



Neutral Citation Number: [2023] EWHC 1514 (Ch)

Case No: CR-2021-001454

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
THE BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMPANIES COURT
IN THE MATTER OF FORE FITNESS INVESTMENTS HOLDINGS LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 21/06/2023

Before:

CHIEF INSOLVENCY AND COMPANIES COURT JUDGE

Between:

IDREES HASHMI

Petitioner

- and -

(1) PAUL LORIMER-WING

Respondents

(2) JAMES GILBERT

(3) FORE FITNESS INVESTMENTS

HOLDINGS LIMITED

STEVEN REED (instructed by **JOSEPH SUTTON SOLICITORS**) for the **Petitioner**

PAUL LORIMER-WING for the **First Respondent**
The Second and Third Respondents not appearing

Hearing dates: 15-18 May 2023

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This judgment was handed down remotely at 10.00am on 21 June 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Chief ICC Judge Briggs:

1. Mr Hashmi, as Petitioner, seeks a buy-out order against the First Respondent, Mr Lorimer-Wing, on the ground that Mr Lorimer-Wing, as director of Fore Fitness Investments Holdings Limited (the “Company”), acted in a manner that was unfair and prejudicial to Mr Hashmi’s interests as shareholder of the Company.
2. Mr Hashmi was a director of the Company from 20 March 2020 until 26 February 2021 when the Company is said to have passed a resolution at a meeting (the “Meeting”) removing him from office. The Meeting involved, as will become clear later in this judgment, the Second Respondent, Mr Gilbert, in his capacity as a director of the Company. Mr Hashmi’s Petition initially included Mr Gilbert. He no longer pursues the Petition against Mr Gilbert as the parties settled out of court.
3. Mr Gilbert gave evidence at trial about the validity of the resolution said to have been passed by the directors at the Meeting.

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4. Just prior to the Meeting Mr Lorimer-Wing locked Mr Hashmi out of the Company's IT systems. Following the Meeting Mr Hashmi was informed that his services to the Company were no longer required. All his contact with the Company's business was severed. These matters combine and amount to, according to Mr Hashmi, unfair treatment within the meaning of section 994 of the Companies Act 2006 (the "Act").
5. Mr Lorimer-Wing says that Mr Hashmi was removed in accordance with the Company's Articles of Association, and in any event the removal was justified.

The CompanyFormation, concept and agreements

6. The registered office of the Company is at 168 Fulham Road, London, England, SW10 9PR. The nominal capital of the Company is £910,904, divided into 910,904 shares of £0.001 each. The amount of capital paid up or credited as paid up is the nominal capital. The share capital is split into 907,904 Ordinary A Shares and 3000 Ordinary B Shares.
7. The holders of "A" Shares are entitled to receive notice of, to attend at and vote at any general meetings of the company. The holders of the B Shares are not entitled to vote upon any resolution.
8. Mr Lorimer-Wing and Mr Hashmi had previously worked together in a property investment company. They continued their friendship after they left the property investment company.
9. The idea for the business came from Mr Lorimer-Wing. During a telephone call in late 2018 he informed Mr Hashmi that he had the ability to use the easyGym brand as well as its database of approximately 500,000 former easyGym members. He said that it was his ambition to create a 'startup' that would a) franchise gyms internationally, b) make use of a technology platform that would help with running all gyms and c) design a workout-generating app. The concept was that the work-out app would be available to clients for use on their tablets, phones and other mobile devices and at any easyGym. The work outs were to last for 45 minutes. It would be called PACK45. An algorithm was needed to randomise and personalise workouts. In a nutshell, the ambition was to provide clients of easyGym with a digitised platform.
10. Mr Hashmi was attracted by the concept of digitisation and said that he could assist with creating the PACK45 app, including the algorithms.
11. In January 2019 Mr Lorimer-Wing e-mailed Mr Hashmi with an investment memorandum.
12. The Company was incorporated on 27 February 2019. Following incorporation Mr Lorimer-Wing set about the task of attracting investment to fund cash-flow and provide funds for research and development. Mr Lorimer-Wing decided that he would raise money using a crowdfunding platform. He chose "Seedrs".
13. By the end of May 2019, the Company had acquired a licence to use the 'easyGym' brand.

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14. On 30 May 2019 Mr Lorimer-Wing wrote to Mr Hashmi to ask if he would be interested in investing as the crowdfunding platform needed a “lead” investor. Mr Lorimer-Wing provided Mr Hashmi with information about the Company including two valuations that used a financial modelling tool.
15. A second investment memo referred to the Company’s use of an existing operational Members’ Management System (“MMS”). This would allow members of an easyGym to access the building in which the gym was situated on a 24 hour basis and provide staff with access to information provided by members about the members. Various other investment memos were sent between May and June 2019.
16. On 26 June 2019 Mr Hashmi informed Mr Lorimer-Wing that he would invest £30,000 of his own money into the Company. He said that he would be happy to “run my savings dry”. Mr Hashmi made his initial investment on 18 November 2019 when he transferred £50,000 to the Company which, it was agreed, would be converted to equity.
17. On 2 September 2019, Mr Hashmi was allotted 114,100 A shares at an issue price of £0.001 per share.
18. On 20 March 2020 Mr Hashmi entered an investment agreement (the “Investment Agreement”) whereupon he was allotted a further 4,639 A shares (with the voting rights) and 1,500 B shares.
19. The relationship between the shareholders was also governed by the Investment Agreement and included an express term that the Company would procure the appointment of Mr Hashmi as an additional director. He was appointed director on the same day (20 March) taking on the role of Chief Technology Officer. (“CTO”)
20. Again, on 20 March 2020 the Company adopted new articles of association (“Bespoke Articles”) that modified, but did not replace in their entirety, the Companies (Model Articles) Regulations 2008 (SI 2008/3229) (“Model Articles”). In a reserved judgment handed down on 2 February 2022 by Richard Farnhill (sitting as a Deputy Judge of the Chancery Division) the court found that the Model Articles were in part modified by the Bespoke Articles which required there to be two directors for a board meeting to be quorate as:

“Bespoke Article 16.1 does require there to be multiple directors in order for board meetings to be quorate”.
21. The court found that a provision in the Bespoke Articles “requiring there to be at least two directors to constitute a quorum [is] logically... a requirement that the company in question have two directors in order to manage its affairs”. Consequently, any act of the Company without authorisation of a quorate board was ultra vires. At that stage of the litigation a counter-petition and counterclaim had been filed without authorisation of a quorate board. The counter-petition and counterclaim were struck out.
22. The Bespoke Articles included specific provisions regarding the shares in the Company including offers, allotment, sale, valuation, transfer, voting rights, general meetings and distribution of capital. There are bespoke provisions regarding the appointment and removal of directors which is the focus of this case. Bespoke Article 14.1 provides that a director shall vacate office if:

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“(a) he shall, for whatever reason, cease to be employed by the Company...

