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Case No: CR-2020-MAN-000606

(Lead Action)

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

IN THE MATTER OF ALAM INVESTMENTS LIMITED
AND IN THE MATTER OF THE COMPANIES ACT 2006

Date: 15 June 2023

Before :

His Honour Judge Halliwell sitting as a Judge of the High Court at Manchester

Between :

MOHAMMED ARSHAD ALAM

Petitioner

- and -

(1) PERVEZ ALAM
(2) ALAM INVESTMENTS LIMITED

Respondents

Mr Ian Croxford KC and Mr James Walmsley (instructed by Kuits solicitors) for the Petitioner
and associated parties

Mr Paul Chaisty KC and Mr Richard Tetlow (instructed by Gateley Legal) for the Respondents
and associated parties

Hearing dates: 9-13, 16-20, 23-27 May, 30 May-1 June, 9-10 June, 13-17 June, 20-24 June, 31
August-2 September, 5-8 September, 21-22 September, 21-23 November 2022.

JUDGMENT

This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 15 June 2023 at 10:30am.

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(1) Introduction

1. These proceedings arise from a family dispute relating to the ownership and control of businesses in Greater Manchester, Birmingham and Bradford. Although historically styled “cash and carry” businesses for the sale of food, the businesses are generally conducted from retail shops or stores. For each business, there is a corporate trading vehicle. There is also a property holding company, Alam Investments Limited (“**AIL**”). Share ownership in AIL is itself in dispute.
2. The dispute is between four brothers, Pervez Alam (“**Pervez**”), Arshad Alam (“**Arshad**”), Shahid Iqbal (“**Shahid**”) and Zahid Iqbal (“**Zahid**”) each of whom are party to the

proceedings. There are another two surviving brothers, Javaid Kashif (“**Kashif**”) and Mohammed Asif (“**Asif**”), but no sisters. Kashif and Asif are not party to the proceedings. Some of the companies under the respective control of Pervez and Arshad have been joined as parties.

3. Before me, there are five separate sets of proceedings. On 28 September 2021, I made an order providing for the determination, as a preliminary issue, of all questions in each claim save questions pertaining to relief (“**the Preliminary Issue**”). This includes the underlying issues in respect of an unfair prejudice petition in respect of ALL, personal claims as to ownership of shares in associated companies and claims for damages for breach of fiduciary duty, conspiracy and dishonest assistance in respect of the diversion of company assets and business. In relation to one of the trading companies, Worldwide Foods (Birmingham) Limited (“**WWF Birmingham**”), the proceedings encompass personal and derivative claims. Since permission has not yet been given, I am not invited to determine issues in the derivative claim, at least to the extent such issues have no bearing on the personal claim.
4. The trial of the preliminary issue took place, before me, in May-June, August- September and November 2022. This is my judgment following trial.
5. Throughout the trial, Messrs Ian Croxford KC and James Walmsley, of counsel, have appeared on behalf of Arshad and the companies under his control. Messrs Paul Chaisty KC and Richard Tetlow, of counsel, have appeared on behalf of Pervez and the companies under his control. They also appeared on behalf Shahid and Zahid who are fully aligned with Pervez. The advocacy was uncompromising. It was also to a high standard and ensured most issues were addressed in considerable detail although, inevitably, some issues evolved and assumed greater significance than originally envisaged as the evidence was explored.
6. On the eve of the trial, Mr Croxford’s clients sought to obtain documentation from RSM UK, previously RSM Tenon, in relation to files held by them as accountants and auditors for some of the relevant companies. They also sought documentation from two firms of solicitors, Enoch Evans and Molesworths. In the case of Molesworths, this encompassed files held by them in respect of professional advice historically provided to the family during the 1990s and early 2000s. In this way a substantial amount of documentation was

obtained during the course of the trial itself, some of which was only produced, upon compulsion, following the issue of a witness summons. As it happens, for different reasons, the documentation produced by RSM UK, Enoch Evans and Molesworths ultimately proved to be of real significance. I pay tribute to counsel for their skill and discretion in accommodating the issues to which this gave rise during the trial.

(2) Background

7. The brothers' parents were Mohammed Alam ("**Mohammed**") and, his wife, Roquiya Khatoon ("**Roquiya**"). Mohammed was born in Jalandhar, India. Together, they moved to Kenya where Mohammed was employed as a welder or electrician on the Railways. In December 1963, Kenya obtained independence. At about this time, Mohammed and Roquiya moved, with their growing family to a village, near Haroonabad in Pakistan.
8. Pervez, Arshad and Shahid were respectively born in 1956, 1960 and 1963 before the family moved to Pakistan. Zahid, Asif and Kashif were born afterwards, in 1968, 1970 and 1973. There was another brother, also called Javaid, who died at a young age during this period.
9. They remained in Pakistan until early 1977 when Mohammed, Pervez and Arshad moved to Nottingham, in the UK, leaving the rest of the family behind. Pervez and Arshad then found work at a small textile factory nearby at Long Eaton. They remained in Nottingham for several months and were soon joined there by the rest of the family. During this period, Pervez obtained a job with Turner Brothers Asbestos in Rochdale, residing locally during the week and returning to Nottingham to stay with the family at weekends. However, later in the year, Pervez found rented accommodation for the whole family at 11 Mellor Street, Rochdale and the family moved in.
10. Pervez soon concluded that it would make more sense to buy than rent. The following year, he identified a suitable house at 7 Pullman Street, Rochdale and was able to borrow sufficient amounts to fund the purchase. The house was bought for use as a family home. However, shortly afterwards, he bought as an investment, a house nearby at Ventnor Street utilising the proceeds of an insurance claim in respect of a stolen car.
11. The family continued to reside at 7 Pullman Street until September 1984 when Pervez bought a more substantial property at Deeplish Road, Rochdale. This property was

purchased in Pervez's sole name but there is an issue as to beneficial ownership. It was ultimately transferred into the name of Zahid in October 1995.

12. For some time, Pervez and Arshad were both remunerated as employees. At an early stage, Arshad joined Pervez as an employee at Turner Brothers Asbestos. Later, in 1979 or 1980, they obtained work at the Vauxhall factory in Luton, and then at the Bedford factory in Dunstable. Together, they worked at these factories for upwards of a year until made redundant, travelling there each week to and from Rochdale.
13. Pervez clearly had an entrepreneurial streak. Utilising funds paid to him when he was made redundant, he returned to Rochdale and set up, with an acquaintance called Sajid Butt, a textile manufacturing business called Haroon Fashion. Arshad maintains that, in addition to Pervez, he was also involved in this business.
14. Pervez did not remain long in business with Mr Butt. A point was soon reached when they decided to bring the manufacturing business to an end and go their own separate ways dividing the manufactured stock between them. So far as he could, Pervez marketed and sold the stock on a Saturday and Sunday in markets at Stalybridge, Ashton and Liverpool.
15. During this period, Pervez set up a grocery business from a shop at 95 Coleridge Street, on the Sholver Estate in Oldham. Shortly afterwards, he set up a laundrette nearby at 91 Coleridge Street. Again, there is an issue between Pervez and Arshad about the extent of Arshad's role in these businesses. Pervez maintains he was sole proprietor. Arshad contends they conducted the businesses together in partnership.
16. Pervez then set up another grocery business from premises at 74A Tweedale Street, Rochdale. This was on the corner of Tweedale Street and Castlemere Street. Business was conducted in the name of "Alam Brothers" or "Choudhury Alam Brothers". During the hearing, a set of accounts, in the name of "Choudhury Alam Brothers", was obtained and admitted in evidence. This incorporated a trading and profit and loss account for the year ending on 31 October 1982 and a balance sheet at the year end. A balance sheet for Choudhury Alam Brothers, as at 31 October 1985, was also admitted. Both balance sheets were signed by M Salim & Co.
17. Pervez accepts that he brought Arshad into the business but maintains that Arshad was no more than an employee. Arshad disputes this. He contends that the decision to set up

this business was taken by them jointly and they conducted the business in partnership. It is common ground their father also worked in the business as did their brothers, Zahid and Shahid.

18. After opening the shop at 74A Tweedale Street, Pervez bought a shop at 77 Milkstone Road, Rochdale which he used for the storage of stock. This was purchased in January 1983 and sold a few months later for a modest capital gain. At about the same time, he also bought a shop at 65 Tweedale Street, setting up a business there and employing his friend, Mohammed Yasin ("**Mohammed Yasin**"). Again, beneficial ownership of these properties and businesses is in dispute. Arshad maintains that, regardless of the name in which they were purchased, each property and business was held for Arshad himself and Pervez as joint beneficial owners. Pervez maintains that he was the sole beneficial owner.
19. In June 1983, Pervez bought a shop at 16 Union Street, Oldham and set up a business selling clothing from the shop. Having purchased the property for £19,750, he sold it four years later for £27,000.
20. Pervez maintains that, in 1985, he purchased properties at 2-4 Lower Tweedale Street, Rochdale, including a shop at 2 Lower Tweedale Street which became the family's principal Rochdale store. These properties were registered, partly, in the names of their parents, Mohammed and Roquya, and partly in the name of Arshad. There is, again, an issue between Pervez and Arshad as to beneficial ownership.
21. At about this time, Pervez and Arshad got married. Their two families lived together with other members of the ancestral family in the house at Deeplish Road, Rochdale.
22. A decision was then taken to incorporate the business conducted from the shop at 2 Lower Tweedale Street, Rochdale. The corporate vehicle was Worldwide Cash and Carry Limited (Company no. 1929098) ("**WCCL**"), a company formed on 8 July 1985 and its first audited accounts were for the year ending on 31 October 1986. Pervez, Arshad and Mohammed were then the only directors. In WCCL's first annual return on 31 October 1986, it was recorded that 1,000 ordinary shares of £1 had been taken up with Pervez and Arshad each issued 333 ordinary shares and Mohammed 334 shares.
23. Between October 1985 and 1999 or thereabouts, properties were repeatedly acquired, disposed of and transferred within the family. Following acquisition of the shop at 2 Lower

Tweeddale Street, the original stores were disposed of. In October 1986, a property at 63 Milkstone Road was acquired. In December 1987, 16 Union Street was disposed of. In December 1992, property denoted as “the former education stores” was acquired. This was on land neighbouring the family’s main shop. In September 1993, four separate registered titles to property incorporating the main store at 2 Lower Tweeddale Street were transferred into the names of Roquiya, Pervez and Arshad. In October and November 1997, properties at 29 Equitable Street and 9 Briar Street, Rochdale were transferred into the name of Pervez and, in 1999 or thereabouts, leasehold property at 24 Pullman Street, Rochdale was transferred to Arshad.

24. Throughout this period, Pervez, Arshad and Shahid were of full age. Zahid attained the age of 18 years in August 1986. All four brothers worked in the business. Kashif was significantly younger. He was only born in 1973. However, he was already helping in the business by the age of 15-16 years of age whilst still at school. This continued when he went to university and joined two firms of accountants, first Shaik & Co then Gruber Levinson Franks, before starting work in the business on a full time basis with effect from September 2000.
25. By then an associated business had been established from premises at 24 Slade Lane, Longsight, Manchester comprising a shop and a local market stall. This business was conducted through a new corporate vehicle, Worldwide Foods (Manchester) Limited (Company no. 02916752) (“**WWF Manchester**”), formed on 7 April 1994. In WWF Manchester’s first annual return on 10 June 1995, Mohammed Yasin and Zahid were recorded as the only directors. It was recorded that two ordinary shares of £1 had been issued and transferred to Pervez and Arshad.
26. Both parents passed away at a formative time in the commencement of the businesses, Mohammed on 24 May 1990 and Roquiya on 12 December 1996. They died intestate. No grant of representation was ever obtained in respect of Mohammed’s estate and representation was not obtained in respect of Roquya’s estate for upwards of seven years after her death.
27. In September 1999, Rochdale Metropolitan Borough Council carried out a health and safety inspection in respect of WCCL’s business premises on Lower Tweeddale Street, Rochdale identifying serious defects in the electrical system and significant food

contamination issues. Zahid was present at the initial inspection. Fearing the Council would close down the store, Zahid called Pervez who was abroad, in Pakistan. Pervez returned immediately.

28. Following their initial investigation, the Council served statutory requisitions and demands on Pervez, as managing director. They then prosecuted Pervez, Zahid and WCCL for a series of statutory offences. In the case of Pervez, this included offences under the Electricity at Work Regulations 1989, the Provision and Use of Work Equipment Regulations 1998, the Health and Safety at Work etc Act 1974, the Food Safety Act 1990 and the Food Safety (General Food Hygiene) Regulations 1995. Much of the relevant documentation is no longer available. However, it appears they were each convicted of statutory offences.

29. In October 2001, Zahid was sentenced to a fine in the Rochdale Magistrates Court. However, Pervez's case was adjourned for sentence to the Crown Court at Manchester. On 7 January 2002, he was finally sentenced to a fine of £19,500, based on nineteen separate charges. He was also ordered to pay the Prosecution costs in the sum of £7,500. Although ultimately sentenced only to a substantial fine, it appears Pervez was advised, well beforehand, that he was at risk of a custodial sentence. The whole experience had a significant impact on his health and mental well-being at the time. It may also have affected his outlook and the way in which he viewed his assets. Prior to sentence, he maintains he was advised to shift assets out of his own name in order to create a misleading impression about the assets that would be available to him to meet a fine.

30. In this context and on the eve of significant business expansion, several companies were formed and properties transferred. Two of the companies were formed on 15 July 1999, shortly before the initial health and safety inspection itself. These companies were AIL and WWF Birmingham.

30.1. AIL subsequently became a property holding company and it has assumed an important role in these proceedings. However, it was originally formed in the name of Worldwide Cash & Carry (Rochdale) Limited (Company no. 3807712). The change of name was on 5 September 2000 pursuant to a special resolution "of the members" signed by Kashif as company secretary. At that stage, only one £1 share had been issued in respect of the company and, according to the annual return made up to 15

July 2000, Arshad was sole shareholder. On 17 July 1999, Pervez was appointed sole director of the company and Zahid was appointed company secretary. According to the returns filed at Companies House, Arshad was appointed a director on 10 August 2000 and remained as such until 18 November 2002. Pervez resigned as a director on 17 November 2000 but resumed office on 18 November 2002.

30.2. WWF Birmingham was originally formed in the name of Worldwide Foods Cash & Carry (Manchester) Ltd (Company no. 03807718). This time, the change of name was on 28 April 2003 pursuant to a special meeting of the members on 23 April 2003, again signed by Kashif as company secretary. Again, at that stage, only one £1 share had been issued in respect of the company and, according to the annual return, this was held by Pervez. Pervez was appointed director and remained as such until 29 June 2001, before he was sentenced following the health and safety prosecution. On 29 June 2001, Kashif was appointed director and remained as such until 2 August 2007. Arshad was appointed as a director on 28 April 2003. Following Kashif's resignation as director on 2 August 2007, he has held office as sole director.

31. Between the commencement, in September 1999, of the Council's health and safety investigation and Pervez's sentence, in January 2002, for the health and safety offences, two additional companies were formed. These were Al Halal Supermarket Limited ("**Al Halal**") (Company no. 4049854), ultimately the vehicle for two stores acquired in Bradford, and Worldwide Foods (Rochdale) Limited ("**WWF Rochdale**") (Company no. 4065792). Another company, Worldwide Foods (Rusholme) Limited ("**WWF Rusholme**") (Company no. 04411940), was formed on 9 April 2002. This company was to become the vehicle for stores at Miles Platting, Rusholme and Cheetham Hill.

32. WWF Rochdale was formed on 5 September 2000. It was formed or acquired with the intention it would take over from WCCL as vehicle for the business of the Rochdale and Oldham stores and the café at 63 Milkstone Road, Rochdale, known as Cuckoos. On 5 September 2000, Kashif was appointed company secretary and his wife, Sumera ("**Sumera**") director. Kashif continued as company secretary until 10 July 2006 but Sumera resigned as director on 18 November 2002 when she was replaced by Zahid. In its initial return, it was recorded that 100 shares of £1 each had been issued and the shares were held, in their entirety, by Kashif and Sumera. However, it appears to have informally

taken over WCCL's business during the currency of the criminal prosecution. In its final accounts for the year ending on 31 May 1999, WCCL was shown, on its abbreviated balance sheet, to have total assets less current liabilities of £142,915. After provision for £2,300 in respect of deferred taxation and share capital of £1,000, there was £145,215 in respect of shareholder funds. In WCCL's final return on 31 October 2000, Pervez and Arshad were each shown as holders of 333 ordinary shares of £1 each and Roquiya 334 shares following the informal transmission, to her, of Mohammed 334 shares. However, the route by which this happened is obscure since Pervez and Arshad were each shown as the holders of 500 shares in the company's return to 31 October 1999. WCCL was finally dissolved, by notice, on 30 July 2002. WWF Rochdale's first abbreviated accounts were for the year ending on 31 May 2001. There is no available copy of its profit and loss account. However, by then, it was plainly in business since the company was shown, on its balance sheet, to have trading stock of £241,920 and debtors of £340,970. The accounts showed that WCCL was indebted to a "related undertaking" for some £139,457. There was no such provision in its accounts for the year ending on 31 May 2002.

33. Following AIL's change of name, Pervez transferred to the company his title to some properties. He did so in the latter part of 2000, when the criminal proceedings were extant. This included the properties at 63 Milkstone Road, 9 Briar Street and 29 Equitable Street, Rochdale. It was considered unnecessary, at this stage, for him to take action to dispose of the registered title to the business premises at 2 Lower Tweedale Street, Rochdale (Title GM389844) or the land on the south side of Lower Tweedale Street (GM389843) since these remained, at least nominally, in the name of his late mother. However, the leasehold land at 2-4 Lower Tweedale Street, initially registered in the name of Arshad under title no GM374573, was transferred to WWCL in 1999 before it was transferred to AIL in October 2000. This suggests that, by then, it was already envisaged AIL was more than a vehicle for the ownership of properties held specifically in the name of Pervez.

34. As will be seen later, there subsequently came a time when it was envisaged the shares in some of the trading companies would be transferred to a holding company. However, this never happened. The companies were never subject to anything in the nature of a formal group structure. Conversely, with the exception of the businesses in Birmingham,

the properties earmarked for company business – in use as shops - were subsequently transferred to AIL together with the investment properties separately acquired, over the years, in the names of Pervez, Arshad and their parents. This continued long after the health and safety prosecution and can be taken to have reflected a conscious decision, informed perhaps by the health and safety prosecution, about the value of separating trading companies from the properties at which they carried on business, thus sheltering their properties as assets.

35. Although there was never a formal group structure, AIL and the trading companies were associated with one another in the sense that the shares were held in the names of various family members and the businesses were under family management. The trading companies were engaged in similar lines of business using similar trade names. Moreover, at least some of the supplies were routed through specific companies in the informal group, particularly WWF Rochdale. From an early stage, companies within the group also made use of the same overall banking facilities from National Westminster Bank plc. However, the companies were not collectively managed by a single family member. If the family companies came to be regarded as a group, this was in a loose sense only.
36. By the beginning of 2001, Pervez had disposed of his legal title to 9 Briar Street, 29 Equitable Street and land to the rear of 63 Milkstone Road, Rochdale. WCCL had ceased business and was heading for dissolution. Conversely, WWF Rochdale and Al Halal had commenced in business. WWF Rusholme had not done so. However, at this stage, the shares in these companies were not held in Pervez's name. Arshad was the sole shareholder of AIL. Pervez was himself the sole shareholder of WWF Birmingham but, as late as April 2003, this company was filing accounts as a dormant company and had no substantial assets.
37. More generally, Pervez had been disquieted by the Health and Safety Prosecution and, amidst the rapid formation of several companies, he had become more alive to the importance of establishing his control of the businesses and investment properties. In all likelihood, this was reinforced by Arshad's decision to buy a more substantial family home for himself and his family at 566 Broadway, Chadderton. This property was purchased on 3 April 2002. No doubt, Arshad's opportunity to buy the property could be put down to his involvement in the businesses and Pervez regarded it as an unnecessary extravagance.

38. In this context, some of the brothers were requested to sign a document acknowledging Pervez's rights ("**the Acknowledgment**"). The document appears to have been prepared by Kashif at Zahid's immediate request. On its face, there are four signatories, Arshad, Shahid, Zahid and Kashif. However, Arshad denies signing it. If he did sign it, he contends that he would not have understood what he was signing. It will be necessary for me to resolve these issues later in the judgment.

39. The Acknowledgment was in the following form.

"To whom it may concern

This is to confirm that Mr Pervez Alam of 20 Woodcock Close, Bamford, Rochdale, OL11 5QA is the sole and 100% owner of:

... [Al Halal, WWF (Rochdale), WWF(Manchester) and AIL].

We the undersigned have no ownership or interest in the past, present and future projects of Pervez Alam."

40. The names of Arshad, Shahid, Zahid Iqbal and Kashif are then listed at the bottom of the page.

41. The document was typewritten but there is a manuscript signature against each name. They have also been dated in manuscript, in each case on 18 April 2002 save that, in the case of Kashif, it is dated 17 April 2002.

42. For the avoidance of doubt, there were two copies of the document in the Trial Bundle. The original was not admitted in evidence and appears to have been lost or destroyed. Moreover, the copies were each incorporated in separate fax transmissions.

43. In any event, the original document would have been signed upwards of 18 months after Pervez resigned as a director of AIL in the wake of the health and safety prosecution. His resignation was on 17 November 2000 and he was not re-appointed as a director until 18 November 2002. Upon Pervez's re-appointment, Arshad resigned as a director.

44. There is a wider dispute between Arshad and Pervez. Arshad maintains that, at about this time, their relationship completely broke down and they ceased speaking to one another. Pervez does not deny that their relationship came under strain but does not accept that it deteriorated to such an extent that they ceased to communicate altogether.

45. On 28 April 2003, business premises were acquired at 28 Slade Lane, Longsight. These were adjacent to WWF Manchester's Longsight store. However, they were purchased in the name of AIL and charged by AIL to National Westminster Bank to secure the monies advanced. Arshad maintains he purchased the property for his own use and it is thus held on trust for him.
46. On the same day, WWF Birmingham was re-named so as to denote its intended presence in Birmingham, and Arshad was appointed a director. Kashif was already a director at that stage.
47. On 20 June 2003, business premises were acquired for WWF Birmingham at 360 Coventry Road, Small Heath, Birmingham for a price of £900,000 plus £157,500 VAT. The transaction was funded from monies advanced to the company by United National Bank Limited and National Westminster Bank plc.
48. WWF Birmingham can be taken to have commenced business after it acquired the premises at Coventry Road. It is unclear precisely when. However, having filed accounts for a dormant company in the periods ending on 31 July 2001, 31 July 2002 and 31 May 2003, trading accounts for WWF Birmingham were subsequently filed for the period ending on 31 May 2004 suggesting that it commenced business shortly after the Coventry Road premises were acquired.
49. On 25 June 2003, Zahid resigned as company secretary of WWF Birmingham. He was replaced as company secretary by Kashif. Kashif and Arshad remained in office as directors. On the same day, Kashif completed a return recording that an additional 999 ordinary £1 shares had been allotted, in respect of WWF Birmingham, to Pervez, Arshad, Shahid, Zahid and Kashif himself. Pervez was allotted 199 shares and the other brothers, 200 shares each. On this basis, it was recorded, in the company's annual return made up to 15 July 2004, that they each held 200 shares in the company.
50. Although the companies were never introduced to a formal group structure with a holding company and subsidiaries, this possibility was canvassed during the summer of 2003. Kashif instructed the Tenon Group ("**Tenon**"), accountants, to arrange for the shares of three companies, WWF Manchester, WWF Rochdale and Al Halal to be transferred to AIL mindful that the shares in the three companies were then believed to be held respectively

in the names of Pervez and Zahid (WWF Manchester), Kashif and Sumera (WWF Rochdale) and Arshad (Al Halal). Al Halal was then incorporated in the name of Worldwide Cash & Carry (Bradford) Limited. Arshad was then registered as the sole shareholder of AIL.

51. By letter dated 1 August 2003, Tenon Group (“Tenon”) advised the Inland Revenue that they were authorised to act as agents for all four companies and requested advance clearance for this series of transactions, under *TCGA s 138* and *ICTA 1988*. The transactions were to involve AIL making a bonus issue to Arshad of 99 £1 ordinary shares for each existing share held by “capitalising part of its profit and loss account”. Following the transactions, the proposed shareholders of AIL were Arshad (273 shares), Kashif (123 shares), Sumera (118 shares), Pervez (369 shares) and Zahid (369 shares). There was no provision for Shahid, who was not registered as a shareholder of any of the three trading companies. Elsewhere in their letter, Tenon advised the Inland Revenue that “the group as a whole will be controlled by the head of the family, Pervez...As Pervez will not have automatic control by virtue of his shareholding in [AIL] some or all of the other shareholders may gift some or all of their shareholdings in [AIL] to Pervez in order to give him voting control of the group”.
52. By letter dated 7 August 2003, the Inland Revenue gave clearance for the proposed transactions, confirming that the provisions of *s703(3)* of the *1988 Act* would not be applied and *s137(1)* of the *1992 Act* would not have effect with the result that *s135* would not be prevented from applying.
53. On 8 August 2003, Arshad signed a resolution, as sole shareholder and member of AIL, providing for an additional £99 to “be capitalised from revenue reserves and appropriated” to his shareholding. This was reflected in a company return signed by Arshad on 29 September 2003. In the company return for the following year, it was recorded that the nominal value of the share capital of AIL had been increased to £1,252 with 273 shares now allotted to Arshad, 369 shares allotted to Pervez, 369 shares to Zahid, 123 shares to Kashif and 118 shares to Sumera. This was based on a Return of Allotment of Shares signed by Kashif on 29 March 2004 and reflected the allocation of shares envisaged in Tenon’s letter to HMRC dated 1 August 2003. However, contrary to the scheme proposed in the letter, the shares in WWF Manchester, WWF Rochdale and Al Halal were not ultimately transferred to AIL.

54. On 16 September 2003, a house at 2 Dean Court, Rochdale was acquired for Asif and the leasehold title transferred into the name of AIL. The registered title is LA376200 and it comprises the unexpired residue of a lease for a term of 999 years from 2 January 1974. Asif continues to reside there.
55. On 11 March 2004, there was an important meeting attended, so it appears, by all six brothers, including Asif, at the shop on Lower Tweedale Street, Rochdale. It appears to have been arranged with Mr John Kay ("**Mr Kay**") of Molesworths Bright Clegg solicitors, Rochdale, for the purpose of making progress in relation to Roquiya's unadministered estate and attending to the execution of personal guarantees to support the borrowing commitments of their associated companies, at a time when WWF Rusholme was about to purchase trading premises at Miles Platting and Wilmslow Road, Rusholme with monies to be advanced by National Westminster Bank plc.
56. There is a note of the meeting. This appears to have been drafted by Mr Kay. It was denoted as an attendance note rather than formal minutes. It is un-signed and there is nothing to suggest it was circulated afterwards. However, it appears to have been prepared shortly after the meeting and is the best available evidence of the meeting itself.
57. It is apparent from the attendance note that Zahid was nominated to obtain letters of administration prior to the meeting. It can also be seen from the note that it was contemplated, at the meeting, that the properties held in Roquiya's name would be transferred to AIL.
58. The note also contained passages which throw light on the brothers' perceptions about the ownership of Roquiya's property and the way in which they wished it to be presented to the tax authorities at the time. There were also more general observations about the ownership of "family property" and the basis on which Arshad held his shares in AIL. These passages were as follows.

"(6) JFK [taken as a reference to Mr Kay] explained that the concept of Family Property was difficult for the Inland Revenue to accept. He explained that provided the Inland Revenue accepted that their late mother would always have been consulted and make the final decision concerning the Company then Business Property Relief would apply and there would be no Inheritance Tax payable. He explained that otherwise there would be Inheritance Tax payable. They appeared to understand the position.

- (7) JFK explained that matters were now being simplified because all the properties were being vested in [AIL]. However this still left the same difficulty in connection with the shares which were currently all vested in [Arshad]. If he was to die then we would have to convince the Revenue that he did not have beneficial ownership of all the properties by virtue of holding the shares. He explained that at the present time it did (sic) cause an immediate risk provided Business Property Relief would apply but it was not a solution.
- (8) JFK had formed the view that the way in which they operated the Family Property was similar to a Discretionary Trust under which presumably Pervez and Arshad would have a discretion to appoint out the income to those members of the family that it was appropriate to receive it and that all properties would be held in the Trust to that a problem did not arise in the event of a death. However [Mr Kay] pointed out that there was a down side to such an arrangement namely the levy of 10% above basic tax on income and the 10 year charge on capital."

59. During the meeting, all six brothers, Pervez, Arshad, Shahid, Zahid, Asif and Kashif signed a deed naming them as signatories and providing as follows.

- "(1) We consent to the said Zahid Iqbal is to take out a grant of Letters of Administration to the estate of our late mother Raquia Khatoon Alam.
- (2) The said Zahid Iqbal is to charge the property which forms part of her estate in favour of National Westminster Bank plc to secure the liabilities of the family company, [AIL]
- (3) The said Zahid Iqbal is to transfer the said property into the name of the family company [AIL] as soon as possible after the said grant is obtained
- (4) That all assets and liabilities of the estate of our late mother Raquia Kahtoon Alam are the responsibility of the family and that Zahid Iqbal will be indemnified in respect of any personal liability by us all on a joint and family basis".

60. At the same meeting, Pervez and Arshad executed a deed ("**the 2004 Trust Deed**") recording that, historically, they held 333 ordinary shares and Roquiya 334 shares in WCCL. Later, it was also recorded – albeit in the operative part of the deed or at least the provisions styled as such – that WCCL was dissolved and struck off the register on 30 July 2002. Elsewhere in the recitals to the 2004 Trust Deed, it was recorded that WCCL had carried on the business set up in Rochdale by Roquiya and her late husband, and Pervez and Arshad had entered into the deed to confirm the trusts on which they held or had held the shares in the family business.

61. In Clause 1 of the operative part of the 2004 Trust Deed, Pervez and Arshad declared or confirmed as follows:

“the shares in the family business were vested in themselves as Trustees upon the following trusts

- 1.1 to vote the shares in [WCCL] in accordance with and at the direction of [Roquiya] during her lifetime and after her death at the direction of the head of the family and;
- 1.2 in all other respects to hold the said shares on trust for those members of the Alam Family who are currently involved in the family business”.

62. It appears the 2004 Trust Deed was prepared by Mr Kay. By letter dated 12 March 2004, Mr Kay advised Kashif that, since “the position in your family has been simplified by the decision to vest all properties” in AIL with AIL’s share capital vested solely in the name of Arshad, it would be necessary, in the event of Arshad’s death, to show to the satisfaction of the Revenue Authorities that Arshad did not own the shares beneficially. He advised Kashif that one solution to this problem would be the creation of a discretionary trust. He enclosed a draft trust deed with Pervez and Arshad appointed as trustees. It was envisaged, in the draft deed, that Arshad would transfer to himself and Pervez, his 100 ordinary £1 shares in AIL and his £1 ordinary share in Al Halal, then incorporated in the name of Worldwide Cash & Carry (Bradford) Limited as trust property, to hold as trustees on discretionary trusts for a wide class of beneficiaries, including all six brothers, remoter issue, dependants and spouses. However, the draft deed was never signed nor, indeed, did Arshad formally transfer to Pervez and himself his shares in AIL or Al Halal.

63. It can be seen from the attendance note of the 11 March 2004 meeting that he had envisaged the matter would be considered further and Tenon consulted before a final decision was made. No further decision appears to have been made at this stage other than to progress the envisaged arrangements in relation to Roquiya’s estate.

64. By letter dated 12 March 2004, Mr Kay submitted to the Manchester Probate Registry Zahid’s formal administrator’s oath together with Form IHT 200, identifying, as assets of Roquiya’s estate, her 334 shares in WCCL, subsequently dissolved but valued at £37,938 immediately prior to her death, her freehold interests in Title Nos LA2388641 (the Lower Tweesdale business premises) and LA238640, and her leasehold interests in Title GM389843 and the first floor flat at 2 Lower Tweedale Street, Rochdale, collectively

valued at £215,000. On the footing that she was entitled to 100% business property relief on the shares and 50% relief on the property used by the relevant business, her estate was entitled to relief of £162,939 and the chargeable value of her assets in the UK was no more than £90,000.

65. On 23 March 2004, there was a telephone conversation between Kashif and an associate solicitor of Enoch Evans, Ms Shemar, in which Kashif appears to have canvassed with Ms Shemar, the transfer of shares in WWF Manchester, WWF Rochdale and Al Halal to a holding company. No doubt, Kashif had in mind AIL as the holding company.
66. With this objective, by letter dated 24 March 2004, Ms Shemar forwarded to Kashif a series of documents, including draft minutes for board meetings in respect of WWF Manchester, WWF Rochdale and Al Halal. These provided for the issued capital of all three companies to be transferred to AIL. Draft minutes were also prepared for AIL providing for the shareholders of the three trading companies to be issued with shares in AIL. As it happens, this included Zahid, who had erroneously been recorded, at Companies House, as one of the two shareholders of WWF Manchester. Draft share purchase agreements and stock transfer forms were included.
67. Upon receipt, Kashif attended to the execution of much of the documentation, by arranging for it to be signed and dated on 29 March 2004. He returned at least some of the documentation to Ms Shemar on 8 April 2004 or thereabouts but, by letter dated 20 May 2004, she returned clean copies of the Share Purchase Agreements to him on the basis that the signatures had not been witnessed. Signed copies of these documents were obtained from Enoch Evans's files and admitted in evidence. These documents were unwitnessed. It appears witnessed copies of the Share Purchase Agreements were never sent to Ms Shemar and returns were never filed at Companies House recording the transactions or confirming that the shares in the three trading companies had become vested in AIL.
68. On 21 April 2004, Zahid finally obtained letters of administration in respect of Roquiya's estate, upwards of seven years after her death. The sworn net value of her estate was £289,528. Once representation had been granted, Zahid was able to attend to the conveyance of properties held in Roquiya's name. Several such properties were transferred to AIL, to be held as an investment. The store at Lower Tweedale Street,

Rochdale, was transferred to AIL on the basis it would continue to be deployed as such by WWF Rochdale.

69. Meanwhile, on 15 March and 16 April 2004, the business premises at Miles Platting and Wilmslow Road, Rusholme were respectively acquired for WWF Rusholme, as envisaged, with monies advanced by National Westminster Bank plc. AIL was registered as proprietor. On 6 October 2004, Pervez and Kashif were formally appointed as director and company secretary respectively of WWF Rusholme.
70. Although Arshad's shareholding in AIL was mentioned at the meeting on 11 March and the draft deed provided for his shares to be transferred to himself and Pervez subject to discretionary trusts, there appears to have been no discussion with a view to the allotment of additional shares.
71. On 29 March 2004, a Return of allotment of shares was filed at Companies House recording that a total of 1,252 shares in AIL had been allotted so as to bring the total allotted shareholding to 1,252 shares. Of these, 173 additional shares had been allotted to Arshad so as to bring his shareholding to 273 shares, 369 shares to Pervez, 369 shares to Zahid, 123 shares to Kashif and 118 shares to Sumera. No doubt, this Return was based on signed copies of the documentation that had been sent to Kashif by Ms Shemar under cover of her letter dated 24 March 2004.
72. The allotment recorded in this Return reflected the shareholdings of Pervez, Arshad, Zahid, Kashif and Sumera in WWF Manchester, WWF Rochdale and Al Halal at the time. The obvious logic of the allotment is that it provided for their shares in the trading companies to be replaced by their new shareholdings in AIL. However, the project to transfer the shares in the trading companies to AIL was never fully implemented.
73. In July 2004, Arshad suffered a serious stroke. He was initially treated at Heartland Hospital in Birmingham and was then moved back home. He was away from work for several weeks but ultimately appears to have made a full recovery. Although he maintains they were not on speaking terms, Arshad accepts Pervez visited him in hospital, perhaps four times. By this stage, Arshad had established himself at the Birmingham business and maintains he was essentially in control. Whilst Arshad resided at Chadderton and his work

was certainly not limited to the Birmingham business, Pervez accepts that, a substantial part of Arshad's working week was spent at Birmingham.

74. On 19 May 2007, another form of acknowledgment, bearing the signatures of Shahid and Zahid only, was apparently faxed from WWF Rusholme's office. This time, it was entirely handwritten. It might originally have been signed in 2005 since there was an obscure entry to the side of the document in the following terms, namely "3 00 pm SATDAY 19 11/05". However, the main part of the document was as follows.

"To Pervez,

I am declaring that I will follow Pervez Alam in all Instructions + Decision in Positive and Negative Decisions. All property AND Business Must Return to Pervez NAME.

Shahid IQBAL ALAM

Zahid Iqbal".

75. In any event, in the ten-year period, 2005 - 2015, additional properties were identified and acquired for use as trading stores. This was accompanied by a substantial increase in business turnover and the formation of at least one new associated company, Pennine Distribution Limited ("**Pennine Distribution**"). The opportunity was also taken to acquire a series of new investment properties.

76. As a general rule, each property was acquired in the name of AIL save where located in the West Midlands. If located in the West Midlands, the property was acquired in the name of WWF Birmingham. However, there is a dispute about the propriety of at least some of the Birmingham acquisitions. Moreover, towards the end of the period, in September 2014 and May 2015, WWF Birmingham ultimately acquired at least three properties outside the West Midlands, namely premises at 91 Edderthorpe Street and 51 Ingleby Road, Bradford, and Cheetham Hill Library, Crumpsall, Manchester.

77. During this period, AIL thus acquired business premises at Glodwick Road, Oldham for WWF Rochdale (June 2006), Great Horton Road, Bradford for Al Halal (June 2006), and the Cheetham Hill store at Crumpsall, Manchester for WWF Rusholme (April 2008). However, the Miles Platting store was disposed of in 2006. In January 2010, AIL acquired premises at Queensway, Rochdale for Pennine Distribution.

78. Similarly, having already acquired business premises for its Coventry Road store at Small Heath, Birmingham, WWF Birmingham acquired additional trading premises on Alum Rock Road, Birmingham (May 2011), 356-8 Coventry Road (“Brighton Arms”)(August 2012), premises at 753-769 and 771/773 Stratford Road, Sparkhill (August 2014). The properties WWF Birmingham acquired at 91 Edderthorpe Street and 51 Ingleby Road, Bradford were designated or let as “Pakeezah” stores. The property at Cheetham Hill Library was in close proximity to the Cheetham Hill Store.
79. Most of the companies filed abbreviated accounts only for much of the relevant period and, where this is the case, profit and loss accounts were generally not admitted before me in evidence. However, the following emerges.
- 79.1. The annual turnover of WWF Birmingham climbed from £966,646 in the year ending 31 May 2005 to £12,663,966 in the year ending 31 May 2015.
- 79.2. Having commenced in business no earlier than March 2004, WWF Rusholme was generating a turnover of £12,612,594 by the year ending on 30 May 2011. Following a minor change in the company’s accounting period, the annual turnover for WWF Rusholme had climbed further to £13,163,839 by the end of the year ending on 31 May 2015.
- 79.3. In the case of WWF Manchester, profit and loss accounts were not admitted in respect of the period from 30 May 2005 - 31 May 2009. However, for the period ending on 31 May 2010, the company’s turnover was £4,492,694. In 2010 or thereabouts, WWF Manchester acquired a market stall at New Smithfield Market, Manchester from which it commenced business whilst continuing to trade from its Longsight store. By 31 May 2016, the annual turnover of WWF Manchester had climbed to £5,087,889.
- 79.4. Whilst profit and loss accounts were not admitted in respect of WWF Rochdale or Al Halal from 31 May 2005 to 30 May 2010, it can be seen, from WWF Rochdale’s profit and loss accounts from 31 May 2011 to 31 May 2015, that its annual turnover grew from £8,519,911 to £13,124,822. During the same period, Al Halal’s annual turnover grew from £9,653,196 to £11,607,498.

80. During the same period, AIL acquired a series of investment properties in Rochdale, Rusholme and Bradford, namely 79 Durham Street, Rochdale (February 2005), 144 Woodhead Road, Bradford (February 2006), 26 Banff Road, Rusholme (April 2009), 26 Pullman Street, Rochdale (May 2010), 332 Queensway, Rochdale (September 2012), 372 Queensway, Rochdale (September 2012), land to the North of Woodhead Road, Bradford (July 2013), 30 Berwick Street, Rochdale (September 2013). These acquisitions were ultimately followed by the purchase of land on the NW side of Leeds Road, Bradford (June 2017), 21 Milkstone Place (July 2017) and land on the NW side of John Street, Rochdale (January 2018).
81. Similarly, WWF Birmingham acquired a property at 65 Treaford Lane, Ward End, Birmingham (July 2006) and land at 45 Green Lane, Small Heath, Birmingham (January 2011), land on the NW side of 9 George Arthur Road, Saltley (January 2015) and land on the SE side of Adderley Road, Birmingham (November 2015). Arshad maintains that he purchased the property at 65 Treaford Lane himself before transferring it to WWF Birmingham for a purchase price of £139,000. In any event, the acquisition of at least some of the Birmingham properties has given rise to a dispute. Pervez contends that, ultimately, he made the decision to purchase 65 Treaford Lane but at least some of the subsequent transactions were initiated and completed without his authority utilising funds advanced by the Bank pursuant to its overall facility to the associated companies.
82. Only one issued share of £1 has been issued in respect of WWF Rusholme. Until June 2009, if not later, it was held by Kashif. However, in the company's annual return of 9 April 2010, it was recorded that Kashif had transferred his share to Pervez. This transfer must have post-dated commencement of the business of the Cheetham Hill store, acquired by AIL in April 2008. Since then, Pervez has been recorded as WWF Rusholme's sole shareholder in the company's annual returns. Pervez has also been recorded as sole director of the company since he was appointed on 6 October 2004.
83. Pervez maintains that, on 27 November 2009, there was an extraordinary general meeting of the shareholders of AIL attended by Pervez, Zahid, Kashif and Sumera. If the previous 29 March 2004 Return for AIL accurately recorded the shareholdings at the time of the alleged meeting, Arshad would have been the only shareholder who did not attend. It was allegedly resolved at the meeting that Zahid, Kashif and Sumera's 610 shares be

transferred to Pervez for £1 each. It is also at least implicit in Pervez's case that, pursuant to the resolution, these shares were duly transferred to him. On this basis, Pervez's shareholding would have been raised from 369 to 979 leaving Arshad with 273 shares. Arshad contends that he did not have notice of the meeting. In any event, he challenges the alleged disposition of shares.

84. On 8 July 2011, Pervez filed a Share Allotment Return recording the issue of an additional 18,000 shares in AIL at a value, again, of £1 each. On this basis, the total issued share capital was stated to be £19,252. Arshad challenges this return. Somewhat confusingly, in the annual return for AIL made up to 15 July 2013, there were shown still to be 1252 shares, each of which were purportedly held by Pervez, Arshad, Zahid, Kashif and Sumera in as they had been prior to 27 November 2009. However, on 11 February 2014, a corrected return was submitted to correct these apparent anomalies. In this return, Pervez was stated to hold 18,979 and Arshad 273 shares in AIL. This return appears to bear Pervez's signature. It has not been suggested otherwise.

85. Meanwhile, on 4 September 2012, Kashif resigned as secretary of AIL, WWF Birmingham and WWF Rusholme.

86. Arshad maintains he was unaware until the summer of 2014 that he was not the sole owner of the Birmingham businesses. He was thus unaware the share capital of WWF Birmingham had been divided into five separate shareholdings. He contends he was only alerted to his brothers' shareholdings during a conversation with Kashif when Kashif attended his house to obtain his signature on some paperwork.

87. On 12 August 2014, notice was filed, on Arshad's behalf, that WWF Birmingham had resolved to increase the nominal capital of the company by £20,000. Arshad signed the Notice of Allotment of the shares. He also signed the minutes of the purported shareholders' meeting, on 12 August 2014, at which the increase in share capital was authorised. It was recorded in the minutes that the meeting had been attended in person by Arshad and, through proxy, Pervez, Zahid, Shahid and Kashif and that consent had been given to hold the meeting at short notice. Pervez contends that, until a long time afterwards (2016), he was unaware of the alleged meeting or resolution, allegedly made at the meeting, to increase the nominal capital of WWF Birmingham.

88. On 14 August 2014, Kashif and Sumera transferred to Pervez their shares in WWF Rochdale. Immediately prior to the transfer, Kashif held 51 shares and Sumera 49 shares in the company, amounting to the entirety of WWF Rochdale's issued share capital. The transfer was thus intended to transfer the entirety of the share capital to Pervez. The transaction was formally confirmed in WWF Rochdale's Annual Return dated 5 September 2015.
89. For many years, NatWest Bank provided banking facilities to each associated company. This involved a single overdraft across the whole informal group. Arshad contends that, in May 2015, he authorised WWF Birmingham to pay £1.35m to the Bank as part of arrangements to separate the facilities between companies within the group. It is not in dispute that this amount was paid to the Bank from funds credited to WWF Birmingham. Nor is it in dispute that this payment was applied to reduce the group indebtedness to the Bank. Moreover, the payment appears to have been made at a time there were proposals to replace the group overdraft facility with separate facilities for each company or business. It is not accepted, on behalf of Pervez, that the payment was simply made to achieve severance and, whilst the payment was made from funds credited to WWF Birmingham, it is maintained that it would be unduly simplistic to credit it to WWF Birmingham without taking into account the cross liabilities to one another of each of the associated companies based on inter-company transactions (for example where stock was purchased by one company and supplied to another within the group) and adjustments for payments to the Bank, from associated companies to meet the overall liabilities of other companies and ensure they were within their overall overdraft facility. It is clear that steps were taken at this time to separate the bank facilities. However, there is a substantial issue between the parties as to whether Arshad is entitled to rely on this payment together with the release of funds owed to companies under Arshad's control in respect of a claim against the Bank to furnish him with a claim or claims against Pervez or companies under his control under the doctrine of proprietary estoppel.
90. On 1 September 2015, Arshad incorporated a new company called Worldwide Foods Cheetham Hill Ltd (Company No 9756514) ("**WWF Cheetham Hill**") with one ordinary £1 share. Arshad was and is the only shareholder.

91. Arshad contends that, on 30 November 2015, the trade, assets and liabilities of the Cheetham Hill Store were simply transferred, at net book value, from WWF Rusholme to WWF Cheetham Hill. He maintains that this was with Pervez's agreement. Pervez contends otherwise and states that he was entirely unaware of the transfer until October 2017. On 10 May 2017, Pervez approved WWF Rusholme's annual accounts for the year ending on 31 May 2016. In his directors' report, there was a passage referring to the transaction in bald terms. However, Pervez maintains that this was not drawn to his attention by WWF Rusholme's auditors, RSM UK Audit LLP ("**RSM**"), and he thus signed off the accounts without appreciating that a substantial part of the business had been disposed of in this way.
92. Consistently with the alleged transaction, in the accounts approved on 10 May 2017, WWF Rusholme's turnover in the year ending on 31 May 2016 was shown to have declined from £13,163,839 (for the year ending on 31 May 2015) to 10,586,494. Fixed assets were shown to have reduced from £35,619 to £19,801. More significantly, current assets at the end of the year had reduced from £4,496,842, on 31 May 2015, to £2,588,309 on 31 May 2016. This encompassed a reduction of £1,366,390 in the amounts owed to WWF Rusholme from related undertakings. On the basis that, at the beginning and end of the year, there was only £1 of share capital - allotted, called up and fully paid - and the company's net assets had diminished from £702,594 to £692,136, its capital and reserves reduced by £10,457 from £702,594 to £692,137 over that period.
93. Pervez contends that after his son, Mohammed Adil Chaudhry Pervez ("**Adil**"), had drawn his attention to the disputed transaction in WWF Rusholme's accounts, he instructed accountants to amend the accounts by deleting any reference to the transaction with corresponding adjustments to its profit and loss account and its balance sheet. On 10 April 2019, the board approved the company's amended accounts with the company's annual turnover and current assets respectively adjusted upwards to £13,064,808 and £4,359,233. The amended accounts were signed by the company's new auditors, Ashworth Moulds, and filed at Companies House.
94. There are issues as to the nature and extent of the collaboration between the parties and businesses between 2003 and 2016. By 2003 Arshad was already responsible for the management of WWF Manchester and, between 2003 and 2016, he assumed

responsibility for the management of WWF Birmingham and the Cheetham Hill store. During the Summer of 2016, Kashif advised Arshad that he wished to withdraw from his role as accountant in connection with these companies or businesses and, in August 2016, Arshad took the opportunity to appoint an accountant, Mr Kanwarbir Sawhney (“**Mr Sawhney**”) to act as management accountant for these businesses. This was on the basis that Ken Sawhney would replace Kashif and be exclusively responsible to Arshad himself, not the other brothers. However, Kashif continued to provide services for the other associated companies until shortly before proceedings were commenced.

