anderson QC leading Ms Ranales-Cotos, as at the main trial, and Mr Mather leading Mr Wraith, as likewise.

19. As I have noted in the list of characters, the sixth defendant, Usman, having previously been represented by the same solicitors as the other defendants, had shortly before the trial instructed new solicitors who served notice of change on 7 April 2021. On 21 April 2021 those solicitors informed the other parties that Usman would not be participating in the forthcoming hearing and he did not, although he was present at the hearing and an offer made by his solicitors on his behalf was the subject of some controversy. In the remainder of this judgment where I refer to "the defendants" and to "Mahboob and the other defendants" I am referring to Mahboob, Nusrat, Mirza and Asad, and will refer to Usman separately as appropriate.

20. Having considered all of the evidence and the submissions my conclusions are as set out in section D.4 below, namely that there should be a sale on terms, followed by a buy-out of Tariq's shares by Mahboob if no sale proceeds.

21. As with my previous judgment, my reasons follow under the separate section headings as they appear below.

B. Witnesses

22. Tariq and Mahboob were the only two witnesses of fact. My impressions of them as witnesses were essentially unchanged from those I reached at the first trial, and for essentially the same reasons, namely that: (a) Tariq was wholly unreliable as a witness, being hopelessly incapable of giving a straight answer to a straight question, rather than hurling accusations and insults at Mahboob and saying whatever he thought, however misguidedly, would advance his case; whereas (b) Mahboob was more reliable, but not completely so.

23. As regards the two expert accountancy witnesses, Mr Black for Tariq and Mr Smith for Mahboob, they were both suitably qualified and experienced and appropriately independent and objective. It appeared to me that Mr Black did not have the same advantage as did Mr Smith of being part of a large, well-resourced forensic accounting team and that his written and oral evidence was somewhat less detailed and polished as was that of Mr Smith. However, it also seemed to me that Mr Smith had on occasions strayed into advocating his client's case, albeit - I emphasise - not such as to make me doubt in any way his overall independence or integrity. I must consider the substance of their evidence rather than their presentation and, where I need to

resolve issues on which they gave evidence, must do so by reference to the substance and cogency of their evidence on those issues rather than by superficial appearance.

24. One particular point which arose was that in his written opening, and again in his cross-examination of Mr Smith, Mr Mather took issue with a number of matters appearing in Mr Smith's reports, even though those matters had not been addressed by Mr Black in his written reports or in the joint statement and, thus, had not been the subject of cross-examination of Mr Black by Ms Anderson QC. Mr Mather was of course perfectly entitled to cross-examine Mr Smith on those issues notwithstanding that they had not been addressed by Mr Black and, to the extent that I found Mr Smith's explanations unpersuasive, I am entitled to reject Mr Smith's opinions on those points notwithstanding the absence of contrary evidence from Mr Black. Nonetheless, I must exercise particular care in that respect, having not had the benefit of expert evidence from Mr Black on those points.

C. Relevant legal principles

25. There was a large measure of agreement between the parties as to the applicable legal principles, which are well summarised in the relevant passages from Lindley & Banks on Partnership (20th edition) to which I have been referred: see paragraph 23-187 and ff.

26. The starting point is that since both s.39 and s.44 of the Partnership Act 1890 (PA 1890) confer a right upon each partner, in the event of a dissolution, to have the surplus assets of the partnership shared between them in accordance with their respective rights as partners, it would be wrong in principle for the court to make an order which had the effect that each partner did not receive his or her full share. In order to ensure that each partner receives his full share the normal rule is that the partnership property should be sold, since a sale is normally the most expedient means by which the true value of the partnership assets can be realised.

27. However, the court has a discretion, so that the presumption in favour of a sale is not absolute, so that any other method of settlement may be adopted if it is fair and just as between the partners.

28. Thus, the House of Lords in Syers v Syers (1876) 1 App. Cas. 174 declined to make an order for the sale of the business as a going concern and, in effect, ordered one partners' share should be valued at the date of dissolution as if the business had been sold as a going concern and that the other should have the right to acquire his share at that value. There is no limit on the considerations which can be taken into account in the exercise of the court's discretion.

29. In Hammond v Brearley (CA, 1992) (unrep) Hoffman LJ, holding that there was nothing in the PA 1890 positively requiring that a winding-up of a partnership should be effected by a sale, famously observed:

"It is I think notorious in the Chancery Division that *Syers v Syers* is an authority far more frequently cited by counsel than applied."

However, he also added:

"But the discretion which it gives seems to me a valuable one which I think judges should not hesitate to use when it suits the justice of the case".

30. The authors of Lindley & Banks observe at 23-192 that one of the main reasons why the court may be reluctant to make such an order is a natural resistance to placing too much reliance on valuation evidence, rather than by ascertaining the market value of the partnership assets in the traditional way, i.e. by ordering their sale. This is illustrated by the facts of Benge v Benge [2017] EWHC 2124 (Ch), where the Deputy Judge, having summarised the law in a way which emphasised the search for a flexible and fair solution, declined to order a buy-out on the basis that the evidence in that case indicated that significantly more might be achieved by a sale than the value indicated by the valuation evidence.

31. At [54] he made an observation which is particularly apposite to the dispute which has arisen in this case and which I bear well in mind:

"The cases do show that where one of the partners is running the business and would be the accounting party and wishes to continue to use the relevant assets, it may be just indeed to order that partner to pay for his purchase so long as the so-to-speak selling partner does not lose out financially. That of course requires the court to be very certain as regards what would be a fair value in those circumstances, and in my opinion the only way to do that is to judge the value of the asset against what would be achieved in the open market. Sometimes and for some assets that is an exercise which can be completed with a reasonable degree of confidence. Sometimes it is not."

32. Mr Mather and Mr Wraith also referred me to the observation in Lindley & Banks at 23-195(c) that an order for a buy-out as between two equal partners would be "extremely rare". Insofar as the rationale is that it would normally be unfair to prevent an equal partner from bidding to buy out his co-partner or to see whether a third party would pay more than the valuation price to acquire the interest I can see the rationale for this observation.

33. However, if the only objective of the objecting partner is to attempt to increase the price by engaging in a bidding war, with no genuine intention or ability to purchase, then for my part I see less force in the observation.

