Neutral Citation Number: [2024] EWHC 1819 (Comm)

Case No: LM-2021-000170

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
LONDON CIRCUIT COMMERCIAL COURT
SHORTER TRIALS SCHEME

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

Date: 17/07/2024

Before :

RECORDER JANET BIGNELL KC
Sitting as a Judge of the High Court

- -

Between :

ALEXANDER JAMES WOOLGAR	**Claimant**
- and -	
NEWPORT CAPITAL & GUARANTEE LIMITED	**Defendant**

- -
- -

Mr Richard Mott (instructed by **Richard Slade & Partners LLP**) for the **Claimant**
Mr Robert Deacon (instructed by **Direct Access**) for the **Defendant**

Hearing dates: 20, 21, 22, 24 May 2024

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Approved Judgment

This judgment was handed down remotely at 10.30am on 17 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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RECORDER JANET BIGNELL KC

Recorder Janet Bignell KC :

1. This was the trial of the first issue formulated in the Consent Order dated 6 October 2023 approved by the Court: whether on 5 August 2019 the Claimant, Mr Alexander Woolgar, agreed with the Defendant, then known as Newport Capital Limited, that his salary would be reduced from £250,000 to £60,000 per annum.

2. The second issue for trial was to be the Claimant's claim for payment of £17,600 on the basis that he had paid a deposit for office premises at the request of the Defendant to Bramdean Asset Management LLP ("the Bramdean Claim"). The Defendant conceded the Bramdean Claim shortly before trial. Judgment will therefore be entered for the Claimant on the Bramdean Claim.

3. The Claimant was represented at trial by Mr Richard Mott and the Defendant by Mr Robert Deacon. I thank them both for their excellent advocacy and for the written materials provided before trial and once the full transcript of the hearing was available after trial.

The Parties, Key Individuals and the Service Contract

4. The Claimant was a co-founder of the Defendant together with Mr Keith Beekmeyer. The Defendant is a private company limited by shares incorporated in England and Wales. It carries on business providing corporate and commercial indemnities and guarantees. At all material times, the Claimant and Keith Beekmeyer each held 42.5% of the shares in the Defendant. Mr Andrew Bye ("Andy Bye") held 15% of its shares.

5. On 16 March 2018, the Claimant was appointed as a statutory director of the Defendant. He was employed under the terms of an Employment and/or Service Agreement dated 1 May 2018 ("the Service Contract"), under which he was appointed the Defendant's Chief Executive Officer.

6. Keith Beekmeyer, Andy Bye and Mr Brian Clarke were also appointed as directors of the Defendant on 16 March 2018. Keith Beekmeyer and Andy Bye entered Employment and/or Service Agreements with the Defendant in the same form as the Service Contract and at the same salary on 1 May 2018.

7. The Service Contract was for a fixed term of five years initially, extendable in the circumstances set out in clause 2.2. At clause 5.1, the Claimant's salary as employee was agreed to be at the rate of £250,000 per annum. This was to accrue day to day and to be payable by equal monthly instalments. At clause 5.3, provision was made for an annual review of salary on 1 May 2019 and thereafter each year at a level to be agreed between the employee and the Board. At clause 5.4 the Claimant was given an express right to waive or defer actual receipt of any part of the salary.

8. At clause 10.2 of the Service Contract the Claimant was given the ability to claim in lieu of outstanding holiday in the event of termination of his employment for any reason. At clause 13.5 the Defendant was to pay the Claimant his salary at the rate then payable under clause 5 for the unexpired portion of the duration of his appointment in the event of termination for any reason.

9. It is common ground between the parties that:

a. the Defendant did not make monthly payments of salary to the Claimant under the Service Contract for the period from 1 January 2019 onwards. Instead the Claimant's salary accrued due;

b. no salary review process was conducted under the Service Contract on or around 1 May 2019;

c. no salary review process was conducted under the Service Contract on or around 1 May 2020;

d. no paperwork was signed by the Claimant at any stage recording any agreement to reduce his salary from £250,000 to £60,000 per annum.

10. The Defendant terminated the Claimant's Service Contract with effect from 25 August 2020. On the same date, the Claimant resigned as a director of the Defendant.

The Claim

11. The Claimant issued his Claim for breach of contract under the Service Contract on 30 July 2021. The Claim is that the Defendant has failed to pay:

(1) accrued salary for the period from 1 January 2019 to 25 August 2020 in the sum of £412,328.77 (the "Accrued Salary Claim");

(2) severance pay in respect of the period from 25 August 2020 to 30 April 2025 in the sum of £1,170,547.95 (the "Severance Pay Claim");

(3) holiday pay in lieu of accrued but untaken holiday days in the sum of £9,995.89 (the "Unpaid Holiday Claim").

Together, the Service Contract Claims.

12. The Defence was served on 26 August 2021. The Defendant disputed the interpretation of the Service Contract. It also asserted the Claimant had agreed to a reduction in his salary from £250,000 to £60,000 per annum. I set out below at paragraphs 19 and 21 the way in which the Defendant pleaded its case on salary reduction.

13. On 1 October 2021, the Claimant applied for summary judgment on the Service Contract Claims. On 5 April 2022, the Defendant applied for permission to amend its Defence by way of substitution of a draft Amended Defence. The parties' applications were heard together on 29 June 2022 by Julia Dias QC (as she then was), sitting as a Judge of the High Court: [2022] EWHC 1970 (Comm).

14. Ms Dias resolved the interpretation of the Service Contract in the Claimant's favour. She held the Defendant had no real prospect of successfully defending the Service Contract Claims and there was no other compelling reason why those claims should proceed to trial, with the exception of a triable issue as to whether the Claimant agreed with the Defendant on 5 August 2019 that his salary would be reduced from £250,000 to £60,000 per annum.

15. Summary judgment was entered for the Claimant on the Accrued Salary Claim, the Severance Pay Claim and the Holiday Pay Claim in a sum to be determined at trial. The

Defendant was ordered to pay the Claimant 2% interest above Bank of England base rate from time to time on any sums found to be due and owing under the Service Contract Claims, such interest to run from 25 August 2020 to the date of judgment on quantum under the Service Contract Claims. An interim payment in the sum of £400,000 was ordered to be paid by the Defendant to the Claimant in respect of the Service Contract Claims by 20 July 2022.

16. The Defendant was granted a limited permission to file and serve an Amended Defence subject to the Defendant's prior provision of a new revised draft and the Court's approval of that document. On 1 September 2022, the Defendant was given permission to amend in the form of the Re-Amended Defence.

17. During the trial much was made by each party of the way in which they said the other party's statements of case were pleaded. I should add that neither set of statements of case was pleaded by Mr Mott or Mr Deacon at any stage.

18. In terms of the Defendant's Defence and Re-Amended Defence, the Claimant's key point was that it exemplified the Defendant had changed its case by trial on the central issue of the date upon which it contended the Claimant orally agreed to reduce his salary. At trial, the Defendant's case was the Claimant agreed to the reduction in his salary at a board meeting on 22 July 2019 and confirmed this on 5 August 2019. In the Claimant's submission, the Defendant's lack of consistency undermined the credibility of its evidence in respect of what was actually discussed and said by the Claimant at the board meeting on 22 July 2019 and, indeed, what happened on 5 August 2019. In contrast, the Claimant's case has always remained consistent that he never agreed to reduce his salary to £60,000 at any stage.

19. The Defendant had pleaded its case on salary reduction in its Defence as follows:

> "19. Clause 5.1.1 and 5.3 of the employment contract refer to a salary of £250,000 per year. The Claimant is well aware of the fact that a Board meeting was held on 22nd July 2019 and rescheduled on 5th August 2019 for the Company where it was mutually agreed that the three contracts of all the Company directors including Mr A.J. Woolgar would be amended from 1 May 2019 and all Directors' salaries including Mr A.J. Woolgar will be reduced from £250,000 to £60,000 per annum. It was also decided that each Director will be individually evaluated by one Director and the Company's Auditors on the 1st March 2020 regarding their individual performance and appropriate recommendations would be made. Mr A.J Woolgar was aware of the annual reports up to December 2019 where the Company could not afford to keep paying extortionate salaries to its Directors".

20. The Claimant's Reply commenced with a standard denial, except insofar as matters were otherwise expressly admitted. His reply to paragraph 19 of the Defence was as follows:

> "20.1 The first sentence is admitted.
>
> 20.2 Regarding the second sentence:

> 20.2.1 It is admitted that the said board meeting was held;
>
> 20.2.2 It is denied that the Claimant agreed to a reduction in salary or voted in favour of any such resolution:
>
> 20.2.2.1 It will be noted that the Claimant did not initial, sign or otherwise authenticate the minutes of the board meeting.
>
> 20.2.2.2 It was not within the Defendant's gift to unilaterally amend the terms of the Service contract and the Defendant does not point to any provision of the Service Contract pursuant to which it was entitled to reduce the Claimant's salary at all or in the way in which it purported to do so.
>
> 20.2.2.3 In the premises, it is denied that clause 5.1 of the Service Contract was amended such that the Defendant was obliged to pay the Claimant £60,000 per annum.
>
> 20.2.3 Whether Mr Beekmeyer and Mr Bye agreed to a reduction in salary by variation of the terms of their employment contracts is beyond the knowledge of the Claimant and irrelevant.
>
> 20.3 Save that it is denied that the Claimant voted in favour of any such resolution and that the Defendant had any power to unilaterally vary the terms of the Service Contract, the third sentence is admitted.
>
> 20.4 Regarding the fourth sentence, the Claimant's understanding was that the Defendant was in sufficient financial health to afford to pay the salaries to the directors which it was contractually bound to pay. This was especially so in light of the fact that the Defendant had not in fact paid the Claimant for all of 2019."

21. The Defendant subsequently re-pleaded its defence at paragraphs 8 and 13 of the substituted Re-Amended Defence as follows:

> "8. … The Claimant was at all material times party to discussions with and between his fellow directors and both understood and accepted that the Defendant was not in a financial position to pay to the directors under the Service Agreement or at all anything more than £60,000 per annum and to that extent the Service Agreement was varied.
>
> PARTICULARS
>
> At divers dates and locations the Claimant expressed his disapproval to having to agree to his salary under the Service Agreement being reduced but agreed and accepted the situation for so long as his fellow directors (Keith Beekmeyer and Andy Bye) ("Directors") agreed to the reduction.

The said divers dates were occasions post inception of the Service Agreement and after the 5 August 2019 Board Meeting when it was formally agreed by the Claimant and his fellow Directors following a resolution to amend the Service Agreement whereby their salaries would be reduced to £60,000 per annum.

The said locations included the Defendant's offices located in Park Street, London W1 and the Barley Mow Public House.

The said occasions were in the presence of the Directors and Ross Beekmeyer ("RB") with whom the Claimant would regularly express himself openly about the performance of the Defendant and its Directors. The Claimant and Ross Beekmeyer enjoyed a good relationship and would often socialise together. The Claimant would frequently express himself along the lines that he understood Keith Beekmeyer's position and viewpoint that the Defendant "could not run before it could walk" and although he thought the reduced sum was "derisory" and "insulting" he would nevertheless accept it for so long as his fellow Directors would also do so. The Claimant expressed himself along these lines from time to time and in particular very soon after the 5 August Board Meeting – see below.

13. … By Board rescheduled meeting and resolution dated the 5 August 2019 all directors of the Defendant, that being Mr Beekmeyer, Mr Bye and Mr Woolgar agreed to have their salaries reduced, the Claimant from £250,000.00 per annum to £60,000.00 per annum. The Claimant who was aware of and present at the said meeting agreed to the resolution and thereby agreed to the reduction in salary."

22. In the Claimant's Amended Reply dated 22 September 2022, the Claimant replied to the Defendant's new pleading as follows:

" 11. As to paragraph 8:

… To the extent it is alleged, it is denied that the Defendant ever undertook any annual review of the Claimant's salary or that, if there was any such review, it conferred a right on the Defendant to unilaterally reduce the Claimant's salary without his agreement.

(3) As to the third sentence:

a. It is admitted that the Claimant was aware of and present at discussions between members of the Board of Directors relating to the reduction of the directors' salaries.

b. It is denied, however, agreed to the reduction of his salary from £250,000 to £60,000 per annum.

> (4) As to the particulars set out in the remainder of paragraph 8:
>
> a. They are embarrassing in that they fail to set out the dates and times on which it was alleged that the Claimant expressed his disapproval to the alleged agreement to reduce his salary. The Claimant reserves the right to plead further as and when proper particulars are given.
>
> b. Without prejudice to the above, it is specifically denied that the Claimant agreed to reduce his salary, either at the board meeting held on 5 August 2019 or otherwise. In this regard, it is noted that the Claimant did not initial, sign or otherwise authenticate the said minutes of said meeting.
>
> 1K As to paragraph 13:
>
> (1) As to the second and third sentences:
>
> a. It is admitted that the Claimant was present at the board meeting on 5 August 2019.
>
> b. It is noted that the Defendant relies solely on the alleged agreement to a resolution reducing his salary as a variation of the Service Contract.
>
> c. It is denied as a matter of law that, if the Claimant had voted in favour of the resolution to reduce the directors' salary (which is denied), the voting in favour of said resolution as a director of the company bound him in his personal capacity and/or amounted to variation of the Service Agreement.
>
> d. In any event, it is specifically denied that the Claimant agreed to any resolution reducing his salary or those of his fellow directors. As pleaded above, it will be noted that the Claimant did not initial, sign or otherwise authenticate the minutes of said meeting."

23. At paragraph 5 of Mr Deacon's Skeleton Argument, "The Defendant's position on the issue", he described the case advanced by the Defendant at trial as follows:

> "(1) On 22.7.19 at a board meeting it was resolved that the directors' contracts of employment would all be amended as at 1.5.19 to reduce directors' salaries from £250k to £60k and that the review date for salaries would be 1.5.20.
>
> (2) On 5.8.19 at a board meeting (Mr Keith Beekmeyer, Mr Andy Bye and C), C agreed to the reduction and thereby agreed to a reduction in his salary.
>
> (3) C never thereafter raised an invoice for his salary (but did submit invoices for expenses).

> (4) In discussions C agreed to the reduction so long as his fellow directors (Keith Beekmeyer and Andy Bye) did likewise. These discussions were in diverse places including D's offices in Park Street and the Barley Mow public house in the presence of the directors and Ross Beekmeyer.
>
> (5) The reduction of salary was evidenced by the minutes of the board meeting on 22.7.19; the letter sent to the directors dated 30.7.19; the board minutes of 5.8.19 and the board minutes of 25.8.20. These minutes are the best evidence of the reduction.
>
> (6) C attended these board meetings."

24. At trial, the central focus of the Defendant's case was that an oral agreement was reached on 22 July 2019 and this agreement was subsequently re-confirmed. The Defendant relied upon board minutes of that meeting and a letter of 30 July 2019 regarding that meeting. I agree with Mr Mott that this focus did not accord with a natural reading of the Defence and Amended Defence. This is reflected in the fact the first issue formulated for trial at summary judgment stage, and in the Order, was evidently based upon the understanding that the Defendant's case was that the relevant oral agreement had been reached on 5 August 2019.

25. Mr Deacon's criticism of the Claimant's Reply and Amended Reply was that he said it was necessary for the Claimant to have pleaded a case disputing the authenticity of the minutes of the board meetings on 22 July 2019 and 5 August 2019 if he was to be entitled to challenge their content and weight. The central plank of the Defendant's case at trial was that board minutes are important formal documents prepared as a matter of statutory compliance and the content of those minutes are the best evidence of what was agreed by the participants, and should be accepted by the court as such.

26. As a matter of pleading, I disagree with Mr Deacon's submissions as to the way in which he says the Reply and Amended Reply should have been pleaded. The case the Claimant has had to meet is that he made an oral agreement to reduce his salary to £60,000 per annum. The Claimant's case is that he did not agree. That is clearly pleaded. The evaluation of the minutes and of the letter of 30 July 2019 are matters of evidence.

27. The Defendant made no reference to the meeting of 22 July 2019 or any documents generated in respect of that meeting in its Defence and Re-Amended Defence for the Claimant's answer. When replying to the way in which the Defendant's case was then put, the Claimant pleaded that he did not sign the Defendant's Board Minutes to "authenticate" them. In the Amended Reply he pleaded he did not sign the minutes of the 5 August 2019 board meeting and had not agreed to reduce his salary at any stage. The Claimant's case that he did not accept the accuracy of the board minutes on this issue was identified from the outset.

28. As a separate matter, the Claimant says the letter of 30 July 2019 which the Defendant now relies upon was only disclosed to him for the first time late during the course of these proceedings.

The Matters for Decision

29. In the event, the evidence at trial turned to a material extent on whether an oral agreement was reached between the Claimant and the other directors of the Defendant at either or both the two board meetings held on 22 July 2019 and 5 August 2019 that the Claimant would reduce his salary to £60,000 per annum as the Defendant contends. There was a direct conflict of oral evidence on this point. There was no scope for any finding that both parties' evidence was correct and, therefore, true.

30. The background against which these board meetings took place played a large part at trial. The Claimant's case was that the breakdown in the relationship between himself and Keith Beekmeyer and Andy Bye demonstrates the Defendant's motivation to assert that he agreed to reduce his salary and why it would not have been in his own interests to agree to do so. The Defendant's case is that the Defendant's financial position meant that all the directors, including the Claimant, agreed to reduce their salaries.

31. In addition to what was or was not orally agreed by the Claimant at the board meetings on 22 July 2019 and 5 August 2019, there were significant disagreements between the parties as to:

    a. the state of the relationship between the Claimant and the other directors in May 2019 and at the date of the 22 July 2019 and 5 August 2019 board meetings;

    b. the specific state of the relationship between the Claimant and Keith Beekmeyer;

    c. the inclusion by Keith Beekmeyer of disciplinary proceedings against the Claimant on the agenda for the 22 July 2019 board meeting;

    d. the Defendant's financial position by the summer of 2019;

    e. the basic ambit of the board meeting on 22 July 2019;

    f. whether the Defendant made the Claimant an offer to leave the Defendant during the meeting on 22 July 2019 (and whether it was for £1.8 million);

    g. what Keith Beekmeyer knew or did not know about the offer made to the Claimant to leave the Defendant on 22 July 2019;

    h. the reason for the adjournment of the board meeting on 22 July 2019;

    i. whether the Claimant spoke to Ross Beekmeyer after the meeting on 22 July 2019 and, if so, what was said;

    j. whether the Claimant received a letter from Keith Beekmeyer dated 30 July 2019;

    k. whether the board minutes of the meeting of 22 July 2019 attached to the minutes of the meeting of 5 August 2019 accurately reflected what had taken place at the board meeting on 22 July 2019;

    l. what Keith Beekmeyer knew about the financial negotiations which took place for the Claimant to leave the Defendant after 22 July 2019 and before 5 August 2019;

    m. what took place at the board meeting on 5 August 2019;

n. whether the board minutes of the meeting of 5 August 2019 accurately reflected the content of the meeting of 5 August 2019;

o. whether the Claimant told Ross Beekmeyer that he had agreed to have his salary reduced to £60,000 per annum at any stage;

p. what was the reason for the inclusion of the minutes of 22 July 2019 and 5 August 2019 on the agenda for the board meeting on 25 August 2020;

q. what took place at the board meeting on 25 August 2020;

r. whether the board minutes of the meeting of 25 August 2020 accurately reflected the content of the meeting of 25 August 2020.

The resolution of each of these questions plays some part in my evaluation of the overall credibility of each party's case and the reliability and plausibility of the evidence given by the parties' witnesses.

The Witnesses

32. The Claimant's witnesses were the Claimant and Mr Jonathan Jacobs. The Claimant's evidence was given in person. Arrangements were made for Mr Jacobs' evidence to be given by video link from Kenya. Before Mr Jacobs was called to give his evidence at trial, Mr Deacon informed the court that he would not cross examine Mr Jacobs.

33. The Defendant's witnesses were Keith Beekmeyer, Ross Beekmeyer and Ms. Charlotte Green. Keith Beekmeyer and Charlotte Green gave evidence in person. Ross Beekmeyer gave his evidence via videolink from his home at my suggestion.

34. On the afternoon of 20 May 2024 I dismissed an "eleventh hour" application by the Defendant dated 14 May 2024 for an adjournment of the trial on the grounds of Ross Beekmeyer's ill health. Notwithstanding the content of Ross Beekmeyer's Third Witness Statement dated 18 May 2024 regarding his physical inability to give his evidence as a result of a (genuine and verified) medical condition, he was able to give his short evidence without the difficulty described. He did not seek any of the contemplated breaks which would have been available to him if required.