95. On 12 October 2016, Arshad formed three separate companies, Worldwide Foods Longsight Limited (“**WWF Longsight**”), Worldwide Foods Sparkhill Limited (“**WWF Sparkhill**”) and Worldwide Foods Saltley Limited (“**WWF Saltley**”) as potential vehicles for business in Manchester and Birmingham with Arshad as sole director and shareholder. On 1 February 2017, Arshad formed another company, Worldwide Foods Small Heath Limited (“**WWF Small Heath**”), again on the basis it would potentially be a vehicle for some business in Birmingham.

96. Following the formation of these companies, Arshad transferred to them the businesses of WWF Manchester and WWF Birmingham at, respectively, their Longsight, Stratford Road, Alum Rock and Coventry Road stores. In the case of the Longsight business, this appears to have happened in November 2018. At the same time, WWF Manchester’s market stall business was also transferred to WWF Fruit & Veg.

97. Following the formation of these companies, control of all relevant companies is as set out in the Appendix to this judgment.

98. By letter dated 19 October 2017, from Baker & Coleman solicitors (“**Baker & Coleman**”) to Pervez, Baker & Coleman notified Pervez that they had been instructed by Arshad and challenged the Return of Allotment of Shares on 29 March 2004 in which Pervez, Zahid, Kashif and Sumera were shown to have acquired additional shares in AIL together with the subsequent allotment of a further 18,000 shares in AIL. They advised Pervez that they intended to commence proceedings to reinstate Arshad as sole shareholder. They also stated that Pervez had fraudulently procured the transfer to himself of Arshad’s shares in Al Halal, requiring Pervez to give up control of AL Halal and ensure that Arshad was paid all the profits and dividends of the company.

99. On 5 December 2017, Kashif signed a stock transfer form transferring to Arshad his 200 shares in WWF Birmingham.
100. Pervez, Shahid and Zahid instructed Gateleys to act as their solicitors in connection with the dispute evolving with Arshad. By letter dated 5 January 2018 to Baker & Coleman, and his companies, Gateleys stated that they were instructed on behalf of AIL, WWF Manchester, WWF Birmingham, Al Halal, WWF Rochdale, WWF Rusholme, Pennine Distribution and, surprisingly, WWF Cheetham Hill. In a passage on which Mr Croxford has relied heavily for Arshad, they contended that each of these companies formed part of a group “controlled by [Pervez] but for the benefit of all the brothers.” They then challenged the 12 August 2014 resolution to increase WWF Birmingham’s nominal share capital and made requisitions about the alleged transaction for the transfer, on 30 November 2015, of the assets and liabilities of the Cheetham Hill store.
101. In March 2018, Pervez appointed Ashworth Moulds to replace RSM as auditors of the companies under the control and management of Pervez himself, Shahid and Zahid.
102. On 25 July 2018, Arshad formed another company, Worldwide Foods Fruit & Vegatable Merchants Limited (“**WWF Fruit & Veg**”), no doubt as a potential vehicle for the market stall business at New Smithfield Market, Manchester.
103. On 1 November 2018, Arshad caused WWF Manchester to transfer to WWF Longsight the business and assets of the Longsight store. At about the same time, he caused WWF Manchester to transfer, to WWF Fruit & Veg, the business and assets of the market stall at New Smithfield Market, Manchester
104. During the following months, the dispute escalated and, between December 2018 and November 2021, five separate claims were issued.

(3) The Claims

105. The five claims are as follows.

(a) Unfair Prejudice Petition (AIL) (CR-2020-MAN-000606)

106. The Unfair Prejudice Petition was presented to the High Court on 5 June 2020. Arshad is the Petitioner. Pervez and AIL have been joined as Respondents. This is the Lead Action.

Messrs Croxford KC and Walmsley appear on behalf of Arshad. Messrs Chaisty KC and Tetlow appear on behalf of Pervez and AIL.

107. Arshad's case is founded on the basis that AIL is a quasi-partnership established for the benefit of Arshad and Pervez only, together denoted as "the Brothers". It is alleged that it was their "shared common understanding...that [AIL] was an investment and holding company established and operated for the purpose of acquiring properties from which supermarket stores businesses would operate, and for the purpose of supporting and furthering the Brothers' business and financial interests".

108. Arshad contends that Pervez has conducted AIL's affairs contrary to the Brothers' shared understanding and in a manner unfairly prejudicial to Arshad's interests as a member. He relies *inter alia* on the steps taken by Pervez to dilute the value of Arshad's shareholding and thus wrongfully obtain control of the company. He also contends that Pervez has purported to act as director without having been appointed in accordance with the company's articles. He has excluded Arshad from the management of the company and failed to consult or inform him about the operation of the company and the general conduct of its affairs. It is alleged that, by reason of these matters, the relationship of trust and confidence between the Brothers has broken down irretrievably.

109. In support of the allegation that Pervez has caused the company to dilute Arshad's shareholding, Arshad relies on the 29 March 2004 Return, which appeared to have shown that 1,152 shares were allotted in respect of the company on or around this date so as to bring the total allotted shareholding to 1,252 shares. He contends that annual returns for the company suggested that in the periods ending on 15 July 2006, 2007, 2008 and 2009, another 2,404 shares were allotted without his knowledge and that, ultimately, there was a return on 15 July 2013 showing a total of 19,252 shares had been allotted, of which Pervez was entitled to 18,979 shares and Arshad was entitled to 273 shares only. On this basis, Arshad would thus have held less than 1.5% of the issued shares in the company.

110. In support of the contention that, in breach of his legitimate understanding and expectation that, as a member of the company, he would participate in the management of the company, it is stated that he did not resign as a director of the company on 18 November 2002 or thereabouts nor was his appointment validly terminated and that,

contrary to the company's articles, no meeting was held to appoint Pervez as a director at that time.

111. By the time Arshad issued the Petition, AIL had commenced possession proceedings against WWF Cheetham Hill under Claim No E06MA632 (see below). Mindful of this, Arshad contended, in the Petition, that, by causing AIL to commence such proceedings, Pervez was conducting the affairs of the company in a manner prejudicial to Arshad's interests as a member. He contended that, again this was contrary to the understanding and expectation of the Brothers and amounted to a breach of the common purposes for which the company was established.

112. Arshad thus seeks a declaration that he is entitled to 50% of AIL's issued share capital, an order requiring Pervez to purchase Arshad's shares or Arshad to purchase Pervez's shares together with accounts, inquiries and other relief.

113. In their Points of Defence, AIL and Pervez deny that AIL was a quasi-partnership and they deny that there was any shared common understanding that AIL would operate for the purpose of supporting and furthering the business and financial interests of Pervez and Arshad. They contend, in Paragraph 7 of the Points of Defence, that Pervez is the sole owner and in sole control of the Worldwide Foods Business, defined to encompass "the business of running various supermarkets, food stores and related bodies [through AIL] and various other companies, trading largely, although not exclusively, under the name of Worldwide Foods".

114. Contrary to Arshad's case, it is pleaded, in Paragraph 30 of the Points of Defence, that it was understood and agreed between Pervez, Arshad, Shahid, Zahid and Kashif and their wider family, involved in the business, that all properties purchased by the Worldwide Foods Business or Pervez (save for some domestic properties) would be held for Pervez, their shares would be held beneficially for him and, where appointed as directors, they would act in accordance with Pervez's instructions.

115. In response to Arshad's case, based on the 29 March 2004 Return, that an additional 1,152 shares in AIL were allotted without his knowledge, it is alleged, in Paragraph 139 of the Points of Defence, that this was done with the knowledge of all five brothers involved in the business and was consistent with the understanding on which all shares were held.

116. In Paragraphs 138-144 of the Points of Defence, it is contended that the annual returns from 2006 to 2013 were left to Kashif and, if they contained errors, this would not suffice to warrant an unfair prejudice petition. In any event, if the proper formalities were not followed, each allotment was made with the knowledge and consent of all members of the company at the relevant time and ratified by them so as to be validated in accordance with the *Duomatic* principle.
117. In Paragraphs 145 – 147.4, it is admitted that Arshad was not involved in the management of AIL. However, this is on the basis that Arshad had no right to be involved in the management of the company. In any event, it is denied Arshad has been unlawfully excluded from management. More specifically, it is contended that Arshad “was fully aware of and acquiescent in his resignation as a director...on 18 November 2002 and Pervez’s re-appointment or appointment as director...on that date”.
118. In Paragraph 150, it is specifically denied that there was anything improper in Pervez’s decision to cause AIL to commence possession proceedings against WWF Cheetham Hill. These proceedings had been taken in order to reverse the action improperly taken by Arshad in appropriating the business of the Cheetham Hill store. It was fully in accordance with Pervez’s duties as a director of AIL.
119. More generally, it is denied that there had been any unfairly prejudicial conduct and it was denied that Arshad was entitled to any relief.

(b) The possession claim – Case No E06MA632

120. These proceedings were commenced in the County Court at Manchester on 10 December 2018. The parties to the proceedings are AIL, as Claimant, and WWF Cheetham Hill, as Defendant. Messrs Chaisty KC and Tetlow appear on behalf of AIL and Messrs Croxford KC and Walmsley appears on behalf of WWF Cheetham Hill.
121. This was the first issued claim and, in his submissions for WWF Cheetham Hill, Mr Croxford described it as an early claim for “low hanging fruit” on the basis that AIL was *prima facie* entitled to an estate in possession of the relevant premises, namely the supermarket at Cheetham Hill, Manchester.
122. WWF Cheetham Hill filed a Defence contending that AIL held the premises on constructive or resulting trust for Arshad or was estopped from denying that he was

entitled to a beneficial interest giving rise to a right to occupy. If not, it was contended that WWF Cheetham Hill was entitled to a business tenancy with security of tenure under the provisions of *Part II* of the *Landlord and Tenant Act 1954*. In any event, the claim itself amounted to unfairly prejudicial conduct of AIL's affairs.

123. Arshad was not formally joined as a party to the possession claim. However, at least two separate arguments were deployed and developed in support of WWF Cheetham Hill's defence based on trusts and proprietary estoppel.

123.1. Firstly, it is contended Arshad and Pervez formed a common understanding that "each individual member of the Family who operated a store would be considered to own that business" (Para 19.2) and AIL "would hold the legal title" to any property "acquired from which a store was to be operated" on trust for that family member (Para 20.2) who would "be responsible for the mortgage payments on the property in question" (Para 20.3). In reliance upon this common understanding and to his detriment, it is alleged Arshad invested his time and effort in the operation of the business from the Cheetham Hill store (Para 35.1) and made payments of £2,180,981 out of the profits from the Cheetham Hill business to AIL for the purpose of repaying the mortgage (Para 35.2). On this basis, it is contended that AIL holds the Cheetham Hill store "on express, alternatively constructive, alternatively resulting trust for Arshad (alternatively WWF Cheetham Hill)" (Para 39). If not, AIL "is estopped from denying that Arshad has a beneficial interest by reason of the acceptance...of mortgage payments...pursuant to the shared common understanding that [AIL] held the Property for the benefit of the Cheetham Hill business which was owned by Arshad" (Para 39).

123.2. In Para 55.1 of the Defence, Arshad's case is put slightly differently. It is asserted that "the Cheetham store business was opened at the instigation of Arshad, on the shared common understanding of the Brothers that the business would be operated by Arshad and belong solely to him".

123.3. In any event, Arshad contends, in Paragraph 40, that "Kashif did not incorporate a separate entity for the business trading at Cheetham Hill. Instead, and unknown to Arshad until mid 2015, profits generated by the business were paid into a bank

account held in the name of [WWF Rusholme], a trading company operating in respect of a separate store in Rusholme that was managed by Pervez”.

123.4. Secondly, it is contended that when, in 2015, Arshad told Kashif he wished to “formally separate all the businesses and assets which he individually owned and operated” from the existing “structure” (Para 41), Kashif “*informed*” Arshad that he “would have to pay around £1.6m to [AIL]. In return for this payment, Arshad would receive all assets currently held by [AIL] for the benefit of him (either directly, or indirectly through such corporate vehicle as Arshad had nominated or used to operate a store business)” (Para 44). For this purpose, it is alleged the assets “held” for Arshad’s benefit at the time included the Cheetham Hill store. Although initially characterised as the disclosure of information and later, in Paragraph 46, as a “representation”, Arshad’s case, in substance, is that Kashif made a promise or assurance to Arshad that the relevant assets would be transferred to him or his nominees in return for a payment of £1.6 million.

123.5. At the time Kashif made this promise or assurance, it is contended that Arshad and Pervez were not on speaking terms (Para 42) but Arshad understood Kashif had done so on behalf of AIL and with Pervez’s agreement (Para 43).

123.6. In reliance upon Kashif’s promise or assurance, it is alleged, in Para 46, that Arshad paid “around £1.6m to [AIL] consisting” of the “transfer on 20 May 2015 of £1.35m from” WWF Birmingham’s bank account and the release of Arshad’s share of a claim against NatWest for mis-selling.

124. Each element of WWF Cheetham Hill’s Defence is comprehensively challenged in AIL’s Reply. By way of introduction, AIL contends that, whilst AIL is itself a property holding company for much of the property of the Worldwide Foods Business, Pervez is effectively the owner of the Business, Para 10.1-10.4, and that, whilst it was always the intention for family members to be involved in the Business and a number of the brothers had been involved over time in the management of certain stores, it was always understood that Pervez would be the sole owner and head of the Business. On this basis, there was never an understanding Arshad would own any of the Business nor, specifically, any of the constituent companies or stores.

125. It is thus denied there was ever any common understanding that anyone other than Pervez would own particular stores or businesses. There could thus be no room for detrimental reliance upon such an understanding. Arshad merely carried out work as part of his general role within the Business, not in reliance upon the putative common understanding (Para 46.2). Moreover, the alleged mortgage payments totalling £2,180,981.80 were simply made from WWF Rusholme's bank account, not from Arshad.

126. It is also denied that there were any promises or assurances in 2015 with a view to the separation of any business. In Para 57.2, it is contended that, at this stage, the relationship between Pervez and Kashif was strained and Kashif was not authorised to negotiate with Arshad or make any representations to Arshad on Pervez's behalf. It is specifically denied that there was any agreement between Pervez, AIL or Arshad for the separation of the Worldwide Foods Business, Para 60.1. Moreover, any transfer from a WWF Birmingham bank account was not a transfer of monies from Arshad; it was simply a transfer from part of the Worldwide Foods Business, Para 60.2. There is a blanket denial of Arshad's allegation about an agreement in relation to the settlement of the proceeds of a mis-selling claim against NatWest.

(c) The Birmingham Claim – Case no. BL -2020- MAN-000114

127. These proceedings were issued in the High Court, BPC Manchester on 9 November 2020. The Claimants are Pervez, Zahid and Shahid. The Defendants are Arshad, WWF Small Heath, WWF Saltley, WWF Sparkhill and WWF Birmingham. In this claim, Messrs Chaisty KC and Tetlow appear on behalf of the Claimants and Messrs Croxford KC and Walmsley appear on behalf of Arshad.

128. The proceedings relate to the affairs of WWF Birmingham. They encompass a personal claim ("**the Personal Claim**") against Arshad in relation to the disputed allotment, on 12 August 2014, of 20,000 shares in WWF Birmingham, and a derivative claim ("**the Derivative Claim**") based on the disputed allotment itself and Arshad's alleged breaches of duty as a director. Unlike the Personal Claim, all five defendants are party to the Derivative Claim.

129. WWF Birmingham was formed with an authorised share capital of £100,000 divided into 100,000 shares of £1 each. It was issued with one £1 subscriber share which was

transferred, on incorporation, to Pervez. By Article 8 of the company's articles of association, rights of pre-emption were granted to existing members in the event new shares were created or issued.

130. It is at least implicit in Para 15 of the Particulars of Claim that, in 2003, Pervez, Arshad, Zahid, Shahid and Kashif agreed to expand the Worldwide Foods business into Birmingham through the vehicle of a separate company in which the freehold title would be vested in any properties acquired in Birmingham. It was agreed Arshad would manage the Birmingham business. However, the Birmingham company was to be under the ultimate control of Pervez. Whilst there was an understanding that the five brothers would each be issued with 20% each of the issued share capital in the Birmingham company, this was apparently on the basis that they would each hold their shares "notionally" and Pervez would retain overall control. The concept of a *notional* shareholding has never been fully explained but it appears to be suggested that the shares would be held on trust for Pervez or at his direction. The main body of the Particulars of Claim remains pleaded on this basis. However, on 5 September 2022, I gave Pervez, Zahid and Shahid permission to amend their claim for relief so as to seek a declaration that the shares are held and beneficially owned by Pervez, Arshad, Zahid, Shahid and Kashif absolutely, see [2022] EWHC 2325(Ch).

131. Pursuant to the putative understanding or agreement that the five brothers would each be issued with 20% of the issues share capital of WWF Birmingham, it is contended (in Para 17.3 of the Particulars of Claim) that, on 25 June 2003, the company's issued share capital was increased to £1,000 with the five brothers allotted 200 shares each.

132. Upwards of ten years later, the disputed allotment is alleged to have been orchestrated by Arshad under the guise of an extraordinary general meeting of WWF Birmingham putatively held on 12 August 2014. Minutes of the alleged meeting were subsequently filed at Companies House stating that it was attended by Arshad with other members present by proxy, having consented to the meeting being held at short notice.

133. In Paragraph 29 of the Particulars of Claim, it is contended that, contrary to the putative minutes, Pervez, Zahid and Shahid were not given notice of the meeting and, if there was such a meeting, they were entirely unaware of it at the time. In any event, they did not consent to it being held at short notice and did not agree any additional shares should be

allotted to Arshad. Moreover, their rights of pre-emption were not observed. On this basis, they contend that the putative allotment of 20,000 shares to Arshad at the meeting was unlawful.

134. Arshad was appointed as a director of WWF Birmingham on 28 April 2003 and, since the resignation of Kashif on 2 August 2007, he has held office as the sole *de jure* director of the company. It is alleged that, through the action that he took to orchestrate the disputed share allotment, Arshad was in breach of his duties as a director. However, it is alleged that he committed a series of additional breaches of his duties as a director and, more generally, his fiduciary duties to the company. These include the following:

134.1. the acquisition, without consulting Pervez, of land *inter alia* at Stratford Road, Spark Hill, Birmingham as the site for a new store (Para 36) and properties at Leeds Road and Edderthorpe Street, Bradford (Para 37.1), Cheetham Hill Library, Manchester (Para 37.2) and 51 Ingelby Road, Bradford (Para 37.3), utilising general facilities provided by National Westminster Bank plc to companies trading under the name of Worldwide Foods supported by cross guarantees; and

134.2. the diversion of the business conducted from WWF Birmingham's Coventry Road, Alum Rock and Stratford Road stores to WWF Small Heath, WWF Saltley and WWF Sparkhill respectively (Paras 41.1 to 41.3).

135. The Personal Claim is for a declaration that the disputed share allotment is void and ineffective together with an order providing for the rectification of the register of members and damages.

136. The Derivative Claim is for declaratory relief, equitable compensation or damages, an inquiry as to losses and an account of profits. Since permission has not yet been given for the Claimants to continue the Derivative Claim pending determination of the Preliminary Issues, I shall not, at this stage, determine any self-contained issues in the Derivative Claim itself.

137. For obvious reasons, no Defence has been filed to the Derivative Claim. However, in his Defence to the Personal Claim, Arshad takes issue with each aspect of the case advanced by Pervez, Zahid and Shahid.

138. Contrary to Paragraph 15 of the Particulars of Claim, Arshad contends that he took the decision to commence business in Birmingham unilaterally. Moreover, the decision was to open his own stores. Kashif then arranged for WWF Birmingham to be the vehicle for Arshad's Birmingham business. Arshad himself identified the store from which the new business was to operate at 360 Coventry Road, Small Heath and arranged for the purchase of the property with a loan from United National Bank Limited, secured over the new business premises and Arshad's family home at 24 Pullman Street, Rochdale OL11 1PE. He did so in the belief he was sole shareholder having entrusted Kashif to set up the company as a vehicle for his own personal endeavours.

139. It is implicit in Arshad's pleaded case that he was unaware Pervez was initially sole shareholder. Having entrusted Kashif with setting up the company as a vehicle for his own business, he was unaware that, in June 2003, the five brothers were allotted 200 shares each in the new company. In any event, he set up the business in Birmingham and thus acted to his detriment on the understanding that it was his business. This was a common understanding which he shared with the other brothers (Defence Para 3(1)).

140. Moreover, whilst the other brothers did not attend the extraordinary general meeting of the members on 12 August 2014, the resolution, at the putative meeting, to allot to Arshad an additional 20,000 shares in WWF Birmingham was "in conformity with the understanding ... Arshad shared with all his brothers [that] the Business was his business" and a discussion prior to the meeting between Arshad, Zahid and Shahid at which Arshad advised Zahid and Shahid of his intention to change "the shareholding position in relation to [WWF Birmingham]" (Para 27(4)).

141. Whilst Arshad did not plead fully to the allegations of breach of duty in relation to the acquisition of properties and the diversion of business, he contends that he was fully entitled to cause WWF Birmingham to enter into the relevant transactions. It can thus be surmised that this will be his main line of defence in the event permission to continue the derivative proceedings is given.

(d) The Longsight Claim – Case no. BL-2020-MAN-000105

142. These proceedings were again issued in the High Court, BPC Manchester on 6 November 2020. The Claimant is WWF Manchester. The Defendants are Arshad and WWF Longsight.

WWF Fruit & Veg has not yet been joined as a Defendant although the Claimants sought to reserve their rights to do so in their Particulars of Claim. In these proceedings, Messrs Chaisty KC and Tetlow appear on behalf of the Claimant and Messrs Croxford KC and Walmsley appear on behalf of the Defendants.

143. The proceedings incorporate a claim for damages and/or equitable compensation arising from the transactions, in or about November 2018, in which Arshad caused WWF Manchester to transfer to WWF Longsight and WWF Fruit & Veg the business and assets of WWF Manchester respectively attributable to the Longsight store and the market stall at New Smithfield Market, Manchester.

144. The claim is made on the footing that Arshad caused WWF Manchester to enter into the transactions in his capacity as sole director of the company and, in doing so, committed breaches of his duties as director and his fiduciary duties to the company. The claims against WWF Longsight are for dishonest assistance and knowing receipt. There is also a claim against Arshad and WWF Longsight for conspiracy to injure.

145. The claim is defended in relation to the Longsight store on the following basis summarised in Paragraph 17(2) of the Defence.

“From 2003 (or alternatively by long before the events of which complaint is made in these proceedings), the Longsight Store Business was understood by Pervez, Arshad and [Worldwide Foods Manchester] to belong to Arshad, that understanding being acted on by Arshad to his detriment. The Longsight Store Business was understood to be Arshad’s independent business (albeit a business related to other parts of the Worldwide Foods Business) to be beneficially owned by him and operated under his independent direction and control and for his benefit”.

146. In Paragraph 20(1)-(2), this common understanding and Arshad’s acts of detriment in reliance upon it are enlarged so as to encompass, from its commencement in 2010, the market stall business at New Smithfield Market.

147. Whilst it is admitted that Arshad caused WWF Manchester to transfer, to WWF Longsight and WWF Fruit & Veg, the businesses respectively conducted from the Longsight store and the market stall, it is denied this amounts to an actionable breach of Arshad’s duties as a director since they were entirely in his own beneficial ownership. The

allegations of dishonest assistance and knowing receipt are denied, in Para 31(1) of the Defence, on the basis that they “are premised and dependent on the alleged breaches of duties...which are themselves denied”. Conspiracy to injure is denied on the basis that Arshad was “free properly to arrange in circumstances where the Longsight Store Business was in equity his business or was in equity properly to be treated as such”. It was also denied that the ‘clear predominant purpose’ of Arshad and [WWF Longsight] was to combine ‘to wilfully injure and damage the business of [WWF Manchester]’ (Defence, Para 32).

(e) The Cheetham Hill Claim (BL-2020-MAN-000107)

148. These proceedings were again issued in the High Court, BPC Manchester on 6 November 2020. The Claimant is WWF Rusholme. The Defendants are Arshad and WWF Cheetham Hill. Messrs Chaisty KC and Tetlow appear on behalf of the Claimant and Messrs Croxford KC and Walmsley appear on behalf of the Defendants.

149. The proceedings raise similar issues to the Longsight Claim. They again incorporate a claim for damages and/or equitable compensation arising from a transaction under which Arshad caused one of the Claimants – on this occasion WWF Rusholme – to transfer business and assets to another company under Arshad’s control. However, on this occasion, the transaction took place on 30 November 2015 (some three years prior to the Longsight transactions) and comprised part only of the claimant company’s business and assets, namely the business and assets of the Cheetham Hill store.

150. Arshad was not a director of WWF Rusholme at the time he is alleged to have caused the company to enter into the relevant transaction with WWF Cheetham Hill. He was not a *de jure* director and it is not pleaded he acted as a *de facto* director. In this respect, the Cheetham Hill claim differs significantly from the Longsight Claim. However, it is maintained that, as manager of the Cheetham Hill store, Arshad owed fiduciary duties to WWF Rusholme, including a duty of good faith and a duty not to divert WWF Rusholme’s business for his own benefit or take advantage of any commercial or corporate opportunity created by his own role in relation to the Cheetham Hill store.

151. It is claimed that, in breach of these fiduciary duties, Arshad caused the business of WWF Rusholme to be transferred to WWF Cheetham Hill although the method by which this was achieved is not pleaded.
152. In addition to the claim against Arshad for damages and equitable compensation, WWF Rusholme claims a declaration that Arshad holds his shares in WWF Cheetham Hill on trust for WWF Rusholme. The claims against WWF Cheetham Hill are for dishonest assistance and knowing receipt.
153. The claim is defended on the basis that, from the moment in 2008 when the Cheetham Hill premises were acquired or subsequent occasion, “there has been a shared common understanding between Pervez, Arshad and [WWF Rusholme] that the business operated from premises in Cheetham Hill...belongs beneficially to Arshad (or is properly to be treated as so belonging to him)...on which Arshad has acted to his detriment with the consequence that he was and is free to treat the business of [WWF Rusholme] as belonging to him and free to cause it to be transferred to a different entity as he did in 2015” (Defence Para 2).
154. It is denied that Arshad owed fiduciary duties to WWF Rusholme, including duties not to “divert” the Cheetham Hill Store business for his own benefit or not to take advantage of any commercial or corporate opportunity created by his role in the Cheetham Hill Business (Defence, Para 18).
155. It is admitted, in Para 19 of the Defence, that, on 30 November 2018, Arshad caused the business to be transferred to WWF Cheetham Hill. However, it is denied this amounted to breach of any duty to WWF Rusholme.
156. The allegations of dishonest assistance and knowing receipt are denied on the basis they were premised on the disputed breaches of Arshad’s duties to WWF Rusholme. It is also denied that WWF Cheetham Hill accepted the transfer of business in the knowledge that Arshad was not entitled to transfer the business.
157. The allegation of conspiracy is denied on the basis that the transfer of the business was legitimate, there was no combination with the intention of injuring or damaging the business of WWF Rusholme and the requirements for a successful claim were not satisfied.

(4) The Preliminary Issues

158. The Preliminary Issues are defined in Paragraph 1(1) of my order dated 28 September 2001 so as to encompass all issues in the five sets of proceedings "... save for any questions, if they arise, of whether to grant relief and if so what relief and working out and/or evaluation such relief as may be granted following judgment...and, without prejudice to the generality thereof and to the extent it pertains to such relief, any issues relating to the value of any property or business and/or the evaluation of any such sum of money, price or compensation required to be paid and/or for which a party might otherwise be liable and the quantification of any loss or damage (including any just allowance)".

159. By Paragraph 1(2) of the order, it was provided that "for the avoidance of doubt, in relation to the Birmingham Proceedings, the Court at the First Trial will be determining the issues on the Personal Claim (save for any questions, if they arise, of quantification or damages or consequential relief) but, subject to that, will not be determining issues on the Derivative Claim".

(5) Witnesses

160. I heard evidence from 29 witnesses of fact.

160.1. On behalf of Arshad and the companies under his control, eleven witnesses gave evidence, including Arshad himself and his three sons, Chaudhry Tahrim Arshad ("**Ali**"), Chaudhry Muqim Arshad ("**Muqim**") and Chaudhry Umar Arshad ("**Umar**"). On Arshad's behalf, Mohammed Salim ("**Mr Salim**"), Paul Stewart Barton ("**Mr Barton**"), Wasif Amjad ("**Dr Amjad**"), Bhaskar Bhattacharya ("**Mr Bhattacharya**"), Shazia Khan ("**Ms Khan**"), and Mr Sawhney also gave evidence.

160.2. Arshad also called Kashif who attended court, as a witness, pursuant to a witness summons. No witness statement had been filed on his behalf and it was thus necessary for Mr Croxford to examine him orally in chief having filed a summary identifying the matters on which Kashif was to be examined.

160.3. On behalf of Pervez, Zahid, Shahid and the companies under Pervez's control, 18 witnesses gave evidence, including Pervez, Zahid and Shahid themselves, and Pervez's son, Adil. They called, as witnesses, Stephen Lamb ("**Mr Lamb**"),

Mohammed Yasin (“**Mr Yasin**”), Mohammed Rafiq (“**Mr Rafiq**”), Zahida Parveen (“**Ms Zahida Parveen**”), Javed Tahir (“**Mr Tahir**”), Mohammed Saleem (“**Mr Saleem**”), Ijaz Hussain (“**Mr Hussain**”), Rashid Idrees (“**Mr Idrees**”), Mr Khalid Ashraf (“**Mr Ashraf**”), Mohammed Asif (“**Mr Asif**”), James Lye (“**Mr Lye**”), Charles Payne (“**Mr Payne**”), Mohammed Younis (“**Mr Younis**”) and Ms Thara Parveen (“**Ms Thara Parveen**”).

161. Some witnesses chose to swear an oath, others to affirm. During their closing submissions, counsel wisely confirmed that no point is taken about this nor, implicitly, the degree to which witnesses considered their conscience bound.

162. A substantial number of the witnesses, including Pervez, Arshad and their families are of Punjabi heritage. Pervez, Arshad, Zahid and Shahid were born abroad and spent their formative years there, predominantly in Pakistan. Although they have all resided in the UK for upwards of 40 years, they lacked the confidence or, at least, maintained that they lacked the confidence to give their evidence in English.

163. On 21 March 2022, I thus made a pre-trial order providing for a jointly instructed Urdu interpreter to attend trial in relation to the evidence of Arshad, Pervez, Zahid, Shahid in addition to Ms Parveen and Messrs Younis and Rafiq. For most of the trial, there was an interpreter present. In addition to translating the testimony of the named witnesses, an interpreter was present to assist Mr Yasin when he gave his evidence. Although the order only comprehended Urdu and the relevant witness statements were translated to and from English and Urdu only, it emerged during trial that most witnesses were more comfortable speaking Punjabi. The translators were competent in each language and thus willing to translate orally to and from English and Punjabi during the trial itself. On this specific issue, no point was taken and I was content for their testimony to be translated and admitted on this basis.

164. For the most part, no issues were taken about the quality of the translation. There is no reason to believe it was other than of the highest standard. However, Mr Croxford was critical of the use made of the interpreter by Pervez and his witnesses. He suggested it was apparent from their demeanour, when under examination and, more specifically, their exchanges with the interpreter that Pervez, Zahid and Shahid fully understood the questions and were capable of answering them in English. Indeed, there were occasions on which they answered the question in English without the assistance of the interpreter.

Mr Croxford thus suggested that their decision to give evidence through an interpreter was for tactical reasons, no doubt on the basis it could be expected to disrupt the flow of his cross examination and afford the witnesses more time for reflection when answering at least some of his questions. He was also critical of the assistance provided to Mr Yasin given that the pre-trial order did not provide for him to be assisted by an interpreter.

165. Of course, Arshad himself gave most of his evidence through an interpreter and, by the time Mr Croxford levelled his criticisms about the use of an interpreter in relation to some of Pervez's witnesses, Mr Chaisty had made similar criticisms about the use of an interpreter when Arshad gave his evidence. Mr Chaisty maintained that Arshad was fully able to communicate in English and his use of the interpreter was actuated by tactical considerations, no doubt again on the basis that it might disrupt the flow of cross examination and give Arshad time for reflection.

166. In this respect, there is no material distinction between the relevant witnesses. Neither Mr Croxford nor Mr Chaisty went so far as to suggest I should altogether exclude their evidence. At its highest, it was and is their case that the manner and extent of their use of the interpreter has somehow coloured the evidence of Arshad, Pervez and Pervez's relevant witnesses or diminished their credibility. No doubt, in the exercise of my case management powers, I would have had jurisdiction, during the trial, to exclude at least part of the testimony of one or more of the witnesses for procedural impropriety or on the basis that, owing to defects in the translation of questions or answers, their translated testimony was not an accurate record of their evidence. My jurisdiction to do so remains exercisable until I have given judgment. However, subject to the issues about Mr Rafiq's testimony, I have no reason to doubt that the relevant witnesses' recorded testimony accurately reflects their evidence nor, indeed, that there has been no material procedural impropriety.

167. In any event, if there had been procedural impropriety, my power to exclude evidence for this reason would not be exercisable lightly and I am not persuaded there could have been good reason for me to do so here. During the trial, it certainly appeared Arshad, Pervez, Zahid and Shahid had a reasonable command of English and often understood the gist of questions in English before they were translated. This is not surprising given that they were comparatively young when they first arrived in the UK and have been gainfully

employed in a succession of businesses here for many years. It is also more than conceivable that their decision to give evidence through an interpreter was partly on narrow tactical grounds, particularly with a view to giving the witnesses more time for reflection. However, I have no reason to doubt that their decision was also taken owing to the technical nature of some of the language, for example in relation to company law issues, and the witnesses' lack of confidence in their ability to understand or themselves convey the precise meaning of at least some words, with all their nuance and subtlety. If it were to be suggested otherwise, I am not persuaded that the use of an interpreter was, in itself, an abuse of the process of the court or, bearing in mind the importance and overall expense of the trial and the potential value of the claim, that there was no proper basis for the use of an interpreter.

168. During the trial, I permitted each of the relevant witnesses to give their evidence through an interpreter where the opportunity to do so was sought. Since there was no reason to doubt the professional standards of the interpreters and counsel were astute to ensure their questions were properly understood and answered, the room for misunderstanding and ambiguity was thus reduced to a minimum. No doubt the use made of the interpreters extended the length and expense of the trial. If there is a residual issue about the extent to which this was reasonable and proportionate, this can be resolved when I determine liability for costs.

169. In his closing submissions, Mr Croxford referred me to well-known passages from the judgment of Leggatt J (as he was) in *Gestmin SGPS SA v Credit Suisse (UK) Limited* [2013] EWHC 3560 (Comm) at [15] – [22] exploring the fallibility of human memory and suggesting that, in a commercial trial, the “best approach” is “to place little if any reliance on witnesses’ recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts”. On this basis, Leggatt J took the view that the value of oral testimony was largely that it afforded “the opportunity [through cross examination] to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events”.

170. This is not a statement of practice nor is it comprehensive in scope. No doubt, “known...facts” are irrefutable. However, in the absence of documentary evidence, there will inevitably be issues for which human memory is the only source of knowledge. In such cases, it is axiomatic that the recollection of witnesses is assessed with reference to probability in the light of the evidence as a whole. Moreover, the probative value of a document itself depends on a range of considerations, such as when it was produced, for whom and for what purpose. Nevertheless, it is a statement of the obvious that, where contemporaneous documentation has a specific and material bearing on a particular issue, it will generally be a more reliable guide than the oral testimony of witnesses about matters within their recollection.

171. In the present case, voluminous documentation has been admitted in evidence. However, much of this encompassed conveyancing documentation, third party correspondence, the companies’ accounting records and the documentation filed in respect of the companies at Companies House. There appears to have been little, if any, direct written communication between the brothers, whether in notes, correspondence or electronic media. This is reflected in the documentation admitted in evidence. Some internal company records were admitted but these were limited. There were few, if any, formal meetings of the companies. Minutes were not generally kept or maintained. Moreover, where minutes have been admitted, their validity as a record of a genuine meeting is generally disputed, for example the minutes of the shareholders’ meeting, on 12 August 2014, at which an increase in WWF Birmingham’s share capital was authorised. However, there are some contemporaneous documents which throw light on the way in which family affairs were conducted over the years, for example, WCCL’s first annual return on 31 October 1986 and Mr Kay’s letter dated 12 March 2004 to Kashif referring to their decision to transfer properties to AIL. Although Arshad denies he was a signatory to the Acknowledgment, this document is potentially of obvious evidential value.

172. In his closing submissions, Mr Croxford thus submitted that, where there is unchallenged contemporaneous documentation, this is likely to be more reliable than the unsupported recollection of witnesses and, consistently with *Gestmin*, I should thus accord comparatively more weight to such evidence, at least where the evidence of the witnesses is self-serving.

173. In contrast, Mr Chaisty submitted that, in so far as there is documentation, it is sometimes unreliable on the critical issues. By way of example, he referred to the WCCL Directors' Report dated 15 December 1987, in which it was recorded or purportedly recorded WCCL had acquired "the grocery business formerly carried on by the directors under the partnership name of Choudhary Bros." Since Mohammed was himself recorded as a director at the time and none of the parties has ever suggested he was a partner, Mr Chaisty suggested this document was plainly wrong on its face and cannot be relied upon.

174. It is true that the contents of the relevant contemporaneous documentation were at times inconsistent with the evidence as a whole and cannot be treated, at face value, as an accurate statement of the underlying facts. However, it does not follow that the entirety of such documentation is unreliable. Where the documentation contains inaccuracies, there is generally a rational explanation. In the case of the example identified by Mr Chaisty, the Report did not denote Mohammed as a partner, rather it stated that the *directors* had *carried on* the partnership business. No doubt, Pervez was content, when signing the Report, for Mohammed's limited involvement in the business to be loosely described in this way.

175. In view of the paucity of contemporaneous documentary evidence on some of the issues, the oral testimony of the witnesses is central to the present case. Moreover, where there is contemporaneous documentation, particular caution is exercisable at times. However, as a general rule, the contemporaneous documentation and the pattern of such correspondence is of critical importance in respect of several issues. Where there is no obvious reason to challenge the contents of such documentation as an accurate factual record of the underlying events and it is at variance with the general recollection of the witnesses, I have generally taken the documentation as the starting point and treated the oral testimony of the witnesses as contextual or explanatory evidence. I have also tested the oral testimony of the witnesses by taking a cross reference to the contemporaneous documentation and asking whether their oral testimony is plausible in the light of the evidence as a whole.

176. Arshad and the witnesses called on his behalf gave their evidence first.

(i) Arshad

177. Arshad's written testimony – orally confirmed on oath - commenced with the decision to emigrate to the UK and comprehended the full sequence of events leading to each area of dispute. His account was strikingly different from the account of Pervez and Pervez's witnesses on many significant issues. He maintained that the early decision to emigrate to the UK was taken by their father, Mohammed, not Pervez. After moving from Nottingham to Rochdale, Pervez personally opened a bank account in Rochdale. Together, Pervez and Arshad pooled their wages and the proceeds were paid into Pervez's bank account together with other monies, such as the money payable to Pervez when Vauxhall made him redundant. The deposits for the house at 7 Pullman Street and the property at Ventnor Street were raised from their pooled bank account as, indeed, was the new business known as Haroon Fashions. Pervez and Arshad, together, set up the grocery business from The Sholver Shop and the laundrette on the Sholver Estate. In the early years, they also opened the shop on Castlemere Street, Rochdale.
178. Arshad maintained that he ran the grocery businesses with Pervez on a 50/50 business but, when WCCL was formed, they agreed to give their father, Mohammed, one third of the shares in the new company, as a mark of respect. As there were 1,000 shares, 334 shares were allotted to Mohammed and 333 shares each to Arshad and Pervez. However, he also stated that the Rochdale store on Lower Tweedale Street was transferred into the name of their parents as a mark of respect.
179. When, in 1994, WWF Manchester commenced in business as the corporate vehicle for a store at 24 Slade Lane, Longsight, Manchester, this was allegedly funded from monies in WCCL's bank account. No title documents have been admitted. However, it appears the store was comprised in a short term tenancy albeit at a premium funded from the monies in WCCL's bank account.
180. Although Arshad and Pervez were recorded as the only shareholders of WWF Manchester, in its initial annual return made up to 7 April 1995, Arshad contended, in his witness statement, that it was initially understood Arshad, Pervez and Yasin would each be entitled, somehow, to a share of the profits of the company. However, elsewhere in his testimony, Arshad contended that Shahid and Yasin were initially asked to work in the business on the understanding that they would, together, be entitled to 50% of the profits. In any event, Arshad maintained that, after a year in business, he took over the

management of the Longsight store himself on the basis that Shahid and Yasin were not working properly. Once he did so, Shahid returned to Rochdale. Arshad and Pervez then shared the profits 50/50.

181. According to Arshad, this is consistent with a general understanding that he and Pervez together owned, on a 50/50 basis, the businesses and all investment properties. He contended that, following advice, in 1998, from their accountants, Shaik & Co, Arshad and Pervez decided to form two separate companies as vehicles for the ownership of the businesses and the properties. This led to the formation or acquisition, in July 1999, of WWF Birmingham and AIL. Since they were already 50/50 owners, it was allegedly agreed that Pervez was allotted the only share in one company and Arshad the other. He accepts that Pervez's resignation, in November 2000, as a director of AIL was prompted by the health and safety prosecution.

182. Arshad contends that his relationship with Pervez broke down when, on 3 April 2002, he bought the house at 566 Broadway, Chadderton. At that point, Zahid advised him that Pervez had disclosed that Arshad was to have nothing to do with him from then on. It is a striking coincidence that this happened at about the time he is alleged to have signed the Acknowledgment, namely 18 April 2002. Of course, Arshad has always denied signing such a document.

183. Arshad stated that, in 2003, he personally identified the first Birmingham shop at 360 Coventry Road, following a conversation with his Bangladeshi vegetable supplier. Moreover, he personally obtained, from United National Bank, the loan for the purchase of the property. The manager of the Bank, Mr Yousef Mirza, was an acquaintance of his. It is an important part of his evidence that, whilst he requested Kashif to acquire the property in the name of a new company to be known as "Worldwide Foods Birmingham", Kashif chose to treat WWF Birmingham as the corporate vehicle. On this basis, on 23 April 2003, the name of the company was changed from "Worldwide Cash & Carry (Manchester)" to "Worldwide Foods (Birmingham) Limited". Arshad said he was unaware of this at the time; it was not until much later that he became aware Kashif had used an existing company to buy the Birmingham business and he was not sole shareholder. Indeed, the share capital of WWF Birmingham amounting to £1 only, was in Pervez's sole name until 25 June 2003, six days after the acquisition of the Coventry Road store, when

Kashif completed a return recording that an additional 999 ordinary £1 shares had been allotted, to Pervez, Arshad, Shahid, Zahid and Kashif himself following which it was recorded, in the company's annual return made up to 15 July 2004, that they each held 200 shares in the company. Arshad said he was entirely unaware that each of the brothers had been allotted shares in the company until the summer of 2014.

184. Having set up business in Birmingham, Arshad said that he put a team in place and appointed his brother in law, Dr Amjad, to manage the Coventry Road store. Following the acquisition of the Stratford Road and Alum Rock stores, Dr Amjad ran all three stores. Arshad accepted that, following Arshad's stroke in July 2004, Pervez visited him in hospital on three or four occasions but said they were not really on speaking terms by that stage.

185. In March and April 2004, AIL acquired the shops at Miles Platting and Rusholme. WWF Rusholme was selected as the vehicle for the businesses conducted from these shops. Although Arshad contends that he is beneficially entitled to half the share capital of AIL, he appeared to suggest, when giving evidence, that the shops acquired, in 2004, at Miles Platting and Rusholme were the responsibility of Pervez and thus within his ownership. In contrast, he personally took the decision, in 2008, to purchase the shop at Cheetham Hill. He contended that, although the loan was taken in the name of WIL, the Cheetham Hill shop was acquired on the understanding he would be the sole owner. He said that, to him, it didn't matter whose name was on the ownership papers, the property was his. Moreover, once business commenced from the store, he had control of the cash and profits from the business at the store and knew it was his responsibility to pay off the mortgage.

186. Once Kashif advised Arshad that, contrary to his settled understanding, five of his brothers each held shares in WWF Birmingham, Arshad asked his employee, Mr Sawhney, to prepare documentation with a view to enlarging his shareholding. He contends this decision was taken after he was advised to do so by Kashif and, subsequently, by Zahid and Shahid, on the basis that the Birmingham business was his. Mr Sawhney then prepared documents including a resolution, at an extraordinary general meeting of the members, to issue Arshad with another 20,000 shares. This was then filed at Companies House.

187. Arshad also gave evidence about the £1.35m payment. He stated that it formed part of an overall sum of £1.6m that was paid by him or on his behalf for the benefit – as he saw it – of “Pervez’s companies” on the understanding that his own companies – again as he saw it, would thus achieve severance of their joint banking facilities.

188. Arshad was cross examined at considerable length over a period of some nine days. Unfortunately, he was an unreliable and unhelpful witness. At times, he was argumentative. He frequently sought to answer a question that was different from the question he had been asked or evade it entirely. His evidence was often vague. At times, it was also internally inconsistent and implausible. Sometimes, he engaged in groundless speculation. At other times, his evidence was obviously false and, on occasion, it was overwhelmingly likely he knew it to be false. In giving his evidence, Arshad did himself no favours. This is unfortunate because on some aspects of factual background, particularly in the early years, his account was more plausible than Pervez’s. However, I have exercised considerable caution when examining his evidence, looking for corroboration from elsewhere and, at all times assessing the extent to which it is plausible in the light of the evidence as a whole.

189. Having sought, in his witness statement, to give the impression that Arshad and Pervez were equally responsible, during the early years, for the acquisition of the investment and business properties and Arshad had personally managed the businesses, Arshad was cross examined, at some length, about the factual basis for this part of his case. In contrast to the evidence subsequently given by Pervez, it emerged Arshad had a limited grasp of much of the detail, over-stating his role in connection with the acquisition of the properties and the management of the businesses. He also appears to have overlooked some of the properties and businesses, when issuing the Petition. Having stated, in Paragraph 35 of his witness statement that, until 1985, “for the businesses we ran, I was managing everything, which means hiring staff, dealing with wages, buying, control of the meat”, he was unable to identify the full range of the family businesses and eventually conceded there were limits on the businesses in which he was involved. It also appears that until a late stage of the proceedings - when disclosure was obtained of the Choudhury Brothers accounts - Arshad was entirely unaware of such accounts or, indeed, the basis on which they were prepared and filed. Pervez denies that Choudhury Alam Brothers was

a partnership. This is an issue to which I shall turn later. However, in reality, Arshad was unable to deal with this aspect because he was not made aware, at the time, of the basis on which the business was presented in the Choudhury Alan Brothers' accounts. This included ownership of the business assets. It also emerged Arshad never visited Mr Salim, the accountant, at his offices.

190. On the balance of probability, I accept Arshad's evidence that, in the early years, at least some of his salary was credited to Pervez's bank account and used to meet family living expenses. In this way, it was also pooled with funds for the acquisition of family properties and businesses. His other brothers are also likely to have contributed as and when they could do so. There is no doubt that Arshad worked hard in the businesses. However, in the early years, he played a subordinate role to Pervez, as indeed did the rest of the family.

