Neutral citation number: [2018] EWHC 2336 (Ch)

Case No: 2487 of 2017 and D30MA846

IN THE HIGH COURT OF JUSTICE
BUSINESS & PROPERTY COURTS IN MANCHESTER
INSOLVENCY & COMPANIES LIST
BUSINESS LIST

IN THE MATTER OF LLOYDS AUTOBODY RINGWAY LIMITED
AND IN THE MATTER OF HPP VEHICLES LIMITED

Courtroom No. 42
Manchester Civil Justice Centre
1 Bridge Street West
Manchester
M60 9DJ

Thursday, 6th September 2018

Before:
HIS HONOUR JUDGE HODGE QC
(Sitting as a Judge of the High Court)

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B E T W E E N:

GREGORY PAUL DAVIES

Petitioner

and

(1) GERARD LYNCH-SMITH
(2) LLOYDS AUTOBODY RINGWAY LTD
(3) HPP VEHICLES LTD

Respondents

AND BETWEEN:

GREGORY PAUL DAVIES

Claimant

and

(1) GERARD LYNCH-SMITH
(2) JANET EVANS

Defendants

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MR ANDREW LATIMER (instructed by **EXCELLO LAW**, Chester) appeared on behalf of the Petitioner and Claimant
MR MARTIN BUDWORTH (instructed by **HILL DICKINSON LLP**, Liverpool) appeared on behalf of the First Respondent and the Defendants

Hearing Dates: 6-10 August, 20-23 August 2018

APPROVED JUDGMENT

JUDGE HODGE QC:

1. This judgment is divided into 11 sections as follows:

    1. Introduction
    2. Background
    3. The trial
    4. The witnesses
    5. Equitable obligations or quasi-partnership
    6. Novo
    7. Exclusion from management
    8. Other heads of unfair prejudice
    9. Conclusion and remedies on unfair prejudice
    10. The partnership (HPP)
    11. Summary

1. Introduction

2. This is my judgment following the trial of two matters. The first is an unfair prejudice petition under Section 994 of the Companies Act 2006, presented on 15 May 2017, by Mr Greg Davies ("**Mr Davies**") in relation to the affairs of Lloyds Autobody Ringway Ltd ("**Ringway**"). The first, and effective, respondent to the petition, is Mr Ged Lynch-Smith ("**Mr Lynch-Smith**"). Ringway is a vehicle bodyshop and repair business based in Manchester which was incorporated in 1999. Its two shareholders were and are Mr Lynch-Smith (as to 75%) and Mr Davies (as to the remaining 25%) and they are Ringway's two directors.

3. I find that Ringway was established by Mr Lynch-Smith and Mr Davies to replicate in Manchester the activities of Lloyds Autobody, a vehicle bodyshop and repair business based in Liverpool which had been founded by Mr Lynch-Smith in the 1980s and which now operates though the medium of a limited company, Lloyds Autobody Limited ("Lloyds Liverpool"), incorporated in February 2004, in which Mr Lynch-Smith remains the controlling 95% shareholder and director.

4. The principal relief sought by Mr Davies in relation to Ringway is an order for the purchase of his 25% shareholding on an undiscounted basis, principally on the basis that since 16 November 2016 he has been excluded from all role in the management of Ringway,

although he also relies upon further grounds of unfair prejudice. The petition also seeks an order for the compulsory winding up of a dormant company which has never traded, HPP Vehicles Ltd, which was set up to preserve the name of an unincorporated partnership, HPP Vehicles ("**HPP**"), which was established in 2003 as a credit hire business based at Lloyds Liverpool's premises in Bootle, supplying vehicles to motorists whose own vehicles were being repaired following an accident. The initials HPP signify "High Performance and Prestige" vehicles. The partners are now Mr Lynch-Smith (as to 47%), Mr Davies (as to 35%), and Mrs Janet Evans (as to the remaining 18%). Mrs Evans is a long-standing employee of Lloyds Liverpool who currently acts as its office manager, and she is also the Company Secretary of Ringway. She has been in a personal relationship with Mr Lynch-Smith since about 2002, some four years after he split up from his wife.

5. The second set of proceedings is a partnership claim in relation to HPP, issued by Mr Davies on 21 August 2017, against Mr Lynch-Smith and Mrs Evans. It is common ground that their partnership was dissolved on or about 5 July 2017 by notice served by Mr Davies, and a dissolution account was ordered by District Judge Bever on 2 January 2018. However, it is now agreed by the parties that there should be a *Syers v Syers* order for the purchase of Mr Davies's share in the partnership at a price to be determined by the court. In the light of this, I am satisfied that it is appropriate for the court, as a condition of this buy-out order, to require the remaining two partners to purchase Mr Davies's shares in HPP Vehicles Ltd at their nominal value (given that the company has no assets and has never traded). Had the dissolution of HPP Vehicles proceeded, I would have ordered that the company should be wound up on the just and equitable ground. I therefore need say no more about HPP Vehicles Ltd.

2. Background

6. What follows represents my findings of fact. Since its incorporation at the turn of the millennium, Ringway has always been a separate business from Lloyds Liverpool, although certain services have been provided for Ringway by Lloyds Liverpool. Mr Davies was brought in to manage Ringway and he was based at its Manchester premises although for a time in the mid-2000s he also worked for HPP. During the autumn of 2016 Mr Lynch-Smith became increasingly concerned about what he perceived to be the involvement of Mr Davies in a company which was engaged, in competition with HPP, in the accident management and credit hire business, specialising in prestige and electric vehicles, called

Novo Incident Management Limited ("**Novo**"). Since Novo's incorporation, on 26 March 2015, its registered shareholders have been Mr James Allenby (as to 95%), who is its sole director, and a Mr Gerard Clarke, a chartered accountant and Novo's Company Secretary (as to the remaining 5%). Mr Allenby had previously worked (from 2005 to 2008) for Performance Car Hire ("**PCH**"), a credit hire company providing hire vehicles to the insurance and fleet industries operated by Mr Ken Specter, and (from 2008 to 2015) for Manor Car Hire ("**Manor**"), a claims management company specialising in high-value and luxury vehicles operated by another former PCH employee, Mr Nick Parry.

7. Matters came to a head on 16 November 2016, following an earlier lunch meeting between Mr Lynch-Smith and Mr Davies at the Gusto restaurant in Liverpool at the beginning of November. On 16 November Mr Lynch-Smith attended at Ringway's premises in Manchester and purported to suspend Mr Davies from his employment, ordered him out of the premises, and told him to go home and not to contact any members of staff; and he instructed Ringway's employees not to speak to Mr Davies.

8. The immediately subsequent history appears from the correspondence which followed. There was first a letter from Mr Lynch-Smith to Mr Davies (which was unsigned,) dated 23 November 2016:

> "Dear Greg.
>
> I am inviting you to a disciplinary hearing on Wednesday 30 November 2016 at 11am to be held at the business address in Manchester.
>
> The reasons for the hearing are as follows. I believe you have breached your fiduciary duty to disclose your involvement in another company to a fellow director, i.e, Myself. I believe this to be a conflict of interest to Lloyds Autobody Ringway Ltd.
>
> You can if you wish have a member of staff or a trade union representative present at the meeting.
>
> I need to inform you that the possible outcome of the hearing could lead to termination of your employment.
>
> Yours sincerely,
>
> Ged Lynch-Smith"

9. That provoked a response from Mr Davies's then solicitors (Knights) dated 30 November 2016:

> "We understand that your client is an employee, shareholder and director of

> Ringway. You are also a director and shareholder of the Company, and you have purported to suspend our client, pending an investigation into our client's involvement with a third-party company, Novo Incident Management Ltd, and which you claim is a "conflict of interest". You have summoned our client to a disciplinary hearing organised for this morning at 11am at the Company's premises in Manchester.
>
> Our client will not be attending the disciplinary hearing. It does not appear that there is any basis for our client's suspension and/or the disciplinary hearing, but we invite you nonetheless to set out grounds and justification for the same in writing.
>
> Our client will be taking annual leave for the remainder of the week and next week. We will write further with a more substantive response in relation to matters more generally regarding the Company in the near future."

10. On 1 December 2016 Mr Lynch-Smith wrote to Mr Davies a letter that was signed on Mr Lynch-Smith's behalf by Jackie Devaney:

> "I was disappointed that you did not attend our meeting set for 11am yesterday … and did not even let me know that you would not be attending.
>
> I therefore invite you once more to attend - this time 11am on Thursday 8 December 2016 - at the business address in Manchester.
>
> Would you please confirm by no later than 12 noon on Tuesday 6 December that you will be attending this rearranged meeting.
>
> The reason for the hearing is, as stated, that you breached your fiduciary duty to disclose your involvement with Novo Incident Management Limited.
>
> During my investigations you informed me that you had invested in Novo, so there is, in my belief a fiduciary duty to have informed me.
>
> I will also put to you that you are receiving a gain in the way of a return from hire charges billed from Novo.
>
> Your Lloyds Autobody Expenses look to me as though they are being used for personal gain (i.e. Starbucks, Fuel for used for Personal and Novo Business).
>
> You again have the right to be accompanied at the meeting by either a work colleague or trade union representative.
>
> Finally, I must make you aware that if you fail to attend the hearing - without good reason - it will be conducted in your absence and that the result could lead to termination of your employment."

11. On 2 December 2016, Mr Lynch-Smith again wrote to Mr Davies, signing the letter himself

on this occasion. The letter recorded that Mr Lynch-Smith had received a letter on Mr Davies's behalf from Knights regarding their present situation at work. He informed Mr Davies that it was not his intention to respond to the letter because Mr Lynch-Smith did not believe that their discussions had reached a level at which legal representation was either necessary or appropriate. Mr Lynch-Smith referred to his letter of the previous day, inviting Mr Davies to a rearranged meeting; and he confirmed that Mr Davies would have every opportunity at that meeting to raise any points or questions in his defence which would be fully considered before any final decisions were made. Mr Lynch-Smith would still like Mr Davies to confirm whether or not he intended to attend the rearranged disciplinary meeting on Thursday 8 December. The letter from Knights was also said to have informed Mr Lynch-Smith that Mr Davies had decided that he was now on holiday. That was said to be unacceptable because until further notice Mr Davies was, as of 16 November 2106, suspended from work on full pay. That was said to be another matter that could and should be discussed at the meeting the following week.

12. On 6 December Knights wrote a lengthy letter to Mr Lynch-Smith. The letter was said to be sent in accordance with the Protocol in Relation to Pre-Action Conduct set out in the *Civil Procedure Rules*. Mr Davies's status as a 25% minority shareholder in the company was recorded. Knights asserted that the company had operated as a quasi-partnership but that it had become increasingly apparent to Mr Davies that Mr Lynch-Smith viewed and treated him predominantly as an employee, rather than as an equal partner in the business and as a fellow director and shareholder. It was said that Mr Lynch-Smith's attempt to invoke disciplinary proceedings against Mr Davies in relation to his employment appeared to be fundamentally flawed. As a quasi-partnership, and as a consequence of Mr Davies's role as a director and a shareholder therein, it was said that Mr Lynch-Smith simply had no grounds or basis for attempting to suspend Mr Davies as an employee. Notwithstanding such, it was said that the purported reasons for the suspension and disciplinary hearing did not relate in any way to Mr Davies's employment with the company. Knights demanded further details regarding the allegations made by Mr Lynch-Smith concerning Mr Davies's involvement with Novo; in particular, Mr Lynch-Smith was invited to explain how that involvement raised any issues regarding his employment with Ringway. Reference was made to an unfair prejudice claim. Knights said that they had advised Mr Davies that the manner in which Mr Lynch-Smith had conducted himself, had treated Mr Davies, and had operated as a director and shareholder of Ringway was such that Mr Lynch-Smith had

conducted the company's business in a manner which was prejudicial to Mr Davies's interests as a minority shareholder. Reference was made to Mr Davies having been responsible for the day-to-day management operation of the company and its business, and to him being equally involved in all or any decision-making. As such, it was said that the company had always been a quasi-partnership. However, despite that, it was said that Mr Lynch-Smith appeared to have viewed Mr Davies predominantly as an employee and as a junior partner and had regularly attempted to undermine his position within the company. It was said that Mr Lynch-Smith had disregarded Mr Davies's view on various matters and had excluded him from management, most notably by Mr Lynch-Smith's recent action in purporting to suspend Mr Davies from his employment and widely publicising that fact among the company's employees. Reference was made to various charges which had been raised by Lloyds Liverpool to Ringway. There was said to be no justification or business reason for such charges, and they appeared to be a transparent attempt to divert profit from Ringway to Lloyds Liverpool, which was said to be clearly unfairly prejudicial to Mr Davies's interests as a minority shareholder in Ringway, since he had no interest or involvement in Lloyds Liverpool, whereas Mr Lynch-Smith owned the entire issued share capital in that company. The letter went on to state that in quasi-partnership relationships, such as existed in relation to Ringway, the court would presume that the exclusion from management of a minority shareholder would constitute unfair prejudice unless it was accompanied by an offer to buy out the minority's share at a fair value. It was said that Mr Lynch-Smith had excluded Mr Davies from participation in Ringway's management, contrary to the understanding at the time the company had been formed.

13. On 9 December Mr Lynch-Smith wrote to Mr Davies. He again expressed his disappointment that Mr Davies had not attended the rearranged disciplinary meeting on Thursday 8 December and had not made any contact regard that. With regret, Mr Lynch-Smith informed Mr Davies that he had decided that his actions amounted to gross misconduct, and that the trust and confidence placed in Mr Davies by Ringway had been completely undermined. His employment was said to be terminated with immediate effect, that is to say on Friday 9 December 2016. Mr Davies was requested to return all company property, such as credit cards, documents, car, IT equipment, etc as soon as possible.