34. In my judgment this demonstrates that the search for further principle should give way to an emphasis on the particular facts of the case, given the width of the discretion exercisable by the court. Thus I do not accept Mr Mather's submission that there is a principle of general application that the court should decline to make an order against an unwilling partner for his share to be bought out unless the court can be satisfied that there is no real risk of his being denied the highest price for his share from making such an order. I am prepared to accept that this would be an important consideration in every case and that in many, perhaps most, cases if the court was unable to be so satisfied that would be a decisive factor against making a buy-out order, but I am unable to accept that there might not be circumstances where the other relevant factors all pointed so strongly in the opposite direction so as to overcome that consideration.

35. Finally, I should also note that, as is stated in Lindley & Banks, the court has a discretion not only as to whether or not to order a sale but also as to the manner in which any sale should be conducted. That is particularly important in this case, since in my judgment there is a very real likelihood that Tariq's true motive in pressing for an order for sale is to attempt to increase the price by engineering a bidding war, and I am satisfied that it is necessary to ensure that the provisions in relation to any sale should be tailored so far as reasonable to prevent him from doing so with impunity.

D. The evidence and my findings

36. I will address separately the evidence as to the wishes of the parties and the evidence as to valuation, both of the Stockport Road property and of the Stockport Road company.

D.1. The wishes of the parties

37. As to the former, it is surprising that it was not until his witness statement for this trial that Tariq first openly expressed his wish not to be bought out by Mahboob and to buy out Mahboob. Mr Mather submitted that there had been no express requirement for him to state his position before that time. It is true that there was no formal direction to that effect. However, in my judgment I had said that I expected his advisers to identify, in good time before the case management conference, any further issues he wished to be addressed in witness evidence. He did not raise this issue, nor did he object to directions being given on the assumption, albeit only implicit, that he was willing for his share to be bought out, so that the only matter for determination was the valuation of the partnership assets.

38. Ms Anderson QC acknowledged that his failure to state his case clearly from the outset cannot operate as a bar to his taking the point. Instead, she submitted that it showed that this recent change of position is a cynical and opportunistic attempt to drive up the price that Mahboob would have to pay for his share.

39. I accept that this is indeed a significant motivating factor behind Tariq's change of position. In my judgment Tariq wants to have a sale of the partnership assets on the basis that it would result either in the price which Mahboob would have to pay being driven up, or his being able to acquire the Stockport Road property and the partnership share in the Stockport Road company, his intention being then to so conduct himself as to force the remaining shareholders to sell the remainder of the shares in the Stockport Road company to him or to his nominees. In addition to the unexplained (and inexplicable) lateness of his volte face on the point, the following factors lead me to this conclusion.

40. On 23 March 2021 Tariq's solicitors made an open offer to Mahboob and the other defendants to acquire his entire interest in the partnership assets for a total payment of £2.2 million. Unusually, and unhelpfully, this was stated to be inclusive of any claims for costs in the litigation, so that the actual value to be ascribed to the assets was impossible to ascertain. It was said that Tariq would be prepared to provide proof of funds which, it was said, had been made available by a third party, once the offer was accepted. It was only stated to be open for acceptance until 29 March 2021. It was neither accepted or rejected within that time period, however on 20 April

2021 Clarion wrote to confirm that it was rejected on the basis that: (a) it was unacceptable to Mahboob and the other defendants for Tariq or any third party to acquire Mahboob's share; and (b) since Tariq had no obvious means of funding the purchase, it could not be regarded as a genuine offer.

41. In response to point (b), on 27 April 2021, the morning of the first day of the trial, a solicitor in a Birmingham firm wrote to Tariq's solicitor stating that his clients, who had been in discussions with Tariq, had offered £2.2 million to acquire the Stockport Road property and shares in the Stockport Road company. He said that his clients having been asked for proof of funds he attached a copy print out of their bank statement of yesterday confirming funds of £5.5 million. What was attached was a print out of an undated online document which showed that a customer known as "Soho Data" had funds of that amount in a specified account. Ms Anderson QC told me on instructions that no business of that name could be found on a search of Companies House or a popular search engine. That appears to be the case and the contrary was not asserted on Tariq's behalf. Moreover, when asked Tariq had simply said that the funds would be provided by way of a loan from a family friend. He did not provide any more details. Whilst I am not in a position to make a positive finding that the contents of the email from the solicitor or the bank printout are untrue, I am unable to place any reliance on this evidence as showing that Tariq does indeed have a clear commitment from a reliable source to provide him with the funds to acquire Mahboob's share in the partnership assets for £2.2 million.

42. Moreover, when he was asked what his plan was if successful, Tariq said that he would run the restaurant. This plan is despite the fact that he has not been involved with the restaurant since 2016 and that even before 2016 he was really only involved in the financial side and doing little more than controlling the purse strings. It was apparent from his evidence that he remained implacably hostile to Mahboob. He said that he still had no contact with Asad or anyone else. He was asked about his contact with Usman, in the context of the other defendants' case that the offer from Usman - to which I refer below - was in reality a disguised offer from him. He admitted that both Usman and he had attended a family wedding in Pakistan in February 2021. He suggested that he had not had any real contact with Usman at the wedding. I completely reject that evidence. It is inconceivable that he would not have had contact with his son unless there was a complete rift between them, and neither he nor Usman has suggested that this is the case. Moreover, I reject any suggestion that there is any coincidence between their joint attendance at the wedding in February 2021 and Usman instructing solicitors, out of the blue in April 2021, to make an offer to acquire the partnership assets.

43. When pressed about this, he suggested that Mahboob was behind the offer and that it was simply a game being played by Mahboob. As Ms Anderson QC put to him, this was utterly implausible, because why would Mahboob put up Usman as a front to make an offer of £4.6 million for the partnership assets, when that was: (a) far in excess of any valuation of the partnership assets; (b) in excess of the offer made by Tariq for Mahboob's interest; (c) substantially in excess of the offer made by Mahboob for Tariq's interest?

44. Although Mr Mather submitted that it would be wrong for me to make an adverse finding about this on the available evidence and without hearing from Usman, I do not accept that submission. I have no doubt that the apparent offer from Usman is a device entered into at the instigation of Tariq to support a submission made on his behalf that Usman's willingness to make a substantial offer supported his case that the partnership assets should be the subject of a sale.