191. Between 1978 or thereabouts when the property at 7 Pullman Street, Rochdale was first acquired as a residence for the whole family and October 2000, when AIL purchased the business premises at 2 and 4 Lower Tweedale Street, Rochdale, a substantial number of properties were acquired. These included the business premises at Ventnor Street, Rochdale, the laundrette at 91 Coleridge Road and the grocery store at 95 Coleridge Road, on the Sholver Estate in Oldham, the Castlemere Store on Castlemere Street, Rochdale, 16 Union Street, Oldham, 77 Milkstone Road, Rochdale and 65 Tweedale Street, Rochdale. Residential properties were acquired as an investment or as a place for the family to reside, such as 58 Deeplish Road, Rochdale. The properties were generally acquired in the name of Pervez, Arshad or their parents, Mohammed and Roquiya.

192. Arshad gave evidence that, where property was acquired, during this period, in the name of Pervez or Arshad, such property was acquired on the understanding that it would be beneficially owned by them both. This is reflected in his evidence, in Paragraph 33 of his witness statement, in relation to the acquisition of 77 Milkstone Road, Rochdale. He stated that this property "was bought in Pervez's name, but we didn't really consider whose name it was in, as all mine and Pervez's property was owned by both of us. Me and Pervez trusted each other, and we understood it was owned by me and Pervez".

193. Consistently with this, it also appears to be Arshad's case that properties acquired in the name of their parents were also held on behalf of Pervez and Arshad. However, at least in his witness statement, there appeared to be a subtle difference, reflected in his

evidence, in Paragraph 51 of his witness statement, about the acquisition of 63 Milkstone Road, Rochdale. He stated that “the ownership of this property was put in my mother and father’s name for the reasons of respect and to make sure that it was *kept in the family*, so if me or Pervez got divorced the family wouldn’t lose” (My italics). The reference to their family could have been taken to include Mohammed, Roquiya and all six sons, including Asif.

194. However, when Mr Chaisty sought to explore, with Arshad, his evidence about their intentions in relation to the acquisition of property in their parents’ name at Lower Tweedale Street, Rochdale, his account was subtly different. It emerged that, according to Arshad, this property was also held on behalf of Pervez and Arshad only, not the rest of the family. This is apparent from the following exchanges between Mr Chaisty and Arshad (Day 4 83/17-84/14).

“Q. I just want to be clear. Merely because the property went into the name of your mother and father, you certainly didn't believe, did you, that they actually genuinely owned that property and had complete control over it?

A. It was me and Pervez.

Q. And what you're saying, as I understand it, is that the reason for putting it in their names was so that you would be able to mislead a possible wife of yours, if you got divorced, into thinking that the property belonged to your mother and father.

A. We talked a lot of things.

Q. I just want to be clear. Is that what you're -- I don't accept it. I just want to be clear this is what you're saying was your understanding of the intention; was that you would put a property into the name of your mother and father so that if you got divorced, your wife would think that they owned it.

A. This was as well.

Q. So your understanding of the intention was that although you owned it, you say you owned it with Pervez, your

wife would think your parents owned it?

A. Yes, correct.”

195. Although it is Arshad’s case that, at least initially, the purchase of the properties was partly funded from monies credited to Pervez’s pooled bank account, he did not provide a convincing explanation as to why he should be treated differently, in each case, from Pervez’s other brothers. This is particularly true, as time progressed, in relation to the sons who worked in the businesses and helped generate the funds from which the properties were purchased. If properties were purchased in the names of Mohammed and Roquiya in order to conceal their beneficial ownership from a spouse, this would suggest that this is the main point of distinction between the properties acquired in the names of Pervez or Arshad and the properties acquired in the names of Mohammed and Roquiya. As it happens, Arshad did not marry until March 1985 and, once he did so, there is nothing to suggest he ever had reason to conceal his assets from his wife or, indeed, that he contemplated doing so. A simpler explanation is that the properties were purchased as assets for the family more generally and, on this basis, transferred into the names of Mohammed and Roquiya as a mark of respect.

196. In his witness statement, Arshad made extravagant claims about his role in setting up the business of WWF Manchester at the Longsight store. Together with Pervez, he made the decision to look for premises in the Longsight and Rusholme area. A store was identified at 24 Slade Lane. They bought the lease using monies from a pooled account held for WCCL and took the lease in the name of WWF Manchester. Initially, the lease was signed by Pervez but, when it came to an end, he signed the next lease and dealt with the landlords. When they set up the new business, it was envisaged that Pervez’s long term friend, Mr Yasin would get a percentage of the profits along with Pervez himself and Arshad. In Paragraph 62, he stated “my role in the companies was the decision maker, taking all the headache and responsibility for the business, doing all the buying of fruit and veg and meat, keeping the workers lined up. I was key in every part of the work”.

197. However, when asked, in cross examination to confirm who took the lease, he appeared uncertain, suggesting it could be the company or Pervez; “I don’t know for certain” (Day 5/8/1-25). Nor did he appear to know who were initially appointed as directors. Having been shown that Zahid and Mr Yasin were initially appointed directors (Day 5/2/23-25)

and asked later whether he had known the identity of the directors in 1995 (Day 5/9/13-16), he appeared to have already forgotten or perhaps not fully assimilated the earlier references to Zahid and Mr Yasin, identifying them as “the one (sic) you showed me, it was them” before answering “I don’t correctly remember” (Day 5/9/19). He appeared unaware that Mr Yasin had agreed to act as guarantor (Day 5/13/16) stating that “I was not there”, nor did he appear to have any knowledge of the banking arrangements (Day 5/4/4-8). In my judgment, Arshad’s evidence in relation to his role setting up the business of WWF Manchester at the Longsight store is wholly unreliable and, on this issue, I prefer the evidence of Pervez and Mr Yasin. It is true that, at the outset, the company’s two ordinary £1 shares were allotted to Pervez and Arshad, not to anyone else. However, it is inherently unlikely they were allotted in this way in the expectation Arshad would himself play an integral role in setting up the business at that stage. Indeed, when it first commenced in business, Mr Yasin and Shahid, not Arshad, attended to the management of the store.

198. It is unfortunate Arshad has chosen to over-state his case in relation to the steps initially taken to set up and establish WWF Manchester in business at Longsight. Whilst the initial decision to allocate a share to him was a formality based on his seniority within the family, in due course he became personally involved in the day to day operations of the store. While his initial role in the business was principally as a butcher, he became increasingly involved in the wider management and, by the time of the health and safety prosecution, he was already in control of the daily management of the store. From 17 June 2001, he was sole director of the company and it can reasonably be surmised that, by the time the project to transfer the share capital to AIL was abandoned, he had come to regard the company as his own. Although there was a period in the summer of 2004 when he was incapacitated following his stroke, this has remained the case ever since.

199. For the sake of completeness, whilst Arshad was recorded as a shareholder in the company’s initial returns, this ceased when Kashif filed the company’s returns made up to 7 April 1998 substituting Zahid for Arshad. However, when Kashif gave evidence, he could see no good reason for this and stated that it was likely to have resulted from an error on his part, confusing shareholders with directors (Day 12/65/22-66/4). This is the best evidence on the point.

200. Following the acquisition of the Longsight store, the core businesses were conducted through two separate companies, WCCL and WWF Manchester, from premises at Rochdale and Longsight. In Paragraph 64 of his witness statement, Arshad contended that Pervez “is lying” when he “argues that he was head of the family for business purposes”. He stated that “however much he was involved, I was more involved. Whatever money he used; it was more my money because I did the work in the stores”. Later, he stated that “the business was definitely shared between me and Pervez, but I was the main man”.

201. When asked about the management of the Rochdale store during the period commencing with the health and safety prosecution in September 1999, Arshad stated that “it was under my supervision” (Day 5/42/21-24). However, this is wholly inconsistent with the contemporaneous documentation and all available evidence in relation to the prosecution itself. When referred, in cross examination, to the Voluntary Surrender Certificate dated 15 September 1999 issued to the Council in which Zahid signed as “manager” of the Rochdale store, Arshad accepted, when driven to do so, that this was an accurate description of Zahid’s role at the store (Day 5/42-25/43-11). Arshad was not prosecuted nor, indeed, was he involved, in any way, in the health and safety investigation and subsequent prosecution. At the time of the initial inspection, Pervez was abroad in Pakistan. Zahid called him and he returned to the UK immediately to deal with the issues raised by the Council. When it was put to Arshad that, if supervising the business, he could have been expected to take responsibility for these issues, his reply was that “Zahid was dealing with that. When one brother is doing, what is the need for me to go into it as well” (Day 5/44/20-24). Contrary to Arshad’s evidence, it is abundantly clear that the Rochdale business was not under his supervision at the time of the health and safety investigation and prosecution. I regret to say that, in seeking to maintain otherwise, Arshad gave evidence that he must have known to be false.

202. Although Arshad contends his relationship with Pervez broke down in April 2002 when he bought the house at 566 Broadway, Chadderton, his oral testimony was that they ceased speaking to one another twelve months earlier, in April 2001. This was on the basis that they ceased speaking or, indeed, otherwise communicating, some three to four months after the purchase, in November 2000, of the Bradford store (Day 3/128/2-6).

There is an element of incongruity in this given that, whilst it is alleged Pervez stopped speaking to Arshad at this time, his grievance – as outlined in Paragraph 81 of Arshad’s witness statement and reported to Arshad by Zahid - was that Arshad bought the house “without discussing it with [Pervez himself]”. When cross examined further, Arshad accepted that, after April 2001, they spoke to one another on perhaps five or six occasions “on bereavements, occasions, weddings or just respecting” (Day 3/128-15/129-9) but, on these formal occasions, they did not discuss business (Day 3/129/10-11). This contrasts with the evidence of Pervez who contends that, whilst strained, their relationship did not entirely break down until 2014 or thereabouts. This is a matter of obvious significance to the extent Arshad seeks to build his case on anything in the nature of a common intention formed after the time in which they are alleged to have ceased to communicate or, indeed, on assurances and encouragement purportedly given after April 2001. As it happens, I prefer the evidence of Pervez on this issue.

203. On its face, the Acknowledgment was signed by Kashif on 17 April 2002. There are signatures against the names of Arshad, Shahid and Zahid, each dated 18 April 2002. Kashif thus appears to have signed the Acknowledgment the day before the others. However, Zahid and Shahid maintain that the others signed the Acknowledgment at their Rochdale office together on the same occasion. Whilst they were at Rochdale already, they say Zahid called Arshad to attend and sign the document. They also say that, when he attended, they each signed the document. Arshad maintains otherwise. In paragraph 85 of his witness statement, he stated that, whilst the signature against his name looks like his, it is not his signature and the date appears to have been written by Kashif. In any event, he stated that “I didn’t sign anything like this but if I did it was Kashif”. This is confusing on its face but, later in the same paragraph, he clarified this comment by stating that, if he did sign the document, “Kashif has got me to sign this without my knowledge of what the document was”.

204. To the signatories, the Acknowledgment would certainly have appeared important at the time. In it, each signatory acknowledged that Pervez was sole owner of the four relevant companies. It is not in the least surprising Kashif, Zahid and Shahid should each recall signing it when called to give evidence. Moreover, it was in straightforward and

simple terms. Not surprisingly, when giving his evidence Kashif was in no doubt the brothers would have understood the document at the time. This includes Arshad.

205. When Arshad's written testimony was tested in cross examination, his evidence was entirely unconvincing. He was prompted to read the document. Having done so, he confirmed he was capable of reading it but suggested he did not have the powers of comprehension to understand it (Day 6/37/10-40/24). He stated that he couldn't recall whether Kashif had prepared the document (Day 6/39/7-15). He specifically denied that he signed the document in the office at Rochdale (Day 6/39/21-25). He confirmed that the signature looked like his but not the number "4" in the date alongside his signature. He said this number appeared to be in Kashif's handwriting and confirmed the passage in his witness statement stating that, if he did sign the document, "Kashif...got [him] to sign this without" Arshad knowing "what the document was". When asked whether Kashif would thus have "tricked" him to sign the document, he confirmed that this was correct.

206. On these issues, I unhesitatingly prefer the evidence of Kashif, Zahid and Shahid to the evidence of Arshad himself. On the balance of probability, I am satisfied that Arshad signed the Acknowledgment at the Rochdale office and did so on the understanding that the intention of the document was to confirm Pervez was in overall control of the named companies.

207. Whilst Arshad now contends that, from the outset, there was an agreement or understanding between Pervez and himself that, together they would be beneficially entitled on a 50/50 basis to the entirety of the share capital in AIL, there is no contemporaneous documentary evidence to suggest they ever reached such an agreement or understanding. It is contended that, during the early 1980s, Arshad and Pervez were equal partners in the business of "Choudhury Alam Brothers". When the partnership business was incorporated as WCCL, it is observed that they were each issued with 333 ordinary shares in the company. It is also observed that Arshad and Pervez were each issued with a single share in WWF Manchester. However, these businesses were entirely separate from AIL.

208. In any event, whilst Arshad was initially allotted the single £1 share in AIL, he gave no convincing evidence as to how and when Pervez and himself might have formed an agreement or common understanding that it was to be held beneficially for them in equal

shares. When examined about this on the third day of the trial, he suggested that such an agreement or understanding would have been reached in conversations between himself and Pervez (Day 3/116/5-8) but was unable to say when these conversations would have taken place or provide other details save that, when asked whether anything was understood between them other than that they would own the shares equally, his answer was “nothing else” (Day 3/116/9-24). Having been reminded that AIL was formed in 1999 and asked why it is that his other brothers were not to have an interest in the company, Arshad’s answer was that Pervez and Arshad were older than the other brothers and had “started to be working from day one and then the younger one actually following us because they were young” (Day 3/117/4-13). Of course, during 1999, Shahid, Zahid and Kashif respectively reached 36, 31 and 26 years of age.

209. More likely than not, Arshad was aware of the proposal, in the summer of 2003, to allot new shares in AIL to himself, Pervez, Zahid, Kashif and Sumera in connection with the transaction in which there was to be transferred to AIL their shares in WWF Manchester, WWF Rochdale and Al Halal. There could have been no good reason otherwise for Arshad to sign, as sole shareholder, the resolution on 8 August 2003 for £99 to be capitalised from reserves and appropriated to his shareholding. However, he did not object to the transaction at that stage on the basis he was beneficially entitled to 50% of the shares in AIL. In reality, he knew that it was a family asset for the benefit of Zahid, Shahid and Kashif in addition to himself.

210. Many years later, in August 2019, there was an argument between Arshad and Zahid at the Cheetham Hill store – secretly taped by Ali - in which Arshad sought to assert his rights to the shares in AIL. He did so in uncompromising expletive laden terms, stating that he was fighting for his “10-11 per cent”. When cross examined about this by Mr Chaisty (Day 2/91-10 to 92/12), Arshad sought to explain this part of the taped dialogue in the following way.

“Mr Chaisty: Could you just go back? It says:

"You fucked about with my 10 to 11% as well."

A. It was -- because I was angry --

Q. I haven't asked a question.

A. It just came out from my mouth because I was angry.

Q. Right. Can I just ask the question now?

A. Okay.

Q. You say:

"You fucked about with my 10 to 11% as well."

What is that 10 to 11% a reference to?

A. Nothing.

Q. Nothing? You just said to him, "What about my 10% -- 10 to 11% as well", and, what, it means nothing?

A. It just came out of my mouth.

Q. What were you referring to?

A. I meant by it -- I was trying to -- telling him that:

what did they do with my shares?

Q. 10 to 11%?

A. It came accidentally out of my mouth.

Q. Accidentally, you say, you said "10 to 11%". What did you mean to say?

A. Yes, accidentally it came out of my mouth. There was no meaning behind. There was no --

Q. And what did you intend to say?

A. I was intending to say that there is 50% of my share in Alam Investments.

Q. You meant to say 50%. Somehow you accidentally -- and the words just came out of your mouth, 10 to 11%?

A. Yes."

211. Whilst indicative of the quality of his evidence more generally, Arshad's answers to the questions in these exchanges lend no support to his case, as currently advanced, that he is beneficially entitled to 50% of the shares in AIL nor do they explain why he did not assert he was entitled to such an interest when given the opportunity to do so at the time.

212. Elsewhere, Arshad confirmed his written testimony about the formation of WWF Birmingham. This was in simple terms. He told Kashif to form a new company called "Worldwide Foods Birmingham" but did not tell Kashif how the shares were to be held since it was to be Arshad's company. It was thus implicit that he -- Arshad - would be sole shareholder. It was also implicit in his testimony -- again not specifically stated - that

Kashif later advised him that the new company had been formed because Kashif later advised him he was director. No doubt, this was during the summer of 2003. Only much later did he discover that Kashif had used an existing company. He did not, in his witness statement, disclose when he made this discovery but, in Paragraph 98, he stated that he “now” knew this to be the case, some 18-19 years later. The witness statement was made on 9 March 2022.

213. In cross examination, Arshad refined his evidence so as to confirm that he first became aware that shares in WWF Birmingham had been allotted to each of the brothers “three months before “I increased my shares” (Day 6/109/16). On the basis he filed notice recording that WWF Birmingham had resolved to increase the nominal capital of the company by £20,000 on 12 August 2014, it can be taken to be Arshad’s evidence that he first became aware of the initial allotment to his brothers in May 2014 or thereabouts. Contrary to the evidence of all his brothers, including Kashif, Arshad thus maintains that he was not party to the agreement to allot 200 shares to each of his brothers and was entirely unaware of it for a period upwards of ten years from 25 June 2003. There was no room in his evidence for the meeting to which Kashif subsequently referred, when he gave evidence, at which Arshad, Zahid, Shahid and Kashif himself are alleged to have agreed the share capital in WWF Birmingham should be divided between each of the five participating brothers, including Pervez, in equal shares.

214. On this issue, I unhesitatingly prefer the evidence of Kashif to Arshad.

215. Firstly, in view of the fact that a substantial role in the new business was earmarked for Arshad, it is inherently unlikely Kashif would have arranged for the shares to be allotted to Arshad and his brothers without canvassing the matter with Arshad at all. It cannot reasonably be maintained that Kashif and his brothers decided, at this stage, to embark on an elaborate conspiracy at Arshad’s expense which involved concealing ownership of the shares.

216. Secondly, Arshad was promptly appointed director of the company and, with effect from 19 April 2007, repeatedly signed off accounts showing that there was £1,000 of called up share capital in respect of WWF Birmingham with the company’s ultimate control vested in Arshad, Zahid, Kashif, Pervez and Shahid. When cross examined about this, Arshad stated that he repeatedly signed off the accounts, regardless of his duties as

a director, when “not aware of what is in there” (Day 6/106/24-5) and, stated that, by presenting him with inaccurate accounts, Kashif had “cheated” him. No doubt, Arshad relied heavily on Kashif and the company’s auditors, Tenon Limited and RSM Tenon Limited, for their advice in connection with the preparation and approval of the accounts. Although he is capable of reading simple documents in English, he may have required assistance when considering and interpreting the accounts. More likely than not, he also took a casual approach to the accounts and did not go to any lengths to ensure he fully understood the documentation that was put before him.

217. It is also possible Arshad did not fully understand the overall concept and ramifications of share ownership and, with the passage of time, began to overlook the original agreement to allot each brother with shares. However, it is unrealistic to suggest Arshad had no understanding whatsoever of the documentation he was repeatedly asked to approve and sign off, referring to the share capital and identifying Arshad and each brother, other than Asif, as “ultimate controlling party”. More likely than not he was aware the brothers were each shareholders but, at least in later years, did not reflect on the overall consequences. With some hesitation, I have reached the view that, if his attention was drawn to the provision for deduction of dividends from realised profits in the yearly accounts ending on 31 May 2012, he did not understand or appreciate the significance of this given that it was not reflected in a specific payment to the brothers out of the profits of the company. It is however significant that, during this period, WWF Birmingham continued to file company returns in which the brothers were recorded as shareholders, each with 200 ordinary shares. Arshad must have had at least some awareness that the brothers were being treated as shareholders.

218. When challenged, in cross examination, about the purported meeting at which WWF Birmingham resolved to increase its nominal capital by £20,000 so as to enable him to be personally allotted another 20,000 ordinary shares, Arshad’s evidence was unsatisfactory. The purported minutes record that Arshad was present, in person, and Pervez, Zahid, Shahid and Kashif were present by proxy. When it was put to him that Pervez, Zahid and Shahid had not signed proxy forms for the meeting, Arshad initially sought to obfuscate but ultimately stated, in answer to separate questions about each such brother, that he didn’t know whether they had signed the proxy forms. Arshad gave these answers having

been referred to unsigned proxy voting forms in each of their names. He must have known his answers to be false because he would have been well aware when cross examined and, indeed, at the time of the purported meeting that, had Pervez, Zahid and Shahid been advised of the meeting, it is inconceivable they would simply have authorised him to vote in their names as their proxy at the meeting. Whilst Arshad made an attempt to shuffle the blame onto Mr Sawhney on the basis he prepared the relevant documentation, there can be no doubt Arshad fully understood, when the minutes of the purported meeting on 12 August 2014 were filed, that this was being done with a view to appropriating ownership and control of the company. To the extent Mr Sawhney was involved in the preparation of the documentation, he did so on Arshad's instructions and with his full knowledge and approval.

219. Arshad's evidence in relation to WWF Rusholme was internally inconsistent and confused. He initially sought, in his witness statement, to create the impression that the stores at Miles Platting and Rusholme were acquired following an approach from Aldi Stores Limited, prompted by WWF Birmingham's successful acquisition of the Coventry Road store. He then suggested that he would have bought the premises himself had it not been that Pervez, Shahid and Zahid decided to buy the premises. Pervez then bought the properties in the name of AIL. However, Arshad stated, in Paragraph 107 of his witness statement, that he "knew that even though I had the only share in [AIL] that not everything in [AIL] was mine. I didn't think that I had any rights to the Miles Platting and Rusholme properties because the loans were Pervez's responsibility and not mine. Pervez ran those businesses and got the headache; he paid the mortgage from his accounts, and he got all the profits generated by those businesses". Of course, Arshad contends that he was and is an equal shareholder in AIL. His evidence on this only makes sense if AIL held the properties on trust for Pervez and Pervez agreed to indemnify AIL in respect of its liabilities in respect of the properties, including any loans taken out to fund the purchase of the properties, as Arshad himself implicitly recognised in Paragraph 108 of his witness statement.

220. However, when Arshad's evidence was tested in cross examination, it emerged that he was unacquainted with Mr Lamb, the agent of Aldi Stores Limited in connection with both transactions and he was not personally involved in the transactions for the purchase of

the Miles Platting and Rusholme stores. Having been reminded that, on Arshad's own evidence, he had not been on speaking terms with Pervez for three years, Arshad stated that Pervez had had no choice but to enter into the transaction on behalf of AIL and that "Pervez has confidence as well that Arshad will not cheat him. He speaks to me or not, he knows I am an honest man. That's why he put in that name because the bank wanted the full security as well and it was in [AIL's name]". Again, his evidence was wholly unconvincing. On Arshad's own evidence, he would have been un-acquainted with Pervez's personal affairs and intentions since they were not in communication with one another and hadn't been for upwards of three years. Moreover, there is no contemporaneous evidence – written or otherwise – that the Bank required Pervez to proceed in this way. There would have been several other ways for the Bank to secure its advance, including the provision of third party guarantees and charges.

221. There is a simpler and more rational explanation for these transactions than the one suggested by Arshad. The property was bought in the name of AIL since, as a property holding company, AIL was being deployed to acquire the trading premises of each associated WWF company, save WWF Birmingham, and each relevant investment property. WWF Rusholme was thus being treated no differently from the other associated companies. Arshad would plainly have known this at the time.

222. In Paragraph 115 of his witness statement, Arshad's evidence was that he made a unilateral decision to purchase the store at Cheetham Hill following a conversation with Zahid. He then instructed Zahid to offer £2,800,000. However, it was subsequently valued at £2,200,000 and the vendors, Somerfield, agreed to sell the store at that price. Although he agreed to buy the property personally, he states that "the loan was in the name of [AIL] because Kashif dealt with the finance and arrange it that way. I believed I would be the owner for that property because I was going to be running it, taking the headache for it, and paying the mortgage, so it would be mine." However, he then stated that "it didn't matter to me who was on the ownership papers, the store was mine". It thus appears to be part of his case that, although the property was to be purchased in AIL's name and, on that basis, the loan was to be advanced to AIL, AIL would hold the property on trust for Arshad.

223. On its face, this would have been an anomalous arrangement in view of the fact that Pervez was then sole director of AIL and, indeed, WWF Rusholme, and is alleged not to have been on speaking terms with Arshad. It was also inconsistent with AIL's settled policy for the acquisition of properties and would have been difficult, if not impossible, to reconcile with Pervez's fiduciary duties to both companies. However, when Arshad was cross examined, his testimony quickly unravelled. He was able to provide no rational explanation for the arrangement and his recollection of the detail, such as the amount of purchasers' initial offer, was incorrect. He was unable to identify the solicitors who were instructed to act for the purchaser, namely Enoch Evans. It is clear he did not provide Enoch Evans with instructions and there is no evidence he ever communicated with them. He had no recollection of the advice given by Enoch Evans in connection with the transaction and he certainly didn't pay their professional fees. When asked what security was being requested by the Bank, he was unable even to deal with this, stating that it would have been handled by Kashif. As it happens, Enoch Evans' instructions were provided by Kashif and Zahid and, ultimately, they invoiced WWF Rochdale for their professional fees.

224. There is no contemporaneous written evidence to suggest that Arshad had any role in the transaction at all. Nor is there evidence that Arshad made any personal contribution to the purchase price. When asked why it is that the deposit was funded, in its entirety, by WWF Rusholme from two payments of £146,000 in February 2008, Arshad confirmed that he could not say anything about this. He said it was not within his knowledge; it was within the knowledge of Kashif and Zahid only (Day 7/102/21-25 and Day 8/2/9-20).

225. It is Arshad's pleaded case that, from the moment of acquisition, it was the "shared common intention between Pervez, Arshad and [WWF Rusholme] that the business operated from the premises in Cheetham Hill...belong[ed] beneficially to Arshad" (BL-2020-MAN-000107, Defence, Para 2). In Paragraph 117 of his witness statement, he stated that "I was going to run that store. I was responsible for paying the mortgage. The understanding was that the store was mine before and then mine after the mortgage was paid off. If I paid the mortgage, it was mine, it was my responsibility to pay the mortgage". In Paragraph 118, he stated that, after a few days Zahid came to his house, handed him the key and stated that it was his business and there would be no interference from the

other brothers. Arshad contends that, having purchased the store, he “was the owner...of the store” (Paragraph 119) and had “control over the cash and profits” of the business.

226. When tested in cross examination, it soon became clear that this version of events was fanciful. Having purchased the Cheetham Hill store, WWF Rusholme set up in business at the store, opening a bank account, purchasing supplies and selling its stock to customers. In a remarkable passage of his cross examination, Arshad appeared to accept that the business was operated by WWF Rusholme and that it utilised its own bank account in connection with the operation of its business. However, he stated that he only became aware of this “very late, two three years” (Day 7/116/14-17). When asked to clarify when he made this discovery, he stated that it was “about two years ago, I think. I do not remember the exact date, about two to three years” (Day 7/116-18/117-3). He then confirmed that this would have been perhaps two weeks after he started the new company. I took this to be a reference to WWF Cheetham Hill, to which the assets of the Cheetham Hill store were transferred, on 30 November 2015, following incorporation on 1 September 2015.

227. It is not in dispute that, once the store was initially purchased, Arshad took on a management role in respect of the business. However, there is no contemporaneous written evidence that Pervez, Arshad or, indeed, anyone else contemplated that the business would somehow belong to Arshad. There is no independent evidence to suggest Arshad might have believed WWF Rusholme was conducting the business on his behalf and there is no evidence Arshad personally discharged the outgoings of the business. In cross examination, he stated that, between 2008 and 2015, he would have signed perhaps 500 cheques each year in respect of the business. When it was put to him that each of these cheques were drawn on WWF Rusholme’s bank account and each cheque would thus have borne the words “Worldwide Foods (Rusholme) Ltd”, Arshad’s reply was that “it was written there but I didn’t bother about that because when I was in Birmingham, because there was written underneath Worldwide Rochdale and that was an account as well. I knew it was my own account, so I didn’t take much notice, didn’t pay much attention” (Day 8/4/2-7). When it was thus put to Arshad that he “knew full well that the Cheetham Hill business during all those years, operated through an account at the bank in the name of Rusholme” he replied that “I didn’t know at all” (Day 8/5/21-24). Arshad’s

answers to these questions were wholly unconvincing. Contrary to the case he has sought to present, I am satisfied he was at all times aware it was not his personal bank account and did not personally own the Cheetham Hill store. Whilst, eventually, he started to treat the business as his own, he never had a reasonable basis for doing so.

228. Arshad was also unable to sustain, in cross examination, his case in relation to the mortgage repayments. When asked to identify the source of the mortgage repayments between 2008 and 2015, he was unable to do so. Initially, he stated that they came from “Cheetham Hill” and when asked to clarify what this meant, he stated that “Kashif knows this, he will arrange all the things like that”. At one point, he stated as follows: “I think we were paying to [AIL] and they were paying---forwarding it to wherever and I don’t exactly know and I don’t want to do anymore guesswork”. This might have been consistent with an arrangement under which the mortgage repayments were initially funded from WWF Rusholme’s business receipts. However, when asked for clarification, Arshad stated “I have said before that I don’t want to do any guesswork. The correct answer, you can get it from Kashif or the accounts department” (Day 8/22-20/23-19). On the balance of probability, I am satisfied that, whilst the mortgage payments were made on behalf of AIL, they will have been funded from the business receipts of the trading companies, particularly WWF Rusholme. In the absence of independent evidence to the contrary, I am not satisfied Arshad personally made any mortgage payments.

(ii) Mr Salim

229. Mr Salim has been in practice as an accountant for many years, albeit he is not fully qualified. He is now 74 years of age. When giving evidence, he confirmed that he had acted as accountant for Pervez and Arshad from 1981 until the late 1980s. In fact, it appears he continued to act for them until the early 1990s. This included preparing their annual accounts and tax returns. He also acted for them in connection with the formation of WCCL. He was, at times, a hesitant witness and his recollection of the historical detail was imprecise. This is not surprising given that he was being required to cast his mind back to events occurring upwards of thirty years ago.

230. However, he was confident in his recollection that, during the 1980s, Pervez and Arshad carried on business together in partnership as “Choudhury Alam Brothers”. He was shown a balance sheet for the business as at 31st October 1985 – in all likelihood prepared by Mr

Salim himself – in which the grocery business premises at 2 Lower Tweedale Street and the “laundrette plant machinery & equipment” were listed as assets of the business. No doubt, this is a reference to the laundrette at 91 Coleridge Street. Drawings of £21,670 were recorded on the balance sheet itself so as to leave a balance of £3003 on capital account.

231. It was not recorded, on the balance sheet or, indeed any other contemporaneous documentation that “Choudhury Alam Brothers” was a partnership nor, indeed, that the putative partnership consisted of Pervez and Arshad. However, the balance sheet was expressly headed “Choudhury Alam Brothers” and Mr Salim confirmed that it would not have been headed in this way if the business was in the ownership of a sole trader. Consistently with this observation, his recollection – no doubt substantially based on his instructions at the time – was that the business was conducted in partnership by Pervez and Arshad.

232. On the hypothesis that Pervez and Arshad were indeed partners, there was also nothing in the contemporaneous documentation to identify or quantify their shares in the partnership assets. However, Mr Salim’s recollection was that Pervez and Arshad were entitled to the income of the partnership in equal shares and sent separate tax returns to HMRC calculated on that basis. For tax purposes, their aggregate drawings of £21,670 would have been treated as income and divided between them in equal shares.

233. Mr Salim also confirmed that, shortly afterwards, the partnership grocery business was transferred to WCCL. Indeed, in its initial accounts for the year ending on 31st October 1986, it was recorded that WCCL commenced business on 1 November 1985 “by acquiring the grocery business formerly carried on under the partnership name of Choudhary Brothers”. On a limited basis these accounts were audited by John Mensah & Co. Whilst it was recorded that the partnership business had formerly been carried on by the directors of WCCL so as to include Mohammed, Mr Salim accepted in cross examination that Mohammed Alam was not a partner and, to that extent, he accepted there was an error of description in these accounts.

234. In cross examination, it was suggested to Mr Salim that his evidence was coloured by the acrimony in which his professional relationship with Pervez subsequently came to an end. It is certainly clear they did not part on amicable terms and Mr Salim ultimately

sought to engage bailiffs to recover his unpaid fees. Moreover, only limited contemporaneous documentation was available at trial in relation to the factual issues addressed by Mr Salim himself. However, it cannot reasonably be suggested that Mr Salim sought to give false, misleading or inaccurate evidence in the absence of cogent evidence this is so. No such evidence was adduced. Indeed, Mr Salim's account was entirely plausible. It was also consistent with the limited contemporaneous documentation available.

235. If a case can be made in Pervez's favour, it is that Mr Salim's understanding is essentially based on his recollection of Pervez's instructions and the inferences Mr Salim has drawn from the limited contemporaneous documentation available. Since he was instructed by Pervez himself, albeit on behalf of both siblings, and he was not alive to the internal arrangements between Pervez and Arshad, it is likely that the whole arrangement was conceived by Pervez himself with a view to minimising their tax liabilities. It is also likely Arshad was content simply to go along with Pervez's scheme. Subject to these points, Mr Salim's testimony is the best available evidence of his instructions and the steps taken to implement them.

(iii) Kashif

236. Kashif is the youngest of Pervez and Arshad's brothers. He was born in 1973. After secondary school, he attended Manchester Metropolitan University from 1991 to 1994. He then joined Shaik & Co as a trainee accountant and, in 1996, qualified as a chartered accountant. Whilst working for Shaik & Co, then Gruber Levinson Franks accountants, he provided bookkeeping services for WWF Manchester until September 2000 when he commenced work, on a full time basis, for all the companies in which Pervez, Arshad, Zahid and Shahid were involved. He provided services for each such company until 2016. This included attending to the accounts and accounting records of the relevant companies, and dealing with their returns to Companies House. His brothers came to rely heavily on him in connection with the company accounts and formalities on the basis that he had been educated in the UK to a more advanced level themselves and was professionally qualified as an accountant.

237. Unlike the other witnesses, Kashif did not provide a witness statement. He attended court under a witness summons, issued at the request of Arshad, and was examined in

chief by Mr Croxford. When cross examined by Mr Chaisty, it emerged one of Arshad's sons, Muqim, had been providing Kashif, via his son Razha, with transcripts of the trial to assist him in understanding the evidence. Moreover, Kashif's evidence was more closely aligned to Arshad's case than the other parties although there were significant differences between the testimony of Kashif and Arshad on some issues.

238. On behalf of Pervez, Zahid and Shahid, it is thus suggested that Kashif cannot be regarded as an independent witness. In my view, whilst correct, this is over-simplistic. Kashif was plainly troubled by the litigation and mindful that both sets of parties blame him for failing to communicate with them sufficiently or deal properly – as they see it – with the legal and accounts formalities for the companies. At one point, he stated that he was “being blamed for all the issues regarding shares and ownership, all the way to the point that I left”. If this is so, the complaints levelled against him are not without foundation. Although the relationship between Arshad and Pervez was increasingly dysfunctional, he did little to appraise them with one another's respective management decisions or eliminate the ambiguities in their business relationship. He is certainly culpable for failing to advise Pervez, at the outset, about the steps taken by Arshad, in November 2015, to take control of the Cheetham Hill store. It is also conceivable that, up to a point, Kashif believes he has let Arshad down in the sense he did not do enough to alert him to the share ownership issues and this may have prompted him to lend support to some of Arshad's claims.

239. Consistently with this, Kashif was at times defensive in his answers to questions. He was indubitably anxious to minimise his own responsibility for at least some of the issues which have culminated in these proceedings although he was prepared to accept he was culpable, at least in part, for the difficulties that have arisen. It also emerged, during cross examination, that he has been successfully prosecuted in criminal proceedings for the offence of perverting the course of justice owing to the provision of false information in relation to a road traffic offence. However, he was open about this. He was not a dishonest witness. Moreover, in relation to the family dynamic and much of the factual background, his evidence was illuminating and helpful. Where he gave evidence of fact rather than drawing an inference or expressing an opinion, his evidence was generally more convincing than the evidence of his brothers. It was often actuated by a sense of

fairness which was lacking in the evidence of his brothers and, through his familiarity with the corporate formalities and the accounts management of the companies, he was able to provide an insight which was not available to them. I am also satisfied that, on the contentious factual issues, his evidence was generally more reliable than theirs.

240. Although he accepted that Pervez believes he “owned everything”, Kashif himself saw things differently. He viewed each relevant company as a vehicle for a separate business with ownership dictated by the brothers’ participation in the business itself. When asked, at an early stage, about the ownership of the Bradford store, he stated, in general terms, that “when you join a family business, the reason you join a family business or you are in a family business is that inevitably a share is yours”. On this basis, a brother would be entitled to share in the ownership of the business, if he participated in the business. Whilst I accept this is now Kashif’s honestly held view, it does not stand logical scrutiny as a principle and, without qualification, it is incorrect as a proposition of law. Moreover, it is a view based on hindsight. It is inherently unlikely that, if he turned his mind back to the time when he started work in the business, whether on a part time or full time basis, Kashif then saw it in precisely this way. However, his evidence is consistent with a general expectation or understanding, commencing prior to the health and safety prosecution, that the brothers who participated in a business were entitled to an interest in the corporate vehicle for the business itself and the property from which the business was conducted. This is supported by at least some of the contemporaneous documentation.

241. More specifically, Kashif gave important evidence in relation to a number of specific issues.

241.1. Firstly, it was at least implicit, in Kashif’s testimony, that the decision, in June 2003, to allot additional shares to the brothers in WWF Birmingham was made pursuant to an agreement between Arshad, Zahid, Shahid and himself. Although the shares were to be divided between all five brothers, Pervez was not himself “involved” when the other brothers reached agreement (Day 11/134-17/135-12). It was done in this way “because it was a family business and there was us five brothers and this is how we thought it should be done” (Day 11/135/11-12). Agreement was reached following a meeting between Arshad, Zahid, Shahid and Kashif at Arshad’s house (See, for example, Day 13/47/10-16); each brother was to be allotted 20% of

the shares (Day 13/47/17-19). Having initially suggested agreement was reached when the company was formed, Kashif clarified that “this was going back to 2003” when the name of the company was changed. However, the critical point is that he confirmed the four brothers reached agreement. Although Pervez did not attend the initial meeting at which agreement was reached, it was not suggested he has ever done anything to challenge it. When asked, “going back to 2003...who was the beneficial owner of the Birmingham company?”, Kashif’s answer was that “when we started, we’d agreed that us five brothers, this is how it should be done in terms of company share structure and this is what was going to do” (Day 11/135/4-9). In contrast, Arshad’s testimony was that he believed he was sole shareholder and was unaware the other brothers had been allotted shares until the summer of 2012. I have no hesitation in preferring the evidence of Kashif to Arshad on this aspect.

241.2. It is true that, later in his evidence, Kashif asserted that, when the Coventry Road store was purchased, Arshad was the beneficial owner of the shares in WWF Birmingham (Day 11/162/4-7). This does not make a great deal of sense since, at that stage, the legal title was vested in Pervez and the company only commenced business following acquisition. Kashif did not suggest Arshad was to be treated as beneficial owner on the basis that he had been involved in securing the loan for the purchase of the property. Moreover, six days later Kashif completed a return confirming the allotment of additional shares to the five brothers. Kashif’s evidence only makes sense on the basis he believed Arshad’s interest was enlarged later once he set up the business and took overall control. When asked “what happened between 2003 and September 2017 where instead of being owned by five shareholders, it was solely owned by Arshad”, Kashif’s reply was “beneficial ownership. Arshad was the one who was controlling Birmingham. Arshad was the one who was managing Birmingham. Arshad was the one who was making all the decisions in relation to Birmingham” (Day 13/124/4-10). When questioned further, Kashif stated that he had “messed up the shares” in relation to WWF Birmingham (Day 13/124/14). The following exchanges then took place between Kashif and Mr Chaisty (Day 13/124/17-125/4).

“Q You didn't mess up the shares. You did exactly what
the -- according to you, you did exactly what your three

brothers told you had to do in 2003.

- A. On the condition -- or Arshad agreed or would have agreed if Alam Investments had also -- the shareholding had been the same on the other side.
- Q. What do you mean? That had been owned by five?
- A. Yes.
- Q. Sorry, when did that conversation take place? Arshad doesn't say anything about this. When does that conversation take place?
- A. There wasn't a conversation. Arshad was the 100% owner of that company."

241.3. In his closing submissions, Mr Croxford submitted that, in these exchanges, Kashif can be taken to have suggested that, by filing the return, he "jumped the gun" since the agreement between the brothers was conditional only and the conditions for preceding – whatever they may have been - had not been met. In my judgment, the gist of Kashif's answer was simpler than this when viewed in the overall context of his evidence. He was really saying that, when the brothers reached agreement on the share allotment, they envisaged they would participate more in the affairs of the company than ultimately they did and that, in view of the fact that Arshad ultimately took control of WWF Birmingham himself, he should have been allotted the entirety of the shares. This was said with the benefit of hindsight. There is no convincing evidence that the agreement between the brothers was conditional only; Arshad himself maintains that there was no agreement at all. Kashif confirmed Arshad was "the 100% owner" but this was simply on the basis – consistently with the rest of his evidence – that he achieved ownership by taking control of the business of the company.

241.4. In any event, once the company had commenced business and was generating a profit, dividends were declared out of WWF Birmingham's realisable profits for the benefit of the five brothers, Pervez, Arshad, Zahid, Shahid and Kashif, on the footing that the 2003 allotment was valid and the five brothers were each to be treated as shareholders. As it happens, dividends were not paid to the brothers in cash and Kashif confirmed, when asked about the declaration of a dividend in 2012, that they

were declared as an accounting device since he “had to show [the brothers’] income and no other company had all of us five brothers in there. If any other company did have us five brothers in there I would have done them from that company” (Day 14/81/7-10). He also stated that Arshad was unaware of this arrangement but left it to Kashif to deal with the companies and tax matters as he saw fit (Day 14/82/11-17).

241.5. Secondly, whilst it can reasonably be surmised that, at the outset, company formation agents provided a representative of each relevant company with the formal company documentation necessary in connection with the formalities for incorporation (including a share register), Kashif stated that, during the long period in which he was involved in this aspect of the companies’ affairs, he didn’t think anybody had made any entries in respect of the share registers for each company (Day 14/176/22-177/9). On this basis, whilst company returns were filed showing changes in the shareholdings, these did not reflect entries on the share registers.

241.6. Kashif also confirmed (see above) that he could see no good reason why Zahid should have been substituted for Arshad as a shareholder of WWF Manchester when he filed the company’s return made up to 7 April 1998 and thought this was likely to have resulted from an error on his part, confusing shareholders with directors (Day 12/65/22-66/4). On this issue, this is the best available evidence.

241.7. Thirdly, Kashif confirmed that he prepared the Acknowledgment himself albeit he did so in one of the less convincing passages of his evidence. Initially, he suggested he had no specific recollection of this but it could be inferred from the fact that he was the only brother capable of using a computer. Later, however, he specifically stated that he did so having been told to prepare it by Zahid. He surmised that the instruction was initiated by Pervez who wanted everything to be restored to what it was before the health and safety prosecution. This is consistent with his evidence elsewhere that Pervez believed he owned everything. Having prepared the document, he signed it. He did not sign it on the same occasion as the other brothers nor, indeed, was he present when they are alleged to have signed it. However, he was in no doubt that they would have understood the document.

241.8. Fourthly, when cross examined on correspondence in April 2013 about the historic issue, purported or otherwise, of some 18,000 £1 ordinary shares in AIL to

Pervez, Kashif memorably stated that he did not raise the matter with his brothers because “they were happy to be shafted by Pervez”.

242. Kashif also gave illuminating evidence in relation to the ownership of the store and business at Cheetham Hill. Since Arshad was given “the keys to start and open store” and, having done so, assumed personal responsibility for the operation of the store, Kashif regarded Arshad as beneficial owner of the business (Day 13/81/4-6) prior to 30 November 2015 when it was transferred from WWF Rusholme to WWF Cheetham Hill. This appeared to be a general point about Arshad’s responsibility for the day to day operations of the store rather than a factual account about the commencement of business at the very outset. However, if Kashif was doing more than make a general point, Zahid’s more detailed explanatory evidence about the initial opening of the Cheetham Hill is preferable to Kashif’s evidence on this aspect. Kashif’s more general observation about responsibility and ownership was no more than an expression of his opinion. No doubt, it was based partly on hindsight but it partly explains why Kashif would have been willing to allow Arshad to transfer the business without initially alerting Pervez.

243. Shortly before giving this evidence, Kashif confirmed that the decision to transfer the Cheetham Hill business from WWF Rusholme to WWF Cheetham Hill was taken unilaterally by Arshad without discussion with Pervez. For the avoidance of doubt, Kashif confirmed he was aware, at the time, that Arshad was acting “unilaterally without reference to Pervez in making the transfer” and that he, Kashif, did not bring this to Pervez’s attention. When asked why, he stated – in a memorable passage of his evidence - that “I was between a rock and hard place. Two brothers pulling in different directions, doing their own things. So it wasn’t up to me or it wasn’t my position that I should go and tell one brother what the other was doing” (Day 13/79/11-80/22).

244. As the youngest brother, Kashif considered it was not for him to make demands of his siblings or otherwise do more than advise them about the way in which to give effect to their plans. Particularly in the early years, he simply did as he was told. However, as the tensions between his older brothers grew, he became more and more uncomfortable until he had little option but to withdraw from the businesses under their respective management.

(iv) Mr Barton

245. *Mr Barton* is a director and shareholder of Barton and Redman Limited, a wholesale supplier of fruit and vegetables. He gave evidence confirming that he has supplied fruit and vegetables to Arshad and Pervez for at least 30 years. He also stated that, though his business dealings with them, he had formed an understanding that Arshad and Pervez operated two separate businesses. On this basis Arshad was perceived to be responsible for the Birmingham, Longsight and Cheetham Hill stores and Pervez for the Bradford, Old Trafford, Rusholme, Oldham and Rochdale stores. He stated that this could probably be traced back to the time when Arshad opened the Birmingham store. He could also recall an occasion when Arshad advised him that he had split the businesses.

246. However, when Mr Barton was cross examined, it emerged that his perceptions about the division of responsibility of Arshad and Pervez were not based on conversations or disclosures about their own internal arrangements rather they were based on assumptions he had drawn from the fact that Arshad and Pervez each operated from separate premises. He had not made inquiries about their internal arrangements nor had he taken out policies of credit insurance in respect of their business or made any inquiries about their business in view of the length of their trading history. Over time, his own business, through Barton and Redman Limited, had grown together with the Worldwide Foods businesses. In cross examination, he confirmed that whilst he could recall there was an occasion on which Arshad advised him that he had split the businesses, he could not recall when this happened.

247. Although called by Arshad, Mr Barton was essentially an independent witness. In cross examination, his answers were direct and, when probed, he was quick to clarify the factual basis for the more contentious passages of his witness statement. I am satisfied his testimony was honest and reliable.

(v) Dr Amjad

248. Dr Amjad is Arshad's brother-in-law. His evidence was given remotely. He now works as a doctor in Pakistan. He maintained, in evidence, that between 2003 and 2005 then 2008 until 2015, he worked for WWF Birmingham and confirmed that, when the Coventry Road store was first purchased, he was promptly appointed manager notwithstanding that he had recently qualified as a doctor and did not have any previous experience as the manager of a grocery store. Later, in his evidence, he confirmed that Arshad had

personally founded the Coventry Street store and that, later, the Alum Rock store was identified by Dr Amjad himself as a good location for another store.

249. Dr Amjad was plainly not an independent witness and his evidence was designed to support Arshad's case in the litigation. In addition to exaggerating his initial role at the Coventry Street store, he appeared to overstate his knowledge of the business ownership and sought to minimise the element of co-ordination between associated companies. Whilst he provided a useful insight in relation to the management of the businesses and corroborated Arshad's evidence in relation to his role in the Birmingham, Longsight and Cheetham Hill businesses, I have exercised caution when considering Dr Amjad's evidence on the more contentious aspects of the case.