14. On 20 December 2016 Mr Lynch-Smith's solicitors, Hill Dickinson, wrote to Knights. They asserted that Ringway had not operated as a quasi-partnership. Whilst Mr Davies had been engaged to manage the company, it was said that Mr Lynch-Smith had retained

ultimate control and been responsible for all key decisions. Mr Davies had carried out the day to day management under the supervision of Mr Lynch-Smith, whilst Mr Lynch-Smith had dealt with high-level management issues such as the company's bank account, funding, and the lease. All key decisions were said to be at Mr Lynch-Smith's sole discretion, albeit with input from Mr Davies, and that Mr Davies had reported to Mr Lynch-Smith accordingly. That set-up was said to have been agreed between Mr Davies and Mr Lynch-Smith from the outset and was the very reason Mr Davies had been offered only a 25% shareholding in the company. In short, it was said that Mr Davies had always been subject to Mr Lynch-Smith in respect of the management and general affairs of the company, and it had never been intended that they would act on an equal footing. Later in the letter Hill Dickinson addressed Mr Davies's shareholding. Mr Lynch-Smith was said to be concerned that the relationship between himself and Mr Davies had deteriorated and might therefore be prepared to make an offer to purchase Mr Davies's shares on the basis that he resigned as a director. Mr Lynch-Smith suggested that the company's accountant be instructed to carry out a fair valuation, to include a discount for Mr Davies's minority shareholding. Knights were invited to confirm Mr Davies's agreement to that course. For the avoidance of any doubt, Mr Lynch-Smith was said to make no admission of liability, and any offer he might make to purchase Mr Davies's shares did not arise as a result of Mr Davies's allegations of unfair prejudice, which Mr Lynch-Smith considered to be entirely unfounded and to lack any merit whatsoever. In conclusion, Hill Dickinson said that it was clear that Mr Davies had no cause to petition for unfair prejudice. It was said that Mr Lynch-Smith's actions had been fair, in line with company procedures and board decisions and, in any event, had not prejudiced Mr Davies's interests as a shareholder. Should he issue proceedings, Mr Lynch-Smith would take all steps necessary to defend his position robustly and, needless to say, would seek payment of his legal costs in full. Knights were asked to confirm that Mr Davies would not issue a petition for unfair prejudice.

15. It is necessary for me to refer briefly to three subsequent letters. The first is from Hill Dickinson to Knights dated 13 February 2017. It was said to be clear from previous correspondence that the parties were in agreement that the appropriate solution to Mr Davies's purported claim, given the breakdown of the relationship between the parties, was for Mr Lynch-Smith to purchase Mr Davies's shares. Mr Lynch-Smith was said to be attempting to take a resolution-focused approach with that in mind. However, Knights'

letter of 20 January 2017 was said to have raised potential claims, not only in relation to the company, but also HPP Vehicles Ltd, and the partnership (HPP). It was said that an email of 31 January 2017 had stated that Mr Davies intended to seek similar remedies to those sought in respect of the company. Hill Dickinson presumed, therefore, that Mr Davies was seeking to be bought out of HPP Vehicles Ltd and also the partnership. Knights were invited to confirm their client's position, bearing in mind that Mr Lynch-Smith was not himself a shareholder of HPP Vehicles Ltd.

16. The second letter to which I must refer is Hill Dickinson's letter of 24 February 2017. This was a long letter, but under the heading "Next Steps" it was said that Mr Lynch-Smith was clearly prepared to purchase Mr Davies's shares given the irretrievable breakdown of the relationship between the parties. The main dispute appeared to be the application of the minority discount. On that basis, and in an attempt to progress matters, Mr Lynch-Smith suggested the following:

    (1) That the parties should instruct a joint independent accountant to value Mr Davies's shareholding in the company, both with and without a minority discount.

    (2) That whilst Mr Lynch-Smith maintained that Mr Davies had been fully informed of the management charges and had approved the same, Mr Lynch-Smith suggested that the solicitors instruct the joint independent account to consider what impact, if any, the management charges recorded in the accounts had had on the value of Mr Davies's shareholding; and

    (3) That the costs of the independent accountant be paid by Mr Davies and Mr Lynch-Smith equally.

    It was said that such a valuation would narrow the issues and advance both parties' positions. It would also facilitate the purchase of Mr Davies's shares by Mr Lynch-Smith and settlement discussions, as appropriate. Ultimately, the hope was expressed that it would save the parties the time and costs associated with proceedings, as well as court time. However, if court proceedings did become necessary following that process, the issues for the court to consider would be reduced, and so too would the complexity and cost of the proceedings. If Mr Davies were agreeable to this proposal, Hill Dickinson would provide Knights with suggestions for the independent accountant, and a draft joint letter of instruction for Knights' approval. Hill Dickinson said that they were of the firm view that it would be entirely premature of Mr Davies to proceed to commence proceedings in the above circumstances (and generally). The proposals set out did not prejudice Mr Davies's

position in any way and, ultimately, should serve to reduce the costs incurred by both parties. Should he commence proceedings, Hill Dickinson anticipated being instructed to make an application for a stay to enable the parties to obtain an independent valuation and would bring the correspondence to the attention of the court on costs.

17. Knights' response was dated 3 March 2017. It was said that Mr Lynch-Smith's version of events bore no relation to the truth and that Hill Dickinson's latest letters were a noble attempt to seek to justify what could not be justified. Put simply, it was said that Mr Lynch-Smith would fail in his attempt to force Mr Davies out of the company, HPP Vehicles Limited and HPP (the partnership) and to acquire his interests and shareholding in each for less than full value. On the contrary, it was said that Mr Lynch-Smith would ultimately be ordered to pay full value for Mr Davies's shareholdings and interest in each business, and to pay Mr Davies's costs; and Mr Lynch-Smith would also bear his own costs. Knights suspected that Hill Dickinson appreciated that fact which was why they appeared so desperate to avoid litigation in the matter.

18. Correspondence between the parties' solicitors proceeded in an attempt to find an appropriate basis for Mr Lynch-Smith to buy out Mr Davies's shares in Ringway but these efforts foundered, for reasons which were not addressed at the trial. From the terms of the early correspondence, it would appear that a sticking-point may have been the propriety of management charges levelled against Ringway by Lloyds Liverpool and of consultancy fees paid by Ringway to Mrs Evans.

3. The trial

19. On 14 December 2017 the petition was listed for trial on 6-10 August 2018, with an estimated length of hearing of five days. The partnership claim was subsequently ordered to be listed for trial at the same time. At the Pre-trial Review held before me on 4 July 2018 it became apparent to all concerned that five days would be wholly inadequate for the trial, and I was able to arrange for a further three days to be provided on 21-23 August, with an additional day set aside for pre-reading. In the event, the court and the parties were also available for the trial to continue on 20 August. The trial therefore began on Monday 6 August and continued until Friday 10 August. The court then adjourned, and the trial resumed between Monday 20 and Thursday 23 August, when I adjourned to consider and prepare my judgment.

20. The petitioner and claimant, Mr Davies, was represented by Mr Andrew Latimer (of

counsel). The individual respondent and the defendants, Mr Lynch-Smith and Mrs Evans, were represented by Mr Martin Budworth (also of counsel). Both counsel had submitted helpful and detailed written skeleton arguments which I had had the opportunity of pre-reading. I thank both counsel for all the assistance they have rendered me in what has been a difficult and hard-fought case. The trial documentation comprised over 6,600 pages, crammed into 17 heavy and unwieldy lever-arch files, including an inaptly named "Core Bundle". Some of the bundles contained in the order of 450 or more pages.

21. On the first day of the trial, Mr Latimer concluded his oral opening by applying for permission to adduce in evidence supplemental witness statements, both dated 25 July 2018, from Mr Davies and Mr Allenby. This application was opposed by Mr Budworth. For the reasons which I gave in an extemporary ruling delivered just before the luncheon adjournment, I gave Mr Latimer permission to rely upon paragraphs 23 to 34 of Mr Davies's supplemental witness statement, and the concluding paragraph 21 of Mr Allenby's supplemental witness statement, but I otherwise excluded this further witness evidence. Mr Budworth then addressed me in opening for about 30 minutes.

22. Mr Latimer then called the petitioner, Mr Davies. He was in the witness box for over nine and half hours (against an estimate of a little under five and a half hours), commencing at about 2.50pm on Day 1 and concluding at about 2.30pm on Day 3. Mr Davies was later recalled, to be tendered for further cross-examination, principally on his bank statements, for a further 50 minutes on the afternoon of Day 7. The petitioner's other witness of fact were Mr Carl Hinchey (interposed during Mr Davies's evidence) for about 30 minutes during the afternoon of Day 2, and Mr Gerald Clarke and Mr James Allenby (both interposed during Mr Lynch-Smith's evidence) for about 15 minutes and 1 hour and 50 minutes respectively on the morning of Day 4. There was also a short, unchallenged witness statement from Mr Jonathan Crossley, the managing director of the Manchester dealerships for Bentley, Rolls Royce and McLaren. In addition, Mr Davies's litigation solicitor, Miss Alexandra Collett, was called on the afternoon of Day 7 to be cross-examined for about 25 minutes on two witness statements relating to her inspections of and enquiries about Mr Davies's bank statements.

23. The individual respondent and the defendants, Mr Lynch-Smith and Mrs Evans, both gave evidence, and they called a further nine witnesses (as opposed to the total of three witnesses assumed by their cost budgets). Mr Lynch-Smith gave evidence for a total of just over seven and a half hours (against an estimate of a little under five and a half hours), beginning

at about 2.45pm on Day 3 and concluding at about 3.05pm on Day 5. Mrs Arabella Ferris (formerly Bennett) was interposed during Mr Lynch-Smith's evidence for about 35 minutes at the start of Day 5. Mrs Ferris gave evidence pursuant to a witness summons having been reluctant to give evidence because of her uncle, Mr Clarke's, shareholding in Novo. Her evidence therefore had to be elicited orally in chief by Mr Budworth before she was cross-examined by Mr Latimer. Mr Lee Smith gave evidence for about 45 minutes on the afternoon of Day 5. At the conclusion of his evidence the court adjourned for a week due to my pre-existing sitting commitments in Liverpool.

24. When the trial resumed for Day 6 at about 10am on Monday 20 August the court heard from Mrs Evans for about two hours and then from Mr Roy Hartwell for about one- and three-quarter hours (either side of the short adjournment). Mr Christopher Greenwood gave evidence for a total of about one and a half hours on the afternoon of Day 6 and the morning of Day 7. The rest of the morning of Day 7 was taken up with the evidence of a number of short witnesses: Miss Kirsty Jones, Mr Patrick Ryan, Miss Jackie Devaney, Mr Lee Peat, and Mr Nick Parry. The afternoon was taken up with the evidence of Miss Collett and the further evidence of Mr Davies.

25. On Day 8 the court heard from the two expert accountancy witnesses: for the petitioner and claimant, Mr David Houghton of DSW Bridge Houghton Forensic; and for the individual respondent and the defendants, Mr Brent Wilkinson of BDO. In addition to their expert reports, the accountants had prepared a helpful joint statement; and they gave their evidence concurrently, as directed by the court, following an agenda prepared by counsel and in accordance with the procedure set out in paragraph 11.4 of Practice Direction 35.

26. At the conclusion of the evidence, both counsel submitted helpful written closing notes summarising the main findings of fact which they were each inviting the court to make. Mr Latimer addressed me on Day 9 for a little under two hours, Mr Budworth responded for over two and a half hours, and Mr Latimer then briefly replied. I then adjourned to prepare this judgment.

27. I should make it clear, when delivering this judgment, that I have found it unnecessary to address all the myriad of complaints that Mr Davies and Mr Lynch-Smith have levelled against each other. That does not mean that they have been overlooked but simply that I have found their resolution to be unnecessary to enable me to reach a clear conclusion on the issues that I have to decide in order to do justice between the parties. The alternative would have been to deliver a judgment of such length and detail that its audience would

have run the risk of losing sight of the wood amongst the trees. Some lay, and perhaps even professional, listeners may feel that I have failed in that task.

4. The witnesses

28. Unfortunately, this is one of those difficult cases where the court has to reach a conclusion on strongly conflicting and contested evidence. In closing, Mr Latimer drew my attention to the observations of Nugee J in *Glenn v Watson & Others* [2018] EWHC 2016 (Ch) at paragraphs 58 to 59. Omitting case law citations, these read:

> "A number of other witnesses were called but I do not think it necessary to detail them. It will be apparent that I have significant reservations about the reliability of the evidence of each of the key witnesses that I have referred to. Despite the primacy which our trial system has long given to oral evidence, it is by now a commonplace that the memory even of witnesses who are doing their honest best is often unreliable …; and in cases of fraud when the credibility of witnesses is in issue, it has long been recognised to be essential to test their veracity by reference to the objective facts proved independently of their testimony, in particular by reference to the documents in the case, and also to pay particular regard to their motives and to the overall probabilities …
>
> That seems to me to be pre-eminently the case with the present case, and I have found the contemporaneous documents of much more assistance to me in trying to ascertain what happened than the meticulously prepared but inordinately lengthy witness statements, or the many days of oral evidence. In a very recent judgment … Fancourt J made some remarks about the witness statements in that case and their value (or the lack of it) as evidence …, and much the same can be said in this case. As for the oral evidence, I think with hindsight that I would have benefitted from more of the trial time being devoted to examining the documented course of events and less with the witnesses: it is not I think necessary to challenge a witness on every statement with which issue is taken, and I have taken no account of submissions that if a witness was not challenged on a particular point his evidence must be treated as accepted. I do not understand that to be the law or the modern practice."

29. I endorse all that Nugee J has said, much of which has a particular relevance to the present case. I find that neither Mr Davies nor Mr Lynch-Smith were clear or straightforward in their evidence to the court. Both were unsatisfactory and prevaricating witnesses who were inclined to see base motives in everything the other had done. In their respective written openings, Mr Latimer portrayed Mr Lynch-Smith as someone who "assumes a conspiracy against him wherever he looks", whilst Mr Budworth described Mr Davies as engaged in "sweeping up all and any crumbs of arguable prejudice". I agree with both of these

analyses. In my analysis of the principal protagonists I make it clear that I have had regard not only to their respective evidence and demeanour over many hours in the witness box but also to my assessment of the other witnesses and the contemporaneous documentation.

30. Mr Davies was an argumentative and difficult witness who was not prepared to confine himself to answering questions, constantly responding to one question with another. I found him to be self-confident and arrogant. I find that Mr Davies constantly exaggerated his own role in, and contributions to, Ringway, and sought to undermine those of Mr Lynch-Smith by, for example, grossly exaggerating the effect of Mr Lynch-Smith's minor heart problem and the length and effects of his absences and interests abroad. A documented example can be found at paragraph 19 of the Reply (which Mr Davies verified by a statement of truth) denying Mr Lynch-Smith's expertise and track record in repairing Porsche or similar prestige vehicles which is contradicted by the letter of reference from Porsche dated 9 November 1999 (at Core Bundle page 1) and which Mr Davies admitted in cross-examination was a mistake for which he apologised. Another admitted mistake was the allegation (at paragraph 64H of the Reply) that Mr Lynch-Smith had used his Ringway credit card to fund personal expenditure of £3,200 in December 2010. Mr Davies accepted in cross-examination that this expenditure was for a watch they had bought for Roy Hartwell as a reward for his ten-years service to the company.

