



Neutral Citation Number: [2023] EWHC 3080 (Ch)

CH-2022-000155

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY APPEALS (CH D)

1 December 2023

Before:

MR JUSTICE LEECH

B E T W E E N:

KHADIM HUSSAIN

Appellant

-- and --

(1) ALLAH HUSSAIN
(2) TANVIER HUSSAIN
(3) SHAHZAD HUSSAIN
(4) KTA GROUP LIMITED

Respondents

MR SHANTANU MAJUMDAR KC and MR ROBIN SOMERVILLE appeared on behalf of the Appellant.

MR JONATHAN MCDONAGH (instructed by **Wolf Law Solicitors Ltd**) appeared on behalf of the First to Third Respondents.

Hearing dates: 10 and 11 October 2023

APPROVED JUDGMENT

This judgment was handed down at 10.30 am on Friday 1st December 2023 and released to the National Archives.

Mr Justice Leech:

I. The Appeal

1. By Appellant's Notice dated 12 August 2022 the Appellant, Khadim Hussain ("**Khadim**"), applied for permission to appeal against the Order dated 19 July 2022 made by Chief ICC Judge Briggs (the "**Judge**") dismissing a petition originally issued on 16 October 2020 seeking relief under section 994 of the Companies Act 2006 and amended on 4 April 2021 (the "**Petition**"). The Judge dismissed the Petition after a full trial which took place in June 2022 and the judgment which the Judge also handed down on 19 July 2022 (the "**Judgment**") is reported at [2022] EWHC 1880 (Ch). Where I refer to paragraphs below in square brackets, I intend to refer to paragraphs in the Judgment (unless otherwise stated or coupled with a citation from authority). The relief which Khadim sought in the Appellant's Notice was either an order winding up the Fourth Respondent, KTA Group Ltd (the "**Company**"), or, alternatively, an order that the First Respondent, Allah Hussain ("**Allah**"), sell his shares to Khadim.
2. In the Grounds of Appeal which were filed with the Appellant's Notice the Appellant advanced two grounds of appeal. The first ground was that the Judge had been wrong to find that the Appellant had not been excluded from the management of the Company whether as pleaded or, as the Judge formulated his decision, not in a way which deserved a remedy. I will refer to this ground as "**Ground (1)**". The second ground which the Appellant advanced was that the Judge had been wrong to find that sums which Allah and the Second Respondent, Tanvier Hussain ("**Tanvier**"), had taken from the Company in excess of declared salary (which the Judge defined as the "**Excess Takings**") were prejudicial but not unfair. I will refer to this as "**Ground (2)**".
3. By Order dated 2 March 2023 Adam Johnson J granted permission to appeal on Ground (1) but not on Ground (2) and gave further directions for the hearing of the Appeal. On 31 May 2023 Khadim filed Amended Grounds of Appeal (the "**Grounds of Appeal**") which were limited to five sub-grounds in support of Ground (1). By Order dated 6 June 2023 he varied those directions by consent and on 10 and 11 October 2023 I heard the appeal on Ground (1). Some of the five sub-grounds on which Khadim was granted permission to amend, break down into two or more additional sub-grounds. For the

purposes of this judgment I divide up Ground (1) into nine separate sub grounds which I will number “G1” to “G9”. I will also refer to Khadim’s appeal limited Ground (1) as the “Appeal”.

4. Mr Shantanu Majumdar KC and Mr Robin Somerville appeared on behalf of Khadim and Mr Jonathan McDonagh instructed by Wolf Law Solicitors Ltd (“**Wolf Law**”) appeared on behalf of both Allah and Tanvier. He also appeared on behalf of the Third Respondent, Shahzad Akhtar (“**Shahzad**”). The Company did not participate in the appeal and where I refer to the Respondents in this judgment, I intend to refer to the First to Third Respondents unless I state otherwise. From time to time I also refer to them as the “**active**” Respondents to distinguish them from the Company.

II. The Proceedings Below

A. The Statements of Case

(1) The Petition

5. Khadim and Allah closely related by marriage. Khadim is married to Allah’s sister and Allah is married to Khadim’s sister. On 17 November 1998 the Company was incorporated to acquire the business and assets of a partnership which they operated together with Khadim’s elder brother, Talib, and the name of the Company contains an acronym (“KTA”) based on their given names. They were described by the Judge as equal members although Khadim and Allah were each registered as the holders of 50% of the shares and Talib never became a shareholder himself.
6. Between 1998 and 2004 or 2005 Khadim and Allah were the Company’s only directors but in December 2004 and January 2005 respectively they each appointed one of their sons to be directors. Allah appointed Tanvier and Khadim appointed Mazamal Hussain (“**Mazamal**”) to be additional directors. Mr Majumdar submitted (and I accept) that this represented handing on the business to the next generation of the family. In 2009, however, Mazamal resigned as a director in circumstances which I need not describe and no new director was appointed until 30 June 2020 when Shahzad was appointed by a majority of the board of directors. He is the son of Talib, the nephew of Khadim and Allah and the cousin of Tanvier. There was no dispute that his appointment was formally valid and in accordance with the Company’s constitution.

7. By this stage another of Khadim's sons, Tazamal Hussain ("Tazamal"), had become an employee of the Company and a dispute had arisen between Khadim's branch of the family and Allah's branch. Shahzad's appointment followed an unsuccessful attempt to resolve this dispute at a mediation. On 16 October 2020 Khadim issued proceedings and the Petition described the corporate history of the Company and its business in the following terms:

"4. At all material times each of the Petitioner and First Respondent has been legal owner of 50% of the issued shares in the Company. Since about 2000 this has comprised 700,000 shares, with each holding 350,000 shares.

5. The Company has at all material times carried on a business operating petrol stations and motor vehicle sales and repairs.

6. The Company's registered address is Worleys, Hamilton Road, High Wycombe, Buckinghamshire, HP13 5PA ("Worleys"). Its places of business are at the registered address and at Pewsham Garage, London Road, Pewsham, Chippenham, SN15 3RR ("Pewsham"), each of which it owns. The Company also owns Corner Garage, Keepers Corner, Burstow, Copthorne, Gatwick, RH6 9RR ("Corner") which is leased to an unconnected third party. The Company also operates two workshop businesses known as A M Auto Care at 3 Maundrell Road, Calne, SN11 9PU and Sawmills Garage at Chippenham Road, Lyneham, Chippenham, SN15 4PA which premises it also owns.

The History of the Board

7. From December 1998 until about 2005 the Petitioner and the First Respondent (his brother-in-law) were the only directors of the Company.

8. In 2006 Mazamal Hussain ("Mazamal") (a son of the Petitioner) and the Second Respondent (the son of the First Respondent and nephew of the Petitioner) were appointed as additional directors. In 2009 Mazamal resigned as a director. Between that resignation and June 2020 the board of the Company therefore comprised the Petitioner and the First and Second Respondents.

9. The Third Respondent is the son of the late Talib Hussain ("Talib") (the elder brother of the Petitioner) and also the cousin and long-standing friend of the Second Respondent. The Third Respondent was (as more particularly set out below) appointed as a director on 30 June 2020."

8. In this judgment, I use the same defined terms and abbreviations which Khadim adopted in the Petition. Khadim's case was that he alone provided the investment capital and security for the Company's borrowings, that he gave half of Worleys to Talib and that he gave one third each of Pewsham and Corner and the additional sites acquired by the Company to Allah and Talib. It was also his case that he was entitled to

be involved in the management of the Company in the following specific respects:

“22. By virtue of its genesis (as set out above) and the familial relationship between the members, the management of the Company was at all material times to be conducted in good faith and on the basis that the Petitioner would be treated as having an equal right to involvement in the management to that of the First Respondent and:

- (1) would have access to all of the Company’s books of account;
- (2) would be involved in any significant management decision if he indicated a wish to be so involved;
- (3) would not be excluded from liaising with (or prevented from appointing) professional advisors to the Company on accounting or legal matters;
- (4) would not be denied a proper explanation for any significant payment made by the Company, and
- (5) would not be prejudiced by his forming a minority of the board following the resignation of Mazamal.”

9. Khadim contended that Allah and Tanvier had extracted substantial sums from the Company without his knowledge and that Tazamal had conducted an examination of the Company's bank statements to identify the amounts involved. In support of his case Khadim relied on a number of schedules which were annexed to the Petition and prepared under Tazamal’s direction. Fortunately, it is unnecessary for me to consider these schedules or the total amount in issue on this Appeal. The Judge was unable to determine the precise amount involved and I do no more than record that in their Skeleton Argument Mr Majumdar and Mr Somerville stated that the sums which Tanvier withdrew from the Company amounted to £790,000 in total. I also record that Mr McDonagh did not dispute this figure. To describe these sums I adopt the Judge’s term Excess Takings.
10. Khadim also contended that he had been excluded from management of the Company. He alleged that he had instructed the Company’s accountants, UHY Hacker Young (“UHY”), to carry out an investigation which Allah and Tanvier had blocked and that at a board meeting on 30 June 2020 they had appointed Shahzad to be an additional director. He alleged that the Respondents had been guilty of the following unfairly prejudicial conduct and committed the following breaches of their duties as directors in relation to those events:

“24. (1) the First and Second Respondents have:

(a) caused or permitted to be made by the Company numerous payments to themselves and others which the Company was not obliged to and/or should not have made;

(b) caused or permitted the books of the Company to be compiled in a manner that concealed or failed to make clear the true nature of those payments;

(c) caused or permitted the Company to file its accounts and make returns to HMRC in a manner which concealed or failed to make clear the true nature of those payments (and hence failed to give a true and fair reflection of the Company’s liabilities to tax and national insurance) and have thereby exposed the Company to the risk of increased liabilities by way of interest and penalties;

(d) caused, without any good faith reason, the Company’s bankers to refuse to accept instructions from the Petitioner;

(e) caused, without any good faith reason, the Company’s accountants to refuse to accept instructions from or to provide information to, the Petitioner;

(f) failed, without any good faith cause, to allow a proper investigation into allegations of payments made by the Company as set out at (a) above; and

(g) appointed the Third Respondent as a director for improper purposes.

(2) The Third Respondent has:

a) failed since his appointment to make any effort to correct the defaults of the First and Second Respondents set out at (a) to (f) above. It is inferred that before he was appointed as a director he was informed by the First and Second Respondents of the substance of the complaints that had been raised by the Petitioner (as set out at paragraphs 28 to 30 below). He has however, not sought any input from the Petitioner on those significant matters and it is inferred that he has not done so because he has agreed to side with the First and Second Respondents and will do so and since October 2020:

b) failed to support the Petitioner in any of his requests for information about the Company or its management.

c) commissioned a report by the Auditors in respect of the Petitioner and his family members and/or further blocked investigation into the First and/or Second Respondents and then instructed the report not to be released until he had approved it for release. The Report was designed to favour the First and/or Second Respondents.

d) inconsistently asserted that hiring of new staff is a site-specific matter and on other occasions that they must be approved by the Board, which he and the First and/or Second Respondents control.

e) failed to account for the time he has allegedly committed in performing his duties.

(3) The First, Second and Third Respondents individually and/or collectively as two or all of them have, since October 2020:

a) refused to appoint the Petitioner's son Tazamal Hussain as an alternative director.

b) called board meetings at very short notice and/or without the time of the meetings being communicated until very short notice with the purpose or effect of making it difficult for the Petitioner to engage or prepare.

c) attended board meetings in a manner of *fait accompli* and/or where the agenda items have already been decided on in advance by the First, Second and Third Respondents where there is little or no meaningful debate.

d) conducted board meetings in such a way, that the Petitioner need not have attended and/or squeezed him out and/or left him with no effective voice and/or acted in a hostile and/or oppressive and/or undermining manner towards him.

e) not permitted the review of board meeting minutes when issues, errors or omissions have been identified.

f) proposed and/or adopted measures to one or more of their personal interests including, but not limited to creating a back dated lease over parking spaces allegedly owned by them and retrospectively applying payment for them, retrospectively applying a salary increase in favour of the second respondent

g) failed to investigate the Petitioner's concerns over potential abuse of the furlough scheme.”

11. In relation to the process of Shahzad's appointment Khadim alleged that Allah and Tanvier gave short notice of the meeting on 30 June 2020 and also that they did not properly identify the director whom they intended to appoint. He also alleged that Shahzad was appointed for an improper purpose:

“41. On Friday 26 June 2020 the First and Second Respondents gave notice of a board meeting at 2pm on Tuesday 30 June 2020 at which they intended to propose the appointment of an additional director. They did not identify the new director although they must have known that it was the Third Respondent. It is inferred that they withheld his identity to prevent the Petitioner making any preparations to resist his appointment, there being no other good faith reason for doing so.

42. When the Petitioner's legal representative raised the lack of notice with the solicitors for the First and Second Respondents those solicitors (it is inferred on explicit instructions) wrote that their clients welcomed discussion at the meeting about the appropriateness of the proposed director, but declined to identify him. They referred to the new director being “an independent person” when the Third Respondent is manifestly

not such a person given his longstanding relationship with the First and Second Respondents and his longstanding bad relationship with the Claimant. It is inferred that the First and Second Respondents did not reveal his identity to their solicitors because if they had, the solicitors could not properly have referred to him as “an independent person”. That the First and Second Respondents were not in fact seeking an independent person is demonstrated by the invitations extended by them to the Third Respondent’s brothers to become a director (which each declined) before they invited the Third Respondent to accept that position.

43. The Third Respondent was appointed for an improper purpose in that the First and Second Respondents wished to ensure that there was an in-built majority of 3 to 1 on the board which they intended to (and intend to) use to protect themselves from the Petitioner’s attempts to uncover the true state of the Company’s finances and the breaches of duty of the First and Second Respondents. The appointment was in breach of each of the duties pleaded at paragraph 24 above.”

(2) *The Points of Defence*

12. In the Amended Points of Defence (the “**Points of Defence**”) the active Respondents challenged Khadim’s explanation for the genesis and ownership of the Company and, in particular, that he alone provided the investment capital and security for its borrowings or that he made a gift of shares in the Company to Allah. Their case was that the Company was owned in equal shares by Allah and Khadim. They asserted that the recent origins of the dispute arose in 2019 as a result of Tazamal’s involvement in an attempt to divide the assets between the different branches of the family and also because Worleys had repeatedly breached its overdraft limit: see paragraphs 22 to 36. Their pleaded case in relation to the recent origins of the dispute was as follows:

“39. Worleys' overdraft remained a problem and point of family tension throughout 2019. On or around 13 September 2019, Tanveir [sic] and Allah instructed KTA's bank that written transfer requests from KTA's bank accounts would have to be authorised by additional directors in writing. The purpose of this request was to prevent Khadim from making a unilateral written transfer of the surplus funds from the accounts of the Chippenham-based businesses into Worleys' overdrawn bank account at High Wycombe.

40. It is Allah and Tanveir's [sic] case that, as the tensions between the parties escalated in relation to the matters described in paragraphs 35-37 above, Khadim's son, Tazamal, sought to resile from Khadim's prior acceptance and approval of Tanveir's [sic] withdrawal of sums from KTA and launched a vendetta against Tanveir [sic] to seize control of the Chippenham-based businesses and Corner Garage.”

13. The Respondents denied that Khadim lacked access to information about the Company or its management and averred that he had comprehensive access to the financial information at Worleys and attended meetings with the auditors. They admitted that he commissioned a report by UHY but denied that they had blocked their investigation. Their defence to the specific allegation in relation to the hiring of staff was as follows:

“41C Paragraph 24(2)(d) is embarrassing for want of particularity as to the decisions which are impugned, and as to the Petitioner's case on whether such decisions should have been made (a) as a matter of site-specific business; or (b) at a board level. Each hiring request in the relevant period has been treated on its merits by the board of directors by reference to operational needs within one of the Company's businesses.”

14. The Respondents also denied that Khadim or Tazamal had the unilateral right to provide instructions to the Company's bank, NatWest plc and later the Royal Bank of Scotland plc (the “**Bank**”), and averred that these matters were the proper subject of board discussion and approval. They admitted that they had refused to appoint Tazamal as an alternative director but denied that any proposal to appoint him was in the best interests of the Company. In relation to the appointment of Shahzad their defence was as follows (original emphasis):

“58. As to paragraphs 41-42, no breach of KTA's Articles of Association is identified. The correct procedures were followed.

(1) It is not understood what "*preparations to resist [Shahzad's] appointment*" means and the basis for any such resistance has not been identified, other than a suggestion that was made by Khadim's solicitors in correspondence that Shahzad "*is estranged from his mother, who lives with and is taken care of by our client.*" Shahzad's case will be that Khadim is unfairly hostile towards him, despite the business making significant improvements.

(2) Khadim was provided with proper notice of the meeting on 30 June 2020 yet he declined to attend, despite attempts to contact him.

(3) It is denied that Shahzad had a "*longstanding relationship with [Allah] and Tanveir.*" [sic].

(4) The asserted "*longstanding bad relationship with [Khadim]*" is unexplained and not understood.

(5) Shahzad had no substantive relationship with either Allah, Tanveir [sic] or

Khadim, or the family generally, for over 20 years.

(6) It is denied that any approaches were made by Allah or Tanveir [sic] to Shahzad's brothers to become directors.

59. As to paragraph 43, it is denied that Shahzad was appointed for any improper purpose. The relevance of the alleged "*in-built majority of 3 to 1*" is not understood and is inaccurate in any event. The assertion that Shahzad was appointed to protect Tanveir [sic] and Allah from Khadim's "attempt to uncover the true state of KTA's finances" is vague and contradicted by the fact that Tanveir [sic] and Allah had already contacted HMRC by the time Shahzad was appointed to the Board.

60. As to paragraph 44:

(1) The Board's meeting on 18 July 2020 was called early, not late, on 16 July 2020.

(2) The suggestion that Khadim was only notified on 17 July 2020 is wrong. The email invitation was sent at 09:31 on 16 July 2020 with the location clearly identified.

(3) The Board's meeting was booked to take place at a COVID-secure site in High Wycombe, namely a Holiday Inn, which is 10 minutes from Khadim's house by car, and was a location selected for Khadim's convenience. In contrast, the Holiday Inn, High Wycombe, involved a 3 1/2 hours' round trip for Allah and Tanveir [sic], and 11/2 hours round trip for Shahzad.

(4) It is denied that there was any "*deliberate decision to exclude [Khadim] from the meeting.*"

(5) The exchanges that followed the scheduling of this meeting, whereby Khadim failed to contact the other directors, but sent a Zoom invitation to Allah and Tanveir's [sic] solicitors who are dealing with HMRC, do not take matters any further."

B. The Documents

15. In the course of the Appeal I was taken to a number of minutes, letters and emails which were put in evidence before the Judge. Mr Majumdar and Mr Somerville also annexed to their Skeleton Argument a schedule of documents upon which they relied to demonstrate that Shahzad lacked independence and that the board of directors acted at the direction of his brother, Pervaiz. Mr Majumdar confirmed in his oral submissions that this schedule had also been before the Judge. It contained references to – and quotations from – 47 documents. I read all of these documents during the hearing of the Appeal. However, it is not possible or desirable to set them all out in this judgment. For the most part, therefore, I identify and set out those extracts from the scheduled documents which were put to the witnesses. But in considering Mr Majumdar's submissions I had – and have – all of those documents well in mind.

(1) *The Bank*

16. Khadim placed particular reliance upon a letter dated 13 September 2019 which Allah and Tanvier sent to the Bank stating that all written transfer requests from all group bank accounts had to be authorised by both of them as the majority of the board. Tanvier accepted that Allah and he had sent this email in his witness statement. But Mr McDonagh also took me to an exchange of emails between Tanvier and Tazamal which showed that Tanvier also copied this letter to Tazamal whose response was: “Is it possible to get the bank to confirm they have accepted the instructions on the basis it was served?”

(2) *Board Meetings*

(i) 26 March 2020

17. On 26 March 2020 a meeting of the board of directors took place at which Tanvier, Khadim, Allah and Tazamal (who was described as Khadim’s adviser) were all present. Mr Paul Daly and Mr Karl Thornton of UHY also attended the meeting. The minutes record as follows:

“TanH explained that the meeting was that of the board of directors. TazH disputed the lack of balance on the board and that any vote drawn would be meaningless, suggesting that either TanH resign as director or allowing KH to appoint an additional director of his choosing. TanH reiterated that the meeting was that of a board of directors under KTA's current legal structure.

TazH maintained his concern at the lack of representation of the 'beneficial owners' of a 3rd share of the business and raised the possibility of legal sanction should such decisions be made without the consent of representatives of Talib Hussain's Estate. PD was asked for his opinion on the current Covid19 crisis and its impact on the automotive market. PD explained that the current situation is unprecedented and across the 40 plus business that he represents (whom are all now effectively closed) there is likely to be a period of whereby substantial levels of cash expenditure will continue and whilst this crisis may be a matter of weeks it could potentially be longer. PD suggested that given the direction of the meeting thus far the shareholders should undertake a separate call and reconvene the board of directors meeting at a later time.

TazH indicated that he was not keen to see KTA utilise bank funding to see it through the current crisis and suggested that in light of there being no objection as to the aforementioned ownership structure all beneficial owners (including the Estate of Talib Hussain) be given the option to provide funding to 1/3 rd the value of the proposed loan. TanH stated that whilst Talib's estate may have a beneficial interest in KTA for the purpose of this meeting it was irrelevant as the meeting was a meeting of

the board of directors. KH was not open to Bank Funding until such beneficial owners had explored leveraging their own assets. KH intimated clearly his desire to do this.”

18. The minutes also record that there was a discussion about the financial position of the Company, that Tanvier expressed the view that a capital injection of £500,000 was required and that he had been exploring re-financing arrangements which were described in detail. They then record as follows:

“Following further enquiry from TazH, TanH summarised that the ideal situation would be a 50/50 split of the proposed facility, a £250k loan each to both Pewsham and Worleys but likely to be £200k each site with a £100k overdraft facility. TazH emphasised that in the absence of any participation of other beneficial stakeholders that a vote of directors could result in an unfavourable outcome to KTA and the directors. TanH reiterated that the meeting was that of the board of directors and therefore a decision would be made purely by those individuals. Despite the protestations by TazH a vote was called with TanH and AH voting in favour of the application of funding with KH voting against. TazH wished to have committed to the minutes that it be noted that a 50% shareholder (KH) had not agreed with the application of funding and that additionally that a representative from the Estate of Talib Hussain had not been notified of the meeting having taken place.”

19. Mr McDonagh submitted that there was already a dispute about the representation on the board by the date of this meeting and therefore before the mediation. He also submitted that the irony was that Khadim now complains about the unfairness of appointing a third director from Talib’s branch of the family, who is not independent, when Tazamal complained about its lack of representation at this meeting.

(ii) 14 April 2020

20. Khadim did not attend the next meeting on 14 April 2020 and the minutes record that only Tanvier and Allah were present. The minutes also record the following under the heading “Bank Funding”:

“Meeting was opening by Tanvier Hussain (TH) who set out that he had called the Meeting of the Board of Directors so as to conclude on the 23 March 2020 resolution to apply for funding. TH specified that the Company intended to enter into 2 loan agreements of £200,000 each and that the Board of Directors would be asked to vote in respect to the Resolution re Loan Agreement (per Royal Bank of Scotland plc document reference numbers 851786500 and 434786500). TH continued

to read out the following:

Resolution re Loan Agreement

After due consideration of all the circumstances and on being satisfied that it is for the benefit of the Company and in the interests of the Company for the purpose of carrying on its business to enter into a loan agreement (the Agreement) in respect of a Loan of £200,000 from the Royal Bank of Scotland plc (the Bank) in the form now produced, and incorporating the Bank's Base Rate Loan Terms, it was resolved that Tanvier Hussain be authorised to sign on behalf of the Company the Agreement and any other documents required by the Bank in connection to the Agreement.

TH called a vote in respect to the aforementioned Resolution re Loan Agreement (**the Resolution**). Both TH and Allah Hussain voted in favour of the Resolution and with that it was deemed that the Resolution has been passed. TH thanked the directors and the meeting was closed at 14.04.”

