



Neutral Citation Number: [2022] EWHC 1035 (Ch)

Case No: CR-2021-MAN-000159

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

IN THE MATTER OF CLIVE SMITH (OXFORD) LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

Manchester Civil Justice Centre
1 Bridge Street West,
Manchester M60 9DJ

Date: 6 May 2022

Before:

HHJ MARK CAWSON QC
SITTING AS A JUDGE OF THE HIGH COURT

Between:

TIMOTHY SMITH
- and -
(1) JOAN SMITH
(2) CLIVE SMITH (OXFORD) LIMITED

Petitioner

Respondents

Neil Berragan (instructed by **JMW Solicitors LLP**) for the Petitioner
Martin Strutt (instructed by **Spires Legal Ltd**) for the First Respondent

Hearing dates: 11-14 April 2022

Approved Judgment

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

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HHJ CAWSON QC

HHJ CAWSON QC:

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Introduction

1. By his petition presented on 3 March 2021 (“**the Petition**”), the Petitioner, Timothy Smith (“**Tim**”), as a shareholder with 20% of the issued share capital of Clive Smith (Oxford) Ltd (“**the Company**”), seeks relief pursuant to Sections 994-996 of the Companies Act 2006 (“**the 2006 Act**”) alleging that the affairs of the Company have been conducted in a manner unfairly prejudicial to his interests as a member.
2. The First Respondent, Joan Smith (“**Joan**”) is Tim’s mother, and the holder of the other 80% of the issued share capital of the Company. Joan remains a director of the Company, together with Heather Franklin who was appointed as a director of the Company on 29 May 2019.
3. On 20 March 2019, Joan used her position of control in the Company to cause Tim to be dismissed as an employee of the Company, and subsequently, on 29 May 2019, Joan removed Tim as a director by ordinary resolution.
4. The issue to be determined on the Petition is as to whether, in so acting, or at least in so acting without being prepared to offer to purchase Tim’s shares at a fair value not discounted to reflect his status as a minority shareholder, Joan caused the affairs of the Company to be conducted in a manner unfairly prejudicial to the interests of Tim as the only other member of the Company within the meaning of Section 994 of the 2006 Act.

5. Tim thus seeks an order pursuant to Section 996 of the 2006 Act that Joan purchases his shares at a fair value.
6. The Petition essentially turns on the issue as to whether the relationship between Joan and Tim so far as the Company was concerned was such that equitable considerations arose between them so as to qualify the right or ability of Joan to exercise her statutory right as a majority shareholder under s. 168 of the 2006 Act to remove him as a director by ordinary resolution without making an offer to purchase his shares at a fair value.
7. On behalf of Tim, it is argued that such equitable considerations did arise, and that the Company is to be categorised as a quasi-partnership, or company in the nature of a partnership. This is disputed by Joan who maintains that no such equitable considerations arose on the facts of the present case and that the Company is not correctly to be characterised as a quasi-partnership company.
8. Should I find that Tim is entitled to an order requiring Joan to purchase his shares at a fair value, then there is an issue as to whether the value of his shares ought to be discounted to reflect his minority status, and there are a number of further valuation issues between the share valuation experts called by the parties.
9. Neil Berragan of Counsel appeared on behalf of Tim, and Martin Strutt of Counsel appeared on behalf of Joan. I am grateful to them both for their helpful written and oral submissions.

Witnesses

10. I heard evidence from the following witnesses of fact:
 - i) Tim;
 - ii) Joan;
 - iii) Lynne Buchholz (“**Ms Buchholz**”), a Chartered Accountant and now a Director of Shaw Gibbs Ltd, accountants and business advisers, the Company’s long-standing accountant and financial adviser, who gave evidence on behalf of Joan;
 - iv) Aaron Bellinger (“**Mr Bellinger**”), the operator of an MOT bay on property belonging to the Company between 2006 and 2016, who gave evidence on behalf of Joan;
 - v) Brian Kearney (“**Mr Kearney**”), the owner of the French and Italian Car Centre Ltd, which has carried on business on part of the land owned by the Company, who gave evidence on behalf of Joan; and
 - vi) Trevor Biswell (“**Mr Biswell**”), a Quantity Surveyor who carried out work in connection with the construction of six bedsits on property belonging to the Company, who gave evidence on behalf of Joan.
11. In addition, I heard expert evidence as to the value of Tim’s shareholding in the Company from Sally Longworth (“**Ms Longworth**”), a Chartered Accountant instructed on behalf of Tim, and Philip Ewing (“**Mr Ewing**”), a Chartered Accountant instructed on behalf of Joan.

12. As to the evidence of the witnesses of fact, I bear firmly in mind the much repeated observations made by Leggatt J (as he then was) in *Gestmin SGPS S.A. v Credit Suisse Limited* [2013] EWHC 3560 (Comm) at [15] – [22] with regard to the unreliability of memory, and his caution to place limited weight on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. I consider these observations and this caution to be particularly apt in the circumstances of the present case where:
 - i) The key events concerning when Tim joined the Company as an employee and director date back some 18 years to 2004 and therefore there is considerable scope for false but honest recollection of events that took place a long time ago;
 - ii) Tim and Joan having fallen out in 2018 having been on good terms until then, there is, as I see it, a real danger that in seeking to accurately recall events going back many years, they will each quite naturally have done in a way that favours their case, with, for example, Tim subconsciously enhancing or embellishing his recollection of the importance or otherwise of his role in the Company, and Joan doing the opposite and playing down the significance of Tim's role in the Company.
13. Tim suffers from dyslexia and has been diagnosed as suffering from ADHD, which he informed me resulted in internal self-recrimination and emotional dysphoria. In giving evidence under cross-examination, he had a tendency to give long, and at times somewhat rambling answers to questions, and when interrupted under cross-examination became extremely impatient, explaining that it was a symptom of his ADHD that he could not cope with interruptions to his thought process. However, he was articulate, and came across to me as seeking to give an honest account of his recollection of events subject to the inherent difficulties created by the passage of time. However, the process of seeking to recall events that took place many years ago did, I consider, lead to some exaggeration in his evidence.
14. The dyslexia did not prevent Tim from reading documents that were put to him in cross-examination, although I am satisfied that Tim's dyslexia provides a reason as to why he has generated very little documentation of his own throughout the history of the Company. I was told that Tim has and has had a particular difficulty processing numbers, and I am satisfied that this meant that he had a very limited involvement with regard to the Company's accounts and accounting records.
15. Overall, I consider that Joan was more prone to false recollection than Tim, and there were aspects of her evidence that lack a degree of credibility. Particular examples as to false recollection are provided by the following:
 - i) In paragraph 28 of her witness statement, Joan refers to Tim having moved into an existing flat above the front of the Majestic Wine retail unit upon returning to Oxford in 2005 to work for the Company, the flat having been converted from office accommodation prior to Tim's return. However, there is other evidence that shows that agreement was not reached with Majestic to take their retail premises until 2007 – see the letter dated 20 June 2007 from Peter Shepherd to Clive Smith. There is then evidence of Majestic having applied for planning permission to develop the premises. This is an important point because if what

Joan says in paragraph 28 is true, this would serve to undermine Tim's case that on return to Oxford one of his jobs was to provide night-time security on the site bearing in mind that it was Joan's evidence that Majestic was, itself, responsible for security.

- ii) In paragraph 56 of her witness statement, Joan said that Tim had, in 2020, following his departure from the Company, been diagnosed with dyslexia. However, an occupational psychologist's report dated 17 January 2020, prepared in respect of Tim's dyslexia, refers to Tim having informed the maker of that report that he attended special classes for dyslexia in his primary school, something that I consider that he is unlikely to have made up or falsely recalled particularly bearing in mind that further detail as to the assistance provided at school is provided (based on information provided by Tim) in a report dated 10 July 2020 prepared by a consultant psychiatrist in respect of Tim's ADHD condition. However, when asked about these matters, Joan said that she did not know when Tim was diagnosed with dyslexia, and specifically that she did not know that he had attended special classes at school in connection there with, and at one point appeared to deny that Tim had in fact been diagnosed with dyslexia at primary school. Further, when asked whether Tim had difficulty with reading and writing, she gave the rather odd answer: "*I suppose he does*". I find it difficult to accept that Joan would not, at the time, have known rather more about Tim's difficulties with dyslexia at school and the information conveyed by Tim to the consultant psychologist and the consultant psychiatrist, but which she does not now recall.
 - iii) Joan was subsequently asked whether she recalled having seen the psychologists report, this report having been produced prior to the making by Joan of her own witness statement. She initially accepted that she had read the report, but then when challenged further as to detail sought to contend that she could not remember reading it. I gained the impression that she had changed her evidence when the conflict between paragraph 56 of her witness statement and the contents of the psychologist's report dawned upon her.
16. I do not consider that Joan, in giving evidence, set out to mislead the Court, however I do have a serious concern that she has a false recollection of a numbers of key events in the case, and that she did have a tendency in giving evidence to tailor her answers to suit her case.
 17. Overall, therefore, where there are conflicts of evidence between Tim on the one hand, and Joan on the other hand, I prefer the evidence of Tim, although I take into account that Tim, himself, is liable to have falsely recalled certain events in his favour and was prone to exaggeration.
 18. So far as the other witnesses are concerned, I have no doubt that they were doing their best to assist the Court, but again they were largely being asked to recall events that took place some time ago.
 19. So far as Ms Buchholz is concerned, her evidence was to the effect that Tim had had a relatively limited role to play in the business of the Company. This was particularly brought out by paragraphs 24 and 25 of her witness statement, where she says that she did not consider Tim to have been an integral part of the operation of the business, and

expresses the view that she did not consider the Company to have been operated as a quasi-partnership involving Joan and Tim. However, it is fair to say that because the paperwork in connection with the running of the Company was managed exclusively by Joan as a result, amongst other things, of Tim's dyslexia, Ms Buchholz's dealings were almost exclusively with Joan, and as she accepted herself, she had no involvement in operational matters concerning the Company. Thus, whilst I consider that Ms Buchholz's evidence does tend to support Joan's evidence that Tim played a limited role in the affairs of the Company, I consider that it provides limited assistance on the point having regard to the fact that Ms Buchholz was acting as an external accountant liaising exclusively with Joan.

