



**Neutral Citation Number: [2021] EWHC 765 (Ch)**

**Case No: CR-2018-002807**

**IN THE HIGH COURT OF JUSTICE**  
**BUSINESS AND PROPERTY COURTS**  
**INSOLVENCY AND COMPANIES COURT LIST (Ch)**

**In The Matter Of GALLIUM FUNDS SOLUTIONS GROUP LIMITED**  
**And In The Matter Of THE COMPANIES ACT 2006**

**Remote Trial - Teams**  
**Date: 31 March 2021**

**Before :**  
**INSOLVENCY AND COMPANIES COURT JUDGE JONES**

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**Between :**

**PETER DOOLEY**  
**- and -**  
**(1) ANTHONY CARMELOS NORRIS**  
**(2) OAKSMORE PORTFOLIOS AIFM**  
**LIMITED**  
**(3) ANNE FRANCES NORRIS**  
**(4) GALLIUM FUND SOLUTIONS GROUP**  
**LIMITED**

**Petitioner**

**Respondents**

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**Ms Wendy Parker** (instructed by **direct access**) for the **Petitioner**  
**Ms Catherine Roberts** (instructed by **Rix & Kay Solicitors LLP**) for the **Respondents**

Hearing dates: 8-12 and 15-17 February 2021  
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**Approved Judgment**

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

.....CHJ 31/3/21.....

INSOLVENCY AND COMPANIES COURT JUDGE JONES

## **I.C.C. Judge Jones:**

### **A) Introduction**

1. Mr Dooley and Mr Norris are equal shareholders of the holding company, Gallium Funds Solutions Group Limited. Mr Dooley seeks an order for the purchase of his shares claiming unfair prejudice resulting from Mr Norris's conduct and, to a lesser degree, the conduct of Mrs Norris. He relies upon *sections 994-996 of the Companies Act 2006* ("*section 994*", "*section 996*" and "*the 2006 Act*" respectively).
2. This judgment will refer to Gallium Funds Solutions Group Limited as "the Company". For convenience that term will also be used to refer to it and/or its subsidiaries either together or individually when the context requires and it is unnecessary for the issues of the case to draw a distinction between them, even if it would be more accurate to do so. This reflects the fact that the case concerns the group and mirrors the approach taken by the parties at trial. The subsidiaries are listed in Appendix 1 to this judgment. Gallium Finance Services Limited ("GFSL"), was the first company formed by Mr Dooley and Mr Norris in July 2008. Their shareholding in GFSL were in effect swapped for their shares in the new holding company when the Company was formed in September 2009.
3. Mr Dooley's primary case, as identified in the skeleton argument of his counsel, Ms Parker, is that Mr Norris has accepted that he should purchase Mr Dooley's shares and that the only issue is the price to be paid. The Respondents, represented by Ms Roberts, dispute there is an agreement or has been any concession removing the requirement upon Mr Dooley to establish on the balance of probability that the Company's affairs are being or have been conducted in a manner that is unfairly prejudicial to his interests as a member of the Company.
4. The existence of that dispute only really became apparent to the court at a hearing attended by both sides when raised during the pre-trial review. It appears to have first become an issue in a letter from Mr Norris's solicitors following a hearing on 28 October 2020 at which the single issue of valuation at trial was mentioned by Ms Parker. Importantly, it was established at the pre-trial review that both sides were able to continue to trial on the basis that all allegations and issues within the statements of case concerning the existence or otherwise of unfair prejudice could be presented at trial in evidence and addressed in submissions, albeit subject to determination of Mr Dooley's primary case.
5. I decided at the beginning of the trial that this part of the dispute should not be decided as a preliminary issue. Instead, the trial proceeded on the basis that final judgment will resolve whether the court should be satisfied that there has been unfair prejudice either because of its acceptance by Mr Norris and/or because of the evidence before the court. If unfair prejudice is established, it is agreed that the appropriate remedy will be an order for the purchase of Mr Dooley's shares, valued as at 31 October 2018.
6. Sadly, the dispute concerning Mr Dooley's primary case typifies the simmering, divergence of views between the parties. It is a divergence which has resulted in difficulties for the smooth running of this acrimonious litigation. It has affected, for

example, disclosure, the dialogue between experts and even the preparation of trial bundles. These matters will need to be identified to the extent that they have a bearing on the trial and this judgment. However, the appropriate course is to do so having first set the scene within the context of describing the parties, their statements of case and the law to be applied.

## **B) The Parties**

7. As mentioned, **the Company** was formed by Mr Dooley and Mr Norris to be the holding company of GFSL and of all future “Gallium companies”. There are now five active and seven dormant wholly-owned subsidiaries. Those currently carrying on business are: GFSL, Gallium PE Depository Limited, GFS Trustee Limited, Gallium Fund Solutions Administration Limited and Gallium Capital Limited. GFSL started business after Mr Dooley and then Mr Norris left Partnership Incorporations Limited (“PIL”) where they had both worked.
8. A brief description of their businesses derived from the Respondents’ expert’s report is included in Appendix 1. Overall, the businesses provide accounting, administration, reporting and regulatory services to a portfolio of investment vehicles. Collective property investments schemes were launched and managed until regulatory changes in 2014 resulted in alternative investment funds (“AIF”) being used and managed instead. An AIF is a collective investment which raises capital from a number of investors for intended investment for their benefit in accordance with a defined investment policy. The businesses are regulated by the Financial Conduct Authority (“FCA”), holding the necessary permissions and since February 2015 have principally been carried on at Borough Green, Sevenoaks in Kent.
9. **Mr Dooley** became a director of GFSL on its incorporation, 1 July 2008. He became a full time, executive director in November 2008. He was appointed a director of the Company from 28 September 2009. He is recorded as having resigned as a director of the Company on 23 February 2016. Whether that resulted from his exclusion or voluntary resignation is a matter for resolution in this judgment. He is also a dentist and his dental practice, “Oakmead Dental Care” is in Chislehurst, Kent. In addition, he is the Chief Executive Officer of Saratoga Technologies Limited, which is described on its website as a “...one of the World's leading experts in sandbag technology and flood prevention methods”.
10. There is no dispute that in 2010 Mr Dooley stopped working full time for the Company and instead worked at his dental practice whilst remaining a director. This was by agreement, although the terms will need to be considered. There is a dispute as to the extent to which he continued to provide his unpaid services as a director and compliance officer of the Company from 2010. However, there is a question as to the extent to which this is important bearing in mind that the fundamental issue is whether Mr Norris rightly or wrongly acted on the basis that Mr Dooley resigned or agreed to resign as a director of the Company at a meeting in a public house on 15 February 2016. In any event, there is no dispute that from that date Mr Norris treated Mr Dooley as though he was not a director. He registered that change of status at Companies House and he appointed Mrs Norris a director.

11. **Mr Norris** became a director of GFSL on 4 August 2008. He began working for that company full time in about March 2009. He has been a full time, executive director of the Company since 28 September 2008. He is a chartered accountant and has worked for many years in the financial services industry. He describes his expertise as including fund management services, refinancing distressed businesses and property development. He is adamant that Mr Dooley resigned as a director of the Company on 15 February 2016.
12. From June 2016 Mr Norris was also an executive director of Oaksmore Portfolios AIFM Limited (“Oaksmore”, a term which will also be used to refer to it and/or its subsidiaries either together or individually when the context requires and it is unnecessary for the issues of the case to draw a distinction between them, even if it would be more accurate to do so). Its subsidiaries are listed in Appendix 1 to this judgment.
13. Oaksmore was incorporated on 15 June 2016 and the majority of its issued share capital is held by Mr and Mrs Norris. Mr Norris asserts that its business is different from the Company’s and that he has not acted in breach of any fiduciary duty he owes as a director to the Company. Insofar as he, wearing his hat as director of the Company, and/or the Company’s employees have provided services for Oaksmore, which has no employees, they have acted on arms’ length terms. Mr Norris’s position with regard to fiduciary duty also applies to his dealings with his service company, Jagan Limited, and when receiving commission for work for which he had been contracted by a third party. These are matters in issue.
14. **Oaksmore** is joined as a Respondent on the basis of the allegation that it was formed by Mr Norris to divert business from the Company. However, no relief is sought against it in the Petition. Mr and Mrs Norris describe its business as creating and administering its own property development vehicles. They distinguish that as being fundamentally different from the Company’s business of providing a variety of financial services in respect of property backed investment schemes to third party asset managers.
15. **Mrs Norris** is joined as a result of her having been purportedly appointed a director of the Company by Mr Norris on 17 February 2016. She resigned as a director of the Company itself on 1 December 2016 but her responsibilities and decisions as a director are in part the subject of the unfair prejudice claim. In addition she appears to be joined because of her involvement with Oaksmore as a director. However, no relief is sought against her in the Petition.
16. Ms Parker has most helpfully provided a schedule detailing the directorships from time to time of the Company and Oaksmore by reference to the names of the directors. For convenience, I include this within Appendix 2 to this judgment.

### **C) The Statements of Case**

17. I will set out the matters raised in the statements of case in some detail in order to identify the main issues. However, inevitably, its detail notwithstanding, this will

remain an overview (particularly with regard to the Amended Reply), and my decision is reached having considered each statement of case as a whole.

18. Mr Dooley asserts that the Company was formed as a quasi-partnership. He relies upon the background to its formation, namely the fact that he and Mr Norris worked together for Partnership Incorporation Limited in September 2007 and in the summer of 2008 formed GFSL. They were both directors of GFS. He particularly relies upon an oral agreement made in 2008 upon the formation of GFSL and continued when they decided to form the Company as the holding company. They were both appointed as directors of GFSL and then the Company in accordance with that agreement. When GFSL was formed they each deposited £50,000 as “working capital”. It was treated as a loan to the Company following its formation until Mr Dooley upon advice from the auditors decided it should be treated as capital.
19. The Amended Defence (“the Defence”) in general terms accepts the background portrayed but draws attention to it never being disclosed by Mr Dooley that he “was not a fit and proper person to be a director of a company regulated by the [FCA] ... as he had previously been dismissed for gross misconduct”. As to the agreement between them, it is stated that they were to devote equal time to the Company as its only directors. It is denied the two, £50,000 payments formed part of the Company’s “working capital”. It was “start-up” capital, originally for GFSL for which both were to receive a further 49,999 shares.
20. Mr Dooley accepts that in 2010 he returned to work part time as a dentist but asserts that this was by agreement with Mr Norris reached whilst the Company was building up the business. It enabled Mr Norris to be paid a salary from the Company and Mr Dooley to receive an income from his practice instead. The Company could not afford to pay both. It is pleaded that he never received a regular salary up to his wrongful removal as a director and asserted that the intention was for his interest “*to be reflected by the value of his shareholding appreciating over time as the business grew until a point ... when the business could support [them] both*”. At that stage he would have a full time role.
21. The Defence effectively accepts the Company’s inability to pay salaries as the cause of Mr Dooley ceasing in 2010 to be actively involved in its day to day management. It is stated that he became a “sleeping partner”, requiring a salary equivalent to £300,000 before he would return to even part-time employment/engagement. In reply Mr Dooley asserts that he was involved in the operation of the business until his removal as a director and had continued to make efforts to source funding of £4 million to enable formation of a full depository by the Company. He secured and attended many investor meetings. He remained a director without receiving a salary.
22. Mr Dooley’s case is that a relationship of harmony, consultation, mutual trust and confidence changed on 15 February 2016 at an informal meeting in a local public house. Following that meeting, he was wrongly removed as a director of the Company and three of its subsidiaries by Mr Norris without his consent on 23 February 2016. This removal was improperly registered at Companies House. His name was removed from the FCA’s register without his consent. Mr Norris appointed his wife a director and it is alleged the appointment was back dated to 17 February 2016. Mr Dooley denies any involvement in this appointment. Following his unlawful removal, the management of the Company has been conducted on the basis that Mr Dooley’s role

as shareholder gave him no rights of involvement in management. Indeed, on Mr Dooley's case no rights of involvement at all. This is a core area of dispute for the purposes of establishing unfair prejudice.

23. The Defence denies there was any "removal". Mr Dooley resigned on 15 February 2016 at the Company's extraordinary general meeting previously agreed to be held at the public house. It had been called to resolve "*the dispute that had arisen*" over Mr Dooley's failure to work or to return to work for the Company. Mr Dooley did not challenge the minute of the meeting until an email sent 10 March 2016. Mrs Norris was lawfully appointed following that resignation to ensure there were two directors. She should not have been joined to the Petition, not being a member of the Company.
24. The alternative defence is that there has been no prejudice. "Since that meeting" Mr Norris agreed to Mr Dooley's re-appointment subject to him completing the FCA's "Long Form A". Mrs Norris resigned on 1 December 2016 to enable this to occur. However, he is not able to do so because of the circumstances of his previous dismissal from the company they had both worked for when GFSL was formed. As a result, he should and cannot be a director of the Company because it would breach FCA regulations. Mr Dooley denies the allegations of dismissal for gross misconduct in the Reply. He also asserts that each had Level 3 qualifications to pursue FCA permissions for financial regulated work.
25. The Petition refers to the fact that, unknown to Mr Dooley at the time, an FCA investigation began in May 2016. He asserts that the reasons, outcome and recommendations were not disclosed to him. The Defence attributes this to the FCA enquiring about Mr Dooley's service of a statutory demand for repayment of his loan of £50,000.
26. Reliance is also placed in the Petition upon the accounts for the 2016 financial year end, signed by Mr and Mrs Norris (although in fact only by Mr Norris), being qualified as a result of the auditors not having received "*sufficient appropriate audit evidence concerning the quantum of any consideration paid or received on the purchase of GFS*".
27. It is also asserted that the 2015 financial year end accounts show a contradictory position which has not been resolved because Mr and Mrs Norris have never disclosed how the two, initial £50,000 loans were treated as capital contributions in the 2016 year end accounts and in a revision of the previously approved 2015 accounts. They had always previously been recorded as loans and Mr Dooley was not consulted.
28. The Defence states that the payments were reclassified from loans to capital following advice in a report from the Company's auditor. Mr Dooley signed all relevant documentation and there is no loan. Mr Dooley in reply disputes reclassification and states this occurred without his agreement and without his consent even having been sought.
29. The case that Oaksmore was in direct competition with the Company from its formation in June 2016 relies upon its web-site at that date mirroring the Company's until it was taken down following a meeting between the parties in March 2019. It relies on the facts that its FCA permissions "echo" the Company's and upon similar

descriptive entries in its accounts. It is asserted that Oaksmore uses the Company's financial assets (including monies it requires to meet FCA capitalisation requirements), its offices, staff and intellectual property and has diverted business. Company officers appear on the "team" page of Oaksmore's online literature and specific reference is made to Mr Skelton, Ms Hughes and Mr Bailey. It is pleaded that no payment for services has been received from Oaksmore. Reliance is placed upon Oaksmore's audited financial statements referring to it launching a property authorised investment fund. It is asserted that it is incorrect, as stated by Mr Norris in a witness statement, that the Company receives the income from the portfolio of unit trust projects with which Oaksmore has assisted.

30. A different case is presented in the Defence and Counterclaim. Oaksmore is described as a corporate vehicle used by Mr Norris to pursue property development. Mr Norris's photograph and biography are the same on both web-sites but it has always been the case that separate business interests could be pursued by both of them. The web-site was taken down when Oaksmore's "ISA" activities ended.
31. The Defence asserts that the ISA position is misunderstood. The original plan for Oaksmore had been for funds to be raised from third parties through ISA investments managed by the Company's subsidiaries. However, only £18,500 was raised and this plan had to be abandoned. Oaksmore instead, independently borrowed funds from Regarth Land Company Limited. Even if it had been effective, it would have been Oaksmore's own fund and the Company would have benefited from the fees to be paid the subsidiaries who would have provided services.
32. As a property development company it does not require and does not possess the FCA permissions needed to compete with the Company. It creates and administers its own portfolio. It has its own offices in London and has no clients. Any services provided by the Company are invoiced. The authorised investment fund is its own. The Company could not have availed itself of the opportunities of this property development portfolio business.
33. In reply Mr Dooley relies upon the existence of 11 trusts operated by Oaksmore, as disclosed by order in the course of this Petition. It is pleaded that Oaksmore was "*set up as a competitor of Gallium, with the same regulatory permissions, the same address, the same offices, the same Governance and the same staff*". It has not paid "*salary or consultancy fees to [its] employees ... since its incorporation in June 2016 until 31 October 2018; [and relies upon] the receipt of a disguised payment of £125,000 from the Company to Oaksmore in November 2016*". Oaksmore is dependent upon the Company for its resources and shares the same governance, its directors are officers or employees of the Company, it trades at the same address and uses the Company's intellectual property. Oaksmore does not pay a commercial rate for the services provided by the Company.
34. As to services provided, it is pleaded in the Petition that GFSL receives capital from Oaksmore investors, that Gallium Capital Limited issues bonds to those investors and meets the issuer fees and Gallium P.E. Depositary Limited manages Oaksmore's ISA, 2 or 5 year term bond product. In addition that "*All ISA investor cash is passed on by Gallium, on instruction by [Mr Norris] through Oaksmore into [his] 13 unit residential development*" and Mr Norris retains all profits "*over and above the value of the returned bonds*". The Company receives no benefit.

35. The Petition also asserts that Oaksmore's accounts for the financial year ending 2018 show the Company paid £105,000 for its running expenses and yet only £37,612 was repaid, despite the accounts suggesting that sum has been recharged. It is said that the Company pays all Oaksmore's running expenses. It is also asserted that despite all the dealings with Oaksmore, including a variety of conflicts of interest, Mr Dooley has had no access to the Company's books and records since February 2016.
36. The Defence pleads that GFS Trustee Limited holds property on trust for Oaksmore including exempt unauthorised unit trusts that include borrowing, and Oaksmore pays for those services. GFSL and Gallium PE Depository Limited also provide services, acting as trust manager and custodian, which are paid for. £37,612 was paid to GFSL as the correct sum for use of the Company's resources. Mr Dooley has had access to the books and records in accordance with his rights as a shareholder.
37. The Petition also relies upon Mr and Mrs Norris having received £1,600,657 combined salary for the financial years ending 2016-2018 from the Company and but no salary from Oaksmore despite the time spent on Oaksmore. In addition, it is stated that their children have improperly received a salary totalling £68,091 from the Company whilst in tertiary education. Particulars of the "*scope and scale of diversion of business and resources*" alleged are pleaded at paragraph 71 of the Petition, which need not be repeated here. It is further alleged in the Petition that the Company's employees have received excessive remuneration and a number of related party transactions disclosed in the accounts are challenged. There have been no dividends after Mr Dooley was removed as a director. Shareholder meetings have not been held as required.
38. The Defence relies upon Mr Norris between 2012 and 2017 having generated over £7 million turnover for the Company resulting in £920,000 profit. £3 million in turnover was generated since 15 February 2016. Mr Dooley in contrast, it is pleaded, generated only some 2% of the turnover between 2012 and 2016. He pursued dentistry instead from which he earned a salary of around £300,000 per annum. The Defence asserts that the value of the Company depends solely upon Mr Norris and he can leave when he wants to. There is no restraint of trade or confidentiality clause. Therefore "*any attempt to value the Company on the basis of the income that he has generated is misconceived*".
39. The Defence accepts, however, that as a result of this Petition the Company has been advised by accountants that an "*add-back adjustment of £295,572*" should be made in circumstances of Mr Norris having received for the financial years 2016-2018: £660,063 as salary, £268,480 in project fees and £243,587 as consultancy fees. The Defence asserts that "*the time spent by [him] on Oaksmore has been modest as his involvement has largely been that of a property investor or speculator*".
40. The Defence totals Mrs Norris' salary for the same three years as £228,527 "*in line with the salaries paid to other directors and commensurate with the services she provided with her Level 4 RDR qualification*". The children were paid market salaries for the work they provided during university holidays and breaks in their education. All other employees have been and are paid at the appropriate level. Insofar as services were provided to Oaksmore, they were invoiced. There is no conflict of interest including in respect of Mr Norris or anyone else concerned with the Company.

41. Under a heading “further misfeasance” it is asserted in the Petition that a fee of £380,000 concerning the refinancing of a hotel to which the Company or one of its subsidiaries was entitled was misappropriated by Mr Norris and/or his business entity, Jagan Limited, either in whole or as to £180,000).
42. The Defence explains that this matter relates to the Alpine Hotel Investment Fund (No2) (“the Alpine Fund”) which the Company operated as a manager. It is asserted that the Petition confuses two separate payments. One payment resulted as follows: “The Company received £200,000 on the ‘cashing in’ of some of the ISAs by the investor who wished to leave the Alpine Fund because it bought them for £80,000 and resold them for £280,000.”
43. The other payment was a “*similar sum*” to which Mr Norris was personally entitled as commission owed to him by the Alpine Funds. The Company’s role as manager did not include raising capital for the fund. Therefore, Mr Norris had been able to agree a personal contract to assist with the raising of funds for the Alpine Fund. This resulted in him, through his service company Jagan Limited, being entitled to a commission of £200,000. Whilst the Company paid that commission from its own funds in the first instance for “*administrative convenience*”, a recharge resulted in the Alpine Fund subsequently repaying the Company. However, this was a personal commission. Mr Norris acted on his own behalf over some 3 years, although without spending a great deal of time upon it. All payments made to Jagan up to 2016 were approved by Mr Dooley.
44. Nevertheless Mr Norris “*has not re-characterised the £200,000 paid to the Company as his own ... but has informed [the expert valuers] that, in his view, the payments should not be included in any multiplicand ... for the purposes of valuation as the gain was a ‘one-off’ that was most unlikely to be repeated in future years*”. There are further monies outstanding as due to him for the commission.
45. The Petition, as a second case of further misfeasance, relies upon a failure to account to Gallium PE Depositary for the above-mentioned 40 of 240 units in the “Alpine Fund” transferred on 30 September 2016 which it should have received. The Defence explains that the unsold units remain with Gallium PE Depositary Limited as disclosed in its audited financial statements. The Reply values them at £140,000.
46. As a third matter, it is alleged that neither an account nor an explanation have been provided for a loan of £300,000 at a rate of 36% from a client of the Company, “Sycamore IV”, to GFS Trustee Limited in July 2016. It is noted that the loan coincides with the payment of £300,000 used by Mr Norris to capitalise Oaksmore. It is also noted in the context of the loan that bad debts of “Sycamore IV” totalling £140,227 have been written off. The Defence explains that this was a loan to the Company to purchase the ISA units in the Alpine fund from which it made a £200,000 gain. The loan predates Oaksmore’s capitalisation by some 2 years. It has nothing to do with the “*loan from Regarth of £3 million [to Oaksmore] of which £300,000 was used to capitalise Oaksmore Ventures Limited*”.
47. Fourth, a failure to account for the writing off of those debts and of a debt (£33,954) owed by “Romanian Property Trust” is also relied upon as further misfeasance. The defence is that the write offs reflect bad debts in respect of two of the four investment

funds with Sycamore and the poor prospects of ever recovering the monies owed by the Romanian Property Trust.

48. Fifth, a misappropriation of assets is alleged. Namely the transfer of the shares the Company held in GFS Corporate Director II Limited to Mr Norris. Sixth, the fact that Mr Norris then replaced that company as a director of six companies with his own company, GFS Corporate Director (Global) Limited, a name which suggests it belongs or is related to the Company.
49. The Defence asserts that GFS Corporate Director II Limited has always been owned by Mr Norris not the Company. It has provided corporate director services for the Company to enable it to manage new funds. All fees and income generated flow to the Company.
50. Sixth, the misappropriation from the Company on 17 November 2016 of £125,000. This transfer from the Company's bank account described in the bank statement as "TN FCA" was to Oaksmore to enable Oaksmore to meet its FCA capital requirements.
51. The defence denies the fact of the payment. It states that "The £125,000 was paid by Gallium but refunded by the Alpine Fund and relate[s] to [Mr Norris's] work in raising new investment (equity) for the fund". The Reply states that this payment was made without invoice. The Company did not receive a payment of £125,000 from the Alpine Fund until October 2017 in payment of an invoice dated February 2017. In addition, the total payment received by Mr Norris from the Alpine Fund was £380,000 and the balance of £180,000 after deduction of the above-mentioned £200,000 is unaccounted. The full fee belongs to the Company.
52. The Defence also relies upon Mr Norris having offered to purchase Mr Dooley's shareholding for its proper market value. The Reply disputes that a proper market value has been offered.
53. There is also an "Add Back Schedule" produced in accordance with an order made on 20 September 2018 requiring Mr Dooley to set out each item he contends should be added back into the Company's accounts for the purposes of share valuation. I will deal with this when addressing the expert evidence. In practice whilst it remains an important document for identification of those claims, they can be identified within the context of his expert's report.

#### **D) The Law**

54. There are five principal areas of law to consider and apply. The first, of course, is the law concerning *section 994* and its requirements. This is largely agreed between counsel and only a summary is required. The second involves the statutory and fiduciary duties of directors and, in particular, the duties to avoid conflicts of interest and to declare interests in proposed transactions or arrangements. The third concerns the relief which may be granted under *section 996* and, in particular, share valuation. Fourth, the bases for remuneration of directors and employees including decisions to increase the emoluments. The final matter, which it is convenient to treat fifth,

notwithstanding that it addresses Mr Dooley's primary case on liability, is whether relief can be granted under *section 996* without a finding by the court of unfair prejudice.

**D1) Section 994**

55. *Section 994* requires a member of a company to satisfy the Court that its affairs have been conducted in a manner unfairly prejudicial to their interests or to the interests of members generally. It is long established that for this jurisdiction to be engaged, the conduct complained of must be shown to have been both unfair and prejudicial to the petitioner. Unfair prejudice must be suffered as a member and not in any other capacity. It will usually give rise to financial harm, directly or through the company, but does not have to. If the Court is satisfied, it may pursuant to *section 996* make such order as it thinks fit for the purposes of giving relief in respect of the matters complained of. (see generally *Re Saul D Harrison & Sons plc* [1995] 1 BCLC 14 and *O'Neill v Phillips* [1999] 1 WLR 1092, HL).
56. The bench mark for liability (unfairness and prejudice) is a breach of the agreement between the members regarding the conduct of the affairs of the company. The agreement will be contained in the company's articles of association subject to the existence of other sources including company resolutions and shareholders' agreements. The term "unfair" is to be applied in the context of a commercial relationship (see generally *O'Neill v Phillips* (above)). For example, trivial and inconsequential breaches will not be sufficient.
57. It is apparent, therefore, that unfairness which also results in prejudice may be based upon a failure to follow a company's constitution or it may relate to special agreements. Therefore, whilst normally a shareholder will have no expectation to be involved in management unless appointed a director in accordance with the articles, exclusion from management may amount to unfairness and prejudice occur if that has resulted from non-compliance with the constitution or has infringed a special agreement, understanding or obligation between members justifying an expectation of continuing involvement in management. There does not have to be an enforceable agreement or understanding. For example in a quasi-partnership, it will normally be unconscionable for the respondent shareholder(s) to have overridden the expectation to be involved in management making it right to conclude that the association of trust and confidence must be dissolved as a matter of justice and equity (see generally *O'Neill v Phillips* (above)).
58. In addition, the role of the directors may be directly relevant to the issue of liability. As opined by Mr Hollington Q.C. in "*Hollington on Shareholders' Rights*" (9<sup>th</sup> ed., Chapter 5, 5-11) with express reference to the decision of Hoffmann LJ, as he then was, in *Re Saul D Harrison & Sons plc* (above) at 17–18, which opinion I accept as a succinct and accurate summary of the law:

*"It is of fundamental importance to shareholders that the directors should observe their fiduciary and other duties. The general principle is that these duties are owed to the company alone and are not enforceable by minority shareholders, unless a derivative claim lies: see Ch.6 below. If however the directors fail to comply with those duties, prima facie they act in breach of the "bargain" between the shareholders and the company and this may form the*

*basis of a claim for relief under the statutory remedies for the protection of minority shareholders, namely unfair prejudice and the just and equitable winding-up remedies: see Ch.7, paras 7-57–7-59 but see also Ch.10, paras 10-14–10-15 below.”*

59. As Ms Roberts stressed during her submissions, the court will not interfere with commercial decisions or substitute its own. However, that does not mean that a director’s decision making in respect of a commercial matter will not be scrutinised, in particular in the context of asking whether there has been a breach of fiduciary duty. The court will address decisions insofar as it is relevant to do so within the context of ascertaining whether the directors in the performance of their duties have caused unfairness and prejudice to a member(s).