21. Mr McDonagh submitted that the instructions given to the Bank on 13 September 2019 should be understood in the context of the Worleys overdraft and the meetings on both 26 March 2020 and 14 April 2020. He also submitted that the concern was to control the borrowings of the Company and not to require day to day payments out of the Worleys bank account to suppliers or employees to be authorised by the board.

(iii) 30 June 2020

22. Under cover of an email dated 28 May 2020 Khadim sent a detailed letter to Tanvier (which appears to have been dated 3 June 2020) purporting to suspend him pending a disciplinary investigation into allegations “which may amount to theft or dishonesty”. The letter had clearly been drafted by a professional lawyer and by email dated 28 May 2020 Khadim also wrote to Allah informing him of the suspension. Under cover of an email dated 3 June 2020 Khadim sent a second letter of suspension (also dated 3 June 2020) and by email dated 4 June 2020 Tanvier replied stating that he did not believe that Khadim had the authority to suspend him although he would cooperate with any investigation which the Company instigated on proper authority.
23. By email dated 5 June 2020 Khadim wrote to Allah requesting him to “be granted the same Bankline permissions that Tanvier had before I suspended him”. Bankline (as its name suggests) was the Bank’s online banking system. By email dated 5 June 2020 Allah replied as follows (and he referred to Tanvier as “Tan”):

“I’ve considered your request to grant you a mandate for Bankline with Tan. We would like to note that only one director has ever had the permissions for Bankline. We do not therefore understand your purpose for requesting to expand these permissions. Having considered your request at length, Tan and I, as a majority of the directors of KTA, do not consider that it would be in best interests of the company to accept your request.

I have further received an email today from a man called Paul Eddington who said that you had instructed him to carry out an investigation into an allegation that Tan had not complied with your instruction that he should be suspended. I have informed Mr Eddington that you do not have authority to procure this investigation against the wishes of the other directors and I have asked him to cease carrying out any work for the company. Please refrain from carrying out any further steps to investigate Tan unless and until you and I have discussed and agreed a position on behalf of the company.

I would also like to inform you that I have appointed Les Allen and Paul Noble of Mishcon de Reya to advise Tan and myself on the alleged unauthorised payments referred to in your letter to Tan dated 28 May 2020. On our instruction Mishcon de Reya have contacted HMRC to inform them that we wish to make a disclosure of potential tax irregularities. Once we've heard back from HMRC, we will discuss this with you in more detail.”

24. By email dated 8 June 2020 Allah also wrote to Mr Daly of UHY stating that he understood that Mr Daly had been engaged to carry out an investigation into certain payments. He stated that Tanvier and he had not been consulted by Khadim before giving instructions and he requested Mr Daly to stop work on the investigation. All of these exchanges form part of the background to the next board meeting which took place on 30 June 2020.

25. By email dated 26 June 2020 Tanvier wrote to Khadim and UHY notifying them that a meeting would take place by conference call at 2 pm on 30 June 2020. It gave the telephone numbers of all three directors and there was only one agenda item: “Appointment of new Director”. The minutes of the meeting itself record that it was slightly delayed because Khadim did not pick up the call on either the first or second attempt. It then recorded as follows under the heading “Appointment of director”:

“Meeting was opening by TH who set out that he had called the Meeting of the Board of Directors so as to put forward the motion to appoint Shahzad Akhtar (SA) as a director of the Company. TH thanked the directors in attendance and proceeded to explain why he would like to propose to the Board, SA as new Director. TH stated that SA’s

appointment would bring a balance and impartiality to the board and that the board will benefit from bringing in a third party who is not tainted by the pending HMRC investigation. TH continued that the requirement to appoint a fresh director is driven by the following:

1. Review operating strategy, structure and contribution of individual sites to the whole group.
2. Undertake a strategic review of the group
3. Oversee the current shareholder disagreements and the pending HMRC investigation.

TH again stressed that SA will bring impartiality, balance and neutrality to the board, along with valuable commercial experience that will help maintain the board as a well-functioning team. TH asked AH if he had any further comments prior to tabling the motion. AH highlighted that TH had managed the Company for a long time and the appointment of SA will place a 3rd party on the board of directors, whom [sic] will be unbiased and bring fresh ideas to the Company. TH tabled the motion for the Appointment of Shahzad Akhtar as a Director of KTA Group Limited. TH and AH voted in favour and the motion carried. TH thanked the directors and the meeting was closed at 14.06.”

26. Mr McDonagh relied on the minutes of the meeting as evidence that Shahzad was appointed for proper purposes, namely, to bring balance and impartiality to the board and to bring in a third party who had valuable commercial experience and would not be tainted by the pending HMRC investigation. Mr Majumdar submitted that the minutes were no more than window-dressing.

(iv) 18 July 2020

27. Under cover of an email dated 12 July 2020 Tanvier forwarded to Shahzad UHY’s original engagement letter dated 2 June 2020 in which they set out the scope of work which Khadim had instructed them to perform. This was the first document in the Appeal Bundle which was sent to Shahzad and the recipient of the email was not only Shahzad himself but also his brother, Pervaiz. In the engagement letter UHY stated that they had been instructed to address the following questions or tasks:

“1. Other than those that have already been dealt with previously in respect of Mazamal Hussain, whether any payments have been made since incorporation using Company funds to, or for the benefit of, any directors or their families including, but not limited to, the data provided by Robin Somerville.

2. If there were any such payments, we are to provide the Board with details of each transaction that did not relate to genuine business

expenditure.

3. Whether any payments were declared appropriately and whether the relevant tax and other deductions were made.

4. If there were any payments, we are to quantify to what extent they create any liability to HMRC or similar on the part of the Company.

5. If there were any payments, we are to assess whether they breach any of the Company's banking terms or covenants.

6. Calculate the total amount of financial support provided by Khadim Hussain to the Company since incorporation.

7. Calculate the extent of Mazamal's indebtedness to the Company at its peak and identify the extent this was netted off by any credit held on behalf of Khadim and/or whether any liability to HMRC relating to Mazamal, was paid by Khadim direct or otherwise.

8. We are to consider whether there is any evidence to support a suggestion that Talib agreed to swap equity for debt at any time.”

28. In the covering email Tanvier explained the background to Shahzad and Pervaiz in the following terms:

“Attached is the original letter from UHY, covering their scope of work. This was based on when KH asked them to investigate the alleged funds I had taken out. This investigation was stopped as it did not have board approval. When we appoint UHY next week, is every one ok to confirm their scope of work no 6 and 7.”

29. By email also dated 12 July 2020 Shahzad replied asking Tanvier to confirm that UHY’s instructions should be limited to points 6 and 7 (above). Tanvier replied in the following terms again copying in Pervaiz (and to make sense of this email is necessary to know that “Louie” was a family name for Mazamal):

“Yes, no 6 covers off KH loan accounts how much did he put in? No 7 covers off how much did Louie take out. So in essence trying to prove KH put in X and Louie took out Y, so there is no money due back to KH.”

30. On 18 July 2020 a board meeting took place at the Holiday Inn in High Wycombe. In his witness statement dated 30 September 2021 Shahzad gave evidence that this was the first meeting which he attended, that it took place in person and that Khadim did not attend it. At about this time Tanvier prepared an undated document which contained dialogue between Tanvier and Shahzad. It was common ground that it was prepared in advance of the meeting and Mr Majumdar told me that it was prepared on 12 July 2020.

I will refer to it as the “**Script**” which seems to me to be an accurate description of its function. For example, it began as follows:

“Shaz: I would like an understanding how the businesses works and fit together.

Tan; Corner rented out, Chippenham side (inc AM Auto care and Sawmills) run by me. Worleys run by Khadim. All have separate management reports that are combined at year end.

Shaz: How does the banking fit in.

Tan: Pewsham, AM and Sawmills all have their own bank account with RBS. Worleys has its own bank account with RBS. Corner has its own bank account. Each business has its own bank account.

Shaz: What is the overdraft, how does it work.

Tan; Explains overdraft.

Shaz: Tan do you have keys for Worleys and does Khadim have keys for Pewsham. Who signs the cheques at the businesses?

Tan: Chippenhams side have always been signed by my Father or myself. High Wycombe has always been signed by Khadim/Louie. We don't have keys for each other's businesses. I am the only person to have online authority to authorise online payments. So I authorise all the online payments. Can I just add we have only ever had one person authorised to do this before me it was Louie.

Shaz: As I understand these are really run as separate businesses. I read somewhere in one of the position statements “We provided them with a stock of Cars” Just implies and reads like separate businesses. (Page 3/8 KH Statement).”

31. Neither counsel took me to any minutes of the meeting on 18 July 2020. However, on 19 July 2020 Pervaiz sent a legal decision to both Tanvier and Shahzad under the subject line “Interesting Case”. The following email exchange then took place (and the reference to “Nadeem” was to Mr Nadeem Akhtar, the Respondents’ solicitor):

“I think as a result of this article. we should strengthen the board powers against KH. I will discuss with Nadeem and see what we can/should do by way of introducing new board resolution. There are a few outliers from which we can take note and close any loops.....My initial thought was ... Butler had no special powers (contained in articles of association or via his job description) to take the action he decided. However...it is clear that board resolution to appoint investigation is important. Another point to consider is to tighten the Article.”

(Pervaiz to Tanvier and Shahzad, 19 July 2020)

“Yes, makes sense. The articles should be strengthened to include quorum provisions, status and powers of Directors, powers of the board, job roles, duties, delegation etc. Please discuss potential options with Nadeem.”

(Shahzad to Pervaiz and Tanvier, 20 July 2020)

(v) 12 August 2020

32. At 10.30 am on 12 August 2020 the next board meeting took place and the minutes record that Shahzad, Tanvier, Allah and Khadim were all present. The minutes were prepared in tabular form and they recorded that Shahzad invited each director to provide the operational status of each business and that Tanvier responded by telling the meeting that there had been challenges during the Covid 19 pandemic. He then gave an “update on staff, redundancies, business and workshop recovery”. The minutes also record that Khadim declined to answer Tanvier’s request. Finally, they also record against the topics “Business and Operational Review” and “Banking Arrangement” respectively:

“12/08 [SA]:

- SA explained the requirement for engagement of UHY/ASE and distinction between current financial investigation through MDR.
- KH expressed dissatisfaction of previous request for the same (prior to SA appointment) and requested disclosure in terms of engagement with UHY/ASE.
- SA agreed to provide all Directors with full details of KTA report, post analysis.
- SA requested approval to proceed with appointment.

Points - AH agreed, TH agreed, KH disagreed - carried.”

“18/07 [SA]:

- SA requested information regarding banking arrangements of the group as a whole and individual account view by business including overdraft arrangements, use and utilisation.
- TH explained the current structure and use of each account for Pewsham, Worleys and Corner Garage.
- SA to request a meeting with Richard Boyce @ RBS and Directors to discuss options of practical accounts divestment for the group.

Points - agreed.

12/08 [SA]:

- SA reiterated the divestment of business accounts and requested approval to proceed with action.

Points - AH agreed, TH agreed, KH disagreed - carried.”

33. The preparation and timing of the minutes of this meeting were the subject of a number of emails between not only Shahzad and Tanvier but also Pervaiz (who was not present) and Khadim refused to accept their accuracy. By email dated 13 August 2020 he wrote to Shahzad rejecting the minutes as a true record of the board and supported

by three pages of closely typed notes. On the same evening Shahzad wrote to Tanvier and Pervaiz asking how to reply. He also stated: “Obviously they recorded the meeting, seeing the below reply”. A little later he circulated revised minutes which incorporated substantial amendments. On 14 August 2020 the following exchanges also took place:

“Tan and Shahzad

Further to the distribution of the minutes and subsequent response from Mr. KH, I would like to make the following suggestions:

- reply early next week thanking him for the essay type notes - agreed
 - remind him minutes capture the salient points of the meeting. All salient points from the meeting are contained in minutes - agreed
 - any points not correctly captured or additional comments made by participating directors can be considered upon request. No request for changes/additions was received from yourself - agreed
 - The result of your correspondence suggests the meeting was recorded by yourself. Please be reminded that recording without the explicit authorisation/agreement contravenes data protection and company policy (going forward) – agreed
 - as the chairperson it is my duty to ensure the meeting is conducted professionally – agreed
 - in the interest of professionalism I have omitted from the distributed minutes that your conduct and tone was unprofessional – agreed
- Please feel free to change as required”

(Pervaiz to Shahzad and Tanvier, 10.54)

(Shahzad to Pervaiz and Tanvier underlined, 11.12)

“In light of the current situation and to lay the groundwork for future action, I have been thinking of the following:

- i. As part of UHY report it may be useful to mention future operational strategy
 - ii. KTA should consider additional management to replace senior board directors
 - iii. as a result of strategic operational review, the need for tighter operational and financial control and to address challenging economic and market conditions introduce 2 additional directors
 - iv. After the appointment of 2 additional directors, propose that Mr. AH resign as director
- point iv. would strengthen the argument against Mr. KH as we prove he is an absent director.”

(Pervaiz to Tanvier and Shahzad, 11.20)

“Yes, best to advise AH step down, age/health etc in favour of strengthening the board, going forward. We require a unilateral push to build a case against KH as incompetent and unfit to continue in his current capacity.”

(Shahzad to Pervaiz and Tanvier, 11.21)

34. By email dated 11 August 2020 Khadim gave notice to the other directors that he was appointing Tazamal as his alternative director and that under Regulation 66 of Table A of the Companies Act 1985 Tazamal would be entitled to notice of all meetings and to attend them. By email dated 7 September 2020 Khadim complained to Tanvier and Shahzad that they had not responded to this request and the issue was tabled at a board meeting on 9 September 2020. The minutes of this meeting were also the subject of email exchanges between Tanvier, Shahzad and Pervaiz. They had the same format as the minutes for the meeting on 14 August 2020 and they record again that Khadim declined to contribute to the discussion or provide an operational update on the business at Worleys. In relation to the appointment of Tazamal, they also record as follows:

- “1. Alternate Director item added to agenda.
2. KH to provide context and motion to be put to vote.
3. KH reasoning was rejected; ‘behaviour of the board’ and ‘unfair prejudice’:
 - There have been no formal board meetings prior to SA appointment and no records/minutes of meetings/decisions and hence little or no formal accountability across the business.
 - No update provided by KH on business performance/operations.
 - KH has previously chosen not to attend board meetings, e.g. a handful in 2020 for the CIBLs loans where most were missed by KH.”

35. By email dated 14 September 2020 Shahzad wrote to each of the other directors under the heading “Reminder to all Directors”. He stated that in the current economic climate it was in the best interests of the Company that “all future hires were/are to be board approved only”. By email dated 15 September 2020 Khadim wrote to Shahzad with a copy to Tanvier and Allah asking when this issue had been discussed and with whom. By email dated 15 September 2020 Shahzad replied stating that it had been discussed at the board meeting on 18 July 2020.

(3) *Pervaiz’s Drafts*

36. By email dated 22 September 2020 Pervaiz sent a draft email to both Tanvier and Shahzad relating to corporate governance and suggesting that it should be sent to Khadim. This appears to have been a draft response to an email sent by Khadim’s solicitors a few days before and in this draft Pervaiz emphasised that a meeting of the board of directors was the correct forum for decision-making and that discussions should be transparent:

“I'd like to reiterate a few points:

For governance purposes, the board meeting is the correct forum. All discussions are transparent for the attendees. Every director present is free to discuss and put forward their views on each agenda/discussion item, which are correctly captured in the minutes. The minutes of the previous meeting are put to the board for approval. Shahzad has been appointed as Director in accordance with the companies Articles of Association. His role is clearly documented and he continues to fulfill the duties in accordance to the role and in line with the companies memorandum of articles. All matters related to the memorandum of articles and important to the KTA Group Ltd are to be communicated to all Directors.”

37. On the same day Shahzad replied stating that he would send the email to Khadim. However, it is not clear whether he did so and I was not taken to the email itself. It may well be that this draft was overtaken by events because on 23 September 2020, the following day, Khadim wrote to Shahzad chasing a response to his earlier email. On the same day Shahzad provided a draft containing his own thoughts to Tanvier and Pervaiz.
38. By email dated 24 September 2020 Pervaiz circulated to Tanvier and Shahzad a draft reply to Khadim's more recent email dated 23 September 2020 (above) this time addressed to Allah, Khadim and Tanvier. On the same day Shahzad replied to them both stating that he would send the draft the following day. But, again, I was not taken to an email sent by Shahzad to the members of the board and it was unclear whether this draft was ever sent.
39. As I have already stated, Tazamal was an employee of the Company and worked at Worleys with Khadim. By email dated 8 October 2020 Pervaiz sent Shahzad (with a copy to Tanvier) a draft of a notice terminating Tazamal's employment which was intended to be dated 19 October 2020. In the covering email Pervaiz stated: “Here below is a draft notice terminating Tazamal's employment to be signed by Shahzad himself. I obtained this from Nadeem.” This was another reference to Mr Nadeem Akhtar, the Respondents' solicitor. By email also dated 8 October 2020 Shahzad replied stating: “How/when is this to be executed?” But, again, I was not taken to an email or letter in which Shahzad signed or sent the notice and his evidence (below) was that it was never served.

C. The Petitioner's Witnesses

(1) *Khadim*.

40. The trial of the Petition took place over 7 days between 10 June 2022 and 22 June 2022. On 10 and 13 June 2022 Khadim gave evidence. He had made a witness statement dated 31 August 2021 in which he devoted most of his evidence to dealing with the acquisition and development of the various businesses. But in section H he dealt with the involvement of Tazamal (whom he called “Bobby”) and the Excess Takings claim. In section I of his witness statement he dealt with the impact of the board meetings:

“40. The board meetings make me feel extremely anxious and about three days before the meetings I get really stressed. They confirm the timings at the last minute and no real agendas are published. It feels like Shahzad and Tan come prepared to give me a hard time and make sure I cannot prepare.

Allah doesn't say anything. They are now starting to quiz me like I am in court. I have just been an object for them to target and bully and I am fed up with it. I don't want to talk to them and therefore I have now resorted to asking them to put their questions to me in writing and I will answer by email which Bobby helps me with given he is more capable and educated than me. It now appears that Pervaiz is, in fact, heavily involved in helping the Respondent side and guiding them how to push me out. Even before the case disclosure process, I thought I still trusted them. I have now learnt not to say a word as anything I do say gets turned around anyway. They twist my words to suit them and their story. They try and prove I have had no positive impact on the business throughout its life and all the time ganging up on me. Shahzad constantly fails to acknowledge my contributions to the Company. He is very dismissive and insulting towards me but very accommodating towards Tan and Allah. The minutes that have been issued by Shahzad try and show me as causing problems and Tan as being the success behind the Business. My review of Board meeting minutes are not captured or accepted. The board votes on motions from Shahzad which are consistently agreed by Tan and Allah. It is clear that they don't want independent scrutiny of the Company. I don't feel these board meetings have achieved anything for the Business.

41. I could not believe the emails that we received from the disclosure exercise. They were setting out how to prove I am incompetent, how to pressure me, how to hassle me and prove to the board that I am unfit. There are scripted conversations provided by Tan to Shahzad to tell him exactly what to say in trying to help Tan and Allah's case against me. The scripted conversations detail how Shahzad, alongside Tan will pressure me and other members of staff in a threatening manner. There are emails with Pervaiz (Shahzad's brother) instructing the actions of Tan and Shahzad, like he is controlling them. For example, he planned for

Shahzad and Tan to fire Bobby from his role for no apparent reason. I don't trust them anymore.”

41. In section J Khadim addressed his relationship with Shahzad and his brothers (Pervaiz and Jawad) and also his relationship with Shahzad's father, Talib (his own brother). His evidence was that Shahzad's father and brothers had poisoned him against Khadim. He then turned to the current position of Worleys:

“43. Bobby has been involved in the management of Worleys for a number of years and drove the change in franchise to Suzuki, with my support. The business is making money. Bobby has been involved because he is my son and I trust him to look after my interest as a shareholder in the Company. He also discovered the extractions, some of which Tan and Allah have been forced to stop. Other extractions continue, but I have no board control to be able to stop them even though I have tried. The main person I had trusted historically was Tan. But I have now completely lost my trust in him. All I wanted previously was for Bobby to help me out and take over the business and work with the family productively for everyone's benefit. The actions of Tan, Allah and Shahzad now make this impossible. I have worked all my life to ensure the success of this business, that it will not only support the owners but it will support everyone that works within it. With the amount of time Bobby has been involved, the development he has made has been most impressive. He has demonstrated he has the ability to take and drive this business to be in line with our principles. In the short term I was hoping to alleviate the pressure and stress on me given the unbalanced board by rebalancing the board to be the two shareholders and an agreed independent Director, however the underhanded manner in which Tan and Allah have colluded with members of the family who have their own agendas, has stopped this from happening. In the longer term should I be successful in my claim and I'm awarded the opportunity of purchasing the shares held in Allah's name, we have a succession plan in place. This includes retaining and operating all sites as well as looking for new opportunities. The management will be primarily carried out by Nigel and Bobby and I intend on staying close to the business as its founder.”

42. Mr McDonagh asked Khadim in cross-examination about board meetings. The general proposition which he put to Khadim was that he did not see any point in having board meetings and he took Khadim through the series of meetings on from 26 March 2020 to 12 August 2020. His evidence was as follows (and, again, he often referred to Tanvier as “Tan” and to Tazamal as “Bobby”):

“Did you think there was any point in having a board meeting with Allah and Tan? A. I only found out afterwards they were stitched up, they were stitching me up. Q. Did you think at this time there was any point in

having a board meeting? A. No, because I was the one keep joining the board meeting every time and they are the one keep bringing the things to me, such as no agenda. In every meeting, sir, they give me less than 24 hours, and a one— line agenda. What could I say on that agenda? Q. What about on 26 March 2020: did you think that the board meeting you attended had any meaning to it? A. Well, what I could work out it was meaning there, but for their benefit. Q. So did you agree or disagree with Bobby when he said there was a lack of balance on the board and that any vote drawn would be meaningless? A. That's correct. This is true. It was meaningless for me, because they were two to one and their accountant was in their pocket. Q. And you've been one of three directors since 2009, haven't you?

A. Correct. Q. And, therefore, if there had been board governance in the period from 2009 onwards, you could have been outvoted? A. It didn't come to that scenario, because it was a family trust. It only came to light when extraction found out and then they used the board majority to cover their extractions. Q. You were never concerned about being a minority amongst directors because you agreed and understood that board meetings were unnecessary in the family business context? A. I -- say it to you again -- trusted them and there was no need for those board meeting. What they're doing now you can see it very clearly , but those days once a year agreed. Whatever it's signed for, I signed it blindly.”