20. In paragraph 1 of his witness statement, Mr Bellinger refers to having been in charge of the MOT bay at the Company's premises between 2006 and 2016, during which time he dealt "*directly with Joan Smith and the Company*". He plays down Tim's role within the Company, and in acting as Mr Bellinger's assistant in the MOT business, stating that he found him lazy and unhelpful, and at paragraph 7 of his witness statement stating that he found Tim to be "*weird and bizarre*", such that he did not take to him as a person, and was concerned that his customers would be similarly put off by him. However, under cross-examination Mr Bellinger accepted that in 2006 he had had discussions with Tim regarding taking over the MOT business, and he accepted that Tim had been the person who, on behalf of the Company, would deal with problems on the site. Further, he was asked under cross-examination whether he had written what was set out on a sheet of paper shown in a photograph that was handed to him, on which it was handwritten: "*Hi my name is Aron & I have known Tim 4 about 10 years and he is the king of chatting shit ... but I can assure u that Tim is a good guy that yes may be a opinionatted twat the talk's alot (even at 9am in morning) . Just ask him about anything and he will know something about it.*" Mr Bellinger accepted that this reflected his view of Tim at the relevant time.
21. Mr Kearny said in evidence that he had no knowledge of Tim providing any site management and site security, although he does refer in his evidence to a meeting that took place with Tim, Joan and Robin Kemp, a Chartered Surveyor, relating to a rent review, at which, so he says, Tim went off topic and disrupted the meeting, such that he and his wife decided that they would not participate in a meeting that included Tim again. Under cross-examination, Mr Kearney said that he could not recall, as put to him by Mr Berragan on behalf of Tim, that at the relevant meeting Tim had sought to make a point, in the context of discussion about the rent review, about Mr Kearney's wife having recently purchased a Range Rover.
22. Mr Biswell also sought to play down Tim's role in the Company from what he had observed, but under cross-examination he did accept that Tim had been involved to a certain extent at least.
23. The evidence of Mr Bellinger, Mr Kearney and Mr Biswell does suggest that Tim was, perhaps, not the easiest person to deal given that he was, as Mr Berragan put it during the course of the case, "*different*". I consider that this is likely to have affected the perceptions of these witnesses as to the role played by Tim in the Company, and, to that extent, I do not consider their evidence fundamentally undermines Tim's own evidence as to the role that he played in the Company.

Factual background and findings in respect thereof

24. Tim was born on 20 January 1979. He was adopted, as I understand it at a comparatively young age, by Joan and her late husband, Clive Smith (“**Clive**”), who died on 6 October 2010. Joan and Clive also adopted another boy (“**Brother**”), who unfortunately suffers from fairly severe mental illness and drug addiction. I have not named him in this judgment for that reason.
25. The Company was incorporated under the Companies Act 1948 with the name Evans Brothers (Headington) Ltd. It is understood that the Evans brothers owned and directed the Company from its incorporation until the early 1970s.
26. In the early 1970s, Clive, together with Frederick Bryant and Clive Bryant, Joan’s father and brother respectively, purchased the issued share capital of the Company from the Evans brothers, and were appointed as directors of the Company.
27. In or about 1973 the Company took a lease of premises at 381 Cowley Road, Oxford from where it operated the business of buying, selling and repairing motor vehicles.
28. Frederick Bryant died in 1980, at which point Clive Bryant decided to resign as a director and dispose of his shares. Transfers of shares were then made such that the issued share capital of the Company was held equally by Clive and Joan, and they became the only two directors of the Company.
29. On 31 December 1980, the Company changed its name to Cowley Road Car Sales Ltd.
30. In 1987 the Company surrendered its lease of 381 Cowley Road, Oxford and purchase the freehold of adjoining premises at 379 Cowley Road, Oxford (“**379 Cowley Road**”), from which the Company operated a car distribution franchise, as well as selling Calor gas and operating an MOT testing centre. Apart from the parts of 379 Cowley Road used by the Company for these businesses, 379 Cowley Road also comprised a number of commercial units which were let out.
31. On 31 March 1987, the Company changed its name to Clive Smith (Oxford) Ltd.
32. By ordinary resolution dated 10 February 1993, the share capital of the Company was increased from £7,500 to £100,000 by the creation of 92,500 new shares of £1 each ranking pari passu with the existing shares. At all times thereafter, until Clive’s death in 2010, there were 10,000 ordinary shares of £1 in issue held as to 5,000 by Clive and 5,000 by Joan.
33. In 1993 the Company ceased to operate its car distribution franchise and Calor gas business, and the car showroom at the front of 379 Cowley Road was converted for other use and let. The units to the rear of 379 Cowley Road that had been used by the Company were also let out as commercial units, but the Company continued to operate an MOT testing centre from 379 Cowley Road. At all times thereafter the business of the Company has comprised letting the various parts of 379 Cowley Road for commercial purposes, and later for residential purposes, and the operation of the MOT testing centre.

34. On 22 September 2004, at the age of 25 and at a time when he was studying as a student in Brighton, Tim was appointed as a director of the Company. It was Joan's evidence that he was appointed as a director to give him a sense of involvement in the Company.
35. The report of the consultant psychiatrist dated 10 July 2020 referred to in paragraph 15(ii) above refers to Tim having informed the consultant psychiatrist that he remained in school until he was 18, that he went to boarding school and that having been diagnosed with dyslexia, was given special consideration for exams. The report refers to Tim having said that he gained nine GCSEs ranging from grades B to D, two AS levels at grade B, and two A-levels at grades B and C, and that after two gap years, he went to college to study criminology and sociology, and another course in psychology, the consultant psychiatrist recording that: *"he told me he did not complete any of these courses; part of this was because he had to enter the family business to help out"*.
36. In paragraph 12 of his witness statement, Tim refers to being asked by his father, in 2005, to discontinue his studies in psychology and criminology, and a computer repair shop business which he was establishing, in Brighton, and return home to Oxford to take up an active role in the Company and obtain more responsibility within the business.
37. Under cross-examination, Tim confirmed that when he was approached by his father to *"chuck in the degree course"* and return home to Oxford to play a role in the Company, he was studying criminology and psychiatry in Brighton, working in a call centre, working as an Assistant Manager of a shop and in the course of setting up a company with a friend to carry out a computer repair/MOT business. He went on to explain that he was content getting experience in Brighton, but that his father explained that there were problems that required to be resolved within the Company's business that he required Tim's help with, including resolving a confrontation, which had become a physical confrontation, with the individual then running the MOT business at 379 Cowley Road. Indeed, it was Tim's evidence under cross-examination that Clive cried over the phone and begged him to come back to Oxford to help out, the position not having been assisted by the fact that Brother had recently attempted to commit suicide.
38. It was put to Tim that he had added detail to his story under cross-examination in order to provide a narrative, and had exaggerated the reasons for returning home from Brighton. Tim emphatically denied that this was the case.
39. Under cross-examination, Joan accepted that Clive would have had conversations with Tim to which she was not party. However, it was her evidence that Clive would generally discuss matters with her, and he had not mentioned to her any problems that had led to him asking Tim to give up his degree course and other interests in Brighton and return to Oxford. Indeed, it was her evidence that it was Tim who took the decision not to complete his university studies, and return to Oxford, that neither she nor Clive had any involvement in this decision, and neither did they say to him that he would be given any responsibility within the Company if he returned. Further, she says that when he did return, it was a question of finding small jobs to do to keep him occupied.
40. I got the impression from his evidence that Tim was closely attached to his father, Clive. I accept Tim's evidence that he was happy enough doing his degree course and pursuing other interests in Brighton, but was persuaded by Clive to return to Oxford to play an active role in the Company, and to assist Clive.

41. In a sense, the approach to Tim in 2005 to return to Oxford followed on from the appointment of Tim as a director in 2004 to give him a sense of involvement in the business of the Company. I accept that there may be a degree of embellishment of the story by Tim, in particular as explained under cross-examination. However, I do not consider this to be a deliberate attempt by Tim to mislead the Court, but rather how he has genuinely recalled matters in his own mind. However, I am satisfied that it was as a result of Clive's approach, and a request for assistance with the business of the Company, that Tim returned to Oxford and thereafter played a role within the Company.
42. It is common ground between the parties, and Joan accepts that in Tim returning to Oxford to play a role within the Company, it was at all relevant times understood by Clive, Joan and Tim, and discussed between them, that:
 - i) Tim would take over the business in due course, and at the latest following the death of his mother and father;
 - ii) On Clive's and Joan's death, if not before, Tim would become a shareholder in the Company, and owner thereof together with a trust for the benefit of Brother;
 - iii) Tim was employed by the Company on the basis that he would continue to be employed for the foreseeable future, and it being envisaged that he would spend the rest of his working life working for the Company, ultimately taking over the same from his parents.
43. The factors that lead me to accept that Clive did ask Tim to return to Oxford from Brighton are, primarily, the following:
 - i) This is consistent with what Tim independently told the clinical psychiatrist;
 - ii) This is consistent with Tim having been appointed a director of the company the year before he returned from Brighton for the specific purpose of giving him a sense of involvement in the business of the Company; and
 - iii) This is consistent with the agreed common understandings referred to in paragraph 42 above which, if true, does not rest easily with Joan's evidence that Tim made his own decision to return in circumstances in which it was necessary for Clive and herself, as Joan puts it in paragraph 27 of her witness statement, to find small jobs for him to keep him occupied.
44. There is another facet of the family relationship that I should mention. It was Tim's evidence that he was told by his parents, or at least by his father, that it was his responsibility to look after Brother, and he says that this was something that he discussed from time to time with his parents.
45. The issue then arises as to what Tim actually did after his return to Oxford. I am satisfied that, broadly speaking, Tim's role and responsibilities were as follows:
 - i) Between 2006 and 2009, Tim lived and worked on site at 379 Cowley Road in accommodation converted from offices, from which he was able to provide night-time security and general site management, as well as a presence in the MOT business on behalf of the Company;

- ii) In 2009, Tim married, and moved out of the accommodation at 379 Cowley Road. However, he remained on site on a daily basis helping Mr Bellinger with the MOT business in the circumstances referred to below, but also acting as manager of the Company's interests in that business, as well as providing a presence on site more generally in respect of the Company's other interests.
- iii) Between 2009 and 2012, Tim provided assistance to Clive, and subsequently Joan following Clive's death on 6 October 2010, in respect of the development of student accommodation, comprising six bedsit pods or flats at 379 Cowley Road, and subsequently in respect of other residential accommodation known as Clive Court constructed at 379 Cowley Road. This assistance included meeting with the City Planning Officer, liaising with various professionals and contractors, and liaising with Majestic Wines, which had by then become the tenant of the retail unit at the front of 379 Cowley Rd, and with at least one neighbour in respect of the building works and a party wall issue.
- iv) After the student flats had been constructed, Tim had a responsibility for the management for the same as evidenced by the following:
 - a) There was notice to that effect in each flat, with Tim's name and contact number as referred to in a letter dated 18 February 2011 from Joan to the City Council;
 - b) By this letter dated 18 February 2011, the City Council was informed that any problems relating to the site should be reported to Tim;
 - c) Tim's (and his wife's) details were given to the letting agent;
 - d) Under cross-examination Joan, albeit with some reluctance, accepted that Tim was responsible for site management.
- v) As to the MOT business carried on from 379 Cowley Rd, a new MOT bay was constructed in or about 2006 and the previous individual who had operated the same left prior to Mr Bellinger coming on the scene. The Company entered into a form of profit share agreement with Mr Bellinger under which Mr Bellinger effectively ran the MOT business, accounting to the Company for a share of the profits. On 9 May 2008, Joan emailed Tim attaching a copy of the profit share agreement which she and Clive had put together, and she sought his thoughts on it. As Mr Bellinger accepted under cross-examination, it was Tim, either at this point, or prior thereto, who discussed with him the taking over of the MOT business. It was Tim's evidence, which I accept, that after Mr Bellinger had taken over the business, he performed a number of the roles in relation thereto, namely:
 - a) As, effectively, an assistant of Mr Bellinger assisting with the MOT business on a day-to-day basis;
 - b) Being registered as the "*Authorised Examiner*" for the business, with responsibility for the supervision of operations and ensuring regulatory compliance; and