31. Of even more concern to the court is the inconsistency between the assertion (at paragraph 172 of Mr Davies's witness statement) that Mr Allenby had never offered Mr Davies any shares in Novo and he had never asked for the same and the allegation (at paragraph 55.4 of the Reply) that Mr Davies "hopes to become a shareholder in Novo at some point in the future as a result of an invitation made by Novo". Mr Davies sought to explain away this inconsistency in cross-examination by saying that this was a reference to an offer of shares in a sister company of Novo, an insurance brokerage called Novo Esurance Solutions Limited ("**Novo Esurance**"); and this explanation was supported by Mr Allenby when he came to give evidence (having been present when Mr Davies was in the witness box) although it had not been mentioned in Mr Allenby's witness statement. However, this explanation unravelled when the Bench pointed out, during the course of Mr Latimer's oral closing, that Mr Allenby's evidence (in re-examination) had been that Novo Esurance had been incorporated on 16 February 2017, after the date of Mr Davies's expulsion from Ringway, and that Mr Allenby had raised the topic of the shareholding in Novo Esurance with Mr Davies well after the date of his expulsion from Ringway; and

therefore paragraph 55.4 of the Reply could not have been referring to a shareholding in Novo Esurance because it went on to allege that Mr Lynch-Smith had been "annoyed that he did not receive a similar invitation" (a feeling that could not have been experienced by Mr Lynch-Smith after the date of Mr Davies's expulsion). In his oral reply, Mr Latimer accepted that he could not reconcile paragraph 55.4 with the assertion that it was referring to Novo Esurance. Mr Latimer attributed the mistake to a plain "muddle of instructions". I am satisfied that Mr Davies (and Mr Allenby) had been caught out in a lie, and a lie that went to the heart of Mr Davies's case. Mr Davies's own solicitor, Miss Collett, told the court that Mr Davies's evidence that he had been offered shares in Novo Esurance had come as news to her. I also do not accept Mr Davies's evidence, in answer to a question from the Bench, that being a shareholder in Novo had held "no interest" for Mr Davies. I accept Mr Budworth's submission in closing that the true nature of Mr Davies's relationship with Novo was never satisfactorily opened up to sight in this case, and that Mr Lynch-Smith has faced practical difficulties in securing proper visibility of what Mr Davies was really getting up to with Novo. The disappearance and then the reappearance of Mr Davies's work laptop as a functioning instrument, and the disclosure of a limited number of self-serving emails therefrom, is a further matter of some concern to the court.

32. Whilst I accept Mr Latimer's submission that Ms Collett was clearly a capable solicitor who gave unimpeachable evidence to the court, I am also concerned that Mr Davies has not been entirely frank with the court about the true source of all the substantial credits to his bank account since his expulsion from Ringway. According to Mr Budworth's calculations, the income coming into Mr Davies's bank account had been in the order of some £180,000. Although not mentioned in their witness statements, both Mr Davies and Mr Allenby told the court that Novo had been financing all of Mr Davies's legal costs (which are budgeted at a total sum in excess of £250,000). Mr Allenby said that he presumed that Mr Davies had no other option but to ask Mr Allenby to do so. In his further cross-examination, Mr Davies admitted that he had not told Mr Allenby about his alleged income from his property interests. In his further cross-examination, Mr Davies also claimed still to be offering free advice and mentoring to Mr Allenby. In cross-examination Mr Allenby was extremely vague about the terms of Novo's loan to Mr Davies beyond the fact that it was interest-free and that there was no agreed repayment date. All he could say about repayment was: "as quickly as possible". I do not find Mr Davies to be a witness of truth; and I am satisfied that I cannot safely rely upon his evidence.

33. I found Mr Lynch-Smith to be a difficult and challenging witness. Bluff and direct in his manner, Mr Lynch-Smith was clearly irritated by Mr Latimer's questioning of him. Mr Lynch-Smith was prepared to accuse Mr Hinchey of not telling the truth, maintaining that Mr Davies had obviously written Mr Hinchey's witness statement for him (an allegation which I reject). Mr Lynch-Smith maintained that anything written by Mr Allenby was a lie. In his oral closing, Mr Budworth acknowledged that Mr Lynch-Smith had not been a model witness, describing him in cross-examination as displaying agitation and aggression and prone to firing questions at Mr Latimer. However, Mr Budworth submitted - and I accept - that this was in large measure understandable because Mr Lynch-Smith considered that he had been cheated by a long-standing friend who he now felt had dishonestly betrayed him and because, unbeknown to Mr Lynch-Smith, he had set Mr Allenby's new business on the path to success. In his written closing, Mr Budworth submitted, with some justification, that for Mr Lynch-Smith to have failed at all times to keep a lid on his exasperation and anger at being dragged through such an expensive argument, based on what he would regard as Mr Davies's greed, was at least understandable if not entirely forgivable. Mr Davies had been given a big leg-up when he had been at a low ebb and, as a result, he had become a known face in a small industry. I am satisfied that Mr Lynch-Smith has honestly come to view everything about this case through this particular prism.

34. Mr Lynch-Smith's present hostility towards Mr Davies was apparent during his cross-examination by Mr Latimer from Mr Lynch-Smith's constant references to "**your** [emphasised] Mr Davies". Mr Lynch-Smith was suspicious of everything that Mr Davies had done, refusing to accept that emails such as that of 11 August 2011 to PCH (at Bundle 14 page 5159 and Core Bundle page 29) were an attempt by Mr Davies to attract work into Ringway - as I am satisfied, they were - instead suggesting that Mr Davies was probably trying to get in some more bonus bonds (or vouchers). I acknowledge that at times Mr Lynch-Smith was prepared to make appropriate concessions in cross-examination, as when he accepted that he had behaved unprofessionally in failing to document what had passed at his meeting with Mr Davies at Ringway's premises in Manchester on 16 November 2016 when (as Mr Lynch-Smith asserted) Mr Davies had eventually admitted that he had invested in Novo: see paragraph 134 of Mr Lynch-Smith's witness statement.

35. There are aspects of Mr Lynch-Smith's evidence that I cannot accept, such as his repeated denials that he had ever described Mr Davies as his "business partner". Even then,

however, I am satisfied that in this area (as in others, such as the endorsement of expenditure by Mr Davies and Mr Lynch-Smith - though not necessarily by Ringway - on hospitality surrounding race-horse meetings) Mr Lynch-Smith was not deliberately lying; rather he has persuaded himself, with the benefit of hindsight, that he could not have said such a thing or acted in such a way, and that he therefore did not do so. I am satisfied that I must view Mr Lynch-Smith's evidence with considerable suspicion and reserve, and that I must scrutinise it with considerable care. However, making due allowance for that, I am satisfied that where there are direct conflicts between the evidence of Mr Davies and that of Mr Lynch-Smith, I should prefer the latter unless it is contradicted by other reliable evidence. In particular, I prefer the evidence of Mr Lynch Smith to that of Mr Davies in relation to: (1) the establishment of Ringway, (2) the car dealership accreditations, (3) the lunch meeting at Gusto Restaurant, and (4) the meeting at Ringway's premises on 16 November

36. I accept Mr Lynch-Smith's evidence that he did not go into business with Mr Davies and he never told Mr Davies that he was to be his partner in Ringway. Rather, I find that Mr Lynch-Smith employed Mr Davies as a manager and gave him 25% of the shares in Ringway in order to incentivise him; and that Mr Lynch-Smith did so because he could not be in two places at one time and he needed someone in Manchester whom he could trust. Those findings are consistent with the respective business backgrounds, experience and positions of the two men in 1999. I am satisfied that Mr Lynch-Smith has not sought to minimise Mr Davies's role and achievements in Ringway because it now suits him to do so. I accept Mr Lynch-Smith's evidence that he had kept Mr Davies on after (as I find, on the basis of the evidence of Jackie Devaney and Lee Peat, supported on this issue by Roy Hartwell and Chris Greenwood) Mr Davies had lost his initial enthusiasm for a management role in Ringway because Mr Davies was a friend and Mr Lynch-Smith had wanted to "see him grow". Later in cross-examination Mr Lynch-Smith reiterated that he had not been going to fall out with Mr Davies because he was his "friend". Mr Lynch-Smith said that he had treated Mr Davies as a brother but for the last two years (i.e. since November 2016) Mr Davies had treated Mr Lynch-Smith "like something I've picked up from the bottom of my shoe". The sense of disappointment and betrayal was palpable.

37. Mr Lynch-Smith's account of Mr Davies's role in achieving the car dealership accreditations is consistent with the evidence of Mr Hartwell and Mr Greenwood, which on this matter I find to be reliable. Notwithstanding the evidence of Mr Hinchey, I reject

Mr Davies's account of the lunch meeting at Gusto restaurant (with talk of Mr Lynch-Smith's retirement and an offer to sell his shares to Mr Davies) as inherently improbable in the light of what I am satisfied were Mr Lynch-Smith's suspicions of Mr Davies at that time and Mr Lynch-Smith's undoubted behaviour thereafter in first suspending, and then dismissing, Mr Davies from Ringway, behaviour which Mr Hinchey recognised represented a "dramatic" change of position. I prefer Mr Lynch-Smith's account of the 16 November meeting because I regard Mr Lynch-Smith as a more reliable witness of truth than Mr Davies who, I am satisfied, has lied about his involvement in Novo. In short, when I do not accept Mr Lynch-Smith's evidence it is because of his tendency to reconstruct events in the light of the base motives which he attributes to many of Mr Davies's actions whereas in the case of Mr Davies I am satisfied that he has been deliberately misleading the court.

38. I found Mrs Janet Evans to be an honest and truthful witness who was doing her best to assist the court and I accept her evidence. I reject the wholly unrealistic suggestion that she had sought to distance herself from Mr Lynch-Smith by the address she gave in her witness statement. Mrs Evans readily accepted that she disliked Mr Davies, but I reject the suggestion that she was vindictive towards him or that this has coloured Mrs Evans's evidence. She maintained that it was always agreed that the "majority" of the potential car hires from the two bodyshops should be referred to HPP.

39. Mrs Evans's evidence provides no support for Mr Lynch-Smith's oral evidence in cross-examination (first advanced as recently as May 2018 in the defendants' statement of case in the partnership claim) that there was an agreement that no less than 60% of the referrals would be made to HPP. I am satisfied that this is Mr Lynch-Smith's later rationalisation of the true agreement, which was that the "majority" of referrals should be made to HPP. As Mr Lynch-Smith reiterated in cross-examination, the majority was to go to HPP and 60% was a majority. I note that the original business plan for HPP (at Bundle 15 page 5862) asserted that the business for all six of HPP's vehicles could be achieved from Lloyds Liverpool and Ringway. Mr Latimer submits that an agreement to refer a "majority" of vehicles to HPP is too vague to constitute a binding agreement. That may be so, but the submission ignores the basis of mutual trust and confidence which underlies, and gives rise to, the relationship of quasi-partnership which forms the touchstone for the grant of relief under Section 994. As Lord Hoffmann recognised in this context in *O'Neill v Phillips* [1999] 1 WLR 1092 at 1101 letters G to H:

> "Nor is it necessary that … promises should be independently enforceable as

> a matter of contract. A promise may be binding as a matter of justice and equity although for one reason or another … it would not be enforceable in law."

40. Although Mrs Evans said that she did not look at Ringway's credit card statements, she did remember Jackie Devaney running a car parking fine past her. This must be a reference to a parking charge incurred, apparently by Mr Davies's wife, Alex, at lunchtime in Southport on Saturday 13 July 2013. In re-examination, Mrs Devaney said that she had raised this notice with Mrs Evans who had approved it; and this is confirmed by the notation on the relevant documents at Bundle 11 pages 4180 and 3940. Mrs Evans said that she had referred the parking charge to Mr Davies rather than to Mr Lynch-Smith. I also regard it as significant, and supportive of Mr Lynch-Smith's evidence, that Mrs Evans was not told about the receipt of any vouchers from PCH.

41. I turn then to the other witnesses, beginning with those called by Mr Davies. Mr Carl Hinchey is a practising personal injury litigation solicitor and an owner of racehorses and shares in racehorses. Despite Mr Budworth's challenges to his evidence, I regard Mr Hinchey as a truthful and reliable witness and I accept his evidence. I therefore find that both Mr Davies and Mr Lynch-Smith referred to the other as their "business partner", and I reject Mr Lynch-Smith's evidence to the contrary. I also accept the evidence at paragraphs 15 and 17 of Mr Hinchey's witness statement, although I note that it does not follow that Mr Lynch-Smith necessarily understood that the expenditure on hospitality was to be borne by Ringway, as distinct from Mr Davies and Mr Lynch-Smith personally. I note that there was no challenge to paragraphs 22 and 23 of Mr Hinchey's witness statement. I therefore accept Mr Hinchey's account of what he was told by Mr Davies at the lunch meeting at Gusto restaurant. It follows that Mr Davies was either being deliberately disingenuous in what he said to Mr Hinchey for reasons which are unclear or (and more likely in the light of what I perceive to be Mr Davies' personality) that Mr Davies was deluding himself about Mr Lynch-Smith's views and intentions.

42. I regard Mr Gerard Clarke as a reliable and truthful witness. I accept that Mr Clarke is both the legal and the beneficial owner of his 5% shareholding in Novo (for which he paid £10) and that he also lent £5,000 to Novo as what he described as "a small investment which may one day bear fruit". I accept Mr Clarke's evidence that the only reason he was appointed as the Company Secretary of Novo was to enable him to qualify for enterprise relief in relation to his shares, and also his description of himself as a "sleeping partner" in Novo. I accept

Mr Clarke's evidence that he had no knowledge of any invitation from Mr Allenby to Mr Davies to become a shareholder in Novo, and that there had been no discussion of how this might impact upon Mr Clarke's own shares. However, I see no significance in this since Mr Clarke also said that he had not known that Novo had lent any money to Mr Davies for his legal costs of this litigation. I do not view Mr Clarke's evidence as negating the possible existence of any agreement between Mr Davies and Mr Allenby as to the beneficial ownership of Mr Allenby's shareholding, or as to the transfer of any of Mr Allenby's shares to Mr Davies.

43. I do not regard Mr Allenby as a truthful or a reliable witness. He was at times confrontational in the witness box. Through Novo's investment in Mr Davies's legal costs he clearly has a vested personal interest in the outcome of this litigation. In his witness statement he said that he had never offered Mr Davies any shares in Novo without mentioning anything about the possibility of a shareholding in Novo Esurance. This was a later, and false, embellishment which I am satisfied was intended to fit in with Mr Davies's evidence in cross-examination. Mr Allenby's witness statement also contained no reference to the payment of Mr Davies's legal costs. I am satisfied that this substantial investment, as to the terms of which Mr Allenby was suitably vague, would never have been made had Mr Davies not had some interest in Novo which both he and Mr Allenby have declined to reveal to the court. Mr Allenby was vague about when he had ceased making consultancy payments to Mr Davies, eventually suggesting the early part of 2016. Both Mr Davies and Mr Allenby were also unclear about how those payments had been quantified and agreed. I am satisfied that Mr Allenby, like Mr Davies, has not been honest with the court about the true nature and extent of Mr Davies's involvement in Novo, and that Mr Allenby had no wish to assist the court in getting at the truth of the matter.