My Approach to the Evidence

35. Counsel referred me to the frequently cited observations of Leggatt J in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) and to *Kogan v Martin and others* [2019] EWCA Civ 1645 and *Bannister v Freemans* [2020] EWHC 1256 QB. The approach I take to the assessment of the oral evidence is to weigh it in the context of the reliably established facts (particularly those to be distilled from contemporaneous documentation), the motives of the key participants, the possible unreliability of human memory and ultimately, the inherent probabilities.

36. In this case, for reasons I will explain, when weighing that oral evidence the court obtains a better and safer guide to the truth from the more informal contemporaneous communications the parties were exchanging than from the three sets of disputed board minutes and the letter dated 30 July 2019 which the Defendant relies upon to establish the Defendant agreed to reduce his salary in 2019.

37. Although Mr Deacon submitted that the impact of sections 248(1) and 249(1) of the Companies Act 2006 was of utmost importance in considering the evidence, the fact these board minutes were signed by the Chairman, Brian Clarke, is not definitive as to their accuracy for all purposes if challenged. The subsections provide:

    (1) every company must cause minutes of all proceedings at meetings of directors to be recorded; and

    (2) minutes so recorded and purported to be authenticated by the chairman of the meeting, or by the chairman of the next director's meeting, are evidence of the proceedings at the meeting.

38. Whilst I entirely agree that a company's statutory duty to keep minutes of its directors' meetings is extremely important, and a failure to keep minutes is a serious failing, such that the status and weight of signed minutes should not readily be dismissed, the final weight I attribute to the relevant board minutes here must be considered in the light of the evidence as a whole about their content on the material issue.

39. Brian Clarke signed the minutes of the board meeting on 5 August 2019 (attaching the minutes of 22 July 2019), as Chairman of the meeting. They were also signed by Keith Beekmeyer and Andy Bye. The Claimant refused to sign the minutes when tendered to him on several occasions. They were not, therefore, signed by the Claimant in his capacity as a director of the Defendant or as an employee with a Service Contract. This was because the Claimant did not accept the content of the minutes as an accurate record of the meetings. The Defendant well understood that this was the Claimant's position. Not least because Keith Beekmeyer agreed that when he asked the Claimant in person to sign the minutes, he refused to do so.

40. Brian Clarke again signed the minutes of the board meeting on 25 August 2020 as Chairman of the meeting. In addition they were signed by Keith Beekmeyer and Andy Bye. The Claimant says these minutes were not an accurate record of the meeting. During cross examination, Keith Beekmeyer and Charlotte Green (who attended in order to take the minutes), ultimately corroborated the Claimant's case that notwithstanding the board minutes recorded at point 1 that "It was voted and accepted by all Directors that they agreed the contents of the previous minutes dated 5th August 2019 were a true and accurate statement", the Claimant had not voted and agreed to this at the meeting. The record at point 7 that "All Directors present agreed to terminate [the Claimant's] Directorship" was also incorrect. The Claimant did not so agree. The Claimant did not, in fact, cast a positive vote at the meeting in favour of either resolution as minuted.

41. Keith Beekmeyer's evidence that the Defendant's general approach to minute taking was to record that a resolution was agreed by "all directors" when a director abstained from voting undermines the credibility and weight of each and every reference to "all directors" in any set of the Defendant's board minutes without further corroboration or explanation. Furthermore, a letter dated 25 August 2020 sent by Keith Beekmeyer to the Claimant regarding point 7 of the minutes of the board meeting that day actually evidences that the Claimant had positively voted against the resolution for his termination. In direct contradiction of the minutes, it records that the vote taken on point 7 was split 3:1.

42. I therefore reject the Defendant's position as set out in Mr Deacon's Skeleton Argument

(paragraphs 6, 21and 23) and in submissions that the minutes of the board meetings on 22 July 2019, 5 August 2019 and 25 August 2020 all confirm the Defendant's position and that those present at the board meetings accepted and did not dispute that the directors' salaries had been reduced from £250,000 to £60,000. These documents are not the best evidence of what was agreed in relation to salary reduction and are not simply to be accepted at face value.

43. Applying the approach to all the evidence available to me that I have described at paragraph 35 above, I have come to the conclusion that the Claimant's evidence that he did not agree to the reduction of his salary from £250,000 per annum to £60,000 per annum at any stage was truthful.

44. I have also come to the conclusion that significant sections of the evidence given to the court on behalf of the Defendant by Keith Beekmeyer were untrue. Specifically, Keith Beekmeyer's evidence that the Claimant agreed to reduce his salary under his Service Contract from £250,000 to £60,000 on 22 July 2019 and confirmed this on 5 August 2019. My conclusions draw some support, amongst other matters, from the inconsistent manner in which the Defendant has shifted ground and re-shaped its case throughout the proceedings.

45. I set out here some general observations and conclusions about the witnesses and their evidence. I deal with the specific evidence of witnesses on the facts which fall for my determination as they arise elsewhere in this judgment.

The Claimant

46. The Claimant is 49 years old. Until 2010 he worked for Harvey Nash Group PLC, eventually becoming Group Head of Business & Marketing Service. Since then he has founded and held numerous "C-level" positions within various funds and advisory services, such as Newpoint Investment Holdings, Newpoint Financial Corporation, and Inception Partners Limited.

47. He was an honest and direct witness. He gave evidence clearly that he did not agree to the reduction of his salary from £250,000 per annum. Throughout the trial he was restrained and measured. Although he sometimes paused, and occasionally gave no reply at all when Mr Deacon initially put various statements of the Defendant's case to him, I formed the strong view that this was because he believed he had already made his own contrary position quite plain and thought repetition added nothing. He presented as a focused and self-contained man of few words. His evidence was given with certainty and conviction.

48. The Claimant's evidence was given in a balanced and fair fashion. Notably, when twice invited to say that Ross Beekmeyer was lying in saying the Claimant had told him he had agreed to the reduction of his salary to £60,000, the Claimant did not take what may, to some, have presented as a tempting invitation. Instead, when answering that he had not told him this, he carefully said he thought Ross had formed an incorrect impression of what he had said.

49. The Claimant's evidence accorded with the reliably established facts as I have found them to be later in this judgment. On the issue of whether he agreed to reduce his own salary from £250,000 per annum to £60,000 per annum, a salary cut of more than three

quarters, there was little room for the unreliability of human memory. The level of his salary was a matter of direct importance to him. It was a key component of the settlement negotiations he was engaged in for much of the relevant period. His evidence about this was fully supported by the informal contemporaneous documentation; particularly, the material generated by Mr Jacobs. As well, of course, as his steadfast refusal to sign the Defendant's formal board minutes of 5 August 2020 which attached the purported minutes of the meeting on 22 July 2022, and his refusal to confirm those minutes were true and accurate on 25 August 2020.

50. Ultimately, the inherent probabilities also support the Claimant. In July and August 2019 he was Chief Executive Officer of the Defendant. A reduction in his salary to £60,000 would have taken his salary from that of a well paid business man to the level of a junior financial services professional. Under his Service Contract, the level of his salary had added significance because it determined the value of his lengthy five year payment period. The reduction would have operated to reduce the value of his notice payment from £1,250,000 to £300,000. The longer term issue of the level of his salary was worth almost a million pounds to him.

51. The commercial context makes it even less likely that the Claimant agreed to reduce his salary. From May 2019 onwards the Claimant's relationship with both Keith Beekmeyer and Andy Bye was acrimonious. They already wished to take the company in a different direction from the Claimant and, as he saw it, at the expense of the asset management business he wanted to develop. The longstanding friendship and business relationship between Keith Beekmeyer and Andy Bye, coupled with their combined majority shareholding, meant the Claimant could be outvoted at any board meeting.

52. Regardless of the Defendant's financial situation (as to which there was disagreement), this was not a period of time where all the directors were collaborating to achieve a shared corporate vision and making personal sacrifices to do so. Quite the opposite. The Claimant's co-directors made him an offer to leave the Defendant on 22 July 2019 and active negotiations to agree terms for his departure took place before the meeting of 5 August 2019. The terms of the Service Contract were central to the counter proposal that Mr Jacobs made on the Claimant's behalf. At all relevant times, there was no incentive for the Claimant to reduce his salary or to risk foregoing the substantial future payments due to him under clause 5 of his Service Contract.

Jonathan Jacobs

53. Mr Jacobs studied and practiced law as a capital markets solicitor for about 14 years before working as a business adviser in the financial services and private equity sector. He has been a close friend of the Claimant for many years. He said he has always considered him to be a very honest and hard working person.

54. Given Mr Jacobs' own background and experience with corporate procedures, the Claimant occasionally sought his friendly advice in respect of his business affairs. Mr Jacobs spoke to the Claimant before and after the board meeting on 22 July 2022. On behalf of the Claimant he handled the discussions which took place with Lawrence Jones on behalf of the Defendant up to the 5 August 2019 board meeting. The Claimant's and Mr Jacobs' proposals were based on the Claimant's salary at £250,000 per annum.

55. Mr Jacobs' evidence was unchallenged by the Defendant. I accept Mr Jacobs evidence

in its entirety. It is entirely supportive of the Claimant's case.

Keith Beekmeyer

56. Keith Beekmeyer is presently the CEO of the Defendant following its name change from Newpoint Capital Limited on 28 October 2023.

57. Keith Beekmeyer was an unsatisfactory and unreliable witness. He was strikingly calculating in his approach to giving oral evidence. If he was taken to an email that had not been sent directly by him, or that he had received as a cc rather than as primary addressee, his default response was to deny any knowledge of it or its content. He had no compunction in saying whatever he thought necessary whenever he considered this was required to bolster or advance the Defendant's case. A case that was, in essence, his case. I reject his evidence as untrue that the Claimant orally agreed to reduce his salary from £250,000 to £60,000 on 22 July 2019 or 5 August 2019. In my judgment, Keith Beekmeyer told deliberate lies about this.

58. Regardless of the content of the email correspondence and documentation about matters which would have been of critical importance to the Defendant and to him at the time, and sometimes even contradicting sections of his own minutes of the meeting of 22 July 2019, he repeatedly denied that there had been any breakdown in the relationship between himself and the Claimant from May 2019 onwards; disavowed the link between an email sent by the Claimant in May 2019 and his inclusion of disciplinary proceedings in the agenda for the 22 July 2019 meeting; sought to contend that the offer made to the Claimant to leave the Defendant on 22 July 2019 was not made during the board meeting; and even asserted this was an offer made privately by Andy Bye without his knowledge and, on several occasions, that he knew nothing about it at all.

59. His sworn evidence in cross examination contradicted elements of the contents of the Witness Statement he had confirmed to be true. For example, in his witness statement he said that he decided to table the two matters of the directors' contracts and the discipline of the Claimant at the meeting of 22 July 2019, with the remaining issues on the agenda put over to 5 August 2019. In cross examination he said all items on the long agenda for the meeting of 22 July 2019 were discussed on that date. That was not simple confusion: he repeated it, and he did so in his evidence in the morning and the afternoon. His apparent motivation being to re-cast the board meeting of 22 July 2019 as a meeting at which substantive business took place. Presumably, to add some context to the Defendant's case that this was the kind of meeting at which the Claimant would have agreed to reduce his salary following a discussion of earlier agenda items in respect of the Defendant's budget and financial affairs.

60. Keith Beekmeyer's approach to the recording of votes cast at board meetings as agreed by "all directors", and his statement that this was the Defendant's way of drawing up their minutes, means it is impossible to rely on the Defendant's board minutes in isolation as an accurate record of what took place at the Defendant's board meetings. Given the Defendant's adoption of this approach, the content of its formal records misrepresent the true facts whenever a director abstained from casting a vote on an issue or voted against a resolution. There is no legitimate reason for the adoption of such a practice. Its only consequence is to falsify the records.

61. In assessing Keith Beekmeyer's evidence, and weighing it in the context of the reliably

established facts drawn from the relevant correspondence, it is readily apparent that his motivation in 2019 and 2020 was to use the issues of discipline, salary reduction and termination to exert pressure upon the Claimant to leave the Defendant on more favourable settlement terms than set out in his Service Contract. A result that would be to Keith Beekmeyer's own financial benefit.

62. My reading of the contemporaneous correspondence accords with the inherent probabilities. Whilst the Claimant remained with the Defendant his salary was not being paid to him on a monthly basis and was instead accruing due. The key driver around salary at this time was not the Defendant's cash flow as the Defendant suggests. It was instead the terms upon which the Claimant would leave the Defendant as and when that occurred. It was self-evidently to the Defendant's advantage if it could achieve a position where it was obliged to pay the Claimant £60,000 per annum if and when he left; not £250,000 per annum over the next five year period.

63. Although the Defendant was continuing to establish its business in its early years, it was a wholly owned subsidiary of a financially successful group. It was also engaged in a substantial programme of expansion; including decisions to acquire new shareholdings; premises and staff in 2019.

64. In so far as Keith Beekmeyer's letter of 30 July 2019 has any relevance given the Claimant denies receipt, it is probable that its content reflects the same approach as he has described was taken in the board minutes of 25 August 2020. That is the presentation of the directors' position at a board meeting as one of complete agreement with his proposals regardless of any votes in abstention or minority dissent.

65. Keith Beekmeyer's email to the Claimant of 10 July 2020 purporting to record that he and the Claimant had reached agreement on settlement terms is an example of this approach. Given the Claimant's refusal to sign the minutes of the board meeting on 5 August 2019, the strong probability the Claimant would leave the Defendant at a time when both agree their relationship had broken down, and the Claimant's established approach of seeking additional legal advice in negotiating terms to leave the Defendant, it is inherently implausible the Claimant would have reached an agreement with Keith Beekmeyer at the meeting that day. The content of Keith Beekmeyer's email is entirely at odds with the Claimant's conduct following receipt. He proceeded to instruct Mishcon de Reya to act for him. They then drafted identical salary settlement terms to those advanced by Mr Jacobs in 2019 and he provided these to Keith Beekmeyer. These are inexplicable steps for the Claimant to have taken if he had already chosen to agree to Keith Beekmeyer's own different terms.

Charlotte Green

66. Charlotte Green was employed by the Defendant as Executive Personal Assistant from 5 August 2019. She was not therefore employed by the Defendant as at the date of the 22 July 2019 board meeting. She was not in attendance at the 5 August 2019 board meeting. That was her first day at work with the Defendant. Some eleven months after the Claimant left the Defendant, Charlotte Green was appointed as the Defendant's Company Secretary on 15 July 2021.

67. Her short witness statement ventured somewhat beyond her own personal knowledge in a number of respects. That resulted in a somewhat partisan impression. For example, she

asserted the disputed letter of 30 July 2019 was posted by Abel Yeong and that the board minutes of 22 July 2019 and 5 August 2019 were reproduced within the minutes of the 25 August 2020 meeting to confirm the agreed reduction in salary. She volunteered that the Claimant had never indicated to her that he was receiving the wrong salary or payments when it was never disputed that the Claimant did not receive salary from the Defendant at all during the period their employment overlapped.

68. In her live evidence Charlotte Green proved an honest witness. Much of her evidence transpired to be contrary to the Defendant's case. In essence, it supported the Claimant's evidence. In respect of the 25 August 2020 meeting she attended as minute taker, she said the Claimant did not comment on the 5 August 2019 board minutes. She also said she could not positively say she had sent a copy of the minutes of the 25 August 2020 to the Claimant once prepared. Something Keith Beekmeyer said had happened in his own evidence shortly beforehand.

Ross Beekmeyer

69. Ross Beekmeyer is the son of Keith Beekmeyer. He lived with his father and worked for the Defendant as an Associate Partner in 2018, 2019 and 2020. At all times, he has continued to be employed by the Defendant in the same role. He has never been a director or officer of the Defendant. He was not present at any relevant board meeting at any stage.

70. Ross Beekmeyer said the Claimant had confirmed to him that he agreed to reduce his salary to £60,000. This was an important component of the Defendant's case in addition to, or as an alternative to, its reliance on the board minutes of 22 July 2019 and letter of 30 July 2019. In his witness statement he said that after the 22 July 2019 meeting the Claimant returned to his office in Park Street and told him that he had agreed to the reduction in his salary to £60,000. Ross Beekmeyer said:

> "I do not think I would have recalled the precise date had nothing been made of the board meeting. However, given it has been put in focus by this case as the meeting at which the salary of the directors (Keith Beekmeyer, Andrew Bye and [the Claimant]) was reduced, I am obviously now able to pinpoint the date … as it is generally known to me that it was this board meeting where the directors salaries were reduced. This date would make sense because I was still at the Park Street office and had not yet moved to Bevis Marks which happened in August 2019".

71. He described himself as sitting at his desk when the Claimant stormed in holding his briefcase and jacket and chucked them on the desk next to him. He said there were "two parts of the conversation that stuck in my mind … I still recall these comments". The Claimant felt a salary of £60,000 was beneath him and he understood Keith Beekmeyer's position that the company had to learn to walk before it could run. Ross Beekmeyer said he "personally believed" the reduction was justified because Keith and Andrew put themselves on the same salary reduction and this "demonstrated that they were not being bias or disadvantageous to just [the Claimant] anyway, it was just what the business needed at the time". A little while later they went to a nearby pub. The Claimant again raised the reduced salary and was clearly still annoyed. He did not feel he should have his salary reduced to the same amount as Andy Bye and the only reason he accepted the

reduction was that Andy Bye's salary had been reduced as well. He says the Claimant made "clear" to him he had accepted the reduction, but remembers him "not being happy about it". The Claimant also mentioned the performance review of salaries.

72. When asked to agree in cross examination that there was a degree of reconstruction of his memory here, he said he "vividly remembered" the discussions. When shown the Defendant's Re-Amended Defence he agreed the Defendant had said there that discussions took place after the board meeting on 5 August 2019. When asked if he was remembering a conversation after the second board meeting he conceded "it could possibly be so, yes".

73. He said he wasn't aware any disciplinary action was being threatened against the Claimant. It was only when "reading up on these witness statements" in the past week that he had become aware settlement negotiations had been going on with the Claimant to leave the Defendant. He believed the only rift between directors was between the Claimant and Andy Bye.

74. He did not agree that what the Claimant had really been talking about was a salary reduction idea which the Claimant had not supported, but people were trying to force on him. He said, the Claimant "suggested to me he's all for the salary reduction idea as long as everyone else done the same". He was "very clear in everything he said to me". When it was put to him that it did not make sense for the Claimant to have been angry and upset about a reduction in salary that he had agreed to he said:

> "I'd like to think that he completely trusted my father's direction in which he was taking the company in. They would always sort of talk with one another and discuss future plans. I believe that he just had 100% faith in Keith and the direction that he is taking it and I - you know, but you always remember him saying that he does agree with what Keith said and that was, you know, the company's got to learn to basically walk before it can run."

75. The Defendant's reliance on Ross Beekmeyer's initial evidence that the conversation with the Claimant took place after the board meeting on 22 July 2019 was misplaced. The Claimant said this was not the case and he went to see Mr Jacobs after that meeting. Mr Jacobs' evidence demonstrates the Claimant certainly discussed matters with him after that meeting and the Defendant chose not to cross examine Mr Jacobs about when and how that happened. Critically, Ross Beekmeyer accepted he may have been wrong.

76. The Claimant accepted Ross Beekmeyer's memory may have related to events after the board meeting on 5 August 2019, but denied he told him he had agreed to reduce his salary. In cross examination he said he would not have gone into any detail of the board meeting because "fundamentally he was not a board member" and "a junior trader within the company". The conversation would have been "incredibly high level" and "not in any detail whatsoever":

> "I also question as to whether I would be relaying a board meeting discussion and topics of conversation to a level of detail to my fellow shareholder's son who at the time, in principle, was a junior within the company, knowing full well that they lived under the same roof. So therefore whatever was being discussed

> would more than likely be discussed around the dining table. So my point here is that I don't believe that I would have shared any real insight into the board meeting with Ross Beekmeyer."

77. The Claimant was pressed by Mr Deacon as follows:

> "Q I must dwell on this point a bit because it is a central point and I am going to be absolutely clear: Ross Beekmeyer is saying that you said to him that you accepted the reduction. That's what he says you told him. What do you say about that?
>
> A. I deny that point. I deny that point. Having not agreed it at a board meeting, why on earth would I then enter into a conversation with my fellow shareholder's son and then say something incriminating to the extent that I had agreed to a salary reduction. No is my answer."
>
> "Q. But are you saying that it is untrue for Ross to say that you told him you accepted the reduction?
>
> A. I am saying that may well have been his impression, but I am not agreeing to the fact that I said to Ross specifically that I had accepted it, the reduction in my salary.
>
> …. He could very well have assumed that we had agreed, or that I had said I had agreed to a reduction in salary, which I hadn't.
>
> … I don't believe I have hedged around it at all. I believe that Ross' perception of the discussion differs to my recollection of the discussion with him ..."