- c) Looking after the Company's interests in respect of the business – in evidence Tim convincingly described how his father had described him as wearing his "*landlord's hat*" when performing this role.
 - vi) Thus from 2012 up until his suspension prior to his dismissal from the employment of the Company in 2019, Tim worked within the MOT business performing the various functions referred to above, as well as being a presence on site on a daily basis to supervise anything that required to be looked after thereat, in particular in relation to the student flats.
- 46. There is a conflict of evidence between Tim on the one hand and Joan on the other hand, as to the extent of Tim's role in the business, with Joan essentially saying that Tim's role was very limited indeed, if not negligible. With the passage of time, Joan may well have persuaded herself that was the case, but I consider that the documentary and other evidence does support the fact that Tim's role was more significant than she seeks to suggest, and was broadly as set out in paragraph 45 above.
- 47. The key factors that lead me to this conclusion are the following:
 - i) It is true that there is a limited amount of documentation relating to Tim's involvement in the business, and the witnesses called by Joan did, with the exception of Mr Bellinger, rather play down Tim's role in the business. However, this is, I consider, largely explicable on the basis that, given his difficulties with dyslexia, there is very limited written correspondence from or to Tim, and so far as the witnesses are concerned, it is a factor that Tim had a certain social awkwardness about him which perhaps limited the role that he played in dealing with others. However, there is still a not insignificant amount of correspondence that does support Tim playing an active part in the business in the roles referred to above. By way of example, there is the following: an email dated 8 March 2010 with a list of things that Clive had given him to do; an email dated 9 March 2010 from Joan to Steven Roberts of Oxford City Council referring to a meeting between Mr Thompson and Tim regarding submitting a new planning application for 379 Crawley Road for student accommodation; the letter dated 18 February 2011 to the City Council referred to above; an email dated 2 February 2011 from Gary Wilson of Majestic Wines relating to the replacement of ceiling tiles, which Joan accepted under cross-examination was a matter that she and Tim were dealing with together; and an email dated 17 June 2011 from a Chartered Surveyor referring to Tim having been on site for the purposes of an inspection concerning party wall access. The matters referred to in this correspondence do not rest particularly easy with the limited role described by Joan, and are, in my judgment, inconsistent with the position as portrayed by Tim.
 - ii) Tim gave cogent and convincing evidence under cross-examination in respect of the proposals relating to the development of the student flats, when he said that he persuaded Clive to agree to the development of high-quality student flats, which Tim saw as a better investment opportunity than constructing student flats of a lesser quality.
 - iii) Mr Bellinger's acceptance under cross-examination that Tim did play a leading role in him taking over the operation of the MOT business. Mr Bellinger left this

role in 2016 after, as is common ground, he threatened violence against Joan. It is not in dispute that Joan sought help from Tim in this respect. In evidence, she explained that she went to him and ask for help “*as a mother*” seeking help from her son.

- iv) Tim was paid both as an assistant to the MOT business, and also as an employee of the Company.
48. Having made the findings that I have so far as concerns Tim’s role in the Company after having been employed by the Company following his return to Oxford from Brighton, I returned to the chronology of events so far as not already picked up on above.
49. On 27 January 2006, Clive made his last will (“**Clive’s Will**”) by which he:
- i) Appointed Joan and Ms Buchholz as executors and trustees;
 - ii) In the event that Joan survived him, and as a matter of tax planning tailored to the then Inheritance Tax regime, created a nil rate band trust in favour of Joan, Brother and Tim, and their spouses and remoter issue;
 - iii) Provided for residue to go to Joan provided that she survived him for 28 days, and in default for Brother and Tim, in the case of Brother to be held upon protective trusts for his benefit.
50. It is understood that Joan, at the same time, made a mirror will to Clive’s Will.
51. As already mentioned, Tim married in 2009, and moved out of the accommodation at 379 Cowley Road to 32 Pitts Road, Headington, Oxford (“**32 Pitts Road**”), a property that had been left to Clive, and which Clive gave to Tim. In December 2008, Tim applied for a mortgage over 32 Pitts Road in order to fund renovations. To assist in making the application, Joan completed a “*Fact-Find*” for the purposes thereof, as well as agreeing to act as guarantor. The Fact-Find as completed by Joan included the following:
- i) *“Tim also has his rent paid separately by the family business. This has not been taken into account as income. Tim is a Non-Shareholder Director of the company.”*
 - ii) *“Tim is likely to become a Shareholder Director within the next five years. This will lead to an increase in income and dividends. Tim has told me he is getting married next year. No other changes to income, expenditure and family circumstances are expected in the next three-five years.”*
52. Joan was cross-examined about the Fact-Find that she had completed, and in the course thereof emphasised that she had done so in order to help Tim get the mortgage that he was seeking. However, when asked whether, in her mind, the position then was that Tim was likely to become a shareholder within the next five years, she replied “yes”.
53. On 14 May 2009 the Oxford Mail carried an interview with Clive and Joan regarding the business of the Company and 379 Cowley Road in which Joan was reported as saying: “*Now we hope that our son Tim, who helps run the place, will take over the*

business in due course.” When cross-examined about this, Joan responded that she could not recall saying this, but may well have done so.

54. Tim married on 26 September 2009.
55. Clive died on 6 October 2010, leaving Clive’s Will as his last will. An obituary was published in the Oxford Mail on 21 October 2010 that referred to Clive’s retirement in 1995, and to the fact that: *“His son Timothy has run the business since then.”* It is common ground that this report was inaccurate, and that reference to 1995 may have related to when the car distribution franchise was given up, and the Company became, essentially, a property holding company albeit continuing the MOT business. Further, it was plainly not correct that Tim had run the business since 1995.
56. Joan had, at all relevant times, handled the paperwork in connection with the operation of the Company, and prior to his death Clive had had little involvement therein. As I have mentioned, Tim likewise had little involvement so far as paperwork and correspondence was concerned, no doubt because this was something that had always been dealt with by Joan, but also significantly because of his dyslexia. Whilst I do not accept that Tim stepped into Clive’s shoes as such following Clive’s death, I am satisfied that he did play more of a role in respect of the decision making relating to the Company following Clive’s death in discussion with Joan. There is, for example, evidence, which I accept, of discussion between Tim and Joan in relation to such matters as to the rents to be charged for the student flats, and other issues that arose, see e.g. an email dated 26 March 2014 from Joan to Sue of TOP Lettings Ltd in which reference is made to Joan and Tim having *“had a think”* about *“a few changes to be put in place with the students”*.
57. On 1 May 2012, Clive’s 5,000 shares in the Company were transferred by his executors (Joan and Ms Buchholz) to Joan, and on 31 July 2012, 2,000 of the shares were transferred by Joan to Tim.
58. It is Tim’s evidence that in about May 2012, Joan spoke to him about her intention to transfer 2,000 shares to him, Joan informing him that the shares were to be transferred to him as part of him taking on his father’s mantle, and to recognise the fact that he was to secure more and more responsibility within the Company. He says that it was never mentioned to him that the share transfer had anything to do with tax mitigation.
59. Joan disputes that she mentioned anything about the share transfer having to do with Tim taking on his father’s mantle or taking on more responsibility within the Company, and says that the transfer was about tax mitigation and making full use of the nil-rate band trust that had been created by Clive’s Will. Further, Ms Buchholz, who was involved in advising at that time and more generally in relation to Clive’s Will, in her evidence, confirmed that the exercise did involve tax mitigation, and making use of the nil-rate band trust, and she also gave evidence as to a discussion between herself and Joan in which Joan had sought confirmation that by giving away a 20% shareholding in the Company, she would not be giving away control.
60. The transfer of the shares no doubt involved tax mitigation and making use of the nil-rate band trust given the evidence that the shares represented the only asset within Clive’s estate that were available to be applied for such purpose. However, the shares were transferred to Tim, and not, for example, to Tim and a trust for the benefit of

Brother, and Tim had, as I have found, assumed more of a role within the Company following Clive's death against the background of an expectation that, in due course, he would be taking over the running of the business of the Company. Further, as the information provided by Joan in completing the Fact-Find in December 2008 indicated, the transfer of shares to Tim within the five years thereafter was at least a live possibility.

61. I accept that Joan may not have said to Tim quite what is now suggested by Tim with regard to taking up his father's mantle, but I do consider that Joan might well have said, in relation to the transfer of shares, that this was a recognition of Tim's role in the company following Clive's death. However, I also accept that this was not a question of Tim stepping into Clive's shoes as such, otherwise all of Clive's 5,000 shares would have been transferred to him and Joan would not have expressed the concerns that she did to Ms Buchholz with regard to control of the Company.
62. On 6 August 2013, Joan granted Tim Lasting Power of Attorney for her health and welfare and financial matters. This was plainly an indication that Joan placed her trust and confidence in Tim at that time, and is significant in the sense that it meant that if Joan lost capacity, then Tim would then have taken over control of the running of the Company on his own, something that Joan might reasonably be expected to have appreciated in entrusting Tim as her attorney.
63. In April 2016, the Company terminated the arrangement in respect of the MOT business with Mr Bellinger.
64. Joan described her relationship with Tim prior to 2018 as being a good one, under which they got on reasonably well together.
65. However, by early March 2018, serious disagreements had arisen between them. The nature of these disagreements was not explored in any detail in the evidence and it is not necessary to go into the detail thereof bearing in mind that it is common ground that neither Tim nor Joan is to be regarded as being at fault for the relationship breaking down, and no case is now maintained that Joan had grounds for dismissing Tim as an employee, or for removing him as a director, save for the fact of the breakdown in the relationship between them.
66. There were a number of meetings in March 2018. At a meeting on 8 March 2018 between Tim and Joan, Joan mentioned that she and Ms Buchholz were working on giving the MOT bay to him. A fairly lengthy meeting then took place on 29 March 2018 attended by Tim, Joan and Ms Buchholz. It is apparent from the transcript of a recording of this meeting that Tim was willing to see if the disagreements between himself and his mother could be resolved, but that Joan's response was that the relationship had irretrievably broken down and that, as she put it, "*there is no us*". A proposal was made at this meeting that Tim transfer his 20% shareholding to Joan in an exchange for a licence to use the MOT bay.
67. On 3 April 2018, Ms Buchholz emailed Tim to say that she had been asked by Joan to suggest a way forward given that Joan felt that she could no longer work together with Tim as directors of the Company, and the email proposed a split of the business with a newco being granted a licence to use the MOT bay. A further proposal along these lines was made in a letter sent on a without prejudice basis by solicitors then instructed by

Joan on 6 June 2018. This proposed a lease for a term of five years outside the scope of Part II the Landlord and Tenant Act 1954 in exchange for Tim's 20% shareholding.