(b) he shall on more than six consecutive months have been absent without permission of the Directors from meetings of the Directors held during that period and the remaining Directors resolve that his office be vacated;

(c) other than in the case of any Investors' Director or the Executive the other Directors acting by majority for this purpose, determine that such Director shall be removed from the Board”

23. Model Article 9 remains applicable as it was not modified but was retained. It states (where relevant):

“9. (1) Any director may call a directors’ meeting by giving notice of the meeting to the directors or by authorising the company secretary (if any) to give such notice.”

(2) Notice of any directors’ meeting must indicate—

(a) its proposed date and time;

(b) where it is to take place; and

(c) if it is anticipated that directors participating in the meeting will not be in the same place, how it is proposed that they should communicate with each other during the meeting.

(3) Notice of a directors’ meeting must be given to each director, but need not be in writing...”

24. Similarly Model Article 10 applies for the same reason as Model Article 9. It provides (where relevant):

“10. (1) Subject to the articles, directors participate in a directors’ meeting, or part of a directors’ meeting, when—

(a) the meeting has been called and takes place in accordance with the articles, and

(b) they can each communicate to the others any information or opinions they have on any particular item of the business of the meeting.

(2) In determining whether directors are participating in a directors’ meeting, it is irrelevant where any director is or how they communicate with each other.”

25. On 28 August 2020 Mr Hashmi entered an agreement pursuant to which he would be paid for services rendered to the Company: the “Consultancy Agreement”. The Consultancy Agreement states that the “Company is willing to engage [Mr Hashmi] to

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provide the Services as an independent contractor, and not as an employee”. I observe that any connection to his work done as an “independent contractor” is distinguishable from his role as director of the Company.

26. The Consultancy Agreement is said to have started on 1 March 2019 and was terminable by either party on 30 days’ notice or if Mr Hashmi “in the reasonable opinion of the Board [is] negligent or incompetent in the performance of the services.” There are other grounds for immediate termination, but they are not relevant to this action. Mr Hashmi was to receive a consultancy fee of £1,000 per day exclusive of VAT.
27. Accordingly, Mr Hashmi had early discussions about the concept and business model of the Company. He subsequently became a member, an investor, a director and an independent contractor of the Company.

Operations

28. The Company managed two easyGym sites in the UK (Slough and Bradford) and had been granted franchises for two other easyGym sites. One in Basildon and one in Camberwell. The Company also holds master franchises for France and Kenya.
29. It was important to the success of the Company that the bricks and mortar gyms offering 24-hour access were easily accessible for clients and the technology was functioning.
30. Mr Lorimer-Wing states that at the outset it was known, and agreed with Mr Hashmi, that the Company needed to develop the PACK45 application program and the MMS which included a system to permit entry into an easyGym through the use of a PIN code. Mr Hashmi accepts this in his written evidence recalling several e-mails, phone calls and WhatsApp messages from January 2019. The uncontested evidence is that by 18 March 2019 Mr Hashmi had produced the first version of the PACK45 application, continued developing it and sent a second version on 2 May 2019. His account is that Mr Lorimer-Wing was delighted with the work Mr Hashmi had done.
31. Mrs Jones, first a club manager for the Company and then a training and quality manager was appointed head of operations at easyGym in January 2020. Her job was to look after the day-to-day operations of the gyms in their various locations. This included oversight of customer services, health and safety and learning and development. She was called by Mr Lorimer-Wing to give evidence about two issues. First the disengagement of Mr Hashmi from the Company’s business in the period late 2020 to the early months in 2021, and the alleged failures of the MMS overseen by Mr Hashmi.

The Petition

32. Mr Hashmi’s chronology of events starts with an e-mail request sent by him to Mr Lorimer-Wing.
33. The request was sent on 9th February 2021, asking for a report on the Company’s financial and trading position and up to date management accounts. The requested information was not provided.

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34. It is pleaded that in a phone conversation between Mr Hashmi and Mr Lorimer-Wing on 15th February 2021, he repeated his request and was informed he was not permitted access to financial information as he was not a director of the Company. This was not understood by Mr Hashmi.
35. A further request was made later in February, but the information was not provided.
36. On 2nd March 2021, the Petitioner received an email from the First Respondent, for and on behalf of the Company, which stated:

“Dear Idrees...I am writing to you in connection with your position as director and shareholder of the above Company.

Your role as a director

1. In accordance with Article 14.1(c) of the Company’s Articles of Association, James Gilbert and I resolved on Friday 26 February 2021 to remove you as a director of the Company with immediate effect. The record at Companies House will be updated accordingly.

2. All of your rights and duties as a director of the Company have therefore ceased with immediate effect.

Your A Ordinary shares in the Company

3. In accordance with Article 9 of the Company’s Articles of Association, you are deemed to have served a transfer notice in respect of all of your A Ordinary shares in the Company when you ceased to be a director.

4. As you have ceased to be a director within 4 years of the adoption of the Articles on 20 March 2020, and none of the “Good Leaver” provisions are applicable to you, you are deemed to be a “Bad Leaver” within the terminology of the Articles.

5. As a “Bad Leaver” the price to be paid for your A Ordinary Shares is the lower of their “Fair Value” or their “Issue Price” (Article 9.10). Your A Ordinary Shares were allotted in two tranches:

- 114,100 on 2 September 2019 at £0.001 per share, ie. a total issue price of £114.10
- 4,639 on 20 March 2020 at £10.78, ie a total issue price of £50,008.42

6. The Board will be meeting shortly to determine who will acquire your shares in accordance with the provisions of the Articles. Once determined I will advise you accordingly and provide you with the necessary documentation to complete and

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confirm arrangements for payment and completion of the transfers.

Your B Ordinary Shares in the Company

7. In accordance with Article 10.2 you are deemed to have immediately offered all of your B Ordinary shares in the Company back to the Company at their nominal value. You currently hold 1,500 B Ordinary shares with a nominal value of £0.001 each, being a total nominal value of £1.50 which is payable to you.

8. Again, I will write to you separately with the necessary documentation to complete this transaction.

Consultancy Agreement

9. Your consultancy agreement with the Company was terminated by mutual agreement, effective 31 December 2020.

10. I confirm that no further work should be undertaken and no further sums are due to you or will be paid under the consultancy agreement.”

37. On 19 April 2021 a TM01 form was filed at Companies House to change the register by removing Mr Hashmi as director.
38. It is pleaded that the purported removal was ineffective as there was a failure to comply with Model Articles 9 and 10:

“the Petitioner, whether in his capacity as a shareholder and/or a director, had not been notified of any proposed resolution to remove him as a director or of any board meeting or of any general meeting and was unaware (and remains unaware) of the basis upon which he was or was to be removed as a director and was prevented from making any representations.”

39. If the removal was ineffective, it is said that Mr Lorimer-Wing had no right to exclude him from the Company’s e-mail account, remove him as a director, forbid him information or breach the Consultancy Agreement by immediately terminating it. Further failures of the management are also pleaded such as a failure to provide a copy of the Company’s register of members, or copies of the Company’s records of resolutions, failing to consider or determine, adequately or at all, whether Mr Hashmi should be classified as a “Good Leaver”, failing to act fairly as between members of the Company and failing to act in accordance with the Investment Agreement and provide monthly management accounts within 20 days of each month.