44. The unchallenged evidence of Mr Crossley is of little relevance or assistance to me. It goes only to the respective roles of Mr Davies and Mr Lynch-Smith in the accreditation of Ringway for Bentley, Rolls Royce and McLaren, and does not address the roles of others lower down the chain of command on both sides of the negotiation. I agree with Mr Budworth that the relevance and the strength of this evidence was overplayed time and again on behalf of Mr Davies, as was the presentation to Porsche in 2006 and the contrasting "family trees" (at Core Bundle pages 14D and 14E) for Ringway and Lloyds Liverpool respectively. It is clear from the text (at, for example, page 14C) that this document was prepared for, and not by, Mr Lynch-Smith, and the family tree for Ringway

accurately shows Mr Lynch-Smith and Mr Davies as the two directors but says nothing about their respective shareholdings or the ultimate ownership or control of Ringway.

45. I move to the witnesses for Mr Lynch-Smith and Mrs Evans.

46. In closing, Mr Budworth rightly described Mrs Arabella Ferris and Miss Kirsty Jones as impressive witnesses, lavishing particular praise upon the former's calm and sober treatment of Mr Budworth's questions in chief. Mrs Ferris had acted as Novo's claims manager from April 2016 to February 2018, whilst Kirsty Jones had acted as a claims handler for Novo from September 2016 until she left at the same time as Mrs Ferris, setting up in competition with Novo through the medium of Mrs Ferris's newly incorporated company, Concierge Claims Management Limited. Notwithstanding the points made, both during cross-examination and in closing by Mr Latimer, including his submission that it was inherently improbable that Mr Davies would have opened up to Mrs Ferris or to Kirsty Jones in interview about him having an interest and being a silent partner in Novo's business, I accept that both Mrs Ferris and Miss Jones were telling the truth in their evidence to the court. It may be that Mr Davies was sufficiently confident that he could rely upon the discretion of Mrs Ferris (as Mr Clarke's niece) and of Miss Jones (as her friend). I reject the submissions that the evidence of either witness was tainted, or influenced, by a wish to get their own back at Novo, or Mr Allenby, because they had threated litigation against them over the circumstances of their departures from Novo, or that they were influenced by a wish to attract work from Ringway or from Lloyds Liverpool (although I accept that Mr Lynch-Smith and Mr Hartwell may have dangled this carrot in front of them). I also accept Mrs Ferris's evidence that she has nothing against Mr Davies. The evidence of these two reliable witnesses affords further support for my finding that Mr Davies has always had some interest in Novo which he has wished to conceal from Mr Lynch-Smith and from the court.

47. Mr Lee Smith has worked for Ringway since 2001, initially as an apprentice paint sprayer straight from school and working his way up to become Ringway's Customer Relations Manager. I found him to be an honest and reliable witness whose evidence I accept. Mr Latimer made no substantial inroads into his evidence in cross-examination. Mr Smith was prepared to make appropriate concessions, accepting that he considered Mr Davies's close relationship with Mr Allenby to have been of benefit to Ringway's business, and acknowledging that the table of referrals from Novo at paragraph 30 of his witness statement was possibly incomplete. Mr Smith also spoke of a good

number of referrals from Manor.

48. Mr Roy Hartwell has worked for Ringway since 2000 and he is now its General Manager. I found Mr Hartwell to be a thoroughly unsatisfactory and an unreliable witness, and I am satisfied that I must scrutinise his evidence with great care. He was self-satisfied, cocky, and evasive in response to questioning. He accepted that he disapproved of Mr Davies as a social climber (although I confess to having found any comparison with Becky Sharp, the paradigm of that species, less than compelling). I consider that Mr Hartwell exaggerated his own role and significance in Ringway, and also the extent of his early suspicions about Mr Davies's possible involvement in Novo. I am satisfied that Mr Hartwell was not entirely forthcoming in his evidence that he never dangled the prospect of business referrals in the direction of Mrs Ferris (although I am satisfied that whatever he may have said did nothing to affect her evidence).

49. I found Mr Hartwell's evidence about why he never told Mr Lynch-Smith about his increasing suspicions about Novo unsatisfactory. He said that he had assumed that Mr Lynch-Smith already knew about Novo. When it was pointed out to him that, if he had thought that, there could have been no harm in seeking confirmation from Mr Lynch-Smith that he did know, Mr Hartwell's answer was that he was just "wondering where it was going". Mr Latimer pointed out that it was unlikely that Mr Davies should have taken Mr Hartwell into his confidence about any involvement in Novo; but Mr Davies may have known Mr Hartwell well enough to know that he was unlikely to spill the beans to Mr Lynch-Smith, and in that he was proved right because Mr Hartwell did not inform on him to Mr Lynch-Smith. Mr Latimer was on surer ground in pointing out that Mr Hartwell's account of what he had been told by Mr Davies (at paragraphs 48 and 49 of his witness statement) was inconsistent with what Mr Greenwood says that he was told by Mr Davies (at paragraph 31 of Mr Greenwood's witness statement). Mr Hartwell also said in cross-examination that some figures had been mentioned to him by Mr Davies, yet Mr Hartwell was unable to explain why paragraph 48 of his witness statement said that Mr Davies had not given him a figure for his loan to Mr Allenby. Mr Hartwell's evidence is not inconsistent with my conclusions about Mr Davies's involvement in Novo, but I do not regard it as providing any reliable independent support for those conclusions.

50. Mr Christopher Greenwood is Ringway's Operations Manager. I share precisely the same reservations in relation to his evidence (and for the same reasons); and I propose to treat it in exactly the same way as Mr Hartwell's evidence. Mr Greenwood admitted that he had a

low opinion of Mr Davies. I consider that Mr Greenwood deliberately exaggerated Mr Davies's deficiencies in order to portray him in the worst possible light, although he repeatedly referred to Mr Davies as "my managing director". In cross-examination Mr Greenwood revealed that he had only had one conversation with Mr Davies about his involvement in Novo and that paragraphs 31 and 32 of his witness statements were referring to the same conversation. When questioned about paragraph 35 of his witness statement Mr Greenwood confirmed that it was correct, but he said that he had felt uncomfortable about what he claims to have been told by Mr Davies and that he had mentioned it to other employees of Ringway but not to Mr Lynch-Smith. Mr Greenwood was unable to elaborate upon the first sentence at paragraph 38 of his witness statement ("Greg informed me that he was getting money from Novo over a period of time but he never disclosed the details of this"). Mr Greenwood commented that Mr Davies had just been daft enough to confide in him. In the event, I derive no material additional assistance from Mr Greenwood's evidence.

51. I have already commented upon Miss Kirsty Jones's evidence. I accept the evidence of Mr Patrick Ryan that at Aintree Racecourse on 3 December 2016 Mr Davies introduced Mr Allenby to another racehorse owner as his "business partner". Mr Latimer rightly points out that this was after Mr Davies's suspension from Ringway but that is to miss the point of this evidence. Neither Mr Davies nor Mr Allenby have ever suggested that there was any material change in their business relationship after Mr Davies's suspension (apart from the fact that Mr Davies attended Novo's offices a lot more frequently). However, Mr Ryan's evidence is of very limited assistance to me in deciding this case.

52. Mrs Jackie Devaney is Ringway's receptionist and administrator. I have already referred to her evidence about challenging a car parking charge during the course of reviewing the evidence of Mrs Evans. I accept Mrs Devaney as an honest and reliable witness whose evidence I can safely accept. The same applies to Mr Lee Peat who is the manager of Lloyds Liverpool and, since February 2016, a 5% shareholder in the company. Mr Peat formerly managed HPP and he continues to carry out work on its behalf. He told the court that Ringway could have supported HPP a lot more with hire referrals, but it was just not given the opportunity.

53. Mr Nick Parry is a director and shareholder of Manor. I regard him as a reliable and truthful witness whose evidence I can safely accept. He gave cogent evidence about the adverse nature and effect of the referral of business to Novo at the expense of Manor.

Despite the submissions of Mr Latimer, I do not regard Mr Parry's email of 18 April 2016 (at Bundle 14 page 5305) and Mr Parry's solicitor's related email as bolstering the credibility of Mr Allenby. These emails were simply a means to an end, with a view to assisting Mr Parry in ongoing litigation, and merely reflected Mr Parry's hope (not any expectation) that Mr Allenby would tell the truth.

Equitable obligations or quasi-partnership

54. In *O'Neill v Phillips* [1999] 1 WLR 1092 at pages 1098H to 1099B, Lord Hoffmann said this:

> "One of the traditional roles of equity, as a separate jurisdiction, was to restrain the exercise of strict legal rights in certain relationships in which it considered that this would be contrary to good faith. These principles have, with appropriate modification, been carried over into company law.
>
> The first of these two features leads to the conclusion that a member of a company will not ordinarily be entitled to complain of unfairness unless there has been some breach of the terms on which he agreed that the affairs of the company should be conducted. But the second leads the conclusion that there will be cases in which equitable considerations make it unfair for those conducting the affairs of the company to rely upon their strict legal powers. Thus unfairness may consist in a breach of the rules or in using the rules in a manner which equity would regard as contrary to good faith."

55. In *Strahan v Wilcock* [2006] EWCA Civ 13, reported at [2006] 2 BCLC 555, Arden LJ (with the agreement of Mummery and Richards LJJ) observed (at paragraph 18) that equity enabled the court to subject to the exercise of legal rights governing the relationship between shareholders to equitable considerations of a personal character arising between one individual and another which might make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way. She noted that the relationship where such equitable obligations existed was often labelled - but, she said, "not always helpfully" - as a "quasi-partnership". Arden LJ went on to quote from the seminal and celebrated judgment of Lord Wilberforce in *Ebrahimi v Westbourne Galleries Ltd* [1973] AC 360 that:

> "… the superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship involving mutual confidence - this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all or some (for there may be 'sleeping' members) of the shareholders shall participate in the conduct of the business; (iii) restriction on the transfer of the members' interest in the company - so that if confidence is lost, or one member is

removed from management, he cannot take out his stake and go elsewhere'.

56. In the present case, I have already indicated that I accept Mr Lynch-Smith's evidence that he did not go into business with Mr Davies and that he never told Mr Davies that he was to be Mr Lynch-Smith's partner in Ringway. Rather, I find that Mr Lynch-Smith employed Mr Davies as a manager, and gave him 25% of the shares in Ringway, in order to incentivise him; and that Mr Lynch-Smith did so because he could not be in two places at one time and he needed someone in Manchester whom he could trust. I accept Mr Lynch-Smith's account of the way in which Mr Davies came to be involved in Ringway. He was simply, as Mr Lynch-Smith put it, "in the right place at the right time" when the opportunity arose to expand Lloyds Liverpool's existing association with Porsche (evidenced by the letter of reference previously cited) to Manchester which (from its demographics) provided a potentially more lucrative market for body repairs to prestige and performance vehicles than Merseyside. I find that the difference in the two men's respective shareholdings was not simply the result of Mr Lynch-Smith's greater bargaining power but it reflected the facts: (1) that the ultimate control in and responsibility for the strategic decision-making would be reserved to Mr Lynch-Smith, and (2) that Ringway was simply to be an extension of Mr Lynch-Smith's existing and established car body repair business based in Liverpool. Those findings are consistent with the respective business backgrounds, experience and positions of the two men in 1999.

57. The high point of this part of Mr Davies's pleaded case is to be found in paragraph 14.2 of the petition, alleging that "as directors, they would share in the management of the limited company". I accept that this was the case provided "management" in this context is construed in the sense of "day-to-day management". I accept Mr Budworth's submission in closing that the assertion in paragraph 13 of Mr Davies's witness statement that "Ged … stressed that he wanted a business partner, not an employee" was a glaring (and false) attempt to plug a hole in Mr Davies's case. As the 75% shareholder, Mr Lynch-Smith had full control of the company. Not only was he able to secure the passage of an ordinary resolution removing Mr Davies as a director (under what is now section 168 of the Companies Act 2006) but he was also able to secure the passage of any business requiring a special resolution. That is why it is common ground between the expert accountants that if a discount for majority shareholding applies, then that discount should be as great as 60%.

58. Mr Davies did not insist upon any provision in the articles, or any shareholders' agreement, restricting the normal powers of Mr Lynch-Smith. Had he sought to do so, I have no doubt

that he would have received short shrift from Mr Lynch-Smith. There was not even any written business plan (as there was to be when HPP was established). I find that the agreement between Mr Lynch-Smith and Mr Davies was that they would share in the day-to-day management of Ringway, but not that they would be equally involved in all decision-making, or that there should be any constraint upon the exercise by Mr Lynch-Smith of his powers as the 75% shareholder. Mr Lynch-Smith never ceded to Mr Davies an equal share in the running of Ringway. If circumstances changed, Mr Lynch-Smith was entitled, as the controlling shareholder, to terminate Mr Davies's involvement in the management of Ringway. I find that Mr Lynch-Smith had entered into no commitment towards Mr Davies that would have restricted his ability to exercise this power.

59. I have already explained (when addressing Mr Crossley's evidence) why I consider that Mr Davies (and his counsel) have overplayed the significance of the Ringway family tree in the 2006 Porsche presentation. Although I have rejected Mr Lynch-Smith's denials that he ever referred to Mr Davies as his "business partner", I do not regard this as any admission by Mr Lynch-Smith that he had irrevocably or unconditionally promised Mr Davies that he should enjoy any permanent right to participate in Ringway's strategic management and direction, as distinct from its day-to-day management, or that there was any tacit understanding between the two men to this effect; and, in relation to HPP (where the business was established as a true partnership, rather than as a limited liability company), the two men were indeed business partners.

60. It is common ground that when Ringway's bank account was first established with NatWest, Mr Davies entered into a guarantee, limited to £50,000 and supported by a second mortgage over his house, as security for Ringway's bank borrowings. However, Mr Lynch-Smith made a loan of £50,000 to Ringway (which was postponed in favour of NatWest), and he granted a mortgage debenture over the assets of Lloyds Liverpool and a mortgage over Lloyds Liverpool's former business premises in Ralegh Street (owned personally by Mr Lynch-Smith). It was envisaged that there would be a guarantee from Mr Lynch-Smith for £50,000 and an additional personal guarantee for £50,000 from Mr Davies: see the security schedule at Core Bundle page 7. Although Mr Lynch-Smith accepted that there was no copy of this additional guarantee available, I am satisfied (from the security document at Bundle 14 page 5124, relating to Mr Davies's house move to Grosvenor Gardens, Birkdale, in 2003 and the need for Mr and Mrs Davies to grant a second charge over that property, in substitution for the earlier charge over Mr Davies's

former home in Hightown) that Mr Davies did indeed enter into a second guarantee in favour of NatWest (and that Mr Lynch-Smith did execute a guarantee for £50,000 in NatWest's favour). I also accept that in or about August 2013 both Mr Davies and Mr Lynch-Smith gave unlimited personal guarantees to Pendragon Sabre Ltd (trading as the Porsche Centre Wilmslow) in respect of the liabilities of both Ringway and Lloyds Liverpool. Mr Lynch-Smith's evidence was that the giving of the original guarantees had been to "incentivise" Mr Davies and to ensure that he was committed to Ringway's business. (Mr Lynch-Smith had no recollection of the later guarantee to Pendragon.)