68. Although the proposal to grant a lease or licence to Tim or a newco to operate the MOT business in the MOT bay at 379 Cowley Road ultimately came to nothing, Joan was cross examined in relation to it. It was suggested to her that the proposals put forward represented a recognition on her part that Tim was entitled to some form of fair value for his shares. Although Joan did appear, at one point, to accept this proposition, she qualified this by suggesting that this related to her status and obligations as Tim's mother, rather than anything else.
69. On 6 June 2018, Tim emailed Joan setting out a number of complaints and asking for a meeting, stating that he was going away on holiday from 8 to 14 June 2018. The following day, Joan handed Tim a letter suspending him pending an investigation. A telephone call from the Solicitors instructed by Joan required him to leave 379 Cowley Road.
70. On 8 June 2018, Joan emailed Tim to inform him that: *"I have been instructed that you will be unable to return to the Cowley Road MOT bay until the enquiry has taken place. This will be at the end of June."* On the same day, Joan emailed Mandy Brearley ("**Ms Brearley**") at Mbhr Support, who were engaged to provide HR support, to confirm a meeting on 26 June 2018. In this email she stated that: *"My son works with me a Director and 20% shareholder ..."* She also alleged that Tim had been bullying her, that there was a problem banking the MOT bay takings, and that Tim had been offered the opportunity to lease the MOT bay in return for his 20% shareholding.
71. On 26 August 2018 Joan rescinded the Lasting Power of Attorney that she had granted Tim.
72. There was some delay in the HR process in that Tim was not interviewed by Ms Brearley until 4 October 2018. On 19 October 2018, Ms Brearley produced a Misconduct Investigation report which, in its conclusions, proposed a final written warning be given to Tim.
73. In a letter to Joan dated 16 November 2018, Tim raised a further formal grievance, and commented, amongst other things, upon Ms Brearley's report.
74. On 20 March 2019, a disciplinary hearing took place in respect of Tim's alleged misconduct, carried out by Jane Fryatt ("**Ms Fryatt**") of Face2FaceHR. Ms Fryatt rejected the allegations of bullying and breach by Tim of his fiduciary duties as a director that had been made by Joan. However, Tim was dismissed solely on the grounds of an irretrievable breakdown in the relations between himself and Joan. As Ms Fryatt put it:

"Therefore I find that the relationship between you and Mrs Smith, as directors of the business, had broken down and that this is damaging to the company. I find that there is a loss of trust and confidence between you and you are unable to work together.

I therefore find that you are unable to return to work and this leaves the Company with no option but to terminate your employment."

75. On 2 May 2019, Dawn Dickens (“**Ms Dickens**”) of TKD Associates, who had been appointed to conduct the process, rejected Tim’s appeal against his dismissal commenting: “*The relationship difficulties and clear lack of trust and confidence in each other was clear to [Ms Fryatt] in making a decision and I agree with this view.*” Mr Strutt, on behalf of Joan, relies upon the fact that in her report, Ms Dickens noted that:

“The relationship you [i.e., Tim] described to me throughout our meeting appears to be one where your mother makes the decisions around the future of the business, managed the finances and gave you direction and permissions and that you dealt with operational matters on the ground and took a lead role in the management of the MOT Bay. This appears to have been an arrangement that you accepted for a considerable period of time.”

76. On 29 May 2019, Tim was removed as a director by ordinary resolution.
77. On 19 June 2019, Tim brought a claim against Joan and the Company in the Employment Tribunal alleging, amongst other things, unfair dismissal. Reliance is placed by Mr Berragan, on behalf of Tim, upon the fact that in paragraph 10 of the Grounds of Resistance served by Joan and the Company it was pleaded that:

“The First Respondent’s husband died in 2010, and thereafter the business was operated by the First Respondent and the Claimant. They were both directors and shareholders however the First Respondent holds the majority 80% shareholding and assumed the role of managing director.”

78. The claim brought by Tim in the Employment Tribunal was settled at a judicial mediation on a without prejudice basis on 5 March 2021, with the Company agreeing to pay Tim £25,000 in respect of the termination of his employment, with an additional payment of £12,500 plus VAT towards his legal costs.
79. The present petition was presented by Tim on 17 March 2021.

The Unfair Prejudice Remedy

80. Section 994 of the 2006 Act provides that:

“(1) A member of a company may apply to the court by petition for an order under this Part on the ground – (a) that the company’s affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself) ...”

81. Thus, in order to qualify for relief, a petitioner must show that the act or omissions which he complains of consist of the management of the affairs of the company, that the conduct of those affairs has caused prejudice to his interests as a member of the company, and that the prejudice is unfair.
82. The test of unfairness is an objective one (see e.g., *Re RA Noble & Sons (Clothing) Ltd* [1983] BCLC 273 at 290-291), the question being whether a reasonable bystander observing the consequences of the conduct of those who have control of a company

regard that conduct as having unfairly prejudiced the petitioner's interests as a shareholder.

83. In considering these issues, and the dealings between a company and its members, one necessarily begins with the legal rights and obligations to be derived from the company's constitution, and the statutory provisions regulating and governing those dealings such as, for example, Section 168 of the 2006 Act conferring the right on shareholders to remove a director by ordinary resolution.
84. However, in appropriate circumstances, equitable considerations may make it unfair for those conducting the affairs of the company to rely upon their strict legal rights and powers, and unfairness may arise in the use of legal rights in the manner in which equity would regard as contrary to good faith – See e.g. *O'Neill v Phillips* [1999] 1 WLR 1092, at 1098H – 1099A per Lord Hoffmann. A common situation in which such equitable considerations might arise is where the company is a quasi-partnership, but equitable considerations may arise in other circumstances. It will be necessary to consider the relevant principles in more detail in due course in this judgment in considering the parties' respective submissions as to how these principles ought to be applied to the facts of the present case.
85. It is not in dispute that Joan, as holder of 80% of the issued share capital of the Company, had the legal right to use her majority power to procure the Company to dismiss Tim as an employee, and pursuant to Section 168 to remove him as a director of the Company.
86. In his Skeleton Argument for the trial, Mr Berragan, on behalf of Tim, helpfully identifies the core issues that require to be determined in the present case as being the following:
 - i) Whether at the time of Tim's exclusion from the Company (by his dismissal and subsequent removal as a director), the Company was a quasi-partnership company;
 - ii) Whether there were equitable restraints on the exercise of Joan's legal right as a majority shareholder to remove Tim from participation in the business of the Company as a result of the Company being a quasi-partnership company or otherwise; and
 - iii) Whether it was unfair and/or a breach of those equitable constraints for Joan to exclude Tim without making a reasonable offer to purchase his shareholding.
87. So far as the latter issue is concerned, the issue is perhaps better expressed as being whether it was unfair and a breach of those equitable restraints to exclude Tim without making an offer to purchase his shareholding at a fair price not discounted to reflect Tim's status as a minority shareholder and, if so, whether the Court ought to order Joan to purchase Tim's shares at a fair valuation that is not discounted for minority status.

Outline of the parties' respective cases

Tim's case

88. It is Tim's case that equitable constraints did arise in the circumstances of the present case that made it unfair and prejudicial to Tim to exclude him as an employee and director without making an offer to him to purchase his shares at a fair value, not discounted to reflect his minority status.
89. The equitable considerations, at least as pleaded in paragraphs 31 to 34 of the Petition, are said to arise from an agreement, arrangement and/or understanding, further or alternatively on the basis of the Company being a quasi-partnership:
- “31 Prior to the death of his father the Petitioner and his parents were on friendly, familial terms, and did not contemplate making formal agreements concerning the Petitioner's participation in the Company. However, from October 2005 (if not before), it was informally agreed and/or understood between all parties that the Petitioner would devote his working time to the Company, that he would eventually take over the business and that he would be made a shareholder. The expectation was that in due course he would become a significant, if not majority shareholder.
- 32 The Petitioner's participation in the business commenced in October 2005, and increased over time as set out above. Due to the family relationship, no date was set for transferring shares to the Petitioner, but it was expected in due course.
33. This agreement, arrangement or understanding was confirmed when the First Respondent transferred 2,000 shares to the Petitioner following the death of his father and the administration of the estate. The shares were transferred and the Petitioner received them subject to this agreement, arrangement or understanding. In particular, the transfer of shares confirmed that both the First Respondent and the Petitioner expected that the Petitioner would continue to participate in the management of the Company and its business.
34. Further or in the alternative, the Company was a "quasi-partnership" of a family business, in which Clive Smith and the First Respondent were "quasi-partners", succeeded by the Petitioner and the First Respondent as "quasi-partner.”
90. In submissions, Mr Berragan referred to the common understanding that Tim would become the joint owner (with a trust for Brother's benefit) of the business in due course, and that Tim would be taking over the business in due course, and at the latest following the death of his mother and father. Mr Berragan submits that this understanding was confirmed by the gift of the shares, effectively if not actually, out of Clive's estate on 31 July 2012. He submits that the proper inference to be drawn from the gift, in the light of the existing understanding and Tim's continuous employment as a director since 2005, is that there was now an understanding that Tim would continue to participate in the management of the business (in his existing and/or any expanded role) so long as he remained as a shareholder.

91. Mr Berragan places reliance upon the fact that throughout the period from 2012 to 2018, the relationship between Tim and Joan was based on trust and confidence as mother and son, that this was a deeply personal relationship, and that the business is managed on a wholly informal basis, with no employment contracts or statements of particulars as are strictly required as a matter of employment law, or note or record of the respective roles of the directors.
92. It is submitted that the Company had all the hallmarks of a quasi-partnership from the time that Tim acquired his shares for the following reasons:
- i) the business of the Company was continued after 2012 on the basis of a close family relationship between the only two directors, shareholders and employees;
 - ii) The relationship was based firmly on the personal relationship of trust and confidence between them, there being no element of any commercial relationship;
 - iii) There was a mutual understanding that Tim would continue to participate in the business, in the same or expanded roles that he had performed up to 2012; and
 - iv) The articles of association of the Company contained restrictions on the transfer of shares, enabling the majority shareholder to block any transfer.
93. In the alternative, even if no equitable constraints existed, and the Company was not a quasi-partnership, then it is submitted that is plainly unfair for Tim to remain locked in now as a shareholder, given the circumstances of his removal, set against the particular background of the case.

Joan's case

94. It is Joan's case that the Company was not a quasi-partnership, and that there are no other sufficient circumstances that give rise to equitable considerations of the kind contended for by Tim.
95. In essence, it is submitted by Mr Strutt on behalf of Joan there was no expectation on the part of Tim, or understanding, following on from the gift of shares to Tim, that Joan was giving up any aspect of control over the affairs of the Company, including the ability to dismiss him as an employee, or remove him as a director.
96. It is submitted that the authorities show that it is not enough, in advancing a case that a company is a quasi-partnership, or that equitable considerations have arisen in relation to the management of it, that the company is a small family company, and that something more is required than vague notions of fairness within the family relationship. It is submitted that, in a case such as the present, it is necessary to demonstrate some clear promise, agreement or understanding that is acted upon by the petitioner to the effect that the petitioner would not be excluded so long as he or she remained a shareholder. It is submitted that the present facts are insufficient to demonstrate any such promise, agreement or understanding, or that any such promise, agreement or understanding has been acted upon by Tim, and that it is necessary to distinguish hope or expectation on Tim's part from the latter.