250. In Paragraph 5 of his witness statement, he stated that "my understanding through working with Mr Arshad and my close relationship with him was that he was the owner of the Coventry Road store". When it was put to him that he had not discussed ownership with Pervez, he initially appeared to accept this was so (Day 15/37/10-16). However, when it was also put to him that he had not discussed ownership with Zahid or Shahid, he referred to an early conversation in which Arshad's brothers had suggested the Birmingham business would fail and thus did not wish to take the burden of the business in Birmingham (Day 15/37-17/38-2). In this way, Dr Amjad sought to suggest the brothers had given the impression they were content for Arshad to own the Birmingham store. Whilst it is conceivable there was an early conversation in which one or more of the brothers expressed doubts about the future success of the business, I am not satisfied they did anything to create the misleading impression Arshad was the owner of the store or, indeed, sole shareholder of the corporate owner. It is also facile to suggest he could reasonably have obtained such an impression simply on the basis he worked with Arshad.

251. Whilst well aware, from an early stage, that the management of the Birmingham businesses was essentially left to Arshad, Dr Amjad sought to minimise the element of co-ordination between the associated companies, particularly WWF Birmingham and WWF Rochdale. This is exemplified by the passage of his evidence in which he confirmed, under cross examination, that he had no recollection of any occasion on which he had requested Zahid "to send me something", suggesting there was good reason for this "because whenever they send me something, we never wanted it, and were unhappy to keep large

stocks at Worldwide Foods because they will not be good for us” (Day 15/1-7). Predictably, he was then referred to items of correspondence in which he had specifically requested Zahid to provide him with stock (Day 15/23-17/24-24).

(vi) Ali

252. Adil’s formal name is Chaudhry Tahrim Arshad, he is known as “Ali”. He is also Arshad’s eldest son. He was born on 26 May 1986 and is thus 37 years of age. Whilst at college, he did some part time work at the Rochdale store. For a period of four years or thereabouts, he worked at a warehouse for Next. In 2008, at the age of 22 years, he was enrolled on a course at university in Manchester studying accounting and finance and started to do some part time work for WWF Birmingham. He also maintains that, at this stage, he started to work in the Cheetham Hill store – indeed, in his witness statement he went so far as to assert that, in 2008, he was “involved in the running of the [Cheetham Hill] store” and describe his role at the store, from the outset, as manager of the store. This remains his designated role.

253. Ali’s description of his initial role as manager of the Cheetham Hill store was unconvincing. At the stage, he could have been no more than 22 years of age albeit a comparatively advanced age for him to be embarking on a course at university as an undergraduate. There is no evidence he had, by then, obtained management experience working for Next, certainly not experience of the kind necessary to run a substantial cash and carry store. Moreover, it appears from evidence elsewhere that he graduated by the time he was 25 years of age. He would thus have been studying for university throughout the initial period in which he claims to have been managing the Cheetham Hill Store.

254. However, I accept Ali’s evidence that, for so long as he can remember, the Longsight businesses were run by Arshad without direction from his brothers. I also accept his evidence that, for several years, the management of the Birmingham, Longsight and, indeed, the Cheetham Hill stores was effectively under Arshad’s control and that these businesses were managed separately from the other stores. Ali knew this to be so in the case of Longsight and Cheetham Hill stores since he was personally involved in the management of these businesses. He was not directly involved in the management of the Birmingham businesses but it is easy to see how he came to form the same impression in relation to such businesses based on his interaction with other members of the family.

255. Eventually a point was reached at which the stores under Arshad's management ceased to collaborate effectively with the other stores. The main issues are as to process and time scale. Ali contends there was, as he put it, a "split" in the business throughout the time of his involvement and that "the interaction between the businesses [became] less and less as the relationship between my dad and his brothers got worse from around 2014/2015". No doubt, it is correct that, over a period of time, the businesses drifted apart culminating in the steps taken by Arshad between November 2015 and November 2018 to transfer the businesses to new corporate vehicles. However, in evaluating Ali's evidence on these issues, I have looked for corroboration from the evidence elsewhere.

(vii) Muqim

256. Muqim gave evidence immediately after his brother, Ali. Between 2007 and 2011 or thereabouts, Muqim studied at Liverpool University for a degree in Architecture but was unable to remember the year in which he graduated. By then he had accumulated a certain amount of experience working at a market stall – in all likelihood, the market stall at Smithfield Market – and, by 2012, he recollects that he was working full time on the market stall on days other than Tuesdays and Saturdays when he worked for the stores in Birmingham. At that stage, WWF Birmingham was operating from the stores at Coventry Road and Alum Rock. In 2014 he moved to Birmingham. This was about the time the Sparkhill store was acquired. After Dr Amjad left for Pakistan in September 2015, he maintains he was personally running all three Birmingham stores, implicitly on behalf of Arshad. However, this is no longer his role. His main role now is as director of the company operating the Alam Restaurant at Small Heath, Birmingham.

257. Elsewhere in his evidence, Muqim stated that from the time he joined the business he understood that his father Arshad ran and owned the Birmingham, Longsight and Cheetham Hill businesses and Pervez ran the Bradford and Rusholme stores. In more general terms, he stated that "in terms of the buildings themselves, my understanding was whoever ran and paid the mortgage off is who owned the actual stores themselves as there was never any interference from any of the brothers in the running of the stores – it was just a given". It appeared to be implicit in his evidence that ownership would shift according to who was in control of the business from time to time. He stated that "from my understanding, Zahid and Shahid had the benefit of the cash and profits from the

Rusholme and two Bradford stores. I don't think that Zahid and Shahid still have the benefit of the profits from Rochdale as Pervez now has the benefit". In cross examination, it emerged there was no evidential basis for Muqim's observations about the ownership of the properties and businesses; they essentially amounted to contentions and arguments in support of Arshad's case.

258. When it was put to him in cross examination that he had presented before Arshad, for signature, the document purportedly incorporating minutes of a meeting dated 12 August 2014 of the shareholders of WWF Birmingham, Muqim's answer was "possibly, I can't remember the exact details but I was there yes" (Day 16/146/16-24). Since, it was purportedly recorded in the document that the members had all consented to the meeting being held at short notice and the majority had approved a resolution increasing the share capital to £21,000, it was put to Muqim that Pervez, as a member, had not provided him with a proxy and that Zahid and Shahid had not authorised a resolution which would effectively involve them giving up their 20% shareholdings. In answer, he stated that "as far as we were concerned we did [have a proxy from Pervez] but I'm not 100% sure" (Day 16/149/18-20) and that Arshad had obtained the permission of Zahid and Shahid to give up their 20% shares "even though he didn't require it" (Day 16/152/12-15). I am satisfied that, when giving these answers, Muqim's evidence was, at best, disingenuous. Muqim had no good reason to believe Pervez had provided his proxy when the document was presented to Arshad for his signature. He would also have known it was inherently unlikely Pervez would do so at their request given the nature of his relationship with Arshad at the time. Moreover, nothing happened afterwards to suggest otherwise. Similarly, Muqim cannot have had good reason to believe Zahid and Shahid ever authorised him to take steps with a view to the dilution of their shareholdings in WWF Birmingham.

259. In the absence of independent corroboration, I have exercised a significant amount of caution when considering Muqim's evidence.

(viii) Umar

260. Arshad's other son, Umar gave evidence that he is now the main dry goods buyer and head of operations at the three Worldwide Foods stores in Birmingham and does some

bulk buying for the Cheetham Hill and Longsight businesses, each of which is now under Arshad's control.

261. After graduating from the University of Leeds in 2014, Umar enrolled on a Masters Degree at Kings College London which he completed in September 2015. Prior to this, he had done a certain amount of work at the Cheetham Hill store but, upon completion of his Masters Degree, he commenced full time work at the WWF Birmingham stores. In 2017, he was appointed manager of the Alum Rock store and, in 2019, he took full charge of the three Birmingham stores.

262. Umar gave evidence about the management and severance of the businesses and his perceptions of ownership. His evidence was adduced in a more moderate way than his brothers, certainly Muqim, and it was focussed on the period from 2015. His perceptions of ownership were based on conversations with his father and a view that "if you pay for something, its yours". As with most of Arshad's witnesses, he did not treat the companies as separate legal entities but, on the footing, for example, that his father or his companies had paid for the store at Cheetham Hill, he regarded his father as the owner. On the more contentious issues, his testimony was only of limited probative value.

(ix) Mr B Bhattacharaya

263. By the time of trial, Mr Bhattacharaya was engaged as bookkeeper and payroll administrator for WWF Longsight and WWF Cheetham Hill, each of which are under Arshad's control. Between August and October 2005, he worked at the Rusholme store. He was later based at the Longsight store but provided services for both stores until November 2015 or thereabouts when Pervez indicated his role at the Rusholme store should be brought to an end.

264. He gave evidence that the Longsight and Rusholme stores were generally run separately, subject to the same brand name. Arshad managed the Longsight store and Pervez managed Rusholme. Historically, the accounts were managed on an *ad hoc* basis. Zahid would order some dry goods for both stores but generally such goods were ordered separately for each store as indeed were orders for fish, poultry, meat and vegetables. Since the Longsight store was small and did not have substantial storage facilities, some goods would be supplied from the Rochdale store. The Cheetham Hill Store was much

larger. By February 2016, stock was thus being supplied to the Longsight store via Cheetham Hill.

265. Mr Bhattacharaya was generally a careful witness. I am satisfied that, where based on his personal knowledge, his evidence was reliable. This includes his evidence about the management of the stores. However, where his evidence was secondary and contentious, based for example on his perceptions about the family origins of the business, his evidence was of limited probative value. On these aspects of his testimony, I have exercised caution in the absence of independent corroboration.

(x) Ms Khan

266. Ms Khan now works for WWF Fruit & Veg in connection with the management of a double unit at Smithfield Market, Manchester. Between 2009 and 2018 or thereabouts, she worked in a similar role for WWF Manchester.

267. She gave evidence that, when she started with WWF Manchester, she was under the erroneous impression that Arshad owned the Group as a whole but later appreciated this was not the case. Soon after she joined the business, she became aware there were tensions between Arshad on the one hand and Pervez, Zahid and Shahid on the other. Later, in 2014, she became aware that the Rochdale, Bradford, Oldham and Rusholme stores were being supplied from the market unit at Smithfield Market.

268. Ms Khan was straightforward and direct in the way in which she gave her evidence and I am satisfied that she provided an honest account of her perceptions at the time and the unfolding events as she observed them.

(xi) Mr Sawhney

269. By the time Mr Sawhney gave evidence at trial, he was acting as management accountant for some eight companies, namely WWF Birmingham, WWF Small Heath, WWF Saltley, WWF Sparkhill, WWF Manchester, WWF Cheetham Hill and WWF Longsight and WWF Fruit & Veg. Each of these companies is now under Arshad's control.

270. He was a defensive witness who naturally demonstrated a measure of loyalty to Arshad to whom he is answerable. In any event, it is clear that his understanding about the ownership of the business assets was based on advice from Arshad and members of his

immediate family, by which I took him to mean Ali, Muqim and Umar, rather than any independent assessment of company records. Moreover, he did not provide a convincing explanation for the creation of the new companies and connected transfer of business assets. This was plainly done with a view to putting such assets beyond the control of Pervez and other family members.

271. Mr Sawhney first became acquainted with Arshad and Muqim at a meeting in August 2014. In cross examination, he confirmed that this was “out of the blue”. It happened on the occasion of a visit from Arshad and Muqim to the offices of a client, Mr Khalid Pervez. Things must have moved very quickly because Mr Sawhney was called into the meeting and, on Arshad’s instructions, then prepared the “paperwork” in connection with the 2014 allotment of shares in respect of WWF Birmingham. No doubt, this included notice of the share allotment, minutes of the purported shareholders meeting and proxy forms for the signature of the members. However, he did not file the documentation at Companies House. This task was left to Muqim.

272. In cross examination, Mr Sawhney confirmed that he prepared the relevant documentation after carrying out a search of the company at the Companies House website and noticing that five shareholders were recorded each with 200 shares. In an unconvincing passage of his cross examination, Mr Sawhney confirmed that he prepared the documentation, apparently without further enquiry or discussion, after Arshad advised him that, contrary to the company returns at Companies House, he was “100% shareholder” himself (Day 18/46/2-19). Had that been so, the draft minutes and proxy forms made little sense. Notwithstanding that he had been advised that Arshad was the sole shareholder, Mr Sawhney maintains that he then marked, in pencil, the places for the other shareholders to sign (Day 18/48/22-49/14). He also stated that he assumed that Arshad and Muqim would get the documents signed (Day 18/48/22-49/3). More likely than not, all three were well aware the five brothers were each recorded as shareholders and that, as shareholders, they would be entitled to notice of the meeting. However, the brothers were not given notice of the meeting, they did not appoint Arshad, or anyone else, as their proxy and they did not approve the resolution.

273. Some two years later, in August 2016, Arshad engaged Mr Sawhney to act as management accountant for companies over which Arshad had assumed control, such as

WWF Birmingham and WWF Manchester. This involved taking over responsibility for tasks that had previously been performed by Kashif although Kashif's responsibilities had ranged more widely in respect of all associated companies. He also assisted Arshad in connection with the incorporation of new companies as a vehicle for the transfer of the assets of other Group companies.

274. Mr Sawhney provided helpful evidence about the sequence of post August 2016 events from his perspective as management accountant for the eight companies under Arshad's control.

(xii) Pervez

275. Pervez's written testimony was wide ranging and comprehensive. He was born in Nairobi, Kenya in 1956 and can have been no more than seven years of age when, in 1963, the family moved to Pakistan. At an early age, it was his ambition to come to the UK. Mindful that he had been born in Kenya, when it was a British colony, he recalls writing later to the British High Commission in Islamabad and mentioning that he had possession of his parents' old passports and their birth certificates. An appointment was arranged and he travelled on his own, by bus, from Haroonabad to Lahore and then, on the night bus to Rawalpindi before attending for interview at the High Commission in Islamabad. Ultimately, each member of his immediate family was issued with a British passport. Pervez then travelled to the UK with his father, Mohammed, and Arshad. For a while, they lived in Nottingham. Eventually, they were joined by the rest of the family. However, after Pervez found a job at Turner Brothers in Rochdale, they moved to the house there at Mellor Street.

276. According to Pervez, he was the principal breadwinner during the early years. He opened a bank account with National Westminster Bank in Rochdale, paying his wages into the account and using the account to pay family expenses. He accepts that Mohammed contributed to the household expenses from his pension and child benefit but says Arshad made no contribution: "I don't know what Arshad was doing with his money".

277. Pervez maintains that he bought the property at 7 Pullman Street himself. He also bought a house at Ventnor Street, Rochdale using the proceeds of a successful insurance

claim in relation to a stolen car. In due course, he also purchased other investment properties in Rochdale. Together with a partner, Sajid Butt, he set up the business of Haroon Fashions, the grocery business at 95 Coleridge Road and the laundrette at 91 Coleridge Road, on the Sholver Estate, Oldham. Later, he opened the grocers shop at 74A Tweedale Street, Rochdale. He subsequently purchased the shops at 77 Milkstone Road, 65 Tweedale Street and 16 Union Street, Oldham. In 1985, he bought the Rochdale store at Lower Tweedale Street. He also bought 2 Lower Tweedale Street in the names of his parents, Mohammed and Roquiya, and 2 to 4 Lower Tweedale Street, Rochdale in Arshad's name albeit on the understanding Arshad would not be responsible for the mortgage.

278. In Paragraph 16.1 of his witness statement, Pervez asserted that "it was always understood in the family (and in the wider community) that the businesses were mine. All of the family, including Arshad, knew it was me who had found and started those businesses using the money I had earned." However, this appears not to have been expressly discussed and agreed, rather it was implicit in the fact that he had personally set up and funded the businesses himself. Later in Paragraph 16.1, he thus stated that "all of the family, including Arshad, knew it was me who had found and started those businesses using the money I had earned. There was never any discussion with any of my brothers before I started a business".

279. On its face, this is difficult to reconcile with the use of WCCL, as a corporate vehicle, for at least the main grocery business in Rochdale since Mohammed and Arshad were issued with shares in addition to Pervez himself. Pervez sought to provide an explanation for this in Paragraph 18.1 of his witness statement, in which he stated that he "didn't know about limited companies at the time I opened Rochdale or anything about directors and shareholders. I remember my accountant at the time, Mr Salim of Salim & Co telling me that because the business was getting bigger I should change to a company so that the company will be responsible and liable if anything goes wrong. I didn't understand any more than that and just trusted Mr Salim that if he told this then it was the right thing to do". In Paragraph 18.2 of his witness statement, Pervez stated: "I can't explain why my father and Arshad's names are on the paperwork. At that point I didn't know what a director or shareholder was so it wouldn't have been something I came up with. I can

only assume it was on Mr Salim's advice and that my father's name was there because he is my father and Arshad because he is the next oldest brother. It wouldn't have mattered to me because everyone knew, including Arshad, that it was me and no-one else who was the owner of the business".

280. According to Pervez, it was his personal decision to set up a new business at Longsight, utilising WWF Manchester as a new corporate vehicle. He says Arshad was not involved. "At that time, I still didn't know about directors and shareholders so I don't know the reasons why the first directors of [WWF Manchester] are Zahid and Yasin with me and Arshad as the shareholders. If it was my instruction I can't think of any reason I would have told them to do it that way". The new business was funded from the business at Rochdale. "I did all the works like shelving, the cold store and the butcher's section".

281. In Paragraph 25.2 of his witness statement, Pervez stated that AIL "was initially set up because I wanted to keep all the properties I fully owned on one side". He was unable to explain why Arshad was made the sole shareholder stating, in Paragraph 25.3, that "I was always the owner of the company and the properties the company owned".

282. AIL was formed on 15 July 1999, two months prior to the critical health and safety inspection at the Rochdale store. Following the inspection, Pervez and Zahid were charged with criminal offences. They instructed Mr John Kay to act on their behalf. In Paragraph 26.4 of his witness statement, Pervez stated that he was advised to dispose of the assets in his name.

283. In any event, a series of properties was subsequently transferred to AIL, including 2 and 4 Lower Tweedale Street (LA374573)(October 2000), 29 Equitable Street (October 2000), 9 Briar Street (October 2000), leasehold land at 63 Milkstone Road (GM429044)(October 2000), freehold land on the north side of Station Road and 63 Milkstone Road (LA238641) May 2005), leasehold land to the north of Station Road (LA238640)(May 2005), neighbouring leasehold land and buildings to the north of Station Road(GM627538) (October 2005), leasehold land on the south side of Lower Tweedale Street (GM389843)(May 2005) and leasehold land on 2 Lower Tweedale Street (GM389844)(May 2005), all under separate registered titles. Prior to these transactions, two of these properties were in the sole name of Pervez, namely 29 Equitable Street and 9 Briar Street. Moreover, the property on the north side of Station Road was registered in

the names of Pervez, Arshad and their late mother, Roquiya. As at 2000, WCCL was registered as proprietor of the properties at 2 and 4 Lower Tweesdale Street and the land registered under title no. GM429044. Moreover, Mohammed and Roquiya were together registered as proprietors of the leasehold land in Title no. GM389843 and Roquiya was registered as sole proprietor of each of the other properties.

284. Regardless of registration, Pervez maintains that he was the beneficial owner of each such property. This is at least implicit in Paragraphs 25.4.1-25.4.7 and 25.5.1-25.4.2 of his witness statement. It is also implicit in his witness statement that, if the transfers were not dictated by the health and safety prosecution, the prosecution was at least a catalyst for some of the transfers.

285. In his witness statement, Pervez confirmed that he was not present when his brothers signed the Acknowledgment. However, it was signed after he asked Zahid “to have everything put back into [his] name”.

286. Elsewhere in his witness statement, Pervez suggested that, when an annual return was filed in June 2003 showing that each brother was entitled to 200 shares in WWF Birmingham, this was with his assent having “told Kashif to make all the brothers equal in Birmingham” (Paragraph 36.2). He also contends that he instructed Kashif to arrange for WWF Birmingham to buy the Coventry Road premises and, once such premises had been acquired, stock was sent to WWF Birmingham from Rochdale and other stores.

287. In Paragraph 37.1 of his witness statement, Pervez stated that, when WWF Rusholme acquired the Rusholme and Miles Platting premises, he personally took over the management of both stores. Conversely, Zahid initially set up the business at Cheetham Hill but, after experiencing some difficulty at the store with vandalism, Zahid advised Pervez that Arshad would be better placed to manage the store on the basis that it was closer, in proximity, to Arshad’s house. Pervez then invited Arshad to take over the management of the store. However, it did not follow that he was the owner of the building or the business at Cheetham Hill.

288. On 10 May 2017, Pervez approved the accounts for WWF Rusholme for the year ending on 31 May 2016. In these accounts it was recorded, under the heading “Review of the business” that, “on the 30 November 2015 the trade, assets and liabilities of the

Cheetham Hill store were transferred at net book value to a new company”, namely WWF Cheetham Hill. Pervez maintains that he signed off these accounts without knowledge of this transaction and without appreciating that it was recorded in the 2016 accounts. In Paragraphs 42.1-42.5 of his witness statement, he sought to pre-empt this issue by stating that he does not understand anything about accounts, he would generally be asked to sign them on the last day for submission and Kashif would give him the papers and ask them to sign them, showing him the page to sign, implicitly without any explanation. He surmised that these accounts were signed “as normal”, although he remembered that, on this occasion, he attended a meeting with Mr Anthony Steiner, an accountant from WWF Rusholme’s auditors when signing them. He subsequently showed the accounts to his son, Adil. On considering the accounts, Adil alerted him to the purported transaction. Pervez raised the matter with Kashif, who agreed to reverse it.

289. Pervez was cross examined at considerable length over a period of some 10 days. He was a confident witness and did not hesitate to give evidence about much of the factual background although, when questioned on issues relating to the corporate formalities and accounts, he repeatedly sought to suggest that he could not respond specifically to these questions since they pertained to matters for which Kashif was exclusively responsible. No doubt, Kashif was given responsibility for matters such as this. However, it is inherently unlikely – particularly in the early years – that Pervez would simply have left them to Kashif without giving him instructions and satisfying himself that Kashif had implemented them. He is plainly an intelligent and forceful businessman and was generally able to demonstrate a reasonable command of detail. It is very unlikely he would simply have abdicated these matters to Kashif or, indeed, that Kashif would have had sufficient confidence, at least in the early years, to make important decisions in relation to the affairs of the companies without providing Pervez with an explanation and obtaining his authority.

290. Without crossing professional boundaries, Mr Croxford cross examined Pervez in a way that was, at times, hostile and calculated to be provocative. When this was so, Pervez did not lose his self-control and was determinedly courteous at all times. However, significant passages of his testimony were implausible or inconsistent with the contemporaneous documentary evidence. Indeed, at times it flatly contradicted such evidence. For many

years, Pervez had substantial control of the family affairs and businesses. However, looking back, he appears to have confused control with ownership. Moreover, it can be seen from the contemporaneous documentation that his own views about the ownership of the family assets have shifted over time. This is exemplified by the apparent shift in his instructions to Gateley following their letter dated 5 January 2018, in which they stated that the companies were controlled by Pervez for the benefit of his brothers. By the time proceedings were commenced, it was Pervez's case that the shares in each relevant company were simply held for him personally although, in the case of WWF Birmingham, they were alleged to be held "notionally" by the brothers for Pervez although his case on this has been amended during the course of these proceedings. No satisfactory explanation has been given for the shift in his case. Unfortunately, Pervez was not a reliable witness. On the more contentious issues, I have at all times looked for corroboration or convincing supporting evidence.

291. Whilst Pervez has become a prominent figure in the local community and he is plainly a strong and forceful personality accustomed to getting his own way, caution must obviously be exercised before drawing inferences about his character and personality when he first arrived in the UK as a young migrant, no more than 21 years of age. However, there are signs he already had a mind of his own in those days. He was also resourceful; obtaining family passports, travelling to the UK and securing work at locations spread between Luton and Rochdale. In cross examination, Pervez accepted that he was old before his years.

292. When cross examined about the initial family decision to move to the UK, Pervez accepted that it wasn't his own unilateral decision; he had to persuade his father, Mohammed, that they should come (Day 19/102-2/103-9). Indeed, it would have been unrealistic to suggest otherwise. However, his parents were unfamiliar with the UK. They were also lightly educated and of relatively advanced age. Once they arrived, they appear to have been content to let Pervez make the major decisions and assume responsibility for doing so, for example finding the first house for the family at Mellor Street, Rochdale, hiring a van and moving the family there from Nottingham. No doubt, Arshad assisted Pervez where required, as indeed did his younger brothers as they matured in age.

However, Arshad was himself no more than 17 years of age when they moved to the UK and would have relied heavily upon Pervez at the time.

293. Pervez was cross examined at some length on the transcripts of a tape-recorded message issued by Mohammed shortly before his death. It was put to Pervez that he had over-stated, in his witness statement, Mohammed's expression of gratitude to Pervez, in the tapes, for his personal contribution to the family. It was also put to him that, in at least one of the tapes, Pervez was treated in the same way as Arshad. In response, Pervez stated that there were three tapes, one of which had gone missing and Mohammed had particularly sought to express his gratitude towards Pervez in the missing tape. There is a dispute between the parties as to whether there was or is a missing tape and, if so, whether it went missing or might have gone missing whilst in Arshad's custody. In my judgment, this dispute is disproportionate, in extent, to the significance or probative value of the tapes. It is overwhelmingly clear from the evidence that Pervez played an instrumental role in supporting and looking after the family during the early years in the UK and, in doing so, played a more substantial role than Arshad or indeed anyone else in the family during the early years. This is so regardless of the way in which Mohammed might have chosen to express himself in the tapes.

294. However, it does not follow that Pervez was personally entitled, or regarded himself as such, to the family monies or, indeed, the properties purchased in the names of Pervez, Arshad and his parents between 1978, or thereabouts, when the initial family home at 7 Pullman Street was first acquired, and October 2000, when the first properties were transferred to AIL. Indeed, on the balance of probability, the properties were family assets and regarded as such.

295. Firstly, there is no convincing evidence that Pervez treated his money separately from the rest of the family during this period. He opened a bank account with National Westminster Bank in Rochdale, paying his wages into the account and using it to support the family. More likely than not, this was pooled with funds made available to Mohammed and Roquiya for the support of the family, such as child benefit and the proceeds of Mohammed's pension. Contrary to Pervez's evidence, I am also satisfied this would have included at least a substantial part of Arshad's wages during the early years. The family moved to the UK with significant demands and minimal financial resources. As

a young member of the family, Arshad would have been expected to earn his keep and contribute to the wider demands of the family. Although Pervez would himself have been no more than 21 years of age when they arrived, it is plain from his evidence that he was plain speaking and, in a position of authority; he also knew his own mind. No doubt, he encouraged Arshad to find work to support the family. It is inherently unlikely he would lightly have tolerated Arshad withholding his wages. It is also unlikely Arshad would have had the sense of independence to do so at that stage. In the absence of contemporary documentary evidence to the contrary, I thus prefer Arshad's evidence to the evidence of Pervez on this particular aspect.

296. Secondly, whilst Pervez was no doubt a higher earner than Arshad and the other family members throughout the early years and assumed personal responsibility for repayment of loans, it can reasonably be surmised that at least part of the purchase price for several properties was raised from pooled family monies. Since Pervez did not accept that there was ever a pooled fund, it was axiomatic that the properties could not have been purchased out of such a fund. After it was put to him that the first such property, at 7 Pullman Street, was purchased using pooled funds (Day 22/89/9-11) and the profits, following re-sale, were paid into his own bank account as part of the pooled funds (Day 22/91/9-11), Pervez thus made the point that "there was no pooled fund. That was my bank account". (Day 22/91/12-13). However, I am satisfied that Pervez held at least one bank account in which family monies were pooled and it is improbable that the properties were purchased using funds that he held separately from the rest of the family's money. A pattern developed in which properties were bought with pooled monies then sold with the proceeds re-applied in the purchase of new properties. In the case of 7 Pullman Street, Arshad assisted in carrying out works of improvement prior to re-sale.

297. Thirdly, whilst some properties were purchased in the Pervez's sole name, several properties were purchased in the names of other family members, particularly Mohammed and Roquiya. Property was also purchased in the name of Arshad as their second eldest son. When giving evidence, Pervez himself stated that this was done as a "mark of respect". It would make sense for property to be held in their names as a mark of respect if it was a family asset and they were chosen to hold it owing to their seniority or status within the family. It would make less sense for Pervez to have transferred it into

the names of other family members on this basis if they were no more than Pervez's personal nominees and thus held on bare trust for Pervez absolutely. When cross examined on this, Pervez was able to provide no rational explanation as to why the properties were transferred into the names of other family members if it was understood he was the beneficial owner. For example, although he maintains that he bought the leasehold property at 2 Lower Tweedale Street, Rochdale (GM389844) with his own money, Pervez could not explain why it was purchased in the name of Roquiya then transferred, on 9 September 1993, into the joint names of Roquiya, Pervez and Arshad. In cross examination, he confirmed he did not know how the 1993 transfer "...came about, who did it, how did it and why did it", stating "I can't recall anything" (Day 19/156/3-18).

298. Throughout this period, Pervez was in control of the affairs of the family. Both transactions would have been on his instructions. If he has no recollection of the transactions, this suggests there was nothing striking or unusual about them at the time. In all likelihood, his instructions were on this basis because he regarded the properties as family assets. If Pervez aimed to enhance his prospects of obtaining a mortgage by proceeding in the names of multiple borrowers, this is not how his case was presented. There is every possibility he was alive to this as a possibility but there is nothing to suggest his overall objective at this age was to acquire properties for himself personally rather than the family as a whole.

299. Somewhat surprisingly, no evidence was adduced to suggest, for material purposes, there was an immediate change in the wider family dynamic during the 1980s when Pervez and Arshad each married and started their own families.

300. Upon Mohammed's death, his legal estate in jointly held property would have passed by survivorship. The same is true of co-owned property subject to a beneficial joint tenancy. However, property held by him otherwise than on this basis would have formed part of his estate. Under the law of intestate succession applicable at the time of his death, Roquiya would have become entitled to his personal chattels together with a statutory legacy of £75,000 and a life interest in one half of his residuary estate. As it happens, no grant of representation was ever obtained. However, it appears that in December 1995 or thereabouts, Pervez instructed Mr Kay to advise the family in connection with the potential inheritance tax liabilities of Mohammed's estate. Of course,

the deemed transfer of value to Roquiya, as Mohammed's surviving spouse, would have been exempt on the footing that they were domiciled in the UK at the time of his death. However, this would not have included the balance of his estate, widely defined so as to include all the property to which he was beneficially entitled at death save statutorily excluded property.

301. Mr Croxford cross examined Pervez on a written note dated 12 December 1995 from Molesworths' files, obtained only during the course of the trial following the issue of a witness statement requiring production under the provisions of *CPR 34.2(1)*. Although it did not refer to attendances, it appears to have been prepared by or on behalf of Mr Kay following a meeting with Pervez and one of his brothers. This is reflected in a letter dated 27 September 1996 from Mr Kay to Pervez in which he referred to their discussions in December 1995 and an invoice dated 29 September 1996, addressed to Pervez himself, for services following a meeting with him and an unidentified brother to "discuss the property held partly in the name of your mother and partly in joint names with yourself..."

302. When cross examined on the note, Pervez appeared unable to give specific evidence about the meeting or meetings at which these discussions might have taken place. However, he stated that "in 20 years, I would have met [Mr Kay] dozens of times, but, on and off, and these sort of topics were brought up" (Day 20/83/7-9). Although he appeared to have no specific recollection of the particular meeting in question, he surmised at one point that the discussions would have involved Kashif. Indeed, he went so far as to say "I say that – again that it was Kashif with whom he had all this discussion. If it had been discussed with me, then I would have understood that" (Day 20/87/4-11).

303. Although the meeting took place as long ago as December 1995, when Kashif was no more than 22 years of age, shortly after he started work for Shaik & Co as a trainee accountant, it is more than conceivable Kashif was present at the meeting. This would be consistent with the invoice itself in which reference was made to the presence of a brother at a meeting. Elsewhere in the invoice, Kashif was specifically identified by name albeit not as a party to the meeting. No doubt, Kashif also had a better command of English than Pervez. However, it is overwhelmingly likely that Pervez himself attended the meeting and gave Mr Kay his instructions. It is possible that, if Kashif attended the meeting, Pervez relied on him for assistance in understanding or clarifying Mr Kay's

questions and ensuring his own instructions to Mr Kay were properly understood. However, it is unlikely Pervez would have allowed Kashif to dictate the conversation and unilaterally give his instructions to Mr Kay. To the extent Pervez suggested otherwise in cross examination, I reject his evidence.

304. Having been referred, in cross examination, to passages in the 12 December 1995 note about the legal title to the properties at Lower Tweedale Street and 63 Milkstone Road, Pervez was referred to the following paragraphs under the heading “Ownership of property generally”.

“The view as to ownership of the family property is that commonly held by muslim families. The Property belongs to the family rather than any particular individual and is often vested in the name of the head of the family for convenience sake.

The family will take the view that those members of the family who are prepared to work in the family business are entitled to a share in the property or the profits arising from it. Any member of the family who does not work in the family business and goes elsewhere will not be entitled to such a share.

The arrangement whereby the head of the family holds title to the property is convenient as if a member of the family was to leave and thus cease to be involved with the family property but was then to come back into the family the respective shares in family property can be amended without any major change in documentation”.

305. When asked to confirm whether these paragraphs would have correctly stated the position at the time, Pervez appeared to be equivocal about whether they might reflect the “commonly held” view of Muslim families (“Yes and no. It does happen and it does not happen. You can’t say anything for sure” Day 20/89/20-21). However, he was adamant that this did reflect the position in his household (Day 20/91/17-19). Pervez’s current impression about the view of other Muslim families is, in itself, of little, if any, significance. However, there is no good reason to suggest that the 12 December 1995 note does not accurately record Pervez’s instructions to Mr Kay at the time. If Kashif was present, it is conceivable the homily in relation to the work of family members was partly intended for his encouragement. However, in my judgment, these passages provide a clear insight into Pervez’s understanding about the ownership of the family properties at the time. They lend strong support to the proposition that the properties were regarded as assets of the family and beneficial ownership was not confined to Pervez.

306. It is not without significance that the invoice itself dated 26 September 1996 and addressed to Pervez himself was in the following terms.

“To our professional charges for work done following a meeting with yourself and your brother to discuss the *family property* held partly in the name of your mother and party in joint names with yourself, *discussion on the equitable interest in the property considered to be owned on behalf of the family* and the need for tax planning to avoid possible inheritance tax falling due in the future considering some of the options available and writing to you in detail the matter then being passed by you to your Accountant Mr Aziz Shaik and your brother Mr Javed Kashif for further consideration”
(My italics).

307. In this light, it was put to Pervez that he couldn't have advised Mr Kay, at the meeting, that the properties were all in his personal ownership. Pervez's answer was that “if we had a meeting in this regard with him and we would have taken the matter further, then I would definitively have told him”. He later sought to clarify that no such meeting was specifically held since Mr Kay provided his advice “on and off” (Day 20/81-24/82-21).

308. Contrary to Pervez's evidence, I am satisfied that the issue of ownership was discussed at a meeting between them in December 1995 and, during the discussion, Pervez did not state that the properties were all in his personal ownership. Had he done so, the meeting would have taken an entirely different course and Mr Kay's note dated 12 December 1995 would have recorded Pervez's contentions on the point. His contentions would then have been reflected in the invoice itself. However, for the avoidance of doubt, I am also satisfied Pervez said nothing at the meeting to suggest that the properties were beneficially owned by Arshad and himself in equal shares.

309. Pervez was also cross examined about the ownership of the Rochdale and Longsight businesses. Relying on Mr Salim's evidence, it was put to Pervez that, before 1985, he had carried on business with Arshad as equal partners. In reply, Pervez stated as follows (Day 22/112/11-18).

“Mr Salim knows 100% that this business was mine and mine alone, but since I had sacked him, that's the reason he came here and sat in the witness box. He - - knows for sure that the business belonged to me. Mr Salim knew it all and now what he's saying is just because he's against me and he did the wrong documentation, but at the time, we were not bothered about that.”

310. When cross examined on the balance sheet prepared by Mr Salim for “Choudhury Alam Brothers” as at 31 October 1982 showing drawings of £7370, Pervez did not challenge the authenticity of the document but took issue with the proposition that he shared the drawings with Arshad (Day 22/107-12/108-5). This could only be on the footing that the reference to “Choudhury Alam Brothers” in the heading to the accounts was to his business as a sole trader.

311. On these issues, I unhesitatingly prefer Mr Salim’s evidence to the evidence of Pervez. If conducting business in the name of “Choudhury Alam Brothers” was intended only to create the misleading impression Pervez was trading in partnership when he was actually a sole trader, he would not have been the first sole trader to operate on this basis. However, trading as “Choudhury Alam Brothers” was obviously more consistent with a partnership than a sole proprietorship even if, as Pervez contends, Arshad did not personally refer to himself as Arshad Alam at the time. In any event, Mr Salim was confident in his recollection that Pervez and Arshad carried on business as a partnership at this stage. Whilst Mr Salim’s professional relationship with Pervez ultimately descended into acrimony, any suggestion that this might have prompted Mr Salim to give a dishonest account would require compelling evidence. There is no such evidence here.

312. Conversely, it is also clear that Mr Salim’s understanding of the business relationship between Pervez and Arshad was essentially based only on his instructions from Pervez himself. It is unlikely that Arshad instructed him separately. Moreover, Pervez was in all likelihood in control of the affairs of the business and is likely to have played a more substantial role in the business than Arshad. It can thus be inferred that Pervez had his own reasons for treating Arshad as a partner or holding him out as such, whether for tax or other purposes. Whilst their relevant historic tax returns were not admitted in evidence, I am satisfied, on the balance of probability, tax returns would have been filed on the basis they were partners and, having held themselves out, together, as “Choudhury Alam Brothers”, they could have been sued as such. Since Pervez denies that they conducted business in the guise of a partnership or held themselves out as partners, it is not open to him to suggest, simply, that the arrangement was a sham. His evidence is that there was no such arrangement at all. Contrary to Pervez’s evidence, I am thus satisfied that Pervez and Arshad are to be regarded as partners in the period 1981-1985

and, in the absence of evidence to the contrary, they are taken to have been equal partners. Whilst Arshad may not have fully understood the nature of their working relationship at the time, they were effectively working together – albeit at Pervez’s direction - and carrying on business in common with a view of profit.

313. It can be seen from the partnership balance sheet, as at 31 October 1985, that the partnership encompassed the laundrette and grocery businesses since the “laundrette plant machinery and equipment” and the premises at 2 Lower Tweedale Street were separately listed as fixed assets. However, the property at 2 Lower Tweedale Street was purchased in the names of Mohammed and Roquiya and treated as a family asset. No doubt the grocery business was treated as a partnership asset. However, it can be inferred that the reference to the property as a fixed asset of the partnership was erroneous.

314. Pervez was later cross examined about the incorporation of WCCL, the appointment of Arshad and Mohammed as shareholders and the allotment of share capital in the new company. He was also taken to WCCL’s first annual accounts for the year ending on 31 October 1986, again prepared by Mr Salim. These showed that, on 1 November 1985, WCCL had acquired the grocery business “formerly carried on by the *directors* under the partnership name of Choudhary (sic) Brothers” (my italics) notwithstanding that the recorded directors included Mohammed in addition to Pervez and Arshad.

315. When asked about the appointment of Arshad and Mohammed as directors, Pervez explained that “when I asked Salim in his office that I want to form a company, he asked me to give him two more names. And, my lord, he knew my name because I was the one who was asking him to form the company and then he said that I should give him two more names. And I thought that it was a necessity that he needs two more names, and I said to him that ‘you put down here my father’s name and my younger brother’s name’. That the reality and that’s the fact and that’s what happened” (Day 23/18/3-12). Later, Pervez appeared to confirm that the shares were also allotted to Arshad and Mohammed on the same basis, stating that “... the reality is that the - - their names are in - - in this, that, had he not asked me for two more names, he had asked for just one name, it would have been my name and had he asked for one name, then it would have been my father’s name” (Day 23/19/9-13).

316. When he confirmed there was never any discussion with a view to giving Arshad a 50% share (Day 23/31/22-24), it was put to Pervez that this would have reflected their shares in the partnership. The question and Pervez's answer are as follows.

“Q You and your brother Arshad had equal shareholdings in this company because you had been equal partners and you were now going to be, as between yourselves, the equal owners of this company.

A. Looking at the paperwork, it appears so, but the shares of our father, they were more than either of us. And if you look at that in this context, then my other four brothers, how would they -- they do not know about this and how would they work with me or how would we pull on together? And if they come to know that they are 50% shareholders, how would -- what would they think? How would they be satisfied?”

317. It is now almost forty years since Pervez's initial conversations with Mr Salim about the concept of incorporation and attendant formalities. Although the concept would have been unfamiliar to Pervez and he may have a distant recollection of the occasion on which it was first canvassed with him, it is inherently unlikely he has a detailed recollection of his conversations with Mr Salim at the time. More likely than not, there will also have been many occasions on which Pervez was advised of the need to obtain signatures from members of his family which he could easily have confused with the formalities for the new company. However, Mr Salim obtained his instructions from Pervez only, not other members of the family. On the balance of probability, it was Pervez's decision to put the shares into the name of Mohammed, Arshad and himself, and nominate them for appointment as directors. On this basis, it is more than conceivable that Pervez can recollect making these decisions and advising Mr Salim to attend to the necessary formalities. However, I am not satisfied Pervez would have nominated Mohammed and Arshad for appointment as directors simply because he thought it necessary to obtain two more names. He would certainly not have been professionally advised that this was the case. The same is true of their initial allotment of shares. In all likelihood, Pervez regarded the shares as a family asset and instructed Mr Salim to appoint Mohammed and Arshad

as directors on account of his perceptions about their seniority within the family. However, beneficial ownership would not be confined to the three shareholders. Mindful that his other brothers were also participating in the businesses, Pervez himself put it in this way: “how would they work with me or how would we pull on together” if otherwise.

318. No doubt, in this respect, WCCL was distinct from the preceding partnership, Choudhury Alam Brothers, in which the assets appear to have been owned equally by Pervez and Arshad. The obvious explanation is that, by the time the business was transferred to WCCL, the business had grown significantly in scale and it was now viewed as a family venture with Shahid now working full time in the business and every prospect that Zahid would wish to do so in the future. No profit and loss account was admitted for the year ending on 31 October 1985 from which to assess turnover. However, by comparing the partnership balance sheets as at 31 October 1982 and 1985, it can be seen that there was a substantial increase in the assets and liabilities of the business over this period. By 31 October 1985, Shahid was working full time in the business and Zahid was assuming increased levels of responsibility. It would thus have been more natural for Pervez to treat the business, like the family properties, as a family asset at that stage. In any event, I am satisfied that Arshad and Mohammed were fully aware they held their shares in WCCL on this basis and, by the time WCCL commenced in business, Zahid and Shahid had a similar understanding about the ownership of the business itself.

319. Following Mohammed’s death, Mohammed’s shares in WCCL were put into the name of Roquiya or at least treated as such. When Pervez was asked to confirm that, in 1994, the shares in WCCL were thus held by Pervez himself, Arshad and Roquiya, he replied that they were “partners in the paperwork” only and that “he” – by which he meant Arshad knew this to be the case. In a somewhat obscure passage of his evidence, he then stated that “if that was the case, then it was my mother as well, and if it was him, then it was my father as well, and if it is him, then there are my brothers as well” (Day 24/45/1-5). However, by this I took Pervez to mean that, whilst shares were held in his name, Arshad was no more beneficially entitled than his parents or siblings. It was implicit in his evidence that they were put in Arshad’s name on the understanding they would be held for Pervez himself or at least subject to his directions. By then, Pervez was already in control of the family affairs and accustomed to getting his own way. He expected members of the family

to defer to him and believed that he was acting according to the best interests of the family. I am thus satisfied that Pervez believed that the shares would be held at his direction. More likely than not, however, they were held on trust for the family and not simply for himself personally.

320. The acquisition of the Longsight store and commencement of business through the vehicle of WWF Manchester was more complex. Upon formation, two ordinary £1 shares were issued and transferred to Pervez and Arshad. However, at the outset, Zahid and Mr Yasin were together appointed directors. Moreover, Mr Yasin assisted Pervez in setting up the shop and commencing business.

321. Nevertheless, the acquisition of the new company was almost certainly funded from monies held on behalf of WCCL. This was not denied by Pervez when put to him in cross examination (Day 24/40-24/41-6) and it can reasonably be inferred that, at the outset, a substantial part of the new company's working capital originated from WCCL.

322. By letter dated 20 July 1994, Pervez advised Mr Mike Smith of WH Smith News that "our newest venture as a family is a single storey unit in Longsight..." and, on this basis, sought to make contact with Mr Smith "in the hope of obtaining a supply of daily newspapers and magazines". Having been referred to the letter and answered a series of questions about it, Pervez indicated that he had dictated the letter rather than written it personally. More likely than not, this is correct. However, there is no good reason to believe it did not accurately reflect his instructions.

323. When it was put to Pervez, on behalf of Arshad, that the reference to a "family venture" could not be taken as a reference to himself alone, Pervez observed that "this does not mean that apart from myself and Arshad, there's nobody else in this family" (Day 24/44/1-10). Later, he clarified that the reference to his family would have included each of his brothers who worked in the business at the time and, on reflection, confirmed that, in 1994, it extended to all his brothers since "Asif, he was also there" and "Kashif also worked as a trainee..." (Day 24/46/4-17). His mother was also "a part of the family" but the expression did not apply to her "in this manner", presumably because she was not working for the business at this stage (Day 24/46/1-3). Although Pervez later sought to distinguish this part of his evidence from the issue of ownership (Day 24/46/18-23), his evidence on this aspect of the case was illuminating.

324. By this stage, Pervez had already referred to the Rochdale business as a family owned business. By a letter dated 23 March 1994 to the Legal Secretary of the ACCA in which Pervez appears to have submitted a complaint about the conduct of their accountants, Riaz Ahmed & Co, Pervez stated that “we are a *small family owned business* previously a partnership now a limited company audited by the above”. It is unclear whether this complaint was pursued. However, when cross examined on this letter, Pervez stated that the letter was written on his behalf by a third party, Mr Shaik Abdul Rauf, who had written the letter in his own words. Pervez stated that “the reality is that I did not tell him -- tell him about these – our business or the wording used, small business, small family. I did not tell him anything like that, neither did I use these words” (Day 20/78/13-16). Whilst I accept that the letter was not written by Pervez himself, he was plainly content to approve and sign the letter and, on the balance of probability, I am satisfied that it is consistent with his views at the time.

325. Pervez was cross examined, at some length, about the Health and Safety inspection and prosecution involving the Rochdale store. When it was put to him that the local authority regarded Pervez himself as the employer and Zahid, as general manager, he did not disagree (Day 20/29/4-10). It is clear that, by the time of the inspection, Pervez was in overall control with Zahid attending to the daily management of the store. Pervez also confirmed that Arshad “would have been in Longsight, so he did not have any role over there” in Rochdale (Day 20/44/1-5). It was for this reason that Pervez and Zahid, not Arshad, were ultimately prosecuted. Although Arshad was formally recorded as a shareholder and director, he had no role in WCCL at this stage.

326. Mindful of the prosecution, Pervez maintains that he transferred to AIL his registered title to investment properties in Rochdale. No doubt, this included the registered title to 9 Briar Street (Title no. LA33517) and 298 Equitable Street (Title no. LA291701). Since Arshad was the sole shareholder of AIL, this was designed to create the impression that he did not have an interest in them, whether directly or through the vehicle of a company. In cross examination, Pervez stated that the decision to do so was based on the advice of his solicitors (Day 20/19-15/20-15). This is at least consistent with the chronological sequence since these properties were disposed of, in December 2020, when Pervez’s prosecution was pending. However, when Pervez was cross examined further (Day

23/100/12-22), he also stated that Arshad was issued with his share in AIL on the basis that Pervez was then facing prosecution. Mr Croxford was able to demonstrate that this could not be correct since Arshad was issued with his share in July 1999, some two months prior to the initial health and safety inspection. Mr Croxford put it to Pervez that, given the chronological sequence, his answer was a deliberate lie. If Pervez is to be given the benefit of the doubt and his answer put down to an error of recollection, this at least shows his recollection to be unreliable on this aspect of the case.