## **D2) Directors’ Duties**

60. As a general background to consideration of a directors’ duties, I will bear in mind the following well-known passage from the judgment of Jonathan Parker J, as he then was, in *Secretary of State for Trade and Industry v Baker* [1999] 1 BCLC 433, ChD at 489:

*“In summary, the following general propositions can, in my judgment, be derived from the authorities to which I was referred in relation to the duties of directors: (i) Directors have, both collectively and individually, a continuing duty to acquire and maintain a sufficient knowledge and understanding of the company’s business to enable them to properly discharge their duties as directors. (ii) Whilst directors are entitled (subject to the articles of association of the Company) to delegate particular functions to those below them in the management chain, and to trust their competence and integrity to a reasonable extent, the exercise of the power of delegation does not absolve a director from the duty to supervise the discharge of delegated functions. (iii) No rule of universal application can be formulated as to the duty referred to in (ii) above. The extent of the duty, and the question whether it has been discharged, must depend on the facts of each particular case, including the director’s role in the management of the company”.*

61. Against that background, **section 171 of the 2006 Act** provides that a director must act in accordance with the company’s constitution. Powers must be exercised only for the purposes for which they are conferred. **Section 172 of the 2006 Act** provides that directors have a duty to act in the way each considers, in good faith, will be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so are to have regard (amongst other matters) to the need to act fairly as between members of the company. This is plainly a bench mark to apply when addressing issues of unfair prejudice related to directors’ duties.
62. An example of the need to act fairly relevant to the Petition is the declaration of dividends. In the case of *Re a Company (No. 00370 of 1987) ex p Glossop* [1988] 1 WLR 1068 at 1075D, Mr Justice Harman observed:

*“It seems to me that it is important to remember that a company is simply a vehicle for carrying on a business for the benefit of all members. One of the major benefits to shareholders, i.e. members, in a company is, or ought to be, the payment of dividends. Undoubtedly, directors have an express power to put a ceiling upon the amount of dividends paid in almost all (and certainly in this company’s) articles. Undoubtedly, directors are responsible for the commercial affairs of a company and should not be forced to pay out moneys which may leave them at risk of trading while insolvent or incurring debts which the company cannot easily meet; that would put directors at peril of committing, at worst,*

*criminal offences and, at lower levels, actions which would be wrong and could be the subject of censure. Undoubtedly, it must be extremely difficult in any case to prove that more dividend should be paid out than has been paid out. But as a matter of concept, it seems to me, it must be capable of being an improper conduct of the affairs of a company to retain in the company for the greater growth and glory of the company profits which could with entire propriety and commercial ease be paid out to members in dividends for the benefit of members."*

63. That does not mean there is a right to receive dividends. There is no requirement in law (subject to any agreement or enforceable expectation) that dividends must be recommended by directors even if profits enable that course. However, there is a duty for a director to consider on a regular basis whether to declare dividends when shareholders have a right (a rebuttable presumption) to participate in a company's profits. In addition, directors when applying commercial assessments to the decision whether to declare a dividend must have regard to the need to act fairly as between members of the company. Although, whether a failure to do so will result in unfair prejudice to a member will be a matter of fact (see ***Re a Company (No. 00370 of 1987) ex p Glossop*** (above)).
64. I have been asked to consider in particular the statutory duties contained in ***sections 175-177 of the 2006 Act*** and their associated fiduciary duties. The following are summarised principles (noting that ***Chapter 4 of Part 10 of the 2006 Act*** is not addressed):
- a) The equitable principle underlying the codification of directors' duties within the ***2006 Act*** is that directors, being fiduciaries, must not place themselves in a position where their own interests conflict with their duties to and the interests of the company unless permitted by the articles of association (whether the articles require board or member approval or otherwise). This applies to internal decision making and to any external duty or interest which might conflict with their fiduciary duties.
- b) As to external matters, it is explained by the Court of Appeal in ***Bhullar and others v Bhullar and another*** [2003] EWCA Civ 424, [2003] 2 BCLC 241, that:
- "whether the 'reasonable men looking at the facts would think there was a real sensible possibility of conflict' and where a fiduciary, such as the director of a company, exploited a commercial opportunity for his own benefit, the relevant question was not whether the party to whom the duty was owed (ie the company) had some kind of beneficial interest in the opportunity but whether the fiduciary's exploitation of the opportunity was such as to attract the application of the rule"*.
- c) Regard is to be had to that underlying principle when construing the codified duties within ***sections 175-177 of the 2006 Act***. Each section concerns separate duties and provides different mechanisms for their exemption or waiver.
- d) ***Section 175 of the 2006 Act*** creates a duty to avoid actual and possible conflicts of interest unless the situation cannot reasonably be regarded as likely to give rise to a conflict or the matter has been authorised by the directors in the manner specified within ***sub-sections (5) and (6)***. It includes a duty not to exploit *"any property, information or opportunity (and it is immaterial*

*whether the company could take advantage of the property, information or opportunity)”.*

- e) **Section 175 of the 2006 Act** does not apply to a conflict of interest arising in relation to a transaction or arrangement with the company. Any such conflict must be declared under **section 177 of the 2006 Act** in the case of proposed transactions and under **section 182 of the 2006 Act** in respect of existing transactions.
  - f) The declaration under **section 177 of the 2006 Act** applies if a director is “*in any way, directly or indirectly, interested in a proposed transaction or arrangement with the company*” provided the director is aware or ought reasonably to be aware of the interest or of the transaction or arrangement. The declaration must be made before the company enters into the transaction or arrangement. It may be made at a meeting or by notice under **sections 184 or 185 of the 2006 Act**. There must be full and frank disclosure of the precise nature of the interest. A further declaration must be made if the one made proves to be inaccurate or incomplete before the transaction or arrangement is entered into. The onus is upon the director to prove compliance with the letter and spirit of this duty.
  - g) Exceptions to that statutory duty arise if : (i) it cannot reasonably be regarded as likely to give rise to a conflict of interest; (ii) if, or to the extent that, the other directors are already aware of it (and for this purpose the other directors are treated as aware of anything of which they ought reasonably to be aware); or (iii) if, or to the extent that, it concerns terms of his service contract that have been or are to be considered (see generally **Fairford Water Ski Club Ltd v Cohoon and others** [2021] EWCA Civ 143).
  - h) **Section 176 of the 2006 Act** prohibits a director from receiving a benefit from a third party as a result of being a director or of doing or not doing anything as a director if receipt can reasonably be regarded as likely to give rise to a conflict of interest.
  - i) **Section 180(4) of the 2006 Act** provides that the above-mentioned duties are subject to the rights and ability of members or of any other provision in the articles of association to authorise the conflict.
65. Equity has always treated the “no conflict” rule as a strict one. I refer to the well-known passage from the speech Lord Wright in **Regal (Hastings) Ltd v Gulliver** [1967] 2 A.C. 134 HL at 154G: [1967] 2 A.C. 134 HL at 154G:

*“The rule of equity which insists on those, who by use of a fiduciary position make a profit, being liable to account for that profit, in no way depends on fraud, or absence of bona fides; or upon such questions or considerations as whether the profit would or should otherwise have gone to the plaintiff, or whether the profiteer was under a duty to obtain the source of the profit for the plaintiff, or whether he took a risk or acted as he did for the benefit of the plaintiff, or whether the plaintiff has in fact been damaged or benefited by his action. The liability arises from the mere fact of a profit having, in the stated circumstances, been made. The profiteer, however honest and well-intentioned, cannot escape the risk of being called upon to account.*

*The leading case of Keech v Sandford is an illustration of the strictness of this rule of equity in this regard, and of how far the rule is independent of these outside considerations. A lease of the profits of a market had been devised to a trustee for the benefit of an infant. A renewal on behalf of the infant was refused. It was absolutely unobtainable. The trustee, finding that it was impossible to get a renewal for the benefit of the infant, took a lease for his own benefit. Though his duty to obtain it for the infant was incapable of performance, nevertheless he was ordered to assign the lease to the infant, upon the bare ground that, if a trustee on the refusal to renew might have a lease for himself, few renewals would be made for the benefit of cestui que trust."*

66. In this context Ms Parker has referred me to the Court of Appeal decision in ***Re Allied Business & Financial Consultants Ltd, O'Donnell v Shanahan*** [2009] EWCA Civ 751, [2009] B.C.C. 822. She submits it is on all fours with the connections between the Company, Mr Norris, Oaksmore and/or the Alpine Fund. I will address the submission in context but refer now to the Court of Appeal's decision.
67. It concerned a quasi-partnership for a company providing clients with financial advice and assistance (including arranging bank loans, mortgages and insurance) and with an object to carry on any other trade or business which could, in the opinion of the directors, be advantageously carried on by the company. Two of the quasi-partners, to the knowledge of the other, continued their pre-existing property investment and development business whilst the company was in business. A property purchase transaction involving the company as the vendor's agent eventually led to a wholly different transaction but involving the two quasi-partners as members of the new purchaser. The fact that the business opportunity to purchase the property had come to the attention of the two quasi-partners in their capacity as directors was sufficient to make them accountable to the company for the profit they made from the transaction. It did not matter that the company did not carry on the business of property investment. It did not matter that the company would have only received a commission not any element of profit under the original transaction with which it had been concerned. They had used information obtained as directors for which the company had the better right. This breached the "no conflict" rule because they did not offer the opportunity to the company and did not obtain authorisation to enter into the transaction on a personal basis.
68. The Court of Appeal, explaining that this was not the same as a partnership when a partner's fiduciary duties would be determined by the nature of the partnership business by application of the partnership agreement, held, as set out in third holding of the report:

*3. The authorities relating to trustees' and directors' duties to account for profit earned in consequence of a breach of the "no profit" rule all pointed to the same conclusion and none qualified the liability to account by reference to whether the impugned transaction was (in the case of an alleged breach by a director) within or without the scope of the company's business. The principle of accountability by directors in breach of the rule derived from the strict rule affecting trustees. The rationale of the "no conflict" and "no profit" rules was to underpin the fiduciary's duty of undivided loyalty to his beneficiary. If an opportunity came to him in his capacity as a fiduciary, his principal was entitled to know about it. The director could not be left to make the decision as to whether he was allowed to help himself to its benefit. The authorities relating to directors' accountability not only did not support the "scope of business" exception in relation to the "no profit" rule, they were contrary to it. (***Keech v Sandford*** (1726) Sel. Cas. Ch. 61; ***Parker v McKenna*** (1874-75) L.R. 10 Ch. App. 96; ***Furs Ltd v Tomkies*** (1936) 54 C.L.R. 583; ***Regal (Hastings) Ltd v Gulliver*** [1967] 2 A.C. 134n applied."*

69. The issues in the petition for which those principles need to be considered are the claims that a share valuation should take into consideration the benefits Mr Norris received from the Alpine Fund and/or the benefits he and/or Oaksmore received as a result of his breaches of the “no conflict rule” whilst acting as a director of the Company. These are matters of fact and law.

### **D3) Section 996**

70. If unfair prejudice is established, the court has power to make any order it thinks fit, even if the order has not been requested by the petitioner (see *Hawkes v Cuddy* [2008] B.C.C. 390 and the dismissal of the appeal against the decision of Lewison J., as he then was, in [2010] B.C.C. 597 at [91]). In this case the parties agree it is to be an order for the purchase of shares at a fair value.
71. “Fair value” is the general principle to be applied when the court exercises its wide discretion to put right and cure unfair prejudice. There is a presumption that shares will be purchased on a non-discounted basis in the context of quasi-partnerships. Whilst in principle the presumption is rebuttable, that would be unusual. However, in *Re Edwardian Group Ltd* [2018] EWHC 1715 (Ch), [2019] 1 B.C.L.C. 171) Mr Justice Fancourt drew attention to the cases “*not speak[ing] with one voice*” on this point in non-quasi-partnership cases. His analysis concluded that there are no fixed rules precisely because the basis of valuation depends upon what is fair in all the circumstances. As he observed, the remedy is to be proportionate to the unfair prejudice suffered.
72. The Judge, as an example, explained that it may be unfair to apply a pro rata share of the Company’s overall value when the shares never had an enhanced value. In contrast it may be fair to recognise that the purchaser, the person who has achieved the purchase by unfair prejudice, will obtain total control over the company upon purchase and, therefore, additional “marriage” value could be required. Fancourt J. described a pro rata valuation and a valuation based on market value as being the two extremes of price that could be ordered. He emphasised that there may be various options in between those extremes to be applied to achieve fairness when the purchase results from the remedy to relieve a shareholder from unfair prejudice.
73. For that purpose the opinions of experts will of course be valuable but share valuation is an art not a science and involves questions of law and principle. The assistance of experts should ensure that commercial and business sense is applied. As explained in many authorities, the nuts and bolts of the business, figuratively speaking, are to be taken for what they are at the date of valuation. Although an art, valuation is not a speculative exercise but one to be based upon evidence to reach the fair value described above in the context of the assumption of a willing, commercially minded but reasonable purchaser and vendor in the positions of the petitioning creditor and the respondent(s) ordered to purchase the shares (see generally *Joiner & Another v George & Others* [2002] EWCA Civ 160, [2003] BCC 298).
74. It is also an exercise which may require the court to “add back” value into the company in order to compensate for unfairly prejudicial actions. For example, the misappropriation of assets or diversion of business. This is not the same as but may

overlap with the making of adjustments to the net assets or to the net earnings to take account of the value a purchaser will identify within a company as a potential area of profit for the future. For example, it may be fair to increase the value in the balance sheet of fixed assets and/or to reduce expenditure because the purchaser will appreciate that these are matters which may be adjusted once the shares are purchased to improve the “bottom line” and, therefore, increase the price the willing purchaser may pay. The other side of the coin being that the price willing to be paid may be reduced by risk, uncertainties or reasonably anticipated business deterioration. These are all potential elements of reality and it is reality which must be addressed (see generally *Chilukuri v RP Explorer Master Fund* [2013] EWCA Civ 1307). The general principles above will be applied in this judgment.

#### **D4) Remuneration**

75. The issues of add backs and adjustments in this case address substantial increases in remuneration for both Mr Norris and Company employees/consultants. As for Mr Norris, there is no dispute that he was always entitled to a salary, although, as will be seen the basis for this is opaque. The issue raised is whether the remuneration received during the 2016-2018 financial years was excessive or unreasonable. The underlying point of law is that directors are not entitled to remuneration. There will be no payment implied purely by appointment if the articles make no such provision and there is no service agreement entitling remuneration. In this case it is accepted that the articles provide that remuneration is to be determined in general meeting with the result that it cannot be voted for by the board. There is no evidence of any members’ meeting before or after 16 February 2016.
76. For the purpose of those circumstances, Ms Roberts has referred me to the decision *Irvine and Irvine (No1)* [2006] EWHC 406 (Ch), [2007] 1 B.C.L.C. 349 at 419, [262-275] in which Mr Justice Blackburne found that the respondent to the unfair prejudice petition had fixed his own remuneration without reference to the board or the approval of the company in general meeting contrary to the articles. In that case Blackburne J. when having to decide in the absence of independent scrutiny whether the remuneration received was at the expense of dividends because it was excessive, asked whether the remuneration was within the bracket that executives carrying the responsibility and duties the recipient undertook would expect to receive.
77. That test applies objective commercial criteria reflecting the fact that it is a management decision even if it is to be exercised, as in this case, by the members. An example of breach of duty would arise if the remuneration was fixed without regard to the company’s interests and/or with regard to personal interests (see *Re Tobian Properties Ltd* [2012] EWCA Civ 998, [2013] B.C.C. 98 approving the decision of Blackburne J.).
78. For completeness I should record that I have not been asked to consider the law on quantum meruit, no doubt because of its unlikely application in the face of the decision of the House of Lords in *Guinness plc v Saunders* [1990] 2 AC 663, HL when the articles have not been applied.

## **D5) Section 996 and the Issue of Acceptance/Compromise**

79. It is established and obvious from the wording of the statutory provisions that the court's jurisdiction to grant relief under *section 996* is dependent upon unfair prejudice having been established. Therefore, an applicant petitioner will still have to prove their case even in the absence of a defence or in the face of a non-admission (see *Re Bird Precision Bellows Ltd* [1986] Ch. 658 CA, per Oliver LJ at 670F-G and 672A-B and *Re Bankside Hotels Ltd* [2018] EWHC 1035). This is also illustrated by the fact that there cannot be an interim or provisional order in anticipation of a finding of unfair prejudice (see *Re A Company (No.004175 of 1986)* [1987] B.C.L.C. 574 Ch D. This is a case where the petitioning creditor claims that the respondent has agreed to valuation and either accepted jurisdiction or has conceded unfair prejudice. I will address that further, to the extent necessary, within my decision upon Mr Dooley's primary case.

## **E) Procedural Issues**

80. As mentioned at paragraph 6 above, there have been a number of procedural issues affecting the trial which are relevant or, at least, are to be borne in mind when reaching a decision. The first to address concerns disclosure.

### **E1) Disclosure**

81. It will have been clear to the Respondents from the statements of case that the trial, whether limited to share valuation or not, would include the issues concerning whether Mr Norris's involvement with the Alpine Fund and/or Oaksmore produced a breach of the "no conflict" rule. This would inevitably bring into play, for example, Mr Norris's commission contract with the Alpine Fund both in respect of information, opportunity and application of *section 175 of the 2006 Act*. Also the question whether Oaksmore's business relied upon information and/or opportunities acquired as a result of Mr Norris's directorship of the Company. The issues would apply to contracts between the Company and Oaksmore concerning the provision of services to which *section 177 of the 2006 Act* applied.
82. As a result, if documents relevant to those matters exist, they will have been the subject of disclosure whether within the context of exhibits to witness statements or under disclosure orders or pursuant to the obligation to disclose adverse documents. For example, in regard to the Oaksmore issues one might have expected to see all relevant board meeting minutes, contracts and documents evidencing work done and benefits received.
83. In fact, from what I have been told, only minutes for three Company meetings have been disclosed. Only one concerns Oaksmore issues. No Oaksmore board minutes were disclosed. No contracts have been produced and there are question marks over the extent to which documentation concerning services and benefits have not but ought to have been provided. This apparent absence of disclosure could simply be because no further documents exist. However, during cross-examination Mr Norris

asserted that Oaksmore's directors, who were also Company subsidiaries' directors/employees appointed with specific responsibility to ensure no conflict of interest occurred, held quarterly board meetings addressing the work carried out or to be carried by the Company for Oaksmore. He said these were minuted. He also referred to the existence of other documents which has led Ms Parker to make the following written submission (as requested) during the trial:

*Issues surrounding evidence and lack of disclosure by the Respondents*

*During cross examination Mr Norris referred to, for the first time, the existence of:*

- a) Board minutes pertaining to work undertaken by Oaksmore*
- b) Joint Venture Agreements in respect of Oaksmore companies- query whether they were known to Gallium as clients or associates*
- c) FCA Regulations in respect of non-mainstream pooled investments.*
- d) Gallium or Oaksmore Board meeting minutes*
- e) Agreements between Jagan Limited and Gallium in respect of recharging mechanism*

*The Respondents team have indicated that they have spent in excess of £600,000 in this matter, they have been represented throughout by Rix and Kay Solicitors and by Clifford Darton QC and Catherine Roberts. Mr Norris and his co-directors control the governance of both the Oaksmore and Gallium Groups. They have had these documents in their possession and have failed to disclose them, No reference in any witness statement is made to the existence of these documents. No explanation has been given for this. It would not be in the spirit of the CPR or the Overriding Objectives for the consideration of these documents. The Respondents have always maintained their desire to resolve matters between the parties and conduct a fair and reasonable valuation and trial. It would be grossly unfair to the Petitioner to have to delay any determination of any issues in this case and to incur further costs. The Respondents have had ample opportunity to prove their case and have patently failed to do so. No other witness referenced these missing documents other than Mr Norris.*

*The Petitioner submits that the Court should determine the valuation upon the evidence and documentation disclosed for this trial."*

84. This submission (in part) raises the question whether there was an obligation to disclose such matters in accordance with the court's directions.
85. The relevant procedure for the Petition starts with the unfortunate fact that there is no approved order for the case management conference held before me on 20 September 2018. It added to or superseded the directions made on 5 April and 12 July 2018. "Ce File" indicates that a draft order was lodged by counsel for approval on 15 October 2018 and again (in the same form) on 19 October 2018. It was returned to them with suggested amendments for their approval on 22 October 2018. This is the draft order at tab 13 of Trial Bundle 1. I also note for completeness that paragraph 1 of the draft would normally have been struck out and its continued existence in the draft returned to counsel indicates to me, which I think I also expressly remember, that this draft was intended in the context of limited time to be subject to overall review upon its return. In any event nothing was returned to or approved by me.
86. It is also to be noted that Trial Bundle 1 contains at tab 14 what is described as an "amended directions order of ICC Judge Jones agreed between parties 30.10.201". Assuming that description of agreement is accurate, the draft is nevertheless incomplete, does not appear on Ce file and has not been returned for approval by me.

87. Nevertheless, it is clear from those drafts that the directions were for the purposes of “*a trial for valuation of the shares*”. The circumstances in which that position was reached should appear from the transcript. Notwithstanding that the hearing took place in the Rolls Building, the parties have been unable to obtain one. I will address this problem further when considering Mr Dooley’s primary case but the relevance of the hearing at this stage is to identify the procedure adopted.
88. The drafts of the order made on 20 September 2018 establish a format requiring before the trial: (i) a Scott Schedule identifying the parties’ cases concerning “add backs” to the valuation; (ii) witness statements addressing the facts to be decided for the purposes of valuation; and (iii) expert evidence of valuation from both parties with the usual provision for discussion between experts etcetera. Directions were also given for interim relief then being sought.
89. At that stage disclosure was not ordered. It was required by order made on 15 February 2019. The parties’ legal representatives were to meet to discuss the issues produced by the Scott Schedule and to decide the disclosure required. Their agreed disclosure would be implemented by a specified date before the exchange of witness statements. I have not seen what was agreed. In addition, on 9 April 2018 specific disclosure of Oaksmore’s nominal ledgers for the financial years 2016-2018 inclusive was ordered.
90. The trial was to have begun on 14 May 2019. The parties were not ready, a possibility identified previously by me but one the parties had wanted to try to overcome. ICC Judge Burton adjourned the trial of valuation and also ordered disclosure of Oaksmore’s audited accounts. She repeated the order for disclosure of its ledgers. There were also orders concerning disclosure by Mr Dooley. On 28 October 2020 orders were made for specific disclosure of bank statements of Jagan Limited concerning the Alpine Fund’s refinancing and of the Company concerning the receipt of £125,000 subsequently paid to Oaksmore.
91. It is in this procedural context that the above-mentioned submission of Ms Parker will need to be addressed but having first considered the evidence.

## **E2) Expert Evidence**

92. The second matter to address in the context of procedure is the expert evidence. Two specific problems have arisen. First, although there was the usual order made on 20 September 2018 for a discussion after the exchange of reports, that has not happened. This is most unfortunate because discussion between experts acting in accordance with the duties owed to the court should result in a substantial narrowing of issues. This is particularly the case in respect of the art of valuation where the experts should appreciate that opinions should not be set in stone and compromise can be a legitimate aid in reaching a joint opinion.
93. What occurred instead is that the experts resorted to a quasi-Scott Schedule and in effect pleaded their cases. This not only lost the advantages of discussion but produced a sequence of three documents. They were not superseded by a final joint report and they are substantial, time consuming and difficult to follow. This caused

counsel inevitable difficulty for their cross-examination. In round terms, instead of being able to start their questions from the position of the dispute being now narrowed to “x” with the matter in issue being “y”, both counsel concentrated upon the experts’ original reports. That left the court without knowledge from examination of what was in the Scott Schedules and without knowing, therefore, what response the experts would have given during cross-examination to questions concerning their disputes. This judgment must proceed accordingly.

94. Disclosure is also relevant in this context. The fact that Mr Dooley had to make a number of applications for disclosure from time to time after the experts’ first reports meant that Mr Dooley’s expert’s “final” report, the one available at the beginning of the trial, is Mr Whyke’s sixth and it is subject to a letter containing further amendments. A seventh was later provided to incorporate the contents of the letter. Ms Blower has “stuck” with her one report dated 30 April 2019 subject to a “Schedule of Errata & Update”. The errata and updates have been incorporated in a report produced after the trial but they do not substantially address Mr Dooley’s subsequent reports. Ms Blower has relied upon the three Scott Schedules for her responses to the additional matters raised by Mr Whyke in his latter reports but that returns to the problem that these Schedules have largely not been referred to at trial.
95. I will provide just three examples of the difficulties:
- i) Ms Blower’s reply box in the third joint expert statement includes the argument that Mr Whyke has incorrectly applied earnings multiples to the reported profit of the Company. She adds: “*As this is a technical area, I have attached explanatory notes at Points 29 to 31 of this document*”. Yet there has been no reference to this at trial. Whilst it can still be read by me, I have not been able to ask questions of Ms Blower and I do not know what Mr Whyke’s response might be. As a result, I cannot address her conclusion that his valuation is overstated by between £0.8 million and £1.5 million as a result of that technical error.
  - ii) Mr Whyke asserts he has adduced an EV/EVITDA multiplier. Ms Blower in the third joint expert statement opines that Mr Whyke has mixed P/E multiples with “EBITDA” (earnings before interest, tax, depreciation and amortization) when they should be applied to net profits and an EV/EBITDA multiplier (which compares the value including debt to the company’s cash earnings less non-cash expenses) should be applied. Plainly it is potentially important to address this but no reference to it has been made during cross-examination or submissions. I must proceed on the basis that it is no longer advanced and that Mr Whyke’s assertion is accepted.
  - iii) Ms Blower in the third joint statement relies upon the conclusion that the add backs relevant to Oaksmore proposed by Mr Whyke would materially change the reported and audited profit and loss for Oaksmore. No doubt that is true if they are accepted but it has not been developed whether in cross-examination or submissions. It is not for me to develop it in this judgment.
96. I could refer to many other examples. It is plainly unsatisfactory and there is no clear cut solution. The course I will take in general terms is to rely upon the final reports of both experts and their answers to cross-examination. I will not rely upon the Scott

Schedules unless I clearly identify matters which can be referred to without the matter having been put to the expert(s) in cross-examination. The length, complexity and general lack of clarity within the Scott Schedules combined with the absence of any guidance from experts or submissions from Counsel means that their use will be have to be relatively minimal.