78. Ross Beekmeyer's approach to giving evidence was undoubtedly more satisfactory than Keith Beekmeyer's, but I do not accept that the Claimant did tell him at any stage that he had agreed to reduce his salary to £60,000. Given Ross Beekmeyer's junior position in the company, and as demonstrated by his own evidence, he had no grasp or understanding of the issues between the parties' and the relationships at play in 2019. His account was quite at odds with reliable and cogent contemporaneous documentation. Indeed, his was the lone evidence that went so far as to suggest the Claimant was "all for" salary reduction as long as everyone else agreed. A comment that sat ill with his evidence the Claimant was unhappy about it.

79. I agree with the Claimant's description and Mr Mott's characterisation of Ross Beekmeyer's evidence as skewed by perception. I formed the strong impression that he was somewhat naïve. He had persuaded himself that his own memory of events in 2019 was reliable when he had simply pieced together partial recollections of casual conversations about an issue which did not involve him at the time and where he did not appreciate what was involved. Probably, sub-consciously, recalling matters through the lens of his father's views and the implicit faith he places in his father. It was plain from his evidence that he admires his father greatly.

80. Furthermore, it is inherently implausible, for the reasons the Claimant identified in cross

examination, that he would have informed Ross Beekmeyer he had agreed to reduce his salary when he was not willing to confirm that otherwise and refused to sign the board minutes of 5 August 2019. The conversation is otherwise consistent with the Claimant's annoyance and upset that the other directors had voted in favour of a resolution to reduce salaries.

81. There was a difference between the description of Ross Beekmeyer's condition in the medical correspondence in support of the Defendant's application for the trial's adjournment and in his third witness statement where he said he was "unable to speak". This difference was borne out at trial when he was able to give his evidence. No doubt his illness has been a difficult time for him. Although invited to find that this was a deliberate exaggeration, I consider that the approach taken by him to the preparation of a rather general witness statement more likely demonstrates this same naivety on his own part. It is unlikely that the decision for the Defendant to seek an adjournment was his alone.

The witnesses who were not present

82. In the Consent Order of 6 October 2023 the parties agreed that no more than three witnesses of fact were to be called on each side. It is striking that the witnesses the Defendant chose to call to give evidence in support of its case the Claimant orally agreed to reduce his salary from £250,000 to £60,000 during the board meeting on 22 July 2019 and/or 5 August were not the other directors and attendees at each meeting: Brian Clarke and Andy Bye.

83. Brian Clarke and Andy Bye had the ability to give first hand evidence as to what was said and what was or was not agreed by the Claimant on the relevant occasions. Brian Clarke chaired these meetings. Andy Bye had a direct personal interest in all the issues in play; including salary. They both signed the minutes of both meetings, and the minutes of the meeting on 25 August 2020. Andy Bye's contemporaneous involvement meant he could have provided the court with his own direct evidence as regards the background disputes between the parties and his own view as to the impact of the Defendant's financial position when directors' salaries were not being paid and were instead accruing due.

84. Keith Beekmeyer confirmed Andy Bye is still a director of the Defendant. He said that he had first met him in 1998 and they have been friends since. He said Brian Clarke ceased to be a director of the Defendant on 1 March 2021, but that he remains on very good terms with him. No reason was suggested why they could not have attended to give evidence. Indeed, I was told by Mr Mott that Brian Clarke and Andy Bye had made witness statements earlier in the proceedings in support of the Defendant's response to the Claimant's summary judgment application and the Defendant's application to amend its Defence.

85. In the event either Brian Clarke or Andy Bye was not available to give evidence, it may have been anticipated the Defendant would have called Abel Yeong to support its case. Abel Yeong attended the board meeting on 5 August 2019 as a "reporter". He was responsible for the material that went into the minutes. He was the person who is said to have prepared the letter of 30 July 2019 upon which the Defendant relied. Keith Beekmeyer confirmed that Abel Yeong continues to work within the Newpoint Group.

86. In calling Charlotte Green and Ross Beekmeyer, the Defendant chose to call two witnesses who were not present on 22 July 2019 or 5 August 2019. Neither was a director fully versed in the Defendant's affairs. Indeed, Charlotte Green only entered the Defendant's employment on 5 August 2020. Elements of the Re-Amended Defence appear to have been based upon Ross Beekmeyer's evidence (Keith Beekmeyer did not state the Claimant expressed agreement in a public house to the reduction of his salary), but he had himself identified that his recollections as to date were based upon reconstruction, for example.

87. Mr Mott invited me to draw adverse inferences against the Defendant's case from the absence of Brian Clarke and Andy Bye and/or Abel Yeong given the material evidence they could be expected to have given on the key issue of whether or not the Claimant agreed to reduce his salary during the meetings they attended. Their evidence would naturally have assisted the court on the issue to be determined.

88. I was invited to infer that none of Brian Clarke, Andy Bye and Abel Yeong was prepared to attend court and give evidence under oath to back up Mr Beekmeyer's account of what had happened at the 2019 meetings. On the contrary, it was submitted, if any of these individuals had come to court as a witness and had told the truth, they would have supported the Claimant's account in contradicting Mr Beekmeyer's.

89. I was taken to His Honour Judge Hodge KC's summary of the circumstances in which the court may be justified in drawing adverse inferences in *Ahuja Investments Limited v Victorygame Limited* [2021] EWHC 2382 (Ch) at [23]-[25], and the references there to *Magdeev v Tsetkov* [2020] EWHC 887 (Comm) and *Wisniewski v Central Manchester Health Authority* [1998] PIQR 324. Applying the requirements identified to support an exercise of the court's discretion, Mr Mott submitted all three individuals were plainly accessible to the Defendant and, indeed, prepared to submit witness statements when they knew they would not have to give oral evidence and be cross-examined on their statements. None had given evidence at trial when that would be subject to cross-examination. It was submitted the inference I was invited to draw was justified on the basis of both their availability and the remainder of the contemporaneous evidence which was relied upon by the Claimant as to what happened in 2019.

90. Mr Deacon said that the Defendant had recently sought to contact the court and to re-visit the number of witnesses it was allowed to call in order to call Brian Clarke and Andy Bye. He said that the Defendant was essentially acting in person when it made decisions as to which witnesses it called. It called Ross Beekmeyer to speak to his conversation with the Claimant and Charlotte Green as she had located the Certificate of Posting relating to the letter dated 30 July 2019 the Defendant says Abel Yeong posted to the Claimant.

91. In the circumstances of this case, given the limit on the number of witnesses capable of being called, and notwithstanding that the limit should really have served to focus the Defendant on calling those who did have the most relevant evidence to give, I do not consider it appropriate to exercise my discretion to draw the adverse inferences I am invited to draw. Fundamentally, the contemporaneous documentation and the oral evidence I have received, is ample to enable me to form a sound judgment as to whether the Claimant or the Defendant was telling the truth. It was unnecessary for me to have additional recourse to inference to support the relevant facts as I have found them to be.

Disclosure

92. Separately, it is however a matter of serious concern that it was established at trial that the Defendant had failed to comply with its disclosure obligations. Indeed, even when taken to the provisions of the Order of 6 October 2023 at the end of his evidence on the topic, Keith Beekmeyer did not accept he had not searched properly for the sort of documents that may have supported the Claimant's case and undermined the Defendant's case. An unapologetic refusal by Keith Beekmeyer to accept the most objective of facts. A further example of the way in which Keith Beekmeyer approached the formalities of the Defendant's affairs and its response to the claim against it.

93. In accordance with paragraph 4 of the Order of 6 October 2023, each party was to serve a disclosure list by 4pm on 3 November 2023 and copies of all documents in the list. The documents to be listed were the documents on which the parties relied upon as supporting their case and the documents requested by the other party identified in Annex 1. Each party was ordered to provide a disclosure statement containing a brief description of the steps taken to locate the document agreed or ordered to be disclosed. Annex 1 listed:

> "Request: Any documents, agreements, letters, emails, notes or other memoranda discussing C's salary reduction from £250,000 to £60,000 between July 2019 and August 2020, including, but not limited to, documents prepared or created by Mr Keith Beekmeyer (CEO of D), Mr Andrew Bye (Executive Director of D), Brian Clarke (former Director of D), Mr Abel Yeong (employee of D), Charlotte Green (employee of D) and Mr Ross Beekmeyer (employee of D), including any texts and WhatsApp messages as well as calendar entries (if any) of any calls made by the relevant parties where it is said that they had discussed this issue. Agreed.
>
> Request: All board minutes of D for the period from July 2019 to August 2020. Agreed.
>
> Request: All emails to/from our client's corporate email account [REDACTED] in relation to the two triable issues. These must include but not be limited to, emails to/from Keith Beekmeyer and Charlotte Green. Agreed."

94. This third request was made because the Claimant had no access to his own corporate email account at the Defendant after his employment and directorship was terminated.

95. Charlotte Green signed the Defendant's Disclosure Statements on 3 November 2023 and 6 December 2023:

> "I state that I have taken the following steps to locate the documents agreed or ordered to be disclosed under the order made by HHJ Pelling KC on 6 October:
>
> …
>
> I have searched for documents:

> Created between 1 April 2018 and 30 July 2021 and contained on or created by the Defendant and on work and personal computers, mobile phones, and hand written notes including those files contained either as saved files or email files."

96. After the disclosure statements had been forwarded by Lawrence Jones, the Defendant's retained Counsel, to the Claimant's solicitors, Richard Slade & Partners LLP, the Claimant's solicitors quickly took issue with what they considered to be the very limited extent of disclosure provided. They made clear the Claimant considered there should be "thousands of emails". Specifically, on 13 December 2023 they wrote to Lawrence Jones:

> "For instance, among [the Claimant's] emails from his corporate account, your clients have disclosed only a single e-mail chain prior to and during the two board meetings on 22 July and five August 2019, where the salary reduction issue arose. However, this remains incomplete as the e-mail at the chain's bottom (dated 20 August 2019, timed at 12: 25) refers to an attachment that has not been disclosed.
>
> More alarmingly, the aforementioned example replicates within your client's set of documents. Our disclosure request, as mutually agreed and approved by the court, explicitly sought disclosure of documents relating to the salary reduction issue between July 2019 and August 2020. Your e-mail suggested that the Defendant undertook a targeted search, presumably in line with our request, and provided disclosure on three November 2023, along with a disclosure statement. However, the sequence of events indicates otherwise. …
>
> Does your client sustain that no emails were exchanged among its principals discussing the pertinent issues leading up to or following the board meetings or circulating drafts of the various letters and/or minutes? This cannot be right.
>
> …
>
> Considering the above, you will have to excuse our and our clients scepticism regarding your assurances that your client has fully met its disclosure obligations."

97. Having taken the Defendant's instructions, Lawrence Jones replied on 14 December 2019:

> "With reference to your final paragraph, you and your client are excused.
>
> Your skepticism is noted and well placed.
>
> In support of your skepticism you ask, "does your client sustain that no emails were exchanged among its principles discussing the pertinent issues leading up to or following the board meetings

> or circulating drafts of the various letters and/ or minutes? This cannot be right."
>
> The evidence shows that it is right.
>
> We agree that it beggars belief that there are so few emails relevant to the issues during the relevant. But my instructions are that it accurately reflects [the Claimant's persistent inactivity as far as it related to [the Defendant]. The majority of emails are to do with his colourful social life with which he was engaged at all material times."

98. It was readily demonstrated during the cross examination of Keith Beekmeyer and Charlotte Green that the Defendant had not undertaken the requisite disclosure searches as agreed and required under the Order. That included its anticipated failure to have searched for any form of correspondence or any notes of discussions between Keith Beekmeyer and Andy Bye and Brian Clarke, as well as a failure to search any of the Defendant's administrative or accounting records relating to the level of the Claimant's salary (or that of the other directors) after 22 July 2019.

99. In cross examination, Keith Beekmeyer's account of the Defendant's process included the following answers:

> "Q. … Can you just explain in your own words what searches you carried out?
>
> A. Well, I just spoke to our IT people to isolate all emails that [the Claimant] had utilised on email, and all emails to me and back … and we found that - in a year of working [the Claimant] only did anout eight emails so not many really to go and search for.
>
> Q. So you searched [the Claimant's] email account?
>
> A. Yes.
>
> Q. What key words did you use to search?
>
> A. Just his name.
>
> Q. And so it was you who looked at them and you looked through them?
>
> A. Yes."
>
> "Q. Did you search your own email account?
>
> A. I did.
>
> Q. And did you search Mr Bye's email accounts?
>
> A. No, Mr Bye … my emails to [the Claimant] and the

> Claimant's emails to me were put into a specific folder … the same for Andy. … very scant, eight pages.
>
> Q. Did you actually search the hard drives of any computers?
>
> A. No
>
> Q. Did you search any mobile phones?
>
> A. No
>
> Q. Did you search for any handwritten hard copy notes?
>
> A. No."
>
> "Q. Do you think its surprising that there aren't any more informal communications or internal documents from the company which show what the salary is for its executive directors were understood to be at the time in 2019, 2020, 2021, do you think that's surprising there's not a single document showing that?
>
> A. No. It shows that all of the directors at board meeting, and I got paid the amount per month going forward to that, so no.
>
> Q. I mean, there will be pay slips presumably?
>
> A. I got paid through my service company.
>
> Q. I mean, there will be bank records?
>
> A. Correct.
>
> Q. There will probably be an explanation to your accountants of what salaries the executive directors are?
>
> A. Yes, … my accountant.
>
> Q. None of that's being disclosed?
>
> A. I wasn't asked to disclose it."

100. Charlotte Green said:

> "I didn't carry out specific searches. I spoke to our IT team who isolated emails for Keith, … [the Claimant] … and the same with Andy. And then Keith went through his emails and, you know, anything he thought was of relevance, and the same with Andy. And that was then provided to be then put into a folder.
>
> Q. So you didn't look through documents, working out, well that one's relevant. You didn't do that kind of review exercise yourself?

> A. Well I had – well, I wasn't part of the company at the time that all this was happening. So for me to do that, I wouldn't have to have known maybe the relevance of what a … would have been produced there.
>
> Q. Yes, quite right. That would be for Keith, so because he was in the company at the time.
>
> A. Yes.
>
> Q. And he understands what the issues are in the case very well?
>
> A. Yes.
>
> …
>
> Q. … just to check, [the Disclosure Statement] would have been a statement you made based on what Keith had told you he had done as part of the searches?
>
> A. Yes".

101. Amongst other missing material, none of the original notes used to draft the minutes of the Defendant's board meetings on 22 July 2019, 5 August 2019 and 25 August 2020 the Defendant relied upon were provided. The minutes of the 22 July 2019 board meeting were prepared by Abel Yeong. He had not been present himself, so must have received an account to draw up those minutes. Mr Yeong was present as a "reporter" at the 5 August 2019 board meeting, but his contemporaneous report of events was not disclosed. In cross examination, Charlotte Green explained she took notes "by pen and paper" at the board meeting on 25 August 2020 and typed them up afterwards. She had sent her typed draft minutes around for review by all directors, but could not remember if that included the Claimant. Neither her handwritten notes, her draft minutes, the records of her sending the minutes around to recipients, or any comments received were disclosed. She remembered Andy Bye coming back to her "to add a few things in so that they were accurate", but no record of those comments or his changes was disclosed.

102. In all likelihood, if the Defendant had conducted its disclosure exercise in accordance with the court order further relevant material would have resulted and would have assisted the court. Regardless of the Defendant's breach, there was, however, sufficient contemporaneous documentation before me to enable me confidently to establish the events as they unfolded in 2019 and 2020.

The Oral and Documentary Evidence in Review

103. The Claimant and Keith Beekmeyer met in 2017 and decided to form the Defendant. Initially to incorporate three lines of business: (1) commercial and corporate indemnity and guarantees; (2) financial engineering services for small insurance firms that would enable them to sell more policies; (3) asset management. The first two areas fell within Keith Beekmeyer's expertise; the third the Claimant's. They intended the first two areas of the Defendant's work would generate income streams to fund the asset management business.

104. At an early stage Keith Beekmeyer brought Andy Bye into the business. As the Claimant understood it, Andy Bye was an old contact who could fulfil the group's risk requirements. He was not told Keith Beekmeyer and Andy Bye had known each other for years. Andy Bye wanted shares in the Defendant and Keith Beekmeyer was determined he should receive them. That resulted in Andy Bye receiving a 15% shareholding. The Claimant felt he was forced into a minority position when it came to strategic decision making.

105. The internal management of the Defendant was formalised at a board meeting on 3 May 2018. The meeting was attended by Brian Clarke, the Claimant, Andy Bye and Keith Beekmeyer. Brian Clarke was a non executive director and was appointed Chairman at the meeting. The Claimant was appointed as the Defendant's CEO; Andy Bye as Group Risk Director and Keith Beekmeyer as Executive Director.

106. The minutes have the Defendant's address at Creechurch Street at the top of the first page and are headed "BOARD MINUTES" with the reference 2018/0001/01. The two pages are stamped "Newpoint Capital" and initialled and dated 3 May 2018 by Keith Beekmeyer, Andy Bye, the Claimant and Brian Clark. The second (and final) page was signed by Brian Clarke as Chairman and dated 3 May 2018 timed at 1.45pm. They are an example of the Claimant placing his initials on board minutes when he agreed their content.

107. They recorded that the meeting started at 10.30am and ended at 1.30pm. They do not record the detail of any discussions or exchanges of views or individual positions taken during the meeting. Seven bullet points were listed as matters "discussed and resolved", including:

   a. the "newly formed board of directors" resolved to appoint a named firm of chartered accountants and registered auditors;

   b. agreement that an unsecured promissory note dated 30 November 2017 issued to the Claimant for £60,000 was due and owing either in cash or in kind;

   c. agreement that secured promissory notes issued to Andy Bye for £10,000 and to Keith Beekmeyer for £60,000 were also owed and payable either in cash or kind;

   d. it was noted that a loan was taken out by Newpoint Investment Holdings from ASR Family Trust (details to be furnished) and it was agreed how this was to be settled with Keith Beekmeyer directed to have relevant costs at the next Board Meeting;

   e. the Claimant confirmed the costs he had incurred on trips abroad and was directed to have all relevant costs at the next Board Meeting.

108. In contrast to the 22 July 2019 and 5 August 2019 board minutes upon which the Defendant relied as the best evidence in respect of the issue to be determined at trial, the Defendant's 3 May 2018 minutes specifically demonstrate that the Defendant did recognise and understand that each of the Claimant, Keith Beekmeyer and Andy Bye occupied separate roles as directors and as employees of the Defendant. By way of example, after services contracts were put to the Chairman and to each of the directors and reviewed and agreed:

> "Mr A.J. Woolgar abstained from voting on his contract, the board of directors plus the Chairman voted for his contract to be fully adopted" [by the Defendant].

109. Rather similarly to the minutes of 25 August 2020, the minutes also referred to "the board of directors" as having voted in circumstances where a member of the board, in this case the Claimant, evidently had not voted in respect of his own Service Contract. In this case, that was readily apparent from the immediate context, however.

110. The minutes record that it was agreed that a copy of the minutes of the meeting would be attached to the Service Contract:

> "to validate that the contract of service was duly agreed upon".

111. The Claimant's Service Contract dated 1 May 2018 was stamped "Newpoint Capital" on each page. Each individual page was initialled by the Claimant, Keith Beekmeyer, Andy Bye and Brian Clarke. The final page was signed by the Claimant as employee and by Keith Beekmeyer and Andy Bye as two directors of the Defendant and by Brian Clarke as witness. As before, evidencing the Claimant's practice of initialling formal documents to signify his agreement to their content. Together with the Defendant's appreciation that an individual director's terms of employment by the Defendant, including salary, were matters which they were required to agree in their capacity as employee, not as director.

112. On 25 July 2018 the Defendant and Bramdean Asset Management LLP ("Bramdean") proceeded to sign a Sale and Purchase Agreement for the Defendant to acquire 60% of the partnership capital in Bramdean. The purpose of the transaction was for the Defendant to acquire an asset management vehicle which already had the necessary permissions and approvals from the Financial Conduct Authority. The Agreement was signed by the Claimant and Keith Beekmeyer on behalf of the Defendant. Each page of the Agreement was initialled by the Claimant and Keith Beekmeyer.

113. When asked a line of questions about this in cross examination, Keith Beekmeyer chose to insert extraneous personal criticism of the Claimant. He alleged the Agreement gave the Defendant no say in the running of Bramdean but that he had no option other than to go along with it and sign because the Claimant had already committed the Defendant as a director. On this occasion, his sole motivation appeared to be a wish to attack the Claimant's business acumen. In so far as relevant to the issues in this case at all, his comments ran counter to his own later robust denials that no tensions existed between himself and the Claimant. They support the Claimant's evidence that the relationship between the two men had become difficult before the later events of May 2019. In similar fashion at other points in his evidence, Keith Beekmeyer sought to disparage the Claimant's character with the same disregard for the question asked of him.