61. I do not attach the significance to these guarantees that Mr Latimer does. Mr Davies was not merely an employee of Ringway; he was also a 25% shareholder, and the guarantees reflected his 25% shareholding in the company, and the fact that, unlike Mr Lynch-Smith, he had not provided any initial capital injection of £50,000. Moreover, the 2013 guarantee extended to Lloyds Liverpool (in which, unlike Ringway, Mr Davies had no interest) as well as to Ringway. In the light of all the other evidence, I do not regard the giving of these guarantees as evidence of any agreement between Mr Lynch-Smith and Mr Davies that Ringway should be treated as a "quasi-partnership", or as giving rise to any of the equitable constraints inherent in this legal construct.

62. Mr Latimer also relied upon the other factors listed at paragraph 32 of his initial skeleton argument, which he described as "a spread of evidence over a period of time'", evidencing "a personal relationship and/or understanding that [Mr Lynch-Smith and Mr Davies] would manage [Ringway] together in what lawyers would term a quasi-partnership". I cannot attribute the significance to these factors that Mr Latimer does. Even when viewed cumulatively, I cannot regard them as manifesting an understanding on the part of Mr Lynch-Smith and Mr Davies that Ringway was to be operated as a quasi-partnership. In my judgment, the concept of unfairness which underlies section 994 as the criterion by which I must decide whether I have jurisdiction to grant relief under that section is not engaged simply by reason of Mr Lynch-Smith's decision to suspend, and then to terminate, Mr Davies's employment as the managing director of Ringway.

63. However, it does not seem to me that my search for any equitable constraints upon the exercise of Mr Lynch-Smith's powers as the majority shareholder of Ringway should end here. In *O'Neill v Philipps* (previously cited) the House of Lords (at pages 1104C to 1105B) firmly rejected the notion that in a "quasi-partnership" company one partner ought

to be entitled at will to require the other partner or partners to buy out his shares at a fair value whenever trust and confidence had broken down between them. Mr Latimer readily accepted that in the case of a quasi-partnership company there was no such concept as a "no-fault divorce". However, when rejecting the notion that a shareholder could "demand that his shares be purchased simply because he feels that he has lost trust and confidence in the others", Lord Hoffmann was speaking in the context of "a member who has not been dismissed or excluded": see page 1104G to H. Earlier, Lord Hoffmann had recognised (at page 1102H) that "it would have been unfair of [the respondent] to use his voting powers under the articles to remove [the petitioner] from participation in the conduct of the business without giving him the opportunity to sell his interest in the company at a fair price."

64. In *Richards v Lundy* [2000] 1 BCLC 376 at 394F Mr Nicolas Strauss QC recognised that "… even in cases in which the exclusion from the company may be reasonable, and indeed inevitable, because of a breakdown in the relations between the shareholders, it may be unfair for the very reason that it is not accompanied or followed by an offer on reasonable terms to purchase the shares"; although a later passage (at page 395C) suggests that the Deputy Judge may not have had in mind a case where the petitioner's exclusion from the management of the company was justified by reason of his misconduct.

65. It therefore seems to me that the concept of unfairness which underlies section 994 as the criterion by which I must decide whether I have jurisdiction to grant relief under that section by way of an order for the purchase of Mr Davies's shares requires me to go on to consider whether it was unfair for Mr Davies's management role in Ringway to have been terminated without giving him the opportunity to sell his 25% shareholding at a fair price. This requires a highly fact-sensitive enquiry into the reasons for Mr Davies's expulsion from management, and their fairness; and requires a preliminary finding as to Mr Davies's role and involvement in Novo since this was the principal reason put forward by Mr Lynch-Smith for that expulsion.

6. Novo

66. Mr Latimer submits that Mr Davies has no direct or indirect interest in Novo. He is not a registered shareholder and (as I accept) Mr Clarke's shares are not held in trust for him. The hope of acquiring an interest in Novo is not itself an interest in that company. The admitted advance of a loan of £15,000 to Novo does not amount to any interest in that company; and, in any event, Mr Davies is no longer a creditor since the debt to Mr Davies

has been discharged by a corresponding payment by Novo on account of Mr Davies's legal costs of this litigation. Although Mr Davies acted as a consultant to Novo, the payment of consultancy fees totalling £31,351, of which the final £11,400 was paid on 31 January 2017, after the termination of Mr Davies's employment with Ringway, does not amount to an interest in Novo. The fact that Mr Davies hired a Bentley motor car for the benefit of Novo is said to be a red-herring because the invoice is dated 16 December 2016, a month after Mr Davies's exclusion from Ringway and, in any event, Novo reimburses Mr Davies' hire costs each month. Mr Latimer submits that Mr Lynch-Smith's late attempt to show that Novo paid for Mr Davies's Range Rover Sport in September 2016 also fails. Mr Davies merely used a Novo bank card (which he had received to pay for expenses incurred whilst on Novo's business) to pay the £180 documentation fee and, although Mr Davies accepted that he had never reimbursed Novo for this expenditure, this was a trivial sum. All other payments for the vehicle had been made by Mr Davies personally, as established by Ms Collett's examination of Mr Davies's bank statements.

67. I have already indicated, when addressing Mr Davies's evidence, that I accept Mr Budworth's submission that the true nature of Mr Davies's relationship with Novo has never satisfactorily been opened up to sight in this case and that Mr Lynch-Smith has faced practical difficulties in securing proper visibility of what Mr Davies has really been getting up to with Novo. I have already indicated that I do not accept either Mr Davies or Mr Allenby as reliable and truthful witnesses. I find that they have both lied to the court about the invitation to become a shareholder in Novo asserted at paragraph 55.4 of the re-re-amended points of reply, and I reject Mr Davies's evidence that he had no interest in becoming a shareholder in Novo. Consistently with the views I have already expressed when reviewing the evidence of Mr Davies and Mr Allenby, I am satisfied that Mr Davies has some involvement in Novo and that the opacity of this involvement is entirely due to the present litigation. The scribblings in the notebook that was left behind when Mr Davies was expelled from Ringway were directed principally to the business and affairs of Novo, its financial performance and work in progress, rather than (as one would expect) those of Ringway. I accept that there was panic on the part of Mr Allenby and Mr Davies when they discovered that Mr Lynch-Smith had discovered the terms of Novo's presentation to RK Harrison in December 2016. I cannot accept that Mr Davies would be continuing to provide free consultancy services to Novo, or that Novo would have been stumping up some £250,000 in Mr Davies's legal costs, if there were no binding obligation on the part of

Mr Allenby to hold part of his shareholding in Novo for the benefit of Mr Davies. On the balance of probabilities, I find that Mr Davies has, and has always had, some interest in Novo, the precise nature and extent of which he has persistently sought to conceal from Mr Lynch-Smith and the court.

68. Even if I am wrong to find that Mr Davies has, and has always had, some interest in Novo, I am satisfied that Mr Lynch-Smith had legitimate grounds for genuinely believing that Mr Davies had such an interest which Mr Davies has done nothing effectively to dispel. In evidence, Mr Davies accepted that he did not tell Mr Lynch-Smith that he was working for Novo as a consultant and that he did not discuss with Mr Lynch-Smith his involvement with Novo or with Mr Allenby. I have to ask myself why this was the case. When I posed this question to Mr Latimer in closing, he submitted that, rather than deliberately concealing his role as a consultant to Novo from Mr Lynch-Smith, Mr Davies had simply taken the view that this was a matter of no interest to Mr Lynch-Smith. I cannot accept this lame explanation: I am satisfied that when challenged by Mr Lynch-Smith about his involvement in Novo, following their return from the race meeting at Cheltenham on 22 October 2016, in particular during the course of the lunch meeting at Gusto restaurant at the beginning of November, Mr Davies effectively brushed off Mr Lynch-Smith's enquiries without giving a true and full account of his consultancy role. I find that Mr Davies could not, and did not, consider that this was a matter of indifference to Mr Lynch-Smith; it clearly mattered to him. I find that Mr Davies's assertion that his association with Novo was of benefit to Ringway is at odds with his behaviour at the time.

69. Mr Latimer submitted that Mr Davies was not in breach of any duty owed to Ringway by reason of his involvement in Novo. Mr Lynch-Smith had accepted that Ringway and Novo were not in competition because the former was a bodyshop and the latter was an accident management company. Mr Lynch-Smith had been conflating the duties owed by Mr Davies to HPP with the duties owed to Ringway. For the reasons advanced at paragraph 5 of his written closing note, Mr Latimer submitted that HPP and Novo were not in competition with each other; the former provided credit hire whilst the latter was an accident management company. Novo had not been incorporated until March 2015, by which time HPP had been finished as a trading entity. HPP's bank had effectively withdrawn its financial support from HPP in 2012, and thereafter HPP had disposed of most of its vehicle fleet. By 2015 HPP only had five vehicles, of which three were provided to its three partners; and HPP's last employee, Lee Peat, had ceased to be an employee of HPP and had

returned to Lloyds Liverpool in 2011.

70. I reject these submissions, both factually and legally. Although HPP's net profits fell dramatically after 2010, this was not due entirely to the financial crash but to the change in HPP's accounting practices, related by Mrs Evans at paragraph 66 of her witness statement. The number of referrals to HPP from Ringway, but not from Lloyds Liverpool, dropped in 2012 and 2013, and there were no referrals at all from Ringway after 2014. I accept that all of this took place before Novo was incorporated, and that the beneficiaries of this change in the destination of referrals were PCH and, later, Manor; and I note that in cross-examination Mr Davies did not deny that PCH, and later Manor, were in the same line of business as HPP. However, although the number of referrals to HPP from Lloyds Liverpool dropped in 2014, the fall was not as dramatic as it was from Ringway, and HPP continued to source referrals from Lloyds Liverpool. I accept the evidence of Lee Peat that Ringway could have supported HPP a lot more with hire referrals, but it was just not given the opportunity; and also the evidence of Mrs Evans that she had tried to encourage referrals from Ringway but without success. When I queried the difference between the drop-off in referrals from Ringway and Lloyds Liverpool, Mr Latimer sought to explain this on the basis that Lee Peat was still based in Liverpool, and that Liverpool dealt with more mass-market vehicles. I cannot accept this explanation because it does not account for the number of referrals from Ringway before 2012. Mrs Evans explained that more vehicles could have been sourced for HPP from cross-hiring; and there is also force in Mr Budworth's point that, if necessary, Mr Davies could have hired a Bentley for use by HPP, as he was later to do for Novo.

71. I acknowledge the need to distinguish between the duties owed by Mr Davies to HPP and to Ringway; but in the context of the flexible concepts of unfairness and equitable obligation which underlie the section 994 jurisdiction, it is relevant, and important, to bear in mind, when considering Mr Davies's conduct, the reason why HPP was established in the first place, which was the opportunity offered by the business of a bodyshop to earn further income from referrals to credit hirers. In cross-examination Mr Davies accepted the obvious scope for cross-referral of work between vehicle repair and credit hire businesses. In my judgment, even apart from what I find to be Mr Davies's personal interest in Novo - even though he has sought to conceal the precise nature of that interest from Mr Lynch-Smith and the court - I find that there was an actual conflict of interest between Mr Davies's role as the Managing Director of Ringway and his association with Novo. That association impacted upon the dealings between Ringway and its commercial associates, HPP, PCH and

Manor. The detrimental effect upon Ringway's association with Manor is vividly depicted in Mr Parry's evidence.

72. However, apart from an actual conflict, in the sense of commercial harm caused to Ringway's reciprocal commercial arrangements with businesses with which Novo was in direct competition, it is sufficient that there was a potential conflict of interest. Paragraphs 35 to 40 of Mr Budworth's opening skeleton argument address the strictness of the "no-conflict rule", now reflected in section 175(1) of the Companies Act 2006, which provides that "a director of a company must avoid a situation in which he has, or can have, **a direct or indirect interest that conflicts, or possibly may conflict**, with the interests of the company". It is sufficient for me to refer to only one of the authorities cited by Mr Budworth, Barling J's statement in *Cullen Investments Ltd v Brown* [2017] EWHC 1586 (Ch) at paragraph 244 (which was said to be well-established by a long line of authorities):

> 'In the light of the findings above, it is clear that Julian was also in breach of his director's duties to KIL under section 175 of the 2006 Act (and corresponding pre-existing common law duties) by reason of the conflict of interest, and was in breach of both section 172 and section 177 by reason of the failure to disclose that interest. If a director of a company has, or is planning to take, a personal interest which would, or might, give rise to a potential conflict, it is clear that he or she is under a duty to inform the company, for it is only with the informed consent of the company that such an interest could properly be taken up by the director'.

73. Although I find the existence of an actual conflict of interest, there was clearly sufficient potential for a conflict of interest to render Mr Davies's involvement in Novo a breach of his duties to Ringway, as well as to HPP. It is not sufficient for Mr Davies to assert that he was acting for the benefit of Ringway in seeking to drum-up referrals up from Novo. Even if Mr Davies had no personal interest in Novo, his preference for that company was a potential, and actual, detriment to Ringway's relationship with its established commercial associates, such as HPP, PCH and Manor, and should have been disclosed to Mr Davies's co-director and Ringway's majority shareholder, Mr Lynch-Smith. However, in any event, in my judgment the existence of such a personal interest has been established.

74. In his submissions Mr Latimer sought to rely on the decision of Blackburne J in *Framlington Group Plc v Anderson* [1995] 1 BCLC 475 for the proposition that, whilst fiduciary duties are strict, they are not inflexible and do not apply in every situation. Mr Latimer also relied on *In Plus Group Ltd v Pyke* [2002] EWCA Civ 370, [2002] 2 BCLC 201 for the proposition that although the fiduciary duty of a director to his company

is uniform and universal, there is no completely rigid rule that a director should not be involved in the business of another company which was in competition with a company of which he was a director. Every decision whether a fiduciary relationship existed in relation to a matter complained of was fact-specific; and in exceptional circumstances, where a director had been effectively excluded from the company, it was not a breach of fiduciary duty for him to work for a competing company.