### **E3) Bundles**

97. I will mention the third issue, bundles, briefly as a matter of record because the disputes appear to have had no real impact at the end of the day. The trial bundles were prepared by the Respondents' solicitors by order of the court (albeit that they were without a chronological bundle of documents and without indexes identifying the documents other than by reference to the exhibit number). Mr Dooley wanted a massive amount of documentation added. At the end of the day, a "Petitioner's Bundle" in a filtered form is before the court and some of its contents have been relied upon. However, this only resulted after a "spat" during which the Respondents' solicitors had refused to include documents required by Mr Dooley in the trial bundles they had prepared. It is fair to observe that those documents in unfiltered form were too substantial but neither side appears to have appreciated that documents which are not agreed to be in a trial bundle have to be proved or at least presented by a witness in evidence, subject to court directions. The general approach adopted by me during the trial was that notice of content and of use is a key requirement for admission of documents as evidence. By the time of submissions, no disputes were being raised.

### **F) Submissions**

98. Both counsel have taken a lot of care and have obviously spend a considerable time preparing and presenting their skeleton argument and submissions. I trust they will forgive me, therefore, when I reach the logistical decision that it is impractical to record them separately. I have them in mind and I will refer to them in context but only when it is necessary to do so.

### **G) Witnesses**

99. The trial took place through the remote medium of Microsoft Teams, which worked extremely well. If anything, the absence of the formalities of the court room environment and immediate proximity of counsel appeared to create a more relaxed environment for the witnesses. Nevertheless, I have borne in mind the pressures that inevitably exist for witnesses and the difficulties for memory caused by the lapse of time and by the fact that memory is reconstructed each time it is to be applied. I have also appreciated that the fact that if I do not accept a particular piece of evidence, that does not necessarily mean it is a lie or that other parts of that witness's evidence will also be unreliable.

100. Bearing those matters in mind I will set out my assessment of the witnesses. I will not seek to identify details of the evidence of Mr Dooley or Mr Norris at this stage. I will have their witness statements in mind and refer to their evidence in context to the extent necessary to do so when setting out the evidence and findings of fact and my decisions below. However, it will be convenient to summarise the evidence of the other witnesses. The summaries and observations made will not necessarily be repeated when setting out the evidence and findings of fact below but will be borne in mind when reaching my findings and decisions.

### **G1) Witnesses of Fact - Petitioner**

101. **Mr Dooley** is obviously an intelligent and highly capable man. The fact that he is a qualified dental practitioner and was able to change course during 2006 to obtain FCA qualifications is evidence of that. However, it was also obvious from his ability to understand, analyse and respond to a cross-examination which may be described as challenging. In addition, he was able to find his way around the bundles giving the court helpful references when wishing to refer to documents. His answers were on occasions over-elaborate but that was because a question would bring to his mind detailed scenarios which he wished to describe or draw attention to. I considered him to be a thoughtful and reliable witness subject to the usual caveats which are to be borne in mind for all witnesses relying on memory and giving evidence for their own claim. Overall he is a quiet and thoughtful character.
102. In reaching that assessment I have taken into consideration the questions implying, as I understood them, his unreliability because there had been no letter before claim and/or because his valuation of his shares in the Petition was grossly over-valued. The former criticism was met by the fact that there had been some 18 months of correspondence and talks, including a failed mediation, before-hand. As to the latter it is a feature that the value opined in an expert report he had obtained from Roffe Swayne supports that conclusion. However, that report would need to be dissected to ascertain the significance of the many differences between its approach and the approach of Mr Whyke, his expert at trial. Mr Dooley is able to respond to the criticism from the standpoint that Mr Whyke's opinion supports the level of valuation he has sought to obtain. The real issue is what the correct valuation should be and I reject, if this is implied, any suggestion that he has come to this court with any intention to manipulate his evidence to achieve the highest possible value. I conclude there is no basis for that conclusion having heard his evidence.

### **G2) Witnesses of Fact - Respondents**

103. **Mr Norris** is also, plainly, an intelligent man but insofar as demeanour is relevant, he came across as someone who is authoritative and controlling. Someone who will lay down their point of view and readily conclude that this view has been accepted by others. Someone against whom most others will not want to argue. Contrasting his approach with that of Mr Dooley, I can understand why Mr Dooley preferred to have social meetings rather than formal meetings in a boardroom. Notwithstanding their long standing, pre-dispute friendship, I can identify this choice of locations as a

method of potentially avoiding confrontation with Mr Norris should there be cause for disagreement.

104. However, I will apply that assessment with caution. It is clear Mr Norris feels extremely aggrieved and angry about this dispute. This may have affected the manner in which he gave his evidence. I will treat this apparent distinction in character and demeanour as a background feature and not one to necessarily influence my decision.
105. **Mrs Norris**, Mr Dooley's cousin, is a business lady who specialises in human resources management. She also has customer qualifications required by the FCA. As appears in Appendix 2 below, she was from time to time a director of the Company and three of its subsidiaries and of Oaksmore and three of its related companies. She has provided a reasonably detailed witness statement addressing the start of the Company and the intentions of Mr Norris and Mr Dooley, Mr Dooley's reducing role from 2010 and his "*lack of concern for [her] family's financial security*". She also addresses the resignation of Mr Dooley, her appointment as a director of Gallium to comply with the articles of association and the reallocation of the two, £50,000 payments as capital. She asserts that Mr Dooley with his "*bullying tactics*" "*is using [her] as a pawn to bully Tony to do what he wants*". She explains the reasons for Oaksmore being established and responds to the claim of competition.
106. From this statement it would be reasonable to expect Mrs Norris to be able to provide detailed information concerning the Company and Oaksmore. Not only in the context of human resources but also as a result of fulfilling her roles as director. In fact her evidence under cross-examination presented a different conclusion.
107. For example, after having stated that when appointed a director of the Company she had known the Company's articles of association required two directors (which is in fact incorrect), she had to accept that she could not remember even reading them. Whilst she then said she must have been told about their content by Mr Norris at the board meeting for her appointment on 17 February 2016, she then accepted she could not recall whether the meeting took place or of Ms Watts attending, as the minute recorded, if it did.
108. Similarly, she started to deal with the board decision (after Mr Dooley's exclusion/resignation) to restate the 2015 Company accounts by treating the £50,000 payments as capital not loans by stating that she had immediately abstained at an informal Company board meeting because of her family relationship with Mr Dooley. However, it then became clear that she could not even remember the meeting. She did not know if she had seen the relevant report from the auditors, Beavis Morgan, dated 23 September 2016. She stated that she had no knowledge of and did not address financial matters. She described herself as a nominal director of the Company, appointed just in case anything happened to Mr Norris. This was in contrast to her original assertion that she was appointed because of the terms of the Articles. Further, she said she took no management role and did not carry out any director's duties but was just there. I note this is evidence which also supports my assessment of Mr Norris's demeanour.
109. In addition, although a director of Gallium Corporate Director III Limited, she did not know or had forgotten who owns it or why it was incorporated. She also could not say

anything about the finances of Oaksmore, including its expenditure. Overall, she said did not have anything to do for Oaksmore. It was all Mr Norris's work.

110. Mrs Norris explained that she was on the Company's remuneration committee together with Mr Bailey and Mr Cooney but she did not consider the Company's financial position when addressing salary awards. Financial matters were not for her and were addressed by the two gentlemen. When asked about her increases in salary over three years, from £63,500 in the financial year ending 2016 to £94,200 in the financial year ending 2018, she at first attributed them principally to bonuses for attaining her FCA qualifications. She subsequently quantified that bonus at £5,000.
111. I have referred to all this in some detail for four reasons. First, to explain by its content why I do not consider Mrs Norris to have been a reliable witness. Second because it gives rise to the concern as to whether the two Company meetings for which minutes have been disclosed took place. Third because one would not expect Mrs Norris, a business lady with the experience and qualifications she has, to take no real management role in the companies for which she was a director unless that was agreed with Mr Norris. Fourth because her evidence supports an assessment of Mr Norris being a very strong, assertive character who completely controlled the Company and Oaksmore.
112. Mrs Norris has provided a second witness statement concerning Mr Dooley's primary case but I will address that in context. My decision on reliability concerning her other evidence does not necessarily mean this evidence is unreliable.
113. My assessment of **the director/employee witnesses** who gave evidence for the Respondents must start with recognition of the fact that it is not easy for them to remember events a number of years ago. That is especially the case insofar as financial information is concerned unless they have had notice of the topic/questions and have the relevant books and records available to them. That was not always so and they are also entitled to leeway in this context because of the limited scope of the topics covered by their respective evidence in chief.
114. Their witness statements (in general summary) concentrate upon the conduct of Mr Dooley and avoid addressing the issues which concerned the valuers. For example (still in general summary), they could have but did not address the contractual relationship between the Company and Oaksmore, the contractual or other bases upon which the charges for services between the two were made, the nature of the work carried out by the Company and whether it could have undertaken work which Oaksmore undertook. Similarly there is an absence of detail concerning the contractual agreement(s) between the Company and the Alpine Fund and/or between the Alpine Fund and Mr Norris. This includes the circumstances in which he could and did enter into a personal contract with the Alpine Fund.
115. I appreciate that it would not have been their choice to limit their evidence in chief. However, it reflects upon the approach adopted by the Respondents. In addition, I nevertheless have to observe with regard to the employees' when giving their evidence that subject to the exceptions of Ms Watts and Ms Thomas, the underlying impression was that they were unwilling to provide details of the work they carried out or of the business of the Company particularly in the context of Oaksmore. It appeared to me that they were concerned not to say anything that Mr Norris might in

the future criticise them for saying. However, that is only an impression and I will not rely upon potential cause for their apparent lack of willing cooperation when reaching my decision.

116. **Mr Bailey** started that impression. He is a Chartered Accountant with over 40 years' post qualification experience. In 2012 he had been the audit partner at Beavis Morgan responsible for auditing the Company. His evidence in chief only concerned the reclassification of the two, £50,000 loans as capital. Bearing in mind the extent of his involvement with the Company and Oaksmore it is surprising that he was not asked to address other matters relevant to the Petition in his evidence in chief.
117. When asked matters outside of that topic during cross-examination, he appeared to be a reluctant witness. His answers were curt and he certainly did not appear to want to "open up" and provide any detailed information within his answers. Bearing in mind his experience and the roles he undertook, that is surprising. Ms Parker persevered with her questions.
118. Mr Bailey stated that although he had been a director and compliance officer of Oaksmore, appointments not mentioned in his evidence in chief, he did not sign its accounts or even look at them. Whatever work was done by Oaksmore was carried out by Mr Norris. His evidence overall was that he had little, if anything, to do after having helped in the first place to establish it. He had no involvement with Oaksmore's ISA. The time he spent on Oaksmore business or work was nominal because the company did not take off and he had little to do. Any charges for his time would be billed to the Company.
119. On the issue of potential conflict between Oaksmore and the Company, he described Oaksmore as a company raising funds for property development, whereas Gallium was not involved with property development. He is a director of Oaksmore Heritage Property Holdings Limited, which carries out building work. He explained he was appointed to look after the interests of its lender, Regarth Limited, who provided £3 million as working capital. He acknowledged that Oaksmore launched AIFs. Mr Bailey said that the Company could not have done that because it could not have its own funds and, as a result, compete with the funds which it managed when seeking to find investors in the market place.
120. It is to be noted that there was no reference to him being on the Company's remuneration committee nor to quarterly board meetings of Oaksmore whether to ensure there were no potential conflicts of interest with the Company or otherwise.
121. Ms Roberts submitted that his evidence was founded on his expressed failure to understand why there would be a conflict when Oaksmore was only a property developer and had been set up very carefully to ensure there would be no conflict. I appreciate that was his approach to his cross-examination but it is inconsistent with Oaksmore being involved in FCA regulated matters including ISAs and AIFs. It was not simply a property development company. It is also inconsistent with the evidence of Mr Norris that the directors of Oaksmore met quarterly to ensure conflicts with the interests of the Company did not arise. Mr Bailey's evidence provided no assistance for the purpose of untangling those matters of inconsistency.

122. **Mr Skelton** joined GFSL in July 2011 as a launch manager and became a director in February 2015. He continues in office and his duties include managing the Company's relationship with Oaksmore. In chief he explained what he describes as "*the rationale of [the Company's] commercial involvement in the issuing of the Oaksmore ISA*". He started with the description of the Company as an issuer of ISAs, exercising investor safeguards and providing custodian services. He stated that the Company preferred ISAs that are "*property-backed or asset-backed*". It is "*envisaged that the bonds will finance several developments*", mitigating the risk for investors and decreasing the performance risk for the Company. The Company charges fees for the services it provides to Oaksmore ISA. His witness statement provides no other information.
123. Mr Skelton was not able to assist further to any great extent during cross-examination, despite his directorship and described role. He basically did no work for Oaksmore, he did not really know what Oaksmore did or why it had FCA permissions. He could not assist with regard to the charges between the two companies other than that there would be commission payments for which there would be no time sheets or written records concerning the work carried out except. However, he understood there was a written agreement between the Company and Oaksmore and there would be invoices. He explained that Mr Cooney led the Finance Team and would have been responsible for ensuring that proper payments were made and he would have known what Oaksmore was doing. Mr Skelton knew that all seven Company employees worked for Oaksmore and he had provided some quotes for PR and marketing for use by Oaksmore but that was the limit of his knowledge.
124. As a director of Gallium Capital Limited, which contributed 5% of the turnover of the group, Mr Skelton could state that its business involved joint venture structuring and equity raising services but he was not sure if it had conducted business. He was not concerned with it.
125. He had no knowledge before this trial of the £200,000 received by Mr Norris as personal commission from the Alpine Fund. He did not know if the Company or any of its subsidiaries including Gallium Capital Limited, could have done that work through Mr Norris acting as a director. He had no knowledge of Mrs Norris's appointment as a director of the Company. Overall, his evidence was unhelpful subject to establishing his limited role.
126. **Mr Cooney** has worked in the property investment sector for more than 12 years and was employed by GFSL in February 2009. He is the Company's Chief Operating Officer. In his evidence in chief he made a variety of observations concerning Mr Dooley. He appears very upset by Mr Dooley's decision to return to dentistry and attributed that to the Company being unable to pay Mr Dooley a salary. He does not appear to know of any agreement between Mr Norris and Mr Dooley concerning the 2010 return to dentistry. He denigrated what little work Mr Dooley did thereafter and challenged his claims for payment of Company expenses when they were personal expenditure. Understandably, nothing was made of this accusation by Ms Roberts during Mr Dooley's cross-examination.
127. Mr Cooney had a difficult time during cross-examination because of the effluxion of time and the absence of the books and records required to check what had happened to invoices and payments to which he was referred. His evidence in chief had not

contained and, therefore could not be called upon to remind him of such matters. In contrast to Mr Skelton's expectations, he emphasised that he had had no involvement with Oaksmore and had no knowledge of their books and records. He did not recollect any services having been provided by the Company to Oaksmore or vice versa. He was unaware of and could not identify any written agreements between the two companies. As Financial Controller/Fund Accountant of the Company, to his recollection no expenses of Oaksmore were paid by the Company but any that were would have been recorded in the connected party notes of the annual accounts.

128. To be fair to Mr Cooney, he did observe that these matters were not covered by his witness statement and he had not expected them to be asked. However, bearing in mind that it is not in dispute that Oaksmore had no employees and that the Company's employees provided services to it whilst he was the Financial Controller/Fund Accountant of the Company, it is surprising that he could not remember this and assist the Court with his evidence.
129. When taken to a bank statement recording a £125,000 payment made on 17 November 2016 by the Company, he thought this was a payment to Mr Norris. That is because the entry was entitled "FCA TN". It would have been paid, he explained, as a result of Mr Norris providing a consultancy invoice, which he would have approved. He did not know if the payment was transferred to Oaksmore, whether to assist it to meet FCA capitalisation requirements or otherwise. That would have been a matter for Mr Norris.
130. Mr Cooney could not recollect any disclosure by Mr Norris to the Company's board concerning his involvement with the Alpine Fund but sensibly observed that the board minutes should be checked. As to Mr Norris's £200,000 commission, he did not know if the Company could have carried out the work through Mr Norris. Any questions concerning payment would need to be asked of Mr Norris. He could not answer questions concerning three invoices from GSFL to the Alpine Fund totalling £90,000 for on-account transaction fees paid (apparently) on 8, 27 and 29 September 2017, without seeing the books and records. He anticipated that the invoices and any payments would have been recorded and been included within the accounts.
131. **Mr Plummer** is a qualified solicitor and has more than 25 years' experience in banking and property finance. He is the asset manager, and a director of the General Partnership of the Alpine Hotel Investment Fund (No2) Limited Partnership. He gave evidence by telephone from France without the access to a video link. He was an excellent witness, plainly willing to try to assist the court. He described how his association with the Company started. I will address his evidence within the section entitled "Evidence and Findings of Fact" below.
132. **Ms Hughes** joined the Company in 2010 and in her witness statement states she became a project manager and director of the Company (although she probably specifically means GFSL) in July 2015. Her evidence in chief is concerned with the work carried out by Mr Dooley for the Company and nothing more.
133. In cross-examination, she appeared rather too keen to ensure that she made clear that what she did for Oaksmore was in reality nominal or outside her normal working hours. She explained that apparent intent on the basis that, whilst listening to the trial before she gave her evidence, she had understood it to be an issue. My impression is

that she had a close connection with Mr Norris (solely in a business sense, of course) and was protective of his interests. I have approached her evidence with caution.

134. However, subject to that, her evidence was that Oaksmore did not really do any business and that it was a personal project of Mr Norris which he worked on together with his daughter, Grace. Not many of the Company's employees were involved, she said. It was really just Mr Norris but he was fully involved with the Company and the work for Oaksmore was in his own time.
135. She recollected that the Oaksmore quarterly board meetings she attended were short and informal. She could not provide any details of what was discussed or of decisions made. She could not help with the financial side concerning the Company or with charges between the Company and Oaksmore. The financial side was dealt with by Mr Norris. She could not assist with regard to whether there were any contracts between Oaksmore and any third party, such as the PR agents. She did not see any contracts. Mr Norris dealt with the unsuccessful ISA and the two AIF funds which were launched by Oaksmore.
136. **Ms Watts**, Mr Norris's sister, was a straight forward and, in my judgment, a reliable witness. She joined the Company in October 2013 providing secretarial and compliance support. She holds "RDR Level 4" qualifications. Her witness statement is brief, referring to her late filing in April 2016 of Mr Dooley's resignation and to Mr Dooley's limited presence. She does not refer to the board meeting on 17 February 2016 for which there is a minute in the Trial Bundles recording her attendance, the resignation of Mr Dooley and Mrs Norris's appointment as a director. My assessment of her in the witness box leads me to conclude that it will not have been a deliberate decision by her to minimise the evidence she provided in chief. She was perfectly willing to engage during cross-examination.
137. It was pointed out to her by Ms Parker that whilst her recollection in chief was that she had filed the director's resignation form for Mr Dooley with Company's House, upon the instructions of Mr Norris, in April 2016 upon her return from illness, the form records it was received for filing on 23 February 2016. Ms Watts attributed her dating to medical records which would have shown she was away for the relevant period and only returned in April. She looked at the records before making her statement and was reasonably confident her date is correct.
138. As to the minute for the board meeting held on 17 February 2016, which names her as an attendee, she could not remember being there or having prepared the minute. She would have prepared it had she been there. Her evidence is that some board meetings were informal without notice or agenda, whilst others were formal. The board minutes she prepared would be retained on the relevant computer file.
139. Ms Watts was also the Company Secretary for Oaksmore. She did not have a contract with Oaksmore and she was only remunerated under her contract with the Company. She described her duties as minimal and could not remember attending board meetings, although she would have drafted the minutes if there.
140. **Ms Thomas** was also an open and honest witness, plainly intent upon assisting the Court. She has worked in the property investment sector for more than 25 years and was employed by the Company in February 2009. Her evidence in chief addressed Mr

Dooley's FCA approvals and his work for the Company. As with Ms Watts, this limited provision of information will not be attributable to any lack of willingness on her part to deal with other topics.

141. She was cross-examined about her filing of the form with the FCA which withdrew Mr Dooley's regulatory, controlled functions with the Company. Namely, as "CF1 Director", "CF10 Compliance Officer" and "CF30 Customer". The effective date of withdrawal is recorded as 24 February 2016, the date she signed it. Her evidence was that she filed it on Mr Norris's instructions but she did not recollect seeing any supporting evidence for the resignation having occurred. It is also her evidence that the Company dealt with property based funds, namely funds used to purchase properties for investment.
142. **Mr Devine** was not called. His witness statement is accompanied by a Civil Evidence Act Notice as a witness abroad. He was PIL's Assistant Compliance Officer and Company Secretary at the time Mr Dooley left in 2008. His statement records that he could not recollect filing the required "Form C" on the part of PIL with the FCA which would have recorded the reasons for that departure. However, the Form C exists and this evidence became otiose during the trial (a matter addressed further within the facts). Whilst he could have been tendered as a witness, there was no cause to do so and both sides have proceeded on the basis that his statement need not be referred to.

### **G3) The Experts**

143. At the beginning of the trial I raised the suggestion that the "hot tub" procedure should be used. However, both sides advocated the traditional approach and I decided to accept Counsels' submissions that this was the best approach for the case. I took into consideration the fact that they had agreed that the expert evidence would be heard first, which would otherwise have been inconvenient for "hot tub" purposes due to the judicial pre-reading time allowed.
144. I found both experts, Mr Whyke for Mr Dooley and Ms Blower for Mr Norris, to be helpful and skilled within their expertise. That does not mean I necessarily accept their evidence but I reject the criticisms of Mr Whyke in the context of experience. I note what has been submitted by Ms Roberts, in particular concerning the short comings of Mr Whyke's curriculum vitae. However, it was only necessary to listen to him to know that he has more than adequate knowledge and experience to opine upon valuation. It may be that his lengthy experience advising in matrimonial cases has not brought him to court more than once but that does not reflect badly upon him. I also do not accept the criticisms that he did not adequately understand the business. It is generally submitted that his report is out of line with all other valuations. The question, however, is whether his opinion should be accepted taking into account the evidence and approach relied upon. I will address issues of criticism concerning the use of incorrect figures only if and insofar as it is necessary to do so in context.
145. There was to a lesser extent a challenge to Ms Blower's experience both in the context of acting in purchase transactions and in respect of companies regulated by the Financial Conduct Authority. As a general observation, I make the point that she

is an extremely experienced valuer. I will address all issues in their context of valuation and I stand by my conclusion above of help and skill. I have no hesitation in concluding that both experts opined with an understanding of their duties to the court.

146. However, there are two points which should be made at this stage. The first is that neither were able to identify companies similar to the Company for the purposes of a comparable. This obviously makes valuation harder and more opinion dependent. Second, is the problem referred to above under “procedure” that has arisen because of the absence of discussions. I will not repeat what I have already said (see paragraphs 92-96 above).
147. The final point to mention at this stage is that there is an issue concerning expertise in respect of the topic of remuneration. I will address that when relevant but note that whilst neither expert has specific remuneration expertise, they will both be familiar with the emoluments received within the numerous companies they have valued over the years. In addition, Mr Whyke during cross-examination explained that as a Chartered Accountant for over 40 years he has advised on remuneration and sits on a public company’s remuneration committee.

## **H) The Evidence and Findings of Fact**

### **H1) 2006 to 2010 - The Beginnings**

148. There is a background of friendship since childhood, family marriage connections, Mr Dooley having qualified as a dentist and Mr Norris as a Chartered Accountant. They worked together in the financial services sector for PIL from 2006 to 2008. Mr Norris had worked for PIL for many years previously. He had been its managing director and majority shareholder but in 2006 it had been acquired by a property investment group. He had agreed to a two year, “locked in” contract.
149. By the autumn of 2008 they both held the same FCA qualifications, although Mr Norris was by far the more experienced of the two in this field of work. Their PIL contracts were coming to an end and, based upon their friendship and mutual trust, they decided to form their own company. The original idea was for a business launching its own funds and managing others. GFSL was incorporated on 1 July 2008 and on that day Mr Dooley was appointed its director. Mr Norris was appointed on 4 August 2008. It is to be implied that if this caused any difficulty for Mr Dooley in respect of his employment by PIL, the same difficulty would have arisen for Mr Norris. In addition, it is plain they must both have known what each other was doing at PIL and concerning GFSL.
150. It did cause difficulty for Mr Dooley. On 18 November 2008 at an unexpected meeting with PIL’s management, including Mr Norris’s brother in law, he was handed a letter terminating his employment for breaches of contract which made his “*continued employment untenable*”. No dismissal procedures had been adopted and no disciplinary proceedings initiated. This was a unilateral step but without any finding or reference in the letter to “*gross misconduct*”, as subsequently contended by Mr Norris after this dispute began. I accept Mr Dooley’s evidence that he understood the termination to relate to his involvement in the formation of Gallium. I also accept

that the discussion he had that day having received the letter resulted in agreement that the contract would cease on an end of contractual term basis not for breach.

151. My reasons for that acceptance are that I consider his evidence to be reliable. That reliability is borne out by the contents of the “Form C” required to be lodged by PIL with the FCA. The form, completed by PIL the next day, contains PIL’s statement of truth and gives notice of the fact and reasons for an approved person, employee ceasing to perform controlled functions. The reason given by PIL to the FCA for Mr Dooley ceasing to perform three controlled functions was “*end of contract*”. The box available for completion if the reason had been “*dismissal/termination*” was left empty.
152. Mr Norris (through solicitors) instructed Ms Roberts to assert and put to Mr Dooley that the “Form C” was in some way a false document because the photocopy in the bundle suggested that the statement of truth was not signed. Mr Norris’s case also at first sought to rely upon the witness statement of Mr Devine in which he recalled a decision to terminate Mr Dooley’s contract and stated he did not file the Form C. However, Mr Devine was not asked for the purposes of his witness statement or, at least, did not address either the reasons for termination or the existence of the Form “C” which was filed. It is also to be observed that this very serious allegation was being made apparently without any attempt before-hand to examine the original document or obtain specific evidence from the FCA.
153. The position worsened during cross-examination when it became clear that the derivation of a document being put to Mr Dooley to support Mr Norris’s case, indeed what precisely the document was, could not be addressed upon Ms Roberts’s current instructions. That part of the cross-examination was left, on my suggestion, to the following morning in order that the matter might be properly addressed. The cross-examination was not resumed and the allegation was not pursued. There was no explanation or apology. It is plain it is an allegation which should not have been made and the fact there were instructions to do so appears to illustrate the enmity which has very sadly resulted from this dispute. I find that PIL’s termination of Mr Dooley’s employment and his position as controller is not to be attributed to misconduct or breach of contract.
154. Mr Dooley pursuant to plan duly left PIL in November 2008 and began work for GFSL. Mr Norris joined him in May 2009 and they both worked together as intended, albeit without salaries whilst the business was being built. I am satisfied from the evidence that Mr Dooley and Mr Norris agreed (“the Original Quasi-Partnership Agreement”) to use GFSL and later the Company as their vehicle for a quasi-partnership. They would both be directors and subject to available funding would both work full time with service contracts. They proceeded on that basis in trust and confidence.
155. The Original Quasi-Partnership Agreement equally applied to the Company when it was formed as a holding company on 28 September 2009. Both were appointed directors that day. Both agreed that £49,999 of their respective original investments in GFSL would be treated as loans to the Company.