114. Towards the end of 2018 it is common ground that an informal discussion did take place about the level of the directors' salaries. Keith Beekmeyer said he raised the figure of £60,000 in an informal chat and the Claimant made clear that he was "not very happy", but agreed and accepted the point that the Defendant had to at least get established before it could carry such large salaries. As he put it, in language echoed by Ross Beekmeyer in his witness statement when referring to the conversation he described with the Claimant in 2019, that the Defendant could not run before it could walk.

115. The Claimant said he could not remember Keith Beekmeyer's exact words, but this was effectively a conversation that was being had in December 2018. When it was put to him that he agreed the Defendant couldn't really afford salaries at the £250,000 level, he said he did not specifically say "Yes, I accept that". It was more accurate to say he went along with it. As a matter of fact, the Defendant was not paying any money by way of salary to directors or shareholders at all, but he was aware the subject of salary reduction might come up again at the following meeting.

116. By December 2018 Keith Beekmeyer agreed the Defendant had got to a financial stage where the directors could make some payments out to directors and they made them. The Claimant was also pressing for some form of payment to be made to him.

117. The minutes of a board meeting on 10 December 2018 at 11am have the Defendant's address at Creechurch Street at the top. They are entitled "BOARD MINUTES" and have the reference 2018/001/22. They record that Andy Bye, Keith Beekmeyer and the Claimant were present and Brian Clark attended by mobile. It was accepted a quorum to hold the meeting was established since "3 directors out of 4 can attended (sic)".

118. On this occasion, the discussion which took place was summarised. Five points were listed under the heading the "following matter were discussed (sic)":

> "1. [the Claimant] had requested a meeting be held to discuss payment due to him under his contract dated 1st May 2018 and that since Friday 14th December 2018 was our last day in the office it was important, we discuss matters relating to his contract.
>
> 2. He being Alex was encountering personal issues and that he has not received any funds.
>
> 3. He was travelling and needed to have money for the trip he was undertaking with his wife & Partner along with paying several Bills he had incurred.
>
> 4. That he is being Alex would like GBP £200,000 to be paid to him with the balance being paid by 30th April 2019.
>
> 5. [The Claimant] stated that he would invoice NPC."

119. Seven lines followed under the heading "the following was resolved":

> "The following was agreed that [the Claimant] would not vote on this matter.
>
> The Directors acknowledged payment is due under his contract.
>
> The Directors agreed to pay the [Claimant] an agreed amount off GBOP [manual correction] 200,000.
>
> The Directors agree to pay the balance after 30th April 2019.
>
> The Directors confirmed to the [Claimant] that payment can only

> be made from Santander in GBP 50,000 amounts.
>
> The Directors agreed with the [Claimant] that he would Pay any Tax due on any amounts received from the [Defendant]."

120. Again, the minutes reflect the Defendant's recognition of the fact that the directors of the Defendant were not simply directors they were also employees. They again demonstrate that even when one director evidently did not vote upon a matter of direct relevance to them the minute taker continued to refer to the "Directors" just as they would have done if all directors present had taken a unanimous decision.

121. These minutes were initialled by Keith Beekmeyer on page 1; possibly, to approve a hand-written correction that he made there. They were signed by Andy Bye and Keith Beekmeyer on page 2 with the date and time, Monday 10 December 2018, 11.15am. A space labelled "Mr BJ Clark - Chairman" was left blank for Mr Clark's signature. Presumably, because it is recorded he attended by telephone that day.

122. The Claimant was cross examined about the fact he accepted the content of these board minutes was accurate, but had not signed them. He said he genuinely did not know why he had not signed them. In my judgment, this was not surprising at all. The content of the minutes sets out the agreement the Claimant would not vote. No space was identified or marked up in the board minutes for the Claimant's signature as Director. This contrasts with the provision made for the voting directors and Brian Clarke to sign. There was no evidence these minutes were tendered to the Claimant for his signature.

123. The Defendant made payments to the Claimant of £32,556.70 on 14 December 2018; £60,000 on 17 December 2018; £50,000 on 19 December 2018 and £50,000 on 20 December 2018 from a Santander account. The statement for the account shows a balance of £848,474.34 when the first payment out was made to the Claimant. The other entries in the bank statement are redacted. The Claimant said, and it was not disputed, that Keith Beekmeyer and Andy Bye in fact received non-salary payments from the Defendant at the end of 2018 as well.

124. Notwithstanding the informal conversation in respect of salary in December 2018, there was no move to review the Claimant's salary under the Service Contract on 1 May 2019. There was also no review of Keith Beekmeyer or Andy Bye's salaries either.

125. By May 2019, the Claimant said he had become frustrated with Keith Beekmeyer's business decisions and sensed tensions rising between them. Keith Beekmeyer responded badly when his decisions were questioned on serious and bona fide grounds and the same was true of Andy Bye. He felt they were only interested in the insurance and guarantees business and had lost interest in the asset management side he wished to build. He considered the acquisition of Bramdean as a vehicle to develop his asset management area of the Defendant's business, but Keith Beekmeyer saw it as a regulated fund management business to manage insurance money generated from clients and external investors. The Claimant said his frustration grew during the acquisition of Bramdean.

126. As part of this process the Defendant's directors had to submit their Form A to the Financial Conduct Authority. The Claimant says he and Andy Bye submitted their Forms and made the required disclosures. Keith Beekmeyer was away at the time and, given the strict FCA deadlines, he was asked to submit Keith Beekmeyer's Form A for him. In

order to do so, the Claimant says that he and Ms. Laura Jones went through the Form A application line by line with Keith Beekmeyer over the telephone, inserting his responses on the basis of his instructions and adding his electronic signature.

127. The FCA later sought clarification from Bramdean on 15 May 2019 as to why Keith Beekmeyer had not given disclosure in respect of a company called Xplico. The Claimant says this ultimately led to the breakdown in relationships between himself and the other directors.

128. Keith Beekmeyer repeatedly denied during his evidence that there were any tensions between the Claimant on the one hand and himself and Andy Bye in May 2019 (or subsequently). The most he would accept was that there was a difference of opinion between the Claimant and Andy Bye about where the Defendant should be focused. He also denied that he asked the Claimant to fill in his Form A for him whilst he was on holiday; denied that he had a phone call with the Claimant and Laura Jones when they went through the Form line by line; denied that he told them what to put down; and denied he had asked the Claimant to apply his electronic signature once the Form was complete.

129. Given the striking difference in the oral evidence that was given regarding the state of the Claimant's relationship with Keith Beekmeyer prior to 22 July 2019, and its relevance to the content of the agenda subsequently prepared by Keith Beekmeyer for the Defendant's board meeting on 22 July 2019, I have considered the contemporaneous emails in detail in order to establish where the truth lay.

130. Keith Beekmeyer was taken in cross examination to the email from the FCA dated 15 May 2019 regarding his Form A. He said that he could not comment upon it because it was not addressed to him and refused to say more. A rather remarkable response when the contemporaneous email chain evidences that the FCA email was forwarded directly to Keith Beekmeyer by Ms Jones under cover of an email dated 16 May 2019 for his comment. In that email, Ms Jones referred to an earlier phone call between them about the email that day. She asked Keith Beekmeyer to look at the FCA email, to provide a fuller response as to why he had failed to disclose, to have a discussion with "Simon" as to how he felt he should best respond, and to attend a meeting with Bramdean and the Claimant the following Monday at the Defendant's Park Street office. Keith Beekmeyer replied to Ms Jones at 17.38pm copying in the Claimant, Andy Bye and Nicola Horlick. He said he was away all the following week, was looking to see both Simon and Mark at Cartwright and added:

> "I did not sign or complete the form in question".

131. Andy Bye replied to Ms Jones on 16 May 2019 at 23.10pm to say that he would attend the meeting with Bramdean. Ms Jones wrote back on 17 May 2019 at 13.59pm:

> "We asked if Keith could join to discuss his FCA application".

She told Andy Bye he would not need to attend.

132. The receipt of the FCA email resulted in an important internal chain of correspondence on 17 May 2019. It was the Claimant's case that the fall-out truly forms the backdrop to Keeth Beekmeyer and Andy Bye's pursuit of the salary reduction issue afterwards.

133. Andy Bye responded to Ms Jones on 17 May 2019 at 14.50pm:

> "Thanks for confirming there is no meeting regarding the FCA application. I presume that any further matters relating to the change of control will be deferred until Keith returns from holiday. In this respect, I believe it would be prudent for all parties to put the change of control on hold until we have resolved the best advice in responding the query made by the FCA in the compilation of the Application originally submitted.
>
> In view of the issues which the FCA response has raised, [the Defendant] has referred to external legal advisors about then (sic) original basis the application was made, and the implications within the e-mail communication received from the FCA. In this respect we will be in touch upon receipt of their advice and, [the Defendant's] deliberations thereafter."

The Claimant replied at 16.41pm:

> "Dear Andy,
>
> The change of control is not on hold, the deadline set by the FCA is set for a week today.
>
> The avoidance of doubt that is the 24th May.
>
> There are no board deliberations.
>
> The information that was provided to the FCA based on good faith and under instruction.
>
> Therefore a response must be delivered by no later than 24th May. It is not for you to make assumptions or dictate timelines/ responses for and on behalf of the board without prior approval.."

At 16.49pm, Andy Bye emailed all recipients:

> "Alex
>
> The 24th May is noted in respect of the FCA but Laura Jones is the person responsible for the compliance and response not [the Defendant].
>
> However, for avoidance of doubt, we will take this offline to agree between Keith, you and me how to proceed for the benefit of [the Defendant].
>
> We will then collectively communicate to Laura the result of our deliberation."

At 18.04pm, Andy Bye emailed the Claimant and Keith Beekmeyer:

"Hi Alex,

We cannot have discussions on a wider forum when this is an internal matter in the first instance to resolve. In this respect I'm intervening to assist this between Keith, yourself and Nicola. My offline, comments and observations for your consumption is as follows: -

1) The FCA have no interest in "good faith"- as in the case for compliance officer or director- the duty of care is of utmost importance, and the burden rests on the officer or director not the FCA. Meaning you (the person responsible for submitting to the FCA), must ensure what you submit is fully compliant. If you make a mistake or don't know- you are prima facie implying the person complying or requesting approval is not fit for approval as they do not know what is expected of them.

2) Your reference to that (sic) the application was completed "under instruction", unfortunately "1" still applies.

I have been provided with information from Keith who is frustrated and concerned in how this has been dealt with. I share this upon reviewing what has been shared, and in conclusion from what I understand: -

I'm advised you completed the Application for Keith as he was away on holiday.

The application Section 7 "Disclosures" is a highly sensitive area and at the end of the Application draws attention that it is a criminal offence to complete knowingly or recklessly false with information. …

The signature on the document is not authentic!

However, if you have information to the contrary please share.

We have spent considerable time proving Keith's good name, he has told everyone his past and been upfront - if he was to have filled this out he would have been diligent and raised questions about this.

Asking Keith to write a letter to the FCA or Bramdean saying he apologises for filling in incorrectly or such an excuse is not the truth. Between you and Bramdean the application for [the Defendant] was coordinated submitted …

So the question we have to deal with is - either advise the FCA as Keith would like that in fact the application was completed by an associate, the signature is forged. The implications of this are obvious to you but also for [the Defendant's] name too!

> Furthermore, impact on Bramdean alleging they not knowingly beware of (sic) will be tested as to their diligence and proprietary. This may or may not result in further inquiries of Bramdean but seeing you are a common director of both companies, may well call further into question investigation why you did not disclose to fellow Directors in Bramdean.
>
> So the solution, we have drafted a suggested solution (and passed to Clyde & Co), which we seek to be generic but we await the lawyers opinion of solving such matters. We would prefer to resolve in this fashion, and thorough this substantive response we would expect this give satisfaction to the FCA the question levied on application made (sic).
>
> Following this debacle, we need to ensure between us, this can never occur. In this respect, upon Keith's return I recommend we set up a meeting between the three of us to go through and refresh our duties under corporate governance, regulation and risk."

The Claimant replied to Andy Bye, copying in Keith Beekmeyer, at 19.28pm:

> "Thanks Andy, clearly you have misunderstood, no change there then.
>
> His signature nor his understanding is frankly an utter load of nonsense.
>
> We went through the application line by line and I have 3 witnesses to this process. At the end of the day he thought it would pass the FCA, at the end of the day it hasn't. …
>
> He should be man enough to pick up the phone and not be hiding behind you, he has been more than disingenuous about you from the outset, for the record I have simply acknowledged. Neither acted upon or indeed taken to task.
>
> We ran through the questions one by one, he had a copy and chose because of computing inadequacy to ask to fill in and sign off on his behalf. I have witnesses that will stand up in court who will support this statement, to this effect. I will not be the fall guy.
>
> Hindsight I should not have taken this on, on his behalf. This is by far not the first time I've been asked by him to sign off a doc. Nor is it an admission of guilt.
>
> I will not take a fall or indeed have my reputation tarnished.
>
> In the event that this is the case, I will have and indeed take appropriate representation.
>
> I am not for turning on this and I take a dim view in light of your

e-mail that the below is a threat, well my friend I can tell you that despite your manipulation I'm not for turning.

…

You are a 15% shareholder, given not earnt, never once have you put your hand in your pocket.

You are of the belief that you can swan around the world at the expense of the company which will never happen and reside in luxury apartments do a bit of this and do a bit of that. No. Never going to happen.

Personally the gloves are off now, I have humoured a number of futile meetings to suit yourself, have watched you destroy, because it doesn't suit you, what we set out to achieve, I've been left picking up the pieces based on promises given by Keith and I will do so no more.

But you know what Andy, I will not kowtow you anymore.

…

I sat in the meeting last Thursday and to be honest was left stunned, Keith either completely lied or was mistaken with what he and he alone had agreed whilst in the US.

Maybe this is history repeating itself, maybe it's a clear case of being continually lied to, Keith asked me to play the long game with you, when all were questioning, I agreed, clearly I should have played the short game. But as I am a polite and professional person and not wanting to rock the boat I agreed comment what a moron I am

Keith for the avoidance of doubt, whilst you are busy running away from your obligations, you have created this. You are your own worst enemy, you sat in the US staying very clearly such with what we have we can build a truly great business in the US, I have done it before and will do it again, you choose the office and asked me to close on it, you sit and continuously repeat that the US will be great, …

Keith you are the one that agreed to take the office, not me and frankly of tarnished reputation having asked me to get to closure. This I will not forgive and forget on.

…

Keith, I've backed everything you wanted to do, lend money, hire mediocre people at best, I've let it go. I've let it all go.

You looked me in the eye and shook my hand and said if your

> own volition, this is great let's do it. You are an absolute turncoat.
>
> No more, I own 42.5% of this company, you have behaved disgustingly to Nicola and Bramdean, pulled the "I don't know what to do card, which has made both you and I look like utter morons" have continued to make financial promises without board approval and I'm done with your approach.
>
> This is not your company, you do not have the right to agree anything without board approval and if you continue then you leave me no choice.
>
> Over my dead body is 1M being spent in Nevis.
>
> Over my dead body am I going to meet broker dealers in the US and be asked why we don't have a US office.
>
> You have fucked me repetitively and frankly I expected better from the pair of you.
>
> Disappointing."

134. In cross examination, Keith Beekmeyer was asked to agree this was an angry email. He said he wouldn't know. When it was put to him the tone was robust, he said no. He did agree this would have been a bizarre response for the Claimant to send if at fault. He also agreed his own and Andy Bye's proposed way forward at the time was that the Claimant tell the FCA that he completed the Form A and forged the signature. The questions and answers proceeded as follows:

> "Q: stepping back from the detail of this e-mail, in terms of its overall tone, I know you're familiar with it, do you agree that Andy's e-mail to Alex prompted an angry and upset e-mail from Alex back?
>
> A: No
>
> Q: Well, this e-mail that we're looking at, from Alex, is an angry and upset e-mail, isn't it?
>
> A: No
>
> Q: Yes, and I'm going to ask you one more time; This is an angry and upset e-mail, isn't it?
>
> A: I'm saying you, no. …
>
> Q: Let's step away from this particular e-mail chat, just to come back to the point I mentioned to you earlier. By this time, so let's say late May 2019, there were significant tensions between you and Alex?
>
> A: No

> Q: And Mr Bye, Andy, he was siding with you against Alex in the business, wasn't he?
>
> A: No
>
> Q: And you got – as a result of him sending an email, you got Lawrence Jones an external lawyer to send Alex a final warning, didn't you?
>
> No."

135. On 19 May 2019 at 22.30pm, Andy Bye replied to the Claimant copying in Keith Beekmeyer:

> "Alex,
>
> The comments made in your email I found of a personal nature which were unprovoked, abusive and causes personal offence to me.
>
> This is unacceptable behaviour by you.
>
> I am not going to entertain into a diatribe (sic) with your comments and vented anger, nor insinuations made. Keith has requested matters are addressed between the three of us upon his return from holiday next week.
>
> However, in respect of my original e-mail, you are stating Keith is lying- yes? Regardless, we need to finalise an agreed response by [the Defendant] …".

136. In the light of these events and exchanges, I cannot accept Keith Beekmeyer's answers under oath were truthful when he denied tensions existed between the Claimant and himself and Mr Bye or that the relationship between the Claimant and himself was unaffected at this time. It is incontrovertible that the Claimant's email was an angry one, for example. In my judgment, Keith Beekmeyer's approach to his evidence was to deny anything that he considered it necessary to deny if he thought that would advance the Defendant's overall position and neutralise the relevance of the parties' relationship breakdown.

137. There was a conflict of evidence as to why the Defendant instructed Laurence Jones to send the Claimant a "final written warning" regarding disciplinary proceedings shortly afterwards. The Claimant said this related to his email of 17 May 2019. He had recognised his email was not professional in its tone and apologised for that, but had not apologised for the content, which he said was factually correct.

138. At trial, Keith Beekmeyer denied the "final written warning" was the result of this email. I reject his evidence about this as untrue. It contradicted his own witness statement and the content of the contemporaneous documentation. By way of one example, the minutes of the board meeting on 22 July 2019 prepared at Keith Beekmeyer's direction expressly linked the "discipline" of the Claimant to the email at that stage.

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139. The Claimant's evidence as to how matters stood in July 2019 was independently supported by the evidence of Mr Jacobs. He said the Claimant told him in July 2019 there were tensions between himself and the Defendant's other directors, and that disciplinary proceedings against the Claimant were contemplated following the email the Claimant had sent to Andy Bye.

140. On 17 July 2019 Keith Beekmeyer circulated an email attaching his agenda for a board meeting on 22 July 2019. He asked the recipients to confirm that they were happy with the notice period given and for the meeting to go ahead. The agenda referred to notifications sent to Andy Bye, the Claimant, Keith Beekmeyer and Brian Clark. It included a review of directors' salaries as well as a disciplinary matter in respect of the Claimant. In overview, the items were as follows:

> "Headings
>
> (a) Business Plan 2018/2019 – Performance
>
> (b) Business Plan 2019/2020
>
> Financials
>
> (a) Financial 2018/2019
>
> (b) Financial 2019/2020
>
> Budgets
>
> Professional Advisers
>
> [listed by role and name at sub-paragraphs a to n]
>
> 8 Stone Buildings …
>
> Acquisitions
>
> [listed at subparagraphs a to c]
>
> Directors Contracts, Review and Agree Section 5 item 5.3 relating to the following Service Contracts:
>
> a. Andy M Bye
>
> b. [the Claimant]
>
> c. Keith D Beekmeyer"
>
> Premises
>
> [listed at subparagraphs a and b]
>
> Staffing Matters

> [listed at sub-paragraphs a to d]
>
> Litigations
>
> [listed at subparagraphs a and b]
>
> Discipline
>
> a. [The Claimant] – "see 8th Stone Buildings (to be handed out at the meetings)"
>
> Calling for a Shareholders Meeting
>
> [listed at sub-paragraphs a and b].

141. After discipline was listed as an item on the agenda for 22 July 2019, the Claimant confirmed the approach he should take at the board meeting with Mr Jacobs. He also prepared his own notes on a copy of the agenda in respect of the issues he wanted to discuss with the other directors at the meeting on 22 July 2019. The notes appear under the headings "Discipline" and "Calling for a Shareholders Meeting".

142. The Claimant noted he was entitled to have a full disciplinary meeting prior to any board meeting or business review and suggested he attended the following week with representation and counsel. He said matters needed to be handled and squared away properly. They needed to make sure they were doing everything by the book as much for the protection of the other directors as himself. From the Claimant's perspective he noted that he was an employee in this context.