45. It was striking that in correspondence Usman very quickly withdrew his requirement that Tariq should provide an indemnity against any liability arising from the existing or any future tax investigation, whilst maintaining that requirement as against Mahboob.

46. Although Usman's solicitors provided a document which showed that a company known as Together had provided an "in principle" loan offer to Usman, there is no basis for believing that this is anything more than an indicative offer which is not based on the provision of hard information by Usman. As Ms Anderson QC noted, it is an offer of a redacted sum for a 12 month loan term at 0.75% interest per month (9% per annum), with a requirement for security over the property and no apparent requirement for any deposit. It is not signed by Usman and, hence, he has not accepted any liability to pay the very substantial acceptance fee nor has there been any affordability assessment as would be required upon signature. There is no evidence of Usman's ability to provide the requisite funds, either to pay the acceptance fees and legal costs, or to pay any capital injection which may be required of him (as to which the proof of funding, being redacted, does not help), or to provide any working capital or to repay the interest payments. It would have been open to Usman to have filed and served and sought permission to rely upon a witness statement and to give evidence to show that this was a serious and independent offer. His failure to do so is striking. It was not for Mahboob's advisers to request that he give evidence so that he could be cross-examined on his offer.

47. Ms Anderson QC also referred to the articles of association of the Stockport Road company, which include a limitation on the transfer of shares, so that a member may only transfer shares to a spouse or lineal descendant. It follows that the directors of the company would be entitled to refuse to register any transfer of shares to any third party. Mr Mather submitted that a refusal to do so would be open to challenge, if such refusal was not in accordance with their fiduciary duty to the company and without giving reasons being given. Whilst this may well be so in principle, in practice, as Ms Anderson QC submitted, it is unrealistic to suggest that any challenge could be made to a decision by the directors to act in accordance with a clear provision in the articles obviously intended to ensure that the company remained a family business. It follows that in reality there is an extremely limited pool of potential purchasers of the partnership shareholding in the Stockport Road company and that in my judgment it is no coincidence that Tariq put up Usman, as one of the few persons who could qualify, to make the purported offer.

48. Indeed, it is not without significance that Usman currently holds two of the issued shares in the Stockport Road company. If Tariq or Usman were to acquire the partnership assets they would, as a bloc own the property from which the business trades and a majority, albeit only a bare majority, of the issued shareholding in the company.

49. The conclusions which I draw from this evidence are as follows:

(1) Tariq wishes to bid in a sale process for two reasons. The first is simply to drive up the price by forcing Mahboob to engage in a bidding war or to take over the business and run the restaurant. He, personally, does not appear to have the funds to do so and nor has he secured a firm offer of funding from an institutional investor. I am prepared to accept that it is not wholly implausible that he might find a source of funds from within his family or friends, and I recall the evidence from the substantive trial that the competitor business set up by his brothers was based in Birmingham, so that it is possible that Soho Data is a front for his brothers, however the evidence before me shows that this is no more than a possibility.

(2) Usman's bid is clearly either a front for Tariq or at best one made in conjunction with Tariq. On the available evidence he has little or no prospect of raising the funds to make a successful independent bid by himself.

(3) It is inherently unlikely that any unconnected investor would wish to invest in the Stockport Road Nawaab business by acquiring the partnership assets as a whole, because: (a) they would be concerned about the restriction on share transfer as regards the shareholding in the company; (b) regardless of this, it would obviously be unattractive to become an equal investor with a family who did not want them as joint owners.

(4) The reality, therefore, is that the only likely bidders would be Mahboob and the other defendants on the one hand and Tariq (with or without Usman) on the other. I cannot completely exclude the possibility that a third party might be prepared to bid. I also accept that it is perhaps a little more likely that a third party might be prepared to bid for the Stockport Road property alone. However, as Mr King the valuer explains, a third party would be bidding on the basis of the principal tenant being a restaurant, with all the risks that this entails at the present time, especially one currently holding over under a lease with a below market rent rental, so one can understand why such third parties might be cautious of investing in such a property at the present time.

D.2. Property valuation

50. I have already referred (paragraph 15 above) to the opinion evidence of the single joint property valuation expert, Mr King. His valuation of £1.8 million was on the basis of a 5 year lease from valuation date on the same terms as the 5 year lease actually entered into in 2008, save that the assumed rental would be £78,000 pa, being the rental actually declared to HMRC rather than the £260,000 pa inserted in the lease. His valuation of £2 million was on the basis of the open market value. It is clear from the report that he considered that the declared rental of £78,000 pa is an undervalue and that the true market rental value is now £238,500. It is also clear from the report that both of his valuations reflect his assessment of the risk that an owner would not achieve the true market rental value for some of the time going forwards. As regards the £1.8 million, this is on the basis that upon notional lease expiry after 5 years there are risks and uncertainties of reverting to and hence achieving the market rent, including the current risks associated with Covid-19 (see his report at paragraph 11.36).

51. As regards the £2 million valuation, this is on the basis there are risks and uncertainties of achieving the market rent from the outset, where he also factors in the need for a marketing period and a rent free period and what he described as a "Covid-19 rent void" (paragraph 11.37). He reflects this assessment by choosing a 7% yield for the first 5 year period in the first assumed tenancy valuation scenario, followed by a 10% yield thereafter, and by a choosing a 10% yield from the outset in the second open market value scenario.

52. In their written opening submissions Mr Mather and Mr Wraith, doubtless anticipating that Mahboob and the other defendants would contend for the lower valuation, contended that the true valuation was somewhere between the two valuations, identifying some errors of approach in relation to the lower valuation, and that a mid-point of £1.9 million should be adopted.

53. However in their written opening submissions Ms Anderson QC and Ms Ranales-Cotos stated that the defendants accepted, given Mr King's view that the rental of £78,000 pa was an undervalue, that the appropriate basis for a court-based determination of value of the Stockport Road company was £2 million, and invited the court so to find.

54. It appeared to follow that there was no dispute between the parties. However, in their written opening submissions Ms Anderson QC also contended that the court ought also to adopt "the same basis" for valuing the partnership half share in the Stockport Road company i.e. on the basis of a rent of £243,500 pa as opposed to £78,000 pa. This was because although Mr Smith had initially valued the Stockport Road company on the basis that the figure of £78,000 pa for rent should be included in the overheads, in their joint statement the accountancy experts had agreed that it was also appropriate to value by reference to the true market rental value figure of £240,000 (rounded up from Mr King's £238,500 figure). If, as to which they expressed no view, it was appropriate to do so, then this had the effect of increasing the overheads by £162,000 and, thus, decreasing the EBITDA figure by the same amount, with a consequential downwards impact on the valuation of the Stockport Road company[2].