“Q. Can we look at page E23320, please. So this is a meeting that happened after the March meeting on 14 April 2020, meeting of the board of directors, and it records: "Apologies for absence Khadim Hussain." So you didn't attend this meeting? A. Quite right. Q. Quite right because? A. Because I knew what they were going to ask. Q. So in April 2020 you'd decided that there was no point in you taking part in any or more board meetings? A. No. What are you trying to get to me? Q. I'm not trying to get anything other than an understanding of what your state of mind was? A. Yeah. Go on. Q. And by April 2020 you had decided there was no point you turning up to a board meeting? A. What was going to be discussed? That's the main thing. CHIEF ICCJ BRIGGS: Just answer the question, rather than asking a question. A. Sorry. Sorry. My apologies. CHIEF ICCJ BRIGGS: So the question to you was: did you see a point in turning up to any more board meetings after April 2020? A. I did, sir, yes. I would attend them, yes. MR MCDONAGH: In April 2020, at this particular board meeting, you saw no point in attending? A. Well, I didn't. Q. Because you saw no point in doing so. You just told me that. A. Okay. Q. Can we go to E23321, please. Here is a meeting held on 30 June 2020 at which the matter of business was the appointment of an additional director, and you didn't attend that meeting, did you? A. I knew because they -- with that meeting I remember it. They didn't even send me the name or CV or any reference on their director and once I found out in the meeting it was -- it was new director introduced. I knew exactly what they're going to do. They're going to stitch me up, because Shahzad Akhtar already hate me and he wasn't an independent director, which is we suggested early on. So there ie I knew from then onward it's going to be completely stitch up with me,

such as the Shahzad Akhtar, which is my statement said, he is family. He has -- he has not liked me over his life. Q. But my question had been -- A. Yeah. Q. -- you didn't attend this meeting because you didn't see any point attending this meeting either? A. Because I wasn't informed by the board what it's all about. Q. Well, you knew -- A. Give me the name, give me his experience, give me what he'd been doing, but that's the reason I did not turn up. Q. You didn't turn up at the meeting to say I can't accept this appointment because you have given me the name in advance, you haven't given me the proper information I need, you didn't do that? A. But I already rejected that, because I knew I am going to be outvoted, so there ie I let them get on with it. Q. Can we go to E23325, please. And here is a minute of a meeting -- A. Can you blow it a bit up, please. Q. The minute is by Shahzad it says at the top. The meeting took place on 12 August 2020 and in the box in the middle of the page. Group update, discussion and status on the right: "SA [Shahzad] requested each director to provide an operational status of each business and note this will be an ongoing update. TH (Tan) advised challenges during C19. Update on staff redundancies, business and workshop recovery and Khadim declined." And that's an accurate minute of that meeting, isn't it? A. The thing is like -- CHIEF ICCJ BRIGGS: Is it an accurate recording of what was said? A. What are you trying to say, sir? CHIEF ICCJ BRIGGS: Well, what's been put there is you declined and no reason was provided or alternative offered; is that correct? A. Can I have that a little bit bigger? Right. Okay. CHIEF ICCJ BRIGGS: So you can see the discussion on the far left — hand box. A. On the right—hand side? CHIEF ICCJ BRIGGS: Left-hand box, discussion between the directors. A. Yes. CHIEF ICCJ BRIGGS: It's about a group update and then SA and TH provided some feedback and you declined. A. Yeah. CHIEF ICCJ BRIGGS: Is that an accurate recording -- A. Yes, that's accurate. CHIEF ICCJ BRIGGS: -- of what transpired? MR MCDONAGH: And the short point, Mr Hussain, is that you weren't interested in participating in regular board meetings, were you? A. I was, yes. I was interested. Q. But you declined to contribute to them? A. The reason for it was because -- Q. Is that a " yes"? A. Sorry. Q. Was that a "yes"? You said " reason for it". Is that " Yes, the reason for it"? A. Go on. Sorry. Q. You said you were interested in attending them and I put to you that you weren't interested in participating in them? A. I was interested in participating. Q. But you didn't participate in them? A. Correct.”

43. The Judge found that Khadim’s evidence was vague and confused, that he was unable to respond with accuracy to basic questions and that he contradicted himself. He also found that when he was unsure or did not want to answer a question, he would distance himself by saying that the relevant events took place in an era in which he was no longer involved. Finally, he rejected Khadim’s evidence that he would sign documents without reading or questioning them on the basis that he was a self-proclaimed entrepreneur who claimed to have started and run a successful business: see the

Judgment, [60] to [63].

(2) *Tazamal*

44. On 13 and 14 June 2022 Tazamal gave evidence. Between them Mr Majumdar and Mr McDonagh relied on the following passages from his witness statement dated 30 August 2021:

“50.....Since I started asking questions in 2019 about where monies had gone, problems started occurring and Dad started being excluded from certain things in the business. For example, Tan and Allah sent a letter to the bank stating that they had board majority and no written transfer/payment request should be accepted without the majority of the board deciding. This concept of a board majority was something that had never been mentioned or discussed before. Because Allah was not actually working in the business, I believe Tan created Allah’s mailbox to reinforce the decisions he was making were approved by the majority of the board. On a number of occasions, we received emails from Tan signed off with the words “Board Majority”.”

“51. In June 2020, Dad and I started getting information together and gathering emails from Tan particularly in relation to the schedules. Towards the end of June, we received a request for a board meeting, the request didn’t include me, and I started to become isolated. This board meeting was in relation to an appointment of a director. The board meeting request was received on Friday and then the meeting was for the following Tuesday. No discussions were had in relation to the appointment and no CVs were circulated nor were we involved in any interviews. We made complaint to Tan and Allah’s solicitors about the underhanded way this was taking place along with the lack of notice. Dad did not attend as we felt the whole approach was wrong, especially after Tan had agreed to resign as a Director a month before but failed to do so. Also, given Tan’s behaviour in the previous 6 months, we also knew that no matter what Dad would have said regarding the appointment, in the end Tan would have called a vote and his father would have voted with him irrespective of Dad’s views. Tan had started using the board majority concept as a means to push through everything he wanted. We came to know the meeting lasted around 3 minutes according to the minutes of the meeting. It stated that in light of the ongoing family dispute they had nominated Shahzad Akhtar as a director. They stated he was impartial and independent and would bring fresh ideas to the board. As set out previously, Shahzad is Talib’s youngest son. For the reasons I have given above, and as follows, I don’t feel he is independent nor impartial, especially given his history with Dad.

52. We guessed prior to the meeting that the new director would be one of Talib’s sons. We had a feeling it was going to be Shahzad as since this dispute had started, around late 2019, Tan had been speaking to Shahzad’s brothers, Pervaiz and Javid, a lot. Historically they do not like

my Dad. Shahzad had been the black sheep of the family and only stayed in touch when he wanted something. He caused a lot of grief when working at Worleys in his early years as previously set out. He left the family when he got married. We never thought he had any desire or reasoning for being a director. His background is an IT contractor with zero board experience. He knows nothing about the motor trade. As previously stated, in paragraph 12, Dad tried to train him up as a mechanic, but he had no interest in this. It did transpire later, after his appointment, that this had been planned by Tan, Pervaiz and Javid. In addition to what I have seen in the Respondent's disclosure, I was told this by Shahzad's nephew (Javid's son), in a conversation where he explained how Pervaiz came to their house and offered Javid the directorship first. Neither Pervaiz or Javid were willing to take it for fear of exposure to HMRC given the voluntary disclosure Tan and Allah had made. I was told they then offered it to Shahzad reassuring him they would support him in actioning the grudges they held against Dad I was sceptical at first as it seemed like an elaborate plan that wasn't well thought out and didn't think anybody would want to put themselves in such a position especially given legal action was imminent. I took the conversation with a pinch of a salt, however, from what I have now seen in the disclosed emails, I am genuinely shocked at how true it was.

53. It was Dad's preference for me to be on the board as his alternate director, but Tan, Allah and Shahzad wouldn't let it happen. The board meetings have hugely affected Dad. He finds them so distressing that I fear the stress could kill him. He can't sleep and every two weeks he knows the board meetings are coming and he gets all worked up. I too get worked up as they are so obviously scripted. The board meetings have turned into a general bullying exercise against Dad. They have recently come with the tactic of using 'any other business' to question and interrogate Dad so they don't have to mention it in the agenda giving him advance notice. I try and help Dad as much as I can in the background trying to give generic answers. The board meetings have not been effective. Tan and Allah, assisted by Shahzad, have been trying to use the board meetings to help them in their defence to these proceedings and in particular to show that Dad is unfit and can't run a business which is not the case at all. I have informed Dad that there is no shame of needing help from others but because of his age, his pride and his upbringing, to him, there is shame when you need help from others. In every single board meeting they act like they are in court and they just cross examine Dad. I tell Dad he should say to them if they have any questions, they should put them in an email as he can't have verbal conversations with them anymore."

45. Mr McDonagh placed significant reliance on the fact that there was no "follow on" and that Tazamal was unable to point to any decisions taken by the board of directors which were alleged to be unfairly prejudicial to Khadim apart from the letter to the bank dated 13 September 2019 (above). He also relied on the admissions made by Tazamal that he drafted Khadim's emails and that Khadim and he had suspected that Shahzad would be

appointed as a director well in advance of the meeting on 30 June 2020.

46. I was not taken to any passages in Tazamal’s cross-examination and the Judge concluded that his evidence should be treated with caution unless corroborated by contemporaneous documents: see [64] to [68]. In reaching this conclusion, the Judge placed particular emphasis on Tazamal’s rejection of UHY’s findings and his continued assertion that Khadim was owed substantial sums by the Company in the face of the evidence. The Judge stated this at [65]:

“Paradoxically, Khadim wanted to commission a report where UHY was to investigate all drawings made from the Company. His choice of UHY suggests firstly, he trusted UHY to undertake the job diligently and secondly, the report would be impartial. UHY had for many years been the Company’s auditors and any debt that Tazamal thought may be owed to Khadim, who would on occasion sign off the accounts as director or the Company secretary, was not shown in the Company accounts. The assertion made by Tazamal is that Khadim had "put into the business close to a mill". The assertion is not substantiated, and the evidence points in the opposite direction. This issue relates back to the £950,000 raised in or around 2005 I have mentioned earlier. None of the £950,000 was for the Company although it passed through the account of Corner garage. Tazamal accepted (in the passage of cross-examination I have set out above) that Khadim’s chosen "independent" investigator found that no money was owed to Khadim by the Company. The 2018 document he refers to was not put before the Court.”

(3) *Mazamal*

47. On 14 June 2022 Khadim called Mazamal to give evidence. The Judge accepted that he was an honest witness and gave him credit for admitting that he had accepted money from Worleys and Corner Garage for improper purposes. Mr Majumdar did not take me to any of his evidence and did not submit that it supported the Appeal.

(4) *Mr Nigel Findlow*

48. On 14 June 2022 Mr Nigel Findlow, who was the general manager of Worleys, also gave evidence. In his witness statement dated 31 August 2020 he gave evidence that when Shahzad was appointed, a memo was circulated stating that no dividend payments were to be made. He also referred to the letter to the Bank dated 13 September 2019 (above) and stated in paragraph 43: “In or about late 2019 a letter was sent to the bank by Tan and Allah making it clear that any changes to the banking arrangements needed

board majority. I am not aware that anything has been changed at the bank.”

(5) *Ms Kim Dorsett*

49. Finally, on 14 June 2022 Ms Kim Dorsett, who was the bookkeeper at Worleys and administered the payroll, gave evidence on behalf of Khadim. She had prepared the schedules upon which Tazamal had relied in support of the Excess Takings claim and she confirmed this when she came to give evidence:

“Q. Can I ask you to look at paragraph 18 of your witness 8 statement at page A148. It begins: In or around March 2020, Taz had a disagreement with Tan and I was asked by Taz to carry out some investigations. I had to do a spreadsheet of how much Tan and other family members at Pewsham had earned ...” That's on the next page: "... as far back as I could possibly go which was about 2001. I then had copies of p45's going back a little bit further.” And then at 19, you say: "I was then asked to log into the online banking systems and go through each of the individual banking transactions for Pewsham." And you remember doing that? A. Yes. Q. And you could access this from Worleys? A. From the Bankline system, yes, that we've got for the bank. Q. And you didn't need any permission from Tan to access this? A. No, because Bobby gave me the instructions to do so. Q. So he had the access? A. Nigel, myself and Taz have got information for the bank, so, yeah. Q. So any one of you could have accessed this information, and you could have accessed that information at any point over, say, the last five years, the last ten years? A. The banking only went up to the last 15 months or 18 months or something like that. And then if you wanted historic, then you have to ask the bank for their copy of cheques. Q. Yes, but you could have asked the bank for, say, five years ago; you could have made the request -- A. Yeah, yeah, but you'd have to wait for the information. Yes. Q. Yes, and they would have provided it to you? A. Yeah.”

D. The Respondents' Witnesses

50. On the Appeal Khadim sought to overturn or set aside a number of critical findings of fact of the Judge. In their Skeleton Argument, Mr Majumdar and Mr Somerville relied on a number of short extracts from the transcripts of the evidence of Allah, Tanvier and Shahzad. There was a real dispute between counsel whether those extracts or individual answers properly reflected the evidence which the individual witnesses had given although I should record that Mr Majumdar took me to the complete passages (below) in his oral submissions. One of the critical exercises which I had to perform on this Appeal, therefore, was an assessment whether the witnesses made key admissions in

their evidence or whether their individual answers meant that parts of Khadim's case could properly be described as "unchallenged". I set out below the passages from the transcripts of evidence to which I was taken and, in doing so, I highlight the individual passages or answers upon which Mr Majumdar and Mr Somerville relied in their Skeleton Argument.

(1) *Allah*.

51. On 15 June 2015 Allah gave evidence. Mr Majumdar took me to the following passages in his witness statement dated 30 September 2021 in which he dealt with distributions by the Company:

"51. The first dividends were in 2013, this was a paper exercise only to clear up the previous tax investigation, for me and Khad. On our accountant's advice.

52. There were no discussions ever on withdrawals. We never took dividends, because each family would just draw from their own businesses.

53. The next dividends were not taken until 2016. Khadim did not seek my approval or consult me. He just withdrew the dividends. There was no meeting or agreement, Khadim just chose how much he wanted to withdraw. Being a 50% shareholder, I decided to withdraw as well.

54. The following year in 2017 I waived my right to withdraw dividends, Khadim did withdraw. Again, Khadim never sought my approval, or discussed with me. Khadim alone chose how much to withdraw. I was hoping as I had waived my right in 2017, Khadim would then stop talking dividends in the following years. That did not happen so in 2018 and 2019 I withdrew dividends as well. Again, Khadim has never sought my permission. Being a 50% shareholder, I just take whatever Khadim takes. If Worley's bank balance had been in positive, I really would have no objections in Khadim withdrawing dividends. It goes back to each family withdrawing from their own businesses.

55. I have never had a conversation with Khad regarding dividends, such as how much? when and why? The family have only ever withdrawn wages from their own business bank accounts. Khadim and his family have only withdrawn from Worleys Bank Account. My family have only ever withdrawn from Pewsham Garage's bank account. The businesses have always had separate bank accounts, at no time have our families withdrawn from each other's business account. I would have no objections in Khad withdrawing dividends regardless of the amount, providing the business he controlled could support this. I felt he was just going to run his overdraft up again and then he would want to take another loan in the company name to pay off the Worleys overdraft."

52. Mr Majumdar asked Allah in cross-examination about the way in which the parties managed Worley and Pewsham as separate businesses and the extent to which his branch of the family was involved in the management of Worleys, which was Khadim's business. He also put the change in the bank mandate to Allah. I set out below the relevant passage from the transcript and I highlight the specific answers upon which Mr Majumdar relied on in support of Grounds G5 and G7 (below):

“Q. Yes. And there was no decision made that there would be unequal board representation; that was just the result -- A. Sorry? Q. You and Khadim didn't decide that there should no longer be equal board representation? A. No. Q. It just happened accidentally? A. That's right, yeah. Q. Now, between 2009 and 2020 -- A. Yeah. Q. -- nothing changed, did it, in terms of the way the business functioned? A. No -- Q. Wait, wait, despite the fact that your side, as it were, had two board members and Khadim only had one? A. Yeah. Q. It didn't make any difference to the way the business functioned? A. No. Q. You didn't have meetings? A. No. Q. You didn't have meetings? A. No. Q. And you didn't have any disagreements which led to you and Tanvier outvoting Khadim? A. Yeah, only disagreement I had, Worleys overdraft. If they -- that is the -- that was -- that still is the most established business in our family. If there were just (inaudible) evenly, I wouldn't have a problem what he do with the money and nor did I ever have a problem what we do with the money, who we employ, who we fire, always been fine. The problem is they dug us such a big black hole, which we started filling it, we never filled. 1.4 million went in '13, couple a year later, 140,000 overdraft. I mean, that's -- where is he? Why the other place didn't have the overdraft? Why didn't he create the overdraft? He took money. We took money. Q. What I'm asking you about -- A. But that never(?) created the overdraft. Q. What I'm asking you about is the use of your board majority. So you had a theoretical majority from 2009 -- A. Yeah. Q -- to 2019? A. Yeah. Q. But at no point in those ten years did you say to Khadim, “You can't do this” or “You must do this and we have a majority so we can make you”? A. Yeah. Q. That's fair, isn't it? A. Yeah, that's a fact. I never said nothing. They only started -- I was under the impression they are running the overdraft, they will do something, ie they turn it over loan and start paying it rather than playing on family finance. We was thinking about to investing that money to take the business to the next stage. Q. And there was an understanding between you as shareholders that each of you would have equal rights of management A. Sorry Q. There was an understanding between you and Khadim, as shareholders, that you would both have equal rights of management? A. Both have? Q. Equal. The same right -- A. Equal right for the management. Q. Yes, because you were 50/50 shareholders. A. Yeah, yeah. Well, not only between us, it's (inaudible) company has 50/50. Q. And the understanding between you, and I think you agree with this, is that he would manage Worleys, and you, subsequently or with Tanvier would

manage Pewsham? A. Yeah. But wherever we situated geographically. Q. Yes. A. We live there, we manage there, we are -- we hire or fire whoever we want. He hired or fired whoever he want. When I was at Corner, I hired or fired whatever I want. Nobody interfered at all as long as we didn't ask each other, "Pay my wages, I haven't got the money." Q. And the reality was this, wasn't it: that you were entitled to expect to manage Pewsham day to day and Khadim was entitled to expect that he would be able to manage Worleys day to day? A. Yes, yes. Q. Now, that changes in 2019, and I'm going to ask you to look at a document, please, which is at FD6207. (Pause). A. Yes. Q. Now, do you recognise that document? A. Absolutely, yes. Q. If you just scroll down, it's a letter that says it's from you -- sorry, not says it's from you, says it's from Allah and Tan. Is that your signature? A. That's my signature. Q. And we see what it says, so this is written to Mr Boyce at NatWest. A. Sorry?

Q. You see it's written to a Mr Boyce at NatWest? A. NatWest? Q. Yes. That was the company bank, wasn't it? A. Yes. Q. And it says and this is the second line: "All written transfer request from all group bank accounts, have to be authorized in writing." And then the next sentence: "By order of Allah Hussain or Mr Tanvier Hussain, being the majority of appointed directors on the board of KTA Group Limited." A. Yeah. Q. So, in other words -- A. Yeah. Q. -- one or either of you had to countersign? A. Mmm."

53. Mr Majumdar also put a number of the email exchanges which I have set out above to Allah. Again, I set out in full the passages to which I was taken below. I also highlight four answers upon which Mr Majumdar relied in support of Ground G2 (below):

"Q. So far as you know, has Pervaiz played any part in the management of the company -- A. Yeah. -- or of the board since then? A. Sorry? Q. Has Pervaiz played any part in the management of the company or the board - A. No. Q. -- since then? A. No. Q. You're sure about that? A. Not that I'm aware of. Q. Could we look at page FF1805. It will come up on the screen.

12 Now, there are two emails on this page, and you're not -- neither of them are sent to you. If you just want to start at the lower one, you see it says, From: P Akhtar"? Mr Hussain? I just want to make sure we're looking at the right place. A. The bottom paragraph? Q. The bottom email, let's just identify who it's sent from and who it's sent to. A. "As part of UHY report ..." Q. Can we just begin at the beginning of that email. You see it says, "From: "P Akhtar"? A. Oh, "From: P Akhtar". Right, yeah. Q. And I think that's Pervaiz Akhtar, you may not know, I'm sure we'll establish it in due course. It's sent on 14 August 2020 at 11.20, and it's sent to Tan and Shahzad. And, of course, Shahzad by then is a director. A. Yeah. Q. And now do you want to read it? (Pause). A. Yeah, he's only advising the -- his cousins. It's all for -- good for the company or not, but he (inaudible) wind the company down. Q. Have you read the whole of this email? A. Mmm? Q. Have you read the whole of this

email? A. Yeah. Q. Have you seen it before? Have you seen it before? A. No. Q. Does it come as a surprise to you that Pervaiz Akhtar A. Sorry? Q. Does it come as a surprise to you that Pervaiz Akhtar is advising Tan and Shahzad about your company? A. Yeah, they're cousins, they can talk. Q. If you look at the email, point (iv), it says: "After the appointment of 2 additional directors, propose that Mr AH [I think that's you] resign as director." A. It didn't happen, did it? Q. Were you about to say something? A. It didn't happen. Q. No. But you didn't know about this email. Did you know that they were having a conversation about your resigning as a director? A. No. Q. And right at the end, it says: "Point iv. would strengthen the argument against Mr KH [Khadim Hussain] as we prove he's an absent director." A. Yeah. It is, yeah. Q. If we look at the top, there's a reply from Shahzad. A. On the top? Q. Yes, you see he replies to his brother's email. He says: "Yes, best to advise AH to step down, age/health etc in favour of strengthening the board, going forward." And then in the next sentence: "We require a unilateral push to build a case against KH as incompetent and unfit to continue in his current capacity." A. I didn't heard that before. I didn't see that. Q. Now, your expectations of an independent director -- A. Yeah. Q. -- would presumably have included consulting all the shareholders -- A. Yeah. Q. -- acting transparently. So, in other words, everybody can see what you're discussing? A. Yeah. Q. You're not talking only to some directors and not others. 3 Yes, you agree with that A. Yeah, yeah. Q. So no side conversations, not favouring one shareholder over another? A. Yeah. Q. That was one of your particular concerns, wasn't it? A. Yeah. Q. And there's a big family dispute and I think you say or imply that you wanted somebody who was going to build trust where there wasn't trust? A. Yeah, that's right. Q. But now you see apparently for the first time that they are talking privately about getting you to leave the company? A. Yeah. Q. Yes? A. Yeah. And also "proving that Khadim is incompetent and unfit to continue in his current capacity." A. Yeah. Q. Comparing this to your intentions and expectations, is this Shahzad doing what you hoped he would do or something different? A. Sorry? **Q. Is this the way you hoped Shahzad would behave as an independent director? A. No.**"

"Q. So we're going back in time a little here, 19 July 2020. Do you see that? So it's the second email. We'll look at the top email in a moment. Do you see that? It's one sent by Pervaiz Akhtar on 19 July at 15.54. And, once again, it's sent to Tan and Shahzad, but not you. (Pause). Now, I don't think you need to bother with the references to points 16, 17 and 21, because I think that's to a judgment. But what I want you to focus on, please, are: " I think as a result of this article we should strengthen the board powers against [Khadim Hussain]. I will discuss with Nadeem and see what we can/should do by way of introducing new board resolution." Do you see that? A. Yeah, I see that. Q. Do you have a view as to who Nadeem is? A. Pardon? Q. Who is Nadeem in that email? I know it's not addressed to you, but ... A. Nadeem, yes. Nadeem is a solicitor. Q So it might be the gentleman with glasses who has been diligently taking notes behind Mr McDonagh? A. Sorry? Q. You think that's -- A. Nadeem. 3. Q. I see. **So, once again, we see Mr Akhtar**

advising Tan and Shahzad in a private conversation, private from you? A. I can see that, yeah. Q. Have you seen this email before? A. No, no. Q. And it's another example, isn't it, of just the sort of side conversation and plotting -- A. Yeah. Q. -- and siding with one side of the family rather than another? A. Yeah. Q. That you wanted to avoid? A. Yeah. Q. Yes? A. Yeah."

Q. FF4092, please. Now, here, just ignore the top for the moment, you see the second line, on 22 September 2020, P Akhtar wrote: "Shahzad and Tan If you require the need to reply ... something along the following may be sent. "Dear Mr K Hussain "Thank you for your mail ... For governance purposes, the board meeting is the correct forum. All discussions are transparent for the attendees. Every director present is free to discuss and put forward their views on each agenda/discussion item, which are correctly captured in the minutes. The minutes of the previous meeting are put to the board for approval." Etc, etc. A. Yeah. Q. Then going to the top, you see that Tan's response is " I will send this". A. Which one? I read that one. **Q. Yes. So, in other words, he's taking instructions or following instructions or suggestions from Pervaiz about a board letter to Mr K -- A. Yeah, right. I see that, yeah. Q. Had you seen this email before? A. No, no.** Q. And you have, I think it was your evidence, had no idea that Pervaiz might be involved in the management of the company? A. Sorry? Q. You had no idea that Pervaiz might be involved in the management of the company? A. No, no."

"Were you ever sent -- A. Were? Q. I haven't finished. Were you ever sent emails A. Ever? Q. No, were you ever sent emails -- from Pervaiz A. No. Q. -- where Pervaiz Akhtar is -- A. No. advising on the drafting of documents -- A. No, I haven't seen that. -- or decisions or actions for the board to take? A. No, I haven't seen those before, no. Q. And in the light of the documents I have shown you -- A. Yeah. Q. -- you can see now -- A. Yeah. **Q. -- and I accept that you did not know until now --? A. Mmm. Q. -- that the board has not been run in a fair and transparent way -- A. Yeah. -- since Shaz Akhtar was appointed. A. Right. Q. Do you agree with that? A. Well, with this, yeah.** CHIEF ICCJ BRIGGS: Was that " yes"? A. Sorry? 12 MR MAJUMDAR: You agree, do you? A. Yeah, well, looking at this, yes."