143. As a "related item", he "had thought long and hard" and:

> "it strikes me that a lot of the tension is being fuelled by how decisions are being made.
>
> If I'm honest as to how I feel, I'm being excluded from discussions or decisions that seem pre agreed or aligned to one person's agenda.
>
> I want to be very clear now that I don't believe its malicious or underhand but there are decisions that have taken place that I do not feel were reached as a collective, discussed openly or indeed showed mutual respect for fellow directors.
>
> In order to be successful as a business the directors must operate as a collective and on a united front.
>
> 1. Examples, America, Creechurch / City, understanding of strategic objectives and status, listing US, visibility over financial position and OPEX/CAPEX spend.
>
>   Having thought long and hard about it, I recognise that this has not been helped by being physically apart.

> 2. Much better as a united team, therefore suggest post summer hols I move back to the city, but need to know that moving forwards all decisions need to be made in an effective management, board, or shareholders environment."

Then, under the heading "Calling for a Shareholders Meeting", noted:

> "3. Decision making is not a collective
>
> 4. Not operating as a management team or indeed board, it is being driven by one individual on sole agenda with at most determination to steamroll rather than engage with fellow board members and shareholders
>
> 5. I don't feel part of the conversation, communication has ceased, no visibility to business
>
> 6. For my part, I recognise that two different locations are not right
>
> 7. Examples, America, Creechurch / City, understanding of strategic objectives and status, listing US, visibility over financial position and OPEX/CAPEX spend."

144. On 18 July 2019 at 6.48am, the Claimant emailed Keith Beekmeyer that he was happy with the notice period given for the board meeting and confirmed his attendance. He added:

> "Finally I provided topics for inclusion as requested, they do not appear to feature on the agenda".

145. Keith Beekmeyer replied to the Claimant at 7.07am, copied to Andy Bye and Brian Clark. He thanked them for their support in having the meeting on Monday and stated all four directors had agreed to the notification period. He informed the Claimant:

> "all tropics highlighted is on the agenda plus a call for a shareholders meeting".

He said the meeting would be held in Creechurch Lane and concluded, "Alex I trust this answers your email". The notes made by the Claimant were highlighted in yellow.

146. The Claimant's notes demonstrate his own contemporaneous concerns: a proper disciplinary process and business review; the tensions that existed; the fact that decisions were being "driven by one individual" and his own side-lining.

147. In Keith Beekmeyer's witness statement he said there was a need to have a discussion about budgets. He said "we" wanted to discuss the matter of salary reductions and "we" were also keen to tie remuneration of directors to performance. This strongly suggests that when the agenda was drawn up for the board meeting it was not intended that any detailed discussion of salary reduction would take place on a free-standing basis.

148. It was put to the Claimant that when he received notification of the meeting on 22 July

2019 he knew that the Defendant was not doing well, that he had not brought in any business that was generating anything, that the salaries were going to be reviewed, and it was almost a certainty that they were going to be substantially reduced at the meeting. The Claimant was adamant this was not the case and that the Defendant could afford to pay salaries at this stage. He said:

> "The company had generated money. It had money on account. It had £10 million on account. Hence why I have declined the £1.8 million to leave which was then subsequently discussed at the second part of the board meeting which took place on 5 August, which was the follow up discussions between Jonathan Jacobs and Lawrence Jones.
>
> …
>
> It had capital to be able to pay. It was paying salaries [to employees], it was taking on new leases, it was hiring people. ..
>
> The company had money
>
> Q. It couldn't go on could it?
>
> A. Well, if it couldn't go on then why was the company taking on new offices in the City and pushing forward the listing of shares in North America and looking at securing US infrastructure in the way of offices? The company had money. The company at this stage was starting to expand. So the company did have capital and could afford to pay."

149. At the board meeting on 22 July 2019 the Claimant, Keith Beekmeyer, Andy Bye and Brian Clarke were the only people present. No secretary or note taker attended to take a note of the directors' discussions or to draw up draft minutes afterwards. In contrast to the two earlier board meetings where the minutes were drawn up and signed on the day of the meeting, no draft minutes were circulated for the directors' correction or approval when the meeting was adjourned that day.

150. There was a direct conflict of evidence about what was discussed at this board meeting and specifically as to whether or not the Claimant and the other directors agreed to the reduction in each of their employee salaries to £60,000 per annum. As a result, there was a direct conflict of evidence as to whether the minutes the Defendant later attached to the agenda for the re-scheduled meeting on 5 August 2019 were a true and accurate record of what had happened on 22 July 2019.

151. The Claimant says nothing was agreed at the meeting. His recollection was the meeting went straight into the disciplinary issue against him:

> "which was obviously the most – I won't say important – the elephant in the room, as you say".

He requested the disciplinary action against him should be addressed through proper channels and not at board level, taking into account corporate policies and procedures.

Keith Beekmeyer rejected the idea, but Andy Bye did not. The Claimant requested that the item be removed from the board agenda "which was ultimately denied". He said he was then tabled an offer of £1.8 million "to exit" the Defendant. This had not been mentioned previously. He was taken by surprise. He recalls he expressed his willingness to leave, but not for that sum. He knew that £1.8 million was not an accurate reflection of his 42.5% shareholding and his entitlement to salary and notice pay.

152. Overall, he said the meeting was simply a discussion that resulted in an offer for him to leave the Defendant for £1.8 million, including handing his shares over as part of the settlement and, in return, the sale to him of a subsidiary for him to continue in asset management. Although Keith Beekmeyer and Andy Bye did not share how they calculated £1.8 million, he concluded this was no more than his contractual entitlement to salary and notice pay and nothing for his shares.

153. He agreed the salary reduction issue was discussed at the meeting, as was a performance review the following year. Keith Beekmeyer and Andy Bye wanted to review salaries and reduce them from £250,000 a year to £60,000 a year. He categorically denied he accepted the proposal. When they said the salaries need to be reduced he said: "I don't agree". He did not agree the reduction and it was not resolved. Nothing was resolved at the meeting.

154. It is part of the Claimant's case that it would have made absolutely no sense for him to agree a salary reduction, especially in circumstances where he considered he was being driven out of the company and found himself in the middle of a discussion about severance terms. He said it was obvious this suggestion would feed into the severance discussion to his disadvantage. He asked for the meeting on 22 July 2019 to be adjourned so he could consider his options after the offer to leave was made to him.

155. The Defendant's case that he had agreed to reduce his salary to £60,000 was put to him in cross examination. It included the following questions and answers:

> "Q. You see when you went away from the meeting on 22 July, you changed the narrative didn't you, in your mind about what happened, because if you were going to leave, you would get a very substantially reduced payment. That's what led you to …
>
> A. No
>
> Q. get in with Jonny Jacobs and disown the fact that you had agreed to the reduction.
>
> A. That's absolutely incorrect. When I left the first part of that board meeting, I had an offer on the table for £1.8 million to leave Newport Capital and in return handover my shares …
>
> The reason nothing was agreed in the first half of the board meeting was simply because I leave it with the information that had been provided to go away and consider my options with regard to the offer that had been tabled at the time for me to leave the company, and therefore the meeting was suspended."

156. Turning to the Defendant's case about the meeting, there is a marked contrast between the evidence that was given in Keith Beekmeyer's witness statement and the evidence he gave at trial. In his witness statement his evidence accorded with the Claimant's evidence that despite the 22 July 2019 meeting being largely rescheduled to 5 August 2019, he had decided to table the two matters of director's contracts and the discipline of the Claimant in any event, and the remaining issues were put over to the meeting of 5 August 2019.

157. He said in his statement the meeting of 22 July 2019 was rescheduled because the Claimant had believed that the board meeting was going to include a disciplinary matter following:

> "an abusive email he had sent to him and Andy Bye and had wanted a third party to be present at the board meeting."

And:

> "it was not in fact our intention to conduct a disciplinary hearing at this board meeting. In the intervening period between the abusive remarks being made in May and the scheduling of the board meeting, [the Defendant] took the view that a line would be drawn under the event and although the reprimand would remain in place nothing more would be done about the matter."

158. Notably, this account supported the Claimant's case regarding relationship breakdown, the fact the Claimant went into the meeting to discuss the disciplinary process and the fact this was not a meeting at which a great deal of business was conducted. It also evidenced, as did the Claimant's preparations for the meeting and Mr Jacobs' evidence, that the Claimant was not told, if this was indeed the case, that any line had been drawn under the email of 17 May 2019 before the 22 July 2019 meeting.

159. Keith Beekmeyer's evidence in cross examination about the business conducted on the 22 July 2022 and the reason why the meeting was adjourned was very different. He said:

> "We went through all the bits and pieces agreed everything, Alex agreed every - every point with the words agreed when asked by Brian Clark and the meeting then was adjourned because Alex said he has somewhere else to go and then he said, "I can't hang around anymore" and he left. So at his instruction we terminated the meeting and rescheduled."

He was taken to the Agenda and asked:

> "Q: … you are saying, happened exactly as this agenda in exactly the order this agenda sets out, yes?
>
> A: That's my recollection, right. Every single point was discussed. Brian conducted each point. There was back and forth from each director, discussing each point and- and - at the end of it concluded that we do agree, don't we agree and Alex agreed all the points."

And:

> "Q: When you got to the meeting itself on 22 July, when the disciplinary issue was raised by you and Andy, Alex was clear with you that he was not going to discuss that disciplinary issue at the meeting, wasn't he?
>
> A: No
>
> Q: He made it clear that if you wanted to pursue that, there would need to be a formal disciplinary meeting?
>
> A: No
>
> Q: The relevance in the 22 July board meeting of this so called disciplinary issue was it was said to have meant that the whole relationship had fallen apart?
>
> A: No."

160. He was shown the Defence at paragraph 11 and the reference to the agreement to salary reduction on 5 August 2019 and not 22 July 2019. He said:

> "… I believe that [the Claimant] agreed on the 22nd and all the other directors agreed to reduce their salaries and because he then wanted to leave to go to another meeting, at his request we then curtailed the meeting, started it again and I believe the first point was that we were ratifying what was discussed at the 22nd. So I take those two to be - at the 5th to be a continuation of the 22nd."

It was put to him:

> "Q: so when this defence was filed, is it fair to assume that your case was that the resolution reducing salaries had been passed on the 5 August meeting?
>
> A: We agreed to reduce all our salaries on the 22nd, we scheduled for the 5th, at which time it was resolved on the 5th we agreed to reduce all our salaries on the 22nd, we scheduled for the 5th, at which time it was resolved in the 5th."

161. When taken to his witness statement he said he did not see that it said something different. When it was put to him that he had falsely invented his account in the witness box because he thought it would improve the Defendant's case, he denied this. Just as, against the weight of all the contemporaneous evidence, Keith Beekmeyer consistently sought to downplay the tensions which existed between the Claimant and himself at all material times, he deliberately attempted to re-cast the meeting of 22 July 2019 as a meeting at which substantial business was conducted. That was notwithstanding his statement and the content of documents he had produced himself at the time. The apparent reason being to bolster the Defendant's case that a resolution would have been tabled and passed to reduce the directors' salaries on 22 July 2019 and the Claimant would have agreed to that

in the course of discussions about the Defendant's business and its budget.

162. In my judgment, the content of the documentary evidence in the run up to the meeting renders it implausible that the Claimant would suddenly have agreed to any reduction of his salary to £60,000. Instead, the tensions which obviously did exist and the circulation of the Claimant's notes on the agenda resulted in a serious discussion as to whether he would be prepared to leave the Defendant.

163. The Claimant said after the board meeting on 22 July 2019 he went straight to meet his friend and adviser Mr Jacobs at Liverpool Street. Mr Jacobs' unchallenged evidence is that following the board meeting on 22 July 2019 the Claimant told him that the other directors of the Defendant had made him an offer to leave the company and the meeting was then adjourned.

164. For the reasons that I have already set out, I do not accept the Defendant's case that he had a conversation with Ross Beekmeyer that day, or told him that he had agreed to reduce his salary.

165. After the 22 July 2019 meeting and before the meeting subsequently set for 5 August 2019, there is a run of contemporaneous correspondence between the parties, between the parties and their advisers, and between the parties' respective advisers. This was and is important correspondence: the subject matter was a negotiation for the Claimant to leave the Defendant on financial settlement terms. Discussions which were plainly of fundamental importance to the Claimant, to the Defendant, and to the Defendant's other directors.

166. That correspondence begins on 23 July 2019 at 14.50pm with an email from Andy Bye to the Claimant, copied to Keith Beekmeyer and Brian Clarke, "Without Prejudice Informal Outline Proposal NPC":

> "Hi Alex,
>
> Further to our discussion yesterday, please find attached outline the key points of the proposal covered during the informal discussion to find a resolution.
>
> Please can you let Keith and myself know your thoughts how to progress."

167. It is notable that Mr Bye referred to the discussion the day before in terms of attempting to find a "resolution" and that this was by way of the Claimant leaving the Defendant. The content of Mr Bye's email accords with the Claimant's and Mr Jacob's evidence he had been made an offer on 22 July 2019 to leave the Defendant.

168. When asked about the content of this email, copied to him at the time, Keith Beekmeyer said in cross examination that he did not know Andy Bye had sent the Claimant an informal proposal on behalf of the Defendant about his potential exit. He only became aware of it in court the day before and did not know about it at the time. He said he was not aware of any discussion between Andy Bye and the Claimant about this. In answer to the following questions, he replied as follows:

"Q: At the board meeting Mr Bye made a proposal to Alex that he should leave the business, correct?

A: No

Q: Well first let me just put the case and then we'll have a look at the document. What I'm putting to you is this, Andy by made a proposal to Alex that he leaves the business and Alex said that he needed to think about it and consider his position, so that's what I'm suggesting happened at the meeting. Do you agree?

A: No

Q: … it's completely wrong if you say this an informal proposal was not made to Alex at the meeting …

A: No

Q: Has Andy just forgotten what happened 24 hours ago? What's your explanation for how Andy by has completely forgotten or misunderstood what happened the previous day during the meeting? What's your explanation for this e-mail exchange?

A: I don't have one

Q: … I'm showing you an e-mail that sent today after a board meeting where one of the attendees at the meeting is clearly talking about an informal proposal that was made at the meeting. You were at the meeting

A: It doesn't say that

Q: It doesn't say that, but you were

A: No, it doesn't say that. So that's inaccurate.

Q: All right. It's accurate to say that you were at the meeting?

A: Correct

Q: You were copied on the email the next day?

A: Correct

Q: Do you have any sensible explanation for how Mr Bye could have misstated what happened at the meeting itself?

A: I believe Mr Bye and Alex Woolgar spoke after the meeting, prior to him leaving. What they discussed; I wasn't party to

Q: Did Mr Bye talk to you about what he had proposed afterwards?

> A: No. I just said that earlier.
>
> Q: It didn't surprise anyone that one of the other executive directors of your company would make a proposal to Alex Woolgar to leave without having discussed it with you in advance?
>
> A: All directors speak to each other. It doesn't matter if it's without collaborating prior to those conversations. So from my point of view, you're asking me [inaudible] I said no …I wasn't at that meeting.
>
> Q: … you found out for the first time, being told in this e-mail
>
> A: Correct
>
> Q: That your co-director has made an informal proposal to Alex to leave the company?
>
> A: Correct
>
> …
>
> Q: Talk me through how that conversation went between you and Andy when you found out?
>
> A: I didn't have a conversation with Andy on this particular matter."

169. Keith Beekmeyer's evidence about these matters was no more than on the hoof invention. Most probably, it seemed, to draw attention from the inherently improbable state of affairs he promoted whereby the Claimant formally agreed to reduce his salary at a board meeting where he had prepared to fight disciplinary proceedings and had instead received an offer to leave the Defendant. Also, perhaps, in an attempt to provide himself with a justification for there being no disclosed emails between himself and Andy Bye after this meeting discussing what the terms of any proposal might be regarding salary or the Claimant's reaction. His own board minutes for the meeting on 22 July 2019 (drawn up about a week afterwards), record he well knew the Claimant was made an offer during the board meeting.

170. The email correspondence of 24 July 2019 is wholly consistent with the Claimant's evidence that Keith Beekmeyer was an active party to the offer made to him on 22 July 2019 for him to leave the Defendant and the discussions that followed about it. At 12.13pm that day the Claimant emailed Andy Bye, copying in Keith Beekmeyer, Brian Clarke and Mr Jacobs:

> "Dear Keith and Andy,
>
> Please see attached".

Andy Bye replied at 14.54pm:

> "Hi Alex,
>
> Thanks for response.
>
> The contents of the attachment noted, and your suggestion that you wish to utilise an advisor for your peace of mind. However, I had suggested Laurence Jones act as facilitator between us all, for know (sic) reason as he has acted for us before secure resolutions. I believe he could do so again but acting to ensure a fair and amicable outcome is obtained between us.
>
> By all means if you want to refer to your friend for opinion on whether a specific point arising is reasonable or not- then that's your call.
>
> Failing that and you want to fund a formal representative, [the Defendant] will instruct Lawrence Jones to act and liaise with your formal representative to agree the devil in the detail.
>
> Please let me know."

The Claimant responded at 16.15pm, copying in Keith Beekmeyer and Brian Clarke:

> "Andy,
>
> Many thanks. I'm not looking to appoint a formal legal advisor at this stage - Jonny [Jacobs] is an old and trusted friend who I know will be constructive and focused on ensuring all parties reach a settlement they're happy with.
>
> Suggest we get Jonny and Lawrence together to work out the details.
>
> Let me know if that works and, if so, I will pass on Lawrence's contact details to Jonny."

At 16.34pm Andy Bye contacted Lawrence Jones:

> "Please the thread below. Following breakdown in relationship and desire to follow other goals.
>
> We have in good faith made Alex a suggested exit but in a way where there are favourable takeaways aligned to his goals.
>
> Would you be able to assist [the Defendant] reach a fair and reasonable conclusion to matters with Alex?
>
> I will send the summary information shared by separate e-mail."

Mr Jones replied to Andy Bye at 18.15pm, copying in Keith Beekmeyer:

> "This is a start.

> It appears to be most generous".

171. The following day, at 05.46am Lawrence Jones emailed Andy Bye, Keith Beekmeyer and the Claimant that he would be pleased to assist with their settlement agreement with a view to reaching their objective in an efficient manner. He said:

> "I know Alex shall engage Mr Jonathan Jacob to act for him which is of course perfectly acceptable to me however in the first instance I suggest although do not insist that I first speak with Alex. I believe I have a very good relationship with him and believe it will assist me in quickly reaching a complete understanding after having spoke with Andy and reaching the objective efficiently.
>
> I do not seek to circumvent JJ's appointment but seek overall clarity"

172. On 29 July 2019 Mr Jacobs and Lawrence Jones met to discuss terms. It is reasonable to expect that Lawrence Jones would have taken instructions before attending this meeting. I accept Mr Jacobs' unchallenged evidence that he explained that any agreement between the Claimant and the Defendant for the Claimant to leave the company should include the (i) contractual amounts and (ii) the value of the Claimant's shareholding. He said, and I accept, no discussion took place about any agreement by the Claimant to salary reduction during the board meeting on 22 July 2019 and, had there been any such agreement at the board meeting on 22 July, Mr Jacobs would have expected this to have featured in their discussion.

173. The settlement calculation prepared by Mr Jacobs with the Claimant and sent to the Defendant was a straight line calculation of the Claimant's pro rata contractual entitlement under the Service Contract, plus the value of his shareholding based on the Defendant's cash assets. The value used for the Claimant's salary was £250,000.

174. Mr Jacobs sent two emails to Lawrence Jones on 29 June 2019 after their meeting. The first at 12.10pm was entitled "Back of the envelope settlement numbers calculation". The second was at 13.46pm and entitled "Alex Woolgar Settlement and Exit – Framework Terms". The first email read:

> "Lawrence,
>
> As discussed, this is where I would start with the numbers:
>
> employment contract numbers- as set out in the term sheet, this comes to just under **GBP £1,562,500m**.
>
> 42.5% (Alex's shareholding) of bank balances and other cash assets:
>
> E.g. Bank Kramer has a balance of GBP £5.9m, so this would be GBP **£2,507,500.**
>
> E.g. IG Trading Account has a balance of GBP £3m – of this, the first GBP £500,000 was what was put in by [the Defendant] (of

which 42.5% or GBP £212,500 would be allocated to Alex) and 50% of the profit has to be shared with the trader. Therefore, the amount to Alex is (42.5%⁎ ((GBP £3m-£500k)/2)) + GBP £212,500 or **GBP £743,750**.

⁎ 42.5% of the Acasta Insurance fees when they are received; we believe this to be a fee of GBP £5,000,000, in which case Alex's share would be **GBP £2,125,000**.