75. Mr Budworth criticised what he described as Mr Latimer's "cherry-picking" of the authorities. *Framlington Group Plc v Anderson* had involved a most exceptional set of circumstances because the defendants in that case had been specifically instructed by the plaintiffs not to take any part in their negotiations with the third party and had been told by the plaintiffs that they were not concerned with any renumeration terms which the defendants might negotiate with the third party. The *In Plus Group Ltd v Pyke* case had also involved a highly unusual set of circumstances. Neither authority had any application to the circumstances of the present case, where there was both a potential and an actual conflict between Mr Davies's involvement in Novo and Ringway's relationship with its commercial associates such as HPP, PCH and Manor (as Mr Parry's evidence demonstrated in relation to the latter company).

76. I accept Mr Budworth's submissions. The crux of Blackburne J's highly fact-sensitive reasoning in *Framlington Group Plc v Anderson* is to be found at page 498 between letters E to F:

> 'Specifically I see no reason why a director cannot, without committing any breach of his duty of good faith, seek to drive as hard a bargain as he is able with his future employer over the terms on which he is to be employed and the fact, if fact it be, that the result of so doing may be that the employer is deprived of assets which that employer might otherwise have devoted to trading with or acquiring an asset from the company of which the director is still then a director seems to me to be of no consequence'.

77. In *In Plus Group Ltd v Pyke,* at paragraph 75 Brooke LJ described the facts of the case as "so unusual". At paragraph 90 Sedley LJ said that "quite exceptionally, the defendant's duty to the claimants had been reduced to vanishing point by the acts (explicable and even justifiable though they may have been) of his sole fellow director and fellow shareholder'. At paragraph 94 Jonathan Parker LJ said that the claim based on fiduciary duty failed because of the "unusual circumstances of the instant case". On a proper analysis, I am satisfied that these authorities do not assist Mr Davies because they are clearly distinguishable on their facts.

7. Exclusion from management

78. The starting point for Mr Latimer's submission on this issue was that neither Table A nor Ringway's articles of association gave either director the power to suspend the other director or to exclude him from management. The effect of sections 17(a) and 33(1) of the Companies Act 2006 was that the articles of association had contractual effect between Mr Davies and Mr Lynch-Smith and formed part of the terms on which they had agreed contractually to operate Ringway. A breach of this agreement was said to be one of the two types of unfair prejudice identified by Lord Hoffmann in *O'Neill v Phillips* at pages 1098G and 1099A. Mr Latimer submitted that this starting point was important because it remained true whether or not there was a quasi-partnership: Mr Davies succeeded on this allegation that he should not have been excluded from management in the way he was, whether or not he was a quasi-partner.

79. I reject this submission. As the controlling 75% shareholder, under section 168 of the Companies Act 2006, Mr Lynch-Smith had the power lawfully to terminate Mr Davies's appointment as a director. Having done so, he could then terminate Mr Davies's employment with Ringway. As HHJ Purle QC pointed out in *Re Sunrise Radio Ltd* [2009] EWHC 2893 (Ch), reported at [2010] 1 BCLC 367, at paragraph 7, irregularities are likely to be ignored if the outcome would have been no different if the directors had scrupulously observed their duties or the constitution. HHJ Purle cited observations of Lindley LJ in *Browne v La Trinidad* (1887) 37 Ch D 1 at page 17:

> "I think it is most important that the court will hold fast the rule upon which it has always acted, not to interfere for the purpose of forcing companies to conduct their business according to the strictest rules where the irregularity complained of can be set right at any moment."

80. I therefore put this submission on one side and turn to Mr Latimer's principal submission: that the exclusion of Mr Davies from the management of Ringway was classic unfair prejudice.

81. I have already rejected a notion that there was any understanding on the part of Mr Lynch-Smith and Mr Davies that Ringway was to be operated as a "quasi-partnership", but I have indicated that I should go on to consider whether it was unfair for Mr Davies's management role in Ringway to have been terminated without giving him the opportunity to sell his 25% shareholding at a fair price. What follows would also be relevant had I found (which I have not) that Ringway was to be operated as a "quasi-partnership".

82. In his letter dated 1 December 2016 Mr Lynch-Smith had levelled three allegations against

Mr Davies: (1) the alleged breach of his fiduciary duty to Ringway by not disclosing his involvement with Novo; (2) allegedly receiving an unspecified gain from hire charges billed by Novo; and (3) alleged improper expenses claims, including paying for coffee at Starbucks and the use of Ringway's fuel. It was not disputed at trial that these were the reasons for Mr Davies's suspension and exclusion from Ringway. As Mr Latimer recognised, the first two of these allegations are really two sides of the same coin and can be taken together.

83. In the light of: (1) my findings about Mr Davies's involvement in Novo, and the potential and actual conflicts of interest to which this gave rise; and (2) Mr Davies's deliberate refusal fully and fairly to disclose the same to Mr Lynch-Smith before, and particularly when, he was challenged to do so, I find that Mr Davies's suspension, and then his permanent exclusion, from what was, by November 2016, his limited role in the management of, and his employment with, Ringway was entirely justified. It is trust and confidence which underlies, and gives rise to, the relationship of quasi-partnership which forms the touchstone for the grant of relief under section 994. Trust and confidence is not a one-way street, running only in favour of Mr Davies. It is a mutual relationship which should have affected Mr Davies's behaviour towards Mr Lynch-Smith as much as the latter's behaviour towards Mr Davies. For the reasons I have already given, I find that Mr Davies's conduct had resulted in the forfeiture of Mr Lynch-Smith's trust and confidence in Mr Davies, and that Mr Lynch-Smith was entirely justified in recognising, and giving effect to, this fact.

84. In closing, Mr Latimer submitted that Mr Davies's immediate and permanent exclusion from management was disproportionate and a gross over-reaction. I emphatically disagree. Mr Lynch-Smith explained in cross-examination that he believed he had been acting on behalf of the company in suspending a director who had been untrue to the company. I accept that this was Mr Lynch-Smith's motivation; and I find that it was entirely justified. Mr Davies had involved himself in Novo without any prior discussion with, or disclosure to, his co-director and fellow (and majority) shareholder; and thereafter he failed, and he has still failed, to come clean about the full nature and extent of his involvement with Novo. In my judgment, just as in *Grace v Biagioli* [2005] EWCA Civ 1222, reported at [2006] BCC 85, Mr Lynch-Smith's conduct was a proportionate and justified response to what he had belatedly discovered. As Patten J (delivering the judgment of the Court of Appeal) observed (at paragraph 64):

> "The use by the majority of the powers and voting rights conferred by the articles cannot be regarded as contrary to good faith where they are invoked to protect the company from conduct which is itself either in breach of a relevant agreement, or otherwise detrimental to the wellbeing of the company and its assets."

That case was one of the authorities cited by Morgan J in *Interactive Technology Corporation Ltd v Ferster & Ors* [2016] EWHC 2896 (Ch) at paragraph 318 in support of the proposition that:

> "It is established that wrongdoing on the part of a petitioner seeking relief under section 994 can be relevant in two ways. The first way is that the petitioner's wrongdoing may make the prejudicial conduct of the respondent not unfair. The second way is that petitioner's wrongdoing may justify the court in refusing to grant relief to the petitioner or may influence the choice of any relief which is granted."

Just as in *Re Twenty Twenty Productions Ltd, Woolwich v Milne* [2003] EWHC 414 (Ch), a decision of Sir Donald Rattee, Mr Davies has brought his removal from Ringway upon himself. Mr Davies's conduct was the cause of the breakdown of the original relationship of mutual confidence between himself and Mr Lynch-Smith, and I can see nothing unfair in his removal in the interests of Ringway's business.

85. Before proceeding to consider whether it was unfair for Mr Davies's management role in Ringway to have been terminated without giving him the opportunity to sell his 25% shareholding at a fair price, I must address the third of the allegations advanced in Mr Lynch-Smith's letter of 1 December 2016: Mr Davies's alleged misuse of Ringway's credit card for personal expenditure. I can dispose of this quite shortly. I find that there was no express agreement that the company credit card would only be used for company business. There was no need for any such express agreement because of the relationship of mutual trust and confidence that existed between Mr Lynch-Smith and Mr Davies until the latter part of 2016. For the same reason, I find that there was no express agreement as to any tolerated level of personal spending on either of Mr Davies's or Mr Lynch-Smith's credit cards. It was clear from the evidence that Mr Davies's credit card payments were critically scrutinised, first by Jackie Devaney, who was said by Mr Davies to have "hounded" him for any missing credit card receipts, and then by Mrs Evans, who was no great fan of Mr Davies, upon referral by Miss Devaney if she had any doubts about the propriety of any particular payment. I have already stated, when reviewing the evidence of Mrs Evans, that this is what happened about the car parking charge in July 2013, which Mrs Evans had approved after referring it to Mr Davies. Against this background, I am

prepared to infer that an appropriate measure of tolerance was applied to items of personal expenditure, and that Mr Davies was entitled to expect that this would be the case. I am satisfied that the appropriate and proportionate remedy for any misuse of the company credit card would have been a ticking-off by Mr Lynch-Smith, followed by an appropriate adjustment to Mr Davies's director's loan account, and not expulsion from the management of the company.

86. I agree with Mr Budworth that the court should follow the approach of Sir Donald Rattee in *Re Grandactual Ltd, Hough & Ors v Hardcastle & Ors* [2005] EWHC 1415 (Ch), reported at [2006] BCC 73, at paragraphs 19 to 20:

> "I do not consider that the court should entertain a section 459 petition based on conduct of the company's affairs in which the petitioners participated without protest nine years before the presentation of the petition … Petitions under section 459 are always a very burdensome form of litigation. I understand that section 459 is not subject to any period of limitation, but relief under section 461 is always within the discretion of the court. I do not consider that the court should countenance such proceedings in the circumstances that I have described nearly ten years after the event."

87. Mr Budworth invoked that authority in response to Mr Davies's case that the charges for management services should be treated as a separate ground of unfair prejudice. However, in my judgment the point applies equally to Mr Lynch-Smith's attempt to justify the exclusion of Mr Davies from the management of Ringway on the basis of Mr Davies's alleged misuse of Ringway's credit card for personal expenditure. The 29 items pleaded in the amended defence from paragraph 33.5 onwards, and which were sought to be addressed in the schedule to the reply, are 29 items taken over a period of some seven years. Whether taken individually, or collectively and cumulatively, in my judgment they would not justify Mr Davies's summary and permanent exclusion from the management of Ringway.

88. However, the "closed" commissions paid by PCH are another matter. Two forms of commission were paid for referrals of business from Ringway to PCH. Mr Lynch-Smith accepted that the "upfront" (or open) commissions, in a fixed sum and paid in the form of vouchers, were pooled and distributed appropriately amongst Ringway's employees (although I accept Jackie Devaney's evidence - disputed by Mr Davies - that his wife had said that the staff should receive nothing). However, the more valuable "closed" (or profit-based) commissions, calculated according to the schedule to the relevant agreement dated 6 April 2009 at 15% of each recovery (although Mr Davies had recollected 20%) were also paid in vouchers (or bonus bonds) and, according to Mr Davies, these were shared

equally between himself and Mr Lynch-Smith. It is Mr Lynch- Smith's evidence that these were never shared with him; and when he discovered the existence of these commissions, after the exclusion of Mr Davies from Ringway, he put a stop to the practice.

89. Mr Davies did not dispute the table at paragraph 160 of Mr Lynch-Smith's witness statement, based on information provided by Mr Specter of PCH, showing some £86,000 in profit-based commissions. Of this, sums totalling in the order of £16,715 odd were paid into a joint bank account maintained at Weatherbys in connection with the racehorse owning activities of Mr Lynch-Smith and Mr Davies. Mr Latimer points out that whilst Mr Lynch-Smith maintains that all profit-based commissions belonged to Ringway, Mr Lynch-Smith has not queried the credits to this bank account, even though they were clearly designated as coming from PCH, but has accepted these payments. He has not repaid them to Ringway, and the money appears to have been spent on maintaining the racehorses. As to the balance of some £69,478, representing the earlier commissions, Mr Davies maintains that he made no secret of the commissions and the vouchers and that he split them equally with Mr Lynch-Smith. Mr Lynch-Smith's evidence and case is that he did not know about the arrangement concerning the profit commissions and he never received a half, or any, share of them. It was Mr Davies who had signed the relevant commission agreement on behalf of Ringway with PCH. It was Mr Davies who had collected the vouchers from PCH, and the email traffic shows that he was enthusiastic and astute about chasing up the commissions. It was common ground that it was Mr Davies who made all the administrative arrangements regarding the racehorses. Mr Lynch-Smith says that he did not have the log-in details for the Weatherbys account, he did not agree that the PCH commissions should be deposited there, and he did not agree to pay, in effect, 25p in the £1 of those commissions to Mr Davies.

90. There is a stark conflict of evidence about the distribution of the PCH commissions. One of Mr Davies or Mr Lynch-Smith must be lying about them. I reject any suggestion that the receipt of the commissions was the original motivation for Mr Davies to divert work from HPP to PCH. That is inconsistent with the chronology. The relevant commission agreement was entered into in April 2009, yet the fall in the number of referrals from Ringway to HPP only began in 2012, accelerating in 2014, and referrals to PCH only became significant from about 2013. However, subject to this qualification, on this issue I prefer the evidence of Mr Lynch-Smith to the evidence of Mr Davies. I do so because I consider that Mr Lynch-Smith is the more reliable and honest witness; and his evidence

derives support from Mrs Evans who, as I accept, was told nothing by Mr Lynch-Smith about the receipt of any vouchers from PCH, and who would have been likely to have been told had this been happening. I do not consider that Mr Lynch-Smith would have lied about not sharing in the commissions from PCH.

91. On this issue, I consider that burden of proof rests with Mr Davies. As Carr J pointed out in *Psycare Ltd v Mundy* [2013] EWHC 4573 (Ch) at paragraph 31:

> "The burden lies on the person owing the fiduciary obligations in case of any doubt to establish the propriety of any particular payment and to account for it. This in my judgment is particularly so where on the facts, as here, the admitted recipient is the fiduciary himself. There is a heavy burden to account and justify."

Mr Davies accepted that he had received the commissions, and it was therefore for him to discharge the burden of establishing that he had accounted for them; and in my judgment he has not discharged this burden. However, even if the burden of proof had rested on Mr Lynch-Smith to disprove that he had received any of the commissions, I would have held that he had discharged it. I find that Mr Davies has not properly accounted for the commissions he collected from PCH. Strictly, he should have accounted to Ringway since it was Ringway which had provided the opportunity for Mr Davies to earn the commissions. In the case of the monies paid into the Weatherbys account, I accept that Mr Lynch-Smith has had the benefit of half of the commissions; but Mr Davies has had the benefit of the other half even though he was only a 25% shareholder in Ringway.