55. In oral closing submissions Mr Mather objected that this approach would not produce valuations on the same basis. He submitted, relying for the details on a supplemental note produced by Mr Wraith and lodged and served at lunchtime that day, that if Mr King was to value the Stockport Road property on the same basis as the accountancy experts had ascertained the figure for overheads, then he would need to take the value for the rental income from the restaurant as being £240,000 pa without discounting the yield - as he had in his actual valuations - for the contingencies referred to above in relation to Covid-19 and the risk of voids.

56. Mr Wraith's note identified the potential consequence of the differing approaches, arguing that if one adopted a straight comparison then his indicative figures suggested that the valuation of

[2] The figure of £243,500 in the written opening submissions of Ms Anderson QC and Ms Ranales-Cotos is the total of the £238,500 rental valuation of the restaurant and a further £5,000 rental valuation for sums payable for the siting of a telecommunications mast on the rooftop (which explains the discrepancy in the totals, but is of no consequence to the principle).

the property could rise to as much as £3.5 million. Mr Mather emphasised that this was not being relied upon by Tariq to persuade the court to adopt a valuation of £3.5 million for the property. Instead, his submission was that: (a) this exercise demonstrated the potential of real unfairness in ordering a buy-out on the basis of separate valuations of the property and the company, since the property valuer and the company valuer had proceeded on materially different assumptions and since if the same assumptions were used the value of one or other might well differ; and (b) if the court was minded nonetheless to order a buy-out then Mr King ought to be instructed to re-value on the same basis as the accountants in order to ensure that there was no under-valuation of the property.

57. Because this argument had not been raised before (albeit that Mr Mather submitted that this was only because it was a response to the point raised by Ms Anderson QC in the written opening) I permitted the defendants to respond by way of post-hearing written note and for the claimant to reply.

58. In their response Ms Anderson QC and Ms Ranales-Cotos clarified that - given what they submitted was a late and opportunistic position taken by Tariq - they no longer pursued the specific argument raised in their opening submissions, but still maintained the submission that the valuation of the property and of the company should proceed on a comparable basis. On that basis they invited me to take £1.9 million as a mid-point and to decline to direct Mr King to revalue the property on the basis of the assumptions made by the accountancy experts. This was on the basis that in their submission the difference between the two valuation exercises reflected the reality of the actual terms of the lease and, they noted with forensic satisfaction, also accorded with the position taken by Mr Mather and Mr Wraith in their opening submissions.

59. In their reply Mr Mather and Mr Wraith submitted that if the valuations of the property and the company shareholding were to proceed on a comparable basis, then it would be necessary for Mr King to re-value the property on the basis of the company continuing to pay the market rental from whichever date was specified, with no reduction in yield for contingencies and risks, Covid-19 related or otherwise. They submitted that if I was minded to order a buy-out then this is what I should direct should happen, in fairness to Tariq.

60. On receipt of these submissions my provisional view, which I communicated to the parties, was that if I accepted that the basis of valuation of the property and the company should be on the same comparable basis, then it would be more consistent with my substantive judgment to proceed on the assumption that the company would continue to trade from the property under the same terms as it had done for many years on the basis of a continued payment of the declared rental of £78,000 pa, unless either the company ceased trading or the terms changed for some objective business related reason.

61. In fairness to both parties I invited further short submissions on that basis. Both parties took advantage of the opportunity, filing short submissions on that point and again in response to the other's submissions. The reason why the parties did so with some enthusiasm is not hard to understand; it is likely that valuations based on a rental of £78,000 pa would result in a

significantly lower overall valuation (because of the greater impact on the property valuation than the company valuation) than valuations based on a rental of £238,500.

62. In short, the claimant's submission was that since any purchaser of the whole of the partnership assets acting rationally in their own interests, whether Mahboob or a third party, would exercise the rent review clause as and when able to do so, the only proper basis for valuation on an open market basis was to value the property on that basis. They submitted that since any purchaser would own 100% of the property but only 50% of the company their overall financial position would obviously be maximised by enhancing the value of the return from the property rather than the return from the company. They submitted that obtaining a rent increase from £78,000 to market rent would obviously achieve that objective.

63. In short, Mahboob and the other defendants submitted that I should follow the approach provisionally canvassed on the basis that it reflected the reality, namely a continuation of what had happened ever since the lease was entered into in 2008, which is that the rental was never increased upwards because it achieved nothing - in the context of the business being owned by the two families - to do so. They accepted that Mr King could and should have regard to the existence of the rent review clause, but should not be instructed to assume that it could and would be invoked at the first opportunity.

64. In my view the court has to engage with and decide this point, notwithstanding that it is unattractive for Tariq to raise for the first time at trial a further basis of valuing the property which was not expressly ordered and which he ought to have identified and raised much earlier than he did. That is because where the court is being asked to make a buy-out order, whether alone or as a fallback to a sale order, a very significant consideration is the fairness of such an outcome. If it transpires on the basis of the evidence and submissions at trial that making a buy-out order would not achieve a fair outcome the court ought not to do so without ensuring - so far as it reasonably can - that any reasonable adjustments necessary to ensure a fair outcome are made.

65. In this case, the problem has been caused by a combination of two factors: (a) a failure, when setting the terms of the valuer's instructions in October 2020, to appreciate and to address the inter-relationship between the property and the company as partnership assets on any valuation of both; (b) the decision by the valuer to value on the basis of an assumed lease between an unconnected landlord and tenant at a rental of £78,000 pa for a term of 5 years starting from the valuation date.

66. In my judgment it can now be seen that the approach which the valuer ought to take, on the basis that it will maximise the value of the partnership assets, is to value the property on the assumption that the property will be marketed for sale with the partnership half share of the company on the basis that the purchaser will be ready, willing and able to continue to let the property, and the company will be ready, willing and able to continue to occupy the property, in order to undertake the business from the property, by holding over from year to year under the 2008 lease as has been done since 2013.