97. In this context, particular reliance is placed by the Mr Strutt upon the fact that the shares were given to Tim by way of gift, and that there was, he submits, no real change in Tim's role within the Company following the gift. It is submitted that this is demonstrated by, in particular, what Tim said to Ms Dickens as recorded in her report dated 2 May 2019, and that the reality of the matter is that Joan continued to make the decisions, with Tim essentially dealing with pure operational matters, acting at Joan's direction, and subject to her permissions.
98. Consequently, so it is submitted, because Joan's legal powers were not restrained by equitable considerations, it was open to her to cause him to be dismissed, and to be removed as a director of the Company, without it being open to Tim to maintain that it was unfairly prejudicial to his interests as a shareholder to do so.

The authorities

99. It is trite that any consideration of the relevant principles must begin with *Re Westbourne Galleries* [1973] AC 360 in which Lord Wilberforce, in the context of a winding up petition brought on the just and equitable ground, explained that a limited company is more than a mere legal entity, and that there is room in company law for recognition of the fact that behind a company or amongst it there are individuals, with rights, expectations and obligations amongst themselves which are not necessarily submerged in the company structure.

100. Having so expressed himself, Lord Wilberforce went on at 379-380 to say:

"The 'just and equitable' provision does not, as the Respondent suggests, entitle one party to disregard the obligation he assumes by entering a company, nor the Court to dispense him from it. It does, as equity always does, enable the Court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way".

101. Lord Wilberforce then went on to consider the circumstances in which such equitable considerations might arise:

"It would be impossible, and wholly undesirable, to define the circumstances in which these considerations may arise. Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the Articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements:

- (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence - this element will often be found where a pre-existing partnership has been converted into a limited company;*
- (ii) an agreement, or understanding, that all, or some (for there may be 'sleeping' members), of the shareholders shall participate in the conduct of the business;*

(iii) *restriction upon the transfer of the member's interest in the company - so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere".*

102. A number of points are to be noted from this passage, including Lord Wilberforce's observation that the fact that a company is a small company is not, in itself, enough to give rise to the existence of equitable considerations, and the distinction that he draws between a company where the association between the members is a purely commercial one, and where it is based on other considerations where the basis of the association might not be adequately and exclusively laid down in the Company's articles of Association.

103. I have already referred in paragraph 84 above to what Lord Hoffmann had to say in *O'Neill v Phillips* (supra) at 1098H – 1099A with regard to the role of equitable considerations in the determination of a petition alleging unfair prejudice in circumstances where such considerations arise. Lord Hoffmann went on at 1099G-H to refer to Lord Wilberforce's comment in *Re Westbourne Galleries Ltd* at 379 that it would be wholly undesirable to define the circumstances in which the application of equitable principles might make it unjust or inequitable for a party to insist on legal rights or exercise them in a particular way. However, he went on to emphasise that this did not mean that there were no principles by which those circumstances might be identified, and he went on to say: *"The way in which such equitable principles operate is tolerably well settled and in my view, it would be wrong to abandon them in favour of some wholly indefinite notion of fairness."*

104. At 1101D – 1102A, Lord Hoffmann further said this:

"So I agree with Jonathan Parker J. when he said in In re Astec (B.S.R.) Plc. [1998] 2 B.C.L.C. 556, 588:

"in order to give rise to an equitable constraint based on 'legitimate expectation' what is required is a personal relationship or personal dealings of some kind between the party seeking to exercise the legal right and the party seeking to restrain such exercise, such as will affect the conscience of the former."

This is putting the matter in very traditional language, reflecting in the word "conscience" the ecclesiastical origins of the long-departed Court of Chancery. As I have said, I have no difficulty with this formulation. But I think that one useful cross-check in a case like this is to ask whether the exercise of the power in question would be contrary to what the parties, by words or conduct, have actually agreed. Would it conflict with the promises which they appear to have exchanged?

...

I do not suggest that exercising rights in breach of some promise or undertaking is the only form of conduct which will be regarded as unfair for the purposes of section 459. For example, there may be some event which puts an end to the basis upon which the parties entered into association with each other, making it unfair that one shareholder should insist upon the continuance of the association. The analogy of contractual frustration suggests itself. The unfairness may arise not

from what the parties have positively agreed but from a majority using its legal powers to maintain the association in circumstances to which the minority can reasonably say it did not agree: non haec in foedera veni. It is well recognised that in such a case there would be power to wind up the company on the just and equitable ground (see Viridi v. Abbey Leisure Ltd. [1990] B.C.L.C. 342) and it seems to me that, in the absence of a winding up, it could equally be said to come within section 459. But this form of unfairness is also based upon established equitable principles and it does not arise in this case.”

105. Mr Strutt relies upon this latter passage, and also what Lord Hoffmann had to say earlier about wholly indefinite notions of fairness in support of his submission that, on the facts of the present case, to succeed, Tim should be required to identify some clear promise or understanding when, on proper analysis, he is unable to do so.

106. Mr Strutt also draws my attention to what was said by Lord Hoffmann at 1102 H – 1103A where, having said that he agreed that it would have been unfair for Mr Phillips on the facts of that case to use his voting powers under the articles to remove Mr O’Neill from participation in the conduct of the business of the company without giving him the opportunity to sell his interest in the company at a fair price, he went on to say this:

“Although it does not matter, I should say that I do not think that this was the position when Mr. O’Neill first acquired his shares in 1985. He received them as a gift and an incentive and I do not think that in making that gift Mr. Phillips could be taken to have surrendered his right to dismiss Mr. O’Neill from the management without making him an offer for the shares. Mr. O’Neill was simply an employee who happened to have been given some shares. But over the following years the relationship changed. Mr. O’Neill invested his own profits in the company by leaving some on loan account and agreeing to part being capitalised as shares. He worked to build up the company’s business. He guaranteed its bank account and mortgaged his house in support.”

107. Mr Strutt submits that Tim’s position was analogous to that of Mr O’Neill immediately after he had been given his shares on the basis that, at the time that the gift of the shares was made to Tim, although nominally a director he was in substance an employee with no real directorial role, and that his position did not significantly change thereafter, in contrast to the position of Mr O’Neill.

108. Mr Berragan draws my attention to an earlier passage at 1102C-D where Lord Hoffman referred to his earlier decision in *Re Saul D Harrison & Sons plc* [1995] 1 BCLC 14, when he had used the term ‘legitimate expectation’, explaining it as follows:

"I gave as an example the standard case in which shareholders have entered into association upon the understanding that each of them who has ventured his capital will also participate in the management of the company. In such a case it will usually be considered unjust, inequitable or unfair for a majority to use their voting power to exclude a member from participation in the management without giving him the opportunity to remove his capital upon reasonable terms. The aggrieved member could be said to have had a 'legitimate expectation' that he would be able to participate in the management or withdraw from the company".

109. Lord Hoffman went on to say that it had probably been a mistake for him to use the term '*legitimate expectation*'. He explained that the term was *correlative* to equitable restraint - it was a consequence, not a cause, of the equitable restraint.
110. Of course, in *O'Neill v Phillips*, the petitioner had not been excluded. There had been a breakdown in the relationship of trust and confidence, but it was held that without having been excluded from participation in management, the petitioner was not entitled to demand the purchase of his shares simply because the relationship of trust and confidence had broken down. Mr Berragan, by reference to observations in a passage in *Hollington on Shareholders Rights, 9th Edition* at para 7-10, suggests that the result might have been different in *O'Neill v Phillip* itself if it had been a different sort of quasi-partnership, for example, family members as opposed to 'competing businessmen'. However, no authority was advanced for this proposition.
111. Mr Berragan referred me to the helpful summary of the principles to be derived from Lord Hoffmann's speech in *O'Neill v Phillips* of Patten J (sitting in the Court of Appeal) in *Grace v Biagioli* [2005] EWCA Civ 1222 at [61]. Patten J identified the sixth principle as being that:
- "It is not enough merely to show that the relationship between the parties has irretrievably broken down. There is no right of unilateral withdrawal for a shareholder when trust and confidence between shareholders no longer exist. It is, however, different if that breakdown in relations then causes the majority to exclude the Petitioner from the management of the company or otherwise to cause him prejudice in his capacity as a shareholder".*
112. In *Migration Solutions Holdings Limited* [2016] EWHC 523 (Ch), to which I was referred by Mr Berragan, Mann J cited Patten J's summary of the relevant principles, and at [192] and at [193] made the additional point that the existence of a quasi-partnership is not determinative of the question of whether equitable constraints on the exercise of legal rights apply to the particular case, and therefore stated that he did not propose to spend too much time on that "*pigeon-holing exercise*". Further, he expressed the view that the traditional quasi-partnership formulation was likely to describe a relationship where the relationship was personal rather than purely commercial and arm's length.
113. I was referred to a number of cases concerned with the question as to whether equitable constraints had arisen in the context of family companies, and whether those companies were properly to be regarded as quasi-partnership companies.
114. In *Fisher v Cadman* [2006] 1 BCLC 499, Philip Sales, as he then was and then sitting as a Deputy Judge of the High Court, considered a claim by a petitioner against her two brothers, all of whom had inherited their shares on the death of their father and mother. The brothers held a majority, and were in control of the company, and the petitioning sister did not participate in the running of the company. Although this was not an exclusion case, the question arose as to whether equitable constraints arose, and whether the company was to be treated as a quasi-partnership company.
115. At [88] & [89], Philip Sales said this:

"[88]As appears from the authorities I have referred to, conduct of the de facto controllers of a company may qualify as unfairly prejudicial to the interests of a member for the purposes of S459 if it involves (i) a breach of the agreement between the members contained in the Articles of Association or (ii) a violation of such other, wider equitable constraints as may have arisen to bind the controllers.

[89] As to the second of these possibilities, I consider that the relationship between Mrs Fisher and Cedric and Rodney Cadman was one in which equitable considerations going beyond the simple terms of CDL's Articles of Association applied as constraints upon the way in which Cedric and Rodney could behave in relation to the company and Mrs Fisher. It was a relationship to which the label 'quasi-partnership', as used in the authorities, may be applied, albeit it did not share all the features typical of a true partnership-type relationship as identified in *Ebrahimi v Westbourne Galleries* and *Re Bird Precision Bellows*. There was no agreement that Mrs Fisher should have a role in the management of the company. She did not herself provide capital for the company, she was given or inherited her shareholding in it from her parents. But the company had started life as a clear quasi-partnership involving James, Edith, Cedric and Rodney Cadman, and it was effectively continued on the same basis after first James' then Edith's deaths, as a small family company in which the family relationship would be important alongside the relationship defined in the Articles of Association. Its affairs were dealt with on a very informal basis throughout, indicating a common understanding on all sides that the Articles of Association did not represent the complete and exhaustive statement of how the relationship between the members and the members and management should be conducted...".