92. In my judgment, this finding alone would be sufficient to disentitle Mr Davies to any relief based on his exclusion from the management of Ringway. The failure to account properly for commission due to Ringway was dishonest, and the sums involved cannot be characterised as trivial. Where a petitioner's conduct has been serious enough, in the mind of a reasonable majority shareholder, to warrant exclusion from the management of the company, then relief may be refused under section 994. In *Kelly v Hussain* [2008] EWHC 1117 (Ch) at paragraphs 16 and 26 to 27, HHJ Purle QC said this:

> "Exclusion, as is well recognised by the authorities, does not necessarily of itself amount to unfair prejudice. It is certainly prejudicial, but it will not be unfair if … the conduct of the petitioners was deserving of exclusion ….
>
> I have found that Mrs Kelly was a quasi-partner in the sense in which that expression is used in this area of the law, but, as I have also said, being a quasi-partner does not entitle the quasi-partner to remain in a participatory capacity irrespective of his or her own conduct.

> [Counsel for the petitioner] pointed out that there is no defence of unclean hands as such in an unfair prejudice petition. I shall assume that he is correct in that. Nonetheless, he also accepts that for relief to be available there must not just be prejudice, but unfair prejudice, and if a dismissal or exclusion is justified then that is an end of the matter so far as this head of relief is concerned. In my judgment, Mrs Kelly was justifiably dismissed and therefore she can have no complaint under this head in respect of unfair prejudice."

93. Mr Lynch-Smith accepts that his knowledge of the interception of the commissions from PCH was acquired after he had suspended Mr Davies and whilst he was conducting his investigations. However, I accept Mr Budworth's submission that the relevant time for considering the appropriateness of any particular remedy under section 994 is when the relevant petition is heard: see *Grace v Biagioli* at paragraph 73. Mr Davies has to prove not just a breakdown in relations, but a breakdown relating to conduct which was unfair and prejudicial; and even if the circumstances of the exclusion were not sufficient to deny relief altogether, they might separately affect the question of whether a discount should apply to the share valuation.

94. For the reasons I have already given, I find that Mr Davies's exclusion from the management of Ringway was not unfairly prejudicial to Mr Davies. His exclusion was justified because it was Mr Davies's own conduct which was the cause of the breakdown of the original relationship of mutual confidence between himself and Mr Lynch-Smith in two separate respects: first, his involvement with Novo; and, secondly, his interception of commission paid by PCH.

95. Before turning to consider whether it was unfair for Mr Davies's management role in Ringway to have been terminated without giving him the opportunity to sell his 25% shareholding at a fair price, it is appropriate for me to address the other heads of unfair prejudice, advanced on behalf of Mr Davies.

8. Other heads of unfair prejudice

96. I can take these fairly shortly. First, the management charges. I find that these were originally agreed by Mr Davies. I reject Mr Davies's evidence that he only agreed to these charges because he was assured by Mr Lynch-Smith that they were: (1) just a paper exercise, (2) that no money had left Ringway's bank account, and (3) that they would not affect the value of Ringway as a company or of Mr Davies's shareholding in it. It is not suggested by Mr Davies that these assurances were in any way related to the later

arrangement whereby Mr Hartwell's bonus was calculated by reference to Ringway's management, rather than its statutory, accounts. I find that Mr Davies freely assented to these charges. In any event, they were recorded in the company's statutory annual accounts which (until the accounts for the year ending 31 July 2014) I find were approved by Mr Davies as well as by Mr Lynch-Smith. Applying the reasoning of Sir Donald Rattee in *Re Grandactual* (previously cited) the court should not entertain an unfair prejudice petition founded upon these historic management charges. I agree with Mr Budworth that Mr Davies cannot put the cork back into the bottle and escape the consequences of going along with these past management charges, on which Ringway's corporation tax position would have been based over the years.

97. However, I consider that the increase in the management charge from £40,000 to £145,000 per annum falls into a different category. I reject the suggestion that the change in accounting practice, whereby the accounts were only signed by Mr Lynch-Smith, was anything to do with this massive increase in the management charge because that change in accounting practice was first introduced for the accounts for the year ending 31 July 2014, whilst the increase in the management charge was only introduced in the following year's accounts. I also reject Mr Davies's assertion that he was not told the correct date of the meeting at which the 2015 accounts were to be discussed and approved. I find that by this time Mr Davies was so uninterested in the affairs of Ringway that he could not be bothered to attend this meeting.

98. However, I find that the increase in the management charge was unjustified. In cross-examination Mr Lynch-Smith said that he could not explain the change in the level of management charges, or their dramatic increase to £145,000, without the assistance of an accountant. Mr Lynch-Smith did not choose to call Ringway's accountant to assist in explaining this increase, although he had no reticence in calling a large number of other witnesses of only peripheral relevance to the issues in this litigation. Mr Lynch-Smith's expert accountant, Mr Brent Wilkinson, was unable to justify the increased level of management charges. I therefore find that the increase in the level of management charges, introduced into the 2015 accounts, and maintained in each of the succeeding years, was unjustified and constituted unfair prejudice to Mr Davies. However, viewed on its own that would not justify an order for the purchase of Mr Davies's shareholding. The appropriate relief would have been to make an appropriate adjustment to the company's accounts.

99. Secondly, the consultancy charge of £5,000 per annum paid to Mrs Evans. This was first

introduced in the accounts for the year ending 31 July 2015 and was backdated for four years, resulting in an initial charge of £20,000, followed by an annual charge of £5,000 in later years. I reject Mr Davies's case that these charges were unjustified, or that they constitute unfair prejudice. I find that they were expressly agreed by Mr Davies, as admitted in a previous iteration of paragraph 72 of his re-re-amended points of reply, before "agreed" was amended to "did not further challenge". I find that the backdating was expressly agreed to by Mr Davies, and was in fact suggested by him in order to compensate Mrs Evans for the loss of her income as a partner in HPP, no doubt by way of recognition by Mr Davies that this was due to his diversion of hire work away from HPP to PCH (and later Manor and Novo). Like the increased management charges, the consultancy charge was introduced long before, and not as a consequence of, Mr Lynch-Smith's fall-out with Mr Davies and the latter's exclusion from Ringway. Mr Davies accepted in cross-examination that someone would have had to provide the accountancy services provided by Mrs Evans. In any event, as with the original management charge, it is too late now for Mr Davies to be objecting to this charge since he has known about it since shortly after the 2015 accounts were approved; and any unfair prejudice to Mr Davies caused by the consultancy charge would not justify a buy-out order.

100. Thirdly, the payment of £12,000 from Ringway towards Mr Lynch-Smith's personal legal fees of this litigation. I accept that this payment was the result of a genuine error on the part of Mrs Evans in debiting these bills to Ringway rather than to Lloyds Liverpool. The error was promptly corrected by repaying the money after Mr Davies's solicitors had first challenged the payment. This does not constitute unfair prejudice; and it would not, in any event, justify a buy-out order.

101. Fourthly, the payment of £100,000 by Ringway to Lloyds Liverpool on 2 February 2017, which was used to fund a tax payment owed to the Revenue by Lloyds Liverpool. This payment was not authorised by Mr Davies as a director of Ringway. It was promptly challenged by Mr Davies's solicitors when it first came to Mr Davies's attention. I am satisfied that this payment does constitute unfair prejudice to Mr Davies. It is far higher, and has remained outstanding for far longer, than any previous inter-company loan, and Ringway has obtained no commercial benefit from it. Although initially motivated by the need to meet an imminent tax payment, it has enabled Lloyds Liverpool to fund, subsequently, the payment of Mr Lynch-Smith's personal legal fees of this litigation to the tune of approaching £44,000. On its own, it would not justify a buy-out order, as distinct

from an order for its repayment; but I must view it as part of a wider picture. As José Mourinho has recently observed (citing Hegel) "the true is the whole".

102. Fifthly, the purchase, at the end of March 2017, only about a month after the £100,000 payment, of a Tesla Model X for Mr Lynch-Smith's personal use, at a total cost (including finance charges) of some £164,000. Despite Mr Lynch-Smith's claims that the purchase was of commercial benefit to Ringway, as an accredited Tesla repairer, and notwithstanding the tax advantages of owning an electric car, the fuel savings, and the buyback programme, I find that the purchase of such an expensive model was of insufficient commercial value or benefit to Ringway. I consider that the use of Ringway's money in this way was unfairly prejudicial to Mr Davies. Of itself, it would not justify a buy-out order; but, as Baroness Hale of Richmond PSC has recently observed (in a passage not cited to me by counsel) from her judgment in the divorce case of *Owens v Owens* [2018] UKSC 41, reported at [2018] 3WLR 634 (at paragraph 50), and quoting from the judgment of Langstaff J (President) in the Employment Appeal Tribunal in *Ukegheson v Haringey LBC* [2015] ICR 1285 at paragraph 31:

> "Looking at incidents in isolation is perhaps to fail to see the eloquence of the story painted by the whole of the series of events and to focus instead upon events taken individually as though they were in silos. In a constructive dismissal case arising out of a poisoned relationship between parties, what matters is the totality of the picture rather than any individual point along the way."

103. Sixthly, the purchases of a damaged Rolls Royce convertible for £98,000 in March 2018 and a damaged Ferrari for £175,000 in April 2018. It is said by Mr Lynch-Smith that these transactions were effected with a view to making a profitable return on the resale of these two motor vehicles after they had been repaired and sold on; that this has already been achieved in relation to the Ferrari, yielding a profit for Ringway of some £38,000; that a profit would have been earned on the Rolls Royce but for the persistent delay in receiving delivery of the necessary spare parts, as promised; and that a profit (albeit at a reduced level, because of the inordinate delay in effecting the resale) will ultimately be earned for the Rolls Royce. Mr Davies complains that these were not merely bad management decisions, but involved Mr Lynch-Smith in exploiting Mr Davies's exclusion by using Ringway's money to indulge in unprecedented "personal vanity projects", thereby showing contempt for Mr Davies, both by entering into the deals, and by Mr Lynch-Smith's vague responses to Mr Davies's challenges to these transactions. I find that there is some

justification for Mr Davies's challenges to these transactions. Although Mr Davies had been engaged in making a similar profit on the purchase and resale of a McLaren motor vehicle in the summer of 2013, the sums involved had been much smaller: an investment of £22,000 and a profit of £18,000. Again, these two transactions must be viewed as part of a broader picture, and not in isolation.

104. Seventhly, the omission of the inclusion of two cherished registration numbers (5BRG and GLS4) from Ringway's fixed asset list. Unfair prejudice is said to come from the omission of these two assets, Mr Lynch-Smith's broken promise to add them to the asset register, the portable nature of the numbers as assets independent of the two trucks to which they are fitted, and their value, which Mr Lynch-Smith puts at a sum in the order of £5,000-£6,000, although Mr Davies (with no supporting evidence) estimates to be worth in the order of some £20,000. Mr Wilkinson accepted that the value of the registration numbers should be accounted for separately if they have not already been taken into account in the value of the two trucks to which they were fitted. There was no evidence on this point, and therefore I am not satisfied that Mr Davies has established any unfair prejudice under this head.

105. Finally, there had been a complaint by Mr Davies that an £18,000 credit arising from the purchase and resale of a McLaren motor car in December 2013 should have been credited to his director's loan account. After the court had pointed out that this had, in fact, already been credited to Mr Davies's director's loan account (at Bundle 6 page 2304), Mr Latimer abandoned this complaint in closing. However, that is not the end of the matter. As I pointed out to Mr Latimer - and he accepted - on the defendants' evidence and case he should only have been entitled to half this amount, since the profit on resale was to be shared equally with Mr Lynch-Smith, so that Mr Davies's director's loan account would appear to have been overstated by some £9,000. In fact, I reject Mr Davies's evidence that there was ever any agreement between himself and Mr Lynch-Smith for the equal splitting of any profit on side deals involving the purchase and resale of accident-damaged vehicles. Any profit should have belonged to Ringway since it was financing the purchase of the vehicles, and the opportunity to enter into such deals had come about during the course of Ringway's ordinary business activities as a body repair shop. Mr Davies's director's loan account should in fact be debited with the full £18,000, which would thereby fall to be treated as part of Ringway's profits.

9. Conclusion and remedies on unfair prejudice

106. Adopting, and adapting to the circumstances of the instant case, the approach indicated by Arden LJ in *Strahan v Wilcock* at page 569 letters A to B, in my judgment the real remaining issue in the present case is whether Mr Lynch-Smith's failure to buy out Mr Davies's 25% shareholding in Ringway, whether on a non-discounted or a discounted basis (and if so, which,) after he had terminated Mr Davies's management role and employment with the company should fairly be regarded as having been outside the parties' reasonable contemplation at the time when Ringway was established, bearing firmly in mind the reasons for that termination and all that has happened in the intervening period up to the hearing of the petition.

107. I have already acknowledged Mr Latimer's ready acceptance, founded upon Lord Hoffmann's observations in *O'Neill v Phillips*, that in the case of a quasi-partnership company there is no such concept as a "no-fault divorce". I consider that this is all the more so in a case where the company was not a quasi-partnership at all. However, as Patten J recognised in *Grace v Biagioli* (previously cited) at paragraph 77:

> "Lord Hoffmann's remarks on no-fault divorce in *O'Neill v Phillips* were not directed to the case where fault amounting to unfair prejudice was found to exist on the part of the respondents. He was concerned only to exclude the possibility of a buy-out order being made simply because the parties found it difficult to co-exist, although nothing amounting to unfair prejudice could be made out."

That passage is to be found in a section of the Court of Appeal's judgment headed "Fault on Both Sides", where it rejected the argument that the existence of fault on the part of the petitioner could be used to support the rejection of a buy-out order.

108. In closing, Mr Budworth recognised the court's instinctive desire to fashion a clean break in a case such as the present; but he cautioned me against what he described as "the magnet of the clean break". The court was said to be an adjudicator, and not a facilitator or a solution provider. Mr Budworth submitted that the upshot of Mr Davies's egregious conduct was that he had excluded himself from any management role in Ringway, and should be denied any relief. Mr Budworth referred me to a number of authorities, including *Woolwich v Milne* (previously cited) and the decision of Laddie J in *Mears v R Mears & Co (Holdings) Ltd* [2002] 2 BCLC 1 (where a chief executive had been rightly removed from office for acts of forgery, deception and bribery) in support of the submission that there should be no relief in the present case. Mr Budworth submitted that here the court was faced with a binary decision: should it refuse any relief at all, or should it grant a buy-

out order at a fully discounted valuation of Mr Davies's shares in Ringway?