The Defence

40. Mr Lorimer-Wing introduces a slightly different chronology of events.

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41. He says that the purpose of the Consultancy Agreement was to provide Mr Hashmi with compensation for the work that had been carried out prior to the date he signed it, and it was not intended to continue after the compensation had been paid.
42. It is pleaded that the terms of the Consultancy Agreement properly interpreted mean that it terminated automatically in November 2019. The terms of the Consultancy Agreement conflict with such a contention and an entire agreement clause makes the argument untenable. Clause 2.2 provides:

“The Engagement shall be deemed to have commenced on the Commencement Date and shall continue unless and until terminated:

(a) as provided by the terms of this agreement; or

(b) by either party giving to the other not less than 30 days' prior written notice.”
43. No notice was provided under clause 2.2(b) prior to termination.
44. As regards clause 2.2(a) the termination date is defined as “the date of termination of this agreement, howsoever arising.” If the Company wished to terminate the agreement with immediate effect, it could do so if one or more of the default events stated in clause 11.1 arose.
45. None of the events mentioned in clause 11.1 are said to have occurred but as a matter of construction the combination of clauses 2 and 11 point toward an ongoing consultancy terminable on notice or on a default event. There is no legal room to imply a term that the Consultancy Agreement terminated automatically in November 2019.
46. It is pleaded (as an alternative) that there was a collateral agreement terminating the Consultancy Agreement by November 2019.
47. The implied term and collateral agreement arguments were not pursued at trial and no evidence was led on the issue. Accordingly, the pleaded case must fail.
48. I mention it as at trial Mr Lorimer-Wing spoke of a grievance he has about the quantum of charges made to the Company by Mr Hashmi. He claimed that Mr Hashmi overcharged the Company in the period December 2019 to December 2020. The defence does mention the payment of a bonus to Mr Hashmi which was received by him in instalments during December 2020. Mr Lorimer-Wing contends he was not entitled to the bonus payment. He contends that as soon as he received the second instalment, he “abruptly ceased to work for the Company.”
49. The difficulty for Mr Lorimer-Wing is that he caused the Company to make the bonus payment and he caused the Company to pay the invoices sent by Mr Hashmi to the Company for payment. Mr Lorimer-Wing informed the court that he was a qualified accountant and a “careful man” when it came to business. It is reasonable to infer that he made the payments and caused the Company to pay the invoices because he believed the sums were due. Mr Lorimer-Wing claimed at trial that “fake” invoices were rendered. It is unfortunate for Mr Lorimer-Wing that there is not a single

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contemporaneous document evincing a challenge to the work done at the time it was done or when an invoice was paid nor any Company record recording the reason for the payment of a bonus.

50. The first basis upon which Mr Lorimer-Wing defends the Petition is simple: he was entitled to and did remove Mr Hashmi in accordance with Bespoke Article 14(1)(c). The second basis is that it was reasonable to remove Mr Hashmi as he had: “abruptly ceased working for the Company on or about” 21 December 2020 and had himself requested a “clean break” from the Company [para 80b of the Defence]. He seeks to demonstrate Mr Hashmi’s voluntary abandonment of the Company by reference to three events. First an e-mail sent to an employee of the Company informing him that:

“I am taking a step back from this part of the business...”

51. Secondly, a telephone conversation where Mr Hashmi is said to have informed Mr Lorimer-Wing that he wished to resign and:

“reduce his cost to the Company to nil.”

52. Thirdly, a failure of Mr Hashmi to attend bi-weekly meetings and “important technology meetings with third parties”.

53. It was argued that the “stepping-back” e-mail was a failure of Mr Hashmi to assist with technological issues at an easyGym site and provides evidence of voluntary abandonment by the Company’s CTO. Such an argument does not form part of the defence (it was raised several times at trial). It could be said to be an example of the pleaded “abrupt” cessation of work.

54. Sticking with the “stepping-back” e-mail, the failure to help with day-to-day technical issues is corroborated by the evidence given by Mrs Jones. She gave evidence that she messaged Mr Hashmi “Help” when customers could not access one of the easyGyms through a pod that required a PIN. Mr Hashmi did not respond or respond in a timely manner. Mrs Jones turned to another person for help.

55. Mr Hashmi does not challenge the content of the e-mail and argues that even at its highest it is not an example of a failure to attend to the Company’s governance.

56. There is a potential internal inconsistency in the defence about when Mr Hashmi is said to have abruptly stopped working for the Company. It is said that Mr Hashmi ceased to work “on or about” 21 December 2020 [paragraph 76]; that he “abruptly ceased working for the Company “on or about” that date [paragraph 80.1.b], and that he had “stopped working” by 9 February 2021 [paragraph 73].

57. According to the defence an important telephone conversation between Mr Lorimer-Wing and Mr Hashmi took place on 18 January 2021. It is said that Mr Lorimer-Wing asked Mr Hashmi to provide all the code he had worked on for the Company and Mr Hashmi agreed to do so.

58. Mr Lorimer-Wing said that although Mr Hashmi had promised to deliver the code he did not do so which led to a chasing e-mail on 11 February 2021.

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59. Mr Lorimer-Wing and Mr Hashmi both remember a conversation they had by telephone on 15 February 2021. Their respective memories of its content are different. Mr Lorimer-Wing says (in his pleaded case):

“The Petitioner expressed concern to the First Respondent that he was still listed as a director of the Company at Companies House and that he was therefore liable for its affairs;

ii. The First Respondent informed the Petitioner that he could resign as a director at Companies House if he wished;

iii. The Petitioner replied that he had been advised that he was unable to resign as a director of the Company;

iv. The First Respondent replied that he and James Gilbert could therefore remove the Petitioner as a Director; and

v. The Petitioner responded: “if you can remove me as a director, you should”.

60. Mr Lorimer-Wing submitted that it was uncharacteristic of Mr Hashmi not to answer or respond to correspondence. The chasing e-mail on 19 February asked for “everything you have developed for the business so that we can get a handle on the assets created.”
61. The chasing e-mail elicited a response on 23 February 2021 when Mr Hashmi informed Mr Lorimer-Wing that he had uploaded the technical innovations he had developed for the Company onto the Company’s One Drive.
62. Mr Lorimer-Wing argues that Mr Hashmi has not “identified any prejudice he has suffered by virtue of not receiving the information and management accounts which he did not call for until shortly before his removal as a director in February 2021” [paragraph 82H], the Company was worth little or nothing, was “not subject to any duty to provide access to any Company information requested” [paragraph 83(d)], and that solicitors acting for the Company sent a copy of the members and register of allotments on 12 January 2022 [paragraph 82K].
63. Lastly it is pleaded that the termination of the Consultancy Agreement was justified as Mr Hashmi had decided to stop work in December 2020 [paragraph 81 (d), 82 (a)].

Legal framework

64. The starting point is the Companies Act 2006, Section 994(1):

“A member of a company may apply to the court by petition for an order under this Part on the ground – (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial.”