327. In any event, it can be seen that WWF Rochdale was formed, in September 2000, when the health and safety prosecution was pending. WCCL's assets and business also appear to have been transferred to WWF Rochdale during this period since its first annual accounts were for the year ending on 31 May 2001. It is also notable that Kashif's wife, Sumera, was initially appointed director of WWF Rochdale, not Pervez or Zahid.

328. The Acknowledgment appears to have been signed less than five months after Pervez was sentenced, in the Crown Court, to a fine of £19,500. In an entirely unconvincing passage of his cross examination, Pervez sought to suggest that the document was not drawn up at his request, stating that "I never made an attempt to get this sort of a document signed by them or written by them" (Day 25/28/14-15). Whilst the document was drawn up by Kashif following the intervention of Zahid, it is inherently unlikely that it was not initially prompted by Pervez himself. Although, in cross examination, Pervez sought to suggest otherwise, he was in all likelihood seeking to re-assert control following the steps that he had taken to distance himself from ownership during the prosecution. It is also a striking coincidence that the Acknowledgment was signed shortly after Arshad purchased his new house at 566 Broadway, Chadderton. Whilst Arshad has sought to overstate the impact this may have had on Pervez, it almost certainly generated resentment exacerbated by a sense he had lost a measure of control over the family affairs. In cross examination, Mr Croxford went to some lengths with Pervez to emphasise that the document was addressed "to whom it may concern" and probe whether it could thus be taken to have been prepared with the intention that it could be shown to third parties. Notwithstanding that Pervez sought to suggest otherwise (Day 25/27/19-22), I am satisfied this is so.

329. Conversely, when cross examined about the brothers' shares in WWF Birmingham, Pervez stated that the shares were allotted to all five brothers at his suggestion. According to him, he made the suggestion in a "conversation" between the brothers in Rochdale at which "all the brothers were present". This must have been at an early stage because "it was also discussed who would go to Birmingham" (Day 26/25/4-17). In re-examination, Pervez referred to a discussion in which "...we, all, brothers were sat there and everyone was happy that we are in a process to start a new business, and then I asked who would go to Birmingham, and before that any of my other brothers had responded, Arshad said that 'I would go'. I said 'fine, there's no problem, absolutely fine'" (Day 27/85/2-11). This part of Pervez's evidence was unconvincing. Whilst Arshad was more than happy to be appointed to manage the Birmingham store and is likely to have made this clear in discussions with his brothers, including at least one discussion at which Pervez was present, I prefer Kashif's evidence to Pervez's evidence on this issue, as indeed I do on most issues. Kashif's account was that there was an initial discussion between Arshad, Zahid, Shahid and Kashif himself, at Arshad's house, in relation to the ownership of the shares in WWF Birmingham at which they, together, decided that beneficial ownership should be divided equally. This was subsequently presented to Pervez who was content to proceed on this basis.

330. When, in July 2002, WCCL was dissolved, no formal steps were taken to transfer its assets to WWF Rochdale. The Rochdale store had originally been comprised in four separate registered titles under the names of Mohammed and Roquiya or Roquiya alone. Upon her death, they thus formed part of her estate. At the time of her death, she was also treated as one of the three shareholders of WCCL. However, her estate remained unadministered for several years. Conversely, WWF Rochdale appears to have assumed control of the assets of WCCL without any formal contract or instrument.

331. During 2003, Kashif instructed Molesworths to advise them in relation to the way forward and, on 27 November 2003, he spoke to an unidentified fee earner. Under the heading "Worldwide Cash & Carry Group", there is an attendance note of their conversation recording that "after some discussion [Kashif] confirmed [the fee earner's] understanding of the concept of 'family property' and that the shares vested in Pervez and Arshad [were] 'family property' not their own beneficially. We will argue constructive

trust with the deceased controlling voting rights". In reality, Roquiya would have very little understanding of matters such as this but they appear to reflect a submission Molesworths was proposing to canvass with the Inland Revenue. When Pervez was referred to the attendance note, he appeared to have no knowledge of the contents of the attendance note but stated that Kashif's instructions to Molesworths about the beneficial ownership of the shares were contrary to his own understanding (Day 21/65/17-24). However, he appeared not to have given any thought to this aspect of the case.

332. Pervez was then cross examined about the 2004 Trust Deed and the deed signed by all six brothers on the same date, 11 March 2004, consenting to the grant of letters of administration in respect of Roquiya's estate. Upon reflection, he confirmed that he could recall signing the deed consenting to the grant of letters of administration. He also confirmed that the Trust Deed bore his signature. In a surprising passage of his cross examination, he then stated that he signed the Trust Deed without reading it and without any advice or explanation from their solicitor, Mr Kay (Day 21/69/6-25). However, it ultimately appeared to be his evidence that he would simply have signed it because he "was satisfied that Kashif is doing...the right thing" (Day 21/9-16). At this stage, it became clear that Pervez's evidence was based on inference and surmise. He did not have a specific recollection of his understanding when signing each deed. More likely than not, the meaning of the documents was explained to him at the time and he understood what he was signing. He thus understood that the Deed contained a declaration that Roquiya's shares in WCCL were held "on trust for those members of the Alam Family who are currently involved in the family business". It is implausible to suggest that Mr Kay would have been content for Pervez and his brothers – particularly Pervez - to sign the documentation without understanding it. No doubt, on a matter of this importance – relating to the affairs of his family and the administration of his mother's estate - Pervez would also been astute to ensure he had a full understanding of the documents he was signing.

333. More generally, the meeting of 11 March 2004 was of lasting significance. Of all the brothers in attendance, I am satisfied that Pervez fully understood what he had signed up to. Zahid was now authorised to obtain a grant of administration in respect of Roquiya's

estate, including her historic shareholding in the dissolved company and her title to the investment properties. WWF Rochdale would continue to operate the Rochdale business utilising assets originally in WCCL's ownership. However, the properties would be transferred to AIL.

334. At this stage, the possibility remained open of transferring to a holding company the brothers' shares in WWF Manchester, WWF Rochdale and Al Halal although, unless and until this was achieved, they could each have every expectation that the issued shares of each such company would be held for the brothers participating in the relevant business. When cross examined as to who was running the relevant businesses, Pervez accepted that "by early 2003..., [he] was running Bradford, Shahid and Zahid were running Rochdale and Arshad was running Longsight" (Day 25/54/15-21). However, WWF Birmingham was apparently a special case since all five brothers had already been allotted specific shareholdings in the company, apparently on the understanding that they would hold the same beneficially. It was never envisaged that the share capital of WWF Birmingham would be transferred to a holding company.

335. Pervez was cross examined specifically as to why it is that, having envisaged, in March 2004 that shares in some of the trading companies would be transferred to AIL, no such "transaction was ... carried through". In answer, he stated that "the main reason for this" was that he did not give his consent (Day 26/50/7-14). He appeared to suggest this did not reflect a change of mind on his part (Day 26/51/2-15) rather he decided not to "press ahead" when he "came to know" that additional shares in AIL had been allotted to Arshad, Zahid, Kashif and Sumera. According to three Returns of Allotment of Shares dated 29 March 2004, shares were allotted, at that stage, to Arshad, Zahid, Kashif and Sumera (in addition to Pervez himself) to reflect the re-structuring transaction that had originally been envisaged, some time earlier, in August 2003. Pervez signed the return in respect of the shares allotted to Zahid and himself (369 shares each). The returns in respect of the shares allotted to Arshad, Kashif and Sumera were respectively signed by Arshad and Kashif.

336. On this aspect of the case, Pervez's evidence was confused. In part, it appears he decided to abandon the project to transfer the shares in the trading companies to AIL because he was unhappy with the identity of the prospective shareholders in AIL itself and

doubted whether it was practicable to proceed on this basis. More likely than not, he also perceived it was contrary to his interests to proceed further with the project.

337. When cross examined on WWF Rusholme's accounts for the year ending on 31 May 2016, signed off by him on 10 May 2017, Pervez contended that the company's auditor failed to draw his attention to the putative transaction for the disposal of the Cheetham Hill business. This issue is sharply contested and I shall address it in detail when dealing, more generally, with the issues of ownership in respect of the Cheetham Hill store (see 7(ii)(e) below).

(xiii) Zahid

338. Zahid's evidence was closely aligned with the evidence of Pervez on most issues. It was plainly shaped with a view to establishing the case collectively advanced by Pervez, Zahid and Shahid, as parties to the proceedings, on the footing that Pervez was and is the sole owner of each company. Although this is best appreciated once his evidence is considered cumulatively, it is exemplified by his stance when cross examined about the 2004 Trust Deed. Without qualification and without engaging with the provisions of the Deed or appreciating it was capable of nuance, he stated simply that Pervez was the owner – by which I took him to mean the sole owner – of WCCL. When pressed further, he stated that this was not his field; "it was...Kashif's to do. I didn't understand all this documentation" (Day 29/48-49). On this issue, as indeed, on all contentious issues, I have exercised caution when considering Zahid's evidence in the absence of independent corroboration. Contrary to Zahid's evidence, I am satisfied that the shares of WCCL were historically regarded as a family asset as, indeed, the 2004 Trust Deed itself suggested.

339. Zahid's testimony stretched back to when the family first moved to the UK from Pakistan. At that time, he would have been less than ten years of age. He confirmed that, whilst his father, Mohammed, was "laid back" and happy to return to Pakistan when given the opportunity to do so, Pervez had ambitions for the family. From an early age, he regarded Pervez as owner of the Rochdale store and the family businesses. Consistently with this, Pervez made all the important decisions, buying the stock and attending to the requirements of the bank. Like Pervez, Zahid appears to have confused control with ownership.

340. Zahid started work at the Rochdale store once he had left school. Out of the revenue of the business, Pervez looked after the household expenses and ensured Zahid and his brothers, including Arshad, were paid a wage.
341. Pervez attended to the purchase of the Longsight store, not Arshad, and when it was being set up, Zahid assisted him in installing the shelving and placing orders for stock. Arshad had nothing to do with the Longsight business at this stage. When it was initially opened, Shahid and Pervez's friend, Yasin, managed the store. At this stage, Arshad was working as a butcher at the Rochdale store. A little later, he moved to Pakistan. When he did so, Pervez replaced him with another employee. On his return, Pervez gave him a job at the Longsight store. However, certainly at that stage, Arshad was not given a role in the management of the business.
342. By this stage, Zahid already had an important management role at the Rochdale store and taken over responsibility, when required, for buying stock for other stores. At an early stage, Pervez was impressed with Zahid's intelligence and aptitude, qualities apparent when he was cross examined, and had entrusted him with levels of responsibility that he was reluctant to give Zahid's older brothers. Zahid was working at the Rochdale store at the time of the initial health and safety inspection in September 1999. He immediately contacted Pervez who was away in Pakistan. Pervez returned at the earliest opportunity and sought to deal with the Council's requisitions. Pervez and Zahid were prosecuted and convicted for several offences.
343. Zahid confirmed that the Acknowledgment was prepared and signed by the brothers on the basis that "Pervez wanted it sorted because he was still making all of the moves but he wasn't a solicitor so he couldn't sign things". The document was prepared by Kashif and Kashif explained what the document was for. In answer to a question from me, Zahid confirmed that Arshad signed the document in his presence. His testimony on this issue was more convincing than Arshad's evidence as, indeed, it was on most issues notwithstanding its own infelicities.
344. In his witness statement, Zahid stated that the store at Coventry Road, Birmingham was only purchased after it had been identified by a commercial surveyor, Mr Barry Dean. Mr Dean drew it to his attention and he visited the site with Pervez. At this stage, they had never traded in Birmingham and thus "looked at things like the community and traffic

flow". Ultimately, Pervez took the decision to purchase the premises and, together, Pervez and Zahid himself attended to the works necessary to fit up the store and make it ready for business. In Paragraph 22.1 of his statement, Zahid indicated that he did not discover that he had been made an owner of the Birmingham business until after the store opened. In Paragraph 22.2 of his statement, he stated that "Pervez told me he had made all the brothers equal in Birmingham. I understood this to mean that if there were 10 things then I would be owner of 2 things but that it didn't give me the right to make any decisions about the store in Birmingham: this was all still ultimately done by Pervez".

345. However, when asked to confirm his witness statement at trial, he indicated that he wished to modify these passages in his statement having heard Kashif's testimony that four brothers, Arshad, Shahid, Kashif and himself, had met to discuss ownership before the Birmingham store opened. On reflection, Zahid accepted that such a meeting had indeed taken place at Arshad's house at Broadway, Chadderton. It was implicit that, as Kashif had said, ownership was discussed at the meeting because Zahid then confirmed that he "knew before the Birmingham store opened" (Day 29/7-14/8-19). I took this to mean that he knew he had been made an owner before the Birmingham store opened.

346. When cross examined about this change in his evidence, Zahid stated that the meeting at Arshad's house took place after Pervez had "decided that everybody would get 20% shares between the five brothers". Following Pervez's decision, Arshad, Kashif, Shahid and Zahid himself "were all happy that this all five brothers owned 20% of shares". However, "the go-ahead came from Pervez Alam".

347. Zahid's testimony on this aspect of the case must be treated with particular caution in view of the fact that he appears to have had no recollection at all of the meeting at Arshad's house until after he had heard Kashif's evidence, certainly he made no reference to such a meeting beforehand. On balance, I have given Zahid the benefit of the doubt on the basis that Kashif's account prompted him to recollect such a meeting, not least because I accept Kashif's evidence on this issue and Zahid can be forgiven for initially overlooking a meeting that took place twenty years ago. However, on this basis, Zahid cannot have had more than a general and imprecise recollection of such a meeting or the context in which it took place. In the absence of corroboration, I do not accept that the meeting took place after Pervez had unilaterally determined that each of the brothers

would own 20% of the shares. More likely than not, Pervez ultimately accepted that the shares should be divided on this basis after he was advised of his brothers' proposal. No doubt, it would have been out of character for Pervez to cede control in this way. The most likely explanation is that, on reflection, Pervez was content to proceed on this basis since it was consistent with the understanding on which the family assets were generally held at the time, namely on behalf of the participating brothers.

348. Zahid confirmed that the stores at Rusholme and Miles Platting were purchased after the opportunity to so was brought to Pervez's attention by Mr Lamb. Arshad was not involved. Mr Lamb also advised them in connection with the opportunity to purchase the Cheetham Hill store. "The banking and legal was done through Kashif" and Zahid himself attended to the set up of the store. The stock was supplied from the Rochdale business. Initially, Pervez appointed Zahid as the manager but it soon became apparent to him that it was too much for Zahid to manage the Cheetham Hill and Rochdale stores. Moreover, there were issues in relation to vandalism and, at one point, there was a fire in the yard. Arshad was subsequently approached to take over the management of the store. On this aspect I prefer Zahid's testimony to the evidence of Arshad in relation to the initial acquisition and commencement of business from the Cheetham Hill store. On these matters, Arshad's testimony was inconsistent with the contemporaneous documentation and implausible.

349. Zahid was present at the final audit meeting between Pervez and Mr Anthony Steiner before Pervez approved WWF Rusholme's accounts for the year ending on 31 May 2016. When asked whether he could recollect Mr Steiner drawing their attention to the putative transaction on 30 November 2015 for the disposal of the Cheetham Hill business, Zahid's answer was "no, what is in my knowledge, no". When it was then put to him that Mr Steiner had pointed out the transaction, Zahid's answer was "no" (Day 31/36/11-37/5). Contrary to Zahid's evidence, I am satisfied, on the balance of probability, that Mr Steiner did refer to the transaction at the meeting. He could reasonably have been expected to do so. Whilst Pervez and Zahid claim to have no recollection that he did so and it is surprising that Pervez did not take issue with it at the time, I do not accept their uncorroborated evidence on this aspect of the case. The most likely explanation is that this item was only considered fleetingly and Pervez didn't fully appreciate the significance

of it at the time. The same is also likely to be true of Zahid notwithstanding that the presence of them both doesn't make their failure to raise the matter any easier to understand.

(xiv) Shahid

350. Shahid's evidence was again closely aligned with Pervez's evidence. He was less confident as a witness than Zahid. He was also more quietly spoken. However, on the more contentious issues as he saw them, his evidence was again calculated to support the case advanced by Pervez, Zahid and Shahid himself on the basis that Pervez was sole beneficial owner rather than openly address the question and provide accurate answers to the questions he was asked.

351. Following their letter dated 5 January 2018, in which Gateleys suggested, on behalf of Pervez, Zahid and Shahid, that the companies were controlled by Pervez for the benefit of all five participating brothers, their case was changed so as to claim that Pervez was the sole beneficial owner. At a late stage, this was modified further so as to treat WWF Birmingham as an exception. When cross examined on Gateleys letter dated 5 January 2018, Shahid took issue with the proposition that they were equal owners, stating "only the Birmingham one profit would be shared. Only -- other ones belong to Pervez..." (Day 32/17/2-17). However, he did not make an effort to explain or justify his change of position. This was illustrative of his approach throughout. His testimony appeared to have been tailored to fit the case being presented on his behalf without recognising the underlying issues and subtleties.

352. Shahid's testimony was shorter than Zahid's. It commenced with his early years in Pakistan and the move to Nottingham, then Rochdale. After working for Pervez in the shop at the Sholver Estate in Oldham, he started work at the Rochdale store when the Sholver shop was sold.

353. He confirmed that, shortly after Pervez opened the Longsight store, he started work there with Yasin. Shahid took on the role of manager of the Longsight store with Yasin's assistance. Arshad was not initially involved at Longsight but eventually Pervez arranged for him to work in the meat section.

354. Again, Shahid confirmed that the Acknowledgment was signed after the health and safety prosecution. He signed it himself together with Arshad and Zahid in the Rochdale office. His recollection, as presented to the court, is preferable to Arshad's evidence on this issue.

355. In his witness statement, Shahid did not mention the meeting at Arshad's house at which Arshad, Zahid, Kashif and himself are alleged to have agreed the shares in WWF Birmingham should be divided between the five brothers on an equal basis. Nor did he do so when giving evidence. In Paragraph 12.2, he stated simply that "I knew I owned 20% of Birmingham" and that he could "remember Pervez told me that from now on whichever cash and carry we buy in Birmingham I would own 20%". In cross examination, he stated that Pervez had advised the brothers that they would be entitled to 20% at a meeting in the office (Day 32/73/5-23). It is by no means inconceivable that there have been conversations between Pervez and Shahid in which Pervez has mentioned that the brothers, including Shahid himself, are each entitled to a 20% shareholding in the business. However, I am not satisfied that Pervez unilaterally made the decision to allot them each with 20% of the shares and collectively advised them of his decision in a meeting at his office. This is inconsistent with the evidence of the other witnesses, including Kashif, which is generally more convincing than the evidence of his brothers on the main factual issues.

356. Shahid stated that, if Arshad fell out with Pervez in 2003, he was unaware of this at the time. However, the probative value of his evidence on issues such as this was limited.

357. He was aware that Zahid initially found the store at Cheetham Hill. Shahid himself was not involved in setting up the Cheetham Hill business but could recall attending at an early stage with Zahid with supplies. He specifically recalled taking some fridges to the shop. On matters such as this, where he had a specific recollection of particular matters of detail, I have generally accepted his evidence in the absence of convincing evidence to suggest otherwise.

(xv) Adil

358. Adil is a son of Pervez. He currently manages the Worldwide Food stores at Woodhead Road, Great Horton Road and Leeds Road, Bradford. He was a measured and intelligent

witness. Inevitably, his evidence was influenced by his family connection. However, he was not a dishonest witness. Where based on his own factual recollection, as distinct from factual inference or impressions based on what he had been told by others, I am satisfied his evidence was generally reliable.

359. He was born in December 1987 in Rochdale. After graduating in electrical and electronic engineering at Imperial College, London and obtaining a postgraduate MBA qualification at Harvard, he joined his father's business in Bradford in 2011.

360. He gave some evidence about his experience of the businesses prior to 2011. This included a visit to the Coventry Road premises before it was purchased and the opening day at the Cheetham Hill store when Zahid had ordered a large balloon to fly above the store.

361. He also gave evidence about the occasion on which Pervez showed him the WWF Rusholme accounts for the year ending on 31 May 2016 and he alerted Pervez to the transaction for the disposal of the Cheetham Hill business.

362. Pervez himself maintains that he only became aware of the transaction for the disposal of the Cheetham Hill business when it was pointed out to him by Adil. Contrary to his evidence, I am satisfied Mr Steiner mentioned the transaction to Pervez at their audit clearance meeting shortly before he signed off the accounts but, surprising as it might seem, Pervez did not take issue with this at the time. I shall return to this aspect later when addressing the ownership of the Cheetham Hill store. However, there is no reason to believe Adil was made aware of the exchanges that took place between Mr Steiner and Pervez at the time.

363. There is also an issue as to when Adil first saw the accounts and drew the transaction to Pervez's attention.

364. In Paragraph 9.3 of his witness statement, Adil stated that "this must have been 10 May 2017 because I can see from the accounts that my father signed them on that date". Pervez was sufficiently concerned to request an immediate meeting with Mr Anthony Steiner of RSM. Adil made the necessary arrangements and a meeting took place at which the disposal was raised with Mr Steiner. In cross examination, Adil confirmed that this was "a few days after" Pervez had shown him the accounts.

365. However, it would appear from RSM's subsequent letter dated 28 March 2018 to WWF Rusholme that RSM were not advised the disposal was being challenged until 27 November 2017. When this letter was referred to Adil, Adil appeared to concede he might thus have been mistaken about the date on which he saw the relevant accounts and thus identified the disputed transaction since, after confirming that the issue was raised "a few days after" Pervez showed him the relevant accounts, he stated "what might be questionable is the day that I saw the accounts" (Day 33/142/3-17). Since the matter appears first to have been raised with Mr Lye on 23 or 24 October 2017, I am satisfied, on the balance of probability, that Adil first identified the disputed transaction earlier in October 2017 and the matter was not drawn to Mr Steiner's attention until 27 November 2017. In initially stating that the accounts were shown to him on the day Pervez signed them off, on 10 May 2017, his witness statement was incorrect. For the avoidance of doubt, however, I am satisfied that this was based on an error of recollection, not a deliberate attempt to mislead the court. By the time he made his witness statement, Adil was under the impression that he reviewed the relevant accounts on the very day they were signed off rather than on a subsequent occasion.

366. Adil also gave evidence about his exchange of emails with Kashif on 21 and 24 February 2020 when he asked Kashif to clarify the basis on which £1.35 million had been transferred from WWF Birmingham to AIL. Adil's exchange of emails with Kashif in February 2020 took place a long time after the re-arrangements to the companies' overdraft facility in May 2015 or thereabouts. However, it is illustrative of the way in which the re-arrangements were presented to Pervez by Kashif, namely that the "shared overdraft facility" was superseded so as to make each company accountable for its own expenditure. This meant funds had to be transferred from the positive bank accounts to the overdrawn accounts, namely WWF Rochdale and AIL, which involved the transfer of £1.35m from WWF Birmingham to AIL. If a cross reference is taken to WWF Birmingham's accounts for the year ending on 31 May 2015, it can be seen that during this period, WWF Birmingham's indebtedness to AIL was reduced from £1,465,892 to £291,004.

(xvi) Mr Lamb

367. Mr Lamb is a property consultant and chartered surveyor. He is director and employee of Link 61 Limited which trades as "Lamb & Swift Commercial", a regional firm of

commercial property consultants, surveyors and valuers based in Bolton. His evidence was clear, straightforward and reliable.

368. He confirmed that he was instructed by Aldi Stores Limited in connection with the disposal of their stores in Rusholme and Miles Platting. He identified the purchaser, in general terms, as “Worldwide Foods” but confirmed that he had acted for them in connection with other issues and transactions, including a compulsory purchase order some years later in respect of the Miles Platting store, and transactions in respect of a property at Seymour Grove, Old Trafford and the Pennine Distribution Centre in Rochdale.

369. His main points of contact were Pervez and Zahid. He confirmed that he was unacquainted with Arshad although he had heard his name. It can reasonably be inferred Arshad was not involved in the transaction for the purchase of the stores at Rusholme and Miles Platting. Certainly he was not initially involved. In all likelihood, Zahid identified the opportunity and Pervez made the decision to buy the properties.

(xvii) Mr Yasin

370. Mr Yasin has been closely acquainted with Pervez and his brothers since 1977 when they first arrived in the UK. He was for many years employed at WWF Manchester’s Longsight store but this came to an end following the delivery of two of his witness statements on behalf of Pervez. He was able to give evidence about Pervez’s evolving business interests from an early stage, including Haroon Fashions and his laundrette and grocery businesses on the Sholver Estate in Oldham. His evidence also encompassed the acquisition of the Rochdale, Longsight and Cheetham Hill stores.

371. Although it had initially been envisaged Mr Yasin would give his evidence through an interpreter, it was apparent, almost immediately, that this was un-necessary. For many years, he has been a close personal friend of Pervez and cannot be regarded as an independent witness. However, his evidence was generally clear and straightforward. It was also carefully considered. His witness statement was, in part, shaped to support Pervez’s case in the litigation albeit without any obvious transgression of *Practice Direction 57AC*. With this in mind, I have exercised caution when considering his evidence. However, I am satisfied that, for the most part, Mr Yasin’s factual account was given accurately and to the best of his recollection.

372. On the more contentious aspects, Mr Yasin corroborated Pervez's account in respect of the initial acquisition of the Longsight shop and the steps taken to set up business there. He confirmed that Arshad was not involved at this stage nor, indeed, was he involved for the first eighteen months of business. He also confirmed there was a significant level of collaboration between the Longsight and Rochdale businesses until commencement of the present dispute.

373. Mr Yasin also corroborated the account of Pervez and Zahid in relation to the initial acquisition of the Cheetham Hill store. In cross examination, he stated that "Arshad was never involved in finding or setting up the store. It was Zahid and Pervez who found the store, set it up. Arshad came into picture at a very late stage". At this stage, he confirmed that Arshad was at Longsight. (Day 34/91/4-13). I accept his account on this aspect of the dispute.

(xviii) Mr Rafiq

374. Mr Rafiq was called to give evidence as a long standing family acquaintance. He is elderly, at least 87 years of age. When cross examined, it soon emerged there were substantial irregularities in connection with the preparation of his witness statement.

375. On the basis that Mr Rafiq does not speak or understand English, a signed witness from him, in Urdu, was filed at court together with an English translation supported by the translator's certificate that the translation was accurate with a view to satisfying the procedural requirements of *Practice Direction 32 Paras 18.1* and *23.2*. The English translation was accompanied by a certificate of compliance with these requirements together with *Practice Directions 57AC* and the Statement of Best Practice in the Appendix to *PD 57AC*. However, there was no certificate under *PD 22 Para 3A.1*, applicable where a statement of truth is signed by a person who is unable to read the document other than by reason of language alone.

376. Mr Rafiq speaks Punjabi according to a Pakistani dialect. This shares the same script as Urdu. However, in cross examination, it emerged that he does not speak Urdu and is not able to read and understand the Urdu script. He was thus able to read neither his signed copy of the witness statement nor, of course, the English translation. His witness statement had been prepared following a process in which Mr Rafiq provided his account

of events, in Punjabi, using Adil as a translator, to a solicitor who does not speak Punjabi. It appears the witness statement was initially prepared in English then translated into Urdu. It was then translated back into English. This was then certified as a valid translation.

377. Owing to the irregularities in this process, Mr Rafiq was called to give evidence twice so as to obtain clarification, on the second occasion, about the process of preparation and Mr Rafiq's understanding of the evidence. On the first occasion, he appeared confused about the process of preparation suggesting, at one point, that Pervez's solicitor had read out the statement to him in Urdu. On the second occasion, inconsistencies in his testimony soon emerged which are at least potentially explicable by the process in which his statement had been prepared. For example, when answering questions from Mr Croxford it emerged that, contrary to Paragraph 6.1 of his witness statement, Arshad's youngest son is not married to his grand-daughter, rather he is married to the daughter of Mr Rafiq's nephew. When it was then put to Mr Rafiq that this was because he had "just accepted whatever's been read to you or put in front of you and been prepared to accept that as your evidence", he replied in the affirmative (Day 37/27/1-4).

378. In my judgment, the irregularities in connection with the preparation and admission of Mr Rafiq's witness statement have tainted his testimony and I cannot safely rely on his evidence as an accurate and reliable account. I have thus excluded his evidence altogether from consideration.

(xix) Ms Zahida Parveen

379. As Roquiya's youngest sister, Ms Zahida Parveen is the aunt of all six brothers. She lived in Pakistan until the early 1990s when she moved to the UK to live with rest of the family in the house at Deeplish Road. She gave her evidence through an interpreter. I am satisfied that she gave an honest and reliable account of her understanding and perceptions

380. Ms Zahida Parveen gave evidence that she had a close relationship with her sister throughout her life and was well acquainted with the family in Pakistan and subsequently in the UK. In cross examination, she confirmed that Pervez had been given a high level of responsibility, within the family, from an early age.

381. When asked about WCCL, she described it as “the family business” (Day 34/165/2-3) although she did not know about the shareholdings in the company. She was unable to say whether her sister was a shareholder (Day 34/160/7-11). However, when it was put to her that her “sister owned property worth thousands and thousands of pounds”, she confirmed that she knew or, at least, believed this to be the case (Day 34/160/4-6).

(xx) Mr Tahir

382. Mr Tahir is a director of NQV UK Limited, which is involved in the wholesale supply of fruit and vegetables. He has been a supplier of WWF Rochdale and its associated companies since 2001. He was an excitable witness with firmly held views. However, these were ultimately of only limited evidential value.

383. He gave evidence that, within the local community, Pervez has historically been regarded as the owner of the Worldwide Food businesses. No doubt, this is, indeed, his perception based on Pervez’s control of company business and the extent to which his brothers historically appeared to defer to him. However, like some other witnesses, he appears to have confused control with ownership.

(xxi) Mr Saleem

384. Mr Saleem first became acquainted with the brothers when he was manager of Habib Bank’s Rochdale branch. This can be traced back to the time Pervez was running a corner shop at Castlemere Street. However, WCCL and WWF Manchester each held accounts with the Bank during the 1990s.

385. He was able to confirm that he dealt mainly with Pervez on bank business and, consistently with the evidence of other brothers, stated that “Pervez was in the driving seat. Pervez was the main powerful force” (Day 35/26/7-14). However, when challenged on historic detail, his recollection was limited. This is not unsurprising but his evidence was ultimately of insubstantial value for the purpose of elucidating the main issues and answering the questions to which they give rise.

(xxii) Mr Hussain

386. Mr Hussain is now the head butcher at an Al Halal store on Leeds Road, Bradford. However, since his arrival in the UK in April 2004, he has worked at a series of Worldwide Food stores including the Longsight, Birmingham, Rochdale and Oldham stores.
387. Mr Hussain was certainly not an independent witness. He is one of Pervez's employees. He confirmed, in cross examination, that Pervez recruited him from Pakistan together with three others, including his brother Khalid Niaz, and arranged for them to be provided with a work permit together with food and accommodation when they initially arrived in the UK. It is not surprising he has a sense of loyalty to Pervez which was reflected in his evidence, not least his personal descriptions.
388. I accept Mr Hussain's evidence that Pervez was generally regarded as "the boss" and, at least when Mr Hussain started work at Longsight for a three month period in 2004, everyone within the family generally deferred to Pervez. However, during this period, Pervez would have been pre-occupied with the acquisition and set up of the new stores at Miles Platting and Rusholme in addition to the demands placed on him in respect of the day to day affairs of Al Halal. If there was any ambiguity in his evidence about the role of Arshad – whom Mr Hussain regarded as supervisor - at the Longsight store, I am satisfied that Arshad was by then in control of the management of the store. To the extent that Pervez had a role in the business, it was in relation to issues of overall strategy in respect of the informal group as a whole.
389. When asked whether he had discussed ownership of AIL with Pervez, Mr Hussain stated "no. I no ask him ownership. I think he's the owner of everything. He's the boss. Everybody follows him" (Day 35/58/17-21). Like several of Pervez's witnesses, Mr Hussain's impression of Pervez as owner was based simply on inferences from Pervez's relationship with others within the family and the observation that everyone appeared to defer to him.

(xxiii) Mr Idrees

390. Mr Idrees is now a security officer working in Bradford. He arrived in the UK in May 2004 and, after working in Bradford for two months, he worked in Birmingham until May 2005. During this short period, he was required to open and close the Birmingham store, look after the meat section, attend to deliveries and look after the shop floor. Mr Idrees's

evidence was confined to a relatively short period of time and, in places, it was quite vague. He also appears to have overlooked or forgotten about Dr Amjad's role in the Birmingham business at the time. His evidence was of limited value.

391. Mr Idrees's recollection was that he was asked to assist at the Birmingham store because Arshad was in hospital. Arshad's stroke was of course in July 2004. He confirmed that, after a period of about two or three months, Arshad started to attend Birmingham for one or two days a week and assumed responsibility for buying fruit and vegetables and dealing with meat suppliers.

392. Mr Idrees confirmed that, throughout the period he was in Birmingham, Pervez would attend every two to three weeks to check everything and that he continued to regard Pervez as his boss when Arshad returned to the business. He also recalled that Kashif would attend once a week to attend to the payment of their wages. Since they are based on Mr Idrees's specific recollection during a particular period, I am inclined to accept that Pervez and Arshad regularly attended the Birmingham store although, after this length of time, his recollection about the frequency of Pervez's visits is likely to be no more than guess work. It is thus apparent that Pervez continued to maintain an interest in the Birmingham business once management responsibility was given to Arshad. However, this was in exceptional circumstances in the immediate aftermath of Arshad's stroke. If he regarded Pervez as his boss, this is not entirely surprising in view of the fact that he started work in Birmingham at Pervez's request. It is perhaps more significant that Pervez took it upon himself to arrange for Mr Idrees to assist at the store.

(xxiv) Mr Ashraf

393. Mr Ashraf is a coach driver. He has also been acquainted with the six brothers for upwards of forty years. On this basis, he was able to give a useful insight in relation to the family dynamic during the early years, the formation of the early businesses and the acquisition of the initial business premises and investment properties. He came across as a careful and honest witness who gave significant evidence in corroborating Pervez's testimony.

394. Mr Ashraf confirmed that, from the beginning, Pervez was a hard worker who was alive to the opportunities that came to acquire properties and set up businesses. In the light

of Mr Ashraf's evidence, it is clear that Pervez alone identified the properties and business opportunities as they arose at Castlemere Street, Union Street, Ventnor Street, 7 Pullman Street, Deeplish Road, Tweedale Street and Lower Tweedale Street. He also opened the Longsight shop.

395. When his evidence was tested in cross examination, Mr Ashraf did not make extravagant claims about the ownership of the properties. He accepted that he didn't discuss ownership of the properties or companies with Pervez. His evidence was consistent with the possibility that, whilst Pervez purchased the properties and businesses, they were acquired as family assets.

(xxv) Asif

396. Asif is the second youngest brother of Pervez, Arshad and their immediate family. He has worked for the family businesses in the past and confirmed, in his witness statement, that this was the case "maybe until 2005 full time". However, he was never accorded a high level of responsibility. At the time of trial, he was working on a self-employed basis, importing soft drinks. However, he was able to give evidence about the initial formation of the family businesses and the relationship between the brothers. He was also cross examined on the transcript of a conversation with Umar.

397. Asif was a volatile witness. He was at times uncooperative in responding to questions. His evidence was internally inconsistent, for example in relation to an incident involving a violent third party assault on his son. Moreover, on some important issues he appeared to have no recollection. For example, he had no recollection of the meeting to discuss probate of Roquiya's estate (Day 35/146/14-17). I am not satisfied I can rely on his uncorroborated evidence.

398. He confirmed that, by the time of her death, Roquiya knew or believed she owned valuable property (Day 35/146/24-25) and was a shareholder in WCCL (Day 35/146/5-7). However, in answer to Mr Croxford's specific questions about ownership of the companies formed subsequently, he confirmed they were fully owned by Pervez. This includes WWF Rochdale and Al Halal (Day 35/143-25/144-8), WWF Birmingham (Day 35/144/6-8) and WWF Manchester (Day 36/35/2-11). At one point, he suggested that Pervez owned all the companies formed after WCCL, including AIL (Day 35/34-21/35-15)

albeit having drawn a distinction between the legal title to the shares in WWF Manchester and the ownership of the company itself. In reality, Asif cannot have been cognisant with the legal and beneficial title to the shares of each company and his knowledge about the management of their affairs will have diminished over the years, particularly once he ceased to work full time in the businesses.

399. As with other witnesses, including Pervez himself, Asif appears to have confused ownership with control and his understanding about the measure of control Pervez exercised over the company's affairs was itself limited. I have thus taken the view that Asif's testimony about the ownership of the family companies and properties is, in itself, of negligible evidential value.

400. Asif was not probed in relation to the ownership of 2 Dean Court, Rochdale which was acquired for him as a home in September 2003 and transferred into the name of AIL. He is not a party to these proceedings and, in the event that he seeks to assert a claim to such a property under a constructive trust, this question can only be resolved in separate proceedings.

(xxvi) Mr Lye

401. Mr Lye is a chartered accountant. In 1997, he started work for BDO Stoy Hayward ("**BDO**") and, until May 2016, he stayed with the same team in a succession of firms culminating with RSM. In May 2016, he left RSM to join chartered accountants, Ashworth Moulds. In 2016, he became a partner of Ashworth Moulds.

402. From 2004 or thereabouts until 2016 when he joined Ashworth Moulds, he repeatedly worked on the audits in respect of the Worldwide Foods businesses. He was not involved in the audit for the year ending in May 2016, including the WWF Rusholme audit for this period. This audit was carried out by RSM after Mr Lye left to join Ashworth Moulds. However, Ashworth Moulds were subsequently instructed to replace RSM as auditors of the companies under the control of Pervez, Zahid and Shahid. They were also asked to revisit WWF Rusholme's account for the year ending on May 2016. These accounts were then amended by deleting the reference to a transaction, on 30 November 2015, in which the assets and liabilities of the Cheetham Hill store were allegedly transferred to WWF Cheetham Hill, and continuing to incorporate the assets of the Cheetham Hill business in

WWF Rusholme's accounts. The amended accounts were approved by the board on 10 April 2019 and signed by Mr Christopher Harrison, of Ashworth Moulds, on 25 April 2019.

403. Mr Lye was a careful and honest witness who provided a valuable insight in relation to the management of the affairs of AIL and the Worldwide Food companies. However, he can only have obtained a superficial impression of the underlying dynamic between the brothers. Moreover, as the businesses evolved, his recollection of the overall financial management of the companies is likely to have been shaped by his recollection of the systems in place towards the end. He confirmed that, for many years, he regarded Kashif as finance director for the whole group and it is from Kashif that he obtained his understanding about the companies' *modus operandi*. Kashif monitored the bookkeepers at each business, ensuring the accounting records were properly maintained. Mr Lye would attend the Rochdale store for audit and Kashif would arrange for the books and records from each store to be delivered there for him to review. However, Mr Lye also confirmed that he was advised, at an early stage, and was under the impression that Pervez was overall "boss" of the group as a whole.

404. Most of the companies were subject to audit. However, this was not always the case with all group companies, in particular WWF Manchester and, after 31 May 2012, AIL. During the course of each audit, he would attend meetings with Pervez, Kashif and, on some occasions, Zahid. These generally took place at the Rochdale store. In his meetings with Pervez, he would highlight major points and ask him about post balance sheet events. Following the audit clearance meetings, the accounts would be left with Kashif for him to arrange for them to be signed off. The accounts were never signed off in his presence. They would be signed and returned to him later. However, there was generally a mad rush to get the accounts signed off.

405. Whilst there was no formal group structure and the trading companies can be seen to have conducted their business through separate bank accounts, these were for many years subject to an aggregate overdraft facility encompassing each company within the group. He also confirmed that payments on behalf of family members were generally made by AIL. AIL would pay their salaries with at least some salaried remuneration and wage costs recharged to the trading companies. However, in all likelihood, there was no such system in place until some point during the year ending on 31 May 2005 when entries

for “related party transactions” were made for the first time in AIL’s audited accounts. These accounts were only approved by the board on 19 April 2007, almost two years after the company’s year end. In any event, it can reasonably be surmised that the brothers’ salaried remuneration first became subject to these arrangements after the abandonment of the project to transfer the share capital of the trading companies to AIL, as holding company.

406. Whilst Mr Lye was not involved on the audits for the year ending on 31 May 2016 with the disputed item in respect of the transfer of the Cheetham Hill business, he confirmed he would have expected this to be raised with RSM. This part of his evidence was not in the least surprising. By then overall responsibility for the audit had been given to Mr Anthony Steiner, with whom Mr Lye confirmed he was well acquainted. In re-examination, Mr Lye also confirmed that, when he was subsequently asked to re-visit the RSM’s file for the 2016 audit in respect of WWF Rusholme, he saw a brief note suggesting there had been a discussion with Pervez and Kashif which may have related to the Cheetham Hill transaction (Day 36/127/3-8). Mr Lye was not originally involved in the 2016 audit and he was not giving direct evidence with first-hand knowledge. However, whilst his evidence was based simply on his own inferences from third party documentation and was thus of insubstantial evidential value, it is again unsurprising he considered himself able to draw such inferences.

(xxvii) Mr Payne

407. Mr Payne is managing director of Paynes Dairies Limited. Since 2005 or 2006, he has supplied the Worldwide Foods companies with milk. He gave evidence remotely by videolink. It was given in a confident and straightforward way.

408. Mr Payne gave evidence that he currently supplies milk to the Worldwide Foods stores at Rochdale, Oldham, Longsight, Cheetham Hill, Rusholme, Old Trafford, Bradford and Coventry Road, Birmingham. He stated that, for the most part, he transacts his business with Zahid. This includes, even now, the stores in Birmingham, Longsight and Cheetham Hill. However, he has dealt on occasion with Shahid. In his witness statement, he stated that he had no recollection of meeting Arshad but couldn’t be certain. However, when Arshad was presented before him on screen, he confidently recollected that he had seen Arshad before on a single occasion a long time ago.

409. I have no reason to doubt that Mr Payne's evidence is correct, particularly in relation to his trading relationship with the Worldwide Foods companies and his contact with Zahid. Based on his evidence, I accept that he recognised Arshad and, on the balance of probability, he can thus be taken to have met Arshad on at least one occasion. However, when and in what circumstances is obscure.

(xxviii) Mr Younis

410. Mr Younis is an employee of WWF Rochdale. He gave evidence that he has worked in the Worldwide Foods businesses for upwards of 45 years. It was initially envisaged that reliance would be placed on a witness summary of his evidence on the basis that it had not been possible to obtain a witness statement from him when witness statements were exchanged. By the time, Mr Younis was called to give evidence, his evidence was incorporated in a draft witness statement in Urdu which was translated into English. It essentially confirmed the contents of the witness summary and, when examined in chief, Mr Younis confirmed the witness statement itself.

411. There were issues in respect of Mr Younis's evidence that were comparable to the issues in relation to Mr Rafiq. It emerged his witness statement had been prepared in a similar way. Mr Younis also confirmed he was unable to read or write. However, he confirmed that the original witness statement had been read out to him in Urdu shortly before the hearing at the offices of Pervez's solicitors, Gateleys. He also confirmed that the contents of the witness statement were true and, when tested in cross examination, it was at least evident he understood his statement. Although he was lacking in confidence and at times appeared to have difficulty understanding the questions, I have decided not to exclude his evidence from consideration altogether.

412. However, Mr Younis's evidence was of limited probative value. He confirmed that Pervez bought the Cheetham Hill store and that "everyone knew Arshad had nothing to do with the purchase". However, he also stated that, Arshad had claimed ownership "from the very beginning" and did not disagree when Mr Croxford put it to him that Arshad had told him he was the owner of Longsight. He also accepted that Arshad had said he owned Birmingham. In this way Mr Younis acknowledged that Arshad had long-standing claims to all three businesses.

(xxix) Ms Thara Parveen

413. Ms Thara Parveen is an accounts and office manager who currently works at the Pennine Distribution Centre for Worldwide Foods stores at Rochdale, Old Trafford, Oldham and Rochdale. Her evidence was clear and straightforward. I am satisfied that she gave an honest and reliable account.
414. Between 1991 and 2000, she managed the office for the Rochdale store. In 2010 or 2011, she returned to the Rochdale store after a period of time working as a teacher. In 2014, she was then redeployed to the Pennine Distribution Centre. During the initial period of 1991-2000, Zahid and Shahid were in control of the checkouts at the Rochdale store and Arshad worked in the butchers department. More recently, Zahid is now in charge of the Rochdale store and is responsible for the bulk buying for other shops through the Pennine Distribution Centre.
415. She confirmed that, during her initial period, the bookkeeping was done manually but was later moved to an electronic system and currently utilises Sage Business Cloud. The accounts for each branch of the business are maintained separately. Only Kashif and the bookkeepers historically had access to the accounting records of each of the branches. Ms Thara Parveen deals herself with most of the associated companies or their branches but not Birmingham, Cheetham Hill or Longsight (Day 39/50-51). Whilst she dealt with the Longsight store when she originally started, this had come to an end by the time she returned in 2010-2011 (Day 39/51/1-15).

(6) Expert Evidence

416. Expert reports have been filed in respect of forensic accounting, handwriting evidence and cultural norms. The forensic accountants were called to give evidence. Reports from the handwriting and cultural norm experts were admitted in evidence. Whilst their evidence was not agreed, they were not subject to examination in court.

(a) The forensic accountants' evidence

417. The forensic accountants' evidence was admitted for the purpose of determining "how and for whose benefit the revenue and profits of the component parts of the Worldwide Foods Business have been applied from time to time" under the court directions dated 28

September 2021. The main purpose of this direction was to assist the court in showing who was treated, by the parties, as owner of the relevant companies and businesses.

418. On behalf of Arshad and his companies, Ms Carolyn Plummer of Sedulo Forensic Accountants, was called to give evidence after providing a report dated 18 March 2022. On behalf of Pervez and the remaining parties, Mr Mark Underwood, of BDO LLP, after providing a report bearing the same date. Following exchange of their reports, Ms Plummer and Mr Underwood met on 29 March 2022. Following exchanges of email and telephone discussions, they produced a joint statement dated 14 April 2022. Their evidence was tested in cross examination. For the most part, it was clear and reliable.

419. Although the experts were unable to agree that they had each been provided with the same documentation, there were plainly substantial limitations on the accounting records available to them. In the absence of a sufficient set of financial statements, bank statements and nominal ledgers – denoted by her as the “Key Accounting Documents” - for the period from April 1994 to May 2010, Ms Plummer unsurprisingly concluded that she was unable to carry out a financial review for this period. This was consistent with the evidence of Mr Underwood who confirmed he had only been provided with nominal ledgers “from around 2010” for AIL, Al Halal, WWF Birmingham, WWF Manchester, WWF Rochdale and WWF Rusholme. Ms Plummer also observed that there were significant gaps in the Key Accounting Documents relating to the nine years ending on 31 May 2020. She was thus only in a position to provide a detailed review for the period from 1 November 2014 to 26 June 2019.

420. Consistently with Mr Lye’s evidence, Ms Plummer and Mr Underwood each gave evidence about the intercompany loan accounts, recorded on the nominal ledger for AIL, and the Family Loan accounts, recorded, on a separate spreadsheet with information about payments to family members contained in the Net Wages nominal ledger.

421. It can be seen from the relevant accounting records that the salaried remuneration of the brothers and other family members was charged to them under their PAYE reference no. with AIL and recharged to the trading companies, using the intercompany accounts. Ms Plummer identified Arshad’s salary, in the four years ending on 31 May 2016, as a cost of three specific trading companies, namely WWF Birmingham, Manchester and Longsight. In Paragraph 4.28 of her Report, Ms Plummer stated that the wages processed

by AIL in respect of Pervez, Arshad, their brothers and other family members under their PAYE reference for the years ending 31 May 2010 to 31 May 2015 and the period ending on 29 February 2016 were recharged to WWF Rusholme, WWF Rochdale and WWF Birmingham.