109. Mr Budworth also referred me to the decision of Mr Malcolm Davis-White QC in *Re BC&G Care Homes Ltd, Crowley v Bessell & Others* [2015] EWHC 1518 (Ch), reported at [2016] BCC 615. There the Deputy Judge found that none of the allegations concerning the petitioner's conduct had justified his exclusion as a director whilst leaving him locked into the company. The relief granted was an order for the purchase of the petitioner's minority shareholding at an undiscounted valuation so that he should receive back the value of his investment in the company. At paragraph 110 the Deputy Judge said this:

> "… the question, at least in this case, is whether removal of [the petitioner] as a director and employee, without any offer to buy his shares, was a proportionate and justifiable response to what they had discovered. In many cases, unfairness will lie not in exclusion alone but in exclusion without a reasonable offer being made…'.

The Deputy Judge went on to recognise that the question whether exclusion with an offer (and what offer) might have remedied any unfairness might be relevant to remedy.

110. In his brief reply, Mr Latimer submitted that this court should not blind itself to the obvious fact that relations between Mr Lynch-Smith and Mr Davies were not going to improve. The events of the last 18 months or so demonstrated that Mr Lynch-Smith intended to run Ringway as though it were his own, in total contempt and disregard for the 25% shareholding of Mr Davies. Mr Latimer can rely upon: (1) the continuing application of excessive management charges; (2) the loan of £100,000 to Lloyds Liverpool; (3) the purchase of an expensive Tesla motor car; (4) the dealings with the Ferrari and Rolls Royce; and (5) (although not expressly identified as a specific head of unfair prejudice) the non-payment of any dividends since Mr Davies's exclusion from Ringway, and the unlikelihood that Mr Lynch-Smith would declare any dividends in the future. Mr Latimer points to the likelihood of the presentation of a second unfair prejudice petition in the near future if no relief is awarded to Mr Davies on his present petition.

111. I bear firmly in mind the reasons for Mr Davies's exclusion from any management role in the company, and all that has happened in the intervening period, up to the hearing of the petition. Whilst Mr Davies's exclusion was fully justified by his own conduct, and something which he had brought upon himself, I am satisfied that, since then, Mr Lynch-Smith, as the majority and controlling shareholder, has effectively been running Ringway as though it were his own company, and that he will continue to do so for the foreseeable future. I am satisfied that Mr Lynch-Smith will ensure that Mr Davies receives no financial

benefit from his 25% shareholding in the company, and has no say in the running of the company. I am satisfied that an objective and informed observer would fairly conclude that Mr Lynch-Smith's failure to buy out Mr Davies's 25% shareholding on a fair basis after he had terminated Mr Davies's management role and employment with the company was outside the parties' reasonable contemplation at the time when Ringway was established. I am satisfied that such an observer would regard it as unfair that Mr Davies should be left locked into the company despite the egregious nature of his conduct. In my judgment, fairness dictates an order for the purchase of Mr Davies's 25% shareholding in the company.

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

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

(1) The task of the court, in granting relief under section 994, is, first, to identity the unfair prejudice which has been established and, then, to fashion the relief so as to cure that prejudice. That principle must underly the issue whether or not a discount for a minority shareholding should be applied.

(2) The whole purpose of the unfair prejudice remedy is to grant the oppressed minority a remedy which they would not otherwise have. It would substantially defeat the purpose of the new remedy if the oppressing majority were routinely rewarded by the application of a discount for minority shareholding.

(3) Thus, whether or not a discount for a minority shareholding is applicable involves drawing a distinction between the general case, where it would be unfair to treat the

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

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

(5) The choice is not necessarily between an undiscounted and a fully discounted valuation. The wide terms of section 994 leave it open to the court to order the purchase of the petitioner's shares at some middle figure, involving an intermediate discount, where neither a pro rata valuation nor a minority shareholding valuation would be fair: see, in particular, the observations of Mr Nicholas Strauss QC in *Richards v Lundy* at 398 letters C to F, and *Joffe* at paragraph 6.334. However, in my judgment such cases are likely to be rare; and the court must beware of the dangers of applying "palm tree" justice before adopting some middle course.

(6) At least in the case of a going concern, the starting point is that the shares should be valued on the date on which they are ordered to be purchased, although the court has a discretion to vary this date, and fairness may require an earlier valuation date, as where the company has been deprived of its business: see in particular *Re Addbins Ltd, Ashdown v Griffin* at paragraph 82 per the late Mr Edward Bartley Jones QC.

114. In my judgment, the fair course in the particular, and unusual, circumstances of the present case is to require Mr Davies's shares in Ringway to be valued on a fully discounted basis. I reach that conclusion for these reasons (which should be treated cumulatively):

(1) For the reasons I have already given, I find that Mr Davies fully deserved his exclusion from the company.

(2) This is not a case where Mr Davies would stand any prospect of securing a winding-up order in respect of the company on the just and equitable ground.

(3) In seeking a buy-out order in the circumstances as found by this court, Mr Davies should be treated as willing, and not a reluctant, seller.

(4) This is not a case where it would be a wholly unjustifiable reward for unfairly prejudicial conduct if the court were to order Mr Lynch-Smith to purchase Mr Davies's shares at a full minority discount.

(5) This is not a case where the petitioner has provided anything more than (possibly, and at the most) the nominal value for his shares, or has invested any monies personally in the company. Although he has provided company guarantees, they have never been called upon.

(6) The business connections, expertise, opportunity, and rationale for the establishment of the company were all provided by the respondent rather than the petitioner.

Although the process of legal reasoning which leads to this conclusion is a little more involved than Mr Budworth's stark alternatives would suggest, in my judgment he was correct to pose the binary choice between granting no relief at all and ordering the purchase of Mr Davies's shares on a fully discounted basis.

115. In accordance with the usual starting point, the date of valuation should be the date of the court's order since Mr Davies has continued to be locked into the company as a shareholder, and he does not contend for any earlier valuation date.

116. It is necessary for me to make certain findings relevant to the issue of the valuation of Mr Davies's shares in Ringway. The parties have each adduced evidence from two share valuation experts: Mr David Houghton of DSW Bridge Houghton Forensic (called by Mr Latimer) and Mr Brent Wilkinson of BDO (called by Mr Budworth). Helpfully, they gave their evidence concurrently. I find that both men were competent, reliable, and impartial expert witnesses, who were doing their best to assist the court.

117. As is unfortunately common in cases such as this, the experts were a long way apart, although they were in agreement about a number of matters, including the facts that the most appropriate approach to the valuation of Ringway was a maintainable earnings approach, with the most appropriate metric being earnings before interest, tax, depreciation and amortisation ("**EBITDA**"); and also that if a full discount for a minority shareholding were to be applied, the appropriate discount would be 60%.

118. One of the differences between the experts was as to the proper and commercial level of renumeration payable for the services rendered to Ringway by Mr Davies and Mr Lynch-Smith (with Mr Houghton adopting a figure of £23,333, and Mr Wilkinson a figure of £100,000 per annum). More significantly, they also differed as to the multiplier to be applied to the maintainable earnings of Ringway (with Mr Houghton adopting a multiplier

of 5.45, and Mr Wilkinson a multiplier of 3.5).

119. On the issue of the appropriate level of renumeration for senior management, on the basis of all that I have read and heard from the experts I am satisfied that the appropriate base level of renumeration is Mr Wilkinson's adjusted gross annual salary of £100,000 (which includes employer's national insurance contributions). In the light of my knowledge of the respective roles of Mr Davies, Mr Lynch-Smith and Mr Hartwell, and the other members of the management team, in the running of Ringway, both before and since Mr Davies's exclusion from management, and in the light of the answers to questioning from both experts, I am satisfied that a hypothetical purchaser of the company would take the view that approximately two days' work a week would be required overall in the role of senior manager. He would therefore take a figure of £40,000 per annum, representing 40% of Mr Wilkinson's suggested annual salary.

120. On the issue of the appropriate multiplier, I acknowledge the point made by Mr Wilkinson that the company's profitability is already built in to the multiplicand, in the form of Ringway's maintainable EBITDA. Nevertheless, I accept Mr Houghton's assessment that the fact that Ringway is an attractive and profitable business cannot be ignored when determining the multiplier because it will influence the hypothetical purchaser's approach to the number of years it will be prepared to wait to recover back its investment, and also its confidence that it will do so.

121. In my judgment:

(1) Mr Wilkinson has attached too much, and Mr Houghton has attached too little, weight to the effect on the multiple of Ringway's small size and the attendant risks of its business being overly concentrated upon a few major prestige car dealerships, particularly Bentley;

(2) Mr Houghton has attached too much, and Mr Wilkinson too little, weight upon the barriers to new entrants to the car body repair business represented by the high costs of securing accreditation from prestige car dealerships; and

(3) Mr Houghton has attached insufficient weight to the lack of facilities for material growth in the business of Ringway recognised at paragraph 4.1.4 of his report.

Both experts recognise the subjective nature of the exercise of identifying the appropriate multiplier.

122. Perhaps unsurprisingly, given the subjective nature of the exercise, in my judgment Mr Houghton's multiplier of 5.45 was too high and Mr Wilkinson's multiplier of 3.5 was

too low. In terms of comparable sales evidence, the experts were agreed that the appropriate figure to take as a starting point was the agreed median figure of 6.5. Mr Houghton considered a 20% discount to this figure more appropriate to reflect the particular features of Ringway rather than the 35-45% discount used by Mr Wilkinson. However, arithmetically a 20% discount produces a multiplier of 5.2 rather than Mr Houghton's 5.45. In answer to a question from the Bench, Mr Wilkinson said that he would be happy with a discount of 40%, which would produce a multiplier of 3.9, rather than Mr Wilkinson's original figure of 3.5. Therefore, based on the evidence of comparable sales transactions, a multiple in the range of 3.9 to 5.2 would be justified.

123. The experts also had regard to published indices. They were agreed that the most relevant index was the UK 200 Small and Medium Enterprise Valuation Index, which indicated that EBITDA multiples were occurring in the range 3.9 to 8.5, with a median EBITDA multiple of 4.2 and a mean of 6.2. Mr Houghton points out that Mr Wilkinson's multiple of only 3.5 is outside the 95% confidence range of this index. In my judgment there is force in this point although (as previously stated) taking an adjusted discount of 40% produces a multiple at the very bottom of this range. I regard the index as providing a useful cross-check, although of less value than evidence of comparable transactions. I am conscious that very small adjustments to the multiple can have a considerable effect upon the overall valuation.

124. Weighing the factors previously identified as affecting the expert opinions of Mr Houghton and Mr Wilkinson, and acknowledging the subjective nature of this exercise, I consider that a discount of 30% is appropriate to the agreed median figure for comparable sales transactions of 6.5. This produces a multiple of 4.55. That feels comfortable against the median index EBITDA multiple of 4.2.

125. I accept Mr Latimer's submission that the decision of Registrar Briggs in *Wootliff v Rushton-Turner* [2016] EWHC 2802 (Ch), reported at [2018] 1 BCLC 48, is authority for the proposition that the width of the discretion in relation to the relief the court can give a successful petitioner under section 996 of the Companies Act 2006 extends to an award of compensation for breach of an employment contract. However, since I have found that the termination of Mr Davies's role in the management of Ringway was justified, no relief falls to be granted under this head. However, I agree with Mr Latimer that any order for the purchase of Mr Davies's shares should also provide for the repayment of any sum properly falling to the credit of his director's loan account with Ringway (or the repayment

of any debit balance), and that he should resign as a director on completion of the share buy-out.

10. The partnership (HPP)

126. As I have already indicated, it is now agreed by the parties that there should be a *Syers v Syers* order for the purchase of Mr Davies's share in the partnership, HPP, at a price to be determined by the court. I have already indicated that in the light of this, it is appropriate for the court, as a condition of this buy-out order, to require the remaining two partners to purchase Mr Davies's shares in HPP Vehicles Ltd at their nominal value, given that the company has no assets, is dormant, and has never traded.

127. Mr Latimer submits that the current balance on Mr Lynch-Smith's capital account with HPP depends upon £295,308 having been introduced in the year ending 31 July 2013, and that there is no evidence that this actually occurred. This point did not feature in the pleaded Table of Objections to the Draft Dissolution Account. It did feature in Mr Latimer's opening skeleton (at paragraphs 149 to 151) where it was argued that this sum should be deleted. However, Mr Latimer did not address the explanation provided at numbered paragraph 4 of Hill Dickinson's letter of 22 March 2017 (at Bundle 3 pages 1056 to 1057) which is now supported by a note dated 16 August 2018 from the partnership accountants LBW. Mr Latimer did not address this explanation in closing beyond saying (without providing reasons) that it was not accepted. I am not prepared to identify this as an issue which needs to be resolved, still less to resolve it against Mr Lynch-Smith (the two alternatives Mr Latimer suggested in closing).

128. Mr Latimer also invited the court to make the following findings of fact:

(1) That £20,000 should not have been paid in respect of Lee Peat's salary after he moved over from HPP to be the manager of the bodyshop at Lloyds Liverpool in September 2011; and

(2) That £40,000 should not have been paid to Lloyds Liverpool as a management recharge (which was misrecorded as a wages recharge) because Lloyds Liverpool had provided no management services for HPP.

As with the historic management charges applied to Ringway, and for the same reasons, I am not prepared to revisit HPP's accounts in this way.

129. Mr Budworth submitted that there needed to be proper accounts and inquiries to reflect, and quantify, the loss of business to HPP, or the profits earned by Mr Davies, as a result of his

breach of fiduciary duty in putting himself into a position of conflict of interest by and in referring work away from HPP to PCH, Manor, and then Novo. Only then can HPP make an informed election between alternative claims for equitable compensation and an account of profits. Whilst I am reluctant to contemplate any continuation of these proceedings, with its attendant legal costs, it seems to me that HPP is entitled to such relief; and I will order appropriate accounts and enquiries.

11. Summary

130. Accordingly, I find that:

(1) Mr Davies's suspension and exclusion from Ringway were amply justified by his own conduct; but

(2) the failure to offer to buy out his shares on a fully discounted basis of 60% was unfairly prejudicial to Mr Davies, notwithstanding that he had richly deserved his suspension and expulsion.

131. I will make an order on the unfair prejudice petition, requiring Mr Lynch-Smith to buy out Mr Davies's shareholding in Ringway at a 60% discount for a minority shareholding and otherwise in accordance with the findings in this judgement.

132. I will make a *Syers v Syers* order for the purchase of Mr Davies's shares in the partnership, HPP, at a price to be determined by the court and, as a condition of this buy-out order, I will require the remaining two partners to purchase Mr Davies's shares in HPP Vehicles Limited at their nominal value. I direct counsel to agree an appropriate form of order.

End of Judgment