67. The question however remains as to whether the valuation ought to proceed on the basis that the rental will continue to be £78,000 pa or whether it should be assumed that at the next rent review in February 2023 the rent will be varied upwards so as to bring it into line with the market rent of £238,500 pa as determined by Mr King.

68. It is tempting to adopt Mahboob's suggested approach of leaving it to Mr King to decide. In particular, that is because assuming that the property should be valued on the basis that the purchaser would invoke the rent review clause as soon as permitted might be thought inconsistent with the historical position where that was not done.

69. However, in my judgment there are five factors which, taken together, persuade me that I should grasp the nettle and specify that the valuation should proceed on the basis that the rent would be reviewed upwards with effect from the next review date. The first is that this will maximise the value of the property and that, in my judgment, should clearly be the approach to an open market valuation unless there are strong grounds for concluding otherwise. The second is that, on reflection, it would be unsafe to take the fact that has not previously occurred as providing strong evidence as to what would happen in the future, given the previous dysfunctional relationship between Tariq on the one hand and Mahboob and the other defendants on the other hand. The third is that, since Mr King has thus far taken the entirely heterodox position of assuming that the purchaser would act rationally to bring the rental into line with market rental, it would appear not only pointless but positively unfair to ask Mr King as a valuer who speculate as to whether a purchaser might act differently. The fourth is that it would be positively unhelpful to direct an approach which would at least cause some difficulty in ensuring that the approach to the valuation of the property and the company was consistent. The fifth is that adopting the next rent review date is on reflection both a compromise between the two alternatives, namely that the rent would never be reviewed and that if the property and company are under one common control it would be decided to increase the rent forthwith. Indeed, it probably reflect the correct economic analysis, which is that whilst it is unlikely that the rent would be increased at this time of great uncertainty it is more likely that it would be increased in 2 years' time assuming that - as predicted (see below) - the sectors in which the business is engaged will be in a much better position that they are currently.

70. It follows in my judgment that Mr King should value the property on the basis that: (a) the property will continue to be occupied by the Stockport Road company holding over from year to year under the 2008 lease, initially at the agreed rental of £78,000 pa but with effect from 23 February 2023 at the increased rental of £238,500 pa; (b) the relevant yield should be assessed on that basis, with the only risk to be factored in being the risk that the existing restaurant business might fail at some stage in the future, whether for Covid-19 related reasons or otherwise, leaving the owner needing to find an alternative tenancy.

71. I bear in mind that it is unlikely that this further exercise will result in any significant delay or significant additional cost, since it does not require Mr King to undertake a fresh investigation.

D.3 Company valuation

72. In their fourth reports both accountancy experts had addressed, to the extent they considered appropriate, the three specific matters which they were instructed to do (see paragraph 10 above). Mr Black simply stopped at that point, whereas Mr Smith proceeded to conclude that given the uncertainty due to the impact of Covid-19 the business ought now to be valued on the basis that its past performance was no longer a reliable indicator of its future potential earnings or cashflows and that instead it was appropriate to value the business using a "discounted cashflow basis" which, in summary, involved making an assessment of cashflows for the four financial years ending 31 July 2021 to 31 July 2024 (FY21, FY22, FY23 and FY24 for short), discounted back as appropriate to current values, and adding a terminal value for assessed cashflows beyond that period.

73. This was clearly a fairly radical departure from his previous approach in his earlier reports. In arriving at his conclusions he placed considerable reliance upon research published by a service known as IBISWorld which had produced research on a number of market sectors, including (a) full-service restaurants, (b) catering services, including weddings, and (c) bridal stores, in each case being recent research on the anticipated effect of Covid-19 on each sector. He proceeded on the assumption, stated to him by the company accountant Mr Nawaz, that the company's income was split broadly into three streams being restaurant takings, weddings/functions and outside catering, and also proceeded on the assumption that pre-Covid-19 turnover was broadly around £4 million pa. His choice of a discount rate of 25% also took into account Covid-19 related risks. His conclusion was that once account was taken of other matters, including the value of a property in Dubai, bank borrowing, directors loan account and inter-company indebtedness the company value was only £834,130 so that Tariq's one quarter shareholder value was only £208,533. (It is common ground that no discount for minority holding is appropriate in this case.)

74. Mr Black had not undertaken any similar exercise in his report. He did, however, consider and discuss Mr Smith's valuation in their joint statement. He agreed that Mr Smith's valuation methodology was appropriate. However, he noted that Mr Smith's valuation was undertaken prior to the UK government announcing its route out of lockdown and thus assuming no turnover at all from the scheduled date of permitted re-opening 17 May 2021 to 31 July 2021. Mr Smith, accepting this point, undertook a further exercise to reflect some allowance for this latter point, which increased the company value to £1.4 million, illustrating the sensitivity of the result to the assumptions made. Mr Black considered that a discount rate of 20% was more appropriate than the 25% used by Mr Smith on the basis that in his view the biggest risk - being the failure of the business before it could re-open - had been much mitigated by the extension of the furlough scheme and the extension of reduced rates for VAT and business rates to March 2022. Mr Smith maintained his view as to the appropriateness of the 25% figure given his analysis of the ongoing Covid-19 uncertainties and risks. This increased the company value to £2.05 million, illustrating again the sensitivity of the result to the assumptions made.

75. In cross-examination Mr Black frankly accepted that he had no previous knowledge of IBISWorld and had been unable to suggest any better source of data. He did however state that he did not consider that any of the sectors researched by IBISWorld were a complete match for

the business conducted at the Stockport Road Nawaab, which he described as a niche business. I agree with this observation, in that the business of the Stockport Road Nawaab is very much focussed on the self-service buffet market, in particular, for large scale wedding banquets targeted at the South Asian community. However, it is clear that the IBISWorld data in relation to the sectors identified by Mr Smith is the best there is.

76. In opening written submissions Mr Mather identified a number of other aspects of Mr Smith's fourth report which he considered demonstrated an erroneous approach. These were not the subject of a supplemental report from Mr Black nor indeed, as Mr Black confirmed in evidence, did they originate from him. However, Mr Smith rightly considered these points, as was his obligation as an independent expert, and produced a supplemental report dated 26 April 2021 (the day before the trial), in which he addressed the points raised and also corrected certain errors which he had also noted on reviewing his calculations. In particular, he updated his assessments taking into account the latest IBISWorld data published since his fourth report. Finally, on the following day (27 April) Mr Smith produced a further supplemental report in which he corrected a further error in his fourth report in relation to his calculation of the terminal value figure.