**H2) 2010 to 2015 and Dentistry**

156. I am also satisfied that the terms of the Original Quasi-Partnership Agreement changed in about 2010. It was appreciated that the Company would not generate for some time the income required for both to have salaries at the level they required. No sum has been specified within the evidence. The earliest accounts before me (the 2013 financial year end) record the total remuneration for directors in the financial year ending 2012 as £222,417 and that the highest paid director, who must be Mr Norris, received £144,250. That increased to £151,269 in the following year plus £26,765 paid to his service company, Jagan Limited.
157. It was agreed (“the Varied Quasi-Partnership Agreement”) that Mr Dooley would spend most but not all of his time working as a dentist whilst there was insufficient income for both to be paid. That made sense because he had this alternative source of income and he was the less experienced quasi-partner. There is no evidence that they identified the level of payment the Company would have to be able to make for them both to be paid. However, I am satisfied from the evidence (applying the balance of probability test which applies throughout) that they intended to return to the Quasi-Partnership Agreement as and when the Company’s financial position permitted. Consistent with and as a term of the Varied Quasi-Partnership Agreement, Mr Dooley was to remain and did remain a director subject to the events in February 2016 when Mr Norris asserts Mr Dooley resigned and Mr Dooley asserts he was wrongfully removed and excluded from management. Therefore, although the roles changed from 2010 and Mr Norris became the managing director, the quasi-partnership continued to the extent that Mr Dooley had a legitimate expectation to be a director, albeit it with a much more limited executive role until his full time return.
158. Accordingly between 2010 and February 2016 (inclusive) Mr Dooley took a relatively small role in management compared with Mr Norris. However, he was not inactive. Mr Dooley’s evidence concerning his continuing work is supported by e-mail correspondence between the two in September 2015. For example, on 7 September Mr Dooley referred to “the IXE Project” he was working on for the Company having failed to come to fruition. He proposed sitting down to discuss his return to the Company full time. Mr Norris’s email sent on 9 September 2015 was, overall, negative in response to that possibility. However, the point at this stage of the judgment is that Mr Norris did not dispute that Mr Dooley had been working for the Company and did not criticise him for a lack of activity.
159. The “IXE Project” was one with which Mr Dooley had been involved for some 14 months. It was concerned with a commodities fund relevant to the aim of Mr Norris and Mr Dooley that the Company would be in a position to raise £4 million to enable it to start a full depositary business. It is not the only work relied upon by Mr Dooley but it is a sufficient example to sustain the conclusion that the Varied Quasi-Partnership Agreement remained in place.
160. Insofar as Mr Norris presented Mr Dooley’s return to dentistry as a waning of his interest in the Company and within his evidence in chief described Mr Dooley as “*a drain on what little resources the [C]ompany then had*”, I reject his evidence. I have reached that decision taking into consideration my assessment of the two witnesses, the above-mentioned emails, the work carried out by Mr Dooley and Mr Dooley’s evidence of the circumstances in which he returned to dentistry. There is also the

fundamental point that Mr Dooley remained a director with the agreement of Mr Norris and was entitled to be a director in accordance with the terms of the Varied Quasi-Partnership Agreement. What I accept is that Mr Norris began to resent Mr Dooley's continued role in the Company in the circumstance of the effort and time he was putting into the Company and the success he was achieving as the full time executive director.

161. Therefore, the position between 2010 and 2015 was that the Varied Quasi-Partnership Agreement was in place and being followed. Mr Norris was in control of the Company with agreement and Mr Dooley was performing the roles allocated to him whilst being a non-executive director.

### **H3) 2011 to 2015 - The Alpine Fund**

162. Looking at the business between 2011 and 2015, my acceptance of the evidence of Mr Plummer leads to the decision that the Company came to be involved with the Alpine Fund in 2011. That was when the Alpine Fund began raising money for a property fund which would own and develop a hotel in France. This was Mr Plummer's third such project and the Company was the fund manager. Unfortunately, changes to FSA Regulations made it extremely difficult to complete the fund raising required because those who assisted raising funds for an overseas project would become personally liable for any losses suffered by investors. Short of finance, the Alpine Fund through Mr Plummer entered into a gentleman's agreement with Mr Norris, subject to Mr Norris being able to intervene his service company, whereby Mr Norris would act as his agent and receive a reasonable fee if the fund was established with the necessary investor funds.
163. As Mr Plummer said: "*[Mr Norris] was assisting me in his personal capacity and as a director in France I could take on board anyone who was needed to get the business complete ... It was a private deal using Jagan Limited, his service company, as the contractor*". The date of the agreement is unclear but not a material issue. It can be treated as being around 2012/13 or slightly later but in any event some time before 16 February 2016.
164. Bearing in mind the Company's involvement with the Alpine Fund since 2011, the work that involved and Mr Norris's position as a director of the Company, I find that this agreement resulted from the fact that the Company was retained by the Alpine Fund. It resulted from information and an opportunity which came to Mr Norris as a result of this and because of his position as a director of the Company. There was a conflict of interest at the time he entered into the personal agreement and that conflict continued. He owed a fiduciary duty not to personally profit and **section 175 of the Act** applied (see paragraph 64(d) above). There is no evidence of any disclosure to Mr Dooley and the evidence of Mr Skelton indicates it was kept secret (see paragraph 125 above).
165. There was a possible issue from Mr Plummer's evidence as to whether the Company would have been unable to undertake such a contract when it did not have the necessary licences for financial services in France. However, Mr Plummer explained that this was not a problem for Mr Norris and would not have been for any company

he may have wished to use provided he and/or the company acted as an agent. Mr Norris acted as agent and there was nothing from his perspective or knowledge to suggest that the Company could not have done so. That explanation has not been challenged and paragraphs 65-68 above are to be noted in any event.

#### **H4) 2012 to 2015 - The Company's Performance**

166. The Company's financial performance between 2012 and 2015 with Mr Norris in control can be assessed by reference to its filed, consolidated accounts. Obviously, the references to the Company in this context are to it as the group holding company and to its subsidiaries in accordance with the definition.
167. Mr Norris expanded the Company's business and improved its financial position. An operational turnover derived from collective investment schemes of £290,005 with a profit after tax of £10,020 for the financial year ended 30 June 2012, increased in 2013 (with the assistance of previous year acquisitions) to £946,341 with a profit after tax of £147,012.
168. The directors' 2013 strategic report referred to "*exciting opportunities*" ahead. Dividends paid by the Company for 2012 and 2013, totalling £20,000 and £50,000, are recorded in the consolidated cash flow (the Company's profit and loss not being included as permitted by the 2006 Act). The financial statements record that Mr Norris and Mr Dooley have joint control of the Company.
169. As previously mentioned, Mr Norris's remuneration remained reasonably constant: for 2012 and 2013, £144,250 (out of total directors' remuneration of £222,417) and £151,269 (out of total directors' remuneration of £234,436) respectively. Jagan Limited also charged £26,765 for his services during 2013. In addition, Mr Dooley's company, Saratoga Technologies Limited, received £24,838 for his services. They were each owed £49,999 as a non-interest bearing loans repayable on demand.
170. As also mentioned, there is no evidence to identify any express agreement between Mr Norris and Mr Dooley specifying the remuneration to be paid to Mr Norris. Nor is there any evidence of any shareholders' meeting (or indeed even directors' meeting attended by both shareholders) approving his remuneration. However, there is no suggestion of any issue over the sums received and the accounts are approved by Mr Dooley as a member of the board of directors.
171. Bearing that in mind and taking account of the financial statements for 2012 and 2013, the sums paid to him in those years provide a reasonable indication of the minimum level of remuneration the shareholders expected him to receive, subject to any deterioration in the Company's financial position. It can equally be reasonably concluded that his remuneration would increase as the Company expanded and gross sales and profits improved. However, there is no evidence to indicate any method agreed or adopted by Mr Norris and Mr Dooley to determine what those performance increases would be.
172. I find from the matters above, as a fact, that the parties understood the position to be that Mr Norris would receive a remuneration dependent upon the Company's

performance and its ability to pay such remuneration also taking in consideration their intention for dividends to be paid. However, it was also understood that this was Mr Norris' main income and, therefore, there should be a minimum level of remuneration on the basis of the indications to be derived from the 2012-2013 financial years (during which dividends were also paid). That would be so even if the performance deteriorated provided it could be afforded. That understanding is vague but capable of being determined and resolved by fairness within the context of the trust and confidence of a quasi-partnership.

173. The 2014 and 2015 (using the original filed accounts) financial year end strategic reports were also upbeat and each included the following:

*"The group continues to be highly regarded for its professionalism, performance and delivery. Whilst the market environment and regulatory change in recent years has hindered some competitors, our long-term strategic goals remain consistent and effective. The group continues to adapt and progress with all regulatory change and explore new business opportunities.*

*Exciting new opportunities are being developed through offering innovative alternative fund structures to existing and new clients. Consequentially, profitability is growing through our offering of a much broader variety of services ....*

*The group is exposed to liquidity risk, credit risk and interest rate risk. However, there are no external borrowings of the group, and therefore liquidity and interest rate risks are not considered material.*

*The group's principal financial assets are cash and trade receivables ... the group's credit risk is primarily attributable to its trade receivables. The group's approach to managing the credit risk is to monitor these trade receivables and make an allowance for impairment when there is objective evidence that the group will not be able to collect all amounts according to the general terms of the receivables concerned."*

174. Turnover continued to increase. It reached £1,292,363 in 2014 and £1,525,072 in 2015 (referring here and below unless otherwise stated to the original 2015 financial statements not to those revised in 2016). The principal income came from managed fund initial and launch fees, fund operator fees and administration fees. There was also £183,702 attributed to other income. Gross profit was £1,090,405 and £1,210,046 respectively and operating profit £258,373 and £252,945 for those two years.
175. However, there was a significant increase in administrative expenses in 2015 to £1,065,556 from £836,358 the previous financial year. This effectively mirrored the increases in turnover and gross profit. In 2013 administrative expenses had been £660,318 as against an £832,134 gross profit. The expenses in 2014 and 2015 were set off against gross profits of £1,090,405 and £1,210,046 respectively. Therefore, although the Company increased its gross profit in 2015 by some £120,000, its operating profit (excluding other operating income) was some £5,000 less than it had achieved in the 2014 financial year end.
176. This increase in expenditure coincided with the implementation of the Alternative Investment Fund Managers Directive introduced by the FCA in July 2013. It led to the Company becoming managers of AIFs within the property sector. There will have been increased costs resulting from compliance, training and marketing. However, the increased turnover and gross profit figures indicate that the Company was able to find AIF business and that it should continue to do well in the future once costs settled

down. From a GFSL Business Plan dated July 2017, albeit therefore some 2 years later, it is apparent that the Company saw AIF property fund management as a significant opportunity for the business.

177. The profit after taxation was £199,021 for 2014 and £204,228 for 2015, the latter being affected by other operating income of £108,455 compared with £4,326 the previous year. The balance sheets now showed shareholders' funds of £246,055 and £450,283 for the two years respectively because of the accumulated profit. A dividend of £40,000 was paid in 2014 but none in 2015.
178. Mr Norris's remuneration increased to £199,324 (out of total directors' remuneration of £314,808) in 2014 and to £312,833 (out of total directors' remuneration of £484,724) in 2015. However, Jagan Limited also charged £55,324 for his services in 2014 and £145,000 in the 2015 financial year. His emoluments therefore totalled £254,648 and £457,833 respectively for those two years.
179. There is no express evidence to explain the justification for these significant increases, in particular taking into consideration the small increase in profit on ordinary activities after taxation in 2015 compared with 2014. There is reference in the above-mentioned 9 September 2015 email to a benchmark of an income target of "3 times the salary paid in the pre-launch team" but that was not investigated or relied upon at the trial. In any event, both sets of consolidated accounts were approved by the board before the dispute with Mr Dooley concerning his purported resignation and whilst they both controlled the Company. It is to be concluded, therefore, that Mr Norris and Mr Dooley considered this to be a fair remuneration in all the circumstances described above including within the context of increased costs being attributable to an investment in the future resulting from the FCA changes.
180. During the 2014 and 2015 financial years Saratoga Technologies Limited charged £4,500 and £3,000 respectively for Mr Dooley. Both sets of accounts continued to show the above-mentioned directors' loans.
181. The restated 2015 financial year end accounts dealt (subject to qualification of being unable to be satisfied from evidence that the adjustments are properly made) with the recognition of the £50,000 loans as capital: by introducing negative goodwill into the balance sheet (£112,121 less the amount subsequently written off) and restating the cost of purchased goodwill (from £25,155 to £37,276); reducing creditors due within the year from the balance sheet (by £100,000); reducing cumulative administrative expenses and increasing post tax profits (by £106,970); As restated, expenses stand at £1,038,738 and other operating income £108,455 producing a profit after taxation of £231,046. The balance sheet recorded shareholder funds of £537,441.
182. Mrs Norris was appointed a director of GFSL on 1 July 2015 and continues to be a director.

## H5) 2015 to 2016 - The Resignation Dispute

183. The above-mentioned emails of 7 and 9 September 2015 and a further response from Mr Dooley on 10 September 2015 present a scenario of the two of them considering the future, including the possible full time return of Mr Dooley. However, from Mr Norris's perspective the full time option would only be realistic if Mr Dooley was able to devote the time required and the Company's finances permitted it. In the absence of that, Mr Norris was proposing an annual dividend policy or Mr Dooley being bought out. There is nothing to suggest in this correspondence that the parties are in dispute, that Mr Dooley's role and actions concerning his participation in the business of the Company between 2010 and 2015 fell short of what he should be doing or that there was any breach of their Varied Quasi-Partnership Agreement or of any understandings since his return to dentistry 2010.
184. Mr Norris followed up the September 2015 communications with a letter dated 4 February 2016 which included the following approach and proposal:
- "In my last e mail on this matter, I stated that I did not feel that you were In a position to put the necessary time into Gallium on a speculative basis. I suggested that we consider and agree a dividend policy such that you remained as a silent shareholder; or I simply agreed to buy your shares. You said that you would consider this and provide a full response. However, I have not received any response.*
- Therefore, I think it best that we simply agree that I buy your shares and develop the business alone. To that end, we need to agree a fair value for those shares. I will work on that now but in the meantime please let me know if you had an amount in mind. Your original investment was £50,000. I appreciate that you have previously stated that plans do change and I understand that you have had to put your family first, so I don't bear any ill will. But equally, Gallium is my only source of income and I have to put my family first too."*
185. They agreed to meet at a public house during the evening of 15 February 2016 to discuss those matters. There is nothing to indicate that this was intended to be a formal meeting either of the board or of the members. There was no written notice, no agenda and no written resolutions. Mr Norris explained that he would have held the meeting in the Company's board room but that it was always Mr Dooley's preference and requirement to meet in a social environment.
186. Even if that is correct, and it is consistent with paragraph 103 above, the informal nature of the setting is still relevant to context and the pre-meeting correspondence also supports the conclusion that this was to be a discussion of the future between friends not a formal meeting. Indeed, it was not a formal meeting. There was no written notice, agenda or draft resolution. I am also satisfied from the evidence that nothing was said to alter that conclusion.
187. That does not mean a binding agreement could not be reached at the meeting but it is right to take context into consideration when deciding what occurred. One would potentially expect any discussions concerning their parting of the ways to lead, if they led anywhere, to a more formal process of negotiations and drafting including the involvement of lawyers before any agreement was concluded.
188. In the main two paragraphs within the witness statement of Mr Norris setting out his recollection of the agreement to resign he says as follows (my underlining):

*49. ... After exchanging pleasantries, I went through the letter that I had sent to Mr Dooley on 4 February 2016. I explained that I believed that he was not in a position to put the necessary time into Gallium on a speculative basis. I had previously suggested that we agree a dividend policy and he remain as a silent shareholder, or if he preferred then I would buy him out. As I had received no response to my initial proposal in September 2015 then I believed the best way forward would be to ask for his resignation as director and compliance officer and that I would buy his shares at their fair value.*

*50. At that point, I took a comfort break. On my return, Mr Dooley asked me to go through the points a second time. I did so and again confirmed that I was requesting his resignation from his various roles and that I would buy his shares for their fair value. As Mr Dooley had not responded to my e mail in September 2015 then it appeared to me that he did not have the time to commit properly to Gallium. Mr Dooley nodded at that time and said “okay”. He then changed the subject back to pleasantries explaining that his wife would not forgive him if he didn’t ask after Anne and our children ....*

*52. After a second drink, we left the pub. As we left, I confirmed that the next step would be that I would inform Companies House and the FCA of Mr Dooley’s resignation the following day. I asked Mr Dooley to send a written resignation for our files. I would send over the business accounts so that he could obtain a valuation and I would supply an indication of value. Mr Dooley provided various affirmative words (“yes”, “okay”) as we left the pub. I believed that Mr Dooley had resigned and that the next step would be to agree a valuation for his shares.”*

189. Any conclusion concerning whether there was a resignation must and will depend upon considering all the evidence. However, the initial observation is that the version of events remembered by Mr Norris, and presented as his evidence in chief without alteration, presents a very informal context. It is difficult to identify a formal resignation having occurred from that statement. There is also, at the very least, the potential for his references to “*the best way forward*” to be construed as inextricably linking the request for resignation with the outcome of the future negotiations for an agreement to purchase the shares. It is to be noted that this linkage occurs within the context of their value not even having yet been raised. In other words, within the context of there being a long way to go before agreement could be reached. Mr Norris’s request for a letter of resignation can certainly be construed as a step to be implemented as part of a plan going forward which would involve a clean break in terms of office and shareholding together.
190. That construction also fits Mr Norris’s evidence in cross-examination. Whilst setting a more formal scenario at the public house to the extent that he had a folder containing two letters which were considered with Mr Dooley, he described the concluded agreement as Mr Dooley having agreed to resign and to sell his shares at a fair value. It was not described as an agreement to resign with them separately also deciding to negotiate a sale of the shares at a fair value in the days or weeks after the meeting. The two were inextricably entwined. That was clear from his evidence.
191. This is a serious problem for his case when there was no agreement to purchase the shares. As he acknowledged and appreciated during his examination, the agreement he proposed was no more than “an agreement to agree”.
192. When asked by me to explain how in those circumstances he could assert a binding agreement existed, he said that he must have misunderstood the earlier questions. This was unconvincing, although it is inevitably difficult to convincingly justify any such an error during examination. However, whether he did or not, he now said there were

two separate matters. First, an agreement to resign. Second an agreement to agree the sale of Mr Dooley's shares at a fair price upon completion of the negotiations. He said he had gone through this twice at the meeting with Mr Dooley, the second time being at the express request of Mr Dooley for clarification.

193. I do not approach this from the basis that what he said first in cross-examination, supported as it is by the above-mentioned initial observation, is necessarily the nail in the defence. I will bear in mind that this is evidence given some five years later and that Mr Norris has been dwelling on these events and, no doubt, repeating them for a long time with consequential false memory possibilities. I will consider the impact of his oral evidence in the light of all the relevant evidence. However, as matters stood at this stage of cross-examination, Mr Norris's attempt to retract the answers he first gave was unconvincing and no resignation or agreement to resign was established on the balance of probability.
194. It was put to Mr Dooley during his cross-examination that he and Mr Norris went through the 4 February letter, that at the end he agreed to resign and that Mr Norris informed him he would notify the FCA and Company's House of the resignation the following day. It was not suggested that any agreement had been reached as to sale of the shares (at a fair value or otherwise). If this version of events is correct, it would mean Mr Dooley had agreed to give up his position as a director and, therefore, any control or powers in respect of the day to day running of the company without having any binding commitment from Mr Norris concerning the purchase of his shares. I consider that improbable.
195. In his answers, Mr Dooley described the meeting as a discussion of the future within a social context whilst sitting at a table by a walk way to the rest rooms with a constant flow of people, although it was not busy or heaving. He denied each of the facts put to him concerning Mr Norris's recollection in his witness statement. He made plain that he would not have resigned whilst there was no agreement concerning a sale. He said the position at the end of the meeting was that a sale would be investigated and he and Mr Norris would shortly afterwards consider the accounts for that purpose.
196. If Mr Norris's recollection as varied during examination and as put to Mr Dooley is correct, one would expect the email the next day and the subsequent communications to plainly set out the fact of resignation.

- a) His email at 14:19 the next day (also sent by letter as I understand it) includes the following:

*"it is a shame that our partnership did not progress as we had originally hoped but and hopefully we can resolve matters amicably and move forward".*

This is consistent with the conclusion of the meeting being that an agreement was to be agreed. He then proposes a price. There is no suggestion that this proposal had been made at the meeting and Mr Norris has accepted that to be the case. It continues:

*"I propose that you receive your original investment back and an additional dividend/payment of £25,000 giving a total payment of £75,000 on the basis that the net value above the capital requirement is £150,000 (being £500,000 -s £150,000). I also enclose a letter for you to sign and return please to record your resignation as director etc. In the meantime, I will proceed with*

*informing Companies House and the FCA. Perhaps you would let me know what value you were thinking of and the basis of that valuation. We should then be able to sort out that matter in good time for a meeting on Monday.”*

- b) It is to be observed that if the original £50,000 payments by himself and Mr Dooley were loans, as they were understood to be and treated at that stage, Mr Norris was valuing the shares at £25,000. Slightly ironic when viewed against the criticisms of Mr Dooley and his approach to valuation. In any event, I note that if he really thought a binding agreement to resign was being concluded the day before, he would surely (if acting honourably) have indicated that resignation was being sought on the basis of the low figure he had in mind. He did not and at best kept his cards close to his chest at the meeting.
  - c) Be that as it may, there is the enclosure of the letter of resignation. This might indeed support his evidence that there had been a binding resignation or agreement. On the other hand it can easily be read as a letter to be completed if the offer is accepted. Such a reading would also need to take into consideration the statement that Mr Norris would be informing the FCA and Companies House. On its face that is more likely to be read as indicating that this is to give effect to something that has occurred. Nevertheless, if read in the context of the evidence of the meeting considered above, it does not expressly assert this to be the case. It can still potentially be read as a step being taken on the basis that Mr Norris has made an acceptable offer which he expects to be accepted and implemented. No decision can be made upon this, however, without addressing the rest of the evidence.
  - d) Mr Dooley’s evidence that he wanted to wait until the week-end before considering the email (and I am unclear when he received the letter, as opposed to its email form) presents a perfectly reasonable approach when he was working during the week in his dentistry practice. His email in answer at 16:03 is consistent with that evidence. In addition, his oral evidence to that effect was clear. He was busy with work and time was required to address important issues yet to be agreed. Nevertheless, it is to be borne in mind that he might have been expected to ask what Mr Norris meant by his reference to informing Companies House and the FCA if he had read that far. On the other hand, his evidence indicated that he did not read the letter carefully and in any event was reading it (if his evidence is to be accepted) from the perspective that there had been no resignation.
  - e) It may also be surprising that Mr Dooley’s “wait until the week-end” approach did not lead to Mr Norris reminding him (if correct) that he had already resigned and that a completed resignation form was needed in the meantime. Mr Norris’s email on 17 February 2016 at 09:35 only asked for comments by the next Monday and for a meeting at the end of the week.
197. According to a board minute, on 17 February 2016 at a meeting at 16.00 attended by Mr Norris, his wife and Ms Watts at 16:00:

*“Tony explained that he met with Peter Dooley on 15th February to discuss Peter's resignation and that Peter had agreed to resign his position as director of all group companies and as Compliance Officer of Gallium Fund Solutions Limited and Gallium PE Depositary Limited. The Shareholders have accepted his resignation. It was agreed that Anne Norris be hereby*

*appointed as a director to the Company to fill the vacancy and the Company Secretary is instructed to lodge the appointment with Companies House.”*

198. There is a serious issue whether this meeting in fact took place. The fact that Mrs Norris and Ms Watts do not remember it is noteworthy. Its content means it is not a meeting they would be expected to forget. The resignation of Mr Dooley would have been a significant matter for them and memorable for that. However, even if it did not occur and this is a minute written up to justify the steps taken to remove Mr Dooley and appoint Mrs Norris, the issue is still whether there had been a resignation at the meeting on 15 February.
199. Mrs Norris in her evidence in chief asserted that she had been told by Mr Norris after his return from the public house that evening that Mr Dooley had resigned. As previously explained, I do not consider her a reliable witness. Nevertheless the real issue is not whether Mr Norris told her this understanding or whether there was a meeting to record what had already occurred but whether any such stated understanding that there had been a resignation is correct.
200. Mr Dooley emailed on 22 February 2016 seeking clarification before providing “*a more complete response*” of what he had understood had been “*said last Monday*”. He wrote this:
- “1. You wish me to resign from all companies within the group.*
- 2. To resign as compliance officer for gallium fund solutions ltd and gallium PE Depositary ltd*
- 3. You wish me to relinquish in full my 50% shareholding in the above companies to you in exchange for £75k*
- 4. You remain keen on forming a NewCo with me offering Full Depositary services.*
- And that all the above has only recently crystallised out in your thinking, I believe you said, over the last five (or was it seven) days.*
- Kindly confirm and let me know if I've missed anything out.”*
201. The point numbered “1” appears to recognise that resignation was raised orally at the public house together with price. On the other hand, the other points were not discussed at the meeting and the penultimate paragraph suggests Mr Dooley might have been drawing the threads together from the meeting and subsequent email, as he said he did during cross-examination. There is no doubt that price was not discussed and no suggestion of the other matters having been raised on 15 February.
202. In any event, this email is entirely inconsistent with the proposition that he had resigned or agreed to resign or even that he thought Mr Norris had reached that conclusion. It does not read as though it is a disingenuous letter and not only was that not put but I would reject any such suggestion based upon the evidence as a whole and my assessment of Mr Dooley as a witness. In any event, if it was trying to supersede the fact of resignation, whether intentionally duplicitous or not, one would expect a robust response from Mr Norris refuting the reference to “wish” and stating that resignation had occurred.

203. That was not the case. Mr Norris in his reply at 15:32 states what he wishes. He does not state that there had been a resignation. Instead he wrote:

*“Without prejudice, I respond as follows:*

*? Yes I wish you to resign from all companies within the Gallium Group of Companies.*

*? Yes I wish you to resign as Compliance Officer of 6FS and GPEDL.*

*? Yes I wish you to sell/relinquish your holding in Gallium for a total consideration of f 75,000.*

*? You have said that you can source f4 million for the capital adequacy of a newco offering full depositary services. Therefore, you would be involved in such newco with an equity stake (25%) and an executive director role, on the basis that you work within such business.*

*No, I did not say that the above has only recently crystallised out in my thinking over the last five or seven days.”*

204. This is entirely inconsistent with his case that Mr Dooley had already resigned or agreed to resign and I do not accept his attempt in cross-examination to explain this away. I do not accept his suggestion (and I do not think it was more than that) that the question marks show he was querying what Mr Dooley had written. In any event he did not respond that Mr Dooley had resigned. Mr Norris explained that this was because he did not want to fall out with his friend. He did not say that in his evidence in chief, there is no basis for concluding that from this letter or the previous correspondence and it would be contrary to my assessment of their respective characters. In addition, he would not be “falling out” by reminding Mr Dooley what had so recently occurred. I do not accept Mr Norris’s explanation during cross-examination that he “*was on tip toes*” when dealing with Mr Dooley. His previous correspondence and his oral evidence does not come close to sustaining that proposition. Nor does it fit my assessment of him. Furthermore, his “*wish*” is consistent with his original oral evidence at trial and with the initial observation concerning the above-quoted passages from his witness statement. Namely that there was no resignation and only an agreement to agree.