54. The Judge accepted Allah's evidence about the early years of the business. In particular, he accepted Allah's evidence that all three brothers chose not to disclose their profits from the sale of an asset to HMRC and were prepared to pay penalties if they were caught: see [82]. He also accepted Allah's evidence that he would run and benefit from Pewsham and Khadim would run and benefit from Worleys: see [83]. I return to the Judge's substantive findings in relation to some of Allah's evidence below. But overall he found that Allah was an alert and honest witness and to be treated as reliable: see [90].

(2) *Tanvier*

55. On 17 June 2022 Tanvier gave evidence. In his witness statement dated 30 September 2021 he gave evidence about the background to the dispute and to the mediation. He also gave evidence about the overdraft at Worleys and accepted that he and Allah had given instructions that all cheques issued from Pewsham should be signed by both of them. He also accepted that they wrote to the Bank giving instructions them that all written withdrawals from the Company's accounts had to be authorised in writing by the two of them as the majority of the board of directors. On 21 May 2020 the mediation took place and Tanvier described the aftermath in his witness statement:

“On the 28/5/2020 I received an email from Khadim informing me he was suspending me. He had made this decision unilaterally without consulting the board. He also informed Pewsham Garages Sales Manager Chris Ashton, that I was being suspended, this caused a lot of apprehension and panic with the staff. Why would Khadim suspend me? He would know that this would jeopardise the Chippenham side of the business, we were just coming out of lock down the business was in a perilous position. The reason could only be that Khadim wanted control of the whole group. Without me employed it would allow Khadim to gain control, and possibly shut the Chippenham side down. This would have caused a great deal of harm to my father's 50% share in KTA. This caused a huge amount of distress for me and my family. My young family depended on me. (Extremely Clearly).”

56. Tanvier also gave evidence that in September 2020 Khadim made a complaint to the police and that he was interviewed by them about it. When Mr Majumdar put the email exchanges on 14 August 2020 (above) to Tanvier, he accepted that his conduct in communicating with Pervaiz and Shahzad outside the board involved bad behaviour and lacked transparency (and I highlight the answers upon which Mr Majumdar relied in support of Grounds G1, G2 and G9):

“Your father hadn't seen these emails. A. No. Q. I got the impression that he didn't know that behind his back you were talking about moving him on. A. My father knew I was talking to Pervaiz, but he hadn't seen these emails, that's correct. Q. But apart from the influence we see, the advice being given by Pervaiz, it's the second line of Shahzad's response that I just want you to focus on: "We require a unilateral push to build a case against [Khadim] as incompetent and unfit to continue in his current capacity." Now, I asked you a few minutes ago whether Shahzad had taken an even-handed approach as between your side and Khadim's side, and you said inside board meetings he had. Now, is this the conduct outside board meetings that you were alluding to? **A. I agree, there is**

probably a little bit of bad behaviour. Probably wasn't the right thing to do, hands up. But where has anything in that email reflected what's actually happened within the company at the board meeting? Yeah, there is no other way to address it, there is some bad behaviour there and I would agree, that KH is still a director, AH is a director. Nothing's come, nothing from there has appeared in the board minutes or the board. Q. Could we next look, please, at FF4092. Here we see an email from Pervaiz to you and Shahzad, on 22 September, so a couple of months later. And he is basically dictating a message for you to send. You say at the top, "I will send this. So that's the first point. I mean, it's the mere fact that he's telling you what to write and that you do so, or say you will do so. But the other thing I wanted to draw your attention to is one of the things he says, he says that what should be written includes this. Do you see, it says: "I'd like to reiterate a few points: For governance purposes, the board meeting is the correct forum. All discussions are transparent for the attendees. Every director present is free to discuss ..." Now, was this behaviour behind the scenes, between you and Shahzad and Pervaiz, transparent? A. Not in the sense that Khadim, he wasn't obviously copied into it. **Yeah, I agree, it was -- comes over as bad behaviour,** but it's correct the fact that the board meeting is the correct forum for every director. Every director should be free and present to discuss and put forward their views. **But yeah, I get where you're coming from, it doesn't look particularly good and it is bad behaviour.** Q. Yes, and it wasn't even transparent to your father, because he didn't know about this, did he? A. No, I didn't -- he knew I was talking to Pervaiz, but he obviously hadn't seen the emails."

57. Mr Majumdar asked Tanvier next about the reasons for refusing to appoint Tazamal as an alternate director and the threat to terminate his employment at Worleys. He also put the Script to Tanvier and suggested to him that meetings of the board of directors were partisan and that they were intended to put Khadim on the spot and to advance his own interests. Tanvier accepted that the preparation of the Script was bad behaviour:

"Q. On your case, I think possibly everybody's case, Worleys and Pewsham for ever since anyone can remember have been run with different shareholders and their relatives making decisions about things like this in relation to their own sites. **But this is you, with your co-conspirators, interfering in who is employed and working at Worleys, isn't it?** A. I disagree, because yes, we did think about it, we never carried it out. Khad has still got all his employees there. Khad is the one who tried to get rid of me, May 28th. Yeah, we've thought about it, but we haven't -- we haven't carried it through. Yeah, you know, it's -- it's like, you know, you can't be prosecuted for a thought, can you, or a discussion? It never happened, it never materialised. Khad has still got all his employees, he's still got Nigel Findlow there, he's still got Taz there. We haven't changed his employment structure in any way. We haven't told him he can't employ Taz. **Yeah, we**

did think about it, yeah, and there is an element of bad behaviour, I completely agree with that, yeah. Yeah, I'm sorry. But we haven't -- we haven't gone through with it. We could have, we had the board majority to do it. He wasn't employed for two years, we didn't even have to give him any notice, we could have just moved him on. But we didn't. We could have moved Nigel on after the fiasco with the bank reconciliations, but we didn't. We realised that Worleys has always made their staff decisions and we've left. I mean, I can't think of anyone we've removed or there isn't anyone which we've removed from Worleys. Q. Two things. First of all, I entirely accept that you could theoretically have behaved even worse than you had. A. We could have fired Taz and we could have fired Nigel.”

Q. And the reason that you wanted to get rid of Tazamal was because he was continuing to be a thorn in your side with his enquiries about monies taken inappropriately from Pewsham? A. That was all out in the open. That, you know, whatever happened, that was ongoing. What was happening there was a lot of discord with the board. And yes, we did think about firing Taz. Q. For that reason? A. But it wasn't done. Q. **It was a completely partisan act, which you and Shahzad and Pervaiz, who wasn't even a director, had hatched, but didn't end up implementing?** A. Sorry, was that a question? Q. You didn't do it -- this is the plan that you had hatched, isn't it? A. We -- Q. A partisan act? **A. There's no denying it, we thought about it. Yes, we did.** Q. And it had nothing to do with -- A. But we did not do it. We had every opportunity to do it, we had the board majority to do it, we did not do it. Q. And it had nothing to do with the best interests of the business, it was because of the dispute and because he had revealed at least some of your misconduct? A. The schedule is already out there. That was all out in the open. Q. The last thing I'm going to show you, and that's certainly not because there aren't so many more emails like this, but it is the document at FF5805. But when the operator calls it up, what will flash I think on the screen is the search page and I don't know if we can freeze it there, because it's quite revealing in itself. I don't know if this is a blink and you'll miss it situation, but ... No, 5805, which is not this. CHIEF ICCJ BRIGGS: That's the last email you took us to. MR MAJUMDAR: I'm sorry, FF628. So it's the search page that ought to come up, FF628. But doesn't. All right. Can we just take a look at this. The first thing I want to suggest to you is that this was a document that you wrote. A. Yeah. Q. And the second thing I want to suggest to you is that it is a script. A. Sorry? Q. It's an intended script for a board meeting. **A. It was totally out of order by my part, which it's the first board meeting that Shaz attended. It was the questions that we were going to try and discuss with Khad. I tried to give Shaz a steer and it sort of turned into a script. So yeah, it's totally bad behaviour on my behalf.** It was the first board meeting which we held that Khad didn't even attend. It was specifically done so he could attend. It was held in High Wycombe, which is a three—hour round trip for me and my father and a two—hour round trip for Shaz. It does, your Honour, it does read like a script. I was trying -- it's the first board meeting we had, I was trying to give Shaz an idea. Yeah, my relationship obviously with Khad is strained, yeah, and it

does read like a script, I'm sorry. Q. Like a script. It is a script. If we just look at a bit of it, we don't need to read all of it, but it's very, very detailed who will say exactly what and when. Even to the extent, if we just look down, of Shahzad saying, "Khad, you borrowed 280,000." Do you see that? A. Yeah. Q. Towards the bottom of the page and then you coming in and saying, "That's not correct". A. Yeah, it is correct, it is 200,000. Q. No, no, I'm just saying that's what the script says.

20 A. Khad may well have said -- if he had come to the board, he may have said, No, I borrowed 200,000 or there's 200,000. Yeah, I have admitted, it does read like a script. Q. I think you know that he says it's 280 and that's why -- A. Khad says a lot of things. Q. -- you were anticipating that. And let's just scroll down a bit, if we need any more flavour, if we just keep going. So there's quite a lot of material, isn't there, about when money is put in by Khad? So a few lines down, you see Shaz, he's intending to say, he's told to say: "In 2006 Khad lent the Business £504 000k ..." And then there's some page reference: "... where did this come from?" And then you step in, presumably before Khadim would be able to answer, and say: Can I correct you he did not lend the business £504,000 he lent the money to his son." And, of course, that's the case that's advanced in these proceedings. I don't think we need to look any further. When I asked you a few minutes ago about whether Shahzad's behaviour was even-handed since his appointment, you said it was in board meetings. I suggest to you that this clearly shows that it wasn't, none of you were behaving in an even-handed fashion, but certainly not the person who you say you'd appointed to be neutral. A. **Yeah, mine and Shaz's behaviour is, yeah, it's bad behaviour**, but I still maintained all the decisions that were made at the board were for the betterment of the company."

58. The Judge found Tanvier to be an impressive witness. He gave credit to Tanvier for the concessions which he made (including the concession that he did not want Tazamal on the board of directors because he would ask difficult questions): see [91]. However, he also recorded that Tanvier was firm in his evidence that Shahzad had been appointed in good faith and for the purposes of assisting the board: see [92]. Finally, he accepted Tanvier's evidence that Khadim was aware of his takings from the Company although not the "granular details": see [93] and [94].

(3) *Shahzad*

59. On 17 June 2022 Shahzad gave evidence immediately after Tanvier. In his witness statement he stated that he had worked at Worleys during the 1990s as a trainee mechanic for two years. He also gave evidence that he had been independent of the family since the age of 16 and that he had had minimal contact with the majority of family members for over 30 years. In cross-examination Shahzad gave evidence that

Khadim had approached other members of his branch of the family to become directors of the Company:

“Q. You were just mentioning, getting ahead of ourselves, the lack of buy in, as you described it, from Khadim's side. And, of course, you talk about that in your witness statement. Now, in a context where there is a family dispute and there has been a failed mediation, and out of the blue, from Khadim's perspective, a proposal is made to appoint a director, but that person is not even named, as a neutral independent non—executive director, who wants to build trust and agreement between these parties, what do you think about the way it was done? A. It's an interesting one, because you say that, but I'd already heard that Khadim's sons had inadvertently approached my older brother to ask him to be a director and were testing the water. And he wasn't up for it. So the same could be said on that side. Q. So older brother as in Pervaiz? A. As in Jawad. Q. I'm getting negative expressions. We say that's not true -- A. This was at the same time that obviously the conversations were occurring between Tan and I. So there were a number of alternatives. But yeah -- so it doesn't make sense to me. Q. I'm told that's not true. But in a way, it's not the point, is it? A. Well, it was, because my nephew was approached by Tazamal asking him to have a word with his dad, which is my older brother, to see how he would feel about taking on a directorship at the garage, to see how the land lies, to test the water. So, from my perspective, it is true.”

60. Mr Majumdar then moved to ask him about the UHY investigation. He put the engagement letter to Shahzad which had been sent to him on 12 July 2020 and he suggested to Shahzad that he taken sides straight away after his appointment (and I highlight the extracts upon which Mr Majumdar relied in support of Ground G3):

“Q. And the reason I wanted to show you the bottom is that we see on 3 June, there's an email from Paul Daly to Allah saying that he's attaching a copy of an engagement letter. Now, if we scroll up a bit, so we can see the next message, so this is Sunday, 12 July, so you've been on board for a bit less than two weeks by then, Tanvier forwards that email with its engagement letter to you and to Pervaiz. So, by then, by the time you opened that attachment and read the letter, you would know about the instruction? A. Mm—hmm. Q. And let's just look at what Tan says. He says: "Attached is the original letter from UHY, covering their scope of work. This was based on when [Khadim] asked them to investigate the alleged funds I had taken out. This investigation was stopped as it did not have board approval. When we appoint UHY next week, is every one ok to confirm their scope of work most 6 and 7." You then respond to that same day. Do you see that, just above? A. Yeah. Q. "Are you saying their instruction should be limited to only undertake points 6 and 7?" A. Mm—hmm. Q. Then above that: "Yes no 6 covers off KH loan accounts how much did he put in? "No 7 covers off how much did Louie take out. So in

essence trying to prove [Khadim] put in X and Louie took out Y, so there is no money due back to [Khadim]." A. Okay. Q. Okay? Now, this is at a stage when you say you had a completely open mind? A. Yeah, I knew the conversations that were going backwards and forwards though. Q. And it was only later that you started forming the view that Khadim was to blame or he was the one who was being difficult? A. No, not really. At this stage, Tan had already said that, okay, from his perspective, there was going to be an ongoing HMRC investigation. And, for me, because I had no information from any director, apart from Tan, it was a natural course for me to take some form of direction as an introduction into the company and exactly what the issues were from Tan. So yeah, at this point, where Tan is saying in terms of instructions, I needed to get a general handle on the financials of the company and exactly where we were in terms of the balance sheet, in terms of the extractions or possible extractions. So this would have been related to that kind of -- that work that was due to happen. Q. I wasn't expecting you to say that, because the point about this exchange was that it involved UHY being instructed to undertake an inquiry, which removed an investigation into the alleged extractions. A. I didn't see it that way, because -- Q. You didn't understand. A. From my perspective, I needed a heads-up on the company and in terms of the extractions, that would be covered by both UHY being the mandatory auditors for a number of years and the investigation from the HMRC perspective. Q. Two things. The first is this: as I understand your evidence, at this stage, you had an open mind about where the problems lay, you were taking an independent view, you wanted to build trust and agreement. Yes? A. Trying to, yeah. Q. But the effect of this exchange of emails, I suggest, is that you are taking part in a side conversation, as it were, with one of the other directors and somebody who isn't even a director, so Pervaiz, your brother, which involves the suggestion that UHY will be commissioned to produce a report in order to prove something against Khadim in relation to whether he was due money from the company. A. But I'm sure exactly the same conversations were happening with Khad and his side of the family in terms of getting a strategy in place to discredit Tan's side of the family. And this is what I mean about it's just tit-for-tat, it's six of one, half a dozen of the other. So you've heard Tan's evidence. I'm giving my evidence now. Yes, there were conversations that were had, but I'd spoken to many people, as I'm sure Khadim and his sons had spoken to many people, but ultimately, it's to do with exactly how that was prejudicial to the running of the company. And from my perspective, in my tenure in the last two years, there hasn't been. Taz wasn't given his marching orders. Allah wasn't asked to step down. If you look at net net what was actually achieved in the last two years of me being on board, there's significant more control, there's auditability, there's accountability, the CIBLS loans have been attributed correctly, the overdrafts have been attributed correctly. We've saved Suzuki from actually walking out, because of some of the fraudulent documents that were produced by Nigel Findlow. So you have got to look at things holistically. You can't just take -- cherry pick certain

conversations. So, yeah, I'll hold my hands up, we did have these conversations, but I'm sure so did the other side. That's part of a board of directors, is it not? Q. You see that's the problem here. I think everything you just said illustrates the problem. Yes, there were two sides and you are taking sides right at the beginning. A. But it's difficult because -- Q. What's difficult about it? A. It's difficult for anybody. It would be difficult -- you mentioned earlier, why did you not go out to the open market to Tan and find a completely independent director? At the end of the day, if you do that, it's still going to be really difficult for an independent director to form a view, because ultimately, they'll get caught up in the crossfire, because that's just the natural path that things take in terms of this situation. Q. What I'm suggesting to you, and let's do it by reference to this sequence of emails, that you have taken sides straightaway. A. I wouldn't say straightaway at all. Q. Well, it's, what, 12 days since you were told you had been appointed? A. But it's going to be -- **it would be likely for me to take a direction from the person that's requested me come on board** and the only director that's been intrinsic within an organisation for 20/30 years, who knows what's going on, on the ground. And I've tried to try and get the same level of information from the other side, but that's been a completely closed book. So no, I don't think I've taken sides per se, because all I'm doing is I'm asking for a financial report that gives me an understanding of what the gripe is from Tan. That's not to say that once I have got that information, I would then not challenge that to the other side and say, "We have got this information that pertains to Tan and his father -- sorry, to your side and your family, and we have this information that's been forwarded from HMRC in terms of their investigation", so you combine both together, you then go to a forensic auditor and say, "There you go, you carry out your own analysis."

MR MAJUMDAR: Well, no, it's the whole sequence. The effect of these exchanges is that you are party to a conversation which intends to commission the report to prove an aspect of the case of one side in this dispute against another. A. But that was to be balanced out by the other side, which was the culmination of the HMRC report. **So, like I said to you, I've been brought on by one director, so I would naturally take more of an input from that director in terms of: this is what the general ethos is in terms of delivery of your remit, if you like. So we need you to come in, formalise some structures and we also need you to investigate X, Y and Z. So that's what I've done. I've taken that instruction,** I don't know what's occurred within the last 20-odd years of the business. I'm being told that this is what the issue is. Fine, okay. So in terms of you, if you're at fault as well, how am I to make an informed decision? The way you're going to make an informed decision is once we also see the output of the HMRC report, you have effectively got both sides there. So there's no reason why you can't cojoin those and then provide them to an auditor, a forensic auditor, for example, and say, "Okay, we've got both sides here with various extractions from Khadim's side, various extractions from Tan and his father's side, you go away and you analyse the books and you let us know exactly what's what." We never got to that point, because we still haven't received the HMRC

report.”

61. I set out this lengthy passage from the evidence because both parties relied on it. Mr Majumdar relied upon it as demonstrating that Shahzad was partisan from the moment of his appointment. Mr McDonagh relied on it as showing the opposite because, as Shahzad pointed out, the board implemented a number of significant improvements to its corporate governance whilst he was a director and also because it demonstrated that there was no plot to exclude Tazamal (or for that matter Allah) because neither of them were asked to step down. Mr Majumdar then put the Script to Shahzad. Again, I highlight the extracts upon which Mr Majumdar relied in support of G3 in this and the subsequent passages of Shahzad’s evidence:

“Q. When between the beginning of July, when you were told you had been appointed, and this email on 12 July, do you ask Khadim what his side of things is? A. In terms of what? Q. Anything, any of the things you say that you would have needed to know from him, but he didn't tell you. A. But we didn't have any -- there was no dialogue from him. Q. This is 12 days in. A. It's 12 days in, but I've already been told that -- Q. Did you contact him? A. I tried to. Q. Between 1 July and the 12th? A. Yeah. Yes. Q. Where is that in your witness statement? A. I didn't think I needed to put that in there. I wasn't asked whether I needed to contact him or not. I've just said to you that I've tried on a number of occasions and it's just met with resistance. In board meetings, I've offered to go to his house on my own and automatically there was a defensive procedure that, No, we don't". So I'm not sure how much more I could try. **Q. Well, you could try to be independent and you were not being independent within the first two weeks. The appropriate way to have responded to any attempt to get you on side, as it were, in relation to this very selective report, designed to advance Tanvier and Allah's side in the dispute, was to say, "I don't think we should be having these conversations just between us. We ought to be discussing it with Khadim." But that never occurred to you because you never intended to be independent or fair—minded or even—handed?** A. Like I said before, the same conversations were more than likely happening on the other side. So it makes no difference. It's just that there's nothing within the other side's disclosure to show that. But I can guarantee you, knowing my family on both sides, that exactly the same would have been happening on that side. Q. None of them joined the board and adopted directors' duties or was claiming to be independent in the way that you say you were? A. Well, I tried. Q. Yes. And can I ask you to look at FF628. Now, we showed Tanvier this earlier and he identified that he had written it. A. Yeah. **Q. And that I suggest to you that it was a script for the 12 July meeting -- sorry, the 18 July board meeting. A. It was -- basically, it was the first meeting, so it was an idea of what to expect. And this is what I alluded to earlier, I'm not denying the fact**

that I'm going to go into an organisation, so I can either be completely green and not understanding what I'm getting into, or I'm going to take some advice from one of the directors in terms of what the expectation is. That's what I've done here. There's nothing wrong with that, in my eye, to actually understand, okay, this is the way it's going to work, I would then expect the other side to basically do exactly the same and say, "Right, fine, you have asked these questions. What about this, this and this question here?" Otherwise the meeting would have just -- we would have gone there with no agenda and nothing to say, apart from, "Hi guys, welcome, Shahzad's now joined the board", and there would have been silence completely. So this is information that I used to talk about. I'm not denying that. Q. It's a script, who will ask what question at what time. A. It's a way for me to get an introduction into the business. I think Tan already said, yes, it was, it was a script, but it's content. Otherwise, like I said, we would sit there and there would be a complete stalemate, there would be nothing to talk about. Q. How did you know there was going to be a stalemate? This was the first meeting. A. Because there's never, ever been any agenda items that have ever been forwarded from the other side. We provided every opportunity to talk in an open forum, like we said previously. There has never been in the last two years any agenda items that have been proposed from the other side that we can discuss at board. Q. I'm not asking you with the benefit of hindsight. I'm asking you about the time when this script was produced. Now, at that stage -- presumably this is before 18 July, at that stage, you had an open mind and you weren't taking sides. You had no reason to believe that you wouldn't discover that Khadim wouldn't engage or that you wouldn't find out from him the things you wanted to know, did you? A. Yeah. I mean, yeah, this is the first board meeting and it was a framework for how the meeting was going to run. I don't deny that. Tan's not denied that. But like I keep saying, it would have been -- there would have been absolutely nothing to discuss in the meeting if we didn't have some kind of starting point and this was a starting point. Q. This is a starting point and finishing point. A. From your perception perhaps, not from mine. It was the first meeting, so it's not the finishing point at all. Q. It's the fact that it's a first meeting which is so revealing, that you had taken sides. In fact, you were always only on one side and this is a stitch up, isn't it, designed to advance one side's agenda over the other? A. I could say the same for the other side. I don't agree with that."

62. Mr Majumdar then moved to the exchange of emails between Shahzad and Pervaiz on 19 and 20 July 2020 in relation to strengthening the Articles. He suggested to Shahzad that this was aimed against Khadim:

"Q. Okay. Well, let's see. FF1805 -- is the wrong document, I'm sorry. It's FF780. We'll come back to this one. So this is after the meeting, a couple of days afterwards, July 20th, July 19th. If we just scroll down a

bit, it's the third time some of us have looked at this. And it's an email from your brother Pervaiz attaching a judgment and the words I want to draw your attention to, he says: "Please review. I think as a result of this article we should strengthen the board powers against Khadim. I will discuss with Nadeem and see what we can/should do by way of introducing new board resolution." And if we then scroll up, please, you respond saying: "Yes, makes sense." A. It's a point of view. **Q. Yes, it was an anti—Khadim point of view? A. Well, regardless of whether it was an anti—Khadim point of view, it was a point of view, I'm in discussion. Like I said, it didn't culminate in anything.** There wasn't -- this was for -- to strengthen the articles of memorandums of association which were really flaky to start with. So it's understanding how that works going forward. So it was the right thing to do. Q. Against Khadim? A. Say again? Q. Against Khadim? A. No, just to make it better and to secure it in terms of the company itself, because it was non—existent beforehand. There were no -- there were no board meetings. Everything was decided on a best will basis, almost like an old boys network, and it just seemed impossible to me how a business could be run for 40 years off the back of that. So I was open to accepting advice, talking to people, and understanding what challenges I had ahead of me within KTA itself. Q. Why was Pervaiz involved in any of these discussions? A. He's my older brother, I respect him, he knows a fair bit about business having managed and owned businesses himself and generally like any other person that has a close relationship with their siblings, you listen to them. So from my perspective, like I said, I speak to lots of friends and lots of family."