To summarise then, on the basis of these numbers- and assuming there are no other accounts or transactions which have not been disclosed - **this would be a settlement of just under GBP 5m now, and then a further circa GBP £2m as and when the Acasta fees are collected.**"

The second email read:

"Many thanks once again for your time this morning - I thought it was most constructive.

I have attached as promised the draft term sheet, Alex's service agreement and the most recent management accounts for reference.

To sum up:

- It seems that, subjects completing the Bramdean acquisition itself (see below), it would better suit parties if there was a clean break

- On that basis, the first port of call our settlement value will be (1) the contractual employment amounts and (2) Alex's 42.5% of the value of the business. Rather than have to go through lengthy valuations and unwinding of assets, etc, Alex is prepared to take a view of this linked to the cash in hand (bank accounts and IG trading account) and the Acasta fees when they arrive

- Alex and Nicola are happy to complete the acquisition of Bramdean, with the accompanying FCA approval, provided the rest of the matters are agreed; Failing that, they would not complete the deal (Alex will just pursue it separately from [the Defendant]) and would write to the FCA to inform them of that decision and the reason for it.

I trust that is all in order. I would suggest that if the guys agree this in principle, then we should meet face to face in the next 24 to 48 hours to agree the numbers.

As discussed, I think this can all be done swiftly and without too much damage- I am desperately trying to avoid a situation where

> Alex is forced into a more lengthy process under points of bruising lawyer …
>
> Let me know what you think and how we can best proceed."

175. The Claimant's approach to the negotiations conducted by Mr Jacobs provides further cogent evidence that he had not agreed to any salary reduction on 22 July 2019 and that he considered that the Defendant did have funds and access to funds to pay salary at the £250,000 per annum level at this time.

176. In cross examination, Keith Beekmeyer agreed that he and Andy Bye saw the term sheet and the proposal sent to Lawrence Jones. It was put to him that the only way the Claimant's salary figure could be calculated was using the figure of £250,000. Rather than answering the question directly, he said:

> "what he thinks and what he doesn't think I can't attest to."

He agreed that 29 July 2019 was the first time he and Andy Bye appreciated that in order to pay the Claimant the severance package he was asking for they would have to pay a lot more than they thought they could pay.

177. The Defendant disclosed three letters dated 30 July 2019 which were addressed to Andy Bye, Keith Beekmeyer and the Claimant at their respective homes. The letters each state that the board of directors agreed "your salary" would be reduced to £60,000. The Defendant relies upon the content of this letter. The Claimant says he did not receive this letter at the time and first saw it on disclosure.

178. The metadata for the file "Board Meeting Letter – Andy" shows it was created on 30 July 2019 at 12.53.27. For "Board Meeting Letter – Keith", on 30 July 2019 at 12.53.51. For "Board Meeting Letter – Alex" on 30 July 2019 at 12.54.19. The letter to Andy Bye was signed by Keith Beekmeyer. The letter to Keith Beekmeyer by Andy Bye. The letter to the Claimant by Keith Beekmeyer and Andy Bye. Each letter has cc. Brian Clarke at the foot. The letters addressed to Keith Beekmeyer and Andy Bye were not counter-signed in the same way as their letter to the Claimant.

179. Somewhat strangely in circumstances where the letter to the Claimant was created last, all three of the letters were addressed to "Dear Alex". The typed content of the letters is identical:

> "RE: BOARD MEETING HELD AT 33 CREECHURCH LANE LONDON, EC3N 5EB @12 NOON HELD ON 22nd MONDAY 2019
>
> This is to confirm that the meeting held on the above mentioned date was suspended with a new date to be agreed by all directors to continue the Board Meeting.
>
> Before the meeting was suspended, the Board of Directors discussed the following:-
>
> (1) "Item 5.3, page 4. Employment and/or Service Agreement", Section 5 under heading "Pay"

> It was duly agreed by the Board of Directors that you salary would be reduced from £250,000 to £60,000 per year for the financial year 2019/ 2020 and that on the 1st March 2020, an individual performance review would be carried out by a director of [the Defendant] and its auditor to establish the performance of the director in question and whether an increase in salary is warranted and/ an agreed Bonus payable.
>
> The revised review date of your Employment and/or Service Agreement will now be the 1st May 2020.
>
> Whilst writing I would bring your attention to the fact the director expenses were dealt at (sic) our Board meeting dated 6 December 2018 in which it was agreed that all Directors Expenses in Excess of £100 should be signed off by two directors and should relate to current business and/or new business as declared.
>
> I trust that you find the contents to be in order."

180. The letter did not purport to record that the Claimant (or any other recipient), had agreed to a reduction in his salary in his capacity as employee. Nor did it invite the Claimant to countersign the letter and to return it to record his agreement to the reduction in his salary under the Service Contract in his capacity as employee. In these respects, the content is at odds with the Defendant's previous recognition of the legal difference between directorship and employment and, therefore, the Defendant's case that the Claimant had agreed to reduce his salary as employee.

181. The Defendant relied on a Post Office Ltd Certificate of Posting from Houndsditch Post Office dated 30 July 2019 at 13.33pm for a large letter, weight 0.083kg, "Signed for 1st", £2.26, for delivery to the Claimant's address. Mr Deacon submitted this proved that the "Dear Alex" letter of 30 July 2019 was posted to the Claimant on that date. The Certificate was timed within 39 minutes of the record of the computer creation of the three letters.

182. The Claimant said in his witness statement dated 20 December 2023 that he does not believe the letters to be genuine documents created on or about the date they bear. He did not receive a letter regarding a reduction in salary. He says the letter does not fit the factual sequence because no vote was taken on the proposed salary reduction at the meeting on 22 July 2019. The letter is not a fair reflection of what happened at the meeting because he did not agree to his salary being reduced and it does not refer to the offer of £180,000 made during the meeting for him to leave the Defendant.

183. No evidence was given by Abel Yeong that it was this letter dated 30 July 2019 that was placed in the envelope posted to the Claimant that day rather than other company correspondence. However, even if it that was the case, a Post Office Certificate of Posting is just that. It is not a certificate which establishes receipt. No recorded delivery signature for the receipt of the envelope by the Claimant, or at the Claimant's address, was produced.

184. On the basis of the evidence before me, including the lack of any contemporaneous reference to this letter in the negotiations between the parties taking place at this same time, I have no hesitation in accepting the Claimant's evidence that he did not receive this letter in the post on or around 1 August 2019 or in 2019.

185. The disclosure included an undated set of minutes drawn up by Keith Beekmeyer in respect of the board meeting on 22 July 2019. As identified already, the content contradicts much of Keith Beekmeyer's evidence in the witness box about what happened at this meeting and what followed. The minutes are likely to have come into existence on 30 June or 1 August 2019 because they contain a date for the re-fixed board meeting on 5 August 2019. They were later attached to the agenda for the re-scheduled board meeting on 5 August 2019 and are, of course, the primary evidence upon which the Defendant relied at trial to support its case that the Claimant agreed to reduce his salary.

186. They do not have the formal heading "Board Minutes" and do not have a reference number. They stated:

> "The Meeting Started at 12 noon on the 22nd July with a Directors attending.
>
> The following was resolved:-
>
> Brian Clarke accepted to act as chair and will do so at a Board meeting which is now rescheduled for the 5th August 2019 at 12 noon.
>
> Mr KD Beekmeyer requested that the following matters to be discussed before all other subject matters which was put the Board of Directors and duly agreed upon.
>
> i. Directors Contracts
>
> <u>Review and Agree Section 5 item 5.3 relating to the following Service Contracts:</u>
>
> a) Andy M Bye
>
> b) Alexander Woolgar
>
> c) Keith D Beekmeyer
>
> It was duly resolved by the Directors that the above contracts would all be amended as at 1st May 2019 that all Directors salary will be reduced from GPD 250,000 to GPD 60,000 per annum.
>
> It would also be resolved that the review date for salaries in the respective contracts of each Director would be 1st May 2020.
>
> It was resolved that each Director will be individually evaluated by one Director and the company's auditors on the 1st March 2020 regarding their individual performance which will be supported by a recommendation that their salary be restated or a

bonus relating to their performance during the financial year of 2019/ 2020.

ii. Discipline

a) Mr Alexander J Woolgar – see 8th Stone Buildings (to be handed out at the meetings)

Mr Alex Woolgar assumed that we were going to conduct a disciplinary hearing and he, (Alex Woolgar) wanted a third party be present to represent him along with a proper notice being adopted whilst serving notice to convene a disciplinary hearing.

Mr Beekmeyer informed him that this was not the case and the matter has already been dealt with by the Company's Lawyer with Mr Alex Woolgar unreservedly apologising for his malicious abusive language used against his Directors in his e-mail dated 17th Many 2019.

Mr Alex Woolgar asked whether the letter sent him by the Company's Lawyer would be withdrawn. Mr KD Beekmeyer confirmed the letter would not be withdrawn and the content still stands, together with the appropriate reprimand.

The next part of the meeting dealt with the issue concerning Alex Woolgar and whether the other Directors were able to continue working with Alex Woolgar considering his abusive e-mail and comments.

It was mutually agreed by all Directors that the meeting would be suspended, the date of the rescheduled the Board of Directors meeting will be given once Alex Woolgar has time to think about an informal proposal suggested A Bye, made in good faith; which would result in Alex Woolgar leaving the Company to follow his aspiration in the private equity sector as opposed to the Company's focus of a provider of indemnity & guarantees acting as principal. Alex Woolgar accepted on reflection, his aspiration was drawn to private equity and asset management.

The chairman closed the meeting at 2.50pm to be reschedule for a later date. (sic)"

187. Unlike the two earlier sets of board minutes the manner in which the Directors' resolution is recorded does not reflect the separate roles held by Keith Beekmeyer, Andy Bye and the Claimant as not only directors but also as employees. Nor does it record their individual agreement in relation to their own employment as had been the case previously in matters relating to their service contracts. In contrast to the more detailed description

included within the disciplinary section, no record was set out of the discussion regarding the proposed reduction of directors' salaries. The draft contains a number of spelling mistakes and typing errors.

188. It was put to the Claimant in cross examination that he saw these draft minutes shortly after the meeting on 22 July 2019. He said there was no agreement on salary reduction at the meeting on 22 July and he believed these minutes only came out for the second part of the board meeting on 5 August 2019. Keith Beekmeyer did not suggest he circulated his minutes for agreement or correction when first produced. They were not signed by any of the directors at this stage.

189. In an undated email probably sent on 30 July or 1 August 2019, Mr Jacobs wrote to Lawrence Jones "please feel free to share in full with Andy and Keith". The heading of the email is cut off, but the subsequent chain suggests it was entitled "Settlement Attempt prior to Commencing Litigation". Mr Jacobs wrote that he had further discussed matters with the Claimant. They considered Keith Beekmeyer and Andy Bye's "last minute" withdrawal of the offer to commence settlement dialogue and their response to the Claimant's framework document suggested they were not genuine in their desire to reach an amicable or swift settlement. He said it was important the parties were aware of where things stood and set out the Claimant's position under a series of numbered headings:

1. "Board Meeting", the Claimant had been advised not to attend the board meeting while "this ill-judged disciplinary matter if still outstanding". He would be:

   "forced to face the two other directors, who also happen to be the two accusers with regard to the alleged misconduct. It does not get more conflicted than that."

2. "Employment Position", it seemed increasingly clear the Claimant had been unfairly dismissed, indeed constructively dismissed as a result of Keith and Andy's conduct towards him.

3. "Contractual Claim":

   "Notwithstanding [the Claimant's claim for unfair dismissal, he is contractually owed back salary as stated in the draft settlement term sheet, which we do not believe is in dispute.

   There seems to be a clear misunderstanding on Andy and Keith's part here judging from your message last night - this has nothing to do with the valuation of the business (see below); **this is about what is contractually owed**. Put simply: [the Defendant] owes [the Claimant] more than GBP£1.5m in contractual pay - whatever else happens, that matter must be settled in full, and immediately."

4. "Valuation of Business", if settlement could not also be achieved in respect of the Claimant's 42.5% shareholding a forensic accountant would be instructed.

> 5. "Next Steps", a show of good faith was required and the commencement of discussions before Monday 5 August 2019. Failing that, the Claimant would instruct solicitors and pursue claims, including all matters relating to the contractual claim and back salary owed.

190. Mr Jacobs' email plainly proceeded on the basis that there was no dispute as to the Claimant's salary. The Defendant owed the Claimant his contractual pay as set out in the term sheet at the rate of £250,000 per annum. There was no reference to the Claimant's salary having been reduced by agreement to £60,000 per annum at the meeting on 22 July 2019 or that any such reduction was backdated to 1 May 2019.

191. On 1 August 2019 Keith Beekmeyer asked Abel Yeong to write to Andy Bye, himself, Brian Clarke and the Claimant at their respective home addresses. The letters were in the following identical terms:

> "RE: Board Meeting Held at 33 Creechurch Lane London, EC3N 5EB @12 NOON Held on 22nd July 2019 Rescheduled date 5th August 2019 Notification
>
> I am writing to confirm that the meeting held on the above mentioned date was adjourned Alex's (sic) request due to prior commitments and the new confirmed date has been rescheduled for 5th August 2019 as agreed by all Directors.
>
> I trust that you find this to be in order."

192. The reason recorded for the adjournment was incorrect. Although the letter said the date had been agreed by "all directors" it seems improbable the Claimant had joined in this agreement. The email which Lawrence Jones sent on the Defendant's instructions at 9.01pm the same day said the Claimant had been invited to attend the rescheduled board meeting and suggests that he had not agreed to do so.

193. In his email at 9.01pm, Lawerence Jones replied to Mr Jacobs. He expressly said he had taken instructions on Mr Jacobs' without prejudice offer and responded accordingly. He wrote that Mr Jacobs' approach to him had been in the context of the Claimant's resignation and he had presented a term sheet setting out the Claimant's terms for the settlement of his beneficial interest in the Defendant on this basis. He said the terms set out in the term sheet were unrealistic and failed to reflect any sensible and realistic valuation of the Defendant. Informal discussions had led to the adjournment of the board meeting for the Claimant to consider his commitment to the business. The Board Meeting was extant and the Board of Directors had outstanding matters to consider. The Claimant was a director, had been invited and was expected to attend. If he declined to do so that would be a matter for him, but the meeting would go ahead as it would be quorate. He said there was no reference to or intention expressed at the board meeting to discuss the disciplinary matter.

194. The email continued:

> "You will be aware that at the first part of the BM resolution was passed unanimously to reduce the directors salary and for such

> to be backdated with effective from 1 May 2019. [The Claimant] did not demur from this resolution but supported it.
>
> As far as Bramdean is concerned an agreement is in place for [the Defendant] to acquire 60% of its shares and [the Defendant has] every intention of proceeding accordingly.
>
> It is hoped and expected that [the Claimant] will attend the BM.
>
> There are many suggestions and allegations you make which are not accepted and my non replied to such points is not to be construed as accepting the said suggestions or allegations (sic).
>
> Finally is it the case, as you imply, that [the Claimant] has resigned? If so please ask him to do so formally."

195. I accept Mr Jacobs' evidence that this was the first occasion on which any agreed salary reduction had been mentioned to him by Lawrence Jones. I also accept Mr Jacobs' evidence that he believes the Defendant brought the salary reduction issue up only after he had emailed Lawrence Jones his summary of what they had discussed straight after their meeting and the Claimant's calculations for a prospective settlement recording his salary at £250,000 per annum. Based on the Claimants' and Mr Jacobs' evidence, it was incorrect for Lawrence Jones to assert that the term sheet provided had dealt only with the Claimant's shareholding.

196. The Claimant said both he and Mr Jacobs understood that Keith Beekmeyer and Andy Bye were being untruthful about the salary reduction issue and claiming there had been a vote when there had not been. Mr Jacobs forwarded the email to the Claimant at 9.40pm:

> "See below, looks like war old boy. Let's sleep on it and discuss tomorrow morning.
>
> There seem to be some porkies in there, by the way ...
>
> - The reference to my conversations or term sheet as implying "resignation" or that you had "never been" dismissed; pretty laughable considering what was said to you at the board meeting ("I'll never get over that email") or what Andy says in his proposal "the relationship has broken down and is viewed as unrepairable from within [the Defendant] and its related activities and interests". Would seem difficult to argue that you have not being dismissed and that they just meant your shares. You've never resigned - that's been crystal clear since the start. Over reach.
>
> - They seem to be claiming that you actually voted to reduce your salary at the recent meeting (WTF?) - seems that they're telling Lawrence untruths about the meeting mate
>
> - They also claim that the issue of your disciplinary was never

> even mentioned (when we know they tried to talk to you about it and you rightly declined)
>
> Response must a robust and to the point (especially regarding the in accuracies). Basically, they've now said "denial of claim, denial of claim, denial of claim".

197. I consider this to be valuable evidence that the Claimant has always been consistent that he did not agree to reduce his salary at the meeting on 22 July 2019. Mr Jacobs reply to Lawrence Jones was sent on 2 August at 11.03am:

> "The position being taken by Keith and Andy is disappointing, not least because of clear factual inaccuracies. Having discussed the matter with Alex this morning, answers as set out in blue in your e-mail below.
>
> The offer to meet prior to Monday morning still stands."

198. Mr Jacobs' answers in blue appear on a paragraph by paragraph basis beneath the original text of Lawrence Jones' email. In every case the Claimant's / his disagreement was recorded. In several cases with the words "This is inaccurate as a matter of fact" followed by a reason. Mr Jacobs informed Lawrence Jones the term sheet "**expressly**" set out the terms for resolution of the Claimant's "contractual owings" and employment claim. He said Keith Beekmeyer and Andy Bye had pressed the Claimant to discuss the disciplinary matter several times, which he had declined to do outside an appropriate disciplinary meeting. In terms of the contention the Claimant had supported a resolution to reduce the directors' salary, he wrote:

> "This is categorically denied; indeed [the Claimant's] position is that he expressly refused to support such a resolution. Further, and given the outstanding employment and contractual claims, this looks like a fairly clumsy attempt to change [the Claimant's] employment terms to reduce the [Defendant's] obligation to him on termination."

199. As regards a re-scheduled board meeting on 5 August 2019, Mr Jacobs added:

> "Given the comments, inaccuracies and outstanding disciplinary matter, it is not believed [the Claimant] would be treated fairly – there is understandably some nervousness concerning AB/KB intimidatory tactics."

200. The agenda Keith Beekmeyer prepared for the Defendant's board meeting at noon on 5 August 2019 almost entirely replicated the agenda for the 22 July 2019 meeting. The exceptions were the matters of the Directors' Contracts and Discipline which had been removed. Keith Beekmeyer's draft minutes of the meeting on 22 July 2019 were attached to the agenda.

201. Mr Jacobs emailed the Claimant on 4 August 2019 at 11.02pm "For discussion tomorrow – Notes on Keith's Board Minutes":

> "See attached - these Keith notes etc were written before he suddenly flew into Friday's Bramdean related panic, but I just don't trust these guys at all. I think there is every chance they're trying to screw you out of it, and Keith is just desperate to get the Bramdean thing over the line before everything kicks off.
>
> I hope I'm wrong, but I want to be prepared so I've made some notes on the attached - let's discuss in the morning.
>
> Important to go in there tomorrow and control the tone and discussion."

202. Mr Jacobs had annotated the agenda to draw attention to a number of matters where he felt the Defendant's corporate governance fell short. In respect of the draft minutes of the meeting of 22 July 2019 and "Directors Contracts" he commented beneath Keith Beekmeyer's text as follows (underscored text):

> "It was duly resolved by the Directors that the above contracts would all be amended as at 1st May 2019 that all Directors salary will be reduced from GBP 250,000 to GBP 60,000 per annum
>
> Commented [JJ7]: As you have said, this is categorically untrue.
>
> It was resolved that each Director will be individually evaluated by one director and the company's auditors on the 1st March 2020 regarding their individual performance which will be supported by a recommendation that their salary be restated or a bonus relating to their performance during the financial year 2019/2020."
>
> Commented [JJ8]: I don't believe you agreed this either. This sounds like one other director + the auditor can stitch any individual director up. What has the company's auditor got to say about a director's business performance?"

203. Mr Jacobs' first comment recorded the Claimant's contemporaneous response to him that it was categorically untrue that he had agreed to reduce his salary on 22 July 2019. The second suggests it was only when this agenda was provided to him that Mr Jacobs first became aware that it was asserted the Claimant had agreed to a new salary review process the following March. Again, this is important and cogent evidence which supports the Claimant's case.

204. If the Claimant had indeed received the letter of 30 July 2019, I consider Mr Jacobs would have been made aware of this point already as the Claimant's adviser and negotiator. I would also have expected Mr Jacobs to have referred to the content of that letter in his exchanges with Lawrence Jones on 1 or 2 August 2019 if the Claimant had received it.