77. He was cross-examined by Mr Mather about his decision to depart from the latest IBISWorld data in relation to weddings. Mr Smith had decided not to apply the very significant revenue increase predicted for that sector on the basis that it would lead to the turnover previously achieved being very significantly exceeded. This was on the assumption that wedding revenue had previously never managed to exceed £1,333,333 pa (being the proportion of total overall turnover of £4 million split equally as between restaurant turnover, wedding turnover and event turnover). It was suggested to Mr Smith that his opinion as to this limit was no more than surmise, since he had not obtained any further specific instructions backed by documentary or other evidence to confirm the basis of or the accuracy of the data behind the reported one third split, nor to verify his assumption that there might be a physical limit on the number of weddings which could be held which would explain how it might be that this would be a cap on wedding related turnover.

78. However, in his fifth witness statement, produced for this trial, Mahboob had explained that but for Covid-19 he would have expected the wedding suites to be fully booked for the 10 months in the year in which weddings were held, both at weekends and during the school holiday weekdays when some weddings took place. That seems to me to be reasonable corroborative evidence to support Mr Smith's opinion that there was in practice a cap on the number of weddings which the business could host. This would also be reasonable evidence to explain the inability of the business to increase overall turnover above £4 million in previous years. Although it is true that Mahboob did not specifically refer to the turnover split in his witness statement, it is also true that he was not asked about this in cross-examination. Accordingly, I am prepared to accept Mr Smith's opinion as justifying a departure from the IBISWorld data in this respect. However, I do consider that the IBISWorld data in relation to weddings clearly indicates a pent-up demand, particularly for the larger weddings which the Stockport Road Nawaab specialises in, which is a relevant consideration when deciding which discount rate to use (see below).

79. Mr Smith was also cross-examined by Mr Mather on the basis that he had used the IBISWorld data applicable to estimated changes in revenue per sector as opposed to per establishment. This is important, because IBISWorld forecast, unsurprisingly, that one of the effects of Covid-19 is to reduce the number of establishments, so that those remaining have less competition for the same custom which will have a beneficial impact on their turnover. Mr Mather suggested to him that since the discounted cashflow approach assumed that the Stockport Road Nawaab would survive, as now appears tolerably clear will be the case, not least due to government financial support and assuming that the current planned exit from restrictions is achieved, the figure per establishment was the appropriate data set to use, not least because any risk of business failure would be factored into the choice of discount rate. It did not seem to me that Mr Smith had any convincing answer to this point, which seems to me to be obviously right. Although Mr Smith suggested that it might not have any overall impact, that is not obviously the case on the basis of the information in the IBISWorld data, and I am satisfied, therefore, that Mr Smith should amend his projections to use this data instead.

80. He was also cross-examined by Mr Mather on the basis that, when updating his assessment of turnover for the FY21, he had relied solely upon information provided to him by the defendants' solicitors in relation to the current number of bookings for weddings and the number of attendees and expected revenue from those weddings. In relation to the information regarding restaurant bookings, he considered this too limited to rely upon and, hence, had extrapolated back from his FY22 assessment instead. He was criticised by Mr Mather on the basis that he had not sought or obtained any further instructions, backed by evidence, regarding the possibility of further wedding bookings being secured between now and the end of FY21, and nor did he consider the possibility of restaurant income being similar either to that achieved during the previous relaxation of lockdown (albeit that this included the period of "eat out to help out" trading) or to consider that which was achievable in the previous year during the busy Eid festival period which fell before the end of FY21.

81. Mr Mather asked Mahboob about the source of the information provided to Mr Smith, who said that it had been produced by the booking managers employed by the Stockport Road Nawaab who work under the overall control of the fifth defendant Asad. As regards weddings, Mahboob said that he hoped that further bookings would be received for the period in question, although he did say that the weekends are currently booked up. Mr Mather suggested that the data did not support an assertion that weekends were fully booked up as they had been before the pandemic. That appears to be true. On the basis of the evidence as a whole there is clearly an ability to secure more wedding business, both at weekends and particularly during weekdays. As regards the restaurant Mahboob accepted that he would expect more bookings and also that the majority of the business was walk in business and also that he would expect Eid to be a busy time, as indeed he had said in his fifth witness statement.

82. In my judgment Mr Smith has failed to take into account the extra income which may reasonably be expected to be generated from weddings, particularly after 21 June. Doing the best I can in the absence of proper evidence from the defendants I would allow a 33% uplift to the wedding income over this period. I am however satisfied that Mr Smith has proceeded reasonably in

using the FY22 figures for this period for restaurant income, on the basis that it is a reasonable way of addressing the combined impact of the downward effect of continued restrictions until 21 June 2021 and the prospect of greater sales, particularly during Eid, subsequently.

83. In relation to the overheads which Mr Smith had taken when arriving at his cashflow figure for FY21 to FY24, he had adopted a figure for rent, rates and insurance which took no account of the retail discount business rates relief scheme introduced by the government and recently extended until March 2022. Mr Mather suggested to him that he ought to have done. Mr Smith said that this was because it was an unusual or non-recurring item which should be stripped out when arriving at an assessment of normalised trading activity. Mr Mather submitted that this could not be justified. Ms Anderson QC submitted that this was a matter within the scope of Mr Smith's expertise and in the absence of evidence from Mr Black there was no basis for rejecting it. However, in my judgment it is a clearly erroneous approach, because the whole point of the exercise undertaken by Mr Smith is to forecast the effect of Covid-19 on cashflow for FY21 to FY 24. If, in two of those years, the business will in fact incur less expenses because of a Covid-19 related rates holiday, then in my view to take a depressed figure for income due to turnover without taking into account that reduction in expenses is clearly inappropriate and unjustified. Applying the same logic one would strip out the negative impact of Covid-19 on income because that was - it is hoped - an unusual and non-recurring occurrence.

84. It cannot be said that the impact of this is obviously minimal; indeed the opposite appears to be the case. I am satisfied, therefore, that Mr Smith should amend his projections to include the impact of the rates relief as currently announced.