63. Shahzad was then asked about the preparation of the minutes for the meeting on 12 August 2020 and it was suggested to him that Tanvier and he had prepared what to say in advance. Mr Majumdar also suggested to him that Khadim was taping the meetings because of the lack of trust between them:

"Q. Well, you probably discussed with Tanvier in advance what you were going to say at the meeting, but Khadim didn't know? A. But there's no agenda there. It's a point of conversation. The whole point of having the board meetings was not to have this management and these flurry of emails to and fro, was to try and promote some form of open dialogue, which had been missing for so many years and had culminated to the point where both sides of the family are at loggerheads with each other. So it's just a simple thing, you start the meeting, "How are the businesses performing?" There wasn't meant to be an agenda item for it. Q. Everything you have just said sounds very reasonable, doesn't it? **So how does all these side conversations with Tanvier and Pervaiz, that Khadim was not party to, fit into this open and transparent way of talking? A. Like I said to you, the same conversations were happening on the other side or would have been happening on the other side, so you need to look at your side as well.** Q. Well, there weren't any other directors on our side. It was just Khadim. A. But he's

still taking direction from his sons. His son was a director who was struck off. So the same conversations would have happened. Q. And I was going to show you the agenda next, but I think since we're agreed that, for example — I mean, there are only two items on the agenda that you circulated whereas there are a number — A. No. What I didn't understand, if you're referring to this document, is — so we've gone into this completely transparently. We have not recorded any meetings. We have not recorded any participation, but it comes to the effect that this reply here is essentially an essay reply, where the parties, ie your side, have decided to take it upon themselves to actually record the meeting. The whole point of a meeting is to capture the salient points, right? Which is what I've tried to do. And off the back of that, because there was some —there was some unhappiness in terms of how the minutes were being captured, we then proposed to the board: okay, great, let's get an independent minute-taker in. And the best person to do that, at that time, who had done that previously, was UHY. So we went with UHY. **Q. The reason that recordings were taking place was because Khadim didn't trust you and Tanvier, and he was right not to? A. But the same could have been said from our side, but it didn't make us record every meeting or conversation, or receive prompts and clicks in the background that was happening on every board meeting. Q. You say that the same could have been said on your side, but there isn't any conspiracy going on between some of the directors on our side, because there aren't any other directors.** A. But like I said to you, there aren't any directors, but there's a family history there of directors in the business. So you can't qualify yourself by saying that those conversations hadn't taken place, because you simply don't know that. You simply don't know that. Q. I'm not saying that conversations hadn't taken place, I'm talking about the way this board is functioning. That's what this case is about. A. Exactly. So it's, like I said, six of one and half a dozen of the other. Everybody is as bad as each other here. There's no winners here. That's the point I'm trying to make to you. Q. You were meant to be independent -- A. And I tried my best in the beginning to do that (overspeaking) -- **Q. -- and you never were (overspeaking) -- A. I could say the same for the other side.** Q. Sorry. A. I could say the same for the other side. There was no independence there. Why were all the emails architected by Tazamal? Are you saying to me that your client would know exactly the contents and be able to structure conversations in that way? No, it was the same on both sides.”

“Q. Yes, and you clearly feel very strongly about this and the history and what had happened in the past -- A. I feel strongly because I feel we're here and we don't actually need to be here, because through arrogance and through being pigheaded, people can't just sit down and actually figure out what's the right thing to do. So I feel that Khadim has really unfairly treated this side. By discounting their worth and saying they were workers is actually disrespectful. It's actually disrespectful, because they were never workers. Q. Now we're getting the truth, aren't we -- A. We're getting the truth because we've gone through the whole of this process now. So therefore I've formed more of an opinion. Q. And the truth is this, isn't it: that you saw

-- it doesn't matter who is right or wrong about this -- but you saw Allah rather in the same way as you saw your father as having been badly treated by Khadim? A. No, no. Q. And that is why you were not independent, you were never independent? A. That's your opinion. Q. And you joined the board because you agreed with Tanvier and wanted to help him against Khadim. A. That's your opinion and it's wrong."

64. Mr Majumdar then asked Shahzad about the exchanges on 14 August 2020 after the board meeting had taken place. He suggested that these documents also demonstrated that he was taking a partisan approach to his position as a director:

"On the screen, Mr Akhtar, again this is a document we have looked at repeatedly before, this is an email that your brother Pervaiz circulates on 14 August, so after that meeting that we were just discussing, a couple of days after, and subject is " Going Forward/Plan". And you'll see what it says there, I'm not going to read it out in full. But he talks about laying the groundwork for future action, and then he describes what he's been thinking about. And towards the end, there's talk about introducing two additional directors and then (iv): "After the appointment of 2 additional directors, propose that [Allah Hussain] resign as director." And then: "Point iv would strengthen the argument against [Khadim] as we prove he is an absent director." And your response at the top of the page endorses that, and in the second line: "We require a unilateral push to build a case against [Khadim] as incompetent and unfit to continue in his current capacity." This is just more evidence, isn't it, of your taking an entirely partisan approach to your role on the board? A. No, I mean, it was a discussion, it was a consideration, I considered it and ultimately didn't follow through with it because I didn't think it was fair. So, no, I don't agree."

65. Mr Majumdar moved next to the draft emails in relation to corporate governance which Pervaiz circulated to Tanvier and Shahzad at the end of September 2020. He suggested that the contents of both drafts were inconsistent with the practice which they were adopting themselves:

"Q. FF4092. This is Pervaiz dictating a message that should be sent to Khadim. A. I wouldn't say dictating, I wouldn't say specifically for Khadim, it's for the benefit of all of the board. This is what I've said earlier, it's to try and discuss openly. There's nothing negative within that pointing or prejudicing any particular director. It's clearly aimed at the company. Q. Yes, well, it's designed to sound reasonable, isn't it? And so, for example: For governance purposes, the board meeting is the correct forum. All discussions are transparent for the attendees." **But the reality is that that was not the practice that you and Tanvier and Pervaiz were adopting yourself, because you were having all these side conversations effectively plotting against Khadim behind his back. A.**

There was no plot. Q. And even Allah doesn't know about it. A. Like I said, there was no plot. These are conversations that have been had, yes, on our side, but more than likely on the other side as well. Q. Allah feels that he was also being excluded from management. A. Allah's 80 years old, who's half-deaf and suffering from cancer. So to protect him and to protect anybody that's older, they don't need to be privy to certain conversations if it doesn't effect them. Q. The one about getting him to retire and replacing him clearly affects him, doesn't it? A. It does, but ultimately it didn't happen. We considered it, we decided not to move forward with it, and ultimately it wasn't executed. Q. FF4410. This is Pervaiz dictating another email which you say that you will send. A. Okay. It was a discussion. Q. Not with Khadim though? A. But there's nothing in there that is detrimental to anybody. It's about just governance within a board. I'm failing to see where there's an example of, in your words, us colluding to actually do something negatively. Look at the performance over the last two years of what's been achieved over and above what hadn't been achieved for 30 years. Q. I've no doubt -- A. That in itself is evidence that we have done things the right way. Yes, unconventionally, and yes, lessons could have been learnt and there was some silly behaviour. I take that, we both take that, all three of us take that. But you've got to look at what was achieved in terms of where we are now to where we were two years ago from a company perspective.

66. Finally, Mr Majumdar put the draft of the notice terminating Tazamal's employment contract to Shahzad. His evidence was that no notice of termination was ever served because he did not consider it fair to do so and that the board of directors were considering a range of options including a number of redundancies:

“Q. All right. And the last document, I think it's the last document I'm going to show you, is FF5805. I think you were referred to earlier, didn't you, the proposed termination of Tazamal's employment? A. Yes, it was considered -- Q. Why? A. -- like many proposals were considered, but ultimately I didn't think it was fair to proceed with it, so we didn't follow through. Q. Why was it -- A. It was never an agenda item. Q. Why was it being considered? A. In terms of streamlining the operation, and we also considered possible redundancies on the Pewsham side of things because of Covid. So, like I said, it's just -- you've cherry-picked certain examples. Q. Are there any other draft redundancy notices referring to -- A. No, there would have been discussions that we held with regards to streamlining some of the Pewsham side of things, the AM and Sawmills. I know we had certain conversations around letting some of the technicians go there because of the Covid challenges. But, like I said, you just highlighted one which is beneficial to you because it shows Taz, but ultimately we didn't follow through because I didn't think it was fair to. Q. And it's just an unfortunate coincidence that Taz happens to be the one who has led the investigation on Khadim's side, as it were, into Tanvier's misappropriations from the company? A. But that's your point of view. Q. Is it a coincidence? A. Is what a coincidence? Q. That you were

considering terminating his employment? A. Like I said, we considered many -- we considered many options around termination of employment from KTA as a group, not just the Worleys side of operations.”

67. Mr McDonagh submitted that not many of the relevant documents were put to Shahzad in cross-examination and because of this submission I have set out all of the passages to which Mr Majumdar took me (above). I am satisfied that Mr Majumdar properly put his case to Shahzad. I should also record that Mr Majumdar criticised the Judge for taking a favourable view of Shahzad’s evidence immediately after the conclusion of his cross-examination. Mr McDonagh asked the Judge how he would like to receive closing submissions and the Judge gave an indication that he had a particular concern about any remedy to which Kadim was entitled:

“You'll need to assist me with where we go. I mean, I think the big issue is going to be remedy. I can see that there's -- my indication to you is I can see that there's prejudice, but I'm not at all convinced it's unfair; and then even if it is, even if there is an element of unfair, or whether or not the conduct on the other side is such that either there's no order or the company gets wound up if the investigation is something which seems to be pressed so much in cross—examination, that is a way to do it. But I don't think it's going to be the best for anybody in the room, or those behind you, if the company is liquidated, but it's a solution -- MR MCDONAGH: Yes. CHIEF ICCJ BRIGGS: -- which could make a final division of the company between the parties and allow one party to buy out from the liquidator at a fair value, taking into account their interest already, enabling them to have a complete divorce from the other side. MR MCDONAGH: Yes. CHIEF ICCJ BRIGGS: I cannot see how the petitioner in any way is

going to succeed on having a buyout of the whole company. Or I suppose the other option is, as I say, no order. It's very difficult. I have great sympathy for the last witness, who has tried his best, I think, to be as independent as he possibly can, given all the circumstances, despite the cross—examination which was ably done by yourself, but I agree with what he said: it's half a dozen of one and six of the other. And it may be just a matter of quantum, one side had been taking out more than the other side, which in terms of corporate governance isn't going to be particularly attractive if it comes to pushing the paper in terms of wanting a buyout order.”

68. When considering Shahzad’s evidence, the Judge reminded himself that it was his unchallenged evidence that his separation from the family for about 20 years and his professional experience gave him independence of mind: see [98]. But in assessing his credibility the Judge took into account Shahzad’s email exchanges with Tanvier and

Pervaiz and that both he and Tanvier had accepted that those exchanges reflected badly on them (although they did not result in any action). Moreover, he quoted the most damaging email which Mr Majumdar put to Shahzad, namely, the email dated 14 August 2020 which contained the reference to the “unilateral push to build a case” against Khadim: see [100]. Despite this email and his own admissions, the Judge accepted Shahzad’s evidence that he was independent at [101] to [103]. Because of their importance I set out his assessment of Shahzad’s evidence in full:

“101. Shahzad, demonstrating independence of mind, gave evidence, which I accept, that if Pervaiz had e-mailed to suggest a particular course that was unfair to Khadim, he would not recommend actioning it. In a rather perverse switch, Shahzad was asked, as a son of Talib, whether he was fit to be appointed an independent member of the board. Shahzad responded that he knew his oldest brother had been approached by Tazamal to take the position. I accept his answer. It has never been explained how Pervaiz could be "independent" and Shahzad not when the allegation is that their common father held a grudge against Khadim. In any event the material suggestions made by Pervaiz in e-mails did not proceed. The allegation that Shahzad had been appointed for an improper purpose fails if the evidence relied upon is e-mails sent by Pervaiz.

102. The allegation does not solely rely on these emails. Shahzad was taken to several e-mail exchanges where Khadim and Allah were not copied into the e-mails. This meant there was no transparency about how board decisions were reached if they were reached. Shahzad accepted, as he had to, that he was taking the lead from Tanvier. That is understandable as Tanvier is the most active director and Khadim was choosing not to fully engage: "There was nothing forthcoming from Khadim with any interest in running the company." He explained that his influence was limited since, as a non-executive director, he was engaged to work only 1 day a week: "It's difficult. You can only put your best foot forward which is what I tried to do." From this evidence I reach the conclusion that there was no "side" taken by Shahzad but that he was obliged to take instructions and act at the Company's direction. Shahzad acted according to instructions given by the only human agent of the Company engaging with him, Tanvier.

103. My overall assessment of the evidence given by Shahzad is that it is reliable. Although reliable, due to the limited time he spends at the Company and the timing of the events in question his evidence is of limited assistance.”

E. The Judgment

(1) The Relationship

69. The Judge described the background to the relationship between the parties in detail at

[21] to [43] and it is only necessary for me to pick out some features of that description for the purposes of the Appeal. The Judge recorded that there was no evidence that the Hussain family operated the Company by reference to its Articles of Association (the “**Articles**”) and no evidence that any of the directors gave a moment’s thought to their duties as directors: see [23]. He also found that Khadim and Allah agreed to operate the two businesses, Worleys and Pewsham, separately from each other and that the businesses had separate bank accounts giving complete freedom to pay expenses and raise finance. He stated this at [34]:

“Khadim and Allah agree that it was always the intention that Allah would move to Pewsham to operate and manage the garage whilst Khadim would remain at Worleys. Allah and his family initially lived in a flat above the garage. The businesses have always had separate bank accounts giving complete freedom (there being no consultation between directors or shareholders) to pay staff, purchase stock and supplies, set wages for the directors and raise finance or repay finance. The businesses were not, however, totally independent. Khadim would supply cars at cost to Allah and each had visibility of the various bank accounts.”

70. The Judge rejected Khadim’s evidence that he was the sole owner of all three businesses and made gifts to Allah and Talib and accepted Allah’s evidence that the three of them were partners and that one business was intended for each family: see [37]. He later expressed that finding of fact at [107]:

“I do not accept Khadim had made any gifts. Most matters were left unsaid. The unsaid permits a reasonable observer to conclude that the enterprise was joint and their skills complimentary.”

71. In the course of considering the oral evidence of the witnesses, the Judge made additional findings in relation to the corporate responsibility showed by the parties. He found as follows at [63]:

“There is no doubt, in my judgment, that neither Allah nor Khadim had any regard to corporate responsibility differentiating between the interests of the Company and their own personal interests. Khadim raised, on his own evidence £ 950,000 in or around 2005 retaining half for himself and paying half into a Company bank account for Mazamal to use in other companies. He considers this gave rise to a repayable loan when none of the money was used, nor was it intended for Company purposes. This conduct helps inform the common understanding between the directors and shareholders. The articles of association and directors’ duties, at least the enforcement of directors’ duties was not relevant to the

governance of the Company. Directors' duties, if known, were not enforced, or mentioned.”

72. The Judge later expressed those findings of fact at [104]. He held that Khadim and Allah had no regard for company law, that no meetings were held, that dividends were taken by Khadim at will and that money was paid into and out of the Company's bank account without regard to its separate personality. He also held that family members were paid by the Company even though they were not employees and that some takings were not disclosed to HMRC by either side. He concluded that: “The background is peppered with instances of directors' breach of duties without penalty or enforcement *inter se*.” He then set out his conclusions in relation to the understanding between the parties at [115]:

“In contrast to a good majority of family run companies, I find that save for the articles of association, which were ignored by the owner-managers, the affairs of the Company were not conducted by closely regulated rules to which the shareholders agreed. The understanding between Khadim and Allah arose from their conduct, which trickled down to other members of the family who became employees and directors. The understanding may be summarised as follows:

i) Khadim would run and manage Worleys garage. He retained his interest in Worleys at all times. Any suggestion that he was disinterested is against the tide of evidence; "its my baby"; "I did not want to let my baby go".

ii) Management included Khadim's unfettered ability to hire members of staff and determine their pay without reference to Allah or any other director.

iii) Khadim was paid a salary which was not intended to be a market rate for his work. There is no evidence that market rates were contemplated or researched. Salaries appear to have been benchmarked, in large part, against taxation levels.

iv) Khadim drew dividends not by reference to capital requirements governed by company law but by reference to the bank balance or overdraft facility. Khadim often withdrew dividends at monthly intervals. It is more likely than not, due to the frequency of dividend payments, that the withdrawals were in breach the laws of capital maintenance.

v) Khadim drew further sums from the Company when he required them. He considered that these further sums were either (i) owed to him for money he had lent the Company at some point in the past; or (ii) he had an entitlement as one of the owners of the business. Taking money in excess of declared income was part of the common understanding: see paragraph 121 below.

vi) After Allah's attempts at making Corner garage profitable it was let

with its income available to the Company for any legitimate purpose.

vii) The land and buildings of Corner garage was at the free disposal of the Company to charge as security for loans.

viii) Khadim also took an interest in the business located at Pewsham and its profitability.

ix) He had visibility and understood the Company's overall financial position. He would read and understand the Company's audited accounts (sometimes signing them off), the monthly reports processed at Worleys and the various bank accounts. His passion for the Company, so clearly articulated in cross-examination, leads me to conclude that he did understand figures and did keep a watch on the accounts after 2000. Allah, Khadim and Tanvier, but particularly Tanvier, would have regular conversations with Khadim in which they discussed the finances of Pewsham.

x) Corner garage and Worleys. Conversations were causal. They included withdrawals from the business for personal use and Khadim seeking returns of capital he says he lent to the Company.

xi) Khadim knew of the financial dealings at Pewsham and Corner garage, Allah and Tanvier knew of the financial dealings at Corner garage and Worleys. This did not stretch to a knowledge of precise sums taken by the directors or family members nor the reason for all takings. As an example, Tanvier would not inform and Khadim would not ask, if money had been taken or how much money was taken to purchase food, a holiday or a tank of petrol. Khadim knew that Tanvier chose to school his children privately and the bank statements clearly showed money leaving the business to pay the school fees. It was accepted that such takings as required were available to Tanvier, Allah and Khadim for the purpose of supporting their families in the best way they saw fit.

xii) If sums were found to be due to HMRC (such as on the sale of the farm (paragraph 82)) the understanding between Allah and Khadim was that HMRC should be paid including penalties. In respect of the farm there was a deliberate policy not to declare the profits at the time of sale but to pay later and suffer penalties. This common understanding persisted in respect of takings in excess of those declared from the time of incorporation and continued after the conclusion of the HMRC report in 2011. That does not mean that the accepted treatment of takings (accepted as a common understanding) between the shareholders and directors persisted in every year or by every director or family member.

xiii) The common understanding meant that Khadim knew about and acquiesced to any payments made by or for Tanvier's benefit, or other family members and did not rely on strict legal rights.

xiv) It was as a result of the common understanding that Allah wrote to Khadim on 4 June 2020 to express his view that it was a "great shame" that Khadim had resorted to unilateral steps, without discussing matters first."

(2) *The Bank*

73. The Judge recorded that in cross-examination about the restriction on signing cheques by one director Allah had accepted (i) that Khadim should have been consulted and (ii) that there was no intention to prevent him signing lower value cheques in respect of the Worleys account as long as the sums drawn remained within the overdraft limit: see [85]. The Judge continued at [86]:

“My understanding of his evidence is that the bank instruction not to allow withdrawals unless two or more directors approve was not intended to affect the Worleys business. The allegation (paragraph 24(1)(d) of the petition) is that the Company's bankers to "refuse to accept instructions from the Petitioner". There is no evidence that this is the case, but two signatures are required which may include Khadim. The allegation falls away. Allah also made the point that Khadim did not engage with the board or seek alternative arrangements.”

(3) *Excess Takings*

74. The Judge held that in around 2000 Allah and Khadim spent less time in the management of the Company, that their chosen successors (Tanvier and Mazamal) took over and that they assumed the role of director and continued to operate the Company on the understanding set out above: see [117]. He also recorded that between 2003 and 2011 HMRC carried out an inquiry with the following outcome at [122]:

“The investigation, responses and compromise reached demonstrates (i) that the Company was run without regard to the seven statutory duties imposed on directors by the Company Act 2006; (ii) Khadim and Allah's family sought to benefit from extractions from the Company, without declaring the extractions to HRMC; (iii) there was a failure to keep or retain adequate or any books and records and (iv) there was no record of any agreement to permit the extractions by the directors or shareholders. The investigation and outcome provides evidence that the directors and shareholders knew and accepted undeclared extractions from the Company.”

75. The Judge dealt with the Excess Takings claim at [123] to [126]. He recorded that between 2013 and 2020 Tanvier accepted that he had charged personal expenditure to the Company for his personal benefit of £770,515.20 and that he had also used cheques and the Company's credit card to meet personal expenditure including school fees, legal fees, holidays and work to properties which he owned. The Judge also recorded

that Tazamal had produced the schedules of Excess Takings which were annexed to the Petition.

76. The principal issue which the Judge had to resolve, therefore, was not whether Tanvier had taken sums out of the company in addition to his stated salary but whether Khadim was aware of the Excess Takings and had permitted them to take place. The Judge rejected Khadim's evidence that he had been unaware of the Excess Takings and found as a fact that they were permitted in accordance with the common understanding of the parties. He also found that Khadim's conduct in suspending Tanvier led to a breakdown of trust and that although the Excess Takings were prejudicial, they were not unfair. He set out his findings at [135] and [137]:

“135. I mention briefly the letter dated 28 May 2020 written by Khadim suspending Tanvier as an employee pending disciplinary proceedings. The letter was self-serving, motivated, I find, by the family dispute, and in breach of the common understanding. The evidence is that it was written by Tazamal. In fact, at the time of the letter, Allah and Khadim were in discussions to resolve their issues one of which was to divide the businesses so that Khadim would retain Worleys, and Allah, Pewsham. The letter led to strong feelings and, according to Tanvier, drained the trust that existed. The letter is another example of Khadim doing one thing and saying another. He failed to do one of the very things he complains about in these proceedings: consult the other directors prior to sending the letter. I observe that the Company had no policy regarding disciplining family members who were directors of the Company in any event.”

“137. The content of fairness is coloured by the context of the corporate vehicle. The following features colour fairness in this case: (i) the close family ties; (ii) the lack of regard to the legislative corporate framework throughout the Company's trading life; (iii) the reason for incorporation of the partnership; (iv) the agreement between Khadim and Allah that tax would not be paid until "HMRC came knocking" (see para 82 above) that continued as an understanding after incorporation (demonstrated by the HMRC 2011 settlement); (v) the common accepted treatment of the Company's assets (accepting as I do the evidence of Allah that there were "no discussions ever on withdrawals. We never took dividends, because each family would just draw from their own businesses" and later dividends were taken without consultation with one another: he "just withdrew dividends"); (vi) the historical legal failures having some commonality with the failures complained of in this case: Excess Takings; (vii) the acceptance of shareholder and director failures in the past; (viii) the division of businesses within the Company framework; (ix) knowledge of the business by each of the directors without the need to know of every detail; (x) the common understanding that the remuneration was not limited to the salary declared (as such) and (xi) the

directors' and shareholders knowledge, as I have found, that Tanvier was using drawings over and above his salary to support his family does not render the admitted prejudice unfair. I have purposefully restricted (xi) to address Tanvier. That is because these payments are under attack. The withdrawals in excess of declared salary reflected an understanding as to the rights of the family members to draw on the profits generated by the businesses held within the Company.”