205. Furthermore, if the Claimant's negotiations during this period had simply been based upon a salary of £250,000, rather than £60,000, as a negotiating tactic, there would have been no reason for him not to have disclosed that state of affairs to Mr Jacobs. There would also have been no reason for Mr Jacobs to describe Keith Beekmeyer's record of

the resolution in the minutes as "categorically untrue" to the Claimant in their own private correspondence. No private correspondence between Keith Beekmeyer and Andy Bye was disclosed by the Defendant, of course.

206. The comments Mr Jacobs made against the section of the draft minutes headed "Discipline" reflect the account he must have been provided with by the Claimant after the 22 July 2019 meeting:

> "The next part of the meeting dealt with the issue concerning Alex Woolgar and whether the other Directors were able to continue working with Alex Woolgar considering his abusive e-mail and comments.
>
> Commented [JJ9]: No, during this section of the meeting they told you they wanted you to leave. Did they honestly think that you were going to do so without complaint or reference to either the money you are owed or the value of your shares?
>
> It was mutually agreed by all Directors that the meeting would be suspended, the date of the rescheduled the Board of Directors meeting will be given once Alex Woolgar has time to think about an informal proposal suggested A Bye, made in good faith; which would result in Alex Woolgar leaving the Company to follow his aspiration in the private equity sector as opposed to the Company's focus of a provider of indemnity & guarantees acting as principal. Alex Woolgar accepted on reflection, his aspiration was drawn to private equity and asset management.
>
> Commented [JJ10]: See note above. They told you they wanted you to leave. In Andy Bye's proposal it says – in writing – "the relationship is beyond repair".
>
> Commented [JJ11]: hilarious. This looks like an attempt to – literally - give evidance (ie in the writers view you "admitted" it, as if it was some big secret).
>
> The [Defendant's] strategy was to build an asset management business alongside the credit and indemnity business. That changed when KB and AB changed it.
>
> Put another way: [the Claimant] has never hidden his ambition to build an asset management business. Before it was to be as a group, but it seems KB and AB have changed their minds - and well before the infamous disciplinary matter."

5 August 2019

207. On 5 August 2019, the board meeting was attended by Brian Clarke, the Claimant, Andy Bye and Keith Beekmeyer. They were joined by Abel Yeong as "reporter". Again, there was a stark contrast between the evidence given by the Claimant and Keith Beekmeyer as to how the meeting proceeded, and what the Claimant did or did not agree. When

minutes of the meeting were subsequently drawn up by Keith Beekmeyer and Abel Yeong, the Claimant refused to sign them.

208. The Claimant said matters continued from where they were left off at the 22 July meeting. Keith Beekmeyer and Andy Bye repeated their original offer and he repeated his own offer. That was rejected straightaway. The meeting then turned to the salary reduction issue.

209. As the Reply and Amended Reply demonstrate, the Claimant has always accepted that there was a resolution on the reduction of salary passed at this meeting, but that he did not agree to it. He said in his witness statement:

> "I saw no point in spending much time on that. I simply said "no" and subsequently, when asked, I refused to sign off the board minutes."

210. In line with this evidence, the replies the Claimant gave in cross examination were as follows:

> "it was voted by Andy Bye, and Keith, that the salaries would be reduced. Again I didn't agree, which is subsequently why I didn't sign off on the board minutes and why my signature is not on these board minutes.
>
> Q. If it had been resolved, why didn't you sign the board minutes?
>
> A. Because I did not agree.
>
> Q. Did you say, "Look these board minutes need to be amended?" You are a director, aren't you? This is a record, this document is a record of the company's deliberations, of which you are a director and you have duties to ensure that the company's records are accurate.
>
> A. In a minority position, which is what I was. And therefore my two fellow directors voted through that it would be reduced. I didn't agree but didn't really have a leg to stand on at that point. It was going to be voted through. They voted it through. They were the majority shareholders. But as you can see, if I was in agreement with everything within this, then I wouldn't have had a hesitation in signing off the board minutes, which I didn't do. Hence why my signature is not on these board minutes.
>
> …
>
> Q. When the salary reductions were discussed, what did you actually say in the board meeting?
>
> A That I didn't agree with the reduction. Only for my two other directors to say that is what is going to happen. They voted in favour of it and they drove it through.

> …
>
> A I simply stated that I didn't agree with the salaries being reduced."

211. Keith Beekmeyer's evidence about this meeting was:

> "we re-tabled those matters which had been discussed in the adjourned 22 July 2022 meeting and again confirming that there had been an agreed reduction in the salaries from £250,000 to £60,000."

He said the Claimant again expressed his displeasure but nevertheless agreed to it. Keith Beekmeyer said, "without fail or any misunderstanding agreed". The Claimant understood and agreed the Defendant could not continue to pay a salary it could not properly afford. Instead he looked to the time when there would be another review of directors' salaries on 1 May 2020 where consideration would be given to performance. Following his "abusive" email, the Claimant was accepting the reduced salary because it was a salary all directors would receive with no disparity.

212. There is no corroboration to be found for this view in the correspondence at the time. It seemingly makes little sense. If each of the directors and the Claimant had agreed to the reduction of their salaries to £60,000 per annum on 22 July 2019 as Keith Beekmeyer said, there is no apparent reason why a resolution passed was "re-tabled" in identical form within a fortnight. No explanation was tendered by Keith Beekmeyer as to why this was considered to be necessary if the formal vote to reduce directors' salaries had been agreed by all on 22 July 2019. In cross examination he gave the following answers to these questions:

> "Q. … going into the 5 August 2019 meeting, [the Claimant's] position was that he had not agreed on 22 July to the reduction of his salary, correct?
>
> No
>
> … I can't say to you what he felt his position was. He agreed the salary reduction on the 22nd.
>
> Q. But you will have seen at the time from documents that Mr Jones forwarded on to you that [the Claimant's] position was that he hadn't agreed that and you knew that at the time before 5 August?
>
> A. No, I haven't seen any document to say that [the Claimant] disagreed with it. The documents you speak of are a negotiation on settlement that – a discussion that Andy had with [the Claimant].
>
> Q. … I'm going to suggest to you that your case is that at the meeting [the Claimant] essentially did a complete U turn from everything he had been saying before the meeting and just

> meekly agreed that "Yes, at 22 July I agreed to slash my salary". That's your case. I'm going to suggest to you it's just nonsense.
>
> A. That's your opinion."

213. On the assumption that the relationship between the Claimant and the other directors had become strained (which he did not accept it had), Keith Beekmeyer did, however, agree that the Claimant would not have considered the prospect of a salary review the following May provided him much re-assurance in agreeing to a reduction in his salary to £60,000 on 5 August 2019. It is inherently probable that this was indeed the Claimant's position.

214. In my judgment, the Claimant's evidence about the meetings on 22 July 2019 and 5 August 2019 was credible and makes sense within the matrix of the contemporaneous correspondence. Given the acrimony that plainly existed up to the very morning of the meeting on 5 August 2019; the fact the contentious issue of salary reduction on 22 July 2019 had already been identified in the run up to the meeting and firmly rejected on the Claimant's side; the content of the Claimant's discussions with Mr Jacobs as reflected in his communications; Mr Jacobs' advice to the Claimant in preparation for the meeting as reflected in his notes and email; and the fact that no settlement had yet been reached and litigation was actively contemplated, the Claimant's evidence accords with the inherent probabilities.

215. For the reasons I have set out already, the conversation Ross Beekmeyer roughly recalled took place following this meeting. The Defendant's frustration that a vote was pushed through by the other directors against his own wishes is entirely consistent with the anger and upset described.

216. The minutes of the meeting of 5 August 2019 were not produced until 20 August 2019. The metadata produced by the Defendant times their creation at 17.53.14pm. However, this does not accord with the fact Abel Yeong sent an email to Andy Bye and the Claimant on 20 August at 12.25pm saying that he attached the minutes and requesting that they sign them.

217. The minutes were again presented less formally than in 2018. They are not headed board minutes and they do not include a reference number. Whilst relatively brief, they do, however, include a degree of commentary as to the discussion that took place that day between 12.35pm and 3pm. By way of example:

> "Financials
>
> a) Financial 2018/2019
>
>   The financial model for 2018/2019 have not been presented to the Directors which Has been accepted by the Directors.
>
>   It is noted and agreed that … is being paid £1.2k monthly towards Newpoint Capital and it has been agreed by all Directors.
>
>   All directors agreed to proposal above."

218. The minutes evidence activity was taking place and expansion planned across the

Newpoint Group. Including the intention for Newpoint Financial Corp to issue shares to generate capital of USD 1,500,000 with 51% allocated to the Defendant; the approval to Keith Beekmeyer's proposal that the Defendant purchase a property in Connecticut for USD 700,000; confirmation that a new bank account had been opened for Newpoint Reinsurance and its capital was to be increased from USD75k to USD 1,000,000 as at 30 September 2019 and then to USD 2,000,000 later on; an agreement on staff pay packages for NPFC; agreement that Newpoint Financial was to buy a new property for Newport Reinsurance for USD 1,000,000; agreement to the appointment of a new COO for Newpoint Financial Corp; the agreement that the Defendant was to proceed with the acquisition of Bramdean; the agreement the Defendant would increase its ownership of Iroko Securities Ltd from 49% to full ownership; and agreement that the Defendant would increase its shareholdings in Tobell Insurance Services and Visionary Insurance Company.

219. The planned programme does not demonstrate that the Defendant was in financial difficulty such that it could not afford to continue to carry the directors' salaries at the £250,000 per annum level, if it so chose. Particularly when those salaries were not being paid and were accruing due. Regardless of whether or not Keith Beekmeyer and Andy Bye had such financial concerns, the contemporaneous evidence points away from the Claimant sharing that view.

220. The words "All directors agreed to proposal above" appear under all but one agenda item. The exception being "Litigations" where the words used were "All directors confirmed that there are no other claims at present".

221. The minutes do not formally include any reference to the fact that the minutes of the previous meeting on 22 July 2019 were tabled for approval. They also do not contain any account of the discussion of those minutes or any amendment to them or record the formal approval of them by all directors at the meeting. They do, however, annex the first page only of the minutes for the meeting on 22 July 2019 prepared by Keith Beekmeyer (and attached to the agenda for this meeting). Each page of the minutes (including the annexed page) was initialled by Keith Beekmeyer, dated 20/8/19; by Andy Bye, dated 23/8/19, and by Brian Clarke, dated 19/8/19. Mr Clarke's repeated 19/8/19 date attribution appears odd if the metadata is correct that the minutes were created on 20 September 2019.

222. As regards the annexed page from Keith Beekmeyer's minutes of the meeting of 22 July 2019, the text of the "Discipline" section was struck through in blue ink and annotated "TO BE TAKEN OUT". It is reasonable to assume that either Keith Beekmeyer or Andy Bye must have done this because they were the only directors to initial in blue ink. There is no evidence whether this amendment was made before or after the minutes were initialled by Brian Clarke and / or either Keith Beekmeyer or Andy Bye. The original second page of the minutes recording the offer made to the Claimant at the 22 July 2022 board meeting was not attached and, therefore, not initialled. As a result, the only minutes of the 22 July 2022 board meeting initialled and signed by each of Keith Beekmeyer, Andy Bye and Brian Clarke relate to the directors' resolution that salaries would be reduced to £60,000 and there would be a new salary review system by one director and the company's auditors.

223. Notwithstanding the issue as to whether this minute was or was not accurate, these minutes were evidently not an accurate record of the discussion of discipline on 22 July 2019 and the fact an offer was made. Subsequently, the same three individuals signed

minutes of a board meeting on 25 August 2020 which again included the minutes for the 22 July 2019, but which, when circulated for signature on that occasion, reinstated the text that had been struck through here and included the making of the offer.

224. When Abel Yeong sent the board minutes of the 5 August 2019 meeting to the Claimant and Mr Bye on 20 August 2019 he informed them they had been signed by Brian Clarke and Keith Beekmeyer. He asked them to sign and send back for filing purposes. The Claimant was on holiday and replied on 20 August 2019 that he would "review and revert". On 22 August 2019 at 16.01pm Abel Yeong chased for a response. The Claimant replied he had not reviewed and he would comment on his return.

225. In contrast to the Claimant's demonstrable practice when the May 2018 board minutes, Service Contract and Bramdean Agreement were presented to him to be approved and initialled, the Claimant did not initial the board minutes for the 5 August 2019 meeting attaching the 22 July 2019 minutes. The Claimant was forthright in his evidence that he did not do so because he did not approve these minutes as accurate. That was because he had not voted to reduce his salary.

226. There is no logical reason why the Claimant would have refused to sign these minutes in September 2019 if he had acknowledged that he did agree to reduce his salary on 22 July 2019 or if he agreed to do so at the meeting on 5 August 2019. The Claimant summarised his position on the issue in cross examination:

> "I think that my fellow directors, since the e-mail that I sent, had basically tried to utilise the salary reduction tactic to squeeze me out of [the Defendant] and, at times, I hoped that ultimately we would be able to move past it and that success would occur for all parties. But had I agreed to have my salary reduced, then I would have had no issue with signing off the board minutes, which I didn't sign off.
>
> So in actual fact whilst I fully respect and recognise in the beginning of [the Defendant], in the very early days, no, it didn't have any capital because we had to put the money into the company to get it up and running, and I fully accept that there was a payment made to me at a given point in time - I think it was 2018, December 2018 - which was positioned at the time as "here's a bonus", because we had actually had, I would suggest, a relatively good end to the year. From there I think it would be fair to say that tempers frayed over a number of things, resulting in me sending an e-mail which in hindsight I wish I had written slightly better, but the underlying points in my e-mail I still stand by, but I think that subsequently led to an approach by my fellow director, Keith, and Andy, now to drive, ultimately, me out of the business. And the easiest way to do that would be to try to reduce salaries - salaries which had not been being paid - and therefore, yes, the salary reduction point was raised on a number of occasions. Did I agree to it? No. Did they drive it through? Yes. Did I agree, no. Did I sign off the board minutes? No. And that was fundamentally the end. So I didn't agree. Otherwise, had I agreed, then I would have signed off the board minutes. Keith

> even came to me in person at Bramdean's offices to get me to sign off, physically holding the board minutes to get me to sign off the board minutes, and I refused to sign off the board minutes in his office."

227. It was put to Keith Beekmeyer that he had deliberately instructed the creation of a false set of minutes for the 5 August 2019 meeting. He denied this was the case. He agreed that he had visited the Claimant in his office to persuade him to sign the minutes and that he refused to do so. It was therefore well known to him that the Claimant would not accept their accuracy.

Events after the July and August 2019 board meetings

228. In late September 2019 various meetings took place between Keith Beekmeyer and the Claimant. As the Claimant put it, the situation slightly calmed down. They brokered an agreement whereby Keith Beekmeyer would take on the role of CEO of the Defendant and the Claimant would become the CEO of Bramdean. This was recorded in an email of 27 September 2019 from Keith Beekmeyer to the Claimant copied to Andy Bye. The Claimant described this as a way of keeping the peace and maintaining some distance.

229. In line with much of his approach to the questions in cross examination, when asked a straightforward and relatively inconsequential question about this Keith Beekmeyer immediately rejected Mr Mott's objective summary of the arrangements which were made at this stage. When taken to the facts which had been drawn from an email he had written himself at the time, he was then prepared to accept that summary.

230. No review of any director's salary took place during the March to May 2020 period using the new machinery that the Defendant contends had been put in place. In the Claimant's submission there would obviously have been a review arranged if there had been any agreement to implement a new process. Keith Beekmeyer said this did not happen because no one could meet because of the Covid-19 Pandemic. No contemporaneous correspondence was disclosed by the Defendant regarding any proposals for salary review.

231. It is common ground that the relationship between the Claimant and Keith Beekmeyer and Andy Bye deteriorated again in 2020. The Claimant said by July 2020 the relationship between himself and Keith Beekmeyer had broken down irretrievably and they resumed exit discussions. They met on 10 July 2020. The Claimant's evidence was that he listened to Keith Beekmeyer tabling an offer for him to go:

> "I obviously knew by that stage I was going to go. He tabled me his offer. I listened to it.
>
> So the point is here that I – you know, I went to a meeting; yes, I did. I listened to what he had to say; yes, I did. I didn't agree with him, but this was not a meeting where it was "Do you agree?", it was, no, he tabled me a number of points, and I neither agreed nor disagreed with him, I simply took away the information that he had tabled to me and subsequently a settlement agreement was drafted by lawyers which was then delivered to [the Defendant]."

232. At 12.10pm that day Keith Beekmeyer sent the Claimant an email, copied to Andy Bye, headed "Re: NPC and NPRE – Resignation". The content included (amongst other terms):

> "I will not go into the discussions we had and the issues we face (we know what they are) but the exit strategy that we have agreed.
>
> 1. That you will resign from Newpoint Capital Limited & Newpoint Re as at 1st July 2020
>
> 2. The overall costs that you are owed by NPFC is as GBP 560,000
>
> 3. Rent Deposit GBP 17,500 owed to [the Claimant] ….
>
> Please can you send me back an email accepting these conditions.
>
> Thank you for your support & underrstanding (sic)."

233. On 16 July 2020 Keith Beekmeyer generated a series of emails about a board meeting he was arranging. There was little subtlety in his basic message that if the Claimant did not resign his employment would be terminated. He initially emailed the Claimant and Charlotte Green, copied to Andy Bye and Brian Clarke: "Board Meeting & Agenda", 4 August 2020 at 10am, He asked the Claimant to send any issues he wanted to raise by 20 July 2020, adding:

> "Unfortunately we have not been able to agreed your settlement agreement, this will now formally be subject to the directors meeting.
>
> Please note that the meeting will carry on it a quorum of three directors are available (sic)
>
> I would be grateful if you could confirm to Charlotte your acceptance to the conditions of this email."

234. At 10.15am, Charlotte Green emailed Keith Beekmeyer, Brian Clarke, Andy Bye and the Claimant: high importance, "RE: Board Meeting – Tuesday 20th August 2pm":

> "… We are currently putting the agenda together, please see below:
>
> 1. Agreement to previous minutes, 1st August 2019
>
> 2. Financials
>
>   a. The accounts for 2019 to be agreed
>
> 3. Banking

4. Acquisitions

5. Legals

6. NPFC

    a. Director Resignation

7. Any other business

Alex, please could you let me know if you would like anything specific to be added to the agenda."

235. Keith Beekmeyer replied to all the addressees at 10.51am:

"Hi Charlotte

The headings are ok.

Can you put one more heading down ie Staffing

a. Review and the termination of [the Claimant] Directorship & and of his contract."

Keith Beekmeyer agreed it was correct he was telling the Claimant they were going to terminate his Service Contract. When Brian Clarke replied at 10.55am that he would be away and could not attend the meeting, Keith Beekmeyer replied to all at 11.04am to ask Brian Clarke if he could attend by mobile.

236. On 16 July 2020 at 20.58pm, the Claimant replied to Keith Beekmeyer's email of 10 July:

"Thank you for the points below based on the meeting you and I had on 10th July 2020.

Due to the complexity of this situation my delay in responding has simply been down to needing to take legal advice.

As discussed you have asked me to step down from the board of new point and its subsidiaries. In principle I'm happy to do so once a full and final settlement is being drafted and subsequently agreed.

With regards to your e-mail points and offer- my comments are below in red [shown AW and underlined below].

…

I will not go into the discussions we had and the issues we face (we know what they are) but the exit strategy that we have agreed. <u>AW – We did not as far as I am concerned agree anything, you set out your proposed terms/offer and followed up</u>

with the below email.

1. That you will resign from Newpoint Capital Limited & Newpoint Re as at 1st July 2020 AW- I am in principle happy to resign once a full and final settlement has been agreed by both parties, I can confirm I will not hold up this process.

2. The overall costs that you are owed by NPFC is as GBP 560,000 AW – I do not agree with this figure, my employment contract terms need to honoured and are contractually and legally binding. On the basis that GBP 560,000 represents 2 years of salary (which as you are aware is already owed and I've self funded myself to go to work every day) then an addition five years needs to be added to this number)

3. Rent Deposit GBP 17,500 owed to [the Claimant] AW- agreed

…."