65. In order for the Petition to succeed in this case, Mr Hashmi must show:

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- i) That he has standing to petition, i.e. that it is a member of the Company. There is no argument that Mr Hashmi has standing.
 - ii) The acts or omissions of which he complains consist the management of the affairs of the Company. There is no argument that the matters complained of consist the management of the affairs of the Company.
 - iii) The acts or omissions are contrary to law, or the conduct is inequitable.
 - iv) He has suffered prejudice. The prejudice may be economic or non-economic, such as loss of position: *Re A Company (No. 00477 of 1986)* [1986] BCLC 376; *Re Tobian Properties Ltd* [2013] Bus. L.R. 753; *Re Coroin Ltd (No. 2)* [2012] EWHC 2343 at 630.
 - v) The prejudice complained of is prejudice to his interests as a member, although this requirement should not be too narrowly or technically construed: *O'Neill v. Phillips* [1999] 1 WLR 1092 at 1105.
 - vi) That the prejudice is unfair: *O'Neill v. Phillips; Re Tobian Properties Ltd* [2013] Bus. L.R. 753. There is no list of unfair acts or categories of unfair acts.
66. An assessment that conduct is unfair must be made against the legal background of the corporate structure under consideration. And a useful test is to ask whether the exercise of the power or rights in question would involve a breach of an agreement or understanding between the parties when it would be unfair to allow a member to ignore that understanding or agreement: *O'Neill v. Phillips* and *Grace v. Biagioli* [2006] 2 BCLC 70 at [61].
67. It follows from these principles that the starting point in determining whether unfair prejudice has been established is to ask whether the shareholders have departed from what they have agreed: *Re Saul D Harrison* [1994] B.C.C. 475 at 488.
68. In *O'Neill v Phillips* it was submitted that even if the respondent's conduct had been unfairly prejudicial, the petition should have been dismissed because he had made an offer to buy the shares at a fair price, which was the whole of the relief to which Mr. O'Neill would have been entitled.
69. Lord Hoffmann explained in *O'Neill* [1107] that: "unfairness does not lie in the exclusion alone but in exclusion without a reasonable offer. If the respondent to a petition has plainly made a reasonable offer, then the exclusion as such will not be unfairly prejudicial and he will be entitled to have the petition struck out". The value, if not agreed, should be determined by a competent expert.

The documentary evidence and the gaps.

70. The first arm of the defence (entitlement to remove without reason under the Bespoke Articles) is a matter of construction requiring little evidence of fact. The evidential issue that did arise at trial is that Mr Lorimer-Wing claimed that when invoking Bespoke Article 14(1)(c) he acted reasonably since he had taken legal advice from the Company's corporate lawyer at Ashtons on 24 February 2021. The e-mail advice from

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Ashtons has not been disclosed. Mr Lorimer-Wing decided to paste part of it into his second witness statement [99]:

“1. Removal as director: You and James as the other two directors can agree at any time that Idrees should be removed as a director. This takes effect immediately and can be immediately notified to Idrees and to Companies House accordingly. The steps involved are as follows:

You and James formally agree between you to remove Idrees. This does not need to be at a formal board meeting. I therefore suggest that you do this by way of a discussion between the two of you, but then confirm the position in writing by email along the lines: “As discussed, you and I have determined to remove Idrees Hashmi as a director with immediate effect in accordance with the provisions of Article 14.1(c).”

You write to Idrees to notify him (see attached draft letter).

You update the record at Companies House.

You update the company’s statutory records.”

71. I say part of the e-mail advice as Mr Reed pointed out that the e-mail begins with the number 1 which suggests that there were more paragraphs in the e-mail. He argued that the court should make an adverse inference that the undisclosed part of the e-mail was negative advice. Adding the text to his witness statement does not assist Mr Lorimer-Wing. It is not documentary evidence of the advice but does support his evidence that he took advice. As he has failed to disclose the instructions that led to the e-mail advice or disclose the advice itself, I attach no evidential weight to the content of the purported advice pasted into the witness statement.
72. The period focused on at trial was 20 December 2020 to 2 March 2021 (the “Relevant Period”).
73. The Relevant Period envelopes a time when five events important to the determination of this Petition took place:
 - (A) It is claimed he expressed his will to resign as director in a telephone call on 18 January 2021. This is said to be consistent with a telephone call in late December 2020 when Mr Hashmi is said to have wanted to reduce his cost to the Company to nil;
 - (B) Mr Hashmi is said to have informed Mr Lorimer-Wing that he had been advised by lawyers that he could not resign;
 - (C) Mr Hashmi is said to have stopped working for the Company. In practice Mr Hashmi is accused of not attending meetings with potential clients and failed to answer messages and e-mails. Mr Lorimer-Wing took these failures as consistent with his expressed desire to resign as a director and leave the Company;

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- (D) A purported meeting of directors (Mr Lorimer-Wing and Mr Gilbert) took place, and a resolution was passed, said to be in accordance with the Company’s Articles of Association, removing Mr Hashmi from office;
- (E) Mr Hashmi received a letter from the Company informing him that he had been removed from office and the Consultancy Agreement had been terminated.
74. These five events are said to be supported by three different categories of evidence (excluding witness evidence):
- (1) Messages using the WhatsApp platform, where there is an exchange between two or more parties. This is the best evidence of what was said, agreed or not agreed;
 - (2) E-mails where an individual has sent a purported message but there is no response. There is no evidence that the person to whom the message was directed received or if received read the message. As an example, Mr Gilbert says that he did not receive an e-mail that Mr Lorimer-Wing says he sent informing him that Mr Hashmi had been removed. There is no “read receipt”; and
 - (3) Telephone conversations where there is no record of what was said. The telephone conversations pose a particular evidential challenge since this was the method of communication for events A, B and D above.
75. As regards the documentary evidence, in support of event A (Mr Hashmi is said to have informed Mr Lorimer-Wing that he wanted to leave the Company), Mr Lorimer-Wing relies on the “stepping-back” e-mail sent by Mr Hashmi to an employee of the Company.
76. There are no contemporaneous documents to support event B, however there are a few *post facto* e-mail exchanges. Mr Lorimer-Wing relies on e-mails that mainly fall into the type 2 category above, to support his argument that Mr Hashmi did not attend meetings. At trial Mr Hashmi accepted he did not attend meetings in early 2021 but said he was busy working, and the failure should not be misread as an abandonment of his duties.
77. There are no documents that record the resolution to remove Mr Hashmi. Event E is a matter of record and not in dispute.

Events A and C-voluntary withdrawal from the Company.Stepping back

78. In his written evidence Mr Lorimer-Wing said that there had been a telephone call “on around 29 December 2020” when Mr Hashmi informed him that “he had other business interests that he wished to focus on instead of working for the Company...”. Mr Lorimer-Wing says that he was “surprised by his announcement” because he was “unaware that he had been working on other business interests.” In submissions Mr Lorimer-Wing said that he did not want Mr Hashmi to leave the Company at that time.

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79. Mr Lorimer-Wing's written evidence is that immediately after Mr Hashmi received a payment from the Company by way of a bonus on 21 December 2020, he wrote to Mr Mason Wright stating that:

“I'm taking a step back from this part of the business...”