(4) *Exclusion from Management*

77. The Judge began his discussion of the exclusion from management claim by observing that there were two main pleaded elements of exclusion: first, the make-up of the board of directors and, secondly, access to information: see [140]. He pointed out that between 2009 (when Mazamal had voluntarily resigned) and 2020 the board had unequal representation and that after 2009 Khadim did not seek the appointment of another family member: see [141]. He rejected Khadim’s evidence that Shahzad’s appointment was made to spite him: see [142]; and he found that Shahzad was appointed for reasoned and proper purposes:

“143. The following factors lead me to conclude that Shahzad was appointed for reasoned and proper purposes. First, Tanvier was under considerable personal pressure from the breakdown of the family relationship. Secondly, he had recently suffered a serious medical issue that contributed to the pressure he was under. Thirdly, having realised that he should have declared the Excess Takings to HMRC he spent time instructing solicitors to act on his behalf and compiling evidence for the COP 9 disclosure. Shahzad was appointed as a director on 30 June 2020 and helped to oversee the investigation and liaise with HMRC; and lastly, due to the breakdown in the family relationship Shahzad promised to provide an objective position on the board.

144. I find as a matter of fact it is more likely than not that the motivation behind the appointment of Shahzad was not to secure a 'majority' against Khadim on the board as claimed. Allah and Tanvier already had a majority, if they chose to vote in the same way, prior to the appointment of Shahzad. This fact appears to have passed Khadim by. I find that the motivation was to add objectivity to the board, gained from Shahzad's experience outside of the Company (and family business) and introduce a business-like company structure to increase transparency and accountability to the decision-making process required in a new era of crisis due to the break- down of family relations.

145. Upon appointment Shahzad failed at times to live up to the high standards of corporate transparency required of a director when measured by modern standards. He rightly accepted this in evidence but convincingly added that although Khadim and Allah were not copied into all the e-mail traffic, any adverse recommendations made by Pervaiz

were not acted on as he assessed them as unfair.”

78. The Judge rejected the allegation that the majority overrode Khadim’s instructions to UHY to carry out an investigation on the basis that Khadim’s instructions to them were unprecedented and deliberately provocative and that there was no agreement or understanding which entitled Khadim to incur the costs of the investigation: see [147] to [153]. He dealt with the allegation in relation to the bank mandate (and also the evidence in relation to Bankline) as follows at [156] and [157]:

“156. Prior to the purported suspension, Tanvier was the sole director with permissions for Bankline. Following Khadim's letter of suspension he asked Allah to grant him the permissions that Tanvier enjoyed "it was requested...for me to be granted the same Bankline permissions that Tanvier had before I suspended him." The request was denied. This denial of the request is said to give rise to exclusion. In step with his character Khadim did not recognise that he was at once seeking to suspend Tanvier in breach of understanding and seeking to obtain an advantage by doing so. Tanvier was not suspended, yet Khadim asked for the "same level of permission Tan had in Bankline before I suspended him". No justification for the "same level of permission" was given, other than Tanvier had those permissions. The reliance on this as a ground for exclusion is at odds with Khadim's evidence that he could not read accounts or understand figures. Nevertheless, it has not been explained how the failure to grant a new right to Khadim is exclusion as pleaded in paragraph 22 or 24 of the particulars of claim.

157. Khadim's difficulty lay in his inability, due to the need to demonstrate to third-parties that he acted with the authority of the Company, to act unilaterally (paragraph 24 of the particulars of claim). That complaint cannot succeed as there was no understanding that he could act unilaterally when it came to any matter that effected all businesses of the Company. This ground of exclusion is not too different to the change of bank mandate requiring more than one director to sanction payment instructions. It is not prejudicial to introduce oversight for bank payments. It is true that only one director was required for the mandate in the period prior to 2019 but this does not mean that implementing oversight (to prevent argument in an increasingly difficult relationship among the directors) was incapable of introduction. It is said the mandate "removed a substantial part of the Petitioner's involvement in the management of the Company" but that has simply not been made out on the facts. It has not removed any involvement but required him to consult as it has required of all directors. It is said that there is "a comparative disadvantage". No particulars are tendered. In my judgment the fact of the mandate is not prejudicial or unfair, but its implementation could give rise to conduct that is unfairly prejudicial. This could arise, for example, where the mandate was used to benefit Allah and Tanvier at the expense of the Company. No such allegations are made in this case.”

79. The Judge then held that Khadim had not been excluded from management. In particular, he held that Khadim was able to participate in accordance with the parties' common understanding and to run, manage, and profit from Worleys. He also held that he had access to the Company's books, payroll information and bank accounts. Finally, he rejected the allegation of exclusion from management on the alternative basis that Khadim had voluntarily excluded himself and chosen not to attend meetings at [159] and [160]:

“159. It is worth stating that the use of the board as a platform to make decisions required for the Company as a whole, has in my view, become a necessity. The breakdown in family relations, failed mediation, communication breakdown and the unilateral actions of Khadim (suspending Tanvier, investigating reasons for his failure to obey an order, and instructions to the Company's accountants) required a response that provided the introduction of a transparent and accountable decision-making forum. The pleaded case that Khadim should be involved in significant management decisions if he wished to, runs contrary to his actions. He chose not to take part in board meetings. An example of self-exclusion is the meeting on 12 August 2020 where the issue of engaging UHY to undertake an analysis of funding and takings where he opted to make no contribution. A second example is when he chose not to attend a meeting where the agenda included the appointment of a non-executive director. He chose not to attend due to his belief that it was a "stitch-up". If it was a "stitch-up" he would have been able to make his observations and objections all of which would have been recorded in the minutes. Khadim chose to self-exclude and then complain. Nor was he excluded from liaising with advisors or prejudiced on the board since the first of the above examples concerned significant decisions and he chose self-exclusion.

160. Part of the case mounted by Khadim is that he self-excluded due to a feeling that the decisions made at the board were "fait accompli", the agenda had been either decided in advance or that it was received too late to prepare. The evidence is that a schedule of meetings is circulated to directors quarterly in advance and an independent minute taker now keeps a record of decisions at the meetings. It has not been said that an issue tendered for inclusion on any agenda had ever been refused or that Khadim asked for a meeting to be adjourned to permit him time to prepare: it is not said what preparation was required or how long it would take.”

80. Finally, the Judge rejected an allegation that that the board of directors had failed to approve Tazamal as an alternative director on the basis that they had serious concerns that his appointment would not be in the best interests of the Company at [161] and [162]:

161. It is also said that the board failed to approve Tazamal as an alternate director. In closing Khadim's argument is that there has been unfair prejudice by reason of the failure as Tazamal "has been productively serving the Company". The simple submission is intended to convey that Tazamal had been acting as a de facto director. This is not the pleaded case.

162. The board of directors had serious concerns that the appointment of Tazamal would not be in the best interests of the Company. These concerns were repeated by Tanvier in cross-examination. Open correspondence between solicitors identified the issue: "Tazamal Hussain is the driving force behind the present litigation being pursued in his father's name... Tazamal has already been seeking to interfere with the board's workings in order to promote his personal agenda." It is hard to understand Khadim's case in response: that he has been productive for the Company. The context is important. The request to appoint Tazamal came after hostile proceedings had been issued by Khadim. If correct and Tazamal is and was the driving force behind the proceedings, which makes many and various allegations against the board members, the best interests of the Company will not obviously be served. In this context it is not explained how his appointment would be in the best interests of the Company. No such explanation was advanced: it is said that he is younger and more able than Khadim. The question for an objective board of directors is what Tazamal will add to the board of directors in this hostile environment. The reason given is to ensure Khadim had his interest as a member represented. This does not answer the question posed by an objective board. In any event the logical response is to ask for reasons why Khadim cannot represent his own interests? I infer from his participation in these proceedings that he can represent his own interests. Given the timing of the request (with a threat that a further allegation of unfair prejudice would be included in the event the board did not accede to the demand) and the hostility that had broken out (perhaps with Tazamal being the "driving force") there was no Company justification to appoint Tazamal, nor was any valid reason advanced."

81. The Judge then answered the series of questions which the parties had proposed in their agreed List of Issues. He answered Questions 7 to 9 (which cover, broadly speaking, the issues on the Appeal) at [172] to [174]:

“Question 7. Khadim has not been excluded from the management of the Company as pleaded. In particular the common understanding as a basis for the operation of the businesses explains why it is not unreasonable that Khadim should be included in discussions about Tanvier's remuneration; the issue of Excess Takings has been adequately dealt with by voluntary disclosure, but the common understanding permitted the activity complained of; there is no evidence advanced and it an issue at trial, that there had been exclusion in respect of discussions concerning releases of guarantees. Khadim continues to manage and control Worleys in accordance with the common understanding. He has access to the

payroll, Company accounts and bank statements. Since the resignation of Mazamal only Khadim has been on the board of directors from the Hussain family. There was no agreement or understanding that the board would be equally weighted. Any exclusion from board meetings have been caused by Khadim. He has chosen not to attend or not to participate.

173. Question 8. I have found that Tazamal was not wrongly rejected as a potential appointee director of the Company. In any event there was no breach of duty in respect of not appointing Tazamal.

174. Lastly, I find that Shahzad was validly appointed and there was no wrong doing involved in his appointment.”

III. The Appeal

G. The Law

(1) Unfair Conduct

82. The Judge set out the legal framework in the Judgment at [4] to [18]. He referred to section 994 of the Companies Act 2006 and reminded himself that the interests of a member are not limited to his or her legal rights under the Articles of Association or any collateral shareholder agreements between the parties: see [6] to [8]; and he directed himself that fairness is a flexible concept but to be applied in a principled manner: see [9]. He stated that the misapplication of company funds or the exclusion of directors who have an expectation of management may form a ground for a complaint that conduct is prejudicial and unfair: see [13]. Importantly, he recognised that it is not enough to show that there has been a breakdown in trust and confidence unless that breakdown causes the majority to exclude the minority from management: see *Grace v Biagoli* [2006] 2 BCLC 70 at [61]. This was essentially Mr Majumdar’s case on the Appeal.

83. The Judge also cited *Interactive Technology Corporation Ltd v Ferster* [2016] EWHC 2896 (Ch) for the following two propositions: first, the petitioner’s wrongdoing may lead to the conclusion that the prejudicial conduct of the respondent is not unfair and, secondly, the petitioner’s own wrongdoing may justify the refusal of relief. Mr Majumdar did not challenge either of those propositions before me and they are supported by the following passage from Morgan J’s judgment in *Interactive Technologies* at [318]:

“In considering whether the matters of complaint were unfairly

prejudicial to Jonathan, I have not sought to weigh in the scales the wrongdoing of Jonathan in relation to ITC against the prejudicial conduct of ITC, Warren and Stuart. It is established that wrongdoing on the part of a petitioner seeking relief under section 994 can be relevant in two ways. The first way is that the petitioner's wrongdoing may make the prejudicial conduct of the respondent not unfair. The second way is that the petitioner's wrongdoing may justify the court in refusing to grant relief to the petitioner or may influence the choice of any relief which is granted. These propositions are established by *Re London School of Electronics Ltd* [1986] Ch 211 at 222 B-C, *Richardson v Blackmore* [2006] BCC 276 and *Grace v Biagioli* [2006] BCC 85.”

(2) *The Company's Affairs*

84. Shahzad was appointed a director at what was expressed to be a meeting of the board of directors. I raised in argument with both counsel the question whether the appointment by directors was possible and, if not, whether the appointment of a director at a company meeting could be treated as conduct of the affairs of the Company. Mr Majumdar took me to the Articles and satisfied me that it was possible for the directors to appoint Shahzad and that although they also provided for retirement on rotation, directors were deemed to be re-appointed if the relevant vacancy was not filled. Mr McDonagh also drew my attention to *Re Astec (BSR) plc* [1999] BCC 59 where Jonathan Parker J left open the question whether changes in the board of directors should be treated as acts of the relevant company: see 76A-B. But he was prepared to concede the point for the purposes of this Appeal and it is not necessary, therefore, for me to address it.

(3) *Prejudice*

85. Both counsel relied on the description of prejudice which David Richards J (as he then was) gave in *Re Coroin (No 2)* [2012] EWHC 2343. The Judge cited [630] in the Judgment at [14] but Mr McDonagh also relied on the following paragraph [631] and I set out both paragraphs:

“630. Prejudice will certainly encompass damage to the financial position of a member. The prejudice may be damage to the value of his shares but may also extend to other financial damage which in the circumstances of the case is bound up with his position as a member. So, for example, removal from participation in the management of a company and the resulting loss of income or profits from the company in the form of remuneration will constitute prejudice in those cases where the members

have rights recognised in equity if not at law, to participate in that way. Similarly, damage to the financial position of a member in relation to a debt due to him from the company can in the appropriate circumstances amount to prejudice. The prejudice must be to the petitioner in his capacity as a member but this is not to be strictly confined to damage to the value of his shareholding. Moreover, prejudice need not be financial in character. A disregard of the rights of a member as such, without any financial consequences, may amount to prejudice falling within the section.

631. Where the acts complained of have no adverse financial consequence, it may be more difficult to establish relevant prejudice. This may particularly be the case where the acts or omissions are breaches of duty owed to the company rather than to shareholders individually. If it is said that the directors or some of them had been in breach of duty to the company but no loss to the company has resulted, the company would not have a claim against those directors. It may therefore be difficult for a shareholder to show that nonetheless as a member he has suffered prejudice. In *Rock (Nominees) Limited v RCO Holdings Plc* [2004] BCC 466 the respondent directors of the company procured the sale of an asset to a company of which they were also directors. It was alleged to be a sale at an undervalue and procured in breach of the respondent directors' fiduciary duties to the company. The evidence established that the price paid was not an undervalue but was the best price reasonably obtainable, and the Court of Appeal upheld the decision at first instance that no prejudice had been caused to the petitioner. At paragraph 79 of this judgment, with which the other members of the Court agreed, Jonathan Parker LJ said:

“As to the judge's finding of breach of fiduciary duty on the part of the respondent directors, it is plain that, as the judge found, the respondent directors were “in a position of hopeless conflict”. Further, they would undoubtedly have been well advised to obtain an independent valuation. However, no harm was in fact done and no damage or prejudice was caused. Nor is there any question of the respondent directors being personally accountable in any way. That being so, it seems to me to be inappropriate to reach a conclusion that they breached their fiduciary duties, as it were, in the abstract”.”

86. Mr McDonagh submitted that because the Judge had dismissed Khadim's claim in relation to Excess Takings, he could demonstrate no prejudice in relation to his claim for exclusion from management. Mr Majumdar submitted that exclusion from management was itself prejudicial because it left Khadim at the mercy of a majority of the board. To meet this point Mr McDonagh relied on *Re Astec (BSR) plc* (above) in support of his submission that Khadim's lack of trust in the board did not justify a remedy under section 994 of the Companies Act 2006 and, in particular, on the

following passage from Jonathan Parker J's judgment at 77C-78D:

“I turn next to the allegations in para. 11.4–11.7 of the petition to the effect that, having regard to earlier alleged breaches of fiduciary duty by the Emerson nominees when they were in a minority on the board, now that the Emerson nominees are in a majority there must be a serious risk of unfair prejudice in the future. (I take this to be the intended meaning of the plea in para. 11.7 of the petition that ‘this situation has been exacerbated’.)

For reasons which I gave earlier in this judgment, if and in so far as it is established that the Emerson nominees on the board acted in breach of fiduciary duty prior to 9 March 1998 in relation to any matter pleaded in the petition, such breaches of duty cannot in themselves found a complaint under s. 459 since the Emerson nominees were, at all material times, in a minority on the board. In the context of the allegation now under consideration, pre-9 March 1998 breaches of duty by Emerson Nominees are relied on for, in effect, quia timet purposes, as the basis for legitimate concerns as to the future conduct of the company's affairs. However as I pointed out earlier, in order to found a claim under s. 459 relating to the future a petitioner must establish that some proposed act or omission of the company, or on its behalf, would (if it materialised) be unfairly prejudicial.

In my judgment that requirement of s. 459 is not met simply by saying, as the petitioners are in effect saying in the instant case, ‘Look at the track record of the majority shareholder and its nominees. They cannot be trusted. Now that the majority shareholder has control of the board there must be a serious risk of unfair prejudice to the minority shareholders in the future’.

In *Re Gorwyn Holdings Ltd* (1985) 1 B.C.C. 99, 479 (a case under s. 75 of the Companies Act 1980), Oliver LJ said at p. 99,485:

‘The court cannot make orders simply to satisfy Mr Gorwyn's [the petitioner's] peace of mind; it has to be established that there is a jurisdiction to make the order; in other words, that the terms of the section have been complied with and that the petitioner has shown that there is some actual, or proposed, act which would be prejudicial.’

Likewise, in *Re Ringtower Holdings plc* (1989) 5 B.C.C. 82, Peter Gibson J rejected a complaint that the passing of a resolution for the re-registration of a public company as a private company was in itself unfairly prejudicial. At p. 103B–D he said:

‘Mr Heslop took the point that the petitioners were unfairly prejudiced by the second resolution in that the court should infer that the directors intend that Keep, a £2 company, will cause the company's assets to be charged to assist in paying for the acquisition of shares in the company. The point seems to me to be premature. At the moment no prejudice has been caused merely by the special resolution for re-registration. Keep can only cause the

company to finance the purchase of its own shares if the company so resolves by special resolution... The petitioners could at that time, if there is anything in the point, in the light of a definite proposal, complain. But the mere possibility of prejudice is not in my judgment enough.’

To the same effect is the decision in *Re a Company (No. 004475 of 1982)* [1983] Ch 178, where the majority in a private family company had indicated a desire to use the company's funds to buy a wine bar. The petition was held to be premature in the absence of a final decision to proceed with the proposal. See also the Australian decision in *Re Broadcasting Station 2GB Pty Ltd* [1964–5] NSW 1648, where Jacobs J made observations to the same effect (see especially pp. 1663–1666).

In my judgment, every assuming that the petitioner's alleged concerns as to the future are legitimate concerns, the mere existence of those concerns does not provide any basis for an allegation of future unfair prejudice for the purpose of s. 459. To found a case under s. 459 there must be some proposed act or omission by or on behalf of the company which can arguably be so characterised, and none is pleaded here.”

87. I accept Mr McDonagh’s submission that the appointment of a director and general concerns about the way in which he and other directors may behave in the future will not entitle a member to apply to Court under section 994. I also accept his submission that it is necessary for the member to plead and prove that they have committed acts or omissions which are prejudicial to that member’s interests or that they threaten to do so. I, therefore, go this far with Mr McDonagh.
88. Where I part company with Mr McDonagh, however, is in the application of these principles to the present case. Khadim’s case is that Tanvier and Allah appointed Shahzad for an improper purpose, that they took decisions outside of board meetings and that board meetings were reduced to the status of a charade. In my judgment, the specific acts or omissions upon which Khadim relied in support of his case were capable of giving rise to a valid complaint under section 994 if properly proved (and even though the Judge dismissed Khadim’s case on the Excess Takings). In *Estera Trust (Jersey) Ltd v Singh* [2018] EWHC 1715 (Ch) Fancourt J found that a director had committed a number of breaches of fiduciary duty which had caused no loss. He held nevertheless that this conduct was unfairly prejudicial to the petitioner at [338] to [340]:

“338. JS contends that even if he acted in breach of fiduciary duty, as I have held that he did, those breaches of duty caused no loss to the Company, and accordingly that misconduct of the Company's affairs was

not unfairly prejudicial to the interests of the shareholders generally or to HS and Estera in particular.

339. The breaches of duty as regards Winchfern and Expotel by their very nature caused all the shareholders prejudice, in that JS was wrongly putting himself in a position where his duty to the shareholders of the Company conflicted with his own interests and then preferring his own interests. That kind of conflict is corrosive of good administration and trust between shareholders and directors. Further, the prejudice was by its nature unfair. The members did not know of JS's personal interest: they were unaware of the undisclosed conflict that the CEO of the Company continued to have. They were deprived of the right to give or refuse consent to JS taking the opportunity for his personal benefit.

340. In *Re Tobian Properties Ltd* [2012] EWCA Civ 998; [2013] Bus LR 753, Arden LJ identified the six fiduciary duties of directors now on a statutory footing in sections 172-177 of the Companies Act 2006 and observed, with reference to them, that "non-compliance by the respondent shareholders with their duties will generally indicate that unfair prejudice has occurred". Aikens and Kitchen LJ agreed with her judgment. That observation was in the context of a case where the active director of a company had voted himself excessive remuneration, which the company could not afford. On the other hand, if it is clearly established that no financial loss is suffered by a company as a result of a breach of duty, there may be no unfair prejudice capable of being identified by a shareholder in a section 994 petition: see per David Richards J in *Re Coroin Ltd (No.2)* at para [631]. That judge made it clear that unfair prejudice does not have to be financial prejudice, while observing that where a company suffers no financial loss it may be harder to identify unfair prejudice."

89. Nevertheless, Fancourt J found that there had been some financial prejudice or loss: see [340] to [345]. It may be that a ground for distinguishing *Re Astec (BSR) plc* and *Estera Trust (Jersey) Ltd v Singh* is that in the first case there had been no changes in the board of directors and the petitioner was concerned about their future conduct but could point to no breaches of duty (actual or threatened) and in the second case the director had already committed past breaches of duty which had led to the breakdown in trust and confidence between shareholders and directors. This is an issue which may have to be explored in other cases. But for the purposes of the Appeal I am prepared to accept that it was open to Mr Majumdar to argue that Khadim's exclusion from management was unfairly prejudicial to his interests as a member of the Company even though his claim that Tanvier had unlawfully extracted substantial sums from the Company ultimately failed.

90. I add a note of caution, however. This analysis of the authorities shows that it was

essential for Khadim to prove that Tanvier and Shahzad committed breaches of their duties as directors in the conduct of meetings of the board of directors and that the Judge was right to focus on their actions and the specific decisions which they took on behalf of the Company rather than any general appeal to the admissions of “bad behaviour” by Tanvier and Shahzad. In considering Mr Majumdar’s arguments on Ground (1) my focus should be the same. Moreover, the fact that Khadim was unable to point to any financial loss either to himself personally or to the company provides a strong reason for scrutinising the Respondents’ conduct closely to see whether it was genuinely prejudicial or unfair.

(4) *Appeals*

91. In *Central Bank of Ecuador v Conticorp SA* [2016] 1 BCLC 26 at [4] to [7] Lord Mance stated that Appellants who appealed against a finding of fact that they were guilty of a want of probity faced a heavy onus for a number of reasons (which I summarise). First, the Appeal Court will as a matter of settled practice decline to interfere with concurrent findings of pure fact save in very limited circumstances. Secondly, any Appeal Court must be extremely cautious about upsetting a conclusion of primary fact and very careful consideration must be given to the weight to be attached to the judge’s findings and, in particular, the extent to which he or she had, as the trial judge, an advantage over the Appeal Court. Thirdly, the need for caution is further heightened when the Appeal Court is invited to upset the decision of a trial judge exonerating a party of a want of probity. However, Lord Mance’s fourth point was that there may be circumstances in which the Appeal Court’s intervention may be justified and he cited the well-known passage from the judgment of Robert Goff LJ (as he then was) in *The Ocean Frost*:

“Fourth, these principles do not mean that an appellate court is never justified, indeed required, to intervene. They only concern appeals on fact, not issues of law. But they also assume that the judge has taken proper advantage of having heard and seen the witnesses, and has in that connection tested their evidence by reference to a correct understanding of the issues against the background of the material available and the inherent probabilities. In this connection, a valuable coda to the above statements of principle is found in a passage from the judgment of Robert Goff LJ in *Armagas Ltd v Mundogas SA (The "Ocean Frost")* [1985] 1 Lloyd’s Rep 1, 56-57. Robert Goff LJ noted that Lord Thankerton had said in *Thomas v Thomas* that: “It is obvious that the value and

importance of having seen and heard the witnesses will vary according to the class of case, and, it may be, according to the individual case in question." Robert Goff LJ then added this important practical note:

"Furthermore it is implicit in the statement of Lord MacMillan in *Powell v Streatam Manor Nursing Home* at p 256 that the probabilities and possibilities of the case may be such as to impel an appellate court to depart from the opinion of the trial judge formed upon his assessment of witnesses whom he has seen and heard in the witness box. Speaking from my own experience I have found it essential in cases of fraud, when considering the credibility of witnesses, always to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities. It is frequently very difficult to tell whether a witness is telling the truth or not; and where there is a conflict of evidence such as there was in the present case, reference to the objective facts and documents, to the witnesses' motives and to the overall probabilities can be of very great assistance to a judge in ascertaining the truth."