116. As Mr Berragan points out, it was expressly stated in *Fisher v Cadman* that a quasi-partnership relationship may arise after incorporation. This was implicit in the passages that I have cited above from *Westbourne Galleries* and *O'Neill v Phillips*, and the point was authoritatively confirmed by Arden LJ (as she then was) in *Strahan v Wilcock* [2006] BCC 320, where at [21] she said:

"Logically, the appropriate question is whether, if the company had been formed (viz. incorporated) at the time the company is alleged to have become a 'quasi-partnership', that is, in this case, at the time when Mr Strahan acquired his shares, the company would have qualified as a 'quasi-partnership' applying the principles set out by Lord Wilberforce. Thus it is important to ask whether at that point in time, the company would have been formed on the basis of a personal relationship involving mutual confidence. It would also be appropriate to ask whether, under the arrangements agreed between the parties, all the parties, other than those who were to be 'sleeping' members, would be entitled to participate in the conduct of the business..."

117. I was referred to two further family company cases by Mr Strutt.
118. Firstly, Mr Strutt referred to *Waldron v Waldron* [2019] EWHC 115 (Ch), in which the company had been established by the parents of four siblings. The parents transferred their shares to the children over time and the issue was whether the siblings' relations

in respect of the affairs of the company were governed by equitable considerations which would restrict the managing director brother in the exercise of his powers as managing director to dismiss two of his brothers from employment with the company.

119. In considering whether equitable constraints arose, HHJ Eyre QC (as he then was) said this at [29]:

“... I must remember the fact that the company in question is a small one or a private company does not, without more, give rise to such considerations (see Ebrahimi v Westbourne Galleries Ltd per Lord Wilberforce at 379E). A family company can be one in which such equitable considerations are present (see for example Fisher v Cadman & others 2005 EWHC 377 (Ch), 2006 1 BCLC 499). However, those considerations will not be present in every family company and something more is needed for them to be present than the ownership of the shares in a company by members of the same family and more even than the mere fact that family members are officers of or employed by the company in question. Where the equitable considerations are said to derive from an agreement or understanding between members of a company a degree of precision is required. The agreement does not have to have the degree of certainty which would be necessary for an agreement to be enforceable as contract but there must be “a sufficient degree of agreement that it can be said that there has been a breach of good faith in departing from it” (Khoshkou v Cooper & others 2014 EWHC1087 (Ch) per HH Judge David Cooke at 24).” [My emphasis added]

120. At [66], HHJ Eyre QC observed:

“Indeed, the position of succeeding generations in a family company is a classic instance of a case where it is possible for there to be such constraints notwithstanding the absence of any capital introduced those in succeeding generations.”

121. At [68], HHJ Eyre QC held that:

“The family element in the relationship between the three brothers as officers and employees of the Company was significant. I find that there were equitable considerations operating to restrain the exercise of Patrick’s powers.”

122. It is Mr Strutt’s submission on behalf of Joan that the “*something else*” that is required before equitable constraints will be held to have arisen, even in the case of a family company, is missing in the present circumstances.

123. Secondly, Mr Strutt referred me to *Dinglis v Dinglis* 2019 EWHC 1664 (Ch), a decision of Mr Adam Johnson (as he then was) sitting as a Deputy High Court Judge.

124. In this case, a father owned 99 of the 100 shares in the company. Some years after acquiring shareholding, he transferred some shares to his children, but retained a 64% shareholding. One of his sons, was also appointed as a director, was given a 12% holding, and played an active role in the company, particularly after his father relocated to Cyprus. There was a subsequent breakdown in relations and the petitioner was removed as a director of the company. Mr Strutt relies upon a number of points made at [167] – [187] of the judgment, which he relies upon as containing a comprehensive

review of the principles relating to exclusion from management in quasi-partnership/family company cases. In particular:

- i) Mr Strutt referred to [180] of the judgment where the deputy judge noted that the absence of any sufficiently clear promise or understanding (as opposed to expectation, in the sense of a hope that matters would turn out in a way which was desirable) was fatal to a key part of the petition in *O'Neill v Phillips*. I note that in going on to consider this point further in [181], the deputy judge referred to Lewison J (as he then was) in *Dashfield v Dashfield* [2009] 1 BCLC 220 at 65 having explained Lord Hoffmann's analysis in *O'Neill v Phillips* as follows:

"...it is clear from Lord Hoffmann's application of these principles to the facts of the case that a promise binding in equity is more than a reasonable and legitimate expectation. Mr O'Neill had a reasonable and legitimate expectation that he would be allotted more shares, in the sense that it reasonably appeared likely to happen. But Mr Phillips gave no promise to that effect. So there was no equity binding Mr Phillips's conscience and section 459 should not be used to impose on someone an obligation to which he had never agreed."

- ii) Mr Strutt referred to [183(i)] where the deputy judge observed that:

"It follows from the points made above that the mere fact that a company is a family company does not result in the conclusion that it is a quasi-partnership, in which the exercise by the majority of their legal rights are subject to equitable constraints."

- iii) Mr Strutt referred to the fact that the deputy judge, at [186], had identified an important question to focus on as being:

"... notwithstanding that Paul's exclusion from management was in conformity with DPL's constitution, has he shown sufficiently clearly on the evidence the existence of any agreement or understanding, binding in fairness and equity, that he would be entitled to participate in the management of DPL for so long as the business of DPL continued (or at least, so entitled in the absence of an appropriate offer to purchase his shareholding)?"

- iv) Mr Strutt further highlighted [188], where the deputy judge stated:

"... the mere fact that a company as a family company, and even the fact that it is managed on the basis of mutual trust and confidence, are not in themselves a sufficient basis for the conclusion that the company is a quasi-partnership company. Something more is needed." [Emphasis added]

The deputy judge went on in the following paragraph to set out that the *something more* relied upon by the petitioner was the identification of a number of alleged understandings.

- v) Mr Strutt refers to the deputy judge, at [207] and [208], having made findings with regard to the petitioner joining the company and acquiring his shareholding as follows:

Paul was not an existing partner who necessarily had an expectation of involvement in management. He came in as someone who was new to the business, and who would learn the ropes ... When originally incorporated in 1989, Andreas [the father] retained 99 out of the 100 issued shares and appointed himself sole director. There can be little doubt that in those circumstances Andreas regarded himself as in charge of the business. I see nothing in the background at that stage which carries the inference that Andreas' rights as a majority shareholder were to be in any way constrained or curtailed by other agreements or understandings.

...

I do not think that changed at the point in September 1991 when Andreas came to make a gift in DPL to ... Paul, so that Andreas was left with a 64% shareholding ... Again the initiative to make these gifts came from Andreas. It is likely Paul was not even aware of the transfers until some time after they happened. Andreas' decision was motivated by his interest in making provision for his family. He remained the sole director of DPL. I find it impossible to infer from this decision anything which suggests that Andreas wished to relinquish ultimate control over DPL, including having an unfettered final say in the way it was managed."

- vi) Mr Strutt refers to the finding of the deputy judge at [219] that:

"For all the above reasons, I come to the conclusion that Paul's case on his alleged Understandings is not made out. It follows that in my view DPL was not a quasi-partnership company, in the sense in which that phrase was used by Lord Wilberforce in Ebrahimi v Westbourne Galleries. Paul's exclusion from the management of DPL by Andreas therefore does not give rise to unfair prejudice."

125. In the event, the petition in *Dinglis v Dinglis* succeeded on the basis of Andreas' various breaches of fiduciary duty and the likelihood of such conduct continuing in the future. An order was made for the purchase of the son's shares at a discount reflecting his minority status, essentially because it had not been established that the Company was a quasi-partnership.
126. Finally, by way of authority, I was referred to the decision of HHJ Hodge QC in *Re Autobody Ringway Ltd* [2018] EWHC 2336 (Ch). In this case, HHJ Hodge QC, applying the final paragraph from the citation from the speech of Lord Hoffmann in *O'Neill v Phillips* referred to in paragraph 104 above, held that the petitioner, who was 25% shareholder, was entitled to an order pursuant to Section 996 of the 2006 Act that he be bought out notwithstanding that the company in question was not a quasi-partnership company, and the respondent 75% shareholder had grounds for removing the petitioner as an employee. It was held that the unfair prejudice lay, on the facts of that case, in removing the petitioner from management without giving the petitioner the

opportunity to sell his shareholding at a fair price. However, it was also held that the petitioner's shares should be valued on a fully discounted basis.

127. In *Loveridge v Loveridge* [2021] EWCA Civ 1697, the Court of Appeal was invited to overrule *Re Autobody Ringway Ltd*. At [120], Falk J, giving the lead judgment, declined to do so, saying: “Every case must be decided on its facts, and given Lord Hoffmann’s analogy with frustration the conclusion that the judge reached may have been open to him on the facts. But in this case, taking account of the serious nature of [the petitioner’s] conduct, it would not arguably be unfair to leave [the petitioner] without a remedy.”

Is Tim’s case as to unfair prejudice made out?

128. In developing Joan’s case as set out in paragraphs 89 – 93 above, Mr Strutt submitted that the following propositions could be extracted from the cases that I have referred to, namely:

- i) In what Mr Strutt described as the classic quasi-partnership case, where there was a previous partnership between the shareholders or where they had invested on the formation of the company, the Court will readily infer an agreement or understanding which imposes equitable restraints on the majority in relation to participation in the management of the company.
- ii) In other cases, the court will look for evidence of an agreement or understanding, a degree of precision being required in this regard. A legitimate or even reasonable expectation, in the sense of a hope that something might reasonably appear likely to happen, is not enough.
- iii) There must be detrimental reliance on any promise or understanding.
- iv) Family companies can be quasi-partnership companies, but are not automatically so, and there are cases where equitable restraints have been imposed as between members of the succeeding generation (i.e., *Waldron v Waldron* and *Fisher v Cadman*).
- v) However, the imposition of equitable restraints on a parent who gifts shares to a child is a different matter (e.g., *Dinglis v Dinglis*), unless the Court is satisfied on the evidence that the parent intended or agreed to cede the control derived from Section 168 Companies Act 2006.

129. This formulation and approach suggested by Mr Strutt does, in my judgment, represent too restrictive a view of the circumstances in which the existence of a quasi-partnership, or equitable restraints might be held to exist in a family company, in particular so far as it is suggested that law requires to be satisfied, where shares gifted by a parent to a child, that the parent intended to or agreed to cede the control derived from Section 168 of the Companies Act 2006. I consider that this approach attaches insufficient importance to the emphasis placed by Lord Wilberforce in *Re Westbourne Galleries* at 379-380 on whether considerations of a personal character arising between one individual and another might make it unjust or inequitable for legal rights to be insisted on, and the distinction that Lord Wilberforce drew between the case of the company where the association between the shareholders was a purely commercial one of which

it could safely be said that the basis of association was adequately and exclusively laid down in the articles of Association, and a company were considerations of a personal character arose.