80. He links the e-mail to the telephone conversation when Mr Hashmi is purported to have said that he wanted to reduce his cost to the Company to nil.
81. The e-mail of 21 December 2020 does not say what Mr Lorimer-Wing thinks it does. The whole e-mail exchange must be read to gain an understanding. The exchange reads as follows:

Mason Wright: “PT started last week but limited access via Pin number, can you make it so he has unlimited access via the pods. He currently is a paying member but can we make it so he's no longer paying and a member of our team. He would like to keep the same pin If possible.”

Mr Hashmi: “I'm taking a step back from this part of the business, therefore for all issues going forward, Talitha and Michelle will be best placed to help you. They'll then touch base with me if there's something that is repeatedly breaking.”

82. In my judgment a reasonable reader would not conclude from this e-mail that Mr Hashmi was withdrawing from the Company. Mr Hashmi explained in evidence that he wrote the e-mail because he did not think it an efficient use of time to respond to queries that members of the gym staff could deal with when he was working on larger projects. Mr Hashmi was not challenged by Mr Lorimer-Wing on this evidence. However, Mr Lorimer-Wing himself was challenged on the e-mail. It was put to him that this part of his case fails to provide a reason to remove Mr Hashmi. Mr Lorimer-Wing responded:

“ It's not only about this e-mail it's about other things.”

83. I took the evidence to mean that he was no longer relying on the e-mail or if he was relying on it any reliance was peripheral to his argument that Mr Hashmi voluntarily withdrew from the Company.
84. I mention here that a pattern emerged at trial where Mr Lorimer-Wing would be asked to read a document in detail and when he did so he recognised that the document did not always say what he thought it said. This was repeated, for example, when he was taken to certain e-mails, the Investment Agreement and the Model Articles. He often retorted that he may have misread the text as he was a busy man working hard to make a success of a start-up business. The same explanation was also given when he was challenged about not providing financial information about the business to Mr Hashmi. It suggests that he was too occupied to deal with matters that required a level of detail such as carefully reading material.

Surprise announcement- telephone conversation on 29 December 2020

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85. Mr Lorimer-Wing's pleaded case is that it was in a telephone conversation "in late December 2020" that Mr Hashmi "indicated" that he wanted to leave the Company.
86. In his second witness statement he says: [paragraph 58]
- "I told him that I really could not accept his sudden decision to stop work for the Company as he was the Company's CTO. I emphasised that I was trying to build a technology company and that it would be disastrous if the Company's CTO in charge of developing its technology were to leave before its technology development had been completed. He told me that he wanted to reduce his cost to the Company to nil."
87. Mr Lorimer-Wing's case that Mr Hashmi had made a "surprise announcement" to stop working was not put to Mr Hashmi. The failure to ask him about this part of the case is probably due to Mr Lorimer-Wing's method of cross-examination. He used Mr Hashmi's witness statement as a basis to ask questions. As the "surprise announcement" is not mentioned in Mr Hashmi's statement (it is the evidence of Mr Lorimer-Wing) the opportunity was lost depriving the court of hearing evidence from Mr Hashmi on the issue.
88. When cross-examination appeared to be near the end I invited Mr Lorimer-Wing to revisit the pleaded case to ensure that he had fully covered the topics in issue. Mr Reed, counsel for Mr Hashmi, informed Mr Lorimer-Wing that if he did not put his whole case to Mr Hashmi, he would use it against him in closing. I adjourned the hearing early to allow Mr Lorimer-Wing further time. He did not return to these subjects when the court reconvened.
89. Mr Lorimer-Wing did put to Mr Hashmi that he had said that he wanted to reduce his costs to the Company to nil. Mr Hashmi provided a quick and definite response: "No, I never said these words". The statement makes little sense in the context of corporate governance. Mr Hashmi was not a cost to the Company as he was not an employee and not remunerated by the Company. His cost to the Company was as an independent contractor which was governed by the Consultancy Agreement. The alleged comment made by Mr Hashmi is asserted by Mr Lorimer-Wing, and there is no supporting documentary evidence.
90. In any event, messages sent after Mr Hashmi is said to have made the "surprise announcement" include a message to a potential client providing a list of features required to "get the idea up and running" in January 2021. The message is inconsistent with Mr Lorimer-Wing's version of events and provides evidence that Mr Hashmi was not stepping back from his duties as director.
91. When Mr Lorimer-Wing was cross-examined he was asked about his pleaded case that Mr Hashmi had abruptly stopped on or about 21 December 2020. Mr Lorimer-Wing accepted, as he was bound to, that Mr Hashmi had not abruptly stopped working and that the contemporaneous documents provide evidence to support his continued work until at least 6 January 2021.

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92. Having regard to the totality of the evidence, I conclude that Mr Hashmi did not make the “surprise announcement” on 29 December 2020 or abruptly stop working on 21 December 2020 as pleaded, or at all.

8 January 2021 phone call -Mr Lorimer-Wing to Mr Gilbert

93. Mr Lorimer-Wing’s narrative requires the participation of Mr Gilbert as co-director. Mr Lorimer-Wing’s pleaded case fails to mention a conversation with Mr Gilbert on 8 January 2021. The conversation is said to act as a preliminary to the phone call on 18 January 2021. As the preliminary call with Mr Gilbert is not pleaded there was no request for further information (by contrast there was a request for further information about the telephone conversation on 18 January 2021). In his second witness statement Mr Lorimer-Wing states [65]:

By early January I was having real concerns about Idrees’ commitment to the Company given his failures to attend meetings, respond to emails or do any meaningful work following the call that we had on 29 December 2020. As I was unsure how best to handle the situation, I sent a WhatsApp message to Mr Gilbert on 5 January 2021 to ask his advice.”

94. There is no doubt that this message was sent and received by Mr Gilbert. Mr Lorimer-Wing’s written evidence is that having explained the “cracks” in the relationship between he and Mr Hashmi, Mr Gilbert advised: “fire this guy”.
95. Mr Gilbert’s written evidence is that he recalls a phone conversation but that [paragraph 13]:

“As with all our discussions, [it was] conceptual in nature.”

96. Mr Gilbert did not elaborate on what he meant by “conceptual in nature” neither did he seek to deny his advice. By the same token his evidence about how he and Mr Lorimer-Wing communicated when they were both directors of the Company was not challenged. And Mr Gilbert was able to say that the conversation was about how one should approach a break-down of relations between partners. I accept the following unchallenged written evidence of Mr Gilbert as true [10-11]:

“...the nature of mine and Paul’s communications did not change, and Paul would call me up on an ad-hoc basis with general business enquiries. It was very light touch, and he would call me as a sounding board. The calls would be approximately for around an hour every 2-3 months. At no point did we discuss in any detail the executive function of running the Second Respondent, and I did not have any involvement in the day to day running of its business.”

97. In cross-examination Mr Gilbert said that the first he knew of the dispute between Mr Hashmi and Mr Lorimer-Wing was in June 2021.
98. The evidence of Mr Gilbert on this issue is consistent with his written evidence. He is likely to have acted as a sounding board to Mr Lorimer-Wing’s concerns.