237. At 11.49am on 17 July 2020, Keith Beekmeyer responded:

> "I made certain comments in Blue to the points I believe is relevant at this present time.
>
> I will speak to you 12.15pm."
>
> The comments in blue (represented here in italic font), included:
>
> 1. That you will resign from Newpoint Capital Limited & Newpoint Re as at 1st July 2020 AW- I am in principle happy to resign once a full and final settlement has been agreed by both parties, I can confirm I will not hold up this process. *Reply: Noted & Agreed*
>
> 2. The overall costs that you are owed by NPFC is as GBP 560,000 AW – I do not agree with this figure, my employment contract terms need to honoured and are contractually and legally binding. On the basis that GBP 560, 000 represents 2 years of salary (which as you are aware is already owed and I've self funded myself to go to work every day) then an addition five years needs to be added to this number) *Reply – you have done no work for [the Defendant] that is a fact so your views on self funding is not material*."

238. When Keith Beekmeyer was asked to agree in cross examination that the Claimant had clearly said here that the sum of £560,000 effectively represented two years of his accrued salary and that an additional five years needed to be added on top, he said "no, that's incorrect". He said this reflected a salary of £60,000 per annum:

> "So at the meeting that we had … we sat down in an amicable

> situation, it was very cordial, very nice, and basically we agreed to certain terms. Otherwise I wouldn't have put pen to paper. My £560,000 figure was based on the agreed five years reduction in the £250 of £60,000 – so that was £300,000. It was one year prior to that, £250, and the balance was accrued holiday. So I was very clear what I was giving him. So he may have come back in red afterwards and after having a second thought about it, but at the meeting we had … We agreed.
>
> …
>
> Q. Your reply in blue simply says you've done no work for [the Defendant]
>
> A. Yes
>
> Q. You don't say, do you, in this email "Look, your calculation can't be right because your salary's only £60,000?
>
> A. I don't feel I had to, because when we sat down I agreed it with him. … I was just putting up my point and basically responding to a specific point in a specific response to me".

239. On 4 August 2020 at 7.02am, the Claimant emailed Keith Beekmeyer an 11 page settlement agreement which he had instructed Mishcon de Reya LLP to draft. It was dated 3 August 2020 and marked Without Prejudice/Subject to Contract. Amongst the terms was provision for the payment of £1,250,000 in lieu of salary due to the Claimant for the remainder of the fixed term of the Service Contract and £560,000 in respect of the previously accrued but unpaid salary owed to him.

240. Keith Beekmeyer replied to the Claimant at 07.48am that it was not what they agreed and "not worth me looking at". When put to him that it was clear the Claimant's position was his salary entitlement was £250,000 and he was therefore claiming £1.25 million, Keith Beekmeyer replied:

> "That's why we ignored it.
>
> Q. Right. So [the Claimant] believes that's what he's owed?
>
> A. That's what he believes.
>
> Q. And you say …?
>
> A. Something different."

241. On 5 August 2020 Charlotte Green wrote to all directors to ask if they could attend a board meeting on 25 August 2020. She added Keith Beekmeyer's extra item at 7: the termination of the Claimant's Contract. She emailed the Claimant again on 7 August 2020 with a notification letter; the agenda for the board meeting on 25 August 2020 and the following attachments:

    a. "previous board minutes – 01.08.2019";

b. Newpoint Capital 2019 accounts and Newpoint Financial Corp accounts as at 31.12.2019.

She confirmed Keith Beekmeyer, Andy Bye and Brian Clarke could attend the meeting in person at the Defendant's Bevis Marks office, with the Claimant attending on MS Teams.

242. The notification letter was signed by Keith Beekmeyer and dated 7 August 2020 and said:

> "… 25th August 2020 …
>
> Please confirm either by email or in writing that you will be attending.
>
> [The Defendant] confirms that to hold a Board Meeting a quorum of three Directors are required."

243. The agenda for the meeting read:

> "1. Agreement to previous minutes, 1st August 2019 (see attached)
>
> 2. Financials
>
>   a. The accounts for 2019 to be agreed (see attached)
>
> 3. Banking
>
>   No further business
>
> 4. Acquisitions
>
>   No further business
>
> 5. Legals
>
>   No further business
>
> 6. NPFC
>
>   Financial accounts as at 31.12.2019 (see attached)
>
> 7. Staffing
>
>   a. Termination of [the Claimant's] Directorship
>
>   b. Cancellation of [the Claimant's] employment and/or Service Agreement dated 1st May 2018 and subsequent amendments as disclosed in prior minutes.
>
> 8. Any other business."

244. The copied minutes enclosed for agreement (wrongly referred to as relating to a meeting

on 1 August 2019 rather than the 5 August 2019), included the entirety of Keith Beekmeyer's original minutes for the meeting on 22 July 2019. They were not initialled or dated.

245. The Consolidated Statement of Assets and Liabilities of the Defendant's holding company, Newport Financial Corporation, showed total assets of $630,442,446 and total net assets of $505,966.727. The Statement records that on 31 October 2019, Newpoint Financial Corporation and the Defendant, together defined as "the Company", had entered into a Convertible Preferred Stock Purchase Agreement and twenty Promissory and Security Agreements with an independent third party. The promissory notes were collateralized by a $500,000,000 cash deposit with a financial institution and could be liquidated into cash on notice by the Company. They had been classified as cash equivalents in the statement of assets and liabilities as at 31 December 2019.

246. By email on 12 August 2020 Charlotte Green chased the Claimant, copied to Keith Beekmeyer and Andy Bye, as follows:

> "I can see that the Board Minutes documents have been signed for at your address. Please can you confirm that you have received these."

On 17 August 2020 she then wrote to the Claimant, copied to Keith Beekmeyer and Andy Bye:

> "Thank you full confirming that you were able to join the [Defendant's] Board Meeting via Teams on Tuesday 25th August at 2:00 PM
>
> Please can you confirm if a third party will be present on your side?"

Keith Beekmeyer denied that this was the kind of correspondence sent to someone who was going to face a form of disciplinary meeting. That was self-evidently untrue.

25 August 2020

247. On 25 August 2020, Andy Bye, Brian Clarke, Keith Beekmeyer and Charlotte Green gathered at the Defendant's Bevis Marks office for the board meeting. The Claimant joined the meeting remotely from his home.

248. The minutes for the 25 August 2020 board meeting were produced by Charlotte Green. They are largely presented in the format of the 2018 minutes on the Defendant's headed paper with its address, the heading "BOARD MINUTES" and a reference number. Andy Bye, Brian Clarke and Keith Beekmeyer were listed as attending in person, with the Claimant attending by Teams, and Charlotte Green "(reporting)" attending in person.

249. The minutes state that the meeting began at 2pm and ended at 2.37pm. Brian Clarke "informed [the Claimant] that this was a closed meeting of Directors [he] confirmed that there was no third party present":

> "The following matters were discussed:-

1. Agreement to previous minutes, 5th August 2019

   These had been previously circulated last year and signed and agreed but for the record of this meeting, the minutes were re-circulated and agreed.

   It was voted and accepted by all Directors that they agreed the contents of the previous minutes dated 5th August 2019 were a true and accurate statement.

2. Financials

   It was voted and agreed that all Directors approved of the [Defendant's] annual statements for the period of 1 November 2019 to 31 December 2019

3. Banking

   It was voted and agreed by all Directors that there was no further business on banking

4. Acquisition

   It was voted and agreed by all Directors that there was no further business on acquisition.

5. Legals

   It was voted and agreed by all Directors that there was no further business on legals.

6. NPFC

   It was voted and agreed that all Directors approved of the Newport Financial Corp consolidated financial accounts as at 31 December 2019

7. Staffing

   a. Termination of the [Claimant's] Directorship

   b. Cancellation of [the Claimant's] employment and/or Service Agreement dated 1st May 2018 and subsequent amendments as disclosed in prior minutes

      • Keith Beekmeyer discussed an email that was sent to [the Claimant] on 10th July 2020 regarding his exit strategy from [the Defendant]

      • [the Claimant] responds to the email on 16th July 2020 stating that he has no issue with resigning but wanted to ensure that his settlement agreement was

agreed, which Keith Beekmeyer noted

…

• Mishcon de Reyer issued a letter on behalf of [the Claimant] regarding "settlement agreement". [The Defendant] reviewed and found it to be unacceptable and rejected the letter from Mishcon de Reyer and therefore had to hold the Board Meeting.

• The Chairman then discussed the common law duties and statutory duties that all Directors have to abide by, which reflect an essential relationship of trust and loyalty …

[The Claimant's] duties to operate with the skill and care as a Director as laid down in the Companies Act 2006 ...

Keith Beekmeyer discussed how [the Claimant] had created conflicts by …

[The Claimant] rejects the idea of being terminated and [Brian Clarke] asks what he believes he has contributed to the Defendant] in which [the Claimant] responded the following …

He had been made aware on an e-mail from Keith Beekmeyer to [the Claimant] on 10th July that the company felt [the Claimant] had not contributed to [the Defendant], where Keith Beekmayor stated that [the Claimant] has not done any work for [the Defendant] at all. [The Claimant received] but did not respond.

[The Claimant] Stated that he was not happy with the chairman's questioning as he was not prepared for this line of questioning.

Keith Beekmeyer stated that several emails were sent to [the Claimant] asking for his input on the agenda of the Board Meeting knowing that his termination of Directorship and Employment and /or Service Contract was being discussed.

[The Claimant] said he had nothing to add to the agenda and accepted it.

c. The Chairman put a vote to the Board of Directors on terminating [the Claimant's] Directorship.

All Directors present agreed to terminate [the Claimant's] Directorship.

d. The Chairman put a vote to the Board of Directors to terminate [the Claimant's] Employment and / or Service Contract from [the Defendant]

All Directors present agreed to terminate [the Claimant's] Directorship.

8. Any other business

The Chairman asked if there is any other business

1. Keith Beekmeyer brought up the Alan McAshin Lawsuit

   Keith Beeymeyer stated ….

2. Acasta 2017 account

   Keith Beekmeyer discussed ….

3. Bramdean Asset Management

   ….

4. COVID-19

The board discussed the impact that COVID-19 has had on all businesses including the defendant and how the defendant has tried to maintain acquisition, paying bills, and keeping everything in order. Everything is moving forward, and the defendant is maintaining their position.

Trying to do a settlement agreement was always going to be a challenge due to the impact of COVID-19 and depended on cash flows, as was explained to [the Claimant] in an e-mail between Keith Beekmeyer and himself on the 20th July. The settlement agreement has been taken off the table, as the £250,000 relating to it was part of the Acasta bonus that has been withdrawn, with no Directors getting it. The Board discussed that the settlement agreement was given in good faith and the good faith was taken back. And after receiving the legal letter from Mishcon de Reyer (sic) on behalf of [the Claimant] led to the decision to hold the board meeting.

<u>The following was resolved:-</u>

[The Claimant] will be terminated from his Directorship and Employment and/ or Service Contract at [the Defendant] with immediate effect."

250. The minutes were signed by Andy Bye, Keith Beekmeyer and Brian Clarke on the final page above their typed names. The title "Director" was given for Andy Bye and Keith Beekmeyer and "Chairman" for Brian Clarke. The date was recorded as 25 August 2020

at 14.37pm. No space was included for the Claimant's signature.

251. The Claimant said these minutes were again inaccurate. His termination was actually the first item on the agenda at the meeting. The call opened straight with "we are terminating your service contract". He said it wasn't confirmed that he had agreed to the reduction in salary:

> "It was simply a call that opened with "We are terminating your contract – services contract – with immediate effect" Which obviously I knew was going to be the purpose of this call." It was a short call."

As regards the statement at point 1 of the Minutes that "It was voted and accepted by all Directors that they agreed the contents of the previous minutes dated 5th August … were a true and accurate statement", the Claimant said he did not agree this. He said "The meeting was incredibly short."

252. In cross examination, he was pressed whether he had said at the time that the Defendant's minutes of the meeting on 25 August 2020 were incorrect. He said he "did not because he was cut out by the Defendant and on the outside by that stage." He was asked whether he accepted he had received them. He said he didn't know why he would have received the minutes as he had been terminated at the meeting. He genuinely did not recall receiving them. There is no disclosed evidence that suggests these minutes were sent to the Claimant for approval or correction.

253. It was put to Keith Beekmeyer that because the Claimant had not signed the minutes of the meeting of 5 August 2019, the practical effect of including item 1 on the agenda for the 25 August 2020 meeting was to ask the Claimant to confirm his agreement to them. The exchange proceeded as follows:

> "Q. That's what this is trying to achieve?
>
> A. No
>
> Q. … Point 1 of the business on the agenda is asking the directors to agree the minutes of 5 August 2019 meeting. That's what it means?
>
> A. No. No, this is effectively is making sure that they're aware of what took place because this had been a – a year … because don't forget we're in Covid now, right so this is just a recollection of what took place …
>
> Q. So where it says "Agreement to previous minutes", that's not contended as something that the directors should vote on by resolution?
>
> A. Well this is agenda … because of Covid
>
> Q. Well what I am suggesting to you is that it was clear to everybody in August 2020 that [the Claimant] had not previously agreed the minutes of the 5 August 2019 meeting. Do you agree

> with that?
>
> A. No."

254. I again consider Keith Beekmeyer's evidence about this to be concocted. If the directors had agreed to reduce their salaries there was no reason for the inclusion of point 1 of the agenda. The inclusion of this item on a third agenda only serves to confirm the Claimant's case that this had not previously been agreed by all directors.

255. It is difficult to see that Keith Beekmeyer's addition of the minutes of the board meeting on 22 July 2019 and/or 5 August 2019 to the agenda was anything other than a continuing attempt to place pressure upon the Claimant to agree to the reduction in his salary to £60,000 per annum and to ensure it would not face a claim under clause 5 of the Service Contract for payment at the rate of £250,000 per annum. This would have been of the utmost importance to the Defendant in circumstances where the meeting of 25 August 2020 was to be a termination meeting.

256. The statement in the minutes that the minutes of the 5th August 2019 meeting "had been previously circulated last year and signed and agreed" gives the clear impression that all the Defendant's directors at that time had signed and agreed them. That impression was false. The Claimant had refused to sign and agree the minutes. A fact known to the Claimant, to Keith Beekmeyer and, it is to be expected, to Andy Bye, at least.

257. Most tellingly, the Defendant's case that the Claimant had voted and agreed the content of the earlier board minutes on 25 August 2020 was not ultimately supported by either Keith Beekmeyer or Charlotte Green's evidence at trial. In cross examination it was put to Keith Beekmeyer that in signing the minutes he created a deliberately false document. He disagreed. However, in a passage of unravelling evidence which eventually served to fatally undermine the Defendant's reliance on the content of the board minutes as accurate, he gave the following answers about both the content of the minutes of 25 August 2020 and the approach the Defendant took to the production of its minutes generally.

258. The questions first focused on point 7 of the agenda and then point 1:

> "Q. OK, you've got A and B, which are the votes - the voting resolutions. [Read] All directors present agreed to terminate. So, … that's not literally true, is it? … [the Claimant] Didn't vote to terminate his own Service Contract, did he? Or did he? Is it false or is it true?
>
> A. No, it's true.
>
> Q. It's true?
>
> A. Well
>
> Q. Yes, go on?
>
> A. I'm trying to explain it. You're railroading me. When we had the meeting, we had a vote. My directors were after votes. 2 directors … … myself … how do I vote? I … when he went to

Andy Bye, he said it. When he went to [the Claimant], he said. I'm not going to say anything. So at the end of the day, we're having a board meeting. There is a call on directors, right. If one cannot respond, I can't do anything about it.

Q. The point I'm making is that all directors present there doesn't mean all directors present, it means the three of you apart from [the Claimant]

A. No, it means all directors.

Q. Well [the Claimant] is a director and he didn't vote in favour of his own?

A. He chose not to

Q. Yes, but he didn't agree?

A. He chose not to vote. So the directors voted.

Q. Say just be really careful. It says "all directors..." look at the words on the page?

A. I can see them.

Q. It says, "all directors present agreed". The evidence you've just given is that [the Claimant] did not agree?

A. If [the Claimant] actually voted, right, okay, I voted and Andy voted. We asked [the Claimant] and he said he was not going to comment. So he didn't vote, or he didn't take- I disagree with the procedure. He said, "I'm not going to participate". He decided not to participate. He didn't- he didn't vote, yes, and didn't vote, no

Q. So all directors present agreed, and it is the three of you, and [the Claimant] didn't say yes or no, is that what that is code for?

A .Correct. That's what I'm saying. Because … that he would, but he didn't say, "no". The point you make and you keep making the point, he said no right, and we said yes because he didn't say anything he refused to say anything. …

Q. And 1, the second sentence- the second paragraph on the item 1, "it was voted and accepted by all directors that they agreed to the contents"?

A. Yes

Q. It's the same use of language, isn't it? … That language means all directors apart from [the Claimant]?

> A. Yes, all directors were present, including Brian, right. All directors voted. [The Claimant] decided not to vote. He didn't say, yes, and he didn't say, no. He said, "I don't want to be involved", all words to that effect.
>
> Q. That's not agreement is it?
>
> A. Sorry?
>
> Q. That's not agreement?
>
> A. No, but as I said, maybe the wording could have been a little bit better. I think that I can give you that one. But that's how we did our minuting."

259. When Charlotte Green was cross examined it was put to her that she did not actually say in her witness statement that the minutes of 5 August 2019 were voted on or approved on 25 August 2020. She said they were discussed and there were notes from the meeting. When it was suggested to her that the Claimant did not himself agree or confirm the 5 August 2019 minutes at the meeting on 25 August 2020 as set out at point 1 of the minutes, she said they:

> "were discussed and voted on but Keith has explained [he] did not want to comment.
>
> Q. [the Claimant] did not agree or confirm.
>
> A. He did not want to comment or say anything."

260. Following the meeting Keith Beekmeyer wrote to the Claimant, copied to the "Board of Directors". The letter was to be sent by recorded delivery. It recorded that pursuant to agenda item 7:

> "the motion by the Board of votes 3 to 1 in favour, we write to confirm that your Directorship and Employment and/or Service Agreement dated 1st May 2018 has been terminated with immediate effect …".

261. The formal 3:1 vote to which Keith Beekmeyer referred was not recorded in the minutes of the meeting of 25 August 2020. Accordingly, the fact the Claimant had formally voted against his own termination was not recorded in the Defendant's minutes. As a letter sent by Keith Beekmeyer on the afternoon of the board meeting, this is cogent evidence that rather than saying nothing the Claimant positively voted against his termination.

262. Separately, it is obvious that the signed minutes of the board meeting on 25 July 2020 were not a full and entirely accurate record of the meeting that took place. The "In attendance" section of the minutes was presented as if the Claimant was present throughout. No reference was included to the Claimant's departure from the meeting once terminated. Not only is it usual and appropriate for a director to leave a board meeting if their directorship is terminated, but the Claimant's evidence was that this is what happened here. That also seems to be supported by the record of the discussion of "any other business" at point 4 and of Mishcon de Reya's letter there, for example.

263. The Defendant's initial case about the confirmation provided in the form of these minutes was, in any event, entirely at odds with the evidence. By this stage, the Claimant had consistently refused to sign the minutes of these meetings for almost a year; had instructed solicitors and had the benefit of legal advice; had forwarded the terms to Keith Beekmeyer upon which he was prepared to settle, including payment of his salary at £250,000 per annum; and had been made very well by the Defendant aware that this was a meeting at which both his directorship and Service Contract were undoubtedly to be terminated. A termination which triggered the Claimant's right to be paid his salary for the following years under clause 5. Indeed, within these very minutes, the discussion at point 7 recorded in terms the Claimant's position was that he had no issue with resigning, but wanted to ensure that his settlement agreement was agreed. That was an agreement requiring the Defendant to pay his salary at the rate of £250,000 under the Service Contract.

264. Whilst I am entirely satisfied adopting the approach that I have taken to the assessment of the evidence that the Claimant did not orally agree to the reduction of his salary either as director or as employee on either 22 July 2019 or 5 August 2019, I consider that the Defendant's unreliable approach to the preparation of the board minutes for the meeting on 25 August 2020 provides additional support for the Claimant's case that the minutes of 22 July 2019 relating to salary should be afforded no value.

Conclusion

265. In conclusion:

   a. the Claimant did not agree with the Defendant that his salary would be reduced from £250,000 to £60,000 per annum;

   b. Accrued salary for the period from 1 January 2019 to 25 August 2020 is payable to the Claimant in the sum of £412,328.77;

   c. Severance pay in respect of the period from 25 August 2020 to 30 April 2025 is payable to the Claimant in the sum of £1,170,547.95;

   d. Holiday pay in lieu of accrued but untaken holiday days in the sum of £9,995.89 is payable to the Claimant.

266. In accordance with the Order on summary judgment, the Defendant is to pay the Claimant at 2% interest above Bank of England base rate from time to time on the Service Contract Claims, such interest to run from 25 August 2020 to the date of judgment on quantum under the Service Contract Claims.

267. I invite the parties to agree an order for my approval. There will be a consequentials hearing on the issue of costs if an order for costs cannot be agreed.