92. Mr Majumdar submitted that the Court could allow an appeal where the trial judge failed properly to test the evidence of the witnesses by reference to objective facts and against the documents and he relied on the *Gestmin* guidance given by Leggatt J (as he then was). He also submitted that this is the approach which the Judge ought to have adopted. Finally, he cited a number of authorities in which the Court of Appeal had accepted that it was possible to overturn findings of fact (even findings of dishonesty) where the trial judge had failed to observe these principles in carrying out the fact-finding exercise: see *Sohal v Suri* [2012] EWCA Civ 1064 at [6] to 14 (Arden LJ), *Synclair v East Lancashire Hospitals NHS Trust* [2015] EWCA Civ 1283 at [10] to [12] (Tomlinson LJ), *Perry v Raleys* [2020] AC 352 at [52] to [67] (Lord Briggs JSC) and *Farrer v Rylatt* [2019] EWCA Civ 1864. In the last of these authorities Coulson LJ stated the burden which the Appellant had to overcome was as follows at [25]:

“Accordingly, for all practical purposes, in order to appeal successfully against the findings of fact made by a judge at first instance, an appellant has to show that there was no evidence to support the findings made, or there was a demonstrable misunderstanding of, or failure to consider, relevant evidence. If all the relevant evidence was considered by the judge then, even if the appellate court might have come to a different conclusion, an appeal against the trial judge's findings of fact will fail. That is why an appeal against a trial judge's findings of fact is such a high hurdle for an appellant to overcome.”

93. Mr McDonagh did not challenge these principles and I accept and apply them although I am bound to observe that in each one of the authorities which Mr Majumdar cited the appeal on the facts failed. Mr Majumdar submitted that unlike those cases above he was able to overcome the high hurdle for an appeal on findings of fact because the Judge was either wrong or perverse to prefer to accept the evidence of Tanvier and Shahzad in the light of the contemporaneous documents and, in particular, the Script and the email exchanges between the two of them and Pervaiz.

H. The Facts

94. The Judge began the Judgment by summarising his overall conclusion at [3]. He stated that the underlying understanding between Khadim, Allah and Tanvier made the strict enforcement of directors' duties inequitable and that there had been no "exclusion from management deserving of a remedy". Mr Majumdar made a preliminary and overarching submission that the Judge had implicitly accepted that Khadim had been excluded from management but nowhere explained why or why that exclusion merited no remedy. I reject that submission for the following reasons:

- (1) The Judge found that Khadim had not been excluded from management as pleaded by Khadim: see [172]. Moreover, he carefully set out Khadim's pleaded case at [44] and [48] and dismissed those allegations after considering the evidence: see [139] to [162]. In particular, he found as a fact that "Khadim was not excluded from management": see [158]. His statement that there had been "no exclusion from management deserving of a remedy" must, therefore, be read and understood in that context.
- (2) Indeed, the Judge explained precisely what he meant by "deserving of remedy" immediately after finding as a fact that Khadim had not been excluded from management: see [159] and [160]. In particular, he concluded that the use of the constitution of the Company had become a necessity after the mediation because of Khadim's voluntary self-exclusion. In my judgment, the Judge was entitled to find on the evidence that Khadim chose not to attend board meetings or to cooperate with Tanvier and Allah before the appointment of Shahzad rather than as a consequence of his appointment. Khadim accepted after some prevarication and an intervention by the Judge that he saw no point in attending the board meeting

on 14 April 2020 and, as the Judge recorded, he chose not to contribute to the discussion at the meeting on 12 August 2020. I return to the board meeting on 30 June 2020 (below).

- (3) But even if (which I do not accept) the Judge implicitly accepted that Allah and Tanvier had excluded Khadim from the management of the Company, I am fully satisfied that he was entitled to find that this conduct was not unfair because Khadim was himself acting unfairly and in breach of the common understanding between the parties. The Judge cited *Interactive Technologies* (above) and clearly had this point well in mind: see [15]. He found that there was a common understanding at [115] and that Khadim suspended Tanvier in breach of it at [137]. He also found that Khadim's instructions to UHY to conduct an investigation were deliberately provocative and that there was no agreement that he should incur the costs: see [147].
- (4) Finally, it is also possible that the Judge did not consider that any exclusion from management was deserving of a remedy because he had dismissed the Excess Takings claim and Khadim could point to no other financial consequences which would justify the relief which he was seeking at trial, namely, an order requiring Allah to sell his shares in the Company to him and an order requiring the active Respondents to compensate the Company for the amounts extracted (or permission to bring a derivative claim).
- (5) Indeed, Mr McDonagh drew attention to their Skeleton Argument for trial in which Mr Majumdar and Mr Somerville submitted that the two claims were inextricably linked:

“27. The principal complaints made in the Petition are straightforward and allege two categories of unfair prejudice:

a. The first relates to what are termed ‘Extractions’, namely substantial sums of money paid out of the Company to or on behalf of Allah and Tanvier for their benefit or the benefit of their “side” of the family. These Extractions were hidden from the Petitioner (Khadim) and concealed from the Company's accountants and HMRC by their being falsely represented by Allah and Tanvier to be legitimate Company expenditure.

i. Whilst £751,052.90 is now admitted, Khadim's case is that

the Extractions are likely to be substantially more. Further, it can be expected that the Company has and will incur significant costs, interest and HMRC penalties as a result of the Extractions.

ii. The Company has recently received a letter from HMRC which indicates that an assessment is imminent and which is expected to run to several hundred thousand pounds in VAT, penalties and interest.

iii. There is also likely to be corporation tax, interest and corporation tax penalties in addition to section 455 Corporation Act 2010 on what HMRC will deem to be overdrawn directors' loan accounts for Allah and Tanvier, the 1st and 2nd Respondents.

b. The second is exclusion from proper (ie equal) management participation and associated use and abuse of the Respondent's Board majority which, in various instances, itself involves unlawful conduct including the making of further Extractions. This conduct is inextricably connected to the Extractions since it began, and was clearly a response to and retaliation for, the Petitioner's request for an explanation of them from Allah and Tanvier as well as a means of obstructing investigation into the matter.

Either is sufficient to justify the relief which Khadim seeks, both are made out."

(6) The Judge dismissed the Excess Takings claim and there is no appeal against his findings on that issue. In my judgment, he was also entitled to take the view that having dismissed that claim, it was not appropriate for the Court to exercise its discretion to grant any of the relief which Khadim was seeking in the Petition whatever the outcome of the exclusion from management claim. Again, he clearly had the point in mind because it prompted his intervention at the end of Shahzad's evidence: see paragraph 67 (above).

95. I stress that these conclusions do not dispose of the appeal because Khadim challenged the individual findings of fact made by the Judge and I must go on and consider each one in detail. Nevertheless, these conclusions explain why the relief which Khadim was seeking on the Appeal had changed and the primary relief which he sought was an order winding up the Company on the just and equitable ground. This change of direction does not mean that the Appeal is bound to fail. But it does explain why the Judge might have considered many of the points which he took on the Appeal to be irrelevant to the issues which he had to decide and why I had to scrutinize very carefully indeed the argument that he had overlooked vital evidence in reaching his

decision.

G1: The Judge erred by placing wholly insufficient weight on the following evidence which was fatally inconsistent with his finding: (a) contemporaneous documentary evidence including, inter alia, the following documentary evidence which showed that far from the 3rd Respondent's being appointed for a proper purpose and subsequently acting in an independent, fair and even-handed way as between shareholders as alleged by the Respondents and found by the Judge:

(i) In the circumstances of a profound breakdown of trust and confidence between the Appellant and the 1st and 2nd Respondents, including a failed mediation and an agreement by the 2nd Respondent to resign as a director from which he then resiled, the 1st and 2nd Respondents decided without consultation with the Appellant to appoint a new director and then refused to disclose the identity of their candidate (the 3rd Respondent) in advance of the board meeting fixed at short notice for the purposes of that appointment.

96. Mr Majumdar submitted that the circumstances and method of Shahzad's appointment vitiated any credible suggestion that it was other than partisan and designed to advance the interests of Allah and Tanvier. In particular, he relied on: (a) the breakdown in trust and confidence between the parties when Khadim and Tazamal discovered the Excess Takings, (b) Tanvier's refusal to resign as a director after agreeing to do so and (c) the decision to appoint Shahzad as a new director and the timing and content of the notice of the meeting on 30 June 2020.

97. The Judge held that Shahzad was appointed for proper purposes and that the motivation for his appointment was not to secure a majority but to add objectivity to the board gained from Shahzad's experience outside the Company, to introduce a business-like company structure and to increase transparency and accountability: see [143] and [144]. In my judgment, these were findings of fact which the Judge was fully entitled to make notwithstanding the manner of Shahzad's appointment. I have reached this conclusion for the following reasons:

(1) I accept Mr McDonagh's submission that Ground G1 involved a collateral attack on the Judge's findings in relation to the Excess Takings. The Judge rejected Khadim's case that the breakdown in trust and confidence between the parties was the result of his discovery that Tanvier and Allah had extracted sums from the Company unlawfully. The Judge found as a fact that they had known about the Excess Takings all along and Mr Majumdar was not entitled to challenge that finding.

- (2) Moreover, I was not taken to any admissible evidence that Tanvier agreed unequivocally to resign as a director. Mr McDonagh told me that he offered to resign at the mediation but that he did not do so because there was no final agreement between the parties. Mr Majumdar did not challenge that contention or suggest that Tanvier had ever made an unconditional open offer to resign. The Judge was fully entitled, therefore, to discount this offer entirely. Indeed, because of the uncertainty surrounding the offer and whether it was clothed by mediation privilege it would have been wrong for him to place any weight on it (and neither do I).
- (3) It was unnecessary for Tanvier and Allah to appoint another director to enable them to take control of the board for the simple reason that Khadim had given them a numerical majority in 2009 when Mazamal resigned and he had failed to propose or appoint a second director from his branch of the family: see [141]. This could not explain the motivation of Tanvier and Allah for the appointment of Shahzad and, as the Judge also observed, it became a necessity for the parties to use the proper constitution of the Company once there had been a breakdown in trust and confidence: see [159]. In those circumstances the only plausible explanation for Shahzad's appointment was to strengthen the board for the reasons which Tanvier gave.
98. This leaves Khadim's complaints about the meeting on 30 June 2020 itself. Mr Majumdar submitted that it was remarkable that the Judge made no mention in the Judgment of the following facts: (1) Tanvier and Allah decided to appoint a new director without consultation; (2) they decided to appoint a director from Talib's branch of the family which was estranged from Khadim; (3) they gave short notice of the meeting on 26 June 2020 and failed to identify the candidate; and (4) they failed to carry out a documented selection process for an independent candidate. In my judgment, the Judge's failure to mention these facts is unsurprising for the following reasons:
- (1) Tazamal accepted in his witness statement that Khadim and he had guessed that the new director would be one of Talib's sons. Shahzad also gave evidence that Tazamal had already approached one of his brothers (although the Judge identified him as Pervaiz rather than Jawad). The Judge accepted this evidence:

see [101].

- (2) Khadim did not challenge this finding of fact and it was supported by the minutes of the meeting on 26 March 2020 at which Tazamal himself complained about the lack of representation of Talib’s branch of the family. The Judge described Khadim’s change of position as a “rather perverse switch” and indeed it was.
 - (3) It is hardly surprising, therefore, that the Judge did not consider it necessary to mention either that Allah and Tanvier had decided to appoint a new director or that the new director should come from Talib’s branch of the family. Tazamal had himself floated the idea at the previous board meeting and, on the Judge’s finding of fact, he had already approached Jawad. The Judge wrongly identified him as Pervaiz but I am satisfied that this is not a reason by itself for overturning the Judge’s findings.
 - (4) Furthermore, Khadim did not complain before the meeting to Allah and Tanvier that four days gave him insufficient time to prepare or attend the meeting or that he had not been provided with a CV. When this point was put to him, he frankly accepted that he did not attend because he knew he was going to be outvoted and so “I let them get on with it”. As Mr Majumdar accepted in his oral submissions, it was no part of Khadim’s case before the Judge that the decision to appoint Shahzad was vitiated by the failure to give adequate notice of the meeting or to accurately state the business of the meeting in the notice.
 - (5) The real issue for the Judge to decide was whether Khadim was justified in describing the appointment as a “stitch up” (a complaint which he made on a number of occasions) and whether this explained his decision not to attend the meeting. The Judge decided that issue at [142]. He accepted Khadim’s evidence that he believed that both of the other branches of the family held grudges against him but he rejected the submission that this belief was grounded in any objective analysis of the facts. He could not give a coherent explanation for his belief and the Judge rejected his case that the appointment had been made to spite him. This was a conclusion to which was entitled to come.
- (ii) Immediately following his appointment, the 3rd Respondent was being directed by and was colluding with the 2nd Respondent (and a third party, Pervaiz Akhtar, the 3rd

Respondent's brother) against the Appellant and continued thereafter to do so with the purpose inter alia of excluding the Appellant from the Company.

99. This was the main plank of the Appeal. Mr Majumdar took me carefully through the emails between Tanvier, Shahzad and Pervaiz and to the relevant passages in their cross-examination (which I have set out above). I also read all of the emails which were set out in the schedule which he put before the Judge and also before me. Both Tanvier and Shahzad accepted that they had acted improperly by communicating in this way both between themselves and with Pervaiz, who was not a director or employee of the Company. Mr Majumdar placed particular reliance on the Script which Tanvier prepared for Shahzad's first board meeting and the subsequent email exchanges and submitted that this provided clear and incontrovertible evidence of a conspiracy to exclude Khadim from management.
100. The Judge carefully assessed this evidence at [99] to [102]. He recorded the admission made by Shahzad and concluded that there was no "side" taken by him: see [102]. But the principal reason why the Judge rejected Khadim's case that Shahzad was a party to a conspiracy to exclude him from management was that Shahzad refused to act on any adverse recommendations made by Pervaiz because he considered them to be unfair: see [101] and [145].
101. I consider whether the Judge's finding that Shahzad took no side was perverse separately below: see Ground G3. In relation to the weight which the Judge gave to the documents themselves, I accept that it is possible that I might have reached a different conclusion if I had been the trial judge. However, despite his able submissions, Mr Majumdar was unable to satisfy me that the Judge's decision was flawed either because there was no evidence to support the findings which he made or because he misunderstood or failed to consider the relevant evidence. I say this for the following reasons:
- (1) In considering this ground, it must be kept firmly in mind that Khadim relied on the Script and the emails between Tanvier, Shahzad and Pervaiz as evidence that Tanvier and Allah had appointed Shahzad for an improper purpose and not in support of any other allegations of breach of duty. Moreover, in assessing whether directors have committed a breach of section 171 of the Companies Act 2006 their state of mind and motive are all-important: see, e.g., Hollington on

Shareholders' Rights 9th ed (2020) at 5—32. The Script and emails were only relevant, therefore, to the extent that they shed light on the state of mind or motive of the directors who made the appointment, namely, Tanvier and Allah.

- (2) Khadim alleged at trial that Tanvier, Shahzad and Pervaiz were conspiring against him. But it is striking that he did not allege that the board of directors acted on any of the recommendations made by Pervaiz between July and September 2020 or, to use Mr McDonagh's language, that they followed through on any of their email discussions. This is all the more striking because the two key suggestions or proposals which Pervaiz made in the course of the email exchanges to which I was taken were to remove both Allah and Khadim as directors and to terminate Tazamal's employment.
- (3) The Judge had the benefit of hearing the evidence of both Tanvier and Shahzad and concluded that they were honest and reliable witnesses. He accepted Tanvier's evidence that he believed Shahzad to be independent and, in doing so, he attributed significant weight to the fact that Tanvier and Shahzad did not act on Pervaiz's suggestions including both his proposal to remove the two other directors and his proposal to dismiss Tazamal. The Judge accepted that the obvious reason for their refusal to do so was the one which they gave, namely, that they considered these actions to be unfair.
- (4) The high-water mark of Mr Majumdar's case was the apparent agreement between Tanvier, Shahzad and Pervaiz on 14 August 2020 to build a case to remove Khadim as a director because he was incompetent and unfit. The Judge had these emails well in mind and referred to them expressly at [99] and [100]. But Mr Majumdar never explained to him or, indeed, to me why Tanvier and Shahzad never carried it through and removed Khadim as a director (either with or without Allah's assistance). The Judge took the view, therefore, that the exchanges on 14 August 2020 could not be relied on as evidence of a plot and had to be seen in their proper context. He concluded that they were a defensive response to Khadim's unilateral attempt to suspend Tanvier. In my judgment, this was conclusion which was open to him on the evidence. As the Judge pointed out, the legal authority which Pervaiz circulated to Tanvier and Shahzad in response to the attempted suspension clearly supported this view.

- (5) It is also telling that when they made a decision which Khadim opposed, Tanvier and Shahzad did so openly and in accordance with the Company's constitution and here I have in mind their refusal to appoint Tazamal as an alternate director. The board of directors tabled the appointment at a board meeting and their resolution not to appoint him was properly recorded. The Judge held that this decision was not unfair: see [161] and [174]. There is no appeal against that conclusion.
- (6) Finally, Mr Majumdar could offer no compelling motive to explain why Tanvier and Shahzad did not act to remove Khadim and Allah or to dismiss Tazamal if they were genuinely plotting with Pervaiz. He fell back on the submission that their bad behaviour demonstrated that the Court could expect them to behave in a way which was unfairly prejudicial to Khadim's interests in the future (the implication being that they were biding their time). But in the absence of any evidence of actual or threatened misconduct, there is no basis for challenging the Judge's decision.
- (iii) the Judge's own observation (at Judgment §102) that in the light of the numerous side-emails about Company management between the 2nd and 3rd Respondent (and Pervaiz Akhtar, the 3rd Respondent's brother), there was no transparency (as between Respondents and Appellant) about how board decisions were reached.
102. The Judge expressed the view that because Khadim and Allah were not copied into the email exchanges between Tanvier, Shahzad and Pervaiz "there was no transparency about how board decisions were reached if they were reached": see [102]. Mr Majumdar submitted that the Judge simply forgot about this finding when he described the board as a "transparent and accountable decision-making forum": see [159]. In answer to this submission, Mr McDonagh drew attention to the careful way in which the Judge formulated his conclusion at [102] and qualified his conclusion by using the words: "if they were reached".
103. On this issue, I prefer Mr McDonagh's submissions. The Judge's language may have been a little compressed. But it is clear what he meant when it is read in the context of his findings at [139] to [162]. He was expressing the view that the board's decision-making would have lacked transparency if they had taken decisions on the basis of email discussions outside properly constituted meetings of the board of directors. But there was no suggestion that they did this at all or that they sought to disguise or dress

up any board decisions or even that those decisions were inadequately explained at board meetings. Moreover, by the time of Shahzad's appointment, Khadim had either stopped attending meetings or participating in board discussions. In my judgment, therefore, the apparent inconsistency between [102] and [159] is not a basis for allowing the appeal.

104. For these reasons, therefore, I dismiss Ground G1. The conclusion that Shahzad was appointed for proper purposes was one which was open to the Judge and I am satisfied that in reaching that conclusion he conducted a proper fact-finding process. He had the advantage of seeing the individual witnesses and assessing their credibility. Moreover, the conclusion to which he came was based on objective evidence and, in particular, on the conduct of the directors rather than their email exchanges with Pervaiz.

G2: The Judge erred by placing wholly insufficient weight on the following evidence which was fatally inconsistent with his finding: (b) The oral evidence of the 1st Respondent (the Appellant's fellow 50% shareholder) at trial that:

- (i) the 3rd Respondent was not behaving in the way that he had hoped he would behave as a director
- (ii) the board was not being run fairly and transparently since the 3rd Respondent's appointment
- (iii) the 2nd and 3rd Respondents and, Pervaiz Akhtar (a non-director) were conspiring against the Appellant.

105. Mr Majumdar submitted that the Judge's findings were inconsistent with four answers which Allah gave in evidence when he was cross-examined about the email exchanges in July, August and September 2020 (above). Mr Majumdar submitted that where the only other shareholder gave evidence such as this, it would be difficult to escape the conclusion that the conduct of the directors was unfairly prejudicial. He also submitted that the failure to address this evidence fatally undermined the Judge's conclusions. Mr McDonagh submitted that Mr Majumdar's approach was flawed and that he had extracted snippets of evidence from the transcript and plucked odd documents from the tens of thousands included in the electronic bundle but without making any complaint about a decision of the board or identifying any prejudice caused by that decision.

106. I accept Mr Majumdar's submission that the Judge did not set out in the Judgment the four answers which I have highlighted in Allah's cross-examination or consider what

weight to attach to them. I also accept that if he had done this exercise and reached a different conclusion as a consequence, then this might well be a ground for allowing the appeal. However, I am not satisfied that those four answers or his evidence as a whole were even close to being critical or decisive for the following reasons:

- (1) The answers upon which Mr Majumdar relied consisted of four short extracts from Allah's cross-examination. I accept that this does not mean that they were not critical or decisive and cases may turn on a single answer to a critical question. But it is a strong reason why an appeal court should be cautious about overturning a trial judge's findings of fact. The Judge gave full reasons for dismissing the Petition and he could not have been expected to pick out of the transcripts or to repeat and evaluate every answer to every question given by the witnesses.
- (2) The Judge accepted that the emails which Mr Majumdar put to Allah demonstrated a lack of transparency: see [102]. Tanvier and Shahzad also accepted that these emails were inappropriate in their own evidence. Allah was not sent or copied into any of these emails and it was reasonable for the Judge to conclude that the views which Allah expressed about them were not probative of any fact in issue when he was shown them at trial for the first time.
- (3) Moreover, having considered Allah's evidence as a whole and the issues to which it was relevant, I am entirely satisfied that the Judge was right to attribute little weight to the answers which he gave. He rejected Khadim's case based on these emails that Tanvier and Shahzad were conspiring to exclude him from management because they never turned their emails with Pervaiz into board decisions or those decisions into actions which were prejudicial to Khadim's interests. Allah's evidence about these emails was therefore largely irrelevant.
- (4) Allah's evidence about these emails might have been relevant if Mr Majumdar had taken Allah to the minutes of the subsequent board meetings and suggested to him that Tanvier and Shahzad took decisions on the basis of their discussions with Pervaiz in which they did not involve him or which they did not explain. But Mr Majumdar never did this.
- (5) It follows that Allah's evidence about the email exchanges between Tanvier,

Shahzad and Pervaiz was no more than comment by a witness on documents which he never saw at the relevant time. Indeed, it could well be said that the evidence upon which Mr Majumdar relied in support of Ground G2 undermined his case. It demonstrated that Allah was wholly unaware of the discussions between Tanvier, Shahzad and Pervaiz and that he did not conspire with Tanvier to appoint Shahzad for an improper purpose.

G3: The Judge erred by placing wholly insufficient weight on the following evidence which was fatally inconsistent with his finding: (c) The oral evidence of the 3rd Respondent himself in which he:

- (i) admitted taking instructions from the 2nd Respondent
- (ii) expressly admitted and/or did not deny – when this was put to him – that he had taken sides and was not behaving independently.

107. Mr Majumdar advanced similar arguments in relation to Shahzad’s evidence. He submitted that the Judge’s conclusion that there was no “side” taken by Shahzad and that he promised to provide an objective position on the board was not just wrong but perverse. In support of this submission he relied on the answers which I have highlighted above in the transcript of Shahzad’s evidence. Mr McDonagh made the same submission of “cherry-picking” in relation to Ground G3 as he made in relation to Ground G2.

108. I have carefully considered each of the answers upon which Mr Majumdar relied both in their immediate context and in the context of Shahzad’s evidence as a whole. It is a very strong submission to make that a Judge who conducted a detailed and lengthy fact-finding exercise came to a perverse decision (and Mr Majumdar recognised this). I have no hesitation in rejecting this submission and dismissing the Appeal on Ground G3. For the reasons which I have given above, an appeal court should treat reliance upon individual answers from a cross-examination with some care and I am satisfied that the passages upon which Mr Majumdar relied did not really support either limb of Ground G3.