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99. Nevertheless, the documentary evidence, provides the best evidence given it was created in the Relevant Period. There is little doubt they discussed Mr Hashmi.
100. Mr Lorimer-Wing messaged Mr Gilbert about “cracks creeping in with Idrees” and wanted to know how Mr Gilbert “kept his biz relationship strong”. Mr Gilbert responded stating that to keep a business strong “depends on the areas of friction!” On 18 January 2021, Mr Lorimer-Wing messaged saying that “Idrees got there on his own and moving on” and Mr Gilbert responded: “Good result”.
101. I agree with Mr Lorimer-Wing that these messages provide contemporaneous documentary evidence of a conversation which would have included a discussion about a withdrawal plan.

18 January 2021

102. Mr Lorimer-Wing and Mr Hashmi agree that a telephone conversation took place on 18 January 2021. They agree that the conversation was “difficult”. Mr Lorimer-Wing’s evidence is that Mr Hashmi informed him that he wanted to leave the Company “with immediate effect” and wanted “to achieve a clean break with the Company.” Mr Lorimer-Wing’s evidence is [paragraph 70]:

“I told him that I accepted his decision and that I would liaise with Ashtons Legal to formalise arrangements to which he gave me the “go ahead.””

103. Mr Hashmi’s evidence is that [paragraphs 123-124]:

“I told Paul that I was unhappy with how he had suddenly decided to run the business by himself, to the exclusion of me. I remember telling Paul that it was unacceptable that I was being excluded from tech meetings and that they were being run behind my back, that it was unacceptable that furloughed employees were still working, that it was unacceptable that core suppliers were not being paid, and that his treatment of me as his friend and right-hand man had become very poor...in the same conversation, I told Paul that if his treatment of me and if his standards of running the business did not improve, I would find it very difficult to continue working with him... , he told me that he would make me an “offer” for my shares and loan. I never did receive any offer.”

104. It may be that given the distance of time the parties are not too far apart in terms of what was discussed between them at the meeting. Mr Lorimer-Wing recalls Mr Hashmi making a firm commitment to leave the Company whereas Mr Hashmi’s recollection is that leaving the Company was a possibility if their relationship did not improve. The evidence of Mr Hashmi that he had not received an offer to purchase his shares is not so inconsistent with Mr Lorimer-Wing’s evidence that Mr Hashmi’s intention was to leave the Company. Mr Hashmi does not say that he resisted the idea.
105. The documentary evidence supports, in part, both versions. First, Mr Hashmi writes to Mr Lorimer-Wing in a formal manner on 9 February 2021 asking for financial

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information about the Company. Mr Lorimer-Wing responds on 11 February 2021 asking Mr Hashmi to call him to discuss how they “might be able to achieve the clean break you indicated on our last call.” Mr Hashmi responds on 13 February not with alarm about the suggestion of a “clean break” but by simply trying to organise a phone call. The call, however, was also intended to discuss the “deliverables”. The call is subsequently set up for 15 February at 2:30pm.

106. The next document is dated 19 February when Mr Lorimer-Wing writes:

“following your stepping away can you please send me everything you have developed for the business...It would also be useful if we could arrange a walk-through handover call...I appreciate you have offered to see through any further work on the PACK45 app but I think it would be best if we moved towards handover now, with no further work on your side.”

107. Looking just at the response to Mr Lorimer-Wing’s question on 13 February and the e-mail on 19 February, Mr Lorimer-Wing’s version of the conversation appears, at first sight, more likely. However, on 23 February 2021 Mr Hashmi makes his position clear. He writes:

“Before we begin discussing the technical assets I have developed for the company, I would like to clarify that when you refer to me “stepping away” in your email, you are referring to me stepping away solely from the software development work. I mention this because in our most recent call, *you suggested that I had somehow already resigned as a director of Fore Fitness, which is most definitely not the case.* In fact, quite separately from any work undertaken under my consultancy contract, I remain a director together with all the rights and responsibilities that come with that position.” (emphasis added)

108. If Mr Lorimer-Wing had some doubt about what was discussed and/or agreed before he received the e-mail he could have had no doubt following receipt.
109. In light of the e-mail of 23 February 2021 Mr Lorimer-Wing could not have represented to Mr Gilbert three days later that Mr Hashmi had walked away from the Company. Mr Lorimer-Wing is likely to have remembered what he needed to support his case forgetting about the e-mail of 23 February 2021. This observation is consistent with him not reading or fully understanding the documentation he had read (see paragraph 108 above).
110. Mr Hashmi followed up his request for financial information on the same day (23 February 2021) writing to Mr Lorimer-Wing:

“When we spoke on 15 February, I repeated the request I made by email on 8 February for certain information regarding the Company's financial affairs. As you know, I have been concerned about the lack of information, particularly following the recent enquiries I received directly from suppliers about long-overdue debts, and now following my repeated requests.

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When we spoke on 15 February, you told me that I shouldn't have access to financial information if I'm not a director. The reality, of course, is that I am still a director of the company and I have not resigned. As a director of the Company, I have a duty to enquire about and to supervise the company's affairs in order to maintain solvent trading and to promote the success of the Company. My responsibility for the acts and omissions of the Company is equivalent to that of any other director.” (emphasis added)

111. In cross-examination Mr Lorimer-Wing asked Mr Hashmi about his purported resignation:

Q. Do you recall me accepting your wish to leave with immediate effect?”

A. “No”

112. Mr Hashmi’s oral evidence is that he only ever said that he would step away from IT development if that is what Mr Lorimer-Wing wished:

“I did not step away from anything...I am stepping away from the software development not as a director. I never said I need to step away because my other businesses are suffering.”

113. Mr Hashmi’s evidence is consistent with the e-mails of 19 and 23 February 2021.
114. As contemporaneous documentary evidence provides a safe footing to decide the truth, I prefer the evidence of Mr Hashmi and his recall of the telephone conversation on 18 March 2021.
115. That does not mean that Mr Lorimer-Wing lied. From observing how he conducted the trial and gave evidence it is more likely than not that he reached the conclusion he wanted in his mind creating a false memory. The false memory was reinforced by conversations subsequently held with third parties and dealings with these proceedings.
116. Mr Hashmi had not resigned and did not resign as a director. He had not said that he wanted to withdraw from the Company.

Event D- a meeting of directors and resolution to remove Mr Hashmi from office.

117. It is not disputed that a telephone call took place on 26 February 2021 between Mr Lorimer-Wing and Mr Gilbert. They disagree about the content of the discussion. Mr Lorimer-Wing’s evidence is they agreed as directors to remove Mr Hashmi. Mr Gilbert’s evidence in his first witness statement is [14]:

“I remember that he was concerned that the App which Idrees was supposed to deliver as a contractor did not work; and the relationship had come under strain and he wanted to think through what to do. I remember saying, as it was in the context of advice on relationships and partnerships, words to the effect: “if a partnership no longer works, one has to go about disentangling oneself from the partnership and moving on”. That

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was all I remember substantively, but I can confirm, categorically, that there was no discussion about terminating Idrees as a Director and no executive decisions were made or discussion had about Idrees being a bad leaver or terminating his consultancy agreement etc. It was all conceptual, as with all of our previous conversations.”

118. In cross-examination of Mr Gilbert, Mr Lorimer-Wing used intonation to form a question:

“we agreed to remove Idrees?”