205. Mr Dooley’s 18:18 email the same day explains that the “*next useful step ... is to go through the accounts*”. He states he is “*still hop[ing] to move forward with you positively ...*”. In an email in response at 18:30 Mr Norris agrees but asks Mr Dooley to indicate a value and complains (despite supposedly being on “tip toes”) about not having received one. Mr Dooley’s email refutes the complaint at 19:07, relying on the fact that Mr Norris’s “*desire to move [him] on*” was only mooted last week and that all he has received is “*a list of your ‘wants’ and a copy of accounts ...previously received*”. The reply on 23 February 2016 at 11.15 enclosed a remuneration analysis and agreed to go through the accounts asking for questions in the meantime. There is no reference to Mr Dooley’s resignation having been registered at Companies House or with the FCA.

206. Mr Dooley replied at 13:38:

*“I am having to react to your initiatives. In December 2015 we were all set to raise CAR for FD . Nothing was spoken about then, of your intentions expressed at last weeks meeting, including your desire for me to resign my directorship and other roles and the relinquishing of my shareholding.*

*So I am having to consider and respond accordingly. So to date , just so as you understand, you have been setting the agenda.*

*But that won't be for much longer , once I have a chance to fully understand the position of the company in the marketplace today and in turn its commercial worth.*

*I won't be providing a list of questions- I just need to sit down with you and have you go through the accounts . Then we can move on to the next stage of negotiations. Next Monday at 6pm is good. White Hart again ?”*

207. It was put to Mr Dooley that his reference to resignation must be an acknowledgment of resignation having been discussed and agreed at the meeting on 15 February. His answer was that it refers to the previous email train. The word “including” suggests otherwise but even if it is a reference to the meeting, it is clear that this email refers only to a “*desire*” on the part of Mr Norris that he should resign. Not that there was a resignation or agreement to resign.
208. On 24 February 2016 a form was filed, assuming that is the correct date, with the FCA withdrawing Mr Dooley’s controlled functions on behalf of the Company by reason of his resignation. Namely as: “CF1 Director; CF10 Compliance Oversight; and “CF30 Customer”. No supporting documents were included. The “effective date” of withdrawal given was 24 February 2016. This was caused by Mr Norris, a unilateral act.
209. By email sent to Mr Dooley at 9:24 that day, Mr Norris makes a variety of comments before ending:
- “In the meantime, as stated in my email of 15th February I have notified Companies House and the FCA that you are no longer a director or Compliance Officer.”*
210. There is an unexplained gap in communications but on 9 March 2016 there were a series of emails starting with and concerning Mr Dooley’s complaint about access by Mr Cooney to his Company email account. At 5.52pm Mr Norris asked why he would want access now he is “*no longer a director*”. Mr Dooley’s reply the following day was unequivocal, although the absence of a response to the 24 February, 9:16 email is unexplained:
- “I'm glad you have raised the matter of directorships in your last email. Just to be clear. I have never given any permission to anyone at Gallium to remove me as a director of any of the Gallium companies or the parent company Gallium Fund Solutions Group Limited.*
- Given that is the case-who took the decision to inform Companies House and what was the basis of such an instruction?”*
211. There was no answer and there had been during this period no disclosure to Mr Dooley of the purported appointment of Mrs Norris as a director on 17 February 2021. That is the date recorded in a purported minute of a board meeting. By email sent 20 April 2016 Mr Dooley wrote to Mr Norris as follows:

*“I'd like to now go over the outstanding issues I believe need addressing. 1. As far as my resignation as Compliance Officer of the Company is concerned, I will send over a dated email today with a signed letter out in post later today. 2. My role as Director of the Company: To date, regarding this matter ,you have been transparently nontransparent. Your intent seems to be to remove me as Director of our equally owned company without my consent. I will relinquish my directorship on the sale of my 50% holding of our company and*

*not before. I have told you this in previous emails. Authority to perform this action would need a majority vote by the directors of the company (there are only the two of us) or proof of gross negligence or gross misconduct ...”.*

212. In my judgment it is quite clear, looking at the oral and written evidence together, that there was no resignation or agreement to resign. The starting point for that decision is the informal nature of the meeting (see paragraphs 185-187 above), the initial observation concerning the evidence in chief (see paragraphs 189 above) and the fact that that Mr Norris’s original oral evidence under cross-examination leads to that conclusion (see paragraphs 190-191 above). The end point is the fact that the correspondence as a whole also produces that decision (see paragraphs 200 to 211 above).
213. Those reasons apply and the decision stands whether Mr Dooley’s memory is in error as to whether resignation was discussed at the meeting. It applies whether his explanation for his reference to resignation in his email of 22 February 2016 is accepted or not. Although that explanation is consistent with the fact that the other points made in the email were not raised at the meeting either, overall I think it is more likely that resignation would have been mentioned and Mr Norris’s follow up email the next day supports that. However, I am clear that such an error would not be attributable to Mr Dooley intentionally hiding what occurred. That would be contrary to my assessment of him as a witness. It would be a matter of mistaken memory. Further, the fact that Mr Dooley does not remember a reference to resignation supports the conclusion that there was no agreement to resign or resignation. The point being that a decision to resign would have been memorable. A discussion of resignation would not necessarily have been memorable when the real point of the meeting was that he and Mr Norris were agreeing to agree to negotiate the sale of his shares. It would be an inevitable consequence of and within the terms of a concluded agreement.
214. I reach that decision, therefore, even assuming that Mr Dooley’s recollection that the topic of resignation was not discussed at the meeting on 15 February is in error. Even an incorrect recollection on his part is trumped by the fact that Mr Norris’s evidence produces the conclusion that there was a discussion but no agreement to resign or resignation. The request for resignation was inextricably linked with the outcome of the future negotiations for an agreement to purchase the shares. At best there was an agreement to agree.
215. That conclusion is substantiated by the subsequent communications when viewed together and with the oral evidence concerning their content, as well as the meeting itself. The evidence does not prove on the balance of probability that there had been a resignation or that there was an existing agreement to resign. Instead, the correspondence is far more consistent with there not having been a resignation or agreement. I refer in particular to the email from Mr Norris at 15:32 on 22 February 2016 and also to the many other points made above concerning the subsequent correspondence. This is consistent with the oral evidence.
216. In reaching that conclusion I have also taken into consideration the references to Mr Norris intending to inform Companies House and the FCA and to the minute of the meeting purportedly held on 17 February 2016. However, even if read on their own, they are not conclusive on a balance of probability test. They do not establish an

agreement at the public house. At best, viewing the evidence as a whole including my assessment of the witnesses, they are consistent with Mr Norris wanting to get on with what he anticipated would be the inevitable outcome. Further they do and cannot overcome the matters referred to in paragraph 212 above.

217. For completeness I refer to the issue whether the meeting of 17 February 2016 took place and, therefore, whether the minute is accurate. If not, it might support the conclusion that there was no resignation. The fact that neither Mrs Norris nor Ms Watts have any recollection of what was plainly a significant meeting supports that view. However, the notice of termination of appointment (the “TM01”) was filed at Companies House in electronic form on 23 February 2016 and I do not consider the issue to be material. It would affect Mrs Norris’s appointment but that is affected in any event by the fact that the appointment was in circumstances of Mr Dooley’s wrongful exclusion. Nothing turns on the date of filing of her notice of appointment either.

#### **H6) April 2016 – The Statutory Demand and the £50,000**

218. By letter dated 20 April 2016 Mr Dooley requested repayment of his £50,000 non-interest bearing loan to the company. This was met by an incorrect response from Mr Bailey that the loan had been repaid. By a statutory demand dated 14 July 2016 Mr Dooley sought repayment of his loan of £49,946.39. Although his action has been challenged on the ground that it caused considerable stress to Mr and Mrs Norris, the fact is that the demand was consistent with the 2015 financial year accounts. They described the loan as repayable on demand.
219. Mr Norris, who explained during cross-examination that the treatment of the £100,000 as loans had been tax advantageous, asked the auditors to investigate the matter. He instructed the auditors, Beavis Morgan, to address the accounting treatment. They advised “the directors” by letter dated 23 September 2016. As a result the accounts, albeit subject to auditor qualification concerning a lack of evidence, now record that the two, £50,000 loans needed to be and have been restated. This is attributed to an absence of consideration or evidence of loans. As explained in more detail above, it was dealt with by recording negative goodwill, which was released to profits in the restated accounts for the financial year ends 2014 – 2015 with the result that the restated profit for 30 June 2015 is £537,440. The balance sheet reduced the cost of investments and the creditors due within one year by £100,000.
220. There is no dispute that this occurred without the knowledge or involvement of Mr Dooley. He does not complain about the outcome but about the process. He was excluded from the instructions and the advice having been incorrectly excluded from management as a director. He was also excluded from the process even though that process was directly concerned with his interests as a shareholder. It did not cause prejudice to Mr Dooley’s interests because the restatement restored the position to what it should have been. However, it is an example of Mr Norris treating the Company as his own.
221. Mrs Norris became a director of GFS Trustee Limited on 10 February 2016. She became a director of Oaksmore Portfolios AIFM Limited on 4 November 2016. She

resigned as a director of the Company on 1 December 2016 leaving Mr Norris acting as the sole director but only as a result of having excluded Mr Dooley in reliance upon the purported resignation. Mrs Norris remained a director of Gallium Fund Solutions Limited.

**H7) 2016 to 2018 - Oaksmore**

222. Oaksmore was incorporated on 15 June 2016. Mrs Norris in her witness statement of 2 April 2019 says this at paragraphs 29-30:

*“Oaksmore Portfolios AIFM Limited was set up in June 2016 following the Petitioner’s threat of court action and our belief that our sole source of income and that of Gallium’s employees were in jeopardy. Given that the Petitioner has several income streams, as referenced above, we needed to protect our sole source of income.*

*The Petitioner has constantly claimed that Oaksmore is in competition with Gallium and therefore seeks financial compensation for loss of earnings. However, this is grossly unfair as the Petitioner and his family have benefitted from his numerous other business interests, even whilst he was nominally involved with Gallium and that Oaksmore is not in competition with Gallium.”*

223. Although Mrs Norris stated during examination that this passage is badly worded and she had only meant that they needed a different business in the light of the threat to the Company, I am satisfied that this entity was formed to enable Mr Norris to establish an alternative business for his family’s benefit. That does not establish that Oaksmore competed with the Company or that there was any breach of fiduciary duty in respect of the Company concerning Oaksmore. Nevertheless, it sets a scene suggesting that either might occur.
224. When refuting that was/is the case within his evidence, Mr Norris described Oaksmore as being principally a property development company. He also stated within his evidence in chief that *“Oaksmore simply manages property development projects”*. However, plainly, as he accepted in cross-examination, as a group of companies it does far more than that. It raises funds from investors to be used in property development and is regulated by the FCA for that purpose. It has done so first through an ISA, albeit the outcome was unsuccessful, and then through alternative investment funds. The potential similarity of this business with the Company’s business, which launches and manages property investment funds, is relied upon by Mr Dooley
225. Mr Norris also asserted in his evidence that there could be no diversion of business when the Company has far wider FCA permissions. However, the fact that Oaksmore can do far less regulated work does not mean there can be no conflict of interest and diversion of business resulting from the work that it carries out pursuant to the permissions which the Company also has. I reject this assertion and also his statement that the progress of Oaksmore’s business is to be equated with *“the same way that Mr Dooley progresses with his dental practices, property companies and technology companies”*. This is obviously an incorrect analysis. There is no suggestion that any of Mr Dooley’s other interests coincided with the Company’s business or otherwise raised a conflict of interest.

226. However, the real distinction Mr Norris seeks to draw is to be found in paragraphs 109-110 of his first witness statement and in Ms Blower's description of GFSL's business. She refers to the fact that the Company does not "*intend*" to launch its own development project funds, whereas Oaksmore does. Mr Norris emphasised that the Company provided its regulated services for third party clients. Oaksmore would not have third party clients. Mr Norris describes Oaksmore in his evidence in chief as: "*my own personal venture ... earn[ing] fees from property development vehicles created by me and owned by me solely, or with joint venture partners*". Mr Norris asserts the right to carry on his own independent business whilst a director of the Company.
227. The questions this raises are whether the "distinction" drawn is completely accurate and/or whether, in any event, Oaksmore's business produced a conflict of interest for Mr Norris and/or the other directors of the Company and Oaksmore at any time up to the valuation date; whether in terms of the nature of Oaksmore's business and the business opportunities it generates or in terms of whether Oaksmore benefits from the information and business opportunities of the Company and/or from the services the Company provides. In addition whether services were provided by the Company, including the services of Mr Norris, at the expense of the time that ought to have been spent working for Oaksmore without arm's length consideration.
228. There are two, obvious potential problems for Mr Norris's distinction. First, Oaksmore provides regulatory services for Mr Norris's vehicles and business interests. They are or may be third party clients. Second, Oaksmore raises investment funds to be invested in Mr Norris's property development projects. Not only will those funds require management but the process of raising the funds introduces the potential of conflict. For example, using Company information within Mr Norris's mind or Company connections and expertise. Indeed, those connections could even relate to the "finding" of the properties themselves when the Company provides services to funds investing in property.
229. During cross-examination Mr Norris sought to draw a distinction between the Company and Oaksmore based upon Oaksmore's work being "non-mainstream pooled investment" work. He seemed to be suggesting that it was only a technical reason why Oaksmore was FCA regulated when it was arranging the finance for business entities carrying out a property development business. This is one of the issues which is the subject of Ms Parker's disclosure submission at paragraph 83 above. I am far from sure there is a technical rationale but insofar as there is, it was far too late to raise it during cross-examination. It would be wholly unfair and unjust for the trial to have proceeded on the basis that Mr Dooley's counsel was required to investigate this and obtain information for the first time by cross-examination and without prior notice or warning of what the technical issue might be.
230. It is relevant to consider the accounts of Oaksmore when considering the business it carried out the potential for conflict. They have not been specifically referred to me at trial but filed accounts of Oaksmore Portfolios AIFM Limited are in the bundle. They are not consolidated accounts and, therefore, do not provide a full financial picture of Oaksmore and its subsidiaries. Nevertheless they assist.
231. The accounts for the financial year ending 30 June 2017 contain a strategic report which has no apparent reference to property development or managing property

developments. The business is described as being concerned instead with the launch of investment funds and the report refers to a market environment which plainly concerns the same financial market regulatory changes that affected the Company. The exploration of new business opportunities is addressed within the context of that regulatory change affecting collective investment schemes. Oaksmore's principal activity, as disclosed in the directors' report, is that of "*establishing and operating collective investment schemes*". The strategic report also refers to "*working on the launch of our first regulated fund, a property authorised investment trust*". This is contrary to the picture Mr Norris tried to draw of a company that "*simply manages property development projects*".

232. Oaksmore's directors during those financial years were all connected with the Company: Mr and Mrs Norris together with Mrs Hughes and Mr Bailey. Mr Norris was appointed on 15 June 2016, the other three on 4 November 2016. The auditors were Kreston Reeves LLP.
233. The balance sheet for 2017 records no fixed assets. Oaksmore Portfolios AIFM Limited has debtors (accrued income from debt instruments) totalling £38,529, £125,003 cash and creditors totalling (£14,033 of which £6,033 is corporation tax and the balance is accruals). Therefore, shareholder funds total £149,499 with £125,000 being share capital. £6,000 costs accrued from the Company. The operating profit resulted from net fee income and produced a 24% return on capital. There is no profit and loss account but the 2018 filed accounts show administrative expenses of £8,000 and an operating profit before taxation of £30,532.
234. The 2018 financial year end accounts record a loss but the strategic report describes the directors as being nevertheless "*generally pleased with the performance*". The principal activity remained establishing and operating collective investment schemes. The first alternative investment fund had been completed successfully and a second was completing. The Company was looking for its "*next property investment opportunity*". The net fee income increased to £140,961 from £38,529 but produced a loss of (18%), as opposed to a profit of 79%. The return on capital fell to (20%).
235. The directors were unchanged. There are no details of the sources of income but Mr Norris was taken during cross-examination to a document entitled "Oaksmore Portfolios AIFM Limited" identifying its "own funds" with reference to Oaksmore Heritage Property Limited Partnership and "*EPUT's managed for the benefit of [GFSL]*". During cross-examination Mr Norris explained that he worked on those exempt property unit trusts in order to be able to establish the Company as their trust manager. He did not explain why they were managed by Oaksmore or in what circumstances. It is another example of Mr Norris providing limited information.
236. The loss recorded in Oaksmore's 2018 financial year end accounts resulted from a turnover which had increased to £140,961 but was extinguished by administrative expenses of (£166,620). The nature of those expenses is not identified and remains opaque. The loss after tax of (£20,523) reduced shareholder funds to £128,976. Debtors had increased to £84,490 and the cash at bank to £172,558. Creditors now stood at (£128,072), however.
237. Mr Norris asserted in his evidence that the Oaksmore directors are also board members of the Company to ensure that no conflicts of interest arise or business is

diverted and the Company's board had been fully informed of Oaksmore's activities. No board minute was referred to before me by any witness and it was only during submissions that Ms Roberts identified a minute for a meeting of 4 November 2016. This confirms the first part of his assertion concerning a purpose of their appointment and expressly refers to the possibility of conflict of interest arising in the future requiring board review. The obvious observation and finding of fact from that evidence is that potential conflicts of interest and the possibility of business diversion were expected to arise from time to time. Otherwise there would have been no cause for him to have, as he said, "*invited a number of directors from [the Company] to be appointed on Oaksmore companies to ensure that [this would not happen]*". There would also have been no need for the quarterly Oaksmore board meetings, which he said were held, to address such matters.

238. However, notwithstanding that statement, these are no board meeting minutes for either the Company or Oaksmore dealing with such issues. If they exist, as Mr Norris asserted, they have not been disclosed. He has also not provided evidence of any examples of the matters they discussed or over which there would be concern. It may also be noted that whilst he provided considerable detail about the dealings of Oaksmore and the Company in respect of Oaksmore ISA (see paragraph 117 of his first witness statement), although not addressing the anticipated, potential conflicts of interest discussed at board level, this was the collective investment scheme which failed and he has not provided similar detail concerning the AIFs. Further, only Ms Hughes amongst the other Oaksmore directors has even referred to the meetings and she did not do so within her evidence in chief. When she did mention them, she provided no specific details and described them as short and informal.
239. Indeed, what stands out from the evidence is the fact that the other witnesses avoided addressing the Oaksmore issue (as explained at paragraphs 113-115 above). Mr Bailey's approach that he could not understand the questions concerning conflict because Oaksmore was set up in a manner which would avoid conflict is at odds with his appointment as a director to specifically address issues of conflict and diversion of business. His failure to refer to quarterly board meetings having been held for that purpose is significant. His evidence was inconsistent with him having participated in such board meetings, as he would or should have. His evidence undermines the case that the Company had been kept fully informed of Oaksmore's activities. I refer to paragraphs 116-121 above.
240. In all those circumstances and also taking into consideration the evidence below, I do not accept Mr Norris's evidence of full disclosure to the Company or of the Company's or Oaksmore's respective boards having discussed ongoing potential conflicts of interest.
241. In addition there is also a lack of records concerning the work the Company (including Mr Norris and the other Company/Oaksmore directors) carried out for Oaksmore. The evidence of Mr Norris was that he did pretty much everything with the help of his daughter, who developed Oaksmore's web site. He found the properties and he was responsible for the regulatory requirements. He said there were no written contracts and the Company did not work on Oaksmore's business. The work he carried out did not take long. He would work for Oaksmore in his spare time and would only have to attend site meetings every few months. The construction

company puts up the buildings and he ensured the finances were in order. Insofar as this took up time otherwise to be used for the Company, he would make up the time.

242. Although I am concerned by the employees' evidence concerning a lack of involvement (as expressed particularly within paragraphs 113-130 and 132-135 above), Mr Norris's evidence that he did everything, his description of little time being spent and of the business really only be concerned with building work does not in any event correlate with the business evident from the accounts. Namely, the setting up of Oaksmore companies, the obtaining of FCA permissions, establishing and operating collective investment schemes, the completion of one and near completion of another alternative property investment fund, the increasing turnover and the increasing administrative expenses. None of this has been explained or properly addressed by Mr Norris in his evidence and his dismissal of it as a little work in his own spare time is rejected. That is whether or not one should also take into consideration his "spare time" was taken up working for the Alpine Fund.
243. I am satisfied from the matters above and find that Mr Norris has not disclosed either in terms of documentary disclosure or oral evidence the details of Oaksmore's business which gave rise to the potential for conflicts of interest. I am also satisfied and find that he has not disclosed the extent of his work for Oaksmore which is relevant not only to whether the Company has provided services without arm's length consideration but also to whether he has used information and business opportunities which has come to him as a fiduciary officer of the Company for the benefit of Oaksmore.
244. Mr Norris has produced a document purporting to set out hours spent by the Company on Oaksmore work and to show not only that very little time was incurred on Oaksmore work, as he and his witnesses assert. It also purports to show that no charges resulted because of set off. The Company had to pay one third of the rent attributable to the premises in London rented by Oaksmore. He based that liability on Mr Skelton using one of the three available desks as a Company employee and identified a consequential debt owed by the Company to Oaksmore after setting off of £14,000.
245. A one desk equals a third of the rent approach is not a usual calculation and no contract or board minute has been produced to identify this arrangement. There is no reference to it as a related party transaction within the accounts. It is also difficult to understand Oaksmore renting the premises when it has no employees, a fact accepted by Mr Norris. He referred to himself using the office on Oaksmore business but he also said he hardly spent any time on that business. I have rejected that evidence but he has not explained his use of the offices in London for Oaksmore business.
246. Further, in his evidence in chief Mr Norris stated with reference to Oaksmore's accounts that GFSL (together with Jagan Limited and himself) paid Oaksmore's rent and that GFSL invoiced Oaksmore £37,612. On the face of it, this does not equate with the Company being liable for one third of the rent and it certainly does not equate with the Company, whether through himself or others, not providing services for the benefit of Oaksmore, a company without employees. In all the circumstances the document provided by Mr Norris for the purposes of this litigation cannot be accepted as reliable. There are too many inconsistencies in his evidence concerning

the Company and Oaksmore, too little information and a failure to provide disclosure or any supporting material.

247. Based upon the facts, matters and reasons above, I find Mr Norris's evidence to be unreliable. He has not disclosed in his evidence the true nature and extent of Oaksmore's business. There plainly was the potential for part (at least) of Oaksmore's business to produce conflicts of interest for Mr Norris and/or the other directors of the Company and Oaksmore. He has not properly or satisfactorily addressed the business opportunities Oaksmore generated or whether Oaksmore benefited from the information and business opportunities of the Company and/or from the services the Company provides without arm's length consideration. He has not explained in any adequate manner of detail why the Company could not undertake Oaksmore's regulated work or why the information and opportunities giving rise to the creation of that work was not information and opportunity derived from the use of his fiduciary position as a director of the Company. He has not properly or satisfactorily addressed the services provided by the Company, whether limited to the services he provided or not. What the consequences of this are will need to be addressed later.

#### **H8) 2016 to 2017 - The Company's Performance**

248. The directors' strategic report for the financial statements for the year ended 30 June 2016 refers to various disruptions and to changes in the market environment and regulations. Nevertheless, it states that the "*group continues to adapt and progress with all regulatory change and explore new business opportunities*". Whilst in the short term investment in developing "*innovative alternative fund structures*" reduced profits, there is the "*potential of a substantial increase in the future*".
249. The Company's turnover increased by about £150,000 to £1,653,662 and its gross profit by about £50,000 to £1,261,709. However, administrative expenses increased by about £130,000 to £1,164,206 and the profits after taxation fell to £85,241 from £231,046 (as restated for 2015). Shareholders' equity now stood at £622,683. No dividends were paid.
250. The increase in expenses was in part attributable to directors' and employees' remuneration. Mr Norris's directors' remuneration increased for the 2016 financial year to £293,730 (out of total directors' remuneration of £581,545) but in total he received £364,942 including the sum charged by Jagan Limited for his services of £71,201.
251. Employees' remuneration increased by about £130,000 from £654,853 to £763,411. Obviously, savings must have been achieved in respect of other expenses but that has not been addressed within the trial.
252. Saratoga Technologies Limited charged £3,000 for Mr Dooley and he also received a further £7,054, although this is unexplained in the accounts. He is still described as a controlling party.

253. There is no record of any related transaction between the Company and Oaksmore. That is potentially unsurprising when it was incorporated only 15 days before the financial year end. Mr Whyke has proposed that there will have been considerable pre-incorporation work when Oaksmore would need to have permissions from the FCA. However, that work has not been disclosed and it can be taken in those circumstances that any such work which ought to be charged to the Company was to be invoiced in the following financial year.
254. The director's strategic report for the 2017 financial year end in part repeated the report for 2016 concerning change but also stated:
- “Exciting new opportunities are being developed through offering innovative alternative fund structures to existing and new clients. Consequently, profitability is growing through our offering of a much broader variety of services, deepening client relationships, continuing cost management and investment in effective technology.”*
255. The previously observed optimism in the director's 2016 strategic report for the 2017 financial year at first glance appears well founded. Turnover increased to £1,844,919 and the operating profit was £176,293, an increase from £97,503. However, the operating profit was attributable to an exceptional item without which there would have been an operating loss. The expenses totalled £1,298,680, an increase of about £135,000 as against an increase in turnover of about £190,000. The exceptional item of £200,000 represented gains on investment, namely the sale of units owned in the Alpine Fund. The profit for the year after tax was £83,834. Shareholder funds stood at £706,517.
256. The 2017 financial year end increase in expenses occurred notwithstanding a reduction in total director's remuneration of about £150,000 from £581,545 to £432,488. A figure some £50,000 less than paid in 2015. Wages and salaries increased by about £56,000. However, whilst Mr Norris's director's remuneration reduced to £216,069, his total remuneration increased to £461,349 once the charges of Jagan Limited of £314,500 and his own consultancy charges of £130,780 are added. This is plainly out of line with the financial performance of the Company.
257. There is still no related party transaction concerning Oaksmore. There is no doubt, however, that Oaksmore had no employees and used the services of the Company's employees for the purposes of launching its ISA and the subsequent two AIFMs. Whilst the impression provided by the employee witnesses for Mr Norris is that very little work was carried out by them, someone had to ensure that Oaksmore could launch those funds and provide the services the funds required. It may be that most of the work was done by Mr Norris but, if so, he has not disclosed the true extent of his work. If not, the true extent of the work of others has not been disclosed.
258. GFS Corporate Director III Limited is not referred to in the accounts. It was incorporated in June 2016. Mr Norris in his first witness statement states that it was incorporated by him and *“was wholly owned by me at all times. There has been no change of ownership whatsoever”*. He also explained that it acted solely for the Company to provide a corporate director for new managed funds. At trial Mr Norris accepted that this company is beneficially owned by the Company. On his evidence it would make no practical difference because all income earned by this company will be charged to the Company.

### **H9) 2017 to 2018 - The Alpine Fund**

259. During the Company's 2017 financial year Mr Norris became entitled to his commission having been successful in obtaining funding for the Alpine Fund. Mr Norris described the work he provided to achieve the refinancing of the Fund as having been spread over a number of years. He was rather dismissive of the amount of work this involved but concluded that he could not begin to guess because it was so long ago. In any event he relied upon it being carried out in his spare time and during holidays. I do not accept his dismissive approach. He should have been able to provide a reasonable description of the work carried out and a reasonable assessment of the time spent. He has chosen not to. As to his spare time and holidays being used, I will consider that further below when addressing valuation.
260. The 2017 financial year end accounts include a £200,000 payment by the Company to Mr Norris representing his entitlement to that commission. The evidence leads to the conclusion that Mr Norris was responsible for this payment. The reason for payment by the Company with its funds of a liability owed by the Alpine Fund to Mr Norris is unclear and will be addressed further within the decision below. The decision will address the issue of whether the commission was a secret profit.
261. During cross-examination Mr Norris suggested for the first time that the Company's management agreement with the Alpine Fund required it to pay liabilities incurred by the Fund and to subsequently recoup them. That, he suggested, justified the payment but this agreement and those terms have not been disclosed. I do not accept his new evidence without them.
262. Mr Plummer on an unknown date authorised the Company as fund manager to pay the commission to Jagan Limited from the Alpine Fund's monies which it held. In consequence during the Company's 2018 financial year there was a payment from the Alpine Fund to the Company which, in effect, repaid the Company for the money it had paid Mr Norris during 2017. During cross-examination Mr Norris withdraw his concession in the Defence that for the purpose of share valuation the £200,000 is to be treated as the Company's money but as a "one off" payment. It is also accepted that a further commission of £180,000 is to be paid.