422. Ms Plummer and Mr Underwood also reached a measure of agreement about the drawings and expenses of Arshad and Pervez from each company as shown in the so-called family loan account. This is set out in an appendix to their joint statement and shows that such drawings and expenses were generally, but by no means exclusively from the companies over which Arshad and Pervez respectively had management responsibility. Mr Underwood noted that in the years ending on 31 May 2012-2016, Arshad had total expenses and drawings of £299,835 of which £52,026 (17%) came from “companies outside Ms Plummer’s definition of ‘Arshad companies’”. This definition encompassed WWF Cheetham Hill but not WWF Rusholme. Mr Underwood observed that “it is not surprising that cash payments for expenses and drawings were largely made from companies that each brother had most day-to-day dealings with, given that this would be most convenient for them”. He sought to minimise the significance of these payments on the basis that “the profits against which the payments were ultimately charged is the key indicator of where the benefit arose. This represents how they were ultimately accounted for rather than simply a cash movement”. However, as Mr Croxford demonstrated, in cross examination, this missed his clients’ point which was that Arshad was able or entitled to treat, as his own, the funds and assets of the companies under his management.

423. Consistently with Kashif’s testimony, dividends for the brothers were declared from one company only, WWF Birmingham. These were made out of WWF Birmingham’s realisable profits and credited to the brothers’ loan accounts with AIL. During the years ending on 31 May 2010-2016, the company declared dividends of £168,250 for the first two years successively, then £157,450, £154,465, £141,600, £158,967 and £158,645. Until 15 July 2015, when Arshad filed a return showing him to have been allotted with an additional 20,000 shares, the dividends were allocated to the brothers in equal shares. Indeed, Pervez continued to file tax returns showing he was entitled to dividends on this basis until 2016. Ms Plummer thus surmised that the dividend apportionment for the year

ending on 31 May 2016 ignored the allotment of 15 July 2015. In their Joint Statement, Ms Plummer and Mr Underwood “agreed that in the supporting spreadsheets for 2012, 2013, 2014 and 2016, the dividends for WWF Birmingham were split equally between the loan accounts of the five shareholders: Pervez, Arshad, [Kashif], Shahid and Zahid”.

424. Ms Plummer also made observations in relation to the acquisition of the Cheetham Hill store and the mortgage repayments. In April 2008, AIL purchased the property for £2,588,407.75 with a Nat West bank loan of £2,500,000 which was repaid in full by December 2017. Ms Plummer surmised that this was substantially raised out of the revenues of the Cheetham Hill store observing that, in the period 30 April 2010 to 30 November 2017, AIL received the sum of £2,323,994.40 from the Cheetham Hill store. Since this was not specifically earmarked as a matter for expert evidence, Mr Underwood did not deal with this aspect in his report. However, there can be no reasonable basis for challenging Ms Plummer’s conclusion that the mortgage in respect of the Cheetham Hill store was substantially repaid with funds generated from the business of the store itself. More likely than not, this was consistent with the general business model for AIL and the trading companies. The model did not provide for AIL to operate as a trustee of the trading assets.

425. It forms part of Arshad’s case that, in May 2015 or thereabouts, the parties reached an agreement or understanding under which WWF Birmingham credited AIL with funds to repay its overdraft to put an end to the process of “netting off” under which there was an aggregate overdraft facility to all associated companies. On this basis, it is alleged that WWF Birmingham credited AIL with £1.35 million in May 2015. Although Ms Plummer was not provided with formal documentation in relation to the alleged agreement, she was able to confirm, from AIL’s accounting records, that this sum was credited to AIL from WWF Birmingham in May 2015. She was also able to confirm that, on 10 March 2015, the aggregate sum of £1,090,283.31 was credited to AIL in respect of a claim against Nat West for mis-selling in relation to mis-selling of interest rate hedging products. However, she was unable to show how much of this was attributable to companies in which Arshad had an interest.

426. The expert evidence was entirely consistent with Mr Lye's evidence about the internal management of the companies and the collaboration that took place between them with a substantial volume of inter-company business.

427. Whilst the experts were open about the limitations on the information available from the companies' accounting records, it is clear from their evidence that, by 2010, a system was in place under which the participating brothers and their respective families were remunerated by AIL and such remuneration was re-charged to the trading companies for which they provided their services. In the case of Arshad, this included WWF Manchester and WWF Birmingham. It also included WWF Rusholme until the Cheetham Hill store business was transferred to WWF Cheetham Hill.

428. The brothers generally made their drawings on the same basis. Although the accounting records are incomplete, Arshad is likely to have made drawings from the Cheetham Hill business in addition to the businesses of WWF Manchester and WWF Birmingham. In any event, it is common ground that dividends were declared to the brothers from one company only, namely WWF Birmingham, although there are differences between them about the significance of this.

(b) The handwriting reports

429. The parties were given permission to rely on expert evidence from a forensic documentation and handwriting expert in relation to the question of whether Arshad signed the Acknowledgment.

430. Expert reports have been filed from Ms Ellen Radley, on behalf of Arshad and his companies, and Ms Elisabeth Briggs, on behalf of Pervez and the other parties.

431. In view of the fact that the original document is unavailable and each expert was thus working from copies of relatively poor resolution, they were unable to give conclusive evidence.

432. Having compared Arshad's putative signature on the copy Acknowledgment with his known signature on a series of other documents, Ms Radley stated that she was "of the opinion that there is moderate positive evidence to support the proposition that Arshad Alam wrote the signature...". She considered it fairly unlikely that the signature was a simulation by another individual or tracing of a master signature. However, she could not

determine whether a pen and ink signature was ever appended to the relevant document observing that it is a relatively easy process to transpose a genuine signature from one document to another, for example by scanning and reprinting.

433. Ms Briggs stated that the copy document bore “a close pictorial similarity to the known signatures” but, again, observed that the copy document could have been reproduced, traced or simulated by a third party and that “without sight of the original document I cannot completely exclude the possibility that the questioned signature could be a genuine signature transposed from another document”.

434. The expert handwriting evidence was thus inconclusive. I heard the evidence of the other witnesses without any preconceptions based on the reports of the handwriting experts.

(c) Cultural norms

435. The parties were also given permission to rely on the evidence of an expert on such cultural norms as were alleged to exist by Pervez and the parties aligned with him. This was based on the proposition, in Para 9.5 of the Schedule to their Particulars of Claim in the Birmingham Claim (BL-2020-MAN-000114), that the participating brothers, their cousins and children involved in the Worldwide Foods Business “are of Pakistani heritage and the following attitudes and traditions to family business are of relevance”, namely:

435.1. “...it is relatively common, although not universal, in families of Pakistani heritage that assets may be held or place in the name of the eldest in a family as a mark of respect” but “this does not, however, ...necessarily reflect the beneficial ownership of such assets” (Para 9.5.1);

435.2. “...it is relatively common for one family member (who need not necessarily be the generational head of the family) to own and run a business in which other members of the wider family will work and participate. Such work and participation by wider family members does not, however, connote that they own or have any rights of participation in the management of the affairs of the company without more such as to render the same a quasi-partnership or similar...” (Para 9.5.2)

435.3. “it is deemed to be disrespectful, and a matter of insult to other family members’ honesty and integrity, for one family member to raise or question the formal

structure or ownership in order to question the roles of various family members in a company. Such matters are viewed as being ones of trust and understanding between family members” (Para 9.5.3).

436. The overall proposition was challenged in Para 10(5) of the Defence Schedule. The constituent sub-paragraphs were put in issue and it was averred that, “in so far as Pervez relies upon any such matter of supposed Pakistani heritage or practice in support of his claim to sole beneficial ownership of...any company and/or business operated or controlled by Arshad, then each such allegation is denied”.

437. In support of their respective cases on these issues, expert reports from Dr Vanja Hamzic and Professor Mona Siddiqui were respectively filed on behalf of Pervez and Arshad and the parties aligned with them. However, they did not attend court and their evidence was not tested in cross examination. I have thus exercised significant caution in considering their evidence, particularly where there are substantial differences in their views.

438. In Paragraph 27 of his Report, Dr Hamzic observes that “Pakistan is a vastly diverse country, comprising numerous ethnic groups with their own distinct languages – such as the Punjabis, Migrants (Muhajirs), Saraikis, Paharis (Pothwaris), Sindhis, Makrains in the south: Baloch, Hazaras and Pashtuns in the west; or Dards, Wkhi, Baltis, Shinaki and Barusho communities in the north”. Consistently with this, Professor Siddiqui observes, in Paragraph 8 of her Report, that “...there is no singular or homogenous concept of the ‘Pakistani community’. While the family [in the present case] is originally from the Punjab, regional linguistic and ethnic diversity ie Punjabi, Sindhi, Pushtoon means there are subcultures which exist below and within any overarching national value patterns. In addition, the rural and urban areas of Pakistan differ in their emphasis on different values”.

439. In the present case, it must also be borne in mind that Mohammed and Roquiya moved to Kenya at a comparatively early age and from there to Pakistan, at about the time Kenya achieved independence, before moving to the UK in 1977. I must thus exercise particular caution before reaching generalised views about Pakistani cultural norms and extrapolating from these views to reach conclusions. This is particularly so given that, during the course of the trial, I was afforded the opportunity to view and assess the family dynamic at considerable length without preconception.

440. Bearing this in mind, there was a measure of agreement between Dr Hamzic and Professor Siddiqui. They both recognise that the concept of respect, or “izzat”, is a significant aspect of most Pakistani cultures and this can be taken to include for parents and elder members of the family. They also agree that family assets may be held or placed in the name of elder members of the family as a mark of respect. At least to this extent, the proposition in Para 9.5.1 of Pervez’s Schedule is made out. However, in the absence of specific agreement as to how this might be reflected in beneficial ownership, I have not relied on their reports to inform my specific conclusions on this issue. My conclusions on the issue are essentially based on my assessment of the contemporaneous documentary evidence and the evidence of the witnesses of fact. Based on the expert evidence, I am not persuaded that the propositions in Paras 9.5.2 and 9.5.3 embody or reflect applicable cultural norms.

(7) Share ownership

(i) Legal title

441. At all times, each company was under a statutory obligation to maintain a register of members, *Companies Act 1985 s352* and *Companies Act 2006 s 113*. The subscribers to a company’s memorandum are deemed to have agreed to become members and must be entered as such, *CA 1985 s22(2)(i)* and *CA 2006 s112(1)*. Every other person who agrees to become a member is also regarded as such if their name is entered on the register, *CA 1985 s22(ii)* and *CA 2006 s112(2)*. If a company elects to make a share offer, the shares are “allotted” when such a person agrees to take them. For this purpose, their assent will suffice, *Re Nuneaton Football Club [1989] BCLC 454*. However, the shares are not “issued” to them, as shareholders, until their names are entered on the register.

442. In *National Westminster Bank plc v IRC [1995] 1 AC 111*, a majority of the House of Lords thus concluded that shares in five business expansion companies had not been issued to the shareholders for tax purposes until the whole process of application, allotment and registration was complete. Although this conclusion was reached on conjoined tax appeals, it was dictated, for material purposes, by principles of company law and the statutory regime in the *Companies Acts*.

443. The leading judgment was delivered by Lord Templeman. Lords Slynn and Lloyd agreed with Lord Templeman's analysis and the route by which arrived at his conclusion.

444. Lord Templeman observed, as follows, at 126.

"The Act of 1985 preserves the distinction in English law between an enforceable contract for the issue of shares (which contract is constituted by an allotment) and the issue of shares which is completed by registration. Allotment confers a right to be registered. Registration confers title. Without registration, an applicant is not the holder of a share or a member of the company: the share has not been issued to him".

445. Consistently with this observation, he then set out the following propositions of law.

"No person can be a shareholder until he is registered. A person who is not a shareholder by registration cannot claim that the share has been issued to him, but only that the company is bound by contract to issue a share to him. A person who has been allotted shares is in as good a position in equity as a person to whom shares have been issued but that does not mean that there is no distinction between allotment and issue; an allotment creates an enforceable contract to issue and accept shares".

446. Consistently with Kashif's evidence in relation to WWF Birmingham, AIL and WWF Manchester, Mr Croxford submitted it could reasonably be surmised that, at the outset, company formation agents would have sent packs of formal company documentation to the company's initial representatives including a share register for each such company. At various stages, the companies' representatives would have included Shaik & Co or Kashif himself. The family shareholders initially earmarked as shareholders would, at that stage, have been entered on the share register. However, the share registers were not maintained afterwards. When returns were sent to Companies House recording changes in the registered shareholdings, these returns would not have reflected or been reflected in any change in the entries on the share registers.

447. There is no convincing evidence to suggest otherwise. No share registers were admitted in evidence nor was any contemporaneous documentary evidence admitted to suggest the same were maintained once they had been sent to the companies' representatives. Moreover, on this aspect of the case, none of the witnesses said anything to contradict the evidence of Kashif.

448. Applying Lord Templeman's guidance in *National Westminster Bank plc v IRC (supra)*, Mr Croxford submitted that, in the case of each relevant company – not merely WWF Birmingham, AIL or WWF Manchester - it could thus be inferred that the initial family members nominated for entry on the share register remained the only registered shareholders of each such company.
449. Conversely, Mr Chaisty submitted that, on analysis, the applicable principles are more nuanced than *National Westminster Bank plc v IRC (supra)* would suggest. He referred me to *Portal v Emmins (1875) 1 CPD 201*, in which the Court of Common Pleas determined that, although subscribers and registered shareholders were deemed to be shareholders under the provisions of *Section 8* of the *Companies Clauses Consolidation Act 1845*, extrinsic evidence was admissible to identify shareholders in the absence of a register or where the register is defective. Mr Chaisty also referred me to the judgment of Roth J in *re I Fit Global Ltd [2014] BCLC 116 (Ch)*, in which a petitioner, under *Section 994* of the *Companies Act 2006*, was adjudged to have standing to present a petition notwithstanding the absence of a register of members.
450. However *National Westminster Bank plc v IRC (supra)* was a decision of the House of Lords. Lord Templeman's guidance was clear and succinct. Lords Slynn and Lloyd were in full agreement with him. Notwithstanding Mr Chaisty's ingenious submissions, I am not persuaded there is a sound basis to distinguish or disapply Lord Templeman's analysis. *Portal v Emmins (1875) 1 CPD 201* is a decision of some antiquity which appears not to have been cited in the *National Westminster Bank* case. However, it is a decision of a lower court and, whilst there were similar features in each statutory scheme, they are not identical. Conversely, the *National Westminster Bank* case was itself not cited in *re I Fit Global Ltd [2014] BCLC 116 (Ch)*. The parties who might have been expected to rely on Lord Templeman's judgment attended in person. Moreover, one of them, Mrs Jackson, was herself personally responsible for the absence of the register. Roth J later observed he had jurisdiction to rectify the register retrospectively but, in the absence of a register, invited further submissions as to how they should proceed.
451. On the basis that the legal title to the issued shares of each company is vested in the first family shareholders nominated for registration, it is held as follows.
- (a) AIL – Arshad as sole shareholder;

- (b) WWF Birmingham – Pervez as sole shareholder;
- (c) WWF Manchester – Pervez and Arshad;
- (d) WWF Rochdale – Kashif and Sumera;
- (e) Al Halal – Arshad;
- (f) WWF Rusholme – Kashif;
- (g) Pennine Distribution – Pervez.

(ii) Beneficial ownership

452. Subject to a discrete question about the transfer to Arshad of Kashif's shares in WWF Birmingham, no point arises in relation to the formalities for transmission. In the case of each relevant company, members were entitled to transfer their shares subject to restrictions in the Articles requiring them to notify the directors of intended disposals to non-members with a right of pre-emption at fair value. In the event the directors fail to exercise their powers to refuse registration, transferees have an absolute right to registration, *re Hackney Pavilion [1924] 1 Ch 276*. The current dispute essentially turns on beneficial ownership.

453. Although the dispute relates to the beneficial ownership of shares in four specific companies only, namely AIL, WWF Birmingham, WWF Manchester and WWF Rusholme, it remains necessary to consider underlying questions about the beneficial ownership of shares in other companies and the beneficial ownership of real property transferred to AIL if the main issues in dispute are to be resolved properly. The statutory formalities for trusts of real property are, of course, distinct from trusts of shares. No interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, *LPA 1925 s53(1)(a)*, and a declaration of trust in respect of land must be manifested and proved by some writing signed by a person able to declare the trust, *LPA 1925 s53(1)(b)*. There are no such requirements in respect of shares in a company. However, *LPA 1925 s53(1)(c)* requires the subsequent disposition of an equitable interest or trust to be in writing signed by the person disposing of the same or his agent. In any event, the statutory formalities in *Section 53* do not affect the creation or operation of resulting, implied or constructive trusts.

454. In the present case, there is no material declaration of trust. When entering into the 2004 Trust Deed, Pervez and Arshad purported to make a declaration in relation to the ownership of shares in a dissolved company. This is of evidential significance but, following dissolution, there could obviously be no question of the brothers retrospectively creating an interest in its shares or dedicating the same to a trust.
455. Moreover, resulting trusts arise only as a presumption of last resort where the owner purports to transfer property or funds without effectively disposing of an equitable interest or otherwise intending to benefit the transferee.
456. In all likelihood, beneficial ownership at each relevant stage was and is the function of a common intention constructive trust based on an express or inferred intention among family members consistent with the principles identified in *Stack v Dowden* [2007] UKHL 17, *Jones v Kernott* [2011] UKSC 53 and *Hudson v Hathway* [2022] EWCA Civ 1648. In his submissions for Arshad, Mr Croxford sought to rely, in part, on the *Pallant v Morgan* [1953] Ch 43 equity, perhaps on the basis Pervez acquired at least some of the shares pursuant to a joint venture with Arshad. However, the conceptual basis for this part of Arshad's case is not free from obscurity.

(a) Origins

457. During the early years, Pervez was the principal breadwinner. On arrival in the UK, he would have been 21 years of age or thereabouts. Arshad could then have been no more than 17 years old. Their brothers were significantly younger. Their parents were lightly educated; Roquiya was barely literate. They all relied heavily on Pervez and he appears to have made the more important strategic decisions, identifying opportunities for work and places at which to live. Later, he identified business opportunities and investment properties for purchase. However, Mohammed contributed towards the upkeep of the family, from his pension and statutory benefits, and, contrary to Pervez's evidence, Arshad can be taken to have contributed regularly from his receipts as an employee.
458. Arshad has over-stated his role in the businesses set up by Pervez. Such businesses were plainly under Pervez's overall control during the early years. However, Arshad assisted him as, indeed, did their father, Mohammed, when the need arose and, subsequently, Shahid and Zahid when they were of sufficient age to do so.

459. Contrary to his testimony, it is also clear Pervez set up “Choudhury Alam Brothers” as a partnership and held out Arshad as his partner. More likely than not, Pervez set up the business in this way with a view to minimising his tax liabilities. No doubt, Arshad’s role in the partnership was passive in nature; deferring to Pervez at all times and relying on him to make all important or strategic decisions in relation to the partnership affairs. No doubt, Pervez was also in complete control of the partnership monies. Whilst Pervez will have allowed partnership receipts to be re-invested in the business mindful that family expenditure was tightly controlled, it can reasonably be surmised that, during the early years, he deployed each business, including the partnership business, to help support the family and provide some remuneration to Arshad and Shahid.
460. However, it is unlikely Pervez, or indeed Arshad, believed the assets of the partnership were held on behalf of the family or, indeed, regarded them as trust assets. The partnership business generated funds which Pervez was able to use to support the family. However, at that stage, there was nothing in the nature of a trust.
461. The final partnership balance sheet was as at 31 October 1985. By that time, WCCL had been formed with Pervez, Mohammed and Arshad recorded as directors and shareholders.
462. On 1 November 1986, the assets and business of the partnership were transferred to WCCL. This happened at an important time for the family as a whole. Shahid and Zahid were by then of full age, Zahid having achieved adulthood as recently as August 1986. For his part, Shahid was now working full time in the business. Zahid can have had every expectation of doing so in due course although he was also a promising cricketer with the outside possibility of an alternative professional career in the sport. Moreover, Arshad had recently married and Pervez was soon to embark on his own family. His son, Adil, was born in December 1987.
463. No doubt, Pervez was professionally advised – as he maintains – that there was good reason to incorporate from a business perspective. However, it is significant that he was content for Arshad and Mohammed to be nominated as directors and shareholders, in addition to himself, as a “mark of respect” and, indeed, for Mohammed to be allocated one more share than Arshad and himself. No doubt, this was because of their seniority or status within the family. This has an obvious logic if the company was being treated as

a family asset. However, if Pervez was intended to be the sole beneficial owner of the shares, he provided no convincing reason for allocating the shares in this way.

464. Pervez suggested that, when Mohammed and Arshad were nominated for appointment as directors, this was done because he was asked to provide two names in addition to himself. In my judgment, this passage of his evidence was unconvincing. The more likely explanation is that the company was regarded as a family venture. Pervez, Mohammed and Arshad were each selected as directors and shareholders owing to their seniority and status within the family.

465. Although there is a potential issue as to the identity of the family members who were entitled to participate, this view is consistent with the note taken on 12 December 1995, upwards of nine years later, when Mr Kay, of Molesworths, sought to take instructions from Pervez and Kashif in connection with the potential tax liabilities in respect of Mohammed's estate. When cross examined on the note and, in particular, the "family...view" that "members of the family ... prepared to work in the family business" were entitled to share in the property or profits of the business, Pervez refused to accept this was so. However, he did not provide a convincing explanation for the divergence between his perceptions now and the view recorded in Mr Kay's note. When, on 1 November 1986, the partnership assets were first transferred to WCCL, Kashif would have been no more than 13 years of age. He did not participate in the transaction and it is unlikely he knew anything about it at the time. However, the view in the note is consistent with Kashif's subsequent impressions about the ownership of the business assets, shaped by his experience when introduced to the business during the 1990s. The note is also consistent with Pervez's references to the Rochdale business and the newly established business at Longsight as a family-owned business or family venture in his letters dated 23rd March 1994 and 20 July 1994 to the Legal Secretary of the ACCA and WH Smith News (see above).

466. More likely than not, the shares of each company successively acquired by members of the family between July 1985 and April 2002 were initially held on this common understanding, ie on the understanding that they were a family asset. This would have included WWCL (incorporated on 8 July 1985), Alam & Sons Investment Properties Limited (a dormant company formed on 13 December 1990), WWF Manchester (7 April 1994), AIL

(15 July 1999), WWF Birmingham (15 July 1999), Al Halal (9 August 2000), WWF Rochdale (5 September 2000) and WWF Rusholme (9 April 2002). Whilst the shares in each such company were thus held in combinations of the names of Pervez, Arshad, Mohammed, Roquiya, and latterly Kashif and Sumera, they were held on trust for the family. Pervez, Arshad, Mohammed and Roquiya were initially selected according to their seniority within the family or, as Pervez put it, as a “mark of respect”. No doubt, Kashif subsequently arranged for shares to be put into the names of himself and his wife, Sumera, for reasons of convenience. However, no pattern can be discerned under which the legal title can be equated with beneficial ownership of the shares.

467. Prior to October 2000, when the family commenced a series of property transfers to ALL, properties were repeatedly purchased and disposed of in the names of Pervez, Arshad or their parents, Mohammed and Roquiya. A substantial number of business or investment properties were acquired in Pervez’s name, including the premises at Ventnor Street, Rochdale, the laundrette and grocery store at 91 and 95 Coleridge Road, on the Sholver Estate at Oldham, the Castlemere Store, Castlemere Street, Rochdale, 77 Milkstone Road, Rochdale and 65 Tweedale Street, Rochdale. The main store at Lower Tweedale Street, Rochdale and adjoining land (encompassed in title nos. GM389843, GM389844, LA 238640 and LA238641) were purchased in the names of Mohammed and Roquiya or Roquiya alone. The land known as the Former Education Stores, registered under title no. GM627358 was purchased in the names of Roquiya, Pervez and Arshad. “Cuckoos” at 63 Milkstone Road, Rochdale was acquired in the names of Mohammed and Roquiya before it was transferred to WCCL. The property at 2-4 Lower Tweedale Street, Rochdale (Title no. LA372573) was acquired in Arshad’s name before it was transferred to WCCL. The property at 24 Pullman Street, Rochdale, was also acquired in Arshad’s name. Conversely, the properties at 9 Briar Street, Rochdale (Title no LA33517) and 29 Equitable Street, Rochdale (LA291701) were acquired in Pervez’s name before they were transferred to ALL. The family properties at 7 Pullman Street, Rochdale was acquired in Pervez’s name, as indeed was the family home at 58 Deeplish Road, Rochdale.

468. However, I am satisfied that each of these properties was purchased as a family asset. They were purchased utilising pooled funds and third party advances secured by mortgage. The mortgages were taken in the names of the family members to whom the

title was transferred. The whole process was controlled by Pervez himself; he identified the properties for purchase, negotiated the transactions and determined the names of the family members to whom the properties were transferred in the light of the lenders' credit requirements for prospective purchasers. In this way, Mohammed, Roquiya and Arshad were repeatedly nominated as purchasers in addition to Pervez but they participated at Pervez's direction. Contrary to Arshad's evidence, I am satisfied that, in these early transactions, his role was essentially passive in nature.

469. It remains necessary to identify the nature of the family trust or trusts and the identity of the beneficiaries. None of the parties to the present litigation now contends that the relevant shares or properties were originally held subject to a family trust, at least not as their primary case. However, when I canvassed the possibility with counsel, Mr Croxford submitted – without prejudice to his primary case – that the relevant assets could be held subject to a purpose trust for the benefit of family members participating in the business or a trust for identified family members in fixed proportions. Pervez no longer advances such a case. However, by letter dated 15 January 2018, his solicitors identified a common intention, among the brothers, for the relevant companies to be controlled by Pervez for the brothers' joint benefit on the basis that “the profits [would be] pooled with the bothers receiving the same basic salary and then profits split equally”. This did not include WCCL. However, WWF Manchester, AIL, WWF Birmingham, Al Halal, WWF Rochdale, WWF Rusholme and Pennine Distribution were alleged to form part of the arrangement.

470. Mr Croxford submitted that the 2004 Trust Deed lends some support to the possibility that the shares are held subject to a purpose trust on the basis that, whilst it amounted only to a declaration about the way in which the shares of WCCL had historically been held, it was indicative of the common understanding on which shares in the other companies and businesses were held. The putative understanding in the 2004 Trust Deed was that the shares had historically been held “...on trust for those members of the Alam Family who are currently involved in the family trust”. This is consistent with the observations of Mr Kay in his letter dated 12 March 2004 to Kashif. Based on his instructions, Mr Kay stated that “my understanding of ‘family property’ is that the land and premises and the business, although vested in one or more of your brothers, is not considered to be their property beneficially”. Having noted that decisions were taken by

Pervez as “head of the family”, he confirmed it was his understanding that “if a member of the family was to leave the family business then he would not have a defined interest in the assets and that any such interest would be lost”.

471. Mindful that a trust for family members currently involved in the family trust or businesses might otherwise be construed as a trust for an abstract purpose rather than a defined class of beneficiaries and thus void as a private purpose trust, *Morice v Bishop of Durham (1804) 9 Ves 399*, Mr Croxford submitted that such a trust would be for the benefit of participating family members - identifiable as such - at any given point in time, *re Denley's Trust Deed [1969] 1 Ch 373*, and would thus have taken effect as a valid trust on that basis.

472. Whilst, no doubt, the 2004 Trust Deed is admissible as evidence at least as to the basis on which Pervez and Arshad believed they had historically held the shares in WCCL, I am not persuaded there was ever a common understanding that the shares – or indeed that any of the family's other assets – would be held on trust for a class of family members defined in this way. More likely than not, assets were acquired on the common understanding that they would be held on trust for particular individuals albeit, at least in later years, informed by their role in the various businesses. Assets acquired in the earlier years were held for each member of the immediate family and thus included Mohammed, Roquiya and each of their sons, Pervez, Arshad, Shahid, Zahid, Asif and Kashif. During this period, there was already an expectation that the brothers would each participate in the business once they reached adulthood. This included Asif. However, the views of the family evolved with the passage of time as the brothers grew older and the businesses expanded. Following the deaths of Mohammed and Roquiya, their beneficial interest in the pre-acquired assets formed part of their respective estates. With the exception of Asif, the brothers each had an immediate and continuing beneficial interest in the family assets. It follows that the properties came to be held subject to a series of family trusts dictated by the time at which the properties were initially acquired.

473. Asif was born in 1970. After he left school at the age of 16 years, he worked in the Rochdale store and, for some time, continued to work sporadically in the store at Rochdale. From time to time, he has also worked in other family stores. However, he was never accorded a high level of responsibility nor was he allotted shares in any of the

companies. Not long after he reached adulthood and certainly before WWF Manchester commenced business from the Longsight store, it became apparent he would not be entrusted with a significant management role. This is relevant because the acquisition of the store at Longsight was an important milestone in the development and expansion of the family businesses. From the perspective of Pervez and his other brothers, family members could be expected to demonstrate their commitment, if they were to participate in the business and be rewarded from its assets. This is reflected in Mr Kay's note taken, the following year, on 12 December 1995. By the time the Longsight store was acquired, Asif could no longer have had any expectation he would be beneficially entitled to businesses subsequently acquired. More likely than not, this included the family properties although there is nothing to suggest that he reflected on his rights nor did anything, at this stage, to release any beneficial interest he may have had in the family shares in WCCL or the family properties already acquired.

474. A question potentially arises as to the nature of the beneficial interests of family members in the family assets (including their interests in real property), in particular, whether such interests were held subject to a beneficial joint tenancy or tenancy in common or are to be treated as such under a common intention constructive trust. If held subject to a beneficial joint tenancy, the survivorship principle would apply. On this hypothesis, the interests of Mohammed and Roquiya would have passed to their survivors - in Mohammed's case, Roquiya, and their sons - without ever forming part of their estate. On balance, I am satisfied that the assets were all beneficially held subject to a tenancy in common or are to be treated as such. Where the legal title to the assets was held jointly, the same were thus held on trust or sub-trust for each family member. Prior to 1926, the legal title to such property was generally presumed to be vested in co-owners as joint tenants and the legal estate in land is now incapable of being held on any other basis, *LPA 1925 s1(6)*. In *Stack v Dowden [2007] UKHL 17*, the House of Lords took this as their starting point on the basis that equity follows the law. However, there was and is a competing principle that, where partners acquire land as part of their partnership assets, they are presumed to hold as beneficial tenants in common, *Lake v Craddock (1732) P. Wms 138*. This principle has been extended to property held, otherwise than in partnership, for the joint owners' business purposes, *Malayan Credit Ltd v Jack Chia-MPH*

Ltd [1986] AC 549. In the present case, the shares and investment properties were essentially held for business and investment purposes or, at least with a view to the promotion of their businesses. Whilst the beneficial owners were each closely related and there would, at least superficially, be some logic in applying the survivorship principle, Pervez and Arshad were each responsible for separate families from a relatively early stage.

475. Whilst the purchase of the business assets and investment properties was funded out of pooled funds, Pervez did more than his brothers, in the early years, to accumulate the funds and advance their business interests. At the very outset, it is also likely he contributed more than his brothers to the pooled funds. At all times prior to 2003, if not later, he was in overall control of all family business operations. However, he did not do anything to separate their business interests. With the exception of Asif, there was a continued expectation that they would each commit themselves to the businesses and, in doing so, work hard and be accorded a significant and commensurate level of responsibility once in a position to do so. This was largely achieved. In Kashif's case, this followed his training as an accountant but Pervez and the other brothers can be taken to have recognised the value of the professional skills he was thus able to contribute. Conversely, it was never contemplated that their parents should somehow be treated differently on the basis that the expectations of them were lower or they would not be in a position to contribute to the business in the same way. By the time of his death, Mohammed had ceased to make any substantial contribution to the business and Roquiya's contribution was negligible. The brothers themselves performed different roles in the businesses with Pervez accorded higher levels of responsibility and respect than the others. However, their respective interest in each corporate vehicle was not separately addressed or apportioned and it was not suggested Pervez should thus be accorded a larger beneficial interest than the others. It can thus be taken to have been the parties' common intention that they would be beneficially entitled to the relevant shares and properties as tenants in common in equal undivided shares.

476. Following his death in May 1990, Mohammed's beneficial interest in the family assets would have formed part of his estate. Since he died intestate, Roquiya would then have been entitled to his personal chattels together with a statutory legacy of £75,000 and a

life interest in half the residue. His surviving sons, Pervez, Arshad, Shahid, Zahid, Asif and Kashif would have been entitled to the rest of his estate on the statutory trusts in *Section 46(1)(i)* of the *Administration of Estates Act 1925*. However, as it happens, there was no grant of representation. Arrangements appear to have been made for his 334 shares in WCCL to be transferred into the name of Roquiya. However, it is unclear how this was achieved. Mohammed's estate would initially have vested in the President of the Family Division as Probate Judge. On 1 July 1995, it would then have vested in the Public Trustee under *Section 14(2)* of the *Law of Property (Miscellaneous Provisions) Act 1994*. In any event, the legal title to the shares would never have vested in Roquiya, if, as appears likely, there was no register of members, *National Westminster Bank plc v IRC (supra)*. Moreover, it is axiomatic that the beneficiaries of a deceased's estate do not acquire an immediate interest in the assets of the estate, *Commissioners of Stamp Duty (Queensland) v Livingston [1965] AC 694*. Since Mohammed's estate was never administered, no lawful steps were taken to realise his estate or make any distribution to Roquiya in respect of the amounts to which she was entitled in respect of her statutory legacy and life interest.

477. Following the death of Roquiya, again intestate, in December 1996, no grant of representation was obtained in respect of her estate until 21 April 2004. However, under the law of intestate succession, Pervez, Arshad, Shahid, Zahid, Asif and Kashif would have been succeeded to her estate under the statutory trusts in *Section 46(1)(ii)* of the *Administration of Estates Act 1925*. This would have included her beneficial interest in the family assets, including the family properties and shares in WWF Manchester. By the time Zahid obtained a grant, Roquiya's shares in WCCL had been transferred to Pervez and Arshad – again it is unclear how this was achieved – and WCCL had dissolved. However, the grant would be deemed to relate back to Roquiya's death, *Foster v Bates (1843) 12 M & W 226,233*, so as to enable Zahid to obtain relief in respect of injury wrongfully caused to Roquiya's estate prior to the grant (including any claim in damages for breach of trust) or, indeed, to validate transactions concluded for the benefit of the estate.

478. Between December 1996 and April 2002, when Arshad, Zahid, Shahid and Kashif each signed the Acknowledgment, five new companies were formed and acquired, namely ALL, WWF Birmingham, Al Halal, WWF Rochdale and WWF Rusholme. With the exception of

WWF Birmingham, acquired shortly before the initial Health and Safety inspection at the Rochdale store, Pervez was not issued with shares in any of these companies. During the same period, WCCL's assets and business were informally taken over or appropriated by WWF Rochdale prior to dissolution in July 2002. There is no evidence that was ever any orderly winding up of WCCL's affairs but WWF Rochdale can be taken to have assumed full responsibility for its assets and liabilities although the registered title to the Rochdale store remained in the name of Roquiya. However, Pervez transferred to AIL his title to three properties, 63 Milkstone Road, 9 Briar Street and 29 Equitable Street, Rochdale.

479. This sequence of events and transactions is not entirely explicable by the Health and Safety inspection and prosecution, not least because AIL and WWF Birmingham were incorporated and acquired beforehand. However, the Health and Safety prosecution and, more particularly, the perceived need to create the impression he did not own the relevant businesses or assets, plainly featured as an important consideration in Pervez's decision making. The same is true of Zahid albeit to a lesser extent. However, the participating brothers, Pervez, Arshad, Zahid, Shahid and Kashif, continued to regard them as family assets held for the use and benefit of the participating brothers themselves. There is no convincing evidence – certainly no convincing contemporary written evidence – that they understood the business assets or investment properties were held for Pervez's exclusive benefit or, indeed, on trust for Pervez and Arshad alone. The shares in each company were regarded as a family asset for the benefit of the five participating brothers. However, there was a substantial degree of informality in connection with the management of the companies' affairs. The brothers deferred to Pervez for important strategic decisions.

480. Nevertheless, whilst pre-occupied with the health and safety prosecution and, subsequently, the management of Al Halal, Pervez allowed a considerable amount of autonomy to his brothers in relation to the day to day management of the businesses in which they were respectively involved. It is unlikely a system was then in place for them to be remunerated through AIL and re-charged to the trading companies. In this respect, it can be surmised that the system described by Mr Lye developed later. Pervez was astute to impress upon them the importance of financial rectitude and the brothers were careful

in the amounts that they drew. However, it can be inferred they were able to make drawings from the business under their respective management.

481. The Acknowledgment was signed on 17 and 18 April 2002. It was signed first by Kashif, then by Arshad, Zahid and Shahid. In his closing submissions, Mr Chaisty confirmed that it forms no part of his clients' case that the Acknowledgment amounts, on its true construction, to a disposition of the brothers' equitable interests in the shares under the provisions of *Section 53(1)(c) of the Law of Property Act 1925*. In any event, there is no room for such a case. If treated as a contract, the document would be construed by ascertaining "the meaning which [it] would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time...", *Investors Compensation Scheme Ltd v West Bromwich BS [1998] 1 WLR 896, 912* (Lord Hoffmann). In view of the brevity of the document and the absence of relevant professional assistance – Kashif's professional experience was as an accountant rather than a lawyer – it would thus be construed with "greater emphasis on the factual matrix" than would generally be expected of a detailed contract or contractual instrument, professionally drawn up, *Wood v Capita [2017] UKSC 24 at [13]*.

482. On the hypothesis that it was a contractual document, it would not be permissible to take into consideration evidence about what the parties said or did during the course of the negotiations leading up to the contract for the purpose of ascertaining their intentions, *Chartbrook v Persimmon Homes Ltd [2009] UKHL 38*. However, it matters not. Whether construed on its own in the light of the surrounding circumstances or with reference to the parties' immediate intentions, it was not apt to dispose of or acknowledge rights of ownership.

483. Kashif drew up the document himself at Zahid's request. More likely than not, Zahid was prompted to do so by Pervez himself. At Zahid's request, Kashif signed the document and his other brothers attended the WWF Rochdale's Rochdale office to do so. On the hypothesis that the Acknowledgment is a contractual document, Kashif's evidence as to why he chose to use this form of words is not admissible for the purpose of construction. However, the timing of the Acknowledgment is clearly indicative of the intention of the signatories, when signing the document. It was signed less than five months after Pervez

was finally sentenced in the Crown Court at Manchester for the health and safety offences pending which he had disposed of three properties to AIL and taken steps to distance himself from several new corporate vehicles for the promotion of the company businesses. The document was also signed less than three weeks after Arshad unexpectedly contracted to purchase 566 Broadway, Chadderton. Viewed from Pervez's perspective, this would have signified a loss of control. For their part, the brothers had historically deferred to Pervez. He was a strong and formidable personality. Moreover, they are likely to have taken the view that Pervez was instrumental in the success of the businesses.

484. In all likelihood, the Acknowledgment was thus signed to signify Pervez's hegemony and provide him with the means to confirm he was in control of the businesses when communicating with third parties. Whilst limited to four named companies, namely Al Halal, WWF Rochdale, WWF Manchester and AIL, this encompassed all the companies in business at the time. There was no reference in the document to WWF Birmingham and WWF Rusholme because, at this stage, neither of these companies had commenced trade. However, the reference to "the past, present and future projects of Pervez Alam" was plainly intended to ensure that the Acknowledgment was comprehensive in scope.

485. Whilst Pervez was described as "owner" and the signatories confirmed they had "no ownership or interest", it is clear from contemporaneous documentation, for example Mr Kay's note dated 12 December 1995, that the business assets had historically been regarded as family assets. More likely than not, ownership was confused with control and it remained their view that Pervez' control was being exercised for the benefit of the participating brothers, not that Pervez was the sole owner of such assets.

486. In any event, the Acknowledgment was not apt to dispose of or release the brother's beneficial interest in the family assets since they did not use language that is redolent of the transmission of an interest and there was nothing in the context to dictate otherwise. Were it otherwise, it is inherently unlikely that the brothers willingly signed the document with the intention of extinguishing the family trusts. In any event whilst Asif was not a party to the Acknowledgment, he remained entitled, at this stage, to a historic interest in the assets acquired before WWF Manchester and rights in respect of the unadministered estates of Mohammed and Roquiya.

(b) WWF Birmingham

487. WWF Birmingham was formed in July 1999, almost four years prior to the acquisition of the first Birmingham store at 360 Coventry Road, Small Heath. It was formed on the same day as AIL. Mr Croxford submitted it was significant that Pervez and Arshad had mirror shareholdings. Arshad was the sole shareholder of AIL and Pervez was the sole shareholder of WWF Birmingham. However, this was consistent with the historic pattern in which shares were simply being allotted or transferred to the most senior members of the family. The two issued shares in WWF Manchester were transferred to Pervez and Arshad. Only one ordinary £1 share was issued in respect of AIL and WWF Birmingham; one of which was transferred to Arshad and the other to Pervez.

488. WWF Birmingham was initially incorporated under the name of “Worldwide Foods Cash & Carry (Manchester) Ltd” and was registered under this name until 28 April 2003 when its name was changed to “Worldwide Foods (Birmingham) Limited”. Until then it was dormant. However, it was obviously earmarked, at that stage, as the vehicle for the new business to be conducted from Birmingham. When the first Birmingham store at 360 Coventry Road was acquired two months later, it was thus acquired in the name of WWF Birmingham.

489. It is significant that Arshad was appointed director at the same time as the change of name, namely on 28 April 2003. At this stage, Kashif was already a director and Zahid company secretary. The timing of Arshad’s appointment suggests that, from the very outset, it was envisaged he would play an important role in the Birmingham project. It is noteworthy that Zahid resigned shortly afterwards, on 25 June 2003. Kashif did not resign as a director until 2 August 2007.

490. Arshad gave evidence that he never contemplated the store at Birmingham would be acquired in the name of one of their existing companies, even a dormant one. He says that he identified the premises at 360 Coventry Road himself, through his Bangladeshi vegetable supplier, Mr Tariq. On Arshad’s behalf, Kashif then negotiated to buy the premises. He requested Kashif to form a new company as the vehicle for the transaction, to be known as Worldwide Foods Birmingham Limited on the understanding he would be director and sole shareholder. However, contrary to his request, Kashif simply utilised the existing company WWF Birmingham, in which Pervez was the sole shareholder. Arshad

maintains he was never party to any agreement or discussion with a view to the allocation of five separate equal shareholdings for the five participating brothers.

491. Arshad's evidence on this aspect – as indeed on many contentious factual aspects of the case – was unsatisfactory and unconvincing. It is plain Arshad evinced his readiness to take on the role of manager of the new business at an early stage when the business opportunity was first identified. However, there is no independent evidence to suggest he advised his brothers that, contrary to the previous models, he intended to be sole proprietor of the new business or, indeed, that he took specific steps to ensure its affairs were kept separate from the other businesses. Had he done so, it is unlikely his brothers would have collaborated with him in the way they did, setting up the business, obtaining stock and providing administrative support without at least some discussion about the basis for doing so.

492. On 20 June 2003, the business premises at 360 Coventry Road, Small Heath were acquired and, it appears a decision was taken, at about the same time, to allot an additional 999 shares to the five brothers. Consistently with the general lack of company records, no minutes of a meeting were admitted into evidence showing that the directors or members ever resolved to allot the shares to the five brothers. In practice, this was not the way in which company business was handled. However, on 25 June 2003, Kashif filed a company return for WWF Birmingham recording the allotment of an additional 999 shares to the five brothers. The questions that arise are as to who made the decision and with whose authority, in particular whether it was made by the directors and approved by each of the five brothers as beneficiaries and allottees.

493. At this stage Arshad and Kashif were directors. Zahid was company secretary until 25 June 2003. Whilst Pervez was sole registered shareholder, he already held his share on trust for all five participating brothers on the family trusts. However, on the balance of probability, they all approved the decision.

493.1. Kashif himself was aware of the formalities and filed the relevant return. He accepts that he participated in the decision and assented to it.

493.2. Kashif was well aware that, in addition to his appointment as director, Arshad was taking on the management of the business. It is highly unlikely he would have filed

the return without doing anything to satisfy himself Arshad was content to proceed on this basis. It is also unlikely that Arshad would subsequently have signed off company accounts showing there was £1,000 of called up share capital subject of the control of the five brothers. He did so repeatedly in the years following the decision.

493.3. When called to give evidence, Zahid confirmed that the decision was made with his agreement. Shahid and Pervez also assented.

494. Precisely what happened is in dispute. Arshad gave evidence that there was no discussion about the matter at all. It was never contemplated – certainly not agreed – that his brothers would have shares in the new company. The share capital was to be vested solely in himself. In contrast, Kashif gave evidence that there was a specific meeting between Arshad, Zahid, Shahid and himself – not attended by Pervez – at which the four brothers agreed the shares in WWF Birmingham should be allotted to all five brothers as equal shareholders.

495. The other brothers did not initially refer to such a meeting in their witness statements and Zahid only confirmed that such a meeting took place when prompted to do so after hearing Kashif's evidence. Pervez maintained it was his unilateral decision to make the brothers equal shareholders; it was not their decision. Moreover, it would have been out of character and contrary to the way in which they had previously managed their affairs, for them to hold such a meeting and arrive at a decision of such importance in Pervez's absence.

496. However, I can see no good reason for Kashif to have imagined that such a meeting took place or – worse still – pretended it happened when, in reality, there was no such meeting. If it is suggested his evidence was simply designed to justify the steps taken by him personally in filing returns to record an allotment of shares which can now be seen to have been entirely fictitious, he went further than was necessary by giving evidence about a specific meeting with his brothers. In any event, Kashif was not a dishonest witness and he had a better understanding of the companies' affairs and the corporate formalities than his brothers. Moreover, his factual evidence – as distinct from his inferences and expressions of opinion - was generally more convincing and plausible than theirs. From the other brothers' perspective, there was also good reason for them to enter into such an agreement to clarify their rights in respect of the vehicle for new business in

Birmingham in the wake of the Acknowledgment concluded at Pervez's request the previous year. However, it is inconceivable that they would have done anything to withhold this from Pervez himself.

497. More likely than not, the other brothers anticipated they had a better prospect of establishing their rights if they reached agreement *inter se* or at least formed a collective view or proposal before presenting it to Pervez as the way in which they wished to proceed. I am thus satisfied that the essential elements of Kashif's testimony are correct. The brothers met in Pervez's absence, reached agreement and told him how they wished to proceed. Whatever view Pervez may initially have had about the proposal, he decided to go along with it.

498. This is not the way in which Pervez put it in his witness statement and it is subtly different from his evidence in cross examination. In Paragraph 36.2 of his witness statement, Pervez's recollection was that he told Kashif to make the brothers equal shareholders. He put it in a similar way when cross examined on Day 25/77/1-8. He did not state that he was advised the other brothers had themselves reached agreement first. However, when cross examined on the point on Day 19/34-20/35-12, he put it as follows.

"Q. And do you say that when it was agreed that each of the brothers would become a 20% shareholder, so far as you could see, each of your brothers knew that, did they?"

A. Yes. Yes, all of them, they knew it, yes.

Q. All of them did know that you and the other of those five brothers, the five of you, had reached an agreement; is that what you say?

A. (Interpreted) We are not saying agreement. All we're saying, they were all -- all consented. They were all -- all happy with the arrangements.

Q. "... it was discussed and agreed ..."

I'm not asking whether they were happy. I'm asking you whether it was discussed and agreed.

A. Yes, that's what it -- that's what is.

(Interpreted) Yes, that's what it was.

Q. And they each were aware, they each knew, they had made

an agreement, did they?

A. Yes, 200%.”

499. When tested in court, the differences between the evidence of Pervez and Kashif on this issue were essentially as to the route by which agreement was reached rather than the conclusion reached. On this aspect, as indeed on most factual aspects of the case, I prefer the evidence of Kashif where there is a difference between his evidence and the evidence of Pervez. Despite the unsatisfactory nature of the evidence as a whole, I am satisfied, on the balance of probability, that Pervez assented to the agreement reached between Arshad, Zahid, Shahid and Kashif that the share capital in WWF Birmingham should be divided between the five brothers equally. When Kashif filed the return dated 25 June 2003, the company’s registered directors can be taken to have unanimously made the decision to allot the additional shares to the five brothers with the consent and approval of Pervez as sole registered shareholder and all five brothers as beneficiaries and allottees. To the extent necessary, the company return was also filed with their authority.