119. Mr Gilbert responded:

“Paul was not happy with the work of Mr Hashmi – I said if the partnership is not working then one has to extricate- I understood that we would continue this conversation- it was a conceptual discussion- it was not executory.”

120. He says he received a message from Mr Lorimer-Wing on the same day at 10:25 saying:

“nothing for you to do but James has given me a line to send to you re Idrees discussion”.

121. James is a reference to James Tarling, a solicitor working at the firm Ashtons. Mr Gilbert’s evidence is that he did not know who “James” was, and did not turn his attention to the message given the general nature of the conversation they had had about Mr Hashmi on 26 February. At the same time Mr Lorimer-Wing sent an e-mail to Mr Gilbert:

“As discussed, you and I have determined to remove Idrees Hashmi as a director with immediate effect in accordance with the provisions of Article 14(1)(c).”

122. In his second witness statement Mr Gilbert states that he did not see the e-mail until June 2021. He says [paragraph 11]:

“The minute I saw that Paul had emailed Idrees saying that he and I had resolved to remove him as a director I resigned from the business. I did not state that as the reason at the time because, frankly, I have an aversion to conflict. I was however very annoyed at Paul because he had done it without my knowledge and was stating something about me which was not true.”

123. This is important evidence. Unfortunately, it was not directly challenged in cross-examination. His question about the e-mail was couched as a comment and only related to part of Mr Gilbert’s evidence:

“Q. you say you didn’t see the e-mail, I know what you say, that’s convenient for you?”

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A. If I had seen the e-mail I would have intervened and sought legal advice as I think the advice you received was flawed.”

124. Mr Reed submitted in closing that both versions of events cannot be true. Mr Lorimer-Wing was a liar.
125. In closing Mr Lorimer-Wing said that Mr Gilbert was a liar. He did not ask Mr Gilbert if he had told the truth in cross-examination. Mr Lorimer-Wing submitted:

“The mutual decision to remove Mr. Hashmi from his directorship was a consensus reached by Mr. Gilbert and me.”
126. Mr Lorimer-Wing asserts that this position should be accepted given the inconsistencies between Mr Gilbert’s defence and his witness statements: he does not point out which inconsistencies relate expressly to the resolution. It is true, however, that Mr Gilbert did concede mistakes in his evidence by clarifying his position in cross-examination. The errors were not of a quality that undermined his credibility.
127. Mr Lorimer-Wing did not challenge Mr Gilbert on his answer to his intonated question about agreeing to remove Mr Hashmi. The answer provided to the question is not an admission that a resolution was passed as contended by Mr Lorimer-Wing in oral closing. The answer given by Mr Gilbert is consistent with his written evidence.
128. To lie is to make a statement with the intent to deceive. It is a serious finding to make and one that should only be made by identifying first the subjective state of mind of the individual and testing that state of mind against an objective standard. The reasonableness of the individual’s belief is a matter of evidence, but the issue is whether the belief was genuinely held: *Ivy v Genting Casinos* [2018] AC 391 [74]. The questioning of Mr Lorimer-Wing and Mr Gilbert did not focus on the legal test to satisfy a finding of dishonesty.
129. Which version of events is true does not answer the issue at hand in any event. That is because even if Mr Gilbert had agreed with Mr Lorimer-Wing that Mr Hashmi should be removed as director there was no valid resolution.
130. It is Mr Lorimer-Wing’s case that there was a valid resolution because there was compliance with Article 14(c) of the Bespoke Articles of Association. He says that removal of a director could be actioned even if there was “no fault”. The argument was raised in the context of the e-mail dated 2 March 2021 sent dismissing Mr Hashmi. This was a curious submission to make given that in these proceedings Mr Hashmi has been accused of “fault” (failure to deliver the code, overcharging, receiving a bonus when he should not have, incompetent work, stating he wanted to leave the Company and “abruptly” stopping work).
131. Even if Mr Lorimer-Wing is correct there was no valid resolution by the Company’s board of directors. No agenda was circulated to the directors and there was a failure to give notice of the Meeting to the directors in accordance with Model Article 9. There was a failure to comply with Model Article 10 to allow each director “to communicate to the others any information or opinions they have on any particular item of the business of the meeting”.

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132. This is not simply a matter of a failure of process. If Mr Hashmi had known about the Meeting, he could have objected to any resolution proposed and he would have had an opportunity to persuade Mr Gilbert that Mr Lorimer-Wing was wrong in all matters relating to the issues between them.
133. Returning to the issue of whether Mr Gilbert agreed to remove Mr Hashmi at the Meeting, the trial proceeded on the basis of a question I asked Mr Lorimer-Wing about why he did not notify Mr Hashmi of the Meeting in advance of 26 February. He responded that he did not know. I make an adverse inference that he did not want Mr Hashmi to know of the Meeting.
134. The failure to call a properly constituted Meeting, propose resolutions and vote on them in accordance with the Company's constitution has wider significance. It has a bearing on the veracity of the version of events given by Mr Gilbert or Mr Lorimer-Wing about the telephone conversation on 26 February 2021.
135. Mr Lorimer-Wing is an intelligent and proud man who was not slow in informing the court of his professional qualifications and that he had worked for Deloitte. I understood from his submission that he had drafted the Bespoke Articles but in a written document sent after the hearing he said he did not. He informed the court that he was responsible for passing the special resolution on 20 March 2020 to adopt the Bespoke Articles. In evidence he explained that when removing Mr Hashmi as director he had in mind the "bad leaver" provisions in the Bespoke Articles because he was responsible for drafting them. It maybe that he misspoke under pressure but whatever the truth about the identity of the drafter he did not withdraw his statement that he had the "bad leaver" provisions in mind when he removed Mr Hashmi. He was also a party to the Investment Agreement. It is known that he had consulted Ashton solicitors and, if the evidence in his witness statement is taken at face value, obtained advice purely about the interpretation of one Bespoke Article. I find that he knew about the Model Articles and the inter-play between them and the Bespoke Articles.
136. The failure to convene a properly constituted board meeting is objectively unreasonable. It is more likely than not that Mr Lorimer-Wing's was intent on removing Mr Hashmi, failed to check his own conduct and convinced himself that there was a resolution when there was no such resolution at the Meeting. His version of events will have become more distorted due to the retelling of his version of events.
137. For this reason, I prefer the evidence of Mr Gilbert who had not been given any notice to convene the Meeting, nor given an agenda in advance. His defence (not relied upon since he agreed a Tomlin Order prior to the hearing) is consistent with the failure to properly convene a meeting of directors. It states:
- "At no time did the Second Respondent understand that he was being asked to agree or resolve for the Petitioner to be removed from office or that he had in fact done so."
138. The effect of an invalid resolution is that Mr Hashmi remains a director of the Company. He was excluded from the management and excluded from any information.

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139. I should add that it was submitted, perhaps in the alternative, that the Investment Agreement provides that only a general meeting of shareholders may remove Mr Hashmi. I reject the submission.
140. I agree that the Investment Agreement is said to prevail over the Bespoke Articles where there is a conflict between the two, but the clause relied on in the Investment Agreement (clause 3.2) does not state that a general meeting of shareholders must be called to remove those appointed director under clause 3.