### **H10) 2017 to 2018 – The Company's Performance**

263. GSFL's July 2017 Business Plan is extremely positive not only with regard to the Company's AIF services but also in respect of additional services such as: joint venture structuring and equity raising services (through Gallium Fund Solutions Capital Limited); real property assets or property backed schemes for clients without experience or sufficient individual resources (through GFS Asset Management Limited); and as a P.E. depositary for AIFs (through Gallium P E Depositary Limited). It identifies a substantial pipeline of projects and observes that the FCA permissions meant the permitted business "*stretches way beyond simple administration and venture capital activities*". It is explained that existing relationships would continue to provide "*a continued and repeating source of fund launch opportunities*". Referrals had not declined during the recession and it was anticipated that repeat business from satisfied advisers and clients would benefit the

Company in the future. GFSL was aiming to launch a new regulated fund and three new AIFs by the end of 2018 and at least one Institutional Fund by the end of 2019. Expansion was expected and the Company had recently signed a new five year lease for its Borough Green premises to provide for growth over that period.

264. As at June 2018 the Company had £206 million funds under management. However, the Company sustained its first loss. The 2018 director's strategic report attributed it to "*exceptional costs incurred in dealing with issues arising from the activities of the Company's appointed representatives and associated costs of professional advisers*". Income had increased but it was considered necessary to secure new sources of income or to reduce operating costs to meet additional costs in the short to medium terms. There were reputational concerns due to unfair reporting concerning its appointed representatives. This is a reference to what is called "the British Steel Inquiry" which was considering the work of company representative agents and will be considered further below.
265. The consolidated accounts show that turnover increased by about £165,000 to reach £2,047,505 and a gross profit of £1,568,638 was achieved (an increase of nearly £300,000). The turnover continued to be dominated by income from the operation of collective investment schemes, a sum of £1,374,397. AIFM and investment management fees totalled just under £300,000 and depositary fees amounted to £208,000. However, administrative expenses now stood at £1,744,278, an increase of about £442,000 from 2017. There was a small exceptional item (£14,000). The loss after taxation was (£141,515). Shareholder funds reduced from £706,517 to £565,002.
266. The balance sheet identifies a reduction in current assets of nearly £500,000 but creditors were reduced by about £340,000 (principally due to a reduction in trade creditors). The reduction was attributable to debtors being reduced by about £230,000 and to a reduction in investments from £390,000 to £84,000 due to the sale of the Company's units in the Alpine Fund. Cash in bank had increased by about £62,000 to £472,822. The fall in creditors was largely due to the repayment of "other borrowings" from the previous year (£275,158), and "other creditors" (£20,675) together with a reduction in accruals and deferred income (about £75,000) but with an increase in trade creditors by some (£45,000).
267. Mr Norris' directors' remuneration increased from £216,069 but payments to Jagan Consultancy and to Mr Norris for projects reduced significantly from the previous year of £57,875 (from £114,500) and £68,519 (from £130,780). The total received for remuneration was £347,592 instead of £461,349 the previous year and £364,942 in the 2016 financial year.
268. There were sales totalling £37,612 to Oaksmore. This is the first time it is referred to within the accounts. There is no explanation for this.
269. The strategic and directors' report does not attribute the loss to the difficulties experienced by the Company as a result of "the British Steel Inquiry". It appears that the Company used or was associated with agents who were involved in the persuasion of British steel employees to transfer their company pension funds into SIPPs. One of the SIPPs which benefited from this was established by Momentum Pensions Limited and its discretionary investment manager was the Company.

270. That is very much a thumb nail sketch concerning the investigation, which began in January 2018. There was obvious potential for the Company facing higher professional fees and, subject to the result, even financial penalties. There might also be a reduction in turnover. However, subject to reference to it in Ms Blower's report (to be mentioned below), it has not featured at trial (whether in cross-examination or submissions) either in the context of liability or valuation. The Company subsequently received a "clean bill of health" concerning its role.
271. The Business Plan projected net profit for GFSL after taxation of £41,000 growing to £121,000 by the 2022 financial year end. Shareholder funds were projected to increase from £555,000 to £1,011,000 for the same period. FCA regulations meant GFSL needed capital resources of £256,000.

### **H11) November 2018**

272. GFS Corporate Director (Global) Limited was formed in November 2017. Mr Norris's evidence in respect of this company is effectively in the same terms as his evidence concerning GFS Corporate Director III Limited, subject to changing the relevant facts concerning for whom this company provided its services.

### **H12) Events Leading To The Trial**

273. By letter dated 16 October 2017 Mr Norris raised with Mr Dooley the issue of him returning as a director of the Company, continuing a discussion raised in previous correspondence involving lawyers. The letter starts on the basis that Mr Norris was writing in his capacity as the compliance officer of GFSL and of Gallium PE Depositary Limited. In essence, Mr Norris's position is that Mr Dooley must first apply to for FCA approval. Whilst Mr Norris accepted that Mr Dooley's lawyers had indicated his interest in an appointment without controlling functions and, therefore without needing approval, he said that no details had been provided by Mr Dooley and, as a result, this did not progress matters. He also wrote:

*"In addition, it has come to our attention that you completed your previous Controllars Forms incorrectly by not disclosing that you had been dismissed by Partnership Incorporations limited for gross misconduct, a matter on which you misled me personally This is a matter that I am bound to raise with the FCA, and the Form A is an appropriate manner of both disclosing this potential criminal offence and obtaining a ruling from a body whose independence is beyond question as to your fitness to exercise executive or non-executive control over the regulated companies....."*

*You have indicated that you will not complete the forms you are required to complete by law to be re-instated. In light of your continued insistence that you be re-appointed, I find myself in the impossible situation of being damned by the FCA if I re-appoint you without completing the required forms and damned by you if I do not re-instate you . In order to demonstrate that I am following due process and to involve the FCA, as an unquestionably neutral arbiter, in the question of your fit ness to hold office, I will therefore submit this application without your signature, should you continue to hold the view that the application is (1) unnecessary and (2) something that you are not prepared to volunteer to cooperate with in any event. Naturally, the chances of the application being successful without your signature are slim, but it is within your gift to do something about it.."*

274. As previously found, Mr Dooley's departure from PIL had not been based upon gross misconduct and the form filed, not by him but by PIL as it was legally bound to do, expressly declared the reason to be termination of contract. Whilst Mr Norris seeks in his defence to assert that any prejudice caused by the resignation would be cured by re-appointment, it appears plain that he placed unwarranted hurdles in the way of Mr Dooley taking that route.
275. The Petition was presented on 4 April 2018. There was no letter of claim before presentation but the matter had been the subject of dispute for some time and alternative dispute resolution had failed.
276. Standard court directions were made and followed by a hearing on 12 July 2018. Directions proceeded on the basis that liability and, if relevant, valuation were in issue. It is plain, however, that this altered on 20 September 2018. The absence of a transcript for that hearing is a disadvantage and it is unfortunate that Ms Roberts has not had the advantage of being able to inform the court of Mr Darton Q.C.'s recollection when acting at the time for Mr Norris. That does not appear to have been requested and (for the avoidance of doubt) I have no doubt that he would have provided it if asked. I nevertheless recollect that this hearing included Mr Dooley's application for a wide variety of interim relief concerned with him being reinstated as a director. That is, of course, the relief sought in the application notice.
277. The hearing was conducted in accordance with my normal practice for s994 case management. Namely to discuss and try to seek agreement on case management with a view to reducing costs and court time, insofar as that is possible. Notwithstanding the lapse of time, I certainly recollect that the parties agreed that the only issue for trial would be valuation. I am pretty certain that it was also accepted that there would be no minority discount in the circumstance of that approach and of Mr Dooley having a 50% shareholding. It would certainly have been discussed but, absent a transcript, I cannot be sure and will put that out of my mind.
278. Valuation would not be a straight forward issue because of the variety of adjustments and "add backs" to be sought by Mr Dooley. However, in the context of Mr Norris making plain through his counsel, Mr Darton Q.C. that the matter would proceed to valuation only, Mr Dooley did not pursue his application. That is also something I recollect.
279. The absence of an approved order for that day is unfortunate. The draft order sent to counsel should have been returned with comments for approval. However, what is plain is that the petition then proceeded by court order on the basis that the trial would deal with valuation only.
280. Ms Parker also draws attention to paragraph 2 of Mr Darton QC's skeleton argument for the trial in May 2019, which was in fact adjourned, in which he wrote: "*The Petition [T/I] seeks an order that Mr Norris purchase Mr Dooley's shares ("the Shares") for their full market value. As Mr Norris has always made clear his willingness to purchase the Shares the only issue is as to the price to be paid. It is this issue which is now set down for trial.*"
281. There is, however, a letter from Mr Norris's solicitors following a hearing on 28 October 2020 raising issue with a statement by Ms Parker that the trial only concerned

valuation. This issue was also raised by Ms Roberts at a hearing on 21 December 2020. Mr Dooley was unable to attend that hearing and it was adjourned to the pre-trial review on 11 January 2021. At that hearing, once it was established that liability could be determined if required (see paragraph 4 above), the pragmatic approach was taken to leave the issue raised by Ms Roberts to trial but to permit witness statements dealing with the issue to be filed and served. Not only did the pragmatic approach appear sensible in principle but both sides would want to adduce evidence before arguing the issue and there would have been insufficient available court time before the imminent trial to have a separate hearing.

282. The resulting witness statements, particularly the evidence of Mr and Mrs Norris, consist largely of argument and to that extent their content is inadmissible. However, Mr Dooley states his recollection that he decided not to pursue the interim relief sought at the 20 September 2018 hearing because the trial was only concerned with valuation. He also states that all subsequent interim applications were therefore concerned with matters of valuation.
283. Mrs Norris states that she understood the reference to “valuation only” on 20 September 2018 to be a reference to that being the only remedy left not to an acceptance that there had been unfair prejudice. Mr Norris states that there has never been a concession. Whilst he has on numerous occasions offered to purchase the shares, at no time has that been on the basis that he concedes there has been unfair prejudice. He accepts that Mr Dooley’s petition was narrowed to the single issue of valuation on 20 September 2018 but not with any concession having been made. He refutes any suggestion that Mr Darton Q.C.’s skeleton argument evidences or is to be read as a concession. His understanding of that skeleton, which I will take to mean his instructions at the time rather than it being treated as subsequent argument, is that the issue of valuation included the issue of unfair prejudice because that issue would be relevant to valuation.
284. At this trial Mr Norris has also made plain that he has resiled from his position as at 20 December 2018 when in his second witness statement he informed the court “*I am willing to purchase at such a value and without any minority discount ...*”. At that stage he was contending “*that the proper price was £250,000 and not the £2Million claimed by the Petitioner*”. I have not sought to trace when his position on discount altered, although Ms Blower’s report opines upon such a valuation.

## **I) Expert Evidence and Findings**

### **I1) Methodology**

285. Normally consideration of the expert valuation evidence would come after the decision on liability, whether on Mr Dooley’s primary or alternative cases. However, there is a cross-over between some of that evidence and the issues of unfair prejudice which make it necessary to address it next.
286. It is agreed by the experts that the shares should be valued as at 30 October 2018 on the basis of the maintainable earnings of a going concern calculated from the historic accounts. It is also agreed that the earnings should be subject to adjustments. Neither

expert, of course, specifically addressed the court's wide discretion to put right and cure the unfair prejudice.

287. The experts agree that an Enterprise Multiple (i.e. market capitalisation plus total debt minus cash and cash equivalents value divided by earnings before interest, taxes, depreciation and amortisation) ("EV/EBITDA") should be used. The multiplier is in dispute but the range, whilst significant for impact, is not so wide: 7.41x from Mr Whyke and between 5 and 6x from Ms Blower. It is the application of add backs which produce the greatest divergence of opinion. The outcome for each is that Mr Whyke's valuation for the Company is £4,345,830. His valuation of Mr Dooley's shares being 50% of that value. Ms Blowers has opined upon two bases: (i) the pro-rata basis producing a value of between £600,000/2 and 800,000/2; and (ii) applying a discount for the lack of control and marketability associated with a 50% shareholding in a private company to produce a value of between £190,000/2 and 250,000/2.
288. Neither expert has provided a separate value for the retained investment in the Alpine Fund but it is now accepted this is appropriate. I am informed it is in the region of £80,000. However, this will need to be checked and 50% of the value credited to Mr Dooley's share value.
289. As to the multiplicand, the Company's trading results have been addressed within the findings of fact above. Both experts have chosen to average the maintainable operating profit from the three financial years ending 30 June 2016-2018. Both experts treat the position as unaltered between the beginning of August and the end of October 2018. Mr Whyke proposes adjustments for each of those three years from £451,129, £636,069 and £793,304 respectively to produce maintainable operating profits of £548,632, £811,632; and £637,588. Ms Blower's adjustments are significantly less.
290. Mr Whyke has emphasised in his report and during cross-examination that his approach is not to opine upon whether the items concerned can be challenged for breach of duty or are incorrectly included for other reasons but upon whether the maintainable earnings should be altered to reflect the true value a willing purchaser would find in the Company and be willing to pay for when agreeing a price. In other words he is opining upon the value a vendor might identify to achieve a fair price from the purchaser. Ms Blower has adopted a similar approach but with very different results. I will address each of Mr Whyke's proposals in turn with reference to Ms Blower's alternative opinions when appropriate. In doing so I will reach findings and decisions upon what may be described as an "item by item" basis. However, their application to the decision upon valuation will be subject to a global assessment. It is to be noted that I will deal with the Oaksmore issue as a specific topic and not as part of another item, such as director/employee remuneration, unless otherwise stated.

## **I2) The Multiplicand and Add Backs**

### **a) Mr Norris's emoluments directly and through his service company/consultancy agreement**

291. Mr Whyke's theme is that a purchaser would identify significant, potential cost savings because Mr Norris's remuneration package (paid in part as salary to him, part as a consultancy cost to Jagan Limited and in part as consultancy costs paid to him) substantially exceeded the median of £241,000 identified by the BDO Stoy Hayward survey of AIM listed companies set out within Appendix 8 to his report. Mr Whyke has used a salary of £255,440 for 2018 with a 3% retrospective calculation for the two previous years. Instead of £363,189, £461,349 (being for these purposes £661,349 minus the £200,000 included by Mr Whyke for the Alpine Fund commission, which I will address separately below) and £347,596 for the three financial year ends to 2018, the figures he uses (see Table 1 in section of 3 of his report) are £240,777, £248,000 and £255,440. This produces add backs for each of those years of £122,412, £295,189 and £176,451 respectively. I note there are slight differences between his and Ms Blower's 2016 figures but nothing is made of this.
292. Ms Blower has also adjusted Mr Norris's remuneration to benchmark it to market indicators. In her Appendix 3, at Table 3, she has used a CEO salary for each of those three years of, £282,779, £291,262 and £300,000. On her figures this leads to excess payment add backs for each year of £82,163, £170,087 and £47,592. The overall difference between her and Mr Whyke, therefore, for each year is £40,000, £125,000 and £130,000.
293. I observe that it was not put to Mr Whyke and has not been argued that Mr Norris, as the willing purchaser, should not be subject to an adjustment to normalise earnings. The issue between the experts is which of them has identified the appropriate median to be adopted. Neither are experts in remuneration and neither has provided evidence to undermine the other's opinion except for their own opinion and the information underlying it. Nevertheless, both have experience of remuneration assessment when acting on their previous valuations and I have already referred to the experience of Mr Whyke and will do so further below.
294. However, their approach has limitations because it does not address the contractual terms agreed between the Company and Mr Norris or, in this context, between him and Mr Dooley. A reason for doing so is that those terms might explain the increases and decreases of salary which occurred during the 2012 to 2018 financial year ends. This is not a case of remuneration continually increasing at a consistent level or not altering from the level reached each year. The remuneration increases and decreases without apparent reason except for the general observation that the performance of the Company changes each year. Another reason for doing so is that it may be unfair for the shares to be valued without taking into consideration those terms.
295. From the court's perspective, the starting point is that there is no written contract or record of employment terms identifying the base salary, how to calculate any annual increases/reductions or any grounds for a performance related bonus. There is no evidence explaining the reasons behind any of the decisions to award the increases/reductions that were made. Indeed, there is no written record or oral evidence of any decision having been made. This is despite the fact that the articles require determination of a director's remuneration in general meeting. As a result, there is no evidence from which to understand why the total remuneration increased significantly for the 2015 financial year (by £207,000), reduced significantly the following year (by £107,000), increased significantly for the 2017 financial year (by £110,000) and reduced significantly in 2018 (by £113,000).

296. Those changes to his remuneration are obviously linked to the financial performance of the Company but before looking at the performance related explanation, another scene to set is that there is no evidence that Mr Dooley was consulted as a shareholder. In addition, he does not appear to have signed the accounts and there is no evidence of any board meeting approving them. Nevertheless, he does not appear to have objected to the remuneration recorded in the accounts for the financial years ending 2012-2014. It is right, therefore, as between himself and Mr Norris, that he should be taken to have accepted that the remuneration was determined during each of those years in accordance with the approach agreed or accepted by the shareholders.
297. That approach increased Mr Norris's remuneration during the 2012 - 2014 financial years in accordance with the Company's improved performance, whilst at the same time leaving sufficient net profits to allow for the payment of dividends to both of them. I do not consider it right, however, to treat the remuneration as purely performance based. The Varied Quasi-Partnership Agreement arose because it was recognised there were insufficient profits at the time to pay both a salary. It is to be implied that Mr Dooley accepted that Mr Norris would receive a base salary subject to increase in accordance with performance.
298. The increases/decreases could have been assessed by reference to gross profits but it is more likely in the context of performance related analysis and an apparent dividend policy that the overall performance was assessed. Bearing in mind the Varied Quasi-Partnership Agreement, it is also reasonable to conclude that there would be a ceiling for Mr Norris's remuneration. That is because Mr Dooley would return to executive management when the Company could provide remuneration for both. It also appears that the final quantum of the remuneration was assessed at the year-end because otherwise the improved Company performance during 2015 would not have been rewarded until 2016 and the poor performance in 2016 would not have been reflected in the remuneration for that financial year. There has been no disclosure of how that occurred but it must have been the case.
299. The 2015 accounts (using the original ones because these were the ones in respect of which remuneration was calculated) record the most substantial increase to date. They were signed by Mr Norris on behalf of the board on 8 December 2015. This was at a stage, therefore, when there was no dispute between him and Mr Dooley but the emails of 7 and 9 September 2015 evidence that both were approaching (albeit potentially from different directions) the issue of their future relationship as directors and members. This raises the issue of the extent to which Mr Dooley was involved with the decision to increase the total remuneration to £457,000. The evidence before me does not establish that he was excluded from the decision or that he did not agree to it. In my judgment the increase should be taken to be in accordance with the existing approach, agreed or accepted. There is also the feature that there is no evidence of any consideration of the payment of dividends. This has not featured at the trial and the appropriate approach is for this to be treated as a commercial decision.
300. For the four financial years 2012-2015, the total emoluments were £144,000, £178,000, £250,000 and £457,000. The Company's net profits after taxation but adding in dividends were £30,000; £197,000; £250,000; and £204,000. Yet when the net profits/losses after taxation without any dividends being paid were for the 2016-2018 financial years £85,000, £83,000 and (£141,515), the remuneration was

£350,000, £460,000 and £347,000. This certainly occurred without member involvement or approval, formal or informal. No shareholders' meeting was called and there is also no evidence of any consideration being given by the board to the declaration of dividends.

301. It is plain when reviewing the remuneration received in earlier years, that for the financial years of and after the exclusion of Mr Dooley on or about 16 February 2016, the remuneration received by Mr Norris (£350,000, £460,000 and £347,000) exceeded a base salary and did not accord with the Company's financial performance for the purposes of assessing the performance related part of his remuneration. In my judgment it also goes further than that. Mr Norris having excluded Mr Dooley from management made those remuneration decisions (perhaps with Mrs Norris for 2016) without having regard to Mr Dooley's rights as a shareholder. He/they failed to seek a decision from members upon the remuneration to be paid for the financial years ending 2016-2018. He/they failed to have regard either to the Varied Quasi-Partnership Agreement or to the articles of association. It would be unfair not to make significant add-backs for the purposes of valuation.
302. For that purpose a base salary needs to be identified and a decision made upon the performance related part of the package. The evidence of the experts provides background assistance because it demonstrates how other companies were approaching remuneration packages but it does not address the circumstances considered above in respect of the Company. In my judgment, looking at the experts' figures and the remuneration paid between 2012 and 2015 and taking into consideration the Company's financial performance and the potential for dividends, it would be right to accept a base salary by 2016 of £250,000. It follows from the Company's diminished financial performance that there should only be a small performance related increase for the profits made in the 2016 and 2017 financial years and none for 2018. It is arguable that there should be no performance related salary in the absence of members' approval. However, bearing in mind that this issue arises for the purposes of valuation, the valuation should be fair. Flexibility should also be recognised because valuation is an art not a science. I have decided that the remuneration for 2016 and 2017 should be increased to £275,000 but return to the base salary for 2018. **The add backs for 2016, 2017 and 2018 should be £75,000, £185,000 and £97,000 respectively.**

#### **b) Mrs Norris's Emoluments**

303. Mr Whyke's report accepts Mrs Norris's remuneration as "HR Director" in 2016 but does not accept the increases in the following two years. The remuneration for the three years was £63,221, £75,859 and £98,427 respectively. Mr Whyke proposes a 3% uplift after 2016 based on what a purchaser would have to pay to source a replacement. Ms Blower on the other hand identifies a median remuneration for the role of HR director outside London of £82,482 and £94,994 in London.
304. It was put to Mr Whyke in cross-examination that he had not factored in the price of staff retention or Mrs Norris's role as a financial adviser or her specific duties as a director. In response, he relied upon the base line of the 2016 remuneration and upon his experience advising on remuneration over 40 years. He currently sits on the

remuneration committee of a public company. This matter was not raised with Ms Blower but was addressed with Mrs Norris in cross-examination.

305. Mrs Norris at first attributed the increases to a bonus for having obtained new FCA qualifications but then stated that the bonus was £5,000 (although the expert evidence appears to show it was £10,000). Mrs Norris explained that there is a remuneration committee, which she sits on but she would not be involved when her own remuneration is in issue. She explained that their recommendations are then presented to Mr Norris for his decision. However, there is no written evidence of the committee sitting and no evidence from the other members. Nor does Mr Norris provide evidence of his decision making.
306. From the court's perspective of fairness, the starting point is that no contract has been produced to explain the uplifts. Second, the best evidence of reasonable remuneration is the starting figure in 2016, £63,221. Third, it is not necessarily unrealistic that there will be an increase over two years to about £75,000. Whilst that is a substantial increase and no real justification is provided other than a £5,000 or £10,000 bonus, a broad brush approach is appropriate and I find it acceptable for the purposes of valuation within the parameters of a commercial decision. However, an increase in the remuneration of about £35,000 by 2018, more than half the starting figure, requires some form of justification if it is to be considered fair. There is no justification in the evidence before me. Absent any other evidence, and there is none, this leads to the conclusion that Mrs Norris is being favoured in the interests of Mr Norris and without any consideration being given to the interests of members.
307. Adopting round figures and allowing for the element of art not science, **the add-back should be limited to 2018 and be in a sum of £10.500.**

### c) Mr and Mrs Norris's Childrens' Emoluments

308. Mr Whyke has opined that the books and records of the Company fail to support the case that the payments to Mr and Mrs Norris's children were for work carried out in the university holidays or during breaks in their education. He also observed that it is unclear how the payments were determined as market rates. The totals received between them were £9,681, £24,842 and £33,568 in the three financial years starting 2016. Mr Dooley will agree to the maintainable earnings including 50% of those amounts. His contention is that the balance should be regarded as non-recurring. Mr Whyke's findings were not challenged in cross-examination and I have not found any specific evidence from Ms Blower to undermine his opinion. She relies upon the accounts having been audited.
309. It seems to me in the absence of any documentation or other record having been shown to me to address their work, that realistically and for the purposes of a fair value the balance should be treated as connected party generosity. Alternatively I agree with the non-recurring analysis when viewed from the perspective of a purchaser valuing the shares on the basis of maintainable earnings. On the evidence before me I accept the one half deduction for 2016-2018. **The add-backs for 2016, 2017 and 2018 are £4,840, £12,500 and £17,000 after rounding up/down.**

**d) Employees' emoluments**

310. Mr Whyke has identified the following potential adjustments:

- i) Ms Watts, a connected party being Mr Norris's sister, was paid above an average administrative secretary's salary for her administrative roles, including company secretary by some £3,500 during the financial year ending in 2016. No objection is taken to that but her salary increases for the following two years were inflated if 3% annual increases are to be assumed acceptable. She received 20% increases in 2017 and 2018 and even though in part this can be attributed to a bonus, that would not be a recurring cost. She received £10,000 as a bonus for achieving her Level 4 Diploma for a Financial Adviser. The opinion of Mr Whyke takes the financial performance of the Company into consideration. The add backs proposed for those two years are £15,762 and £22,710.
- ii) Ms Hughes's year on year increases of 23% for 2016 and 2017 are rejected on grounds of excessive expenditure, as is a 33% increase in 2018. These would not be recurrent costs for a purchaser. Instead annual pay increases of 3% have been applied to a base salary of £53,500, although there is no table to identify the calculations. Insofar as the 2018 year includes a £10,000 bonus Level 4 Diploma for a Financial Adviser, this is treated as non-recurring expense. The add backs have also taken into consideration the Company's financial performance.
- iii) For Mr Skelton a 3% a year increase to a salary of £67,930 received in the 2015 financial year end has been allowed. This produces add backs for the years 2016-2018 of £20,188, £36,430 and £45,912 in circumstances of the salary paid having been £90,156, £84,715 and £95,645. This is on the basis, as I understand it, that there is no justification for the Company having made those increased payments.
- iv) Mr Cooney's remuneration is only subject to an add back for the financial year ended 2018. A 20% increase is replaced by a 3% increase and the sum received of £100,867 reduced to £5,222 to £95,645.
- v) Ms Brewer's remuneration is the subject of adjustment on the basis that a 241% increase between the 2017 and 2018 financial years should not be taken into account. Instead, there should have been an increase from £17,368 to £27,000 not £41,917. A £10,000 management bonus, also for attaining the Level 4 Diploma for a Financial Adviser is treated as a non-recurring expense. Reliance is also placed upon the Company's results to support the add back.
- vi) The salaries of all other staff members for 2016 and 2017 year ends are accepted. However, add backs totalling £36,515 are made for 2018 on the basis that the national average increase is 2.8% for that period and a 3% increase has been applied. Ms Blower has identified data from which to conclude that the average salary per Company employee has fallen since the financial year ending 2015.