500. Whilst it was at one point pleaded, on behalf of Pervez, Zahid and Shahid, that each of the brothers held their shares “subject to Pervez’s ultimate beneficial ownership” and were thus held on trust or sub-trust for Pervez himself, there was never any evidential basis for this proposition. It was always understood that the newly allotted shares would be held by the five brothers as beneficial owners. For the reasons I have already given when examining Kashif’s evidence, there is also no substantial evidential basis for the proposition that the agreement to issue each of the brothers with shares in WWF Birmingham was conditional only or that Kashif somehow “jumped the gun” when filing the return.

501. Since the allotted shares were not entered on the register of members, Pervez remained sole shareholder at law. However, the brothers each became contractually entitled to be registered as shareholders under the directors’ decision, approved by Pervez as shareholder and his participating brothers as beneficiaries, to allot the shares with their agreement and with the intention they would thus be entitled to the share capital in equal shares.

502. Following purchase of the Coventry Road store, a series of additional business and investment properties were acquired in the name of WWF Birmingham. The business

properties included a shop on 7 Alum Rock Road, Birmingham (Title No WM881629, 26 July 2011), the Brighton Arms store at 356-358 Coventry Road, Small Heath (Title No WK134091, 12 April 2012), the Stratford Road store at 753-769 and 771-773 Stratford Road, Sparkhill (Title Nos WK191592 and WK189387, 20 August 2014), the first Pakeezah Store at Leeds Road/Edderthorpe Street, Bradford (Title Nos WYK436075, WYK431650, WYK392938, WYK210272 and WYK315833, 2 December 2013) and the second Pakeezah store (Title YY53049, 14 July 2015). The investment properties included 65 Treaford Road (Title No. WM80638, 13 July 2006), Cheetham Hill Library (Title No.GM666173, 26 June 2015), 45 Green Lane, Small Heath (Title No WM765850, 20 January 2011), land on the North West side of 9 George Arthur Road, Saltley (Title No MM46898, 16 January 2015) and land on the South East side of Adderley Road, Birmingham (Title No WM577775, 23 November 2015). WWF Birmingham was registered as proprietor of each property and held the same as legal and beneficial owner. For the most part, the properties were acquired with funds advanced by National Westminster Bank plc pursuant to the group overdraft facility. The monies were advanced to the company itself and there is no evidence from which I can reasonably infer that it was intended that the company would hold the properties on trust for any other company or individual.

(c) The 2004 Watershed

503. In early 2004, two significant matters remained outstanding and in need of resolution. The first of these was longstanding. Following her death in December 1996, no grant had been obtained in respect of Roquiya's estate. It remained unadministered. However, the registered title to some property including the main store at Lower Tweedale Street, Rochdale remained in her name. Secondly, no substantial progress had been made in relation to the project for the transfer to AIL, as holding company, of the shares in WWF Manchester, WWF Rochdale and Al Halal notwithstanding that Tenon had obtained clearance for these transactions in August 2003. In anticipation of these transactions, some 99 ordinary shares in AIL had been allotted to Arshad on 29 September 2003 but no other steps had been taken.

504. These matters were connected since the properties and shares were family assets. Moreover, WWF Rochdale had appropriated the assets of WCCL, in which Roquiya was a shareholder prior to dissolution, and it was envisaged Roquiya's title to the properties

would be transferred to AIL in addition to the brothers' shares in the companies. Transferring the titles in this way would enable AIL to charge the properties in order to secure bank loans, potentially for the benefit of each of the trading companies. On its behalf, Pervez was about to acquire premises at Miles Platting and Wilmslow Road, Rusholme with monies to be advanced by National Westminster Bank plc for a business to be conducted through the vehicle of WWF Rusholme. If the Bank did not require additional security at this stage, it was likely to do so in the future.

505. Perhaps by historic anomaly and owing to the different specialisms of the practitioners with whom they were dealing, the two matters were put in the hands of different solicitors, namely Molesworths, of Rochdale, and Enoch Evans, of Walsall. Although these matters were closely linked and arose for consideration at the same time, they were thus dealt with separately. This appears to have given rise to a measure of confusion.

506. At the meeting of all six brothers, including Asif, on 11 March 2004, the main issue for consideration was the need for a grant in respect of Roquiya's estate although the execution of guarantees to support the companies' borrowing commitments appears also to have arisen and there was some discussion about the trusts on which Arshad held his shares in AIL. In any event, it is at least implicit in the attendance note of the meeting that the properties and shares were family assets and treated as such.

507. During the meeting, Pervez and Arshad executed the 2004 Trust Deed confirming that Roquiya's shares in WCCL had been held on trust for the family members who were currently involved in the family business. The brothers each agreed that the assets and liabilities of the estate were the responsibility of the family and they agreed to indemnify Zahid on a joint and "family" basis. They also signed a deed authorising Zahid to take out a grant of representation and charge properties in Roquiya's estate to secure AIL's liabilities. It would have been implicit that Zahid would not advance claims against the other brothers or WWF Rochdale for historic breaches of trust arising from the dissolution of WCCL and they would not sue him for any omission to bring such a claim, whether in their personal capacity as a beneficiary of the family trusts or in *devastavit* as a beneficiary of Roquiya's estate.

508. Advice was obtained from Mr Kay, of Molesworths, in relation to Roquiya's estate and the ownership of the family assets. Mr Kay's instructions are apparent from his letter

dated 12 March 2004 to Kashif. He was instructed that the land and premises were “family property” and they had decided to transfer all such property to AIL. He was also instructed that Arshad was the sole shareholder of AIL but, whilst he was made aware that Arshad was not the beneficial owner or at least sole beneficial owner of such shares, he was not told, so it appears, that additional shares were to be allotted to Pervez, Zahid, Kashif and Sumera. He thus advised that the shares in AIL should simply be transferred to Pervez and Arshad and held on discretionary family trusts.

509. Kashif then contacted Ms Shemar to make further progress with the transaction for AIL to acquire the share capital of the three trading companies. He will have done so, mindful that it was - as he put it later - a “two part” transaction under which the share capital of the three trading companies would be transferred to AIL and, in return, the AIL shareholders would be allotted shares in AIL.

510. Under cover of a letter dated 24 March 2004, Ms Shemar sent Kashif a series of documents, including draft board minutes approving the transactions on behalf of each company together with draft share purchase agreements and stock transfer forms.

511. Upon receipt, Kashif arranged for each of the documents to be signed and dated as 29 March 2004. This included the minutes of an AIL board meeting resolving that “in pursuance of the terms of the Share Purchase Agreement’s (sic) there should be issued the following ordinary £1 shares in the Company”, namely Pervez 369 shares, Zahid 369 shares, Arshad 173 shares, Kashif 123 shares and Sumera 118 shares. Ms Shemar had allocated the shares on the basis that Pervez, Zahid, Arshad, Kashif and Sumera were, together, registered as shareholders of the three companies. No doubt, this was based on the company returns in which Zahid, rather than Arshad, was erroneously shown as a shareholder of WWF Manchester. Since the original shares in all four companies were held on the family trusts, none of the signatories can reasonably have contemplated that the newly allotted shares would be held differently at this stage. There is no reason to believe Ms Shemar was aware of the family trusts when she prepared the documentation.

512. Kashif then filed returns of allotment of shares dated 29 March 2004 at Companies House in respect of AIL. The allotted shares corresponded with the company minutes, providing for 369 shares to be allotted to Pervez and Zahid, 173 shares to Arshad, 123 shares to Kashif and 118 shares to Sumera).

513. It subsequently emerged that, whilst steps had been taken to sign the share purchase agreements, they had not been executed properly owing to the absence of attesting witnesses. By letter dated 20 May 2004, Ms Shemar alerted Kashif to this issue and sent him clean copies of the share purchase agreements so that they could be signed and witnessed, as required. However, by that stage, it appears Pervez was having second thoughts. This is not entirely surprising in view of the increasing fragmentation of the businesses and the obvious disparity between the identity of the allotted shareholders and the beneficiaries of the underlying family trusts.

514. When Mr Croxford cross examined Pervez on this issue, Pervez sought to explain it in the following way (Day 26/53-9/54-8)

Q. And the process that Tenon had got Inland Revenue approval for was a process which was part carried through and then abandoned, wasn't it?

A. As I said, I did not press ahead with it because when I came to know that these shares, which they have transferred in Arshad's name, Zahid's name, Kashif's name, Sumera's name, how was that -- how that became possible? Who said them to do that? From where this possibility came?

Q. So you didn't press ahead and, in consequence, Alam Investments never got the shares in these other three companies which it was supposed to get in return for allotment of shares to various people.

A. No, I do not have any such thing in my knowledge.

Q. Yes. If the shareholders in these other companies transferred their shares to Alam, a bargain was that Alam would issue -- allot, I should say, new shares to them?

A. My Lord, had I known that -- my Lord, had I had any consultations with that or had I observed anything with regards to that and had that been my decision, and that would have happened just like that, but because there was no decision, my decision-making in that -- and

Kashif can answer this better because by his own mind why and how did this happen.

515. Kashif's explanation was different. He was examined on the issue (Day 12/17-8/19-4) after considering AIL's accounts for the year ending on 31 May 2004 – signed off on 25 November 2005 - in which there was no suggestion that any of the trading companies were an asset or subsidiary of AIL.

Q. By the time of these accounts in November 2005, it appears that the transfer into the ownership of the holding company hadn't actually taken place, had it?

A. Correct.

Q. We're more than 18 months on. There was presumably some reason why the 2004 transaction was not perfected, carried through, was there?

A. Correct. Your Lordship, I think the reason was we'd got -- the accountants had -- the solicitors had done the first part of the transaction where the shares had been exchanged. There was a second part to the transaction mentioned in that letter that we saw yesterday, the Tenon letter. And the second part of the transaction wasn't done, hence there's no parent subsidiary relationship in the accounts.

Q. So was there a decision by November of 2005 that this hasn't been done and we're not, therefore, going to carry it through and shown it as done?

A. The only decision I can think of is the shareholdings weren't as per Pervez Alam's requirements. I was being blamed for various shares being in various names, and then I was reluctant to meddle or do anything with shares any longer, hence I wouldn't have followed up any of the second part of the transaction.

Q. What was Pervez -- I'm trying to get the right word. What were Pervez's requirements?

A. Pervez's requirements were for everything to be put as it was before the health and safety case.

Q. Did the 2004 transaction do that?

A. No, it didn't.

Q. So was he willing or unwilling to continue with the 2004 transaction?

A. I'm not sure what he was willing to do, but I had not wanted to deal with shares any longer.

Q. And did he want them to be dealt with in the way that you had organised?

A. No.

Q. Did he regard that as being -- insofar as he explained it to you, did he explain why he wasn't prepared to go ahead?

A. Simple reason, he wanted them back as they were before the health and safety case.

Q. So he didn't want to do this transaction any longer?

A. I don't think he appreciated there were two parts of the transaction in the first place. I don't think I appreciated until I looked back at the documents that there were two parts of the transaction.

516. It appears from this passage of Kashif's examination in chief that he hadn't fully appreciated, at the time, this was – as he put it – a “two part” transaction or at least hadn't appreciated the significance of this. On 29 March 2004, the additional shares in AIL were allotted, as planned, to Pervez, Arshad, Zahid, Kashif and Sumera. However, Pervez later decided to abandon the whole project. On this basis, AIL never acquired share capital in any of the three trading companies.

517. In all likelihood, two reasons can be discerned for Pervez's decision to abandon the project.

517.1. Firstly, there was more than a suggestion in Pervez's evidence that he was puzzled and disquieted about the identity of the allotted shareholders and the apportionment of shares in AIL as holding company. This would have been difficult to reconcile with the concept of a trust, canvassed by Mr Kay, in which the shares were vested simply in Arshad and Pervez himself for the benefit of the family participants. However, it

does not appear Ms Shemar was advised about the family trusts before determining the scheme of allotment. The scheme of allotment was thus based on the entries at Companies House in respect of the ownership of shares in WWF Manchester, WWF Rochdale and Al Halal. Sumera was thus to be allotted shares in AIL because she was recorded as a shareholder of WWF Rochdale.

517.2. Viewed from Pervez's perspective at the time, it is easy to see why he was disquieted. If the shares in AIL were simply to be held on trust for the family, there could be no obvious reason to allot them to Pervez, Arshad, Zahid, Kashif and Sumera, with their shares apportioned in the amounts envisaged. However, if the allotment was to reflect beneficial ownership, it made no sense at all. On this basis, Sumera would be entitled to 118 shares and Shahid would be entitled to no shares. Conversely, there could be no sensible basis to allot Zahid, Arshad and Kashif with 369, 173 and 123 shares respectively.

517.3. However, these considerations cannot fully explain Pervez's decision. If his concerns were only about the identity of the shareholders or the apportionment of shares, it was always open to him to refer the matter back to Ms Shemar for further advice with a view to obtaining a revised scheme of allotment.

517.4. The second reason for Pervez's decision is simpler. When asked to approve the "second part" of the transaction, as described by Kashif, Pervez was in complete control of the affairs and management of Al Halal and WWF Rusholme. There could then have been no question, in Pervez's mind, of ceding control of these companies to a holding company in which he was entitled to no more than a minority shareholder interest. This was particularly significant as the businesses expanded and Pervez's brothers sought to assert more autonomy. The increased propensity of Pervez's brothers to act independently from Pervez was reflected in their initial agreement in respect of the allotment of shares in WWF Birmingham. In Arshad's case, it was also reflected in his unilateral decision to buy 566 Broadway, Chadderton and his increased autonomy in relation to the management of the Longsight store. Whilst it was by now impracticable for Pervez to assume day to day control of each company in the group, he was determined to retain absolute control of Al Halal and ensure, so far as possible, that he had free rein to set up and establish WWF Rusholme

to his own requirements. He was determined to do so notwithstanding that it would involve cementing his brothers' control of the companies under their respective management.

518. Pervez thus decided not to proceed with the next stage of the transaction. It can reasonably be surmised that, upon receipt of Ms Shemar's letter dated 20 May 2004, Kashif advised Pervez that he had been asked to attend to the execution of the share purchase agreements. More likely than not, it was at this stage, if not before, that Pervez decided to abandon the whole project. His brothers were content with this. From their perspective, there could be no good reason to cede overall control of each company to AIL. This is particularly so in the case of Arshad who was, by then, fully responsible for the management of the day - to - day affairs of WWF Manchester.

519. The required documentation was never properly executed and returns were never filed at Companies House showing AIL as controlling shareholder of any of the trading companies. Moreover, it has never been treated as such.

520. It was always contemplated that the transactions were indivisible and, for this reason, the allotment of additional shares in AIL on 29 September 2003 and 29 March 2004 was and is ineffective as a free-standing set of transactions. The 29 March 2004 transactions were also ineffective, in part, for the reasons suggested by Messrs Croxford and Walmsley in Paragraph 199(4) of their Written Closing Submissions dated 14 November 2022, namely that they were made in error on the basis that Zahid was a shareholder in WWF Manchester and three of the five stock transfer forms named the wrong company (WWF Rochdale rather than WWF Manchester and Al Halal). In any event, the share transfers were never taken forward and the share register in respect of AIL was never updated to show Pervez, Zahid, Kashif and Sumera as shareholders or, indeed, to revise Arshad's shareholding.

521. Once it was decided that AIL was to be deployed as a property holding company only, it remained important for it to acquire the legal title to properties comprised in Roquiya's estate. This included, in particular, WWF Rochdale's business premises. When the brothers met on 11 March 2004, they were already aware of the need to perfect the legal title to the property and they had determined this was to be achieved by transferring it to AIL. In the absence of objection from any of the brothers, Zahid obtained a grant on 21

April 2004. In October 2005, he transferred to AIL, the registered title to a series of properties which had been held in Roquiya's name. This included properties comprising the main store at the Lower Tweedale premises encompassing Title nos GM389843, GM389844, GM238640 and LA238641.

522. It follows that, within a period of less than three months, two critically important decisions were taken in relation to the brothers' affairs. Firstly, the brothers each assented to the appointment of Zahid as Roquiya's personal representative on the understanding that her property would be transferred to AIL without any claim against the assets of her estate. On this basis, Zahid then obtained a grant of letters of administration. Secondly, Pervez decided – without objection – that the trading companies should continue separately in business without any transfer of their share capital to a holding company. For Arshad, Zahid and Shahid, this made obvious sense because it ensured they were left in control of the Longsight and Rochdale businesses respectively. For Zahid and Shahid, it was to their added advantage that the title to their trading premises would now be vested in AIL in accordance with the model in which the trading premises were generally held for the family trading companies.

523. Not only did these decisions have an important and, as it happens, lasting effect on the management of the businesses. In my judgment, they reflected a common intention on the part of each brother, including Asif, to vary the basis, and thus the trusts, on which the family assets were held.

524. This did not involve any change to the trusts on which Arshad held his share or shares in AIL. AIL was formed after the deaths of Mohammed and Roquiya and it was never envisaged Asif would have a beneficial interest. From the outset and certainly once Pervez started to transfer assets to the company, Arshad held his share in AIL on trust for the five participating brothers – Pervez, Arshad, Shahid, Zahid and Kashif – in equal shares.

525. However, a common intention to vary their rights and interests in the trading companies can be "objectively deduced" or inferred, within the sense envisaged in *Stack v Dowden* [2007] UKHL 17 at [126] and *Jones v Kernott* [2011] UKSC 53 at [46], from the parties' discussions (including their discussions at the 11 March 2004 meeting), the grant of representation to Zahid and the understanding on which he obtained the grant together with the abandonment of their project to transfer to AIL the share capital of the

trading companies other than WWF Birmingham. Whilst there is now only limited contemporaneous written evidence available, the logic of the parties' revised arrangements is clear and compelling.

526. In permitting Zahid to obtain a grant of letters of administration in respect of Roquiya's estate on the understanding he would transfer her properties to AIL without any claim or challenge, they gave up their rights to advance such a claim or require Zahid to distribute her estate on the footing that the properties should be realised and the net proceeds distributed to them consistently with the statutory trusts after provision for the funeral, testamentary and administration expenses, debts and other estate liabilities, as defined, under *Section 33 of the Administration of Estates Act 1925*. It was also implicit that they would not personally advance a claim to such properties on the basis that they were held on trust for any of the brothers personally. They thus released Zahid and AIL from their rights under such a trust.

527. Pervez, Arshad, Shahid, Zahid and Kashif had obvious reason for releasing Zahid and AIL from their rights in this way since they were equal shareholders of AIL. At least superficially, this is less clear in Asif's case. However, his rights under the family trusts were more limited than his brothers since they were limited to property acquired before WWF Manchester commenced business from the Longsight store in 1994. His succession rights under the statutory trusts were also of limited pecuniary value since they were limited to Roquiya's net estate and shared with his five brothers. Moreover, Asif had recently been provided with a house at 2 Dean Court, Rochdale. This had been purchased by AIL but it was acquired for his own personal use. According to Asif himself, he continued to work within the businesses, at least from time to time, until 2005 or thereabouts. However, he would have been well aware he had not been accorded levels of responsibility commensurate with the responsibility accorded to his brothers and he can have had no substantial expectation he would participate in the management of the businesses. Viewed objectively, there was no compelling reason for Asif to advance or require Zahid to advance a speculative claim in respect of the pre-1994 family trusts once he had been provided with a house in AIL's name. It is conceivable this property is held on trust for Asif. However, it is not subject to any claim in these proceedings.

528. Arshad, Shahid, Zahid and Kashif were content with Pervez's decision to abandon the project for the relevant trading companies to be brought into the ownership and control of a holding company. Ultimately, they can be taken to have assented to it. They had their own reasons for doing so. It meant that the trading companies and their constituent businesses would remain separately under the control of the brothers then managing each such business and in their respective ownership. By that stage, each company was under the management and control of one or more brothers. It was not contemplated they would cede management or control to their brothers otherwise than by agreement. The brothers were each focussed on the management of the business or businesses under their control although inevitably they co-operated with one another in connection with the purchase and disposal of supplies. This obviously applied to the three companies for which Tenon had obtained clearance on 7 August 2003, namely WWF Manchester, WWF Rochdale and Al Halal. However, the brothers would all have been fully aware business premises at Miles Platting and Rusholme were then in the process of acquisition with the intention that Pervez would shortly commence business from such premises through the vehicle of WWF Rusholme. There could have been no logical basis to distinguish WWF Rusholme from the others and it can thus be taken to be subject to the same understanding.

529. The decision to abandon the project for the companies to be brought under the control of a holding company (in which or to which each of the brothers acquiesced or assented), was rooted in changes to their family relationships together with the expansion and fragmentation of their businesses. By this time, Arshad, Pervez and their respective families had grown apart. Their businesses were being managed separately albeit there was a significant amount of collaboration. There was good reason for them to seek separate control of the businesses under their respective management. The obvious way in which to achieve this was through the ownership of the companies' share capital. In the absence of a better solution, it was achieved by severing ownership of the businesses so as to align ownership with management notwithstanding the expectation of continued collaboration. However, this was a once and for all solution for the existing companies and businesses, achieved towards the end of May 2004 or thereabouts, when the project to transfer the trading companies was abandoned. Moreover, it did not generally involve

severance of the title to the trading premises since this was held by AIL and AIL's share capital was held by the five brothers in equal shares. WWF Manchester's relatively short tenancy of the Longsight store was an exception to this but was not regarded in the same way as the trading premises of the other companies. The new arrangements thus involved the minimum interference with the brothers' ownership of their underlying assets.

530. It follows that, at the end of May 2004 or thereabouts, the family trusts of the brothers' shares in WWF Manchester, WWF Rochdale, Al Halal and WWF Rusholme were varied so as to align beneficial ownership of the trading companies with management control. Arshad became sole beneficial owner of the shares in WWF Manchester. Pervez became sole beneficial owner of the shares in Al Halal and WWF Rusholme. Zahid and Shahid became equally entitled to the shares in WWF Rochdale. As part of these arrangements, they each gave up, released or transferred their existing beneficial interests in the companies in which they had no management role. In Arshad's case, this was WWF Rochdale, Al Halal and WWF Rusholme. In Pervez's case, this was WWF Manchester and WWF Rochdale and, in the case of Zahid and Shahid, this was WWF Manchester, Al Halal and WWF Rusholme. Kashif gave up his beneficial interest in the shares in each such trading company. However, he was relatively young and, like the other brothers, he continued to have a beneficial interest in Arshad's share in AIL under the family trusts. Moreover, the participating brothers were each entitled to 200 shares in WWF Birmingham.

531. In *Hudson v Hathway* [2022] EWCA Civ 1648, the Court of Appeal recently confirmed that, following a change of common intention, there can be no variation in the interests of the beneficial co-owners in the absence of detrimental reliance. In the present case, this requirement is amply satisfied. The brothers assumed reciprocal rights and responsibilities in respect of their various business interests and, in doing so, acknowledged the rights of their brothers. In reliance upon the belief that they owned the corporate vehicle for the businesses under their respective control - albeit they did not all fully understand the concept of companies as a separate legal entity - they respected the corresponding rights of their brothers and co-operated with one another in the management of their respective businesses in connection with purchases, supplies

and third party finance requirements. They did so for a period upwards of twelve years from the Summer of 2004.

532. On this basis, Pervez, Shahid, Zahid and Kashif disposed of their equitable interests in the share capital of WWF Manchester to Arshad. Arshad then became beneficially entitled to the entirety of the share capital of WWF Manchester under a constructive trust within the meaning of *Section 53(2) of the Law of Property Act 1925*.

533. From this time, the brothers could have had every expectation that the businesses would continue to expand and, indeed, new stores would be acquired. However, there was no understanding – implicit or otherwise – about the future transfer of their existing businesses, the acquisition of additional businesses or the creation of corporate vehicles for such businesses.

534. WWF Birmingham was not party to the 2004 arrangements and was never treated as such. Although it commenced business during the summer of 2003, the parties never envisaged it would be introduced to the group structure canvassed by Tenon since the five brothers were each specifically allotted shares in the company on 25 June 2003 to be owned beneficially, shortly before Tenon sought clearance from the Revenue on 1 August 2003. Moreover, these shares were never held on the historic family trusts.

535. Another important difference between WWF Birmingham and the other trading companies is that WWF Birmingham acquired its own trading premises. Over time, it also acquired other properties although there is an issue as to the lawfulness of this. Whilst WWF Manchester was entitled to a tenancy of its shop in Longsight, this was initially for a term of only nine years (subsequently renewed) only and could not be regarded as a long term investment. The other companies did not own their trading premises. Such assets were vested in ALL.

(d) WWF Manchester – corporate assets

536. There are discrete issues between the parties about the extent of the assets originally in the beneficial ownership of WWF Manchester or held in connection with the management of its business. These issues can be disposed of shortly.

537. Between June 1994 and 1 November 2018, when it ceased in business, WWF Manchester's main shop was at 24 Slade Street, Longsight. This was held subject to a

series of business tenancies commencing with a lease dated 2 June 1994 between Abdus Sattar, Um Selma Sattar, as lessors, and WWF Manchester, as lessee for a term of 9 years deemed to have commenced on 1 June 1994. This lease was repeatedly renewed in the name of WWF Manchester. The leases contained qualified prohibitions on assignment, defined to include underletting and parting with possession.

538. During this period, there is no evidence WWF Manchester disposed of its interest in the shop or entered into any declarations of trust. No steps were taken to transfer the tenancies to AIL and no sound business reason has been identified for doing so. I am thus satisfied that the main shop was at all material times an asset of WWF Manchester. It is unclear whether WWF Manchester formally assigned or sub-demised its interest to WWF Longsight when it transferred its assets on 1 November 2018. At the very least, it is likely WWF Longsight is entitled to an informal sub-tenancy of the premises or an interest under a trust within the meaning of *Section 41 of the Landlord and Tenant Act 1954*.

539. In contrast, the freehold title to the neighbouring property at 28 Slade Lane, Longsight was purchased in the name of AIL. On 1 July 2003, AIL was then registered as proprietor under Title no. LA65679. In Paragraph 102 of his witness statement, Arshad stated “the mortgage on the property was paid from my Longsight account, so even though 28 Slade Lane was in [the name of AIL] I was paying the mortgage so that made it mine”. Elsewhere, he implicitly accepted he had been in receipt of the rents and profits, stating that he rented out the property, including accommodation for the use of staff in the Longsight store. However, his case on the issue is based on a resulting trust arising from his putative mortgage repayments.

540. In my judgment, Arshad’s case on this issue is fundamentally flawed. AIL bought the property with funds advanced to it by National Westminster Bank plc. In doing so, it entered into a legal charge with the Bank dated 28 April 2003. Arshad signed the charge. However, he purportedly did so in his capacity as a director of AIL, not in his personal capacity. Whilst, by then, Kashif had filed notice at Companies House confirming that Arshad had ceased as a director, he can be taken to have signed the charge as a *de facto* director. It was not contemplated that AIL would hold the property on trust for Arshad personally nor, indeed, on trust for WWF Manchester. Consistently with the model for the acquisition of all such properties, it was purchased with the intention that AIL would be

the sole beneficial owner. Whilst it was anticipated that, at least in part, the mortgage payments would be made from funds generated from WWF Manchester's business, WWF Manchester did not enter into immediate and specific contractual commitments to AIL in relation to the repayment of the mortgage without transcending its general liabilities as a group company. These matters are significant since, as Peter Gibson LJ put it, in *Curley v Parkes [2004] EWCA Civ 1515*, "...the resulting trust of a property purchased in the name of another, in the absence of contrary intention, arises once and for all at the date on which the property is acquired. Because of the liability assumed by the mortgagor in a case where monies are borrowed by the mortgagor to be used on the purchase, the mortgagor is treated as having provided the proportion of the purchase price attributable to the monies so borrowed. Subsequent payment of the mortgage instalments are not part of the purchase price already paid to the vendor but are sums paid for discharging the mortgagor's obligations under the mortgage".

541. It is conceivable there may have to be equitable accounting between AIL and Arshad in relation to the mortgage payments and receipt of the rents and profits from the premises. However, neither party has yet made such a claim. In any event, AIL is the legal owner of 28 Slade Street, Longsight and does not hold its estate in the premises on trust for Arshad. Nor, indeed, is there any substantial conceptual or evidential basis on which to suggest that AIL holds the property on trust for WWF Manchester. This is so regardless of whether the mortgage payments were made from WWF Manchester's business receipts.

542. There is also an issue about the ownership of the business conducted from the fruit and vegetable stall at New Smithfield Market, Manchester. In the absence of credible evidence to the contrary, I accept that, in 2010 or thereabouts, Arshad set up the stall himself and, until 2018, conducted this business through the vehicle of WWF Manchester. Contrary to Arshad's evidence, I do not accept that the assets of the business belonged to him personally. They were assets of the business of WWF Manchester and treated as such albeit he was, of course, beneficially entitled to the entirety of the share capital of WWF Manchester by the time the business was set up and at all material times in the following period. This remained the case when, in 2018, Arshad transferred the assets and business of WWF Manchester in respect of the market stall to WWF Fruit and Veg.

(e) The Cheetham Hill Store

543. Once it had been determined, in 2004, that the relevant trading companies, including WWF Rusholme, should not be brought under the control of a holding company, it was collectively understood that the brothers would be the beneficial owners of the shares of the corporate vehicle for each such business under their respective management at that time. This was not an ambulatory concept. The brothers did not contemplate that they would shift from one business to another and, as they did so, acquire or release their established interest in the corporate vehicle for such businesses. It is probable that one or more of the brothers, including Arshad, did not fully understand the concept of a company as a separate legal entity. However, the brothers all understood from the outset that the businesses of WWF Rusholme at Miles Platting and Rusholme were under Pervez's management and control and he was thus to be treated as the beneficial owner of the company. Whilst Kashif was registered as sole shareholder, he held his share on trust for Pervez. By the time of the company's annual return of 9 April 2010, it had been transferred to Pervez.

544. Some four years or thereabouts after WWF Rusholme first commenced in business at Miles Platting and Rusholme, Pervez was presented with the opportunity to purchase the store at Cheetham Hill. I accept Zahid's evidence that the opportunity was first brought to his attention by Mr Lamb and that, in turn, he raised it with Pervez who made the decision to purchase the property. Consistently with the general pattern in respect of the trading companies other than WWF Birmingham, Pervez decided to purchase the property in the name of AIL. I reject Arshad's evidence that the decision was taken by himself personally, not Pervez, and that Zahid was simply acting on Arshad's instructions. I also reject Arshad's evidence that it was his understanding, when the property was purchased, that he would personally own the property and it was only put in the name of AIL because Kashif dealt with the finance and chose to deal with the matter in this way. His evidence on this was wholly implausible. It was inconsistent with the evidence of Pervez and Zahid. It was also inconsistent with the basis on which business was then being done and it did not receive support from Kashif.

545. When giving his evidence, Kashif suggested that Cheetham Hill was Arshad's property. However, this was not on the basis that Arshad was responsible for the initial purchase of the property. When tested, it emerged Kashif regarded Arshad as owner on the basis that

the businesses and the properties should be treated as one (Day 11/110/21-2) and, by dint of his hard work, in subsequently running the store, Arshad was entitled to be viewed as the owner of the business (Day 11/111-113). When asked to clarify whether this was also the understanding of his other brothers, Kashif stated that he couldn't speak for them and thus could not confirm this was their understanding (Day 11/113/2-4).

546. The decision to purchase the Cheetham Hill store in ALL's name followed the same pattern as the purchase of the other properties during this period other than the Birmingham properties. Contrary to Arshad's testimony, there is no contemporaneous written evidence that it was ever contemplated that the property would be purchased in his name personally or, indeed, on his behalf. Zahid instructed Enoch Evans as solicitors in connection with the transaction. He identified ALL as purchaser and the transaction was negotiated and concluded on that basis. In a remarkable part of his cross examination, Arshad stated that Zahid and Kashif were never instructed "to let Enoch Evans know that [he was] actually the purchaser" because they already knew. How they are alleged to have known was not clarified (Day 7/85/7-18). Enoch Evans contacted Zahid with a series of queries in connection with the transaction. When asked whether Zahid sought to raise them with him, Arshad's reply was "absolutely not". He was then asked whether he had given Zahid "complete discretion...to negotiate whatever terms he thinks as appropriate". If there was a hint of irony in the question, it was lost on Arshad who replied by saying "absolutely. That's the way it was happening" (Day 7/86/9-23). Similarly, when asked why the deposit for the transaction had been paid by WWF Rusholme, his reply was that "I cannot say anything about this. It's only Kashif and Zahid who can tell about it" (Day 7/102/21-24). His evidence on this aspect of the case was wholly implausible.

547. I am satisfied the decision was taken to purchase the store in ALL's name for the simple reason that this was the established way of doing things. It was never contemplated that it would be purchased in the name of Arshad or WWF Manchester. Nor was it contemplated that it would be held on trust for them. Conversely, the decision to use WWF Rusholme as the vehicle for the new business was made out of management convenience. In his witness statement, Pervez put it down to Kashif's view that it would be "better for audit and to manage". Had it been contemplated the new business would

be for Arshad, it would have made more sense to select WWF Manchester than WWF Rusholme as the vehicle for the new business.

548. Having rejected Arshad's account about the purchase of the premises, I reject his account that he personally assumed responsibility for the repayment of the mortgage and that, at the very outset, he set up the whole business. I can see no good reason why he would have stepped forward, at this stage, to assume responsibility for the payment of the mortgage.

549. On the balance of probability, I also accept Zahid's testimony that, having taken responsibility for the purchase, he initially attended to the set-up of the store and stocked the business with supplies from WWF Rochdale. At the very beginning he also managed the store. However, he found it difficult to accommodate the management of the new store with the demands of the Rochdale business and struggled to deal with some incidents of vandalism at the Cheetham Hill store. He thought Arshad would be better placed to deal with them since he resided a little closer to the store than Zahid himself and other members of the family. Arshad was thus approached to take on the management of the Cheetham Hill store.

550. On this aspect, I prefer the evidence of Zahid and Pervez to the evidence of Arshad. I do not accept that Arshad took responsibility for the store at the very outset as he maintains. However, it is clear Arshad took over management not long after the store first opened, in all likelihood no more than three months later. It is conceivable that, as Arshad recalls, there were occasions, at the beginning, when the keys to the store were handed over and taken back. However, I am not satisfied this happened precisely as Arshad recollects and, in any event, it does not have a significant bearing on the issues for determination.

551. In character with most such decisions, Arshad was appointed manager with a minimum of formality. There is only limited significant contemporaneous documentation. However, in view of the strained relationship between Pervez and Arshad, it can reasonably be surmised Kashif acted as an intermediary. It is conceivable Arshad was appointed manager on the understanding it would be open to him to make drawings from the business if not reflected in the remuneration routed to him through AIL. However, the basis for this is obscure.

552. Since WWF Rusholme had already commenced business from the store, Arshad was appointed to manage the existing business on its behalf. Consistently with the lack of formality on all matters of internal management, Arshad was not provided with a written contract for services or employment. There was no agreed notice period. However, the arrangements plainly required a substantial measure of commitment from him. Whilst I have not heard argument on the issue, it is more than conceivable that it would have been an implied term of any contractual arrangement that Arshad would be entitled to notice of termination of substantial length. However, this has not featured as an aspect of the case.

553. Arshad has been responsible for the management of the Cheetham Hill store for many years. Until November 2015 or thereabouts, he managed the business on behalf of WWF Rusholme, utilising a separate bank account in its name to credit company receipts and purchase stock in the ordinary course of business. VAT returns were submitted on behalf of the same company. However, he stated, in evidence that, until August 2015, he believed WWF Rusholme's operations were entirely limited to the Cheetham Hill store. He was unaware, he says, that it was also the vehicle for the Rusholme business or, indeed, that it had been the vehicle for the Miles Platting business prior to closure. He was thus unaware that VAT returns encompassed each of the company's businesses and were not limited to the Cheetham Hill store.

554. Arshad's evidence is to be treated with a great deal of caution. Since he was initially indifferent to the identity of the Cheetham Hill store as a separate business, he did not appreciate that the corporate vehicle comprehended more than one business. For many years, he was able to manage the business independently without significant intervention from Pervez or the other brothers. During this period, he had limited contact with Pervez. Although Pervez attended the store sporadically to satisfy himself that it was being run properly, Arshad had a large measure of control over the management of the store. Eventually, Arshad may have come to view it as his own business or an adjunct of WWF Manchester's business. However, if this is so, Arshad is culpable for his own failures of comprehension. There is no convincing evidence Kashif or his brothers said or did anything to mislead him. Nor did they share his misapprehension if, indeed, it is possible to identify the precise nature and parameters of his misapprehension. In failing to do

anything, prior to August 2015, to clarify the basis on which he was managing the Cheetham Hill store, Arshad brought his difficulties on himself.

555. During this period, the mortgage payments were paid from the business receipts of the Cheetham Hill store. Ms Plummer has demonstrated this with reference to ALL's accounting records. However, it was generally the brothers' intention that the properties vested in ALL would be held by ALL beneficially. This was their working model and it applied to the Cheetham Hill store in the same way as the other properties. In any event, the business receipts were generated from the business of WWF Rusholme, not Arshad's own personal business.

556. Kashif attended centrally to the legal and accounting formalities for each store. He also supervised the bookkeeping and obtained the professional services of accountants, arranging for the books to be audited. Arshad was also in regular contact with Zahid, collaborating with him on purchases and supplies. In reality, Arshad was indifferent to the technicalities for several years.

557. Arshad gave evidence he was finally alerted to the implications of proceeding on this basis in August 2015, when his accountant, Mr Battacharya, advised him, whilst seeking to submit a VAT reclaim, that it was necessary to submit the reclaim for the company as a whole. With Mr Battacharya's assistance, Arshad then formed or acquired WWF Cheetham Hill, with the intention that this company would take over the business of the Cheetham Hill store from WWF Rusholme. This company was separately registered for VAT and, as envisaged, took over the business.

558. It is plain that Arshad took this action unilaterally without any discussion with Pervez. When giving his evidence, he did not state otherwise. However, he maintains that, in practical terms, nothing changed. The new company was registered for VAT but he remained in control, as before, using the same bank account. Ultimately, the initial decision was his but it went unchallenged.

559. Kashif also confirmed that the decision to transfer the business into a new company was Arshad's (Day 13/79/11-14). He stated Arshad took the decision without first discussing it with Pervez. On reflection, he qualified his answer to state "there was no such discussion in front of me" (Day 13/21-23). As it happens, there is no evidence the

initial decision was the result of a discussion between Arshad and Pervez and it is inherently unlikely there ever was such a discussion. Moreover, Kashif chose not to alert Pervez to the action that Arshad was taking because he didn't regard it as his place to do so, at least this is how he put it when giving his evidence (Day 13/79/11-80/22).

560. It can reasonably be inferred that the new company took over the Cheetham Hill business on 30 November 2015. This is the date identified in WWF Rusholme's subsequent accounts for the year ending on 31 May 2016. However, there is an issue as to when Pervez first became aware this had happened.

561. Pervez himself signed off WWF Rusholme's relevant accounts on 10 May 2017. In his Directors' Report, he stated as follows under the heading "Future Developments".

"On the 30 November 2015 the trade, assets and liabilities of the Cheetham Hill store were transferred at net book value to a new company, Worldwide Foods Cheetham Hill Limited. The director considers that the next year will show growth in turnover and satisfactory trading results".

562. At the time Pervez signed the accounts, WWF Rusholme's accounts were being audited by RSM under the overall supervision of Mr Anthony Steiner. Mr Steiner was not called to give evidence. Mr Lye was not working for RSM at the time having left to join Ashworth Moulds. However, it was apparent to him from RSM's audit plan dated 13 January 2017 and Audit Findings Report, circulated on 12 May 2017, that RSM were not advised of the putative transfer until a comparatively late stage after the audit planning.

563. Unfortunately, the evidence on this aspect is limited and obscure. On the balance of probability however, RSM only discovered that the business had been taken over by WWF Cheetham Hill during the course of their audit. They were not advised about it beforehand. When it was identified, they can be certain to have raised the matter with Kashif. Kashif would plainly have been sensitive to the issue having concealed it from Pervez on the basis – so he maintains - that it wasn't his place to alert him. However, a way had to be found to reconcile the transfer of business with WWF Rusholme's accounting records. This was achieved by retrospectively treating the transfer of business as a disposal at net book value. However, under the notes to the accounts, WWF Cheetham Hill – erroneously recorded as a "company controlled by the director", namely Pervez - was treated as a creditor in the sum of £888,869.

564. Conversely, RSM was not engaged to audit the books of WWF Cheetham Hill. Its accounts appear to have been prepared separately. There was no specific reference to the putative transaction in the abbreviated accounts admitted in evidence in respect of WWF Cheetham Hill for the period ending on 30 November 2016. These were approved by Arshad, as director, on 27 April 2017.

565. Pervez gave evidence he was unaware of the putative transaction until after he signed the accounts for the year ending on 31 May 2016. He only became aware of it – so he says – when he showed his son, Adil, a signed copy of the accounts and Adil drew the putative transaction to his attention. Until then, he was unaware that the business had been transferred.

566. In view of the fact that Pervez's evidence on this issue flatly contradicted his own Directors Report, signed by him on 10 May 2017, Mr Croxford challenged this part of his evidence in cross examination. In response, Pervez provided the following explanation (Day 27/33-12/34-12).

"Yes, my Lord. The way this happened is that Kashif asked me to come to Rochdale office. He needs to get the accounts signed. And whenever he asked me to sign these accounts, it has been his routine that he would always say that, "We are running out of time, we are now late, and if these are not signed off today, then we might get fined".

And when I got to the Rochdale office to sign these documents, it was late in the afternoon, it was between 4 and 5 o'clock, and he and Anthony Steiner, they both sat at one side and they made me sit in front of them, and it was a simple routine for him that whenever he asked me to sign off something, he would only tell me that I have to sign here, I have to sign here and I have to sign here.

And Anthony Steiner was sat next to him. He did not make any explanation. He did not tell me anything about that.

And the way today honourable Croxford has pointed out these sentences, these paragraphs, at three places, this thing has been written here and here and here, he did not do anything like that. And I would not hesitate to choose my words with great caution, that this was all pre-planned by Kashif. And I can't even think in my life that this sort of a dishonesty, cheating and whatever it could be said –"

567. It was clear from the way in which he gave his evidence that Pervez is nursing a sense of grievance. He maintains that Kashif deceived him and Mr Steiner failed to draw the putative transaction to his attention.

568. In his written closing submissions, Mr Croxford submitted that Pervez's evidence on the point is implausible on the basis that Pervez could not "credibly have failed to notice that over the 18 months preceding the signing" WWF Rusholme "a company under his management and control, was no longer receiving the revenues of the Cheetham Hill store". He also submitted that it could reasonably be surmised that Mr Steiner would have drawn the transaction to Pervez's attention in the light of Mr Lye's testimony to the court. In any event, Pervez was under statutory duties, as a director, not to sign the accounts unless satisfied that they give a true and fair view of the company's assets, liabilities and financial position under *Section 393(1)* of the *Companies Act 2006*. These are serious duties, supported by criminal sanction under *Section 414(4)*.

569. These are powerful points. Although the Cheetham Hill bank account had historically been under Arshad's control, the reduction in WWF Rusholme's turnover, following disposal of the business, would have been obvious from the company's VAT returns. Whilst Pervez's time was consumed on the management of several other businesses and, in practice, he was content to leave the management of the Cheetham Hill store to Arshad, he could reasonably have been expected to identify the issue. Conversely, however, had he been aware the store had been taken over by a separate company in Arshad's sole ownership, it would have been entirely contrary to character for Pervez to allow this state of affairs to continue without raising the issue with Kashif or Arshad and demanding to know how it had happened. When the transfer of business was identified

in the relevant accounts, it was presented as a transaction for which WWF Rusholme had been credited at book value. At the very least, I would have expected Pervez to ask questions and demand answers before approving the accounts. If, as might reasonably have been expected of him, Mr Steiner mentioned the transaction at his meeting with Pervez, the only explanation for Pervez's failure to raise the matter with him and challenge him on it is that he failed properly to understand and assimilate what he was being told. Whilst denying that Mr Steiner alerted him to the transaction before the accounts were approved, Pervez also stated – in cross examination – that, when challenged subsequently, Mr Steiner told Pervez that “I drew your attention towards it but, you probably did not notice” (Day 27/41/7-17).

570. In view of the incongruity of Pervez's own account, I have exercised caution in the absence of evidence from Mr Steiner himself. There is no satisfactory explanation. However, on the balance of probability, I have reluctantly reached the conclusion that, whilst the Cheetham Hill transaction was mentioned to Pervez before he signed off the accounts, this was done fleetingly and he put the transaction down to an issue of management rather than ownership, confident in the knowledge that the property was owned separately by AIL. On this basis, he was aware that Arshad's company had taken over the management of the business from WWF Rusholme and he was willing to approve the accounts without fully appreciating the ambit and significance of the item. In particular, he didn't fully understand the extent of the assets disposed of. Having approved the accounts, including the item in respect of the disposal of the business, he took a different view when the item was fully explained to him and he reflected on it. In any ordinary circumstances, this explanation would be surprising given that Zahid was also present at the meeting and might thus have been expected to seek clarification and raise issues that would otherwise have been overlooked. However, it would be unhelpful to speculate further.

571. This explanation is quite different from Pervez's own account since Pervez contends that the transaction was not brought to his attention at all. However, it is inherently unlikely that Mr Steiner made no mention of the transaction at all in his conversations with Pervez prior to approval of the accounts. Cultural and linguistic considerations may have played a part. Moreover, as Mr Lye observed in his witness statement, there “was

generally a mad rush to get the accounts signed off” at the end and, in Mr Lye’s experience “Pervez would likely be required to sign approximately 21 documents requiring 44 signatures” at this stage. Pervez’s focus was also on AIL. The recorded transaction did not disturb AIL’s registered title to the store.

572. Nevertheless, the question arises whether, having signed off the Directors Report for WWF Rusholme on 10 May 2017 and thus approved Kashif’s *ex post facto* rationalisation of the transfer of business to WWF Cheetham Hill, Pervez is somehow precluded from challenging the transaction. This question is all the more significant in view of the delay between approval of the accounts and the initial steps taken to challenge them. After the issue was raised with Mr Lye on 23 or 24 October 2017 – some five months after Pervez signed off the accounts – it was not drawn to Mr Steiner’s attention until 27 November 2017.

573. In my view, the answer to this question is no. Firstly, the audited accounts for WWF Rusholme in respect of this period were subsequently amended to delete any reference to the disputed transaction and, again, treat the assets of the Cheetham Hill store as assets of WWF Rusholme once the matter had been raised with Mr Lye. The audited accounts of a company are primary documents which may be relied upon to provide an objective account of its financial affairs, *McCarthy v Tann* [2015] EWHC 2049 (Ch) at [40] *per* Mr Registrar Briggs, cited with approval in *Malik v Henley Homes plc* [2022] EWHC 2611 (Ch) at [7] by Stuart Isaacs KC sitting as a Deputy Judge of the High Court. In this way, a director who approves company accounts can generally be taken to have accepted the amounts shown due to him as a creditor. However, this does not, in itself, preclude a company from challenging items shown to be incorrect. Moreover, it is axiomatic that, following amendment, the company’s amended accounts replace the preceding accounts and take effect as the company’s statutory accounts if the correct statutory procedure is followed even if filed late. Whilst the discrepancies between the two sets of accounts potentially raise issues of credibility in relation to Pervez’s evidence, they do not give rise to more fundamental issues of principle.

574. Secondly, the references to the disputed transaction in WWF Rusholme’s original accounts for the year ending on 31 May 2016 plainly did not accurately record a transaction between WWF Rusholme and WWF Cheetham Hill. WWF Rusholme did not

enter into a contract to sell the business to WWF Cheetham Hill on 30 November 2015 or, indeed, on any other date. On the hypothesis that there could have been such a contract, ALL was not a party and the contract could not have encompassed any proprietary rights or interest WWF Rusholme may have had in the property itself since there was no written agreement or deed of assignment in compliance with Section 2 of the *Law of Property (Miscellaneous Provisions) Act 1989* or a deed of assignment under Section 2 of the *Law of Property Act 1925*. It would thus have been limited to the business good will and stock. In reality, the relevant entry in Pervez's Directors Report was no more than an *ex post facto* rationalisation of the informal arrangements under which WWF Cheetham Hill took over the Cheetham Hill business. It forms no part of Arshad's pleaded case that Kashif entered into a contract on WWF Rusholme's behalf which was subsequently ratified by Pervez.