109. I give two examples. First, Mr Majumdar relied on a series of answers which I have set out in the passage in paragraph 61 (above) in support of Ground G3(ii) and submitted that Shahzad accepted the proposition that he was not independent. But he did not quote the very last sentence of the second answer in that passage: “I don't agree with that.”

When the passage is read in full and that answer in particular, it is clear that Shahzad was rejecting rather than accepting the proposition which was put to him. Secondly, Mr Majumdar also relied on the statement by Shahzad that “conversations were happening on the other side...so you need to look at your side as well” as an admission that he had taken sides: see paragraph 63 (above). But these statements were made in the course of a long answer in which Shahzad said that his aim in accepting appointment was “to try and promote some form of open dialogue”. A fair reading of the entire passage shows that he did not accept that he was not independent or that he had taken sides.

110. These two examples illustrate the danger of lifting isolated answers from the transcript of the oral evidence of a witness and I am satisfied that Shahzad did not accept either that he was acting on Tanvier’s instructions or that he lacked independence. The Judge found that Shahzad “was taking the lead from Tanvier” and that this was unsurprising because Tanvier was the most active director and Khadim chose not to engage: see [102]. He also found that Shahzad was appointed for reasoned and proper purposes although he failed to live up to the high standards of modern transparency required of a director from time to time: see [143] and [144]. In my judgment, not only were these conclusions very far from being perverse; they were fully justified by Shahzad’s evidence.
111. The real sting of Mr Majumdar’s submission was that in the example (above) and other answers Shahzad referred to “your side” or to “our side”. But it is hardly surprising that he had been forced to take sides by the time he gave evidence at trial and used those or similar expressions. Khadim had chosen to bring proceedings against him personally even though he was not a shareholder. Khadim had also alleged that he was a party to a conspiracy and intended to bring a derivative claim against him. The Judge heard Shahzad give evidence and he was uniquely placed to decide what nuance to place on his evidence when he used such expressions. He clearly decided that these expressions did not reflect Shahzad’s state of mind at the time of his appointment and that he took no “side” at that time. In my judgment, this is not a conclusion with which an Appeal Court should interfere. I, therefore, dismiss Ground G3.

G4: The Judge also erred in failing to take any or any sufficient account of the unchallenged witness evidence on behalf of the Appellant that the Respondents held board meetings that a. were scripted; b. were used to bully and interrogate the Appellant; c. were used to build a case against the Appellant and further their own

Defence of these proceedings; d. where single line agenda items were produced at short notice, unsupported by detail or documents; e. included resolutions which were passed only by the use of their board majority; f. resolved that board minutes were not to be reviewed or commented upon. In the premises, the judge was wrong to conclude that the Appellant chose to “self-exclude” and/or “not to engage”. He had been excluded by the Respondents.

112. In my judgment, Ground G4 was in substance an attempt by Mr Majumdar to elide the private communications between Tanvier, Shahzad and Pervaiz with their discussions at board meetings and to treat the admissions which Tanvier and Shahzad made about their private communications as admissions about their conduct of those meetings. But they did not admit the allegations in paragraphs (a) to (f) (above). Not only did they not admit this they gave clear evidence that they did not intend to carry through or give effect to their email discussions with Pervaiz. Indeed, Mr Majumdar himself relied on one such answer from Shahzad in support of Ground G3 (above): “A. It does, but ultimately it didn't happen. We considered it, we decided not to move forward with it, and ultimately it wasn't executed.” I am satisfied, therefore, that Ground G4 provides no basis for a successful appeal. But for the sake of completeness I deal with each separate allegation in turn.

(a) were scripted

113. Both Tanvier and Shahzad accepted that the Script was prepared for the board meeting on 18 July 2020. However, Mr Majumdar did not suggest to either of them that it was deployed at a meeting which Khadim attended. Indeed, he did not take me to the minutes of the meeting on 18 July 2020 or even suggest that it was deployed on that occasion. But even if Tanvier and Shahzad ran through it together on that occasion or used it as an aide-memoire to prompt their discussions, I see nothing sinister in the use to which it was put. The Script was only a sinister document if it was used by Tanvier and Shahzad to mislead or silence Khadim at a board meeting (or, indeed, Allah). There is no suggestion that it was.

114. Moreover, Khadim and Tazamal adopted similar behaviour. Tazamal accepted in his witness statement that he prepared and sent emails on Khadim's behalf and in the light of Khadim's confused performance in giving evidence and his claim that he did not read documents, the Judge was entitled to take the view that Tazamal orchestrated most (if not all) of the complaints which were sent from Khadim's email address to the board

of directors both before and after board meetings and at the meetings themselves. It is also clear that Tazamal and Khadim were taping board meetings (without the consent of the other board members).

115. Finally, Mr Majumdar relied on a one line answer which Khadim gave in cross-examination that “meetings were pre-scripted, they were there to get to cover their wrongdoing” and submitted that this evidence went unchallenged. The Judge considered Khadim to be an unreliable witness and, in my judgment, it was not necessary for Mr McDonagh to challenge each answer with which he disagreed. But in any event, Khadim gave this answer in relation to the meeting of the board of directors on 26 March 2020 and before Shahzad was appointed. I attribute no weight to this evidence and the Judge was entitled to ignore it.

(b) were used to bully and interrogate the Appellant

116. Mr Majumdar relied on an extract from Tazamal’s witness statement in support of his submission that there was unchallenged evidence that board meetings were used to bully Khadim: see paragraph 53 (above). But I was not taken to the minutes of any board meeting at which Tazamal was present apart from the minutes of the meeting on 26 March 2020 and, in my judgment, it was not for Tazamal to give evidence of what took place at meetings which he did not attend and of which he had no personal knowledge. Moreover, the Judge also found him to be an unreliable witness whose evidence should be treated with caution unless it was corroborated by contemporaneous documents or an independent source. For these reasons I attach no weight to paragraph 53 and the Judge was also entitled to reject that evidence or ignore it.

(c) were used to build a case against the Appellant and further their own Defence of these proceedings

117. Mr McDonagh submitted that Mr Majumdar sought to elevate his submissions to the status of unchallenged evidence. That submission had particular force in relation to this allegation. Mr Majumdar did not identify the unchallenged evidence on which he relied either in his Skeleton Argument or in his oral submissions. Indeed, it is clear that this allegation was based on the suggestion contained in the email exchanges on 14 August 2020. But both Tanvier and Shahzad denied taking this suggestion any further and the Judge accepted that evidence.

(d) where single line agenda items were produced at short notice, unsupported by detail or documents

118. It was common ground that Tanvier emailed an agenda consisting of a single line at short notice for the meeting on 30 June 2020 and that it did not contain any information about the proposed new director. However, I have already held that these criticisms of the form and timing of the notice do not provide grounds for setting aside the Judge's conclusion that Shahzad was appointed for a proper purpose. For the same reasons, I do not consider that those criticisms give rise to any grounds for setting aside the Judge's wider conclusion that Khadim was excluded from management. In particular, he chose not to attend that meeting because he held the unjustified belief that Tanvier and Allah were acting out of spite.

119. Mr Majumdar did not identify any other unchallenged evidence on which he relied either in his Skeleton Argument or in his oral submissions in support of allegation (d). Indeed, it is clear that no such evidence was put before the Judge. He recorded that the minutes of all meetings were now taken by an independent minute taker. He also recorded that it had not been suggested to him that any agenda item had been refused for inclusion or that Khadim had asked for a meeting to be adjourned because of short notice: see [160]. I am satisfied, therefore, that allegation (d) was no more than an attempt to suggest to the Court that the notice given for the meeting on 30 June 2020 reflected a general practice intended to exclude Khadim. I am also satisfied that there was no basis for that suggestion.

(e) included resolutions which were passed only by the use of their board majority

120. I deal with Khadim's complaint about procedural fairness here and his substantive complaint about representation on the board of directors below: see Grounds G5 and G6. There was no real dispute at trial that Tanvier, Allah and Shahzad passed resolutions or agreed actions at board meetings with which Khadim either disagreed or refused to engage. For example, the minutes of the meeting on 12 August 2020 contain a series of decisions to which Khadim objected. But this was not a reason for finding that Khadim was excluded from management. If anything the minutes of that meeting show that when he wanted to engage with the other directors at board meetings, Khadim was fully able to do so.

(f) resolved that board minutes were not to be reviewed or commented upon.

121. The only minutes to which Mr Majumdar referred me in support of this allegation were the minutes of the meeting on 12 August 2020 (above). He relied on the fact that in his email dated 13 August 2020 Khadim made a significant number of complaints about the accuracy of the minutes. However, he did not point out that Shahzad amended the minutes in detail in response to that email or that Tazamal and Khadim had recorded the meeting without the consent of the members of the board and that Shahzad had objected to this unlawful activity. Finally, he did not point out that the board very quickly resolved to use an independent minute taker from UHY to avoid further disputes about the accuracy of the minutes: see [160]. I therefore reject this complaint and dismiss Ground G4.

G5: In finding (at Judgment §121¹) that there was no agreement or understanding that there would be equal board representation on behalf of each shareholder, the Judge failed to engage with the Appellant’s pleaded case on this point (which the Judge had quoted (at Judgment §44)) that the alleged understanding included (and/or had the effect) that the Appellant: (a) Would, as expressly accepted by the 1st Respondent in oral evidence, have equal right to involvement in the management of the Company with the 1st Respondent and (b) “would not be prejudiced” by the unequal board representation which existed after 2009.

122. I found Ground G5 difficult to follow as a matter of logic. Mr Majumdar did not submit that there was any agreement or understanding that Khadim was entitled to equal representation on the board of directors or, indeed, that this was his pleaded case. Instead, he relied on a series of negative propositions. In particular, he submitted that the Judge failed to address Khadim’s pleaded case that he should not have been prejudiced if he was the only member of his family on the board of directors. He also relied on the passages from Allah’s evidence which I have set out in paragraph 52 (above) in which Allah accepted that there was no agreement or understanding about board representation.

123. In my judgment, Ground G5 was an attempt by Mr Majumdar to advance a new case that there were equitable constraints upon the way in which the directors could exercise their powers which he did not advance before the Judge. I am also satisfied that there was no basis for the criticisms which he made of the Judge’s conclusions for the following reasons:

(1) The Judge accurately set out Khadim’s pleaded case at [44] as Mr Majumdar and

¹ This was a typographical error and should have referred to [141] rather than [121].

Mr Somerville had to accept in the Grounds of Appeal. But as the Judge pointed out in [45] Khadim's case was not based on any express agreement or understanding between the parties. This was clearly correct: see the Petition (above) at paragraph 22.

- (2) The Judge held that the conduct of the parties gave rise to an understanding between Allah and Khadim which he set out in detail and which I have quoted (above). But he also held that as owner managers they ignored the Articles and gave no thought to their duties as directors: see [23] and [115]. There is no challenge to any of the findings in those paragraphs. In particular, Mr Majumdar did not suggest either to the Judge or to me that there was any express or implied agreement that Khadim would be entitled to equal representation on the board of directors.
- (3) The Judge clearly engaged with Khadim's case that "he had an equal right to involvement in the management to that of the First Respondent" and that he "would not be prejudiced by his forming a minority of the board following the resignation of Mazamal" at [141]. He held that there was no understanding or agreement about representation on the board after 2009 and that the unequal representation on the board was no more than a product of Mazamal's resignation. There is no challenge to this finding either. Mr Majumdar did not suggest either to the Judge or to me that Khadim wished to have equal representation on the board of directors after 2009 or that Tanvier and Allah refused to let him have it.
- (4) Finally, the Judge's conclusions were entirely consistent with the passage from Allah's cross-examination upon which Mr Majumdar relied. Allah accepted in terms that unequal board representation just happened accidentally and was not the product of any decision or agreement. He also gave evidence that at no stage did he oppose or object to any of Khadim's operational decisions at Worleys.
- (5) Mr Majumdar fastened on two of Allah's answers in cross-examination where he accepted that Khadim and he had equal rights to management. But I have read the relevant passage in full and it is clear that Allah gave those answers in the context of Khadim's management of Worleys and not in the context of board

representation. I do not accept that Allah expressly accepted that Khadim was entitled to equal representation on the board of directors or that the Judge should have made a finding to that effect. I therefore dismiss Ground G5.

G6: In the light of that error, the Judge was wrong not to consider that the 1st and 2nd Respondents' instigation of board majority decisions for the first time from 2019 onwards, was contrary to the understanding between shareholders as to the way in which the Company would be managed.

124. Given that Ground G6 is parasitic on Ground G5, I dismiss it for that reason alone. But even if I had held that the Judge ought to have found that Allah agreed with Khadim that they would have equal representation on the board, I would have dismissed Ground G6 for three reasons:

- (1) The Judge held that the use of the board of directors became a necessity once the relationship between the two branches of the family had broken down. He also held that this breakdown was the direct consequence of Khadim's unilateral actions. In those circumstances, the Judge was entitled to take the view that whatever equitable constraints had bound the parties between 2009 and 2019 were no longer binding on them.
- (2) Khadim could have no complaint that Tanvier and Allah began to use the constitution of the Company for the first time and also that they began to comply with the Articles. As Mr McDonagh put it, it could not be unfairly prejudicial to Khadim's interests to comply with the law. Khadim was given an opportunity to participate in board decisions but chose voluntarily to exclude himself.
- (3) The Judge was also entitled to take the view that, on any view, there was no agreement that the board of directors should not exercise control over decisions relating to the management of the Company as a whole (as opposed to the individual businesses run by each branch of the family). Moreover, in the light of the correspondence with HMRC, it was plainly essential that they did so: see [150] and [151].

G7: Further, the Judge erred in giving only the 1st and 2nd Respondents the benefit of the understandings which he did find to exist, namely, (a) That each shareholder would be entitled to manage Worleys and Pewsham without interference from the other.

- (i) In breach of that understanding (and in the exercise of their board majority) in 2019 the

1st and 2nd Respondents instructed the Company's bank only to act on payment instructions from two directors.

125. By letter dated 13 September 2019 (above) Allah and Tanvier wrote to the Bank stating that all transfer requests from group accounts had to be authorised by two directors. Khadim's pleaded case was that as a consequence the Bank refused to accept his instructions. Mr Majumdar and Mr Somerville also submitted in their Skeleton Argument for trial that this change to the bank mandate removed "Khadim's ability to initiate payments from the Worleys account without the approval of either Allah or Tanvier".
126. The Judge addressed this issue in the Judgment at [157]. He quoted the above submission but held that this allegation was not made out on the facts. He accepted that the misuse of the mandate could give rise to unfairly prejudicial conduct but recorded that no allegations of misuse had been advanced in this case. For the sake of completeness the Judge also went on to deal with Bankline at [158]. Again, he recorded that there was no allegation that Allah and Tanvier had agreed to consent to Khadim's request for access to Bankline (above). But he held that in any event, circumstances had changed because of Khadim's hostile actions.
127. Mr Majumdar submitted that the Judge's conclusions were contrary to Allah's evidence that there was an understanding that Khadim would be entitled to manage Pewsham and Worleys without interference from the other branch of the family. He also submitted that those conclusions were "riddled with error, misunderstanding and contradiction". In particular, he submitted that the Judge had accepted that the instructions to the Bank involved a change to the existing mandate but then contradicted himself by stating that: "Nothing has changed." Finally, he also submitted that the Judge fell into error because he failed to appreciate that the change in the mandate involved an obvious disadvantage to Khadim:

"Since Khadim was the sole director managing Worleys, the second director's signature required by him under the terms of the amended mandate meant that the relevant Worleys payments needed the approval of the 2/3 directors involved in the management of Pewsham, contrary to the unilateral right to manage Worleys which the Judge found to exist. By contrast, the Pewsham directors (the Respondents) comprised enough directors to be able to muster the required signatures without recourse to Khadim."

128. Again, I have no hesitation in rejecting those submissions and the serious criticisms made of the Judge. In my judgment, his conclusion that the instructions to the Bank did not involve any prejudice to Khadim was fully justified on the evidence and Ground G7 involved a further attempt by Khadim to move the goalposts and to advance another case which was never pleaded. I say this for the following reasons:

- (1) The Judge accepted Allah's evidence that both Khadim and he were entitled to expect that they would manage Worleys and Pewsham separately. But he also found that they had separate bank accounts and had complete freedom to pay staff, purchase stock and supplies, set wages and raise finance: see [34]. This finding was consistent with the evidence given by Mr Findlow and Ms Dorsett and Mr Majumdar did not challenge it on the Appeal.
- (2) The passage in the transcript of Allah's evidence upon which Mr Majumdar relied in support of Ground G7 also explains why Tanvier and Allah wrote to the Bank on 13 September 2019. They were concerned that Khadim had run up an overdraft for which the Company was liable and which both businesses would have to fund and repay. The purpose of the instructions to the Bank, as Mr McDonagh submitted, was to prevent Khadim from drawing on the Company's overdraft or loan account without the authority of the board of directors.
- (3) Mr McDonagh accepted (as do I) that the letter dated 13 September 2019 was not limited to drawing on the Company's overdraft or its loan account but extended to all transfers made by the Company. The Judge appreciated, therefore, that the instructions to the Bank were capable of being unfairly prejudicial to Khadim's interests. But as he observed, there was no allegation that Tanvier and Allah had misused those instructions to interfere with the management of Worleys. Indeed, Tanvier sent Tazamal a copy of the letter dated 13 September 2019 and it provoked a very muted response.
- (4) Moreover, as the Judge also found, nothing in practice changed. This was the clear evidence of both witnesses whom Khadim chose to call to give evidence about the management of Worleys. Mr Findlow gave evidence in his witness statement that the letter had no effect on the banking arrangements for Worleys and Ms Dorsett accepted in cross-examination that she had access to bank records

on Bankline for the previous 18 months. Indeed, without access to Bankline she would have been unable to compile the schedules upon which Khadim and Tazamal relied at trial.

- (5) I have quoted the Skeleton Argument filed by Mr Majumdar and Mr Somerville (above) because it gives the impression that there was a single bank account for both businesses and that Khadim was prevented from using it after 13 September 2019. This impression was not accurate or consistent with the evidence presented to the Judge. Moreover, the citation of the whole passage from Allah's evidence which I have set out (above) would have revealed his concern about the overdraft.
- (6) Mr Majumdar also sought to rely on the Judgment at [85] (above) and submitted that the Judge accepted Allah's evidence that the instructions to the Bank imposed a restriction on signing cheques. However, he failed to point out that Allah gave evidence (and the Judge accepted) that there was no intention to prevent Khadim signing cheques as long as the sums drawn remained within the overdraft limit.
- (7) Finally, Mr Majumdar relied on Allah's answers to suggest that the Judge treated Khadim unfairly by failing to give effect to the agreement between the parties. But, as Mr McDonagh pointed out, nowhere in the Petition did Khadim allege either that there was an understanding which placed equitable constraints upon the board of directors or that Tanvier and Allah acted in breach of that understanding by sending the letter dated 13 September 2019. The Judge cannot be criticised, therefore, for failing to address this issue. It is also wholly unsurprising that he focussed on the effect of the letter and whether it caused financial or practical prejudice to Khadim.
- (ii) Henceforth, the Appellant's payments from Worleys needed the approval of one or other of the 1st and 2nd Respondents.

129. For the reasons which I have given, the factual basis of this allegation or sub-ground was factually incorrect. Khadim adduced no evidence to establish that the letter dated 13 September 2019 or the refusal to give Khadim access to Bankline had any effect on the operation of the Worleys' bank account such as the payment of wages or suppliers. Indeed, both witnesses whom he called to deal with these issues gave evidence to the

contrary.

G8: The Judge erred in giving only the 1st and 2nd Respondents the benefit of the understandings which he did find to exist, namely, (b) That Worleys and Pewsham effectively represented separate businesses which allowed those managing each to decide what to withdraw by way of remuneration or by way of a dividend.

- (i) In breach of that understanding, the 1st-3rd Respondents (in the exercise of their board majority) resolved in August 2020 that dividends should no longer be drawn and would cease with immediate effect and instead be reviewed on a yearly basis.
- (ii) This decision had an adverse effect on the Appellant alone; he was the only shareholder drawing interim dividends.

130. Mr Majumdar did not pursue Ground G8 in his oral submissions at the hearing of the Appeal. I have set out the Petition, paragraph 24 (above) and neither of sub-grounds (i) or (ii) formed part of Khadim’s pleaded case for trial. It is not surprising, therefore, that the Judge did not address these allegations either in the body of the Judgment or in his answers to the agreed issues. The power to declare dividends annually is vested in the board of directors of a company and an allegation that they have failed to distribute dividends in accordance with the agreement between shareholders (even an informal one) should be fully and adequately pleaded. But in any event, I accept Mr McDonagh’s submission that it was not unfairly prejudicial to Khadim’s interests to comply with the Company’s Articles. I also accept his submission that there was no suggestion that a majority of the board of directors intended to prevent (or prevented) Khadim from taking a legitimate salary from the income of Worleys.

G9: The Judge erred in giving only the 1st and 2nd Respondents the benefit of the understandings which he did find to exist, namely, (c) That the understanding included the Appellant’s “unfettered ability to hire members of staff and determine their pay without reference to the 1st Respondent or any other director”.

- (i) In breach of that understanding, the 1st-3rd Respondents (in the exercise of their board majority) resolved in September 2020 that all future hiring would have to be approved by the board.

131. On 18 July 2020 the board of directors resolved that “all future hires” were to be approved by the board of directors and in his email dated 14 September 2020 Shahzad reminded all of the directors of this decision. The Judge did not address this issue in the Judgment and in their Skeleton Argument Mr Majumdar and Mr Somerville did not submit or even attempt to explain how the Judge fell into error by failing to do so. Again, this is not surprising given that it contained no part of Khadim’s pleaded case

for trial that the parties agreed that Khadim was entitled to recruit employees without the approval or authority of the board of directors. Indeed, the only pleaded allegation was that Shahzad the directors acted inconsistently in their approach to this issue: see the Petition, paragraph 24(d).

132. But in any event, Mr McDonagh submitted (and I accept) that the purpose of this resolution or decision was to prevent either business from putting payments to “phantom” employees through the books of the Company in order to deceive HMRC and not to limit Khadim’s right to recruit and choose new employees at Worleys. This was a significant issue as the Judge recorded in the Judgment at [116] to [127]. Even if it were open to Khadim to run the case that it was prejudicial to his interests to pass a resolution that the new employees were to be approved by the board of directors, I fail to understand how the resolution itself resulted in prejudice to Khadim’s interests as a shareholder. The directors always retained the authority to hire employees and never formally delegated it to Khadim. He would only have been entitled to relief if they had exercised that power in breach of their statutory duties and to his prejudice. This is the final point to which I now turn.

(ii) Given their board majority, this meant that the Appellant’s hiring of employees at Worleys would henceforth have to be approved by the 1st-3rd Respondents.

133. Khadim did not allege or prove that the board of directors had hired or dismissed any employees at Worleys. As he had done in relation to other grounds Mr Majumdar relied on a number of isolated answers given by Tanvier in the course of his cross-examination. When I considered those answers in context, they provided no support whatever for Ground G9. Mr Majumdar was cross-examining Tanvier about his discussions with Pervaiz and Shahzad whether to dismiss Tazamal. The thrust of his evidence was that they considered whether to do so but, in the end, chose not to. Indeed, in the course of the passage upon which Mr Majumdar relied Tanvier stated in terms that Worleys always made their own staff decisions and that the board of directors had not removed anyone. Tanvier’s evidence (which the Judge accepted) provided no support for Ground G9 or, indeed, for Khadim’s wider case that he was excluded from management.

V. Disposal

134. Despite Mr Majumdar's able submissions, he failed to satisfy me that any of the criticisms which he made of the Judgment were justified. Moreover, when I stand back and consider the conduct of the Respondents at board meetings and whether that conduct was prejudicial to Khadim or caused him any financial loss, there seems even less justification for challenging the Judge's conclusions on the exclusion from management claim and no basis for granting the relief which Khadim was seeking in the Petition (as the Judge recognised immediately at the conclusion of the evidence). I therefore reject Grounds G1 to G9 and I dismiss the Appeal in its entirety.