- vii) Mr Bailey is a consultant and Ms Blower has accepted a reduction of 50% of his fees to cover the charges concerning the issues arising from the British Steel case. The payment of £121,328 in 2018 is reduced by 50% by Mr Whyke in accordance with Ms Blower's conclusion and by a further 33% for Oaksmore. The add backs for 2017 and 2018 are £20,000 and £80,000 (£60,000 + £20,000) respectively.
311. There was little cross-examination of Mr Whyke on these matters. Ms Roberts explained in submissions that this was attributable to the fact that she would only have been challenging his opinion and this would simply have led to him standing by it. I appreciate that difficulty but it must result from the absence of positive, contrary evidence to put to him. Insofar as facts were not challenged, they will have to be accepted unless they can be rejected on their face.
312. In my judgment it is very important to avoid questioning and substituting the court's views for management's commercial decisions. It is also important to bear in mind that these are salaries which will continue upon purchase of the shares as at the 31 October 2018 valuation. Whilst that is not the case for the bonuses based upon qualification success, it is not unrealistic to expect bonuses to be paid from time to time. I accept it is fair to opine that the increases for the 2018 financial year in particular do not appear to have taken into consideration the financial position of the Company. Mr Norris, as director, would have appreciated at the end of June 2016 that the Company's performance had deteriorated, that the position had not improved by the end of the 2017 financial year and (potentially) that 2018 would witness further decline. However, the remuneration decisions should still be viewed as being attributable to a management assessment of future prospects in the context of retaining and encouraging employees. That assessment would have been consistent with the opinions expressed within the July 2017 business report.
313. Taking those matters into consideration I have concluded that no further add backs should be made other than those agreed. Namely, 50% of Mr Brewer's fees in 2018 to cover the charges concerning the issues arising from the British Steel case. **The add back is £60,000 in year 2018.**

**e) Travel and Entertainment**

314. Mr Whyke refers to travel and entertainment doubling as a percentage of turnover during the dispute. He identifies costs attributable to Oaksmore (which I will deal with under this topic) to include expenditure relating to a residential development in Cheshire. He also identifies payments to Millwall Football Club in financial year 2018 and to "Leeds Corinthian Rugby Club" in 2017 and 2018 as non-reoccurring on the basis of reasonableness. In addition he has identified an unexplained monthly payment of £1,417.50 for the 2018 financial year totalling £12,757.
315. I have not found any basis for the payments for the residential development in Cheshire. Add backs for 2017 of £16,938 should be made. I have appreciated that the accounts have been audited but this is a specific matter of challenge for which there should be an explanation but for which none has been provided to me. The equivalent

conclusion applies to the unexplained monthly payment producing an add back for 2018 of £12,757.

316. As to entertainment, a problem for this issue is the absence of any written records; a familiar theme. This is a FCA regulated business and from judicial knowledge I understand that the FCA expects hospitality to be designed to enhance the quality of service offered to clients and for there to be a hospitality log which records how that was designed to occur as well as recording the benefits provided. However, I also note that the July 2017 Business Report refers to expenditure on marketing, advertising, promoting and entertaining having to be increased to support a marketing strategy to increase the Company's exposure in the investment market. Corinthian Sports is an events' organiser and I will accept that the payments to it and to Millwall Football Club fall within this category. They are likely to be recurring or to be substituted by an alternative marketing exercise. There will be no add backs for these items.
317. Finally the fact that travel and entertainment has doubled does not in itself establish a ground for an add back. **An add backs for 2017 of £16,938 should be made and an add back for 2018 of £12,757.**

**f) Legal Expenses**

318. I do not understand this now to be pursued.

**g) The s.166 Report**

319. It is agreed by the experts that **£48,000 should be added back for this report in the 2018 financial year.**

**h) Excessive Auditor Fees**

320. An excessive auditor's fee is identified by Mr Whyke for the 2018 financial year and attributed to Oaksmore, which pays no professional fees except for a one-off payment of £125,000 to comply with FCA capitalisation requirements. The add back proposed is £8,500 resulting from an increase in the amount paid to Beavis Morgan from £25,000 in 2016 and 2017 to £33,500.
321. This should be easily capable of resolution by the Company providing evidence from Beavis Morgan to explain their fees. If it exists, it has not been referred to me and the facts relied upon by Mr Whyke are unchallenged. There should be an **add back of £8,500 for the 2018 financial year.**

**i) Meeting Room Hire**

322. Add backs are proposed for payments to hire a meeting room in a spa from time to time. This is treated by Mr Whyke as a non-recurring expense on the basis that the

Company has a two story purpose built office building with a board room on site. There are also rental offices in London.

323. In my judgment there is no cause to decide that the bookings were not for the purpose of meetings and the choice of venue is a management decision. However, bearing in mind the reference in the July 2017 Business Report to the new 5 year lease and the expansion it permits, it is reasonable to treat this as a non-recurring expense. The add backs are **£9,708, £7,240 and £5,701 for the 2016-2018 years respectively.**

**j) Bad and Doubtful Debts**

324. Mr Whyke refers to the write off of debts owed by the Sycamore IV Fund of £50,277, £10,000 and £80,000 in years 2016 – 2018 respectively. In addition to £33,954 owed by the Romania Fund written off in 2016.
325. As to the Sycamore IV Fund (“the Sycamore Fund”) of £50,277, the essence of the case for an add back is that this debt should be available to set off against a loan of £300,000 made to the Company by the Sycamore Fund in the 2018 financial year. That is even assuming that debts connected with the Sycamore Fund, described as enjoying ongoing commercial success in a letter by Mr Norris dated 7 February 2020, could in any event be treated as a bad debt.
326. In my judgment whatever the position at the date of write off, there appears to be no reason why the Company should not set off the debt against the loan repayment. An internal write off is not contractually binding against the Sycamore Fund and no explanation has been provided as to why a purchaser would not anticipate that the Company would do that.
327. Mr Whyke opines that the Romania Fund write off should not have been written off when the Fund is commercially active and engaging with the Company two years later. The same point concerning a write off not being contractually binding arises. It may be (and this is not a finding) that the Fund was unable to pay the debt two years ago but this does not mean that the Company cannot pursue the debt now. There is no evidence before me to establish the debt cannot be repaid.
328. Ms Blower has opined that there should always be provision for bad debt because it will inevitably occur in all businesses. She has replaced the specific write offs with a sum of £60,000 for each year. However, that does not address the points above and the “always provide” approach should be achieved by taking the three year average for the 2016-2018 years of what was correctly written off subject to any evidence to explain why that would be inappropriate or insufficient. There is no such evidence. **The add backs for 2016 total £89,000, for 2017 is £10,000 and is £80,000 in the 2018 financial year.**

**k) Professional and Legal Expenses concerning the British Steel Inquiry**

329. Mr Whyke and Ms Blower agree that **£26,500 should be added back in the 2018 financial year end.**

**l) May 2017 Auditor's Valuation Report May 2017**

330. Mr Whyke describes this as a non-recurring expense being a report for this dispute. No answer to this has been proposed. **£4,500 should be added back into the 2017 financial year.**

**m) 14 Ashbee Court**

331. This item of monthly expenditure is described by Mr Whyke as "*unexplained rental expenditure*" entered into the "*TN Loan Acct*" and totalling £13,200 for years 2017 and 2018. He is unable to identify how that account works. No answer to this matter has been proposed except for the fact that the accounts have been audited. There is no reason before me to indicate why this item of expenditure could not be readily explained for the purpose of valuing the shares to be purchased by Mr Norris. In the absence of an explanation **£11,000 should be added back into the 2017 financial year and £2,200 into the 2018 financial year.**

**n) Oaksmore**

332. Mr Whyke has applied a 33% deduction against the remuneration of Mr Norris and seven employees of the Company who are officers and/or employees of Oaksmore to cover the cost of their time working for Oaksmore when they are paid by the Company. This does not apply to Mr Cooney. The specific evidence relied upon is summarised as follows:
- i) Mrs Norris, has a number of duties and roles with Oaksmore including: Director; Marketing of Oaksmore ISA; She holds regulatory positions within Oaksmore of CF11 Money Laundering Reporting; CF30 Customer Facing; CF1 Director. Oaksmore's marketing material describes as follows: *'Director of Oaksmore Portfolios AIFM Limited, she has worked on the set up and development of the Oaksmore Isa and continues to be fully involved.'*
  - ii) Ms Watts is company secretary for 11 Oaksmore companies.
  - iii) Ms Hughes, an appointed director, is described in Oaksmore's literature as a director with his work to include launching new investment schemes, carrying out AIF due diligence and managing the administration involved in the creation of investment schemes.
  - iv) Mr Skelton promoted Oaksmore's ISA and manages a residential development at Picton Farm. He has responsibility for marketing. He also sources other sites. He oversaw a survey (1160 people) on "*investors' savings fears*" on its behalf. He now works for Oaksmore full time, according to the accounts.
  - v) Mr Bailey, an appointed director, has a number of regulatory positions for Oaksmore (including CF1, CF10, CASS Oversight and Compliance Oversight

of its ISA). Mr Whyke relies upon the Defence referring to Mr Bailey's appointment as a consultant for the Company being "*to prevent the incidence of any conflicts of interest between the Company and Oaksmore*". Taking that into consideration together with criticisms quoted from the s.166 Report, he concludes that the costs of Mr Bailey's consultancy are not direct costs attributable to the Company's day to day trading and should be reallocated to Oaksmore.

333. Mr Whyke explained during cross-examination that an absence of records identifying the time and/or the work carried out by Mr Norris and the Company's employees has caused him to have to assess the probable time spent based upon his knowledge and experience of the work required for a company operating an ISA and later two alternative investment funds requiring compliance with FCA requirements. The add backs for Mr Norris for the financial years ending 2017 and 2018 are £81,840 and £84,295 respectively. The add backs for the others are substantial.
334. Ms Blower has valued Oaksmore on a net asset basis producing figures of £149,499 and £128,976 for the 2017 and 2018 financial years. In essence she makes the point that this start-up company is in the early stages of development and would and could not have required or undertaken the liability for services of the scale opined by Mr Whyke. She describes the level proposed as uncommercial and unrealistic, three times its turnover and 112 times its profit. She states that the evidence she has seen indicates minimal activity in Oaksmore.
335. It is quite apparent that the difference in approach returns to the problem that Mr Norris and his witnesses have not properly addressed this issue and neither has his/the Company's disclosure, except to the extent that the explanation is an absence of relevant documentation (see paragraphs 222-247 above). I will address this further below when deciding liability and valuation.

#### **o) The Alpine Fund Commission**

336. The £200,000 received by Mr Norris and the additional £180,000 for his consultancy fees from the Alpine Fund is wrapped up within the issues of liability. I will address it separately below.

#### **I3) The Multiplier**

337. Next, the multiplier: Mr Whyke refers to ratios for quoted companies in the FTSE and then takes into consideration the BDO Stoy Hayward Private Company Index. He agreed during cross-examination that the first is no more than a piece of information to establish a top floor ceiling. The second is potentially more realistic because it applies to private companies but he also agreed that this too was the product of companies which do not equate with the Company. Therefore whilst the Private Company Index for the 2019, second quarter shows an average EV/EBITDA ratio of 10.40x, it is not surprising that his 7.41x multiple (which I have understood and assume to be an EV/EBITDA ratio) is considerably lower. The reality is that those

two sources of information did not significantly determine his opinion. It also follows that criticisms during cross-examination of his reliance upon them fall away when that reliance was of little relative importance.

338. In those circumstances it is unclear from section 3 of his Report, which purports to explain the multiplier, why he opined 7.41x. Sub-paragraph 3.11 refers to “*using the above*” sources. The answer in cross-examination was that it is based upon experience, which enabled him to value key determinants. These determinants are identified at paragraph 3.4 of his report as: size; “perception” of the market; competitive advantage; anticipated future growth; any “threats” to maintainable earnings where, as here, the company depends on a few key individuals. Subject to considering Ms Blower’s report, I accept that this opinion based upon experience is valuable but there is an absence of comparable examples and of detailed reasoning.
339. Ms Blower has also considered current outlook and borne in mind an overview of the historic performance of the UK Fund Management Industry. She has made cross-checks by using a variety of alternative tests. Although her report might be read as applying, in part, a multiple of assets under-management valuation, she confirmed in cross-examination that she has not done so. Her multiplier ratio is EV/EBITDA based. She accepts that the enterprise value will be the same as the equity value for the Company. Her opinion places the Company at the lower end range of the multipliers for the comparables identified for her EV/EBITDA multiple, a range between 12.9 and 5.8.
340. Those multipliers are first identified in paragraph 8.2 of her report. She agreed, however, that the companies chosen are on an entirely different scale to the Company. I need only mention Jupiter Fund Management, Brewin Dolphin Holdings Plc and Caledonia Investments plc to illustrate that. The same point applies to her table of relative growth at paragraph 8.7, even though she identifies consistency, and to the operating margins at paragraph 8.9.
341. This means that whilst I do not ignore the range identified from those comparables, in the sense that it provides a form of bench-mark, and her assessment of the Company’s value at the lower end of the scale, her evidence does not assist in explaining the causes of the differences between her ratio and Mr Whyke’s or why Mr Whyke’s should be disregarded in favour of hers. The evidence of both experts remains a “my opinion is right, therefore his/her opinion is wrong” approach.
342. Ms Blower has referred to recent fund management sector transactions in Appendix 6 to her report but the companies and deal values, whilst smaller than the previously mentioned comparables, are still quite different in scale. There are only two with values below £10 million and included within the list is even Towry Holdings Limited (albeit by far the most extreme contrast). So many other different factors will have been relevant compared with the Company for each comparable and it is not surprising that a very wide range of multipliers is produced. I agree with her opinion that only limited reliance should be placed upon them.
343. What is needed for the sale of shares in a private company of this size is better comparable information. Unfortunately, as explained during cross-examination, the information of BDO Stoy Hayward derived from their extensive experience advising in the sale and purchase of private companies which would be potentially comparable

is confidential and could not be accessed. This includes the information Ms Blower will be aware of from her own experiences. The reality, therefore, is that her opinion is also derived from her experience without disclosure of the facts established by that experience. This is the same problem as is to be found when considering the report of Mr Whyke.

344. However, Ms Blower has based her opinion upon the similar key determinants of value summarised above in respect of Mr Whyke. In paragraph 9.2, albeit within the context of the above-mentioned comparables, she has identified the importance to her opinion of size, limited diversification, profit margins, decline in profitability, concern over the lack of new fund launches in financial year end 2018 and the Company's reliance upon Mr Norris.
345. I would have expected discussion between the experts to bridge the gap between them. It is one of the reasons why the directions include a requirement that there should be discussions between them after the exchange of their reports. It is regretful that this has not occurred.
346. Ms Blower has also addressed the following additional issues: whether consideration should be given to (i) Mr Norris becoming the controlling party through purchase; or (ii) to the purchaser having a lack of control because of Mr Norris's 50% shareholding; and/or (iii) to a lack of marketability. She accepted during cross-examination that the latter will not be relevant when there is a willing purchaser, Mr Norris. As to the first, she explained that this would be part of the multiplier assessment. The second issue will depend upon the unfair prejudice decision. I will address these matters further when reaching my valuation insofar as it is necessary to do so.
347. In addition she opined that the valuation as at October 2018 would have been materially affected by the ongoing FCA investigation into the British Steel Inquiry. She referred to the potential for adverse publicity and a negative impact on its market value. She opined that it is highly unlikely there would be any interest in the acquisition of a 50% shareholding in the Group (which does not confer control) until the investigation is resolved. There is also an added risk of potential penalties/financial redress, in addition to the risk that the business will not continue as a going concern. She considered a 30% discount may be appropriate but on her valuations this would produce far too high a deduction and she proposed that it should be given effect by choosing the lower end of a valuation.
348. On the other hand, this is a matter which has hardly featured at trial whether in evidence or submissions. I will also address it further below.
349. Before doing so, I need to address liability bearing in mind the need to establish jurisdiction and the relevance of findings of unfair prejudice to the valuation decision.

#### **J) Decision – Liability – Mr Dooley's Primary Case**

350. Mr Dooley's case (primary and alternative) must be limited to his claim against Mr Norris because he is the only person against whom relief is sought.

351. As to the primary case, I do not know which side first introduced the concept of a “concession” having been made by Mr Norris but it introduces an incorrect analysis of what occurred at the hearing on 20 September 2018. The facts as set out at paragraphs 276-284 above establish that the Court’s order that the trial would only address valuation resulted from case management discussion and consequential agreement. That did not involve or require a concession accepting there had been unfair prejudice. It was an agreement which either expressly or impliedly relied upon a decision by Mr Norris that he would not oppose the case of unfair prejudice.
352. It cannot be judged whether that was expressly stated without considering a transcript. However, it is obviously to be implied because there could only be a trial limited to liability if Mr Dooley established unfair prejudice (see paragraph 79 above). The fact that Mr Norris would not be challenging the claim of unfair prejudice did not mean he conceded it. It meant it would have to be proved without opposition. That step could be taken by relying upon the contents of the Petition and its statement of case.
353. In other cases that approach might cause difficulty. It is important to know what prejudice has been caused for the purpose of valuation. However, in this case proving exclusion from management, which the petition read on its own without opposition plainly establishes, would establish the jurisdiction to value the shares. The resulting trial for valuation would then determine the issues concerning adjustments to and add backs for the accounts. The valuers would be able to opine subject to the Court’s findings on those issues.
354. That analysis means the answer to the question whether Mr Norris can now resile from that agreement does not depend upon whether he can withdraw a concession. It depends upon whether the order for trial should be reviewed. That is a decision which should concentrate upon general principles applicable to review, the application of the overriding objective and the court’s inherent jurisdiction.
355. In this case the request to defend, instead of not opposing, was not raised until very late in the day in procedural terms. In that circumstance it is reasonable to anticipate that the Order would not be varied provided prejudice to Mr Dooley would otherwise result. For example, if the trial would have had to be adjourned because the parties were not ready. It is unlikely that costs would be an adequate remedy.
356. However, that reasonable anticipation must be affected by the fact that the parties accepted at the pre-trial review that a trial on liability could proceed if appropriate (see paragraph 4 above). It has proceeded and, as a result, it would be inappropriate to decide this matter purely upon the Petition and its statement of truth. I appreciate that may appear unfair to Mr Dooley because he has lost this primary case due to his own preparation having avoided prejudice. Nevertheless, the Court is concerned with the position as it is and must seek to ensure justice is achieved in that circumstance. Hypothetically, for example, the Court could not have ignored the fact of resignation at the meeting in the public house had that fact been established by the evidence. I turn to the issue of liability.

**K) Decision – Unfair Prejudice Liability**

**K1) Resignation/Exclusion**

357. The findings of fact above establish a clear case of unfair prejudice as required by *section 994* (see paragraphs 55-59 above). The bench mark for liability exists, the principal act of unfair and prejudicial conduct having been Mr Dooley's exclusion from management in breach of the terms of the Varied Quasi-Partnership Agreement and in breach of the Articles of Association. The findings of fact are at paragraphs 183-217, specifically at 212-216 above. It is obvious that this was an unconscionable act concerning the conduct of the Company's affairs which has caused unfairness and prejudice to Mr Dooley as a shareholder.
358. A consequence of Mr Norris's actions, involving a breach of *section 171 of the 2006 Act*, is that the appointment of Mrs Norris by Mr Norris alone was also in breach of the terms of the Varied Quasi-Partnership Agreement and in breach of the Articles of Association. The passage quoted at paragraph 58 above from the judgment of Hoffmann LJ, as he then was, in *Re Saul D Harrison & Sons plc* (above) is apposite for Mr Norris's actions.
359. The fundamental position, therefore, is that Mr Norris gained and exercised absolute control over the Company without reference to the rights and interests of Mr Dooley. That conduct as a whole both at the time of exclusion and following constituted unfair and prejudicial conduct and results in the Court having jurisdiction under *section 996*.
360. Some reference has been placed from time to time to a subsequent offer for Mr Dooley to resume his appointment as a director. That did not feature in final submissions and understandably so. First, the exclusion broke the trust and confidence underlying the Varied Quasi-Partnership Agreement. Second, in the context of the breakdown in relations, it would be unrealistic to anticipate that a reappointment would in fact lead to Mr Dooley being able to undertake his duties as a director together with Mr Norris. Third, there was a fundamental problem at the time, namely that an issue was raised with the FCA by Mr Norris concerning the consequence of Mr Dooley having been dismissed from PIL for gross misconduct. The finding that this was a baseless assertion means that the details need not be addressed either in the findings of fact or here. The point is that Mr Norris created a formidable barrier preventing the offer from being accepted (see paragraphs 150-153 and 273-274 above).

## **K2) The Alpine Fund**

361. Other actions of Mr Norris which constituted unfair and prejudice conduct were his dealings with the Alpine Fund. First, that he entered into a personal contract in breach of his fiduciary duty. The findings of fact are at paragraphs 162-165 above. The law identified at paragraphs 64-68 above applies. The provisions of *section 175 of the Act* as quoted are clear. The strict, “no conflict” rule applied to this transaction because the information concerning it and the opportunity to exploit it arose from the connections between the Alpine Fund and the Company. Those connections had existed since 2011 and the commission contract specifically concerned the fund with which the Company was engaged. As a result, liability arises from the mere fact of profit and the passage from the speech of Lord Wright in *Regal (Hastings) Ltd v Gulliver* (above) applies. I agree with Ms Parker’s submission that the principles within the judgments in *Re Allied Business & Financial Consultants Ltd, O’Donnell v Shanahan* (above) equally apply (see paragraphs [66-68] above).
362. Applying *section 175 of the 2006 Act*, it cannot be and has not been argued that the situation could not reasonably have been regarded as likely to give rise to a conflict or that the matter had been authorised by the directors in the manner specified within *sub-sections (5) and (6)*. There has been no authorisation and the evidence indicates it was kept secret. As the statute expressly provides, Mr Norris exploited “... *information [and] opportunity (and it is immaterial whether the company could take advantage of the property, information or opportunity)*”.
363. Second, following Mr Dooley’s exclusion, Mr Norris caused the Company to pay him £200,000 from its own funds as found in paragraphs 259-261 above. Mr Norris and Ms Blower have sought (independently) to justify the payment on the basis that no loss resulted once the Company obtained payment from the Alpine Fund. That is not a justification and does not avoid the unfair prejudice that resulted from Mr Norris as a director having breached his duty to avoid conflicts of interest and committed misfeasance by receiving company funds to which he is not entitled. It is not asserted that the Company decided to lend him the money. This possibility of fact was raised by me but was not adopted. It is notable in this regard that no-one else who has given evidence appears to have either noticed what was happening or understood it. It is a further example of him not involving Mr Dooley following his exclusion. There is no doubt that Mr Norris caused this payment by the Company. The best that might be said is that the prejudice was short term because of the subsequent payment. However, this ignores the “*fundamental importance to shareholders that the directors should observe their fiduciary and other duties*” (Hoffmann LJ, as he then was, in *Re Saul D Harrison & Sons plc* (above)) and the element of secret profit.
364. Third, whilst the Company has been repaid its payment to Mr Norris by the Alpine Fund, he has retained the profit, the payment of £200,000, for which he must account because of the “no conflict rule”. He has not paid the Company. These are all matters unfair and prejudicial to Mr Dooley’s interests as a member. That sum should be returned to the Company with compound interest at the trustee rate. He will also have to account for any further commission received. The £180,000 yet to be paid is to be treated as an asset of the Company. *Sections 175 and 176 of the Act* apply.
365. In the context of a valuation, the Defence, as Ms Blower proposes in her expert report, is that the £200,000 should be treated as though it was paid to the Company but as a

“one-off” payment. Whilst, Mr Norris during cross-examination did not recollect that to be his defence and resiled from repayment, he was wrong to do so for the reasons above. However, the “one-off” payment issue stands leaving the question whether it should be subject to a multiplier. I will address that further when deciding valuation.

### **K3) Oaksmore**

366. The findings of fact (in particular the section at paragraphs 222-247 above) establish that Oaksmore does far more than “*simply manage property development projects*”. It raises funds from investors to be used in property development and is regulated by the FCA for that purpose (see paragraphs 224-229 above). Its directors’ reports identify its business includes establishing and operating collective investment schemes (see paragraphs 230-235 above). Mr Norris’s own evidence (see paragraph 237 above) is that he appreciated that conflicts of interest would arise and, as a result, required the appointment of Company officers/employees/consultants as directors of Oaksmore. I am satisfied that the formation of operation of Oaksmore as his vehicle gave rise to the potential for a breach of his duty under *section 172 of the 2006 Act* and of the “no conflicts rule”.
367. Ms Roberts submits that no breach of duty has been established. In particular, no misuse of information or actual breach of the “no conflict rule” and no provision of services without consideration. However, that does not take account of a fiduciary’s obligation to provide reasonable information concerning their dealings or of a director’s obligation to avoid conflicts under *sections 175 of the 2006 Act*, the obligation of full and frank disclosure under *sections 177 and 182 of the 2006 Act* (see paragraphs 64(c-g) above) or the shift in the evidential burden of proof at trial.
368. The extent to which those matters each require information to be provided will depend on the circumstances. A relevant circumstance is the fact that Mr Norris’s evidence that the Company’s board was kept fully informed has been rejected (see paragraphs 237-240). Mr Norris has not provided reasonable information to establish that conflicts did not arise or as to the manner in which conflicts arose and were addressed. He has not established that he did not use information and business opportunities which had come to him as a fiduciary officer of the Company for the benefit of Oaksmore (see paragraphs 241-247 above). He has not met the burden as a fiduciary director or in the circumstance of the findings based upon the evidence in support of the Petition shifting the evidential burden of proof. The nature of the relief to be applied will need to be considered but his failings mean his conduct has been and is unfair and prejudicial to Mr Dooley’s interests as a member of the Company.
369. Nor is there any proper or adequate written evidence addressing the work carried out by Mr Norris and/or others paid by the Company for Oaksmore. Undoubtedly considerable work has been required to establish Oaksmore, to obtain FCA permissions, to launch the ISA and subsequent AIFs and to manage the AIFs. Whilst the accounts of Oaksmore Portfolios AIFM Limited reflect its start-up status, that does not mean this did not require a considerable amount of time, effort and skill. In addition, there are the other companies within Oaksmore to consider. Mr Norris’s evidence attempting to play down the extent of the work (even if undertaken solely by

him) is rejected. I have found his evidence to be unreliable and do not accept that all of his work was carried out in his spare time. (see paragraphs 241-243 above).

370. It follows that it is established on the balance of probability that Mr Norris failed to provide the time and effort required for performance of the duties he owed the Company for which he was being remunerated because of his work for Oaksmore. The extent to which this occurred will need to be addressed within the context of valuation. This was a further unfair and prejudicial action in breach of his fiduciary duties. It is no defence that there was no contractual restriction upon his ability to carry out other work. The point being that he would be in breach for failing to carry out the work for which he was contracted as a full time executive director.
371. It equally follows from the facts (although in the context of valuation there must not be double counting) that there has been no account based on reasonable information of the benefits received by Mr Norris and Oaksmore from the services the Company provided to it, whether limited to the services he provided or not (see paragraph 247 above). His conduct is unfair and prejudicial to Mr Dooley's interests as a member of the Company.

#### **K4) Remuneration/Dividends**

372. Whilst remuneration and dividends have featured at trial in the context of valuation, the findings at paragraphs 300-301 above make plain that Mr Norris ignored Mr Dooley after his exclusion when addressing how much Mr Norris should be paid for the 2016-2018 financial years. It is also apparent that there was no consideration of any distribution of the accumulated profits when reaching his decisions or otherwise (noting paragraph 63 above). The latter probably did not cause prejudice based upon the Company's financial position reported at the time (i.e. ignoring add backs) but the former is another illustration of Mr Norris ignoring the Company's constitution (see paragraphs 300-302 above).