130. Further, I consider that the approach suggested by Mr Strutt pays insufficient regard to Lord Hoffmann's specific observation in *O'Neill v Phillips* at 1101H that he was not suggesting that exercising rights in breach of some promise or undertaking was the only form of conduct which would be regarded as unfair for the purposes of Section 994.
131. The following facts and matters in the present case have led me to the conclusion that the Company is properly to be regarded as a quasi-partnership company, or at least as being a company in which Joan became subject to equitable constraints insofar as she sought to exercise any legal power to dismiss Tim as an employee, or to remove him as a director:
- i) The Company was clearly, as I see it, a quasi-partnership between Clive and Joan from when they first became involved in the Company, having each acquired 50% of the issued share capital thereof, and both having appointed directors. In essence they acquired their interest therein as husband and wife to run it together.
 - ii) At all relevant times there was an understanding within the family, as accepted by Joan in giving evidence, that Tim would ultimately take over the business from Clive and Joan, and obtain their shares, possibly with shares also being held on trust for Brother, at the latest on Clive's and Joan's deaths, if not before.
 - iii) Tim was appointed as a director of the Company in 2004 in order to give him a greater sense of involvement in the Company. I consider this can only have been because it was anticipated, and as I see it hoped by Clive and Joan at that time, that he would one day take over the running of the Company from them.
 - iv) I have found that Tim was at least encouraged by Clive to give up his studies and other interests in Brighton and return to Oxford in 2005. This must, as I see it, have been on the understanding, which again I understood Joan to accept, that Tim would work for the Company for the foreseeable future, and indeed would spend the rest of his life working for the Company, after taking over from his parents.
 - v) What Joan wrote in the Fact-Find that she completed in December 2018 in relation to the mortgage that Tim was applying for in respect 32 Pitts Road at least raised the real possibility that shares would be transferred to Tim within the next five years, implicitly as part of the process under which it was envisaged that Tim would eventually take over the running of the business of the Company.
 - vi) There were no doubt good tax reasons for Clive's Will providing for a nil-rate band trust and for shares being transferred to Tim following Clive's death when effect was given to that trust. However, the shares in question were shares that Clive had previously held, and no shares were transferred to be held upon trust for Brother as one might have expected if the motivation for transferring shares at that time was solely down to tax saving considerations. I do not consider that one can properly divorce the transfer of shares in this situation from the overall

plan and understanding that Tim would continue working in the business with a view to taking over, at the latest on Joan's death.

- vii) Thus, I accept that it is correct to say that the 2,000 shares that were transferred to Tim on 31 July 2012 were transferred on at least an implicit understanding that he would continue to participate in the management of, and be employed by the Company, so long as he remained a shareholder. I consider that it must have been upon this basis that Tim then remained employed by the Company for nearly a further seven years after the shares had been transferred to him.
 - viii) Whilst Joan may have been anxious to keep control, at least until the time that the business was handed over to Tim as anticipated and understood, and whilst ultimately it may have been Joan who called the shots on the major decisions in respect of the Company, I have found that Tim did have at least some significant role to play in the decision-making processes of the Company, and he was a director, and Joan must be taken to have recognised that she was ceding at least some control to Tim as a 20% shareholder, and doing so in anticipation that ultimately more shares would be transferred to him, and he would take over the running of the business.
 - ix) It is not without significance that when, in 2018, Joan had got to the point that she considered that she could no longer work with Tim in the Company, despite their previously good relationship, she did not simply dismiss him and remove him as a director in accordance with her legal entitlement to do so, but initially proposed a split of the business of the company, with Joan acquiring Tim's shares in the Company, and Tim taking the MOT business, with the benefit of a licence or lease to use the MOT bay at 379 Cowley Road. Whilst, in evidence, Joan sought to suggest that this was down to treating Tim fairly as her son, one cannot, as I see it, divorce these personal considerations as between mother and son from the affairs of the company, the basis upon which they ran it and the nature of the association between its members, i.e., at this time, Joan and Tim.
 - x) The Company was always run on an informal basis. There were no formal or regular directors' meetings, and no formal contracts of employment were entered into between the Company and Tim or statement of terms provided, contrary to employment law. Under cross-examination Joan accepted that this was down to the fact that she and Tim had trust and confidence in each other.
 - xi) There was a restriction on the transfer of shares in the Company's articles such that it was, at all relevant times, open to Joan to cause the Company to refuse to register any transfer of shares made by Tim.
132. This present case is, as I see it, a very different case on its facts from *Dinglis v Dinglis*, and it is necessary to bear in mind that many of the observations of the deputy judge in that case were directed at the particular facts of that case. In particular:
- i) This case involved a large company firmly controlled by the father, who was a strong character.

- ii) The company was not established as a quasi-partnership company, but rather as the father's own company, albeit that shares were subsequently transferred to the petitioning son.
 - iii) There was no suggestion that the son gave up anything in order to join the Company, and there was no suggestion of any understanding that control of the Company would ultimately pass to the son, and no suggestion of any understanding that the son would continue to work in the company indefinitely, or for the rest of his working life. Rather, the father, in that case, made clear that he retained control of the company, and there was no indication that he ever intended to relinquish that control.
 - iv) The relationship between the father and son was, on proper analysis, more of a commercial relationship, than a personal one so far as the affairs of the company were concerned.
133. I consider the present facts and circumstances to be very much more closely analogous to those of *Fisher v Cadman* and *Waldron v Waldron* than *Dinglis v Dinglis*. In these cases, one had family companies that had been operated as quasi-partnership companies where those in control would have been subject to equitable restraints, and one was concerned as to the position of children who had inherited or acquired shares from their parents. In each case the Court held that the children, as shareholders, effectively stepped into the shoes of their parents, and that the company remained a quasi-partnership company with those in the next generation having control of the company being subject to similar equitable constraints as their parents. In *Fisher v Cadman*, the inheriting daughter, who successfully petitioned as against her brothers, was unable to point to any agreement that she should have a role in the management of the company, did not provide capital for the company, and was simply given or inherited shares from her parents, yet it was found that the company was a quasi-partnership company and that equitable considerations arose as between the brothers and the petitioning daughter.
134. As referred to in paragraph 115 above, in *Fisher v Cadman* at [89], the deputy judge, Philip Sales, in finding for the daughter, emphasised that the company had started life as a clear quasi-partnership involving various members of the family, and was effectively continued on the same basis after the parents' deaths, the relevant company being described as a small family company in which the family relationship would be important alongside the relationship defined in the Articles of Association. Further, the deputy judge attached significance to the fact that the affairs of the company had been dealt with on a very informal basis throughout, and to the fact that that indicated a common understanding on all sides that the Articles of Association did not represent a complete and exhaustive statement of how the relationship between the members and the members and management should be conducted.
135. Similar considerations arose in *Waldron v Waldon*.
136. On proper analysis, I do not consider there to be any significant difference in principle between the situations under consideration in *Fisher v Cadman* and *Waldon v Waldron*, and the circumstances of the present case where one effectively has what is in effect a transition process, and where, although here a surviving parent continues to hold shares and indeed retain control, other shares have been transferred to the next generation in circumstances in which it is anticipated that the child or children to whom the shares

have been transferred will ultimately take over the running of the company, and acquire further shares.

137. On this basis, and on the basis that following the transfer of shares to Tim the family relationship was of importance alongside the relationship as defined by purely legal considerations, and given the informal circumstances in which the affairs of the Company were conducted set against the background of the further matters that I have set out in paragraph 131 above, I am satisfied that the Company was, and remained as at the time that Joan sought to exclude Tim from its affairs, a quasi-partnership company, and one in which the exercise by Joan of her powers was subject to equitable constraints.
138. Further and in any event, I am satisfied that, by implication at least, there did exist an understanding as between Joan and Tim that Tim would continue to participate in the management of the business, and be employed by the Company, so long as he remained a shareholder, and that that was the basis upon which he became and remained a shareholder.
139. In the circumstances, I am satisfied that by causing the Company to dismiss Tim, and exercising her power to remove Tim as a director, and in doing so without offering to purchase Tim's shares at a fair value not discounted to reflect minority status, Joan caused the Company's affairs to be conducted in a manner unfairly prejudicial to Tim as a shareholder, because in so acting Joan acted contrary to the understanding referred to in the previous paragraph and therefore otherwise than in good faith having regard to the equitable restraints that existed.
140. I would add that even if it had not been established that the Company was a quasi-partnership, or that Joan was subject to equitable constraints, I would have been prepared to find that, in the present circumstances, causing the Company to dismiss Tim, and then removing Tim as a director, without offering to purchase his shares at a fair value amounted to unfairly prejudicial conduct having regard to the considerations referred by Lord Hoffmann in *O'Neill v Phillips* at 1102H as applied by HHJ Hodge QC in *Re Autobody Ringway Ltd* (supra), as applied to the facts of the present case. However, in these circumstances, it would be less clear-cut whether a fair value would be the value of Tim's shares on a non-discounted basis, or whether it would be appropriate to discount to reflect his minority status.

Basis of Valuation

141. Given my finding that the Company is a quasi-partnership, I am in no doubt that Tim's shares should be valued on a non-discounted basis.
142. In *Strahan v Wilcock* (supra), Arden LJ, at [1] said:

"The general principle is well settled. Normally, in 'quasi-partnership' companies the appropriate basis of valuation is on a non-discounted basis. This is established by the decision of this Court in Re Bird Precision Bellows Limited [1984] 1 CH 419 and the speech of Lord Hoffman in O'Neill v Phillips [1999] 1WLR 1092 at 1107 with which the other members of the House agreed. But Lord Hoffman added:

"This is not to say that there may not be cases in which it will be fair to take a discounted value. But such cases will be based upon special circumstances..."

143. I do not consider that there are any special circumstances in the present case that lead to a different conclusion other than that Tim's shares should be valued on a non-discounted basis if, as I have found, the Company was a quasi-partnership.
144. Should I be wrong in my conclusion as to the Company's status as a quasi-partnership company, and the basis of my finding as to unfair prejudice requires to be as set out in paragraph 140 above, then further consideration does require to be given to the basis of valuation of Tim's shares, and as to whether they ought to be discounted for his minority status.
145. The correct approach was considered by reference to the relevant authorities by HHJ Hodge QC in *Re Lloyds Autobody Ltd* (supra) at [112] and [113], where he set out the relevant principles as follows:

"112 The next question is the basis upon which those shares should be valued. In approaching this question, I have considered the authorities cited to me on the principles applicable to the grant of relief under section 994 and the terms of any share buy-out order, starting with the classic exposition of Nourse J in Re Bird Precision Bellows Ltd [1984] Ch 419 (and approved on appeal to the Court of Appeal at [1986] Ch 658) and including the decisions of Mr Nicholas Strauss QC in Richards v Lundy [2000] 1 BCLC 376, HHJ Purle QC in Re Sunrise Radio Ltd, Kohli & Lit & Ors [2009] EWHC 2893 (Ch), reported at [2010] 1 BCLC 367, Mr Robin Hollington QC in Re Blue Index Limited, Murrell v Swallow [2014] EWHC 2680 (Ch), the late Mr Edward Bartley Jones QC in Re Addbins Ltd, Ashdown v Griffin [2015] EWHC 3161 (Ch), and the commentary to be found at Joffe: Minority Shareholders: Law, Practice and Procedure, 5th edition (2015) at paragraphs 6.326 to 6.336.