85. The final issue on which Mr Smith was cross-examined was the issue of the appropriate discount rate, where Mr Black had suggested 20% and Mr Smith 25%. Whilst there was some detailed cross-examination on this point, in my judgment the compelling point made by Mr Mather, to which it seemed to me that Mr Smith did not have a convincing answer, was that his 25% figure had been arrived at as at the time of his fourth report in February 2021, by reference to ONS data from December 2020 and a Financial Times article from early January 2021 which represented, in my judgment, the view in the darkest hour before the dawn. Whilst Mr Smith had also noted the more upbeat assessment of the Bank of England from early February 2021 he had chosen to emphasise the caveat that its outlook was still unusually uncertain. As he said in his report at [4.37], the majority of this evidence was generally negative with regards to the UK economy and the restaurant sector. It is clear from his report that it was this evidence of these Covid-19 related risks which he relied upon as justifying his move from adopting a discount rate of between 18-19% in his previous reports to using a higher discount rate of 25%. I must confess that I struggle to see the justification for applying this additional discount, when the data which he used from IBISWorld to arrive at forecast cashflows already factored in an assessment of the likely impact on Covid-19 on turnover in the relevant sectors.

86. By the time of the joint statement the Government had announced its proposals for exiting lockdown and the success of the vaccination programme was becoming clear. Although Mr Smith had acknowledged this by adopting a more optimistic basis for the company's recovery,

he had maintained his view as to the 25% discount rate. I was more impressed by Mr Black's opinion, albeit succinctly expressed, that a rate of 20% was more appropriate as reflecting the improved position both generally but also, specifically, as to the prospects for the survival of the Stockport Road company as a going concern.

87. Finally, Mr Smith had not revisited his opinion in his supplemental report produced just before trial. Instead he had chosen to refer on two reports from BBC News and the Evening Standard which referred to the risk of a third wave of Covid-19 infection over summer. He did not refer to a further article published in the Financial Times on the same day as his report, 26 April 2021 which showed a positive aspect in relation to GDP and growth forecasts. When this was put to him, again he chose to emphasise the caveats in that report in relation to risks, rather than on the headline point that economists were raising their forecasts for UK economic growth this year, whilst properly accepting that he was not purporting to express an opinion on Covid-19 itself.

88. In my judgment, even if Mr Smith was correct to take a 25% discount figure in February 2021 there is no proper basis to maintain that figure as at April / May 2021, and I am satisfied that Mr Black's figure of 20% is more appropriate, both for the reason he gave, viz the improved prospects of the company surviving, and because of the significant change in the optimism expressed by economic analysts from that prevailing before and in February 2021 to the current position. The evidence of pent-up demand, especially for large scale weddings, seems to me to support this decision.

89. As regards the more modest disputes as between Mr Smith and Mr Black, as Ms Anderson QC demonstrated in cross-examination of Mr Black they amount to very little in monetary value. Given that Mr Smith had undertaken a detailed assessment and Mr Black had not, insofar as there is a difference I prefer and accept Mr Smith's figures.

90. The end result, it seems to me, is that Mr Smith ought now to produce a valuation using the figures contained in paragraph 7.2 of his 26 April 2021 report as updated in paragraph 2.7 of his 27 April 2021 report, but making the alterations identified above, namely:

(i) Using the updated IBISWorld data applicable to estimated changes in revenue per establishment as opposed to per sector.

(ii) Allowing a 33% uplift to the wedding income over the period from 17 May 2021 to 31 July 2021.

(iii) Deducting from overheads for FY21 and FY22 the amount saved by the company due to the retail discount business rates relief scheme introduced by the government and recently extended until March 2022.

(iv) Adopting an increase in rental from £78,000 pa to £238,500 pa from 23 February 2023 when arriving at overheads,

(iv) Adopting a discount rate of 20% rather than 25%.

91. For substantially the same reasons as given above in relation to Mr King I am satisfied that it is fair and proper to adopt this course. These changes will not cause any significant additional delay or cost and if Tariq is to be ordered to sell his share to Mahboob or the other defendants then it is only fair and proper that it should be at a fair price.

D.4. Sale or buy-out and their terms

92. As canvassed in argument, there are in fact three options, namely: (a) a straightforward sale; (b) a straightforward buy-out; or (c) a sale process followed by a buy-out if no sale is secured.

93. Tariq's primary case is that there should be a sale. His fall-back case is that there should be a sale, with a buy-out at the valuation set by the court only if the sale process does not result in a sale. Mr Mather also submitted that there ought to be a reserve sale price, which should be the court valuation figure, so that no sale at under that figure could take place.

94. Mahboob's primary case is that there should be a buy-out. If the court is minded to adopt Tariq's fall-back case, then Ms Anderson contended that the sale process ought to be directed to take place to proceed without delay and ought to be structured so that it prevents Tariq from achieving his objective of driving up the price by a bidding war when he has no intention or ability actually to acquire the property or shares in the company.

95. For the following reasons, it seems to me that the fall-back solution of a sale followed by a buy-out is the appropriate course in this case:

    (i) The starting point, especially in a case involving two equal partners, is an order for sale.

    (ii) Whilst I have found that one of Tariq's motives for seeking a sale is to drive up the price through a bidding war, I am also satisfied that he does have a genuine wish to acquire the property and the shareholding in the company if possible. I am not in a position to find that there is no realistic prospect at all of Tariq coming up with the funds to do so.

    (iii) Whilst extremely unlikely, I cannot completely exclude the possibility that a third party bidder may emerge. Whilst I am satisfied on the balance of probabilities that Usman's bid is a front for Tariq and that he has not produced convincing proof of funds, there is at least a possibility that I am wrong or that there is some other family member who may also decide to bid with financial support from a third party.

    (iv) Whilst I am reasonably confident that I have been able to arrive at a decision which will allow a full and fair valuation of the property and the company shareholding to be arrived at, I accept Mr Mather's submission that the valuation of both, but especially the company, is particularly difficult at the present time, given the current uncertainty in relation to Covid-19. The position may change for the better or for the worse over the next few weeks, months or years. As Mr Mather submitted, in such circumstances that supports the usual starting point that the fairest course is to allow the market to decide.