Unfairness

141. There are two categories of unfairness relied upon. First the failure of Mr Lorimer-Wing to convene a meeting in accordance with the Company's constitution. Secondly, the exclusion of Mr Hashmi from the management of the Company and early termination of his independent contractor rights from 24 February 2023.
142. Mr Lorimer-Wing could not provide a reason for his failure to convene a meeting in accordance with the Company's constitution.
143. I have inferred, due to the failure to provide a reason, that Mr Lorimer-Wing knew of the requirements to convene a meeting in accordance with the Company's constitution and decided not to follow them in order to gain an advantage. He was cross-examined by Mr Reed about the advantage he might gain. It was put to him that he wanted to obtain the shares of Mr Hashmi at nominal value and had in mind the bad leaver provisions when removing and excluding him.
144. Mr Lorimer-Wing accepted that he had the bad leaver provisions in mind at the time, but did not accept that he removed and excluded Mr Hashmi to gain the advantage of obtaining his shares at nominal value.
145. Having heard the evidence I find that the advantage Mr Lorimer-Wing wished to gain was multi-faceted. First, he believed that Mr Hashmi was not pulling his weight, although he was never challenged on this during the period Mr Hashmi occupied the office of director.
146. Secondly, he was concerned about the quality of work Mr Hashmi had produced. This did not form a part of the trial.
147. Thirdly, he believed that Mr Hashmi was taking advantage of the Consultancy Agreement and over-charging the Company. There is no documentary evidence that this was the case.
148. It is inexplicable why Mr Lorimer-Wing, an experienced man of business, did not take earlier or any action against Mr Hashmi if the concerns he harboured were so great.
149. Fourthly, he did not welcome questions about the Company's finances because he was unable to answer them as he had failed to comply with the obligations set out in the Investment Agreement.
150. Over the course of the trial it became evident that Mr Lorimer-Wing finds it difficult to take responsibility for his actions or inactions. He frequently blamed others for failure. In his evidence he sought to blame his lawyers instructed on his behalf for what he

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perceived as *their* failures when producing his witness evidence that did not say what he wanted it to say, the pleadings (the defence did not raise the issues for trial that he wanted to raise), any admission made that he wished to retract, the language used in the Replies to Further Information and a consent order striking out allegations made against Mr Hashmi that his work was incompetent. This was so notwithstanding his witness statement, pleadings and Replies were signed by Mr Lorimer-Wing with statements of truth and his evidence was that he had read the documents before signing them and that he considered himself a detailed and careful person.

151. He blamed Mr Hashmi for failure and accused Mr Gilbert of “stabbing me in the back”. He says that the lack of available financial information was due to failings of the Company accountants, failing to realise his own responsibilities as director and CEO.
152. Lastly, given Mr Lorimer-Wing’s admission that he had in mind the bad leaver provision within the Bespoke Articles when attempting to remove Mr Hashmi I conclude that he would knowingly gain an advantage by obtaining the shares owned by Mr Hashmi at nominal value. This is evident from the extraordinary letter he wrote on 2 March 2021 to Mr Hashmi informing him that he had been removed as a director, his bad leaver status and how his shares would be purchased. There is no evidence that Mr Lorimer-Wing disclosed the advantage before or at the Meeting in breach of duty.
153. The exercise of the power to remove involved a breach of the Model Articles and the Investment Agreement pursuant to which Mr Hashmi had been appointed as an additional director because he was an early investor.
154. There was also a breach of understanding that all major decisions would be made by he and Mr Hashmi jointly, as stated by Mr Hashmi in evidence and not countered by Mr Lorimer-Wing.
155. It is unfair to allow Mr Lorimer-Wing to ignore the Company’s constitution and Investment Agreement.
156. To exclude Mr Hashmi was on the face of it unfair for the same reasons.
157. I have used the term “on the face of it” as unfairness does not lie in exclusion alone but in exclusion without a reasonable offer. In closing Mr Lorimer-Wing took me to an offer made to Mr Hashmi for his shares at what he says was “fair value” as assessed by auditors acting for the Company.
158. At this stage I do not know if the offer was reasonable. It can be said that it was not made in a timely manner or on 2 March 2021.
159. When this was brought to my attention Mr Reed invited the court to make findings of fact in respect of the removal and exclusion so that the parties may have an opportunity to discuss how they proceed or seek directions at the hand down of this judgment. Mr Lorimer-Wing did not disagree with the approach.
160. Following trial both parties e-mailed the court. Mr Lorimer-Wing wanted to know if the issue of fairness remained outstanding and solicitors for Mr Hashmi explained that Mr Lorimer-Wing’s late submission does not feature in his defence, that the legal team

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engaged by Mr Hashmi were not prepared to answer the issue when it was raised in closing and invited the court to ignore the submission.

161. In my judgment the purported resolution to remove Mr Hashmi, his *defacto* loss of office and the e-mail dated 2 March 2021 that expressly referred to Mr Hashmi as a “bad leaver” answers the issue raised following trial. It was the intention of Mr Lorimer-Wing to receive the shares owned by Mr Hashmi at a value referable to the “bad leaver” provisions. That was unfair. If he at a later stage made an offer for Mr Hashmi’s shares that was for a “reasonable offer” and Mr Hashmi failed to accept the offer there may well be cost consequences but that does not alter the earlier unfair event.

Prejudice

162. I can deal with prejudice shortly. Prejudice is made out by Mr Hashmi for at least four reasons. First, Mr Hashmi was removed from the office of director unlawfully. Secondly, he has been prevented from accessing the Company systems since 24 February 2021 (prior to the alleged resolution). Thirdly, he has been excluded from financial information. Lastly, the Consultancy Agreement was terminated without regard to its terms.
163. Mr Reed makes the following submissions all of which are made out (see generally paragraph 39 above):
- i) As CEO Mr Lorimer-Wing has never called a general meeting.
 - ii) In breach of the Investment Agreement Mr Lorimer-Wing has failed to cause the Company to prepare and send to the shareholders monthly management accounts within 20 business days of the end of each month.
 - iii) There has been a general failure to provide management accounts and other financial information when requested.
 - iv) On 5th January 2022 Mr Lorimer-Wing was asked to provide the Company’s register of members pursuant to section 116(2) of the Companies Act 2006 and copies of the Company’s records of resolutions pursuant to section 358 of the Companies Act 2006. A copy of the register of members and two resolutions were provided over a year later on 24th February 2023.
164. I do not consider any of the purported failings of Mr Hashmi’s reduces the effect of the prejudice he suffered. Mr Lorimer-Wing has failed to make good his case that Mr Hashmi wished or had decided to resign as director or otherwise cease to have any involvement in the Company. The prejudice is substantial.

Summary

165. Mr Hashmi, as member of the Company, succeeds on the Petition that the Company’s affairs have been conducted in a manner that is unfairly prejudicial to his interests for the reasons I have given.
166. I will hear submissions as to the next stage of this petition at the consequential hearing which is to be fixed.

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167. I invite the parties to agree an order and agree a time estimate for the consequential hearing.