113. From those authorities I derive the following principles (as applicable to the facts and circumstances of the instant case):

- (1) The task of the court, in granting relief under section 994, is, first, to identify the unfair prejudice which has been established and, then, to fashion the relief so as to cure that prejudice. That principle must underly the issue whether or not a discount for a minority shareholding should be applied.*
- (2) The whole purpose of the unfair prejudice remedy is to grant the oppressed minority a remedy which they would not otherwise have. It would substantially defeat the purpose of the new remedy if the oppressing majority were routinely rewarded by the application of a discount for minority shareholding.*
- (3) Thus, whether or not a discount for a minority shareholding is applicable involves drawing a distinction between the general case, where it would be unfair to treat the wronged petitioner as a willing seller, and therefore for the price to be fixed on a discounted basis, and*

the exceptional case where it would fair to do so because (for example) he had acquired his shares at a discounted price, or had so acted as to deserve his exclusion from the company. In other words, the emphasis of the underlying principle lies in the unfairness in treating a successful petitioner as a willing seller.

(4) *Although the general rule is that there should be no discount, the court retains a wide discretion and may apply a discount where, apart from section 994, the petitioner would not have succeeded in securing a winding-up order on the just and equitable ground: see in particular observations of HHJ Purle QC in Sunrise Radio Ltd at paragraph 301 and Mr Robin Hollington QC in Re Blue Index Limited, Murrell v Swallow at paragraph 33.”*

146. However, I note that in *Strahan v Wilcock*, Arden LJ expressed the view *obiter* that there was a presumption in favour of a discount in companies that are not quasi-partnerships. On the other hand, in *In Re Edwardian Group Limited* [2018] EWHC 1715 (Ch), Fancourt J held at [642] that there is no presumption for or against a discount where the company is not a quasi-partnership, in contrast to the presumption against a discount where it was. It is to be noted that in that case, Fancourt J took account of marriage value [647]-[652].
147. Applying the above as best I can to the present facts, I would, in the exercise of my discretion in granting relief pursuant to section 996 of the 2006 Act, have found that Tim’s shares should be valued on a non-discounted basis even if the Company could not properly be regarded as being a quasi-partnership company, The principal considerations that lead me to this conclusion are:
- i) I consider that the better view of the authorities is that there is no presumption in favour of applying a discount simply because the company is not a quasi-partnership company;
 - ii) I do not regard it to be appropriate on the facts of the present case to regard or treat Tim as a willing seller, in which case it may well have been appropriate for the price to be paid to Tim to be on a discounted basis. I do not consider it appropriate to treat Tim as a willing seller bearing in mind that he had no wish to bring the relationship with Joan as co-directors and shareholders in the Company to an end, and it was only brought to an end at Joan’s insistence in circumstances it has been determined, and is now accepted, for which neither party was to blame. Tim would have preferred to continue as a director and shareholder in the Company, and has only been forced into the position he is now in as a result of Joan’s actions.
 - iii) Tim’s shares have marriage value to Joan, and their acquisition would give her 100% control of the Company, and given that the shares have been valued on an asset basis she would be able, if she so wished, to realise the value of her shareholding and recover the price that is required to pay for Tim’s shares.
 - iv) In the circumstances, I consider that it would be unfair and inequitable for Tim’s shares to be valued on any other basis than a non-discounted basis.

Share purchase order

148. Having found that Tim's case as to unfair prejudice has been made out, it is necessary to consider what (if any) relief it would be appropriate to grant in the exercise of my discretion under Section 996 of the 2006 Act.
149. No other form of relief has been suggested other than that I should order Joan to purchase Tim's shares at a fair value assessed as at today's date, and it has not been suggested that I should decline to grant relief on any basis. I will therefore order pursuant to Section 996 of the 2006 Act that Joan purchases Tim's 2,000 of £1 each in the share capital of the Company at a fair value not discounted to reflect Tim's minority status.

Valuation

150. It is necessary for me now to determine the fair value of Tim's shares.
151. The share valuation experts, Ms Longworth and Mr Ewing, are both agreed that the Company should be valued on an assets basis, and there are only three points of disagreement between them as to how the correct valuation is arrived at.
152. They both start with a net asset figure as at 31 July 2021 of £1,955,000. The matters of disagreement relate to what additional amounts required to be added thereto or subtracted therefrom, it being agreed between them that £28,000 ought to be added in any event to reflect post 31 July 2021 profits. The disagreements between them are the following:
- i) Ms Longworth is of the opinion that £527,000 ought to be added by way of adjustment in respect of land value, i.e., the value of property owned by the Company. On the other hand, it is Mr Ewing's opinion that the amount to be added by way of adjustment in respect of land value is only £197,000.
 - ii) Ms Longworth is of the opinion that £73,000 ought to be added to reflect the value of the MOT business carried out from 379 Cowley Road. Mr Ewing is of the opinion that the appropriate figure is only £5,000.
 - iii) The Company's balance sheet that has been used to arrive at the figure of £1,955,000 includes £147,000 in respect of a director's loan owed by Joan to the Company. Mr Ewing's opinion is that this should be deducted from net asset figure, whilst Ms Longworth maintains that there should be no such deduction.
153. I will deal with these points in turn.
154. The position in respect of land values is not ideal, in that there is no expert property valuation evidence as such, neither party having sought or obtained permission to call expert property valuation evidence. Ms Longworth and Mr Ewing have simply relied upon property valuation reports made available to them by the parties respectively. Whilst the valuation report provided to Ms Longworth is CPR Part 35 compliant, the reports provided to Mr Ewing are not so compliant.

155. Ms Longworth's figure is based upon a valuation report produced by Matthews Goodman dated 7 January 2022. This values 379 Cowley Road at £3,085,000, and land at Ragnalls Lane at £329,850.
156. Mr Ewing's figure, so far as the 379 Cowley Road is concerned, is based upon a valuation report prepared by Carter Jonas valuing 379 Cowley Road as at 20 March 2018 on behalf of Svenska Handelsbanken AB at between £2,530,000 and £2,830,000 dependent upon assumptions. I note that in paragraph 6.7 of his report, Mr Ewing comments that this Carter Jonas report is almost 4 years old, and that it was prepared for a purpose other than his report. He further states that he is not qualified to comment on whether the valuation provided continues to reflect a fair value, and reserves the right to amend his report should a more contemporary valuation be provided. So far as Ragnalls Lane is concerned, reliance is now placed by Joan upon a valuation from Hextall Twiddy dated 4 April 2022, valuing the latter at £177,500.
157. There has been no investigation of the respective merits of the land valuation reports during the course of the trial. Nevertheless, I am asked by the parties to resolve this issue on the materials available to me.
158. I have decided that the appropriate course is to accept the property valuation evidence of Matthews Goodman in preference to Joan's property valuation evidence for the following reasons:
- i) So far as 379 Cowley Road is concerned, not only is the Matthews Goodman report more up to date than the Carter Jonas report, it is CPR Part 35 compliant and was prepared for the specific purpose of the present litigation rather than for lending purposes. I consider that the Matthews Goodman report provides a more reliable basis for the Court to work from than that provided by the Carter Jonas report. Further, by way of sense check, the difference in value as between Carter Jonas's report prepared in 2018 and the Matthews Goodman report prepared earlier this year is not outside the sort of range that one might expect to reflect increases in property values over the last few years as a matter of anecdotal impression.
 - ii) So far as the Ragnalls Lane is concerned, Hextall Twiddy's report is slightly more up to date, but again is not CPR Part 35 compliant. Further, it does not have the same level of detail as the Matthews Goodman report, and I have more confidence in the latter.
159. So far as the value of the goodwill of the MOT business is concerned, Ms Longworth has arrived at a figure based on a multiple of turnover, whereas Mr Ewing has allowed a nominal £5,000 based upon such information with regard to expenses and so forth as he has been able to gather from the Company accounting records. Mr Ewing's analysis is that the business does not generate any profit, but in response Ms Longworth has pointed out that this is because the Company notionally attributes 55% of its entire overheads to the MOT business.
160. I found Ms Longworth's explanation as to how she had arrived at a figure of £73,000 based on a multiple of turnover when cross-examined on the point to be cogent and convincing. She explained that she had used her experience of businesses of this kind to arrive at a figure based upon a multiple of turnover. She explained that she had based

her calculations upon a turnover of £120,000, and expenses made up of rent, the annual cost of a mechanic and assistant, and other administrative expenses, leaving a profit of £30,000 per year. Applying an appropriate multiplier to that, she got to her figure of £73,000.

161. The difficulty, as I see it, with Mr Ewing's analysis is that it fails to reflect the fact that the MOT business is, in fact, clearly profitable, and there is no clear evidence as to how the Company's overheads ought properly to be attributed. In these circumstances, I consider that I should take Ms Longworth's figure as the more reliable starting figure, but adjust the figure down slightly to reflect the risk that the turnover figure may not be maintainable and/or that expenses might be more than expected. I therefore propose to place a figure of £50,000 on the goodwill of the MOT business.
162. The final issue relates to Joan's director's loan account in an amount of £147,000. Mr Ewing's essential justification for deducting this figure is that he suggests that any valuation ought to be done on the basis of a willing buyer and a willing seller, and that a willing buyer would not view any balance due from a shareholder/director as a recoverable asset and, as such, would reduce the amount they would pay by such balance in reaching price. I do not accept this analysis. Firstly, I do not consider this to be a situation where one is conducting a valuation on the basis of a willing seller and a willing buyer, bearing in mind that Tim is not a willing seller for reasons that I have already explained. Further, I see no rational basis for concluding that a willing buyer would regard the balance due from the shareholders/director as irrecoverable. In the circumstances, I consider that this figure of £147,000 should remain included within the net asset figure.
163. Consequently, it is my finding that the value of the Company at today's date is £2,560,000, i.e., £1,955,000 (agreed net asset value as at 31 July 2021 subject to adjustments) + £527,000 (land value adjustment) + £50,000 (goodwill of MOT business) + £28,000 (post 31 July 2021 profit).
164. Consequently, the value of Tim's 20% shareholding on a non-discounted basis as at today's date is £512,000.

Conclusion

165. I have found that the affairs of the Company have been conducted in a manner unfairly prejudicial to Tim as a shareholder thereof through his dismissal as an employee, and removal as a director without any offer being made to purchase his shares at a fair non-discounted value, and I consider it appropriate to make an order pursuant to Section 996 of the 2006 Act that Joan purchases Tim's shares in the Company, which I have valued at £512,000 as at today's date.