#### **K5) GFS Corporate Director III Limited and GFS Corporate Director (Global) Limited**

373. Mr Norris's original position was that he owned GFS Corporate Director III Limited and GFS Corporate Director (Global) Limited but that they were of nominal value because they provided services for the Company at no expense to it. The position has changed because these are now assets to be included in the Company's balance sheet. However, there is no suggestion that they have other than nominal value. Therefore, it is necessary to consider this matter further whether in the context of liability or valuation.

## **L) Valuation**

### **L1) The Valuation Background**

374. Mr Norris will be purchasing 50% of the issued share capital of the Company resulting in him having full ownership of a company which has been established for some ten years, has a wide variety of existing FCA permissions and has had successful results until the 2018 financial year. As a consequence of his unfair and prejudicial conduct Mr Norris will no longer face the prospect of Mr Dooley returning to be an executive director or, therefore, of the Company's gross profit being used for his remuneration. Nor will he need to consider Mr Dooley's interests as a member in the context of declaring dividends.
375. Absent add backs, the key features for valuation would be the decline in financial performance during the 2016 and 2017 financial years and the loss incurred in 2018. This would not only impact upon the multiplicand but also raise serious questions concerning the multiplier. The reasons for the deterioration would need to be identified and forecasts assessed to ascertain whether this business will be able to continue as a going concern in future years and, if so, what its prospects might be. In this case, a real issue would be to what extent the Company's business model was sustainable when its increasing turnover did not appear to cover its increasing costs. The potential for a low valuation is apparent.
376. Those matters would produce for a purchaser the need to be analyse why an extremely healthy 2015 financial year (referring to the original accounts) had led to the 2016 downturn. Increased costs had already been incurred during 2015 to address the introduction of AIFs and whilst that set off the increase in turnover, profits after taxation had still been just above their 2014 level (see paragraphs 174-176 above). This would not suggest the decline witnessed during the 2016 financial year. In addition, the fall in profits in 2016 and 2017 does not appear to fit with the expectation to be found in previous years' strategic reports (both for 2015 and 2016). Namely, that AIFs offered the Company a great opportunity (see paragraphs 173 and 248 above). That observation might be considered particularly pertinent by a purchaser when the 2016 profits depended upon the investment gain from the sale of the Alpine Fund units (see paragraph 255 above).
377. A possible explanation is that those deteriorating results were attributable to a delay in fruitful results. This might be consistent with the increased expenses for both years. Another explanation might be that the increases in administrative expenses were controllable, such as remuneration (see paragraphs 249-251 and 255-256 above), but had not been controlled. Another possible factor to consider would be whether the formation and business start-up of Oaksmore by Mr Norris and/or the time spent to secure his Alpine Fund commission had an adverse effect. There were still no reported related party transactions within the accounts to indicate any benefit for the Company (see paragraph 257 above).
378. The contrasting optimism to be found in the strategic and directors' reports for 2016 and 2017 when compared with the subsequent years' results is also to be found within the extremely positive approach of the July 2017 Business Plan. It certainly evidence that management, Mr Norris, was anticipating and had good reason to anticipate a successful future notwithstanding that the financial year ending 2018 would bring the

Company's first loss. This is supported in addition by the willingness to increase employee remuneration, particularly for the 2018 financial year (see paragraph 312 above) The explanation for the loss in the 2018 year end accounts supports that indication. Mr Norris attributed it to exceptional costs attributable to the British Steel Inquiry (see paragraph 264 above). The projected net profit identified in the Business Plan would take time to grow but it was expected to reach its highest level compared with past performance by the 2022 financial year end.

379. The add backs I have accepted total (with rounding up/down) £178,550, £247,178 and £368,158 for those three years. The resulting figures provided by the experts for the EBITDA for the financial years 2016-2018 read: £292,186; £241,110; and £226,355 (assuming the £200,000 Alpine Fund commission is an exceptional payment and without addressing the receipt of additional Alpine Fund commission nor Oaksmore). Those figures would have enabled a 50% shareholder to potentially receive dividends of at least £50,000 in each of those three years taking a reasonably conservative declaratory approach. Absent dividends, shareholder funds would have stood at over £1.15 million applying those profits to the profit and loss reserves of the restated 2015 accounts.
380. The facts and matters above would lead to a vendor of shares identifying the favourable future returns to be anticipated, whilst the purchaser would be emphasising the risks. Nevertheless this scenario would play out in the context of poor results for the three relevant years. It is the add-backs which change the picture. They will make a real difference not just to the multiplicand but also to the assessment of future prospects and risks in the context of the multiplier.
381. This is certainly a positive background for the purposes of valuation when taking into account the directors' reports, the Business Plan, the wage increases and the fact that no consideration has yet been given to the Alpine Fund commission, the Alpine Fund unit assets or to Oaksmore.

## **L2) The Alpine Fund**

382. It is agreed that the valuation will need to include the value of the Company's units in the Alpine Fund. This will be added to the value of the Company derived from its measurement by EBITDA and the multiplier.
383. Plainly the payment by the Company to Mr Norris has no effect upon valuation because of the subsequent payment by the Alpine Fund to the Company, albeit in a different financial year. Equally plainly, for the purposes of valuation the Company's accounts must be treated as including the claims for repayment of the secret profit of all the commission received by Mr Norris and interest and the £180,000 yet to be received subject to hearing any further submissions concerning whether that sum will be paid. The difficult question is whether the £200,000 should be treated as a "one-off" payment (see paragraph 365 above). Ms Parker did not accept that the Company could not have carried out the commission work and submitted that on the face of it, this was work entirely within the business of Gallium Capital Limited which provides equity raising services. Ms Roberts submitted that the distinction was that this commission involved the provision of financial services in France which the

Company was not licensed to provide. Ms Parker submitted that the evidence of Mr Plummer established that this was incorrect provided the company concerned acted as an agent for him.

384. In my judgment it is right to approach valuation on the basis that this specific commission, whilst it is to be treated as an asset of the Company, was a one-off on the facts. There is no evidence to suggest that this specific work will repeat itself. However, that is subject to two separate points potentially relevant to valuation. The first is that the time taken on that work could have been carried out on other work and the Company would potentially have benefited financially as a result even if the opportunity offered by this commission was unique. Second, the Company through its director/employee (with or without Gallium Capital Limited) has the skills and expertise to provide work of that nature, certainly in this country. It is a business opportunity which should be borne in mind as part of the assessment of the value of the Company.
385. Application of this potential value is a good example of why valuation is an art not a science. It also sustains the approach that an item by item approach must be subject to a global overview. The value of that opportunity cannot be specifically valued. It is also not possible to assess the loss of time for the Company when Mr Norris has not provided details of the time he spent (see paragraph 259 above). It is also a route which needs to be approached with some caution when it is to be considered within the context of Oaksmore work. Working full time as the executive director, does not mean that 100% of time is spent in that role. Mr Norris's failure to provide detailed information makes it extremely difficult to assess time on that basis but this potential overlap between Alpine Fund commission and Oaksmore work and between full time work and available spare time needs to be borne in mind. In my judgment the right approach in all those circumstances is to bear in mind the potential for such business opportunities as a part of the overall value of the Company when deciding the multiplier to be applied. Subject to that, commission received and to be received will be added to the value of the Company derived from its measurement by EBITDA and the multiplier.

### **L3) Oaksmore**

386. The fundamental problem for the valuation insofar as Oaksmore is concerned is the absence of information from Mr Norris. This has been identified in paragraphs 366-371 above and for the reasons given does not enable him to avoid findings of unfair and prejudicial conduct. However, it also means that the Court is unable to address any evidence of detail dealing with whether in fact the valuation should include sums attributable to breaches of *section 172 of the 2006 Act* and the equitable "no conflict rule"; whether in terms of secret profits, failure to account for benefits received or failure to pay for services provided. I do not have, for example, the information from which to decide with accuracy whether Oaksmore has benefited from information and business opportunities which came to Mr Norris (or anyone else at the Company) as a fiduciary of the Company. Nor to decide whether Oaksmore has benefited from services provided by the Company for which it has not provided full consideration.

387. The normal approach in those circumstances would be for the court to order an account and enquiry, potentially awarding an interim payment and/or either delaying completion of the sale of the shares or requiring security to be granted over them pending the outcome and any final payment (noting the court's power referred to in paragraph 70 above).
388. Mr Whyke's solution is to apply a 33% reduction for relevant Company expenses. However, he accepted that this is really a "guesstimate", albeit one based upon his background knowledge and experience of FCA business requirements. It is not one which the Court can adopt. Valuation may be an art but it cannot be speculative (see paragraph 73 above).
389. In submissions both Ms Parker and Ms Roberts, having taken instructions to address this possible scenario, requested a final decision at this stage to the extent that is possible not an account and enquiry. Neither side wished the matter to be prolonged.
390. In those circumstances I will provide an indication of a potential solution. However, if the solution is not agreed by both parties, this part of my judgment is to be read subject to a further decision before handing down. Namely, as to whether the solution should be varied or whether I should order an account and enquiry instead. The parties will be able to make submissions. This is the fair and just approach reflecting the fact that although the solution arises from the parties' request, they should have the opportunity to address it in submissions absent agreement.
391. In those circumstances I provided an indication of a potential solution within the draft judgment sent to the parties in the normal manner. The draft explained that if the solution is not agreed by both parties, a further decision would be required before handing down after further submissions. The decision to be made being whether the solution should be varied or whether an account and enquiry should be ordered instead. That was the fair and just approach reflecting the fact that although the solution arose from the parties' request, they should have the opportunity to address it in submissions absent agreement.
392. I identified two possible solutions that I considered potentially, most appropriate. First that the or a part of the value of Oaksmore should be included in the valuation of the Company. Second, the add backs should include an assessment of time spent on Oaksmore matters by Mr Norris (i.e. assuming he carried out all the work) with the value being influenced by the inevitable resulting benefit for Oaksmore's goodwill.
393. The problems with the first possibility are that I do not have consolidated accounts, there is no expert evidence from Mr Dooley and it is bound to be a rough and ready valuation that may or may not be fair. The problem with the second is also its inevitably, rough and ready calculation and there is above-mentioned potential for some work being carried out in spare time. Finally, for both there is the problem that the parties had left me to such a course without submissions either as to the method or the content of the valuation.
394. In the draft judgment I considered the second option the most appropriate. That was expressly on the basis that there is a desire from both parties for a 'clean break' now and that the parties have conferred the widest discretion upon me to do my best in the absence of sufficient information and evidence. That being so, I proceeded from the

footing that Mr Norris had used time upon his own personal venture which would otherwise have been incurred for the benefit and, therefore, have improved the profits of the Company. In addition, that in doing so he had used the services of Company's employees (including himself) to establish a new business venture with resulting good will, albeit as a start-up company, whose aim is to enable him to profit from property development with the use of funds held by Oaksmore.

395. I took into consideration (in particular) the work described within paragraphs 224 and 228 above, the information to be derived from Oaksmore's accounts addressed at paragraphs 230-236 above, the findings and conclusions at paragraphs 242-247 above and also had regard to the fact that Mr Norris appeared (on the current evidence) to have been the main participant (noting also the matters in paragraph 386 above). I took account of some potential spare time work. I decided (subject to further submissions in the absence of agreement) that it would be fair to attribute 1/5<sup>th</sup> of his working time to Oaksmore. Insofar as that is too large a time percentage, the excess would be off-set by the benefits received by Oaksmore and the resulting goodwill achieved. Insofar as it is too small an assessment of benefits and goodwill, that too would be off-set if too large a time percentage has in fact been used but as a solution it will in any event have the benefit of achieving the 'clean break' required. The fraction should be applied to Mr Norris's £250,000 basic remuneration package. That will reduce the expense of directors' remuneration by £50,000 and produce an add back in that amount for each of the three financial years. The parties have accepted this.

#### **L4) The Multiplier**

396. As previously mentioned, the add backs (whether £50,000 is included for Oaksmore each year or not) plainly alter not only the Company's financial performance for the purposes of the multiplicand but also the perspective of the Company's value (see paragraphs 379-381 above). These alterations are relevant to the determinants identified by Mr Dooley in paragraph 3.4 of his report and by Ms Blower in paragraph 9.2 of her report (see paragraphs 338 and 344 above).
397. Ms Blower's choice of multiplier range is not based upon and does not reflect the Company's financial performance with the determined add-backs. The add backs are more substantial than those she made to the multiplicand and the difference (inevitably) has not been addressed when applying her determinants. Her reasons and choice also do not reflect the optimistic approach to be found in the Business Plan and/or the directors' strategic reports and/or within the remuneration decisions, although no doubt that is also attributable to her assessment of the Company's financial performance based upon her more limited add-backs. As a result, I do not find her assessment to be sufficiently consistent with the analysis at paragraphs 379-380 above.
398. In my judgment the positive valuation background summarised at paragraphs 374-381 above means there cannot be any doubt that the multiplier would be at the top range of Ms Blower's opinion at least. The difficult question is to what extent it should be nearer Mr Whyke's. In the absence of further assistance from the experts (see paragraph 345 above) and in the context of the adjusted results, the optimism

identified and the potential for business opportunities arising from the expertise illustrated by the Alpine Fund commission (see paragraphs 382-386 above) together with the Oaksmore consequences (although to a limited extent because of the quantification difficulties identified), the answer must be that the multiplier should be much nearer Mr Whyke's 7.41x than 6x.

399. However, consideration also needs to be given to the fact that Mr Whyke's adjustments are far more substantial than the adjustments determined and he does not appear to give sufficient consideration to the uncertainties of "Brexit" for the Company's market, property funds (although that is not to be over-done) or of the British Steel Inquiry. His opinion is right to be more optimistic than Ms Blower's but in my judgment it moves too far the other way.
400. Weighing all those matters, I conclude that an EV/EBITDA multiplier of between 6.75x and 7.0x is appropriate. On an item by item basis, I will choose 7.0x to reflect the positives identified in paragraph 398 above after balancing them against the matters within paragraph 399 but that is subject to a global overview. I note that unlike Ms Blower, Mr Whyke has not also provided a p/e multiple cross-reference and, therefore, I do not do so.

#### **L5) Discounts**

401. The findings of unfair prejudice lead to the conclusion that there should be no minority discount. The presumption against a discount applies (see paragraph 71 above) and I do not consider there to be any other discounts to consider.

#### **M) Global Overview and Conclusion**

402. I am satisfied that the Company's affairs have been conducted in a manner unfair and prejudicial to the interests of Mr Dooley in his capacity as a member. Jurisdiction under *section 996 of the Act* exists. This has resulted from breaches of the agreement between the members regarding the conduct of the affairs of the Company, which are neither trivial nor inconsequential. There has been unconscionable exclusion not only in breach of the Varied Quasi-Partnership Agreement but also in breach of the Company's Articles of Association. There have also been a number of other breaches by Mr Norris of his fiduciary duties which have breached the bargain between the shareholders and the company.
403. I have determined the add backs to be made to the accounts for the financial year ends 2016-2018 for the purpose of the multiplicand (see paragraph 380). To those figures must be added £50,000 for each year in respect of Oaksmore. This produces an EBITDA for each of the 2016-2018 financial years as follows: £342,186; £291,110; and £276,355. The Alpine Fund commission and the value of the Alpine Fund units owned by the Company are to be added to the valuation produced after applying the multiplier.

404. The multiplier is to be 7.0x on an item by item assessment but a range of 6.75x to 7.0x is to be considered when applying a global assessment to reach my final decision upon the price to be paid at a pro rata valuation (see paragraphs 396-400 above).
405. It is at this stage that it is also convenient to ask the question whether the add backs for Mr Norris's remuneration should be reconsidered to take account of the improvements to the Company's financial results resulting from the add backs.
406. This is where the distinction between my approach to calculating the remuneration add backs and the approach of the experts needs to be borne in mind. My approach (very much in summary) was to add back the difference between the amounts received and the amounts Mr Norris should have received from his basic salary and performance bonuses. It was an approach which was cross-checked against the experts' respective opinions that applied market, median rates to reflect the cost savings a purchaser should identify. Nevertheless it was a different approach and needs review.
407. For the purposes of review, the first point is that Mr Whyke opined a sum of £255,440 for 2018 the range between the experts with a 3% retrospective calculation for the two previous years and Ms Blower the sums of £282,779, £291,262 and £300,000. Second, is the improvement of the results including the effects of the decisions reached in respect of the Alpine Fund and Oaksmore (see paragraph 403 above). The third is that Mr Norris's share purchase will mean he will no longer have to accept Mr Dooley's return and the resurrection of the Varied Quasi-Partnership Agreement or the Quasi-Partnership Agreement (see paragraphs 156-157 above). He will no longer potentially have to share the sums available for remuneration. Nor will he need to share the profits available for distribution as dividends. The fourth is that the third point has been achieved as a result of his unfairly prejudicial actions. The fifth point is that valuation is an art not a science. Those points lead me to conclude that the review should be carried out within the context of the global assessment exercise when choosing the multiplier rather than by considering the redrawing of the financial results for the purposes of EBITDA.
408. The experts have sent to me their pro rata valuation produced by applying multipliers of (i) 6.75x and (ii) 7.0x to the add back EBITDA. £1,972,654.88 is the product if 6.75x is used and £2,045,716.17 if 7.0x is used.
409. My judgment from a global perspective is that a multiplier of 7.0x produces too high a value when viewed in the context of the balancing exercise identified at paragraph 400 above taking into consideration the relevance of the improvements to the financial performance resulting from the add backs for the purposes of the performance based element of Mr Norris's remuneration. This is based upon opinion rather than mathematics and applies the general principles of valuation identified within paragraphs 70-74 above. In my judgment to reflect that relevance the 6.75x multiplier should be used.
410. As to the value of the Alpine Fund commission to be added to £1,972,654.88, there is the further £180,000 owed to Mr Norris but, as yet, unpaid. It was submitted to me immediately before hand-down of this judgment that this sum should be excluded because the current financial position of the Alpine Fund means that it is most unlikely that it will be paid. That is not the evidence before me. Mr Norris could have

presented this evidence at trial had he chosen to do so. There is currently no evidence that it will not be paid and this debt is an asset of the Company. I also specifically note that Mr Plummer, the asset manager, and a director of the General Partnership of the Alpine Hotel Investment Fund (No2) Limited Partnership, gave no such evidence. This absence of evidence also arises in the overall context of Mr Norris having provided limited evidence or information concerning the terms of the commission agreement including the terms as to payment. It is important that there is finality and I do not accept the submission. Insofar as Mr Norris can apply to review this aspect of the judgment on the basis of fresh evidence under the Civil Procedure Rules, that is the route he will need to pursue.

411. The appropriate course in that circumstance is to require £200,000 plus trustee rate interest (from the date that sum was received by Mr Norris until payment) and £180,000 (obviously without interest since it has not yet been received) to be added to the valuation. There has been no request for an appropriate sum attributable to an accelerated payment to be deducted from the £180,000. Also to be added is the value of the Alpine Units owned by the Company. The experts have valued them at £80,000. The above-mentioned submission concerning the current financial position of the Alpine Fund was also relied upon to submit that this sum too should be excluded. However, the same conclusion with regard to an absence of evidence at trial applies. It is also to be noted in this context that the date of valuation is the relevant date, namely 31 October 2018. Further, the units were valued in the Company's accounts for the year ended 30 June 2020 at £84,000. Note 17 records that the units were in the process of being sold and completion was anticipated by December 2020. There is no evidence addressing this, as there should have been to support the submission. There should be finality and I also do not accept this submission.
412. The price to be paid for Mr Dooley's 50% shareholding, valued as at 31 October 2018, is one half of the valuation of £1,972,654.88 plus one half of the Alpine Fund commission, interest and units. That sum is agreed mathematically at £1,222,418. I note as a cross-reference only (it not being relied upon when valuing the shares) that investment of a sum which will exceed £1 million to purchase Mr Dooley's shares should produce a reasonable return based upon dividends reasonably to be anticipated from the three years' results of 2016-2018.
413. Judgment will be for payment of the purchase price by Mr Norris by 4.00pm on 28 April 2021 in consideration for the transfer of Mr Dooley's shares. The parties are to arrange completion accordingly. Obviously, Company funds cannot be used for the purchase if this would involve an unlawful distribution of capital. Obviously, Company funds cannot be used for the purchase if this would involve an unlawful distribution of capital.
414. Insofar as Mr Norris requires further time to pay, it is a general principle that the Court has a discretion to take into consideration matters such as hardship when deciding the date by which completion should occur. If Mr Norris issues an application for an extension of time before 4.00pm on 28 April 2021 with accompanying evidence setting out full details of his assets and liabilities and other evidence for the grounds supporting the application, there will be an automatic stay of the completion date pending determination of the application or further order in the meantime. If appropriate Mr Dooley may have the application listed in the urgent list

should he seek an interim payment, security and/or other relief pending its final determination.

Order Accordingly

## **Appendix 1 – Gallium and Oaksmore Companies**

### **Part 1**

#### **The Company’s Subsidiaries as described by Ms Blower’s Report**

##### **Gallium Fund Solutions Limited**

3.3 GFS acts as an Alternative Investment Fund Manager (“AIFM”) for property funds, in addition to operating some of its own funds. GFS generates c. 80% of the Groups revenue. The company currently operates c. 100 funds, primarily in the commercial property sector.

3.4 Unlike some discretionary fund managers, its funds are premised on tying in capital typically for periods of five to seven years with some contracts maintained on a rolling basis.

##### **Gallium Capital Limited**

3.5 GCL provides joint venture structuring and equity raising services in addition to administrative services to GFSG pension fund investors. It generates c. 5% of Group turnover and made a profit of £0.6k in the year to 30 June 2017.

##### **Gallium Fund Solutions Asset Management Limited**

3.6 GFSAM appears to have been dormant since incorporation in 2012.

##### **Gallium PE Depository**

3.7 GPED was established in 2011 to act as the depository for AIFs (following the Alternative Investment Fund Managers Directive (“AIFMD”)) which required all AIFs to appoint a depository to carry out certain management and oversight functions. It generated 15% of Group turnover and a loss of £16k in FY18.

##### **Gallium Fund Solutions Administration Limited**

3.8 GFS Administration provides human resource services to the Group, and does not undertake any independent activities.

##### **Gallium Fund Solutions Trustee Limited**

3.9 GFS Trustee provides professional trustee services and generated turnover of c. £171k and a loss of c. £41k in the year ended 30 June 2018.

### **Part 2**

#### **Oaksmore Portfolios AIFM Limited Related Companies**

Oaksmore Care Facilities Limited Partnership; Oaksmore Care Facilities Limited; Oaksmore Heritage Property Limited; Oaksmore Heritage Property Limited Partnership; Oaksmore Heritage Property Holding Limited; Oaksmore Nominee 1 Limited; Oaksmore Trustee Limited; and Oaksmore Ventures Limited

## Appendix 2 - Directorships

Anne Norris

Company	Appointed	Resigned
Gallium Fund Solutions Group Limited	17 February 2016	1 December 2016
Gallium Fund Solutions Limited	1 July 2015	
GFS Corporate Director III Limited	12 February 2019	
Oaksmore Heritage Property Holdings Limited	12 November 2018	
Oaksmore Nominee I Limited	7 February 2018	
Oaksmore Trustee Limited	7 February 2018	
Oaksmore Portfolios AIFM Limited	4 November 2016	
GFS Trustee Limited	10 February 2016	

Anthony Norris

Company	Appointment	Resignation
Gallium Fund Solutions Limited	23 July 2008	
Gallium Fund Solutions Group Limited	28 October 2009	
Oaksmore Portfolios AIFM Limited	15 June 2016	
GFS Corporate Director II Limited	1 June 2016	
GFS Corporate Directors III Limited	5 March 2019	
GFS Corporate (Tungate) Limited Director- GFS Corporate Director II Limited	13 November 2016	13 November 2018
Freshers PBSH Chester Nominee Limited	5 March 2014	
GFS Trustee Limited	7 October 2013	
GFS Asset Management Limited	21 March 2012	
GFS Corporate Director Limited	5 March 2012	
GFS Founder Partner Limited	11 July 2011	
GFS (General Partners) Limited	8 July 2011	
Gallium PE Depository Limited	11 April 2011	
Gallium Fund Solutions Administrations Limited	13 October 2009	
GFS Designated Member I Limited	19 February 2009	

GFS Nominee III Limited	30 January 2009	
Oaksmore Care Facilities Partnership Limited Status- Dissolved  Partners 1)GFS Corporate Directors II Limited 2) Oaksmore Nominee I Limited	7 October 2016	
Oaksmore Care Facilities Limited	7 October 2016	
Oaksmore Heritage Property Limited	1 December 2017	
Oaksmore Heritage Property Limited Partnership-  Partners- GFS Trustee Limited GFS Corporate Director II Limited	11 October 2016	
Oaksmore Heritage Property Holdings Limited	28 February 2018	
Oaksmore Nominee I Limited	7 February 2018	
Oaksmore Trustee Limited	7 February 2018	
Oaksmore Ventures Limited	25 August 2016	
Jagan Limited  Status- Dissolved	11 January 2006	5 March 2019

**Anne Norris**

Company	Appointed	Resigned
Gallium Fund Solutions Group Limited	17 February 2016	1 December 2016
Gallium Fund Solutions Limited	1 July 2015	
GFS Corporate Director III Limited	12 February 2019	
Oaksmore Heritage Property Holdings Limited	12 November 2018	
Oaksmore Nominee I Limited	7 February 2018	
Oaksmore Trustee Limited	7 February 2018	
Oaksmore Portfolios AIFM Limited	4 November 2016	
GFS Trustee Limited	10 February 2016	

**Anthony Norris**

Company	Appointment	Resignation
Gallium Fund Solutions Limited	23 July 2008	
Gallium Fund Solutions Group Limited	28 October 2009	
Oaksmore Portfolios AIFM	15 June 2016	

Limited		
GFS Corporate Director II Limited	1 June 2016	
GFS Corporate Directors III Limited	5 March 2019	
GFS Corporate (Tungate) Limited Director- GFS Corporate Director II Limited	13 November 2016	13 November 2018
Freshers PESH Chester Nominee Limited	5 March 2014	
GFS Trustee Limited	7 October 2013	
GFS Asset Management Limited	21 March 2012	
GFS Corporate Director Limited	5 March 2012	
GFS Founder Partner Limited	11 July 2011	
GFS (General Partners) Limited	8 July 2011	
Gallium PE Depository Limited	11 April 2011	
Gallium Fund Solutions Administrations Limited	13 October 2009	
GFS Designated Member I Limited	19 February 2009	
GFS Nominee III Limited	30 January 2009	
Oaksmore Care Facilities Partnership Limited Status- Dissolved  Partners 1)GFS Corporate Directors II Limited 2) Oaksmore Nominee I Limited	7 October 2016	
Oaksmore Care Facilities Limited	7 October 2016	
Oaksmore Heritage Property Limited	1 December 2017	
Oaksmore Heritage Property Limited Partnership-  Partners- GFS Trustee Limited GFS Corporate Director II Limited	11 October 2016	
Oaksmore Heritage Property Holdings Limited	28 February 2018	
Oaksmore Nominee I Limited	7 February 2018	
Oaksmore Trustee Limited	7 February 2018	
Oaksmore Ventures Limited	25 August 2016	
Jagan Limited	11 January 2006	5 March 2019

Status- Dissolved		
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