    (v) I can see that it would be undesirable in terms of the management of the company for Tariq to become owner of the property and 50% of the company shares, which might

either result in deadlock, if Usman as the owner of two shares allies himself with the other defendants, or a narrow margin of control in favour of Tariq, if Usman allies himself with Tariq. However, I accept Mr Mather's submission that, since what this case is concerned with is the winding up of the partnership, that is a consideration of relatively little weight when set against the overriding consideration that Tariq should not have his interest expropriated at anything less than full value.

(vi) Whilst it is obviously unsatisfactory that Tariq did not reveal his intentions until a late stage, after directions had been given for evidence on the assumption that the only issue was the valuation of the partnership assets, I do not consider that this factor is sufficient to deprive Tariq of his entitlement to receive a full and fair price through sale in the market, if there is a real risk that he will not do so through a court valuation.

(vii) Directions can be given which would enable the sale process to be undertaken with relative speed and relatively limited cost.

(viii) I do not consider there to be any real risk that any publicity arising from a sale would in any way prejudice the goodwill of the Stockport Road Nawaab or hence the value of the company.

(ix) However, in my judgment it would not be fair and just simply to allow a wholly unregulated bidding process, with the real risk - particularly so far as Tariq and/or Usman is concerned - of wholly cynical bidding tactics designed to bid up the price either with the intention of dropping out once the price had been driven up sufficiently high or with no real ability to make good on any purchase. It is noteworthy that, as I have said, Mr Mather submitted that there should be a reserve set at the court valuation. That would have the effect of enabling Tariq to avoid any risk of having to sell at an undervalue if Mahboob called his bluff and refused to bid over the court valuation and if Tariq (or Usman or anyone else) was unable to raise the funds to do so. In my judgment the terms must be tailored to ensure that Tariq does not benefit from such a tactic which is, as I have found, a real likelihood.

96. The directions I have in mind are as follows:

(a) That the Stockport Road property and the 50% interest in the Stockport Road company be sold as one unit.

(b) That the conduct of the sale be given to an independent person, such as a sales agent or solicitor, who should have a discretion as to the conduct of the sale, subject to the following terms.

(c) Tariq, Mahboob and any of the other personal defendants, including Usman, should be at liberty to make bids, as should any third party who wishes to do so, although the selling agent should be under no obligation to publicise the sale.

(d) The selling agent should be at liberty to stipulate that any bid should only be allowed on condition that the bidder was able either to make a deposit of a specified sum, not

exceeding 10% of the bid price and/or was able to provide proof of funds sufficient to satisfy the selling agent that the bid was a genuine one.

(e) The timing and mode of the procedure for making bids should be in the discretion of the selling agent.

(f) The property and the shareholding in the company should be sold with the benefit of no warranties other than the conventional warranties as to title as regards the property and the shares, with the property being sold subject to any and all registered charges and the shares being sold with no warranty that the directors of the company would be obliged to register the shares in the name of the purchaser.

(g) The selling agent should provide for a speedy timetable for completion of the transaction to the successful bidder and, in default, to be entitled to treat the contract as having been repudiated by the successful bidder so that the selling agent may sell to the next highest bidder and any deposit paid by the repudiating bidder will not be returned. (For clarity, this would not apply if the successful bidder is Mahboob, exercising the procedure under paragraph 99 below.)

(h) There should be a reserve in the amount of the court valuation.

97. Finally, and importantly, there should be two qualifications, both of which I am satisfied are necessary in this case to prevent injustice and which are within the scope of the discretion which the court has in circumstances such as these.

98. First, in the event that the final successful bidder is anyone other than Mahboob (for this and the following purposes, whether alone or in combination with any other person) then, if that bidder is unable or unwilling to complete within the specified timetable, Mahboob should be entitled to acquire the property and the shares in the company for the court valuation without being held to any bid previously made in excess of the court valuation reserve. This will ensure that anyone bidding above the court valuation reserve without the wherewithal to complete cannot thereby still force Mahboob to complete at a higher valuation. Whilst it could be said that this might result in a windfall to Mahboob, that is a reasonable counter-balance to the decision to set the court valuation as a reserve.

99. Second, in the event that Mahboob is the successful bidder, but there have also been other bids from any other party in excess of the court valuation, then Mahboob should be entitled to withdraw his successful bid and allow the next highest bidder the opportunity to proceed in his place at the bid placed by that party. If that next highest bidder is unable or unwilling to complete within the specified timetable, Mahboob should be entitled to acquire the property and the shares in the company for the court valuation, without being held to any bid previously made in excess of the court valuation. Again, this will ensure that Mahboob should be entitled to call that bidder's bluff. If the bidder is able to complete then they should of course be allowed to do so, but if not then Mahboob should not have to pay above the court valuation. Again in my judgment this is a reasonable compromise to achieve fairness to both sides in the particular circumstances of this case.

100. Following circulation of this judgment in draft Mr Mather and Mr Wraith invited me to clarify what would happen as regards the procedure in paragraph 98 should there be one or more intermediate bidder between the final successful bidder and Mahboob and as regards the procedure in paragraph 99 should there be more than one bidder above the court valuation below Mahboob. They submitted that if there is more than one bidder competing with Mahboob who bids above the court valuation then each should be given the opportunity to make good their bid before Mahboob should be entitled to acquire the property and the shares in the company at the court valuation. They also suggested that it was possible that these procedures could be abused by Mahboob procuring a winning bid from a related party who, defaulting, would then allow Mahboob to acquire at the court valuation. Although Ms Anderson QC and Ms Ranales-Cotos submitted that these concerns are sufficiently unlikely to materialise for provision to be made to guard against them, and extending the procedure in paragraph 99 may cause unnecessary delay, I am inclined to agree that they represent possible outcomes (even though, as regards paragraph 98, only minds as ingenious as Mr Mather's and Mr Wraith's would have identified this possibility) and that the amendments they propose will protect against such risk of unfairness. Nor do I accept that it is reasonably necessary in consequence to amend paragraph 96(c) to provide that the sale should not be publicised or paragraph 96(g) to specify a 7 day timetable.

101. As I said, the next step is now to give directions for the further valuations necessary to set the court valuation, to determine any disputes arising therefrom in a summary procedure, and to give directions for the sale procedure. If questions as to costs cannot be determined without the final purchase price being ascertained, then such questions will have to be deferred. Otherwise, a suitable date can also be set for the question of costs to be determined.