575. Thirdly, whilst Arshad also advances a case based on estoppel, his case is not founded on the proposition that he acted to his detriment in reliance upon assurances or representations in the Directors Report itself nor, specifically on the period of delay between the dates on which the accounts were first approved and corrected. I shall deal later with Arshad's more general case based on estoppel.

576. Pervez signed the Report 18 months *after* Arshad took over the business. It is submitted that Pervez's Directors' Report is consistent with Arshad's case that he was already the beneficial owner of the business at the Cheetham Hill store and thus lends weight to Arshad's case. However this is, itself, fallacious since it would make little sense for WWF Cheetham Hill to pay WWF Rusholme for the business if Arshad was already the owner unless the obligation to make payment had somehow been deferred. In any event, there is no evidential basis for a case based on the proposition that Arshad or WWF Cheetham Hill might somehow have relied upon Pervez's Directors Report to their detriment.

577. I am thus satisfied that, subject to Arshad's wider case based on estoppel, Pervez is the beneficial owner of the one ordinary £1 share in WWF Rusholme. The legal title to the share remains vested in Kashif since no subsequent disposition has been recorded in the register of members. However, Kashif accepted, when giving evidence, that he has transferred the share to Pervez. This is consistent with the company returns since 9 April 2010. I am also satisfied that WWF Rusholme never entered into contractual

commitments to sell its business at the Cheetham Hill store to WWF Cheetham Hill. AIL remains legal and beneficial owner of the freehold property.

(f) The 5 December 2017 transfer of Kashif's share in WWF Birmingham to Arshad

578. On 5 December 2017, Kashif signed a stock transfer form transferring to Arshad his 200 shares in WWF Birmingham. It was not signed as a deed but was accompanied by a certificate of value. At 12:43pm on the same day, Kashif emailed a copy of the stock transfer form to Mr Sawney. His email culminated in the words: "can I leave you to action/amend the changes in the company as and when". The hard copy was not admitted in evidence but, on the balance of probability, it was delivered to Mr Sawhney by post. It is not suggested otherwise. However, if Kashif was in possession of a share certificate, there is also nothing to suggest this was ever delivered into Arshad's possession.

579. By the time he sent the stock transfer form to Mr Sawhney, Kashif no longer had any role in connection with the affairs of WWF Birmingham. He was thus leaving it to Mr Sawhney to attend to all outstanding formalities, including updating the register of members and filing a confirmatory return at Companies House. As it happens, Kashif had not done anything to update the register of members when he was Company secretary but this was now out of his hands. It does not appear that a register of members was being maintained in respect of WWF Birmingham at the time. If there was such a register, there is no evidence it was updated to reflect the transaction. Eventually, the transaction was recorded in a return to Companies House but this was not until 15 July 2021.

580. Since the stated consideration for the transfer was "nil-gift", the question arises whether Kashif ever transferred to Arshad his interest in the shares and/or his right to be registered as a shareholder under the June 2003 allotment. In my judgment, the short answer to this question is yes.

581. Although, in June 2003, an additional 999 shares in the company was allotted to the five brothers, the register of members was not updated to show Kashif as a shareholder. At all material times, he was thus entitled to no more than an equitable interest under the allotment. However, in my judgment, the stock transfer form signed by Kashif on 5 December 2017 took effect as an assignment of his equitable interest. The statutory formalities were and are set out in *Section 53(1)(c)* which requires the disposition to be

“in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will”. Each of these formalities was satisfied. The stock transfer form was in writing. Kashif was named in the document as transferor and Arshad was named as transferee. It was also apt on its face to dispose of Kashif’s interest to Arshad with immediate effect, certainly his interest under the June 2003 allotment. The position is less clear if, contrary to my conclusions, this allotment was void and Kashif was thus entitled only to a beneficial interest in Pervez’s share under the family trusts. However, in the light of the surrounding circumstances it must be taken to have been Kashif’s intention to transfer to Arshad the entirety of his rights in WWF Birmingham. In any event, the document was signed by Kashif himself. It was then delivered to Mr Sawhney as Arshad’s agent.

582. In *Kaye v Zeital* [2010] EWCA Civ 159 at [36], Rimer LJ stated that, where an intending donor is entitled only to an equitable interest in shares, the courses open to him were to make a declaration of trust or assign his interest in compliance with *Section 53(1)(c)*. In that case, it was not enough for the deceased donor to hand over a blank transfer form. By doing so, he did not make a declaration of trust nor did he enter into an equitable assignment in compliance with *Section 53(1)(c)*. Had it been necessary to apply the familiar test, in *Re Rose* [1949] Ch 78 and *Rose v IRC* [1952] Ch 499, asking whether the donor had done everything necessary on his part to effect a transfer, this test was not satisfied either since the donor had failed to provide his wife, the donee, with a share certificate. As it happens, the Court of Appeal took the view that such a test was only applicable in respect of gifts of shares by the legal owner. On this basis, it is not applicable in the present case. Had it been applicable there was and is no share certificate as was the case in *Kaye v Zeital* (*supra*).

583. There is now authority for the proposition that an “apparently incomplete gift [of shares] is to be treated as completely constituted...if it would be unconscionable in the eyes of equity, vis-à-vis the donee” for the donee to be permitted to change his mind, *Pennington v Waine* [2002] 1 WLR 2075 (Ardern LJ). Based on the judge’s findings, at first instance, that the deceased donor had intended to make an immediate gift, the donee was informed of the gift and changed position by agreeing to take office as director, the Court of Appeal concluded that it would be unconscionable for the donor to recall the gift,

[64],[66], [118]. The test thus appears to be whether it would be unfair for the donor or her estate to recall the gift on the basis that the donee has acted to his detriment in reliance upon it or, at least, there has thereby been a material change in the donee's position.

584. In the present case, no substantial evidence was adduced that Arshad has changed position, acted to his detriment or omitted to act in some specific way in the belief or in reliance upon the belief that the relevant transfer constituted a valid gift. Arshad's case is that, at all times, he believed he was the owner of the business and thus the corporate vehicle for the business. There is no evidence that the gift or expectation of such a gift somehow caused him to change position or gave rise to a promise or assurance upon which he has acted to his detriment. If it were necessary for me to apply the test in *Pennington v Waine (supra)* on the hypothesis that, contrary to my conclusions, Kashif has not assigned the shares, Arshad would have failed on this part of his case.

(g) Constructive trusts and proprietary estoppel

585. At the heart of each set of proceedings, there are fundamental issues as to the understanding on which the shares in each relevant company were held. Since the proceedings specifically pertain to AIL, WWF Birmingham, WWF Manchester and WWF Rusholme only, these are the relevant companies for this purpose although the understanding on which the shares were held in associated companies has a material bearing on the more fundamental issues. There are also issues about the ownership of the properties. The parties each contend that the shares and properties are held on constructive or resulting trusts. If the shares and properties were not initially held on the trusts for which he contends, Arshad advances an alternative case based on proprietary estoppel.

586. Pervez's case is founded on the proposition that it was understood and agreed, from the outset, that all the companies, properties and businesses were formed and acquired on the basis they would be in Pervez's sole ownership. This understanding - shared by Pervez and all his brothers - is denoted as "the Understanding" in a schedule to his statements of case. It is alleged that "on the basis of the Understanding...Pervez contributed assets towards and built up the various entities making up the Worldwide Foods Business; and all relevant parties, including Arshad, [Zahid, Shahid and Kashif]

participated by working for those entities, being rewarded for doing so over many years” (Schedule, Paras 28-29). During the trial, I gave Pervez, Zahid and Shahid permission to amend their claim, in the WWF Birmingham proceedings, to seek a declaration that the brothers are each beneficially entitled to 20% of the WWF Birmingham shares. Until then, they had sought a declaration that the brothers’ 20% shareholdings in WWF Birmingham were held on trust for Pervez. However, the amendment was not accompanied by an amendment to the factual allegations in the statements of case.

587. In contrast to the case of Pervez and his brothers, Arshad contends that, together, Pervez and Arshad are each beneficially entitled to 50% of the share capital of ALL together with the entirety of the shares or assets of each company or business under a brother’s exclusive control. His case is pleaded in similar but not identical terms in his statements of case in each set of proceedings.

587.1. In Arshad’s Unfair Prejudice Petition (CR-2020-MAN-000606), it is pleaded that Pervez, Arshad and Mohammed initially formed a common understanding that they would be jointly and equally entitled to all the business assets (Para 12) and, following Mohammed’s death, Arshad and Pervez together formed a “common understanding” that “they were...equal owners of the Worldwide Foods business, each with 50 per cent of the shareholding” (Para 19). It is at least implicit that they continued to share such an understanding although this may have evolved over time until the end of 2003, when they ceased to work together jointly. At that stage, Arshad operated the Longsight store, Pervez operated the Bradford store, and Zahid and Shahid managed the day to day operations of the Rochdale store (Para 41). By the end of 2003, they had thus “developed” a parallel “understanding” that “where an individual brother operated a store independently from the remaining members of the family that brother would be considered to be the owner of that particular trading business” (Para 43.1). The brother doing so “would be responsible for the mortgage payments on the property” from which the business was conducted but ALL would hold such property on trust for him (Paras 43, 43.1, 43.2, 43.3). “Worldwide Foods business” was left un-defined but it is implicit, in Para 17, that it was intended to mean “businesses trading under the ‘Worldwide Foods’ brand”. It is pleaded in Para 37.2 that Pervez and Arshad “were the equal beneficial owners of [Arshad’s shareholding

in AIL]” and it is at least implicit that this is also based on a common intention to be inferred from the efforts in establishing the business (Para 37.2.1), consulting one another (Para 37.2.2) and “equally invest[ing] their time, skill and effort into the operation of the Worldwide Foods Business”.

587.2. In Arshad’s Defence to AIL’s claim for possession of the Cheetham Hill store (Case No. E06MA632), it is again pleaded that AIL’s share capital was at least originally held on the “shared common understanding” that Arshad and Pervez were each beneficially entitled to 50% (Paras 14), the brothers then formed a common understanding in relation to the stores at Rochdale, Longsight and Bradford that each member of the family working at the store would be considered to own the business (Para 19) and, in relation to future acquisitions of property, such property would be held on trust for the family member who operated the store (Para 20.2). It was then pleaded that he had personally attended to the initial acquisition of WWF Birmingham’s business premises, independently from AIL or Pervez, and invested his time in establishing the business (Paras 25-29). Since he had operated the store himself, he should be treated as the owner under the common understanding in Para 19. Moreover, having operated the Cheetham Hill store and been responsible for paying off the mortgage, he was the beneficial owner of the store by virtue of the common understanding in Para 19 (Para 34). Pursuant to this common intention, he had made the mortgage payments in respect of the Cheetham Hill store out of the profits of the business. These payments had been made to his detriment so as to furnish him with a claim based on proprietary estoppel (Paras 35 and 39). In any event, he had paid £1.6m to AIL to achieve a legal separation of the businesses in reliance upon Kashif’s “representation” that, if he did so, he “would receive” the Cheetham Hill store (Paras 44-46). He had also reached agreement with AIL and Pervez, in a conversation with Kashif, that after accounting for £1.35m from a bank account held in the name of WWF Birmingham, the balance of £1.6m could be paid from his share of a claim against National Westminster Bank plc for mis-selling (Para 46.2). Whether by virtue of a contract or under the doctrine of estoppel – the precise legal basis is obscure – Arshad was thus entitled to have transferred to him the title to the store (Paras 46-7). In any event, the property is held for him on constructive or

resulting trust (Para 57.1) or a business tenancy under *Part II* of the *Landlord and Tenant Act 1954*.

587.3. Arshad's Defence to WWF Rusholme's claim against it, under Claim BL-2020-MAN-000107, was filed two years after his Defence to ALL's possession claim, on 29 January 2021. It is in similar but in more refined terms on the basis that Arshad operated the Cheetham Hill business on "a shared common understanding between Pervez, Arshad and [WWF Rusholme] that the business...belongs beneficially to Arshad (or is properly to be treated as so belonging to him), a shared common understanding on which he had acted to his detriment, with the consequence that he was and is free to treat the business...as belonging to him, and free to cause it to be transferred to a different entity..." (Para 2). It is later pleaded that "the Cheetham Hill Business was understood to be Arshad's independent business (albeit a business related to other parts of the Worldwide Foods Business) to be beneficially owned by him and operated under his independent direction and control and for his benefit" (Para 16). Again, it is pleaded in Para 18(1) that "the shared common understanding of Pervez and Arshad, and therefore of [WWF Rusholme] and Arshad, was that the Cheetham Hill Store Business belonged or was to be treated as belonging to Arshad. That is on the basis on which said business had been operated...". In Paragraph 18(2), it is pleaded that "Arshad acted in reliance on this shared common understanding to His detriment...including by investing his time, skill and effort in setting up and operation of the Cheetham Hill Store Business".

587.4. In Arshad's Defence to the claim in respect of WWF Birmingham (BL-2020-MAN-000114), he alleges that "there was a shared common understanding among and between the Claimants, Kashif, Arshad and [WWF Birmingham], from the moment that Arshad started the business of [WWF Birmingham] in 2003 and on which understanding Arshad acted to his detriment, that the [WWF Birmingham] Business belonged beneficially to Arshad or was properly to be treated as so belonging to him. Alternatively, there was such an understanding from prior to the events complained of in these proceedings". Whilst this is based on a shared common understanding, his Defence incorporates, by reference, Paras 47-48 of the Petition in which Arshad referred to his unilateral belief that he was the sole shareholder of WWF

Birmingham” and that the “acquisition of Coventry Road was made by Arshad, without the involvement of Pervez, and without any intention to share the profits of the Birmingham business with the rest of the Family”.

587.5. In Para 16(3) of his Defence to the Birmingham claim, he states “as to the 20% shareholding of each of the 5 brothers specifically, Arshad was not aware at the time of setting up the [WWF Birmingham] Business of these shareholdings and entrusted Kashif to set up a company to be a vehicle for his independent business endeavours, and believed that the [WWF Birmingham] Business was beneficially his alone”.

587.6. It is at least implicit in Arshad’s pleaded case that he relied, to his detriment, on the common understanding that the WWF Birmingham business would be in his sole ownership.

587.7. Arshad’s Defence to the proceedings brought against him by WWF Manchester is founded, again, on the proposition that “there has been a shared common understanding between Pervez, Arshad and [WWF Manchester] that the business of [WWF Manchester] (including the business of the Longsight store...by the end of 2003 by which time Arshad and Pervez had effectively separated their respective parts of the businesses (or at the latest prior to the events about which complaint is made...) belongs beneficially to Arshad (or is properly to be treated as so belonging to him), a shared common understanding on which Arshad has acted to his detriment with the consequence that he was and is free to treat the business of [WWF Manchester] as belonging to him and free to transfer the business...as he did in 2018” (Para 2).

588. Arshad’s case is thus based primarily on a series of “common understandings” about the ownership of the share capital of AIL, the business operated at each store and the property from which each such business was conducted. It is at least implicit in his case that each common understanding in relation to an asset was shared by all co-owners of the asset. It is not always clear, from Arshad’s statements of case, whether each putative “common understanding” is the function of inference or express agreement. Where this is so, it is thus necessary to consider both possibilities.

589. In each case, Arshad contends that the “common understanding” has given rise to a constructive trust. However, in respect of some assets, he also relies on a resulting trust.

Reliance is frequently placed on detrimental reliance in support of his case based on constructive trusts. However, it is in places wide enough to support a case based simply on proprietary estoppel.

590. In their written closing submissions dated 14 November 2022, Messrs Croxford and Walmsley confirmed that Arshad relies on proprietary estoppel in respect of his rights pertaining to WWF Birmingham (Para 314(3)(v)), WWF Manchester and the Cheetham Hill business (Paras 315(2) and 317). In Para 317, they submit that “either there is a common interest constructive trust (reflecting the common understanding of the parties) or the Court should declare beneficial ownership pursuant to a proprietary estoppel reflecting what was known and encouraged to be Arshad’s view as he built the relevant businesses as he did”. In support of the proposition that the doctrine of proprietary estoppel can be deployed in support of a claim to shares or share capital, they rely on *Pinfield v Eagles* [2005] EWHC 477 (Ch), *A v B* [2008] EWHC 2687 (Ch), *Gee v Gee* [2018] 1393 (Ch) and *Spencer Bower “Reliance Based Estoppel”* (5th edn), Para 12.34.

591. I shall turn first to the merits of Pervez’s case on beneficial ownership. His case is supported, at least superficially, by the perceptions of the witnesses who regarded him as beneficial owner and the Acknowledgment. It is easy to see why he might have been regarded as beneficial owner. He took the important decisions. He was and is a strong and formidable character to whom the other family members deferred from an early stage, certainly as early as the 1980s. He was also respected more than anyone else within the family. In the early years, it is likely he earned more than others within the household and made a more substantial contribution than anyone else to the family outgoings and expenses. The Acknowledgment was signed by Arshad, Shahid, Zahid and Kashif. On its face, it appeared to provide written confirmation Pervez was the owner of Al Halal, WWF Manchester and AIL.

592. However, the fallacy with Pervez’s case is that, prior to the 2004 Watershed, it conflates control with ownership. During this period, Pervez was pre-eminent within the family. He also became accustomed to making all the important family decisions. However, this was entirely consistent with his role as trustee of the family assets. Moreover, viewed in context, the purpose of the Acknowledgment was to re-affirm his control of the family businesses following the health and safety prosecution and provide him with the means

to confirm he was in control when communicating with third parties. Subject to the Acknowledgment, there are clear indications in the contemporaneous documentation that the relevant shares and properties were always regarded as family assets. At the very beginning, Arshad and Mohammed were allocated shares in WCCL. Following Mohammed's death, steps were taken to put his shares in the name of Roquiya. Pervez himself accepts that this was done as "a mark of respect" to signify their seniority and status within the family. There are also clear indications the shares and properties were regarded as family assets in Mr Kay's note on 12 December 1995, his letter dated 12 March 2004 and the 2004 Trust Deed. Moreover, no one took issue with Zahid when he obtained letters of administration in respect of Roquiya's estate at a sworn value of £289,528 on the basis she was entitled, at the time of her death, to a substantial beneficial interest in the family assets. Indeed, the brothers were more than content for him to do so.

593. I reject Pervez's case that it was understood, from the outset, that he would be the sole owner of all the family companies, properties and businesses. There is no substantial evidential basis for such a case and it is entirely inconsistent with the case being advanced, on Pervez's behalf as late as 5 January 2018, when Gateleys discerned, in their letter to Baker & Coleman, a common intention for the relevant companies to be controlled by Pervez for his brothers' joint benefit with the profits shared equally. I also reject Pervez's case that, following the formation of the relevant companies, it was ever agreed or understood he would be the sole beneficial owner of the shares of each such company. The shares were put into the names of different family members because each company was regarded as a family asset. When Pervez decided, with the acquiescence or consent of his brothers, that the share capital should not be transferred into the name of a holding company, it was no longer contemplated the companies would be placed under the management and control of a single brother. At this stage, share ownership was severed and Pervez became solely entitled only to the share capital of Al Halal and WWF Rusholme.

594. Arshad's case on beneficial ownership is more qualified and nuanced than Pervez's case. However, for the reasons I have given, I have exercised a great deal of caution when evaluating the evidence given by him personally. This is particularly so in relation to his

subjective and self-serving evidence about his understanding and beliefs. Save where his evidence on such matters is corroborated by independent evidence or there is compelling reason to suggest it is correct when viewed as part of the overall context, I have generally rejected his evidence.

595. In the absence of compelling supporting evidence, I reject Arshad's evidence that he expressly reached agreement with Pervez they would each be entitled to 50% of the shares or shares in ALL. Arshad's oral evidence on this issue was wholly unconvincing as, indeed, it was on most contentious issues. He gave no good reason as to why he should be entitled to 50% rather than the "10 to 11%" to which he referred, in his taped argument in August 2019 with Zahid, at the Cheetham Hill Store. Mr Croxford submitted that Arshad's evidence on the issue is consistent with their shares, as partners, of Choudhury Alam Brothers during the early 1980s and, later, as shareholders of WWF Manchester. If not expressly agreed, he suggested that such an understanding could thus be inferred. However, I am not persuaded this is so.

595.1. Although Pervez set up Choudhury Alam Brothers as an equal partnership and was content to hold out Arshad as his partner on this basis, he did so for his own reasons mindful, in all likelihood, that this was likely to be advantageous for tax purposes. The partnership assets were subsequently transferred to WCCL in which Mohammed was given shares in addition to Pervez and Arshad. Mohammed's shares were later transferred to Roquiya. The shares were not simply held by Pervez and Arshad on a 50/50 basis. There is no substantial evidential basis for any suggestion Mohammed or Roquiya undertook to hold their shares on trust for Pervez and Arshad in equal shares or that they ever understood this to be the basis on which they held their shares.

595.2. WWF Manchester was formed separately in 1994 with two ordinary £1 shares. These were transferred to Pervez and Arshad on the understanding that the company was a family asset. The shares were put into their joint names at the outset because they were the most senior brothers. At this stage, Arshad did not play a substantial part in WWF Manchester's business at Longsight. He did not become involved in the management of this business for upwards of a year after the company had

commenced in business. The initial allocation of shares in WWF Manchester has no bearing on the beneficial ownership of AIL.

595.3. Since AIL was acquired to hold the business and investment assets for the family, and all five participating brothers were by then working in the businesses (including Kashif), there is no obvious reason why, in the absence of agreement or good reason to the contrary, beneficial ownership should be limited to Arshad and Pervez. It is true that, as a “mark of respect”, some properties were historically transferred into Arshad’s name but this was done on the understanding, consistently with Mr Kay’s earlier note dated 12 December 1995, that they were family assets. By the time Pervez started to transfer the family properties to AIL, the other participating brothers were already working in the family businesses with reasonably high levels of responsibility. Zahid, in particular, had an important management role at the Rochdale store. There is no good reason why Arshad and Pervez should each be treated, or indeed, ever have been treated as beneficial owners of 50% of the share capital of AIL with Zahid, Shahid and Kashif entitled to nothing at all.

596. AIL was acquired and all relevant properties were transferred to it on the understanding it was a family asset to which Pervez, Arshad, Zahid, Shahid and Kashif were equally entitled as brothers participating in the management of the family businesses. At the outset, Arshad’s ordinary £1 share in the company was transferred to him on that understanding. It was never agreed or understood that Arshad would become beneficially entitled to half the share capital. Nor was it contemplated that the trusts of AIL’s share capital would be varied when the project to transfer shares in the trading companies was abandoned towards the end of May 2004. Had it been contemplated that properties would be transferred to particular trading companies or brothers, this would have significantly altered the whole character of the variation. The share capital of AIL continues to be held on trust for the five brothers in equal shares. Conversely, the assets of AIL are not impressed with trusts in favour of the brothers or trading companies. They never have been.

597. Notwithstanding the vagaries of the pleadings, it is an underlying feature of Arshad’s case in respect of the Longsight and Cheetham Hill businesses (Case Nos BL-2020-MAN-000114, E06MA632 and BL-2020-MAN-000107) that these businesses were held on trust

for the family member who operated the relevant business at any given time. This included the assets of the businesses, such as the registered title to the Cheetham Hill store, and is based on a common understanding which is alleged to have encompassed also the businesses at Rochdale and Bradford but not Birmingham. It can be seen from Arshad's case on the Unfair Prejudice Petition (CR-2020-MAN-000606) that this common understanding is alleged to have become established by the end of 2003. It is alleged to have given rise to constructive trusts in Arshad's favour in respect of the whole of the business of WWF Manchester, encompassing the Longsight store and the stall at New Smithfield Market, Manchester, and part only of the business of WWF Rusholme, namely the Cheetham Hill store.

598. However, each such claim is very different.

598.1. The claim to the Longsight store and the stall at New Smithfield Market is a function of Arshad's claim to the entirety of the share capital of WWF Manchester. Arshad has a sound basis for such a claim based on the common intention of all five brothers to sever ownership when the project was abandoned for the trading companies to be brought under ALL's control supported by detrimental reliance through the assumption and performance of their reciprocal rights and responsibilities and their work in the businesses themselves. Arshad was or is thus to be treated as beneficial owner of the company under a constructive trust. This includes all assets WWF Manchester acquired subsequently, including the stall at New Smithfield Market. For the avoidance of doubt, it does not include the title to 28 Slade Lane which was not acquired as an asset of WWF Manchester.

598.2. Arshad's claim to the Cheetham Hill store fails. Firstly, the registered title to Cheetham Hill store was acquired on behalf of ALL and the business was set up through the vehicle of WWF Rusholme, a company in the ownership of Pervez. At the outset, Zahid was assigned a management role at the store but he was assigned such a role on behalf of WWF Rusholme and has never asserted an independent claim to the store. Contrary to Arshad's evidence, the Cheetham Hill store was not acquired on his behalf nor was it acquired on behalf of a trading company for which he had management responsibility. He did not take on any such responsibility for the Cheetham Hill store until after it had opened and commenced business. Secondly,

following severance of ownership in 2004, there was never a common understanding or agreement that one brother would somehow acquire from another brother an interest in his businesses or trading companies simply by taking on a management role at such businesses. To do so would have required a discrete agreement or understanding. However, no such agreement or understanding was ever reached, whether in respect of WWF Rusholme or any family other company or business. According to Arshad's own evidence, he was barely in communication with Pervez at this stage.

599. There is also no evidential basis for Arshad's case that, from the moment WWF Birmingham commenced business, "there was a shared common understanding...that the business belonged beneficially to Arshad or was properly to be treated as belonging to him". By this time, the brothers had all agreed that shares in WWF Birmingham should be allotted to the five brothers with the intention that they would be equal shareholders and, on 25 June 2003, five days after the acquisition of WWF Birmingham's first business premises at 360 Coventry Road, Small Heath, Kashif filed a company return recording the allotment of an additional 999 shares to the five brothers. Since Pervez was already entitled to one ordinary £1 share, the brothers were thus recorded as equal shareholders.

600. On this issue, Arshad's testimony is contrary to the evidence of all four of his participating brothers, including Kashif. It is also inconsistent with the contemporaneous company returns and accounts, signed off by him personally, in which £1000 of share capital was shown to be under the control of all five brothers. Moreover, once the company had commenced business, dividends were declared out of WWF Birmingham's realisable profits for the benefit of all five brothers. I accept Kashif's evidence that the dividends were not paid in cash and they were declared in this way because WWF Birmingham was the only WWF company in which the brothers could be shown as shareholders. However, this is inconsistent with Arshad's case that he was the sole owner of the business and thus its corporate vehicle. Kashif's own view is that Arshad is the sole owner or at least should be treated as sole owner on the basis that, from the very beginning, Arshad was solely responsible for the management of the business. This view is easy to understand. However, it is a view he has reached with the benefit of hindsight

and it does not accurately reflect the brothers' common understanding at the time of acquisition or, indeed, at any time afterwards.

601. Kashif's explanation for the payment of the WWF Birmingham dividends is itself difficult to reconcile with the severance of ownership of the other trading companies in 2004. However, it is to be borne in mind that the participating brothers all remained entitled, following severance, to an interest in AIL and the management of the business affairs of each company was loose and informal.

602. It remains necessary to ask whether there was a point in time, after WWF Birmingham commenced business, under which Pervez, Zahid and Shahid agreed to release or otherwise dispose of their beneficial interests to Arshad so as to furnish Arshad with an understanding or, alternatively, whether all five brothers ever reached a common understanding upon which Arshad acted to his detriment so as vary the trusts on which the share capital was held.

603. The first of these questions no longer arises in relation to Kashif since he disposed of his beneficial interest in the share capital to Arshad when, on 5 December 2017, he signed and delivered to Arshad a stock transfer form in respect of his shares in WWF Birmingham.

604. However, no evidence was adduced that Pervez, Zahid or Shahid ever agreed to release or dispose of their beneficial interest in the share capital to Arshad. Arshad's testimony was that they had all reached a common understanding it was his by the time WWF Birmingham commenced business, not on some subsequent occasion. In any event, there was no evidence – certainly no convincing or reliable evidence - that the brothers subsequently entered into an agreement or formed a common understanding that Arshad would be sole owner. Arshad contends that he was barely on speaking terms with Pervez during this period so any such agreement or understanding with him would have had to be reached through an agent or intermediary, such as Kashif. Whilst Kashif himself came to view Arshad as sole owner by dint of his hard work in setting up, establishing and pursuing the business over many years, he did not give evidence on which it can safely be inferred that, following the commencement of business, the brothers collectively reached an agreement or understanding for Arshad to become the sole owner of the business or corporate vehicle for such business. In the hypothetical event that it was possible to discern such an agreement or understanding, it would be necessary to identify Arshad's

detrimental reliance upon the agreement or understanding. I am not satisfied this can be done. It would not be fertile ground for Arshad to rely simply upon the continuation of business activities in the same vein as before.

605. As an alternative way of presenting his case, Mr Croxford submitted that Arshad could rely on the principle in *Pallant v Morgan [1953] Ch 43*. This applies where two or more parties enter into a project involving the purchase of property for their joint benefit. If the property is purchased in the name of one of the parties only, he holds it on trust for them all. As Chadwick LJ put it in *Banner Homes Group plc v Luff Developments Ltd [2000] Ch 372, 397* "...the pre-acquisition agreement...colours the subsequent acquisition...by the defendant and leads to his being treated as a trustee if he seeks to act inconsistently with it".

606. In my judgment, this principle does not assist Arshad in the present case.

606.1. If there was a pre-acquisition agreement in respect of the Longsight store, it applied to the share capital of WWF Manchester, not the land, and it was for the benefit of all five brothers, not Arshad alone. As it happens, the trusts of the share capital of WWF Manchester were varied in 2004 when the project for the transfer of shares to AIL was abandoned. At this stage, Arshad became entitled, as sole beneficial owner, to the share capital of the company.

606.2. There was no pre-acquisition agreement in relation to the Cheetham Hill store. Consistently with the pattern in which property was acquired for the use of the trading companies, the Cheetham Hill store was acquired in the name of AIL as beneficial owner on the understanding AIL would permit WWF Rusholme to operate a shop from the premises. Contrary to Arshad's own evidence, it was never contemplated that the shop would be acquired on his behalf or for his benefit.

606.3. Contrary to the usual pattern, a series of properties was purchased for or transferred into the name of WWF Birmingham over the years. However, there is no evidence that these properties were purchased in WWF Birmingham's name pursuant to a pre-acquisition agreement for the joint benefit of Arshad and WWF Birmingham or, indeed, any other party. Nor, more generally, is there evidence that the properties were transferred into the name of WWF Birmingham with the

intention that they would hold the same on trust for Arshad. In addition to the store at 360 Coventry Road, Small Heath, this includes business premises at 7 Alum Rock Road, Birmingham (WM881629), 356-8 Coventry Road (Brighton Arms) (WM881629), 753-769 Stratford Road, Sparkhill (WK191592) and 771/773 Stratford Road, Sparkhill (WK189387), Leeds Road/Edderthorpe Road, Bradford comprising five separate titles (WYK436075, WYK431650, WYK392938, WYK710272 and WYK710272). It also includes 65 Treaford Lane (WM80638), Cheetham Hill Library (GM666173), 45 Green Lane, Small Heath (WM765850), land on the NW side of 9 George Arthur Road, Saltley (MM46898) and land to the SE side of Adderley Road, Birmingham (WM577775).

607. For the most part, the properties were acquired utilising funds advanced by the Bank subject to the group overdraft facility. The Bank loans were secured by mortgages over the properties and, in due course, the income and profits generated from such properties were applied to repay the loans. However, whilst the Bank loans were generally subject to guarantees and cross guarantees from the brothers and trading companies, it was never envisaged that the brothers or trading companies would thereby acquire an interest in properties purchased with the Bank's advances. No doubt, it was anticipated that funds for repayment would be raised from the rents or profits of the businesses and investment properties. However, it was not intended that this should somehow be reflected in the creation of beneficial interests, whether under resulting trusts or otherwise. Legal and beneficial ownership was intended to vest in the companies to whom the properties were being transferred – AIL or WWF Birmingham – free from trusts or other third party rights. There is no room for resulting trusts, *Curley v Parkes (supra)*. It matters not that repayment was achieved from the revenue of the businesses at each relevant property.

608. Arshad has an alternative case based on proprietary estoppel. This is wide enough to encompass ownership of the Cheetham Hill business and the entirety of the share capital in WWF Manchester and WWF Birmingham.

609. Since Arshad's case is not limited to land, a question potentially arises as to whether *proprietary* estoppel is applicable to other assets and, if so, to what extent. However, in view of the way in which the doctrine has developed in recent years, it is certainly capable of applying to shares in a company and, more likely than not, is also capable of applying

to a business if the business or specific assets of the business are, and remain, sufficiently identifiable when the case arises for determination.

609.1. Firstly, the estoppel will be taken to be “proprietary” in nature if it relates to property, whether real or personal. It can thus encompass chattels and rights in intangible property that can only be enforced through legal proceedings. In *Cobbe v Yeomans Row [2008] UKHL 55, at [14]*, Lord Scott confirmed that “the estoppel becomes a ‘proprietary’ estoppel – a sub-species of a ‘promissory’ estoppel – if the right claimed is a proprietary right, usually a right to or over land but, in principle, equally available in relation to *chattels* or *choses in action*” (My italics).

609.2. The view expressed by Lord Scott, in *Cobbe*, is consistent with Lord Walker’s observation, in *Thorner v Major [2009] UKHL 18 at [61]*, that to qualify for proprietary estoppel, the claim “must relate to identified property (*usually* land) owned (or, perhaps, about to be owned) by the defendant” (My italics). If it is *usually* land, this would suggest it is capable of relating to other property rights, such as a right to share capital.

609.3. By the time of the House of Lords’ decision in *Thorner v Major (supra)* the Court of Appeal had already applied the principle to company shares in *Sutcliffe v Lloyd [2007] EWCA Civ 153*. *Thorner v Major (supra)* was a case of promissory estoppel as, indeed, was *Sutcliffe v Lloyd (supra)*, a decision of the Court of Appeal, uncited before the House of Lords. The doctrine has also been successfully applied to share capital in a case of estoppel by acquiescence, *Pinfield v Eagles (supra)*. Proprietary estoppel is thus capable of applying to real and personal property.

609.4. It remains necessary to identify the property. In the case of company shares, this does not pose difficulty if the shares remain in existence when the promise falls to be performed. However, in the case of a business, particularly an evolving business or set of businesses, the question is likely to be fact specific. In *re Basham [1986] 1 WLR 1498*, assurances about a person’s residuary estate passed the test but, in *Layton v Martin [1986] 2 FLR 227*, Scott J considered that they must relate to specific assets only. In *Thorner v Major (supra)*, Lord Walker left open, at [63], the question of whether *Basham (supra)* was correctly decided. This is less likely to give rise to difficulty in a case of estoppel by acquiescence. In any event, there is no reason, in

principle, why the doctrine of proprietary estoppel should not be capable of applying to the assets of the Cheetham Hill business.

610. Arshad's proprietary estoppel claim to each relevant company or business is nebulous in origin. Such a claim can be based on an irrevocable promise or assurance. With potentially different consequences, it can also be based on acquiescence in conduct arising from an erroneous belief. These claims are based on equitable principles and would potentially furnish Arshad with a cause of action. By contrast, estoppel by representation, at common law, is founded on a statement of fact or mixed fact or law and thus bars the representor from acting inconsistently with the same or making assertions "that stand... in the way of some right claimed by the person entitled to the benefit of the estoppel", *Cobbe v Yeomans Row (supra)*, at [14] (Lord Scott).

611. Estoppel by acquiescence is based on the property owner's culpable failure to alert the other party to his error. It can involve standing by in silence whilst the other party acts in reliance upon his erroneous belief but may also be accompanied by active encouragement. Once established, the property owner is estopped from acting inconsistently with the other party's erroneous belief.

612. For cases of estoppel by acquiescence involving unilateral mistake, Fry J provided the following guidance in *Willmott v Barber (1880) 15 ChD 96, 105-6*.

"In the first place the plaintiff must have made a mistake as to his legal rights. Secondly, the plaintiff must have expended some money or must have done some act (not necessarily upon the defendant's land) on the faith of his mistaken belief. Thirdly, the defendant, the possessor of the legal right, must know of the existence of his own right which is inconsistent with the right claimed by the plaintiff. If he does not know of it he is in the same position as the plaintiff, and the doctrine of acquiescence is founded upon conduct with a knowledge of your legal rights. Fourthly, the defendant, the possessor of the legal right, must know of the plaintiff's mistaken belief of his rights. If he does not, there is nothing which calls upon him to assert his own rights. Lastly, the defendant, the possessor of the legal right, must have encouraged the plaintiff in his expenditure of money or in the other acts which he has done, either directly or by abstaining from asserting his legal right."

613. However, in *Taylor's Fashions v Liverpool Trustees* [1982] QB 133 at 154, Oliver J observed that “the broad test [was] whether in the circumstances the conduct complained of is unconscionable without the necessity of forcing those incumbrances into a Procrustean bed constructed from some unalterable criteria”. He considered that Fry J’s third probandum, “knowledge of the true position by the party alleged to be estopped” was “merely one of the relevant factors”. However, he also observed that it might be “a determining factor in certain cases – in the overall inquiry”. The broader test, identified at 152, was “whether, in particular individual circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment”.

614. Oliver J’s judgment in *Taylor Fashions (supra)* disposed of two claims in respect of options for the renewal of leases. In each case, the parties mistakenly believed the options were valid with the tenants incurring expenditure in this belief. In only one of the claims did the tenant successfully establish the landlord was estopped from challenging the option. In this claim, unlike the other, the tenant had incurred expenditure in reliance upon the mistake. However, it was also critical that the landlord had made a representation to the tenant that the option was valid. This was a representation of fact upon which the tenant had relied to its detriment. It was thus unnecessary for the tenant to rely on estoppel by acquiescence. On analysis, therefore, Oliver J’s conclusions in *Taylor Fashions* were not reached by dispensing with Fry J’s five probanda, including the requirements for the defendant to know of the claimant’s rights and its mistaken belief in such rights.

615. In *Cobbe (supra)*, Lord Walker recognised, at [62], that Fry J’s five probanda remain appropriate, as a guide, where there has been “... unilateral mistake...that is, a case of the defendant taking advantage of a mistake as to title of which he is well aware”. Whilst the five probanda are collectively no more than a guide, it is of the essence of the jurisdiction that one party makes a unilateral mistake of which the other party knowingly takes advantage.

616. When considering Arshad’s claim, by proprietary estoppel, to WWF Manchester, WWF Birmingham and the business of the Cheetham Hill store, it is important to bear in mind the identity of the owners of the relevant assets.

616.1. As it happens, Arshad's estoppel claim in respect of the shares in WWF Manchester is entirely hypothetical given my conclusion that he is entitled to the same under a constructive trust. However, subject to this, the share capital in WWF Manchester was held on trust for Pervez, Zahid, Shahid, Kashif and Arshad himself under the family trusts applicable when the company first commenced in business in 1994 by the time the project to transfer the share capital of the trading companies to ALL was finally abandoned in 2004. Asif was never beneficially interested in the share capital of WWF Manchester under the family trusts. Roquiya's beneficial interest, if any, would have become vested in Zahid when he obtained a grant of representation. All six brothers (including Asif) authorised Zahid to obtain a grant on the understanding he would be under no obligation to realise her beneficial interest in any of the relevant businesses or make a distribution in respect of the same. In any event, however, Roquiya's estate devolved on him alone in his capacity as personal representative. It follows that Arshad's estoppel claim in respect of the shares of WWF Manchester would potentially have divested Pervez, Shahid and Kashif of their beneficial interests in the shares and Zahid of his beneficial interest in his personal capacity and personal representative of Roquiya's estate. To be divested of their interests in this way, it would have to be shown that they are each culpable or deemed culpable for the representations, promises or acquiescence upon which Arshad relies.

616.2. In substance, Arshad's estoppel claim in respect of WWF Birmingham is against Pervez in his capacity as legal owner of one £1 ordinary share in the company and against Pervez, Zahid, Shahid and Kashif as beneficial owners with a competing equity to Arshad himself.

616.3. Conversely, Arshad's estoppel claim in respect of the Cheetham Hill store is against WWF Rusholme as original owner of the business and ALL as registered owner of the property. To succeed, it must be shown that each company is culpable, through its officers or servants, for the representations, promises or acquiescence on which Arshad relies. From 18 November 2002, Pervez was registered as the sole director of ALL. Between 9 April 2002 and 6 January 2004, Kashif and Zahid were respectively the sole director and company secretary of WWF Rusholme. Pervez was

not formally appointed as a director, or at least recorded as such, until 6 October 2004. However, I am satisfied that he was already a *de facto* director by 15 March 2004, when the Miles Platting business premises were acquired, and remained as such until 6 October 2004 when he was formally appointed as a director.

617. In the hypothetical event Arshad had failed on his constructive trust claim in respect of the shares in WWF Manchester, he would have succeeded on this part of proprietary estoppel claim. The same is true of any claim advanced by Pervez in respect of the shares of AL Halal and WWF Rusholme. This is on the basis it was implicit in the decision to abandon the project to transfer the shares of the trading companies to AIL that control, management and ownership of each company would be severed and vested, on a once and for all basis, in the brother or brothers then managing each such company. Whilst this was initially Pervez's decision, each brother acquiesced in and ultimately assented to the decision. In doing so, they implicitly assured one another that, whilst they would continue to collaborate, they would give up their rights in respect of the trading companies in which they had no management role. In reliance upon the respective assurances of their brothers, they each acted to their detriment, working hard in the management of the businesses respectively under their control and collaborating with one another in connection with the accounting and legal formalities, the purchase of supplies and the requirements of the bank.

618. This amounted to a settled understanding between the brothers upon which they acted and co-operated with one another for many years. Although there is some evidence Pervez sporadically attended the stores of his brothers to satisfy himself that they were being managed properly and make management suggestions, there is no substantial evidence to suggest he intervened in anything other than a superficial way. It is true that Kashif was left to deal with the legal formalities for each company. He also had an important role in monitoring their accounts and arranging for them to be audited. This was funded through AIL although AIL was entitled to re-charge the companies for its services. In practice, however, the brothers each had substantial autonomy in connection with the management of the corporate vehicle for their respective businesses. Consistently with Kashif's evidence, I am satisfied that it ought to have been obvious to each of the participating brothers that they were each acting in reliance upon the

understanding that the corporate vehicle for each such business was essentially under the control of the brother or brothers responsible and implicitly in their ownership. This generally included the assets of the business. In the case of WWF Manchester's short term tenancy, it included the tenancy itself. However, it did not include the business properties transferred to AIL since it was never contemplated these would be held by AIL otherwise than beneficially. The whole model was for the properties to be held separately from the trading companies. There is no written contemporaneous evidence to suggest otherwise.

619. By collaborating with one another in their respective businesses in this way, the brothers encouraged one another to act in reliance upon this common understanding. Whilst the businesses provided each responsible brother with a livelihood, the brothers could have set up business on their own had they perceived that the assets of the business were at risk in this way and unanswerably secured their own rights to the income and assets of the business. I am thus satisfied that the brothers each acted to their detriment with the encouragement of one another. It would thus be unconscionable for them to act inconsistently with their common intention that, as corporate vehicle, for the Longsight, Bradford and Rochdale businesses, the relevant trading companies (WWF Manchester, Al Halal and WWF Rochdale) are respectively held on trust for Arshad, Pervez and, together, Zahid and Shahid. Applying the approach taken, in the Supreme Court, by Lord Briggs in *Guest v Guest [2022] UKSC 27* at [74] – [76], the simplest way in which to remedy any “unconscionability constituted by the repudiation” of the brothers’ collective assurances to one another would be to hold them to their assurances and give effect to the equity of each brother by treating them as sole beneficial owners of the share capital of the respective companies respectively in their management. Far from achieving a remedy that is out of all proportion to the detriment, it would yield an outcome that is manifestly reasonable and proportionate.

620. The same principle applies to WWF Rusholme. Although WWF Rusholme was formed on 9 April 2002, the premises from which it first traded at Miles Platting and Rusholme were not acquired until 15 March and 16 April 2004 respectively. This was precisely the time when the creation of a formal group structure was under active consideration prior to Pervez’s decision at the end of May 2004 or thereabouts not to proceed. However, the

brothers were well aware that this was to be Pervez's business and collaborated with one another on this basis. Pervez plainly set up the businesses at Miles Platting and Rusholme in reliance upon this understanding and the brothers were aware or ought to have been aware that this was so. Subject to Arshad's claim in relation to the Cheetham Hill store, there is thus no material distinction between WWF Manchester, Al Halal, WWF Rochdale and WWF Rusholme. From the end of May 2004, the shares of each such company were held on constructive trust or treated as such dictated by the identity of the brothers responsible for the management of the same at that time. If not, the other brothers are estopped from challenging the responsible brothers' rights to the shares on the basis that it would be unconscionable for the other brothers to be allowed to do so following their encouragement to the contrary.

621. In my judgment, subject to Arshad's case in relation to the Cheetham Hill store, the simplest and most obvious way in which to give effect to Pervez's equity in respect of WWF Rusholme is to treat Pervez as the sole shareholder. Again, this is consistent with the principles identified by Lord Briggs in *Guest v Guest [2022] UKSC 27* at [74] – [76] and it has not been shown that this would, in itself, be disproportionate given that Pervez personally set up and established the whole business prior to the acquisition of the Cheetham Hill store. It does not, of course, involve conferring on Pervez an interest in the registered title to the property. This was and is in the separate ownership of ALL consistently with the model promoted at all times by Pervez himself. As it happens, Kashif had transferred or purported to transfer to Pervez his share in WWF Rusholme by the time of the company's annual return dated 9 April 2009. By this stage, he already held his share on trust for Pervez as sole beneficial owner or is at least to be treated as such.

622. Whilst I have treated Arshad's evidence with a great deal of caution, I accept that at the latest by August 2016 when he appointed Mr Sawhney to act as his management accountant and, in all likelihood, a substantial period of time before then, Arshad had started to treat the Cheetham Hill business as his own. However, he never had a reasonable basis for doing so.

623. Arshad claims he is entitled, by proprietary estoppel, to the registered title to the property from which the Cheetham Hill business is conducted and the business itself. However, his claim fails in its entirety.

623.1. Firstly, the Cheetham Hill store was acquired as part of the assets of AIL with the intention that, in the same way as all the trading companies other than WWF Birmingham, it would be an asset of AIL. It was never contemplated that the registered title would be transferred to Arshad or his companies nor was he given any promises or assurances that it would be transferred to them or held for them. His evidence to the contrary was wholly implausible. Had, it been envisaged that the property would be acquired in the name of Arshad or a company controlled by them, this would have been entirely contrary to the pattern in which such properties were acquired and held. Arshad has no room for a case based on unilateral mistake or acquiescence since he never had any reasonable grounds to believe that he would acquire the property in this way. In the unlikely event he was ever somehow under the mistaken impression he had acquired or would acquire an interest in the property itself, his brothers were entirely unaware of his mistake. This is fatal, in itself, to a claim based on acquiescence since it is contrary to Fry J's fourth probandum which is at the very heart of the equity.

623.2. Secondly, the business at the store was initially set up in the name of WWF Rusholme, a company in the control and ownership of Pervez. Arshad was only approached to take on a management role after business had commenced. Once approached, it is true he took on the role with a minimum of formality. He appears to have been engaged to manage the business on the understanding he would be entitled to remuneration from the profits of the business regardless of whether this was paid by AIL and re-charged to WWF Rusholme. Although the process of routing the payments through AIL appears to have post-dated the 2004 Watershed, the underlying system under which the brothers drew their remuneration from the businesses under their respective control was consistent with the historic pattern in which businesses were run. However, neither Pervez nor, to the extent it is relevant, did any of the other brothers ever promise to transfer the Cheetham Hill business itself to Arshad personally and there would have been no good reason for them to do so without at least some understanding about the basis on which this was to be done and how he would account to WWF Rusholme for the assets of the business. Contrary to the 2004 pattern, in which ownership of the various businesses was severed on

the basis that Pervez himself became entitled as sole beneficiary to the shares of AL Halal and WWF Rusholme, there would have been no obvious reason for Pervez to enter into an agreement on these terms in relation to the business of the Cheetham Hill store.

623.3. Having taken on the management of the Cheetham Hill store, Arshad conducted the business through the vehicle of WWF Rusholme for many years until alerted, he says, to the fact that the business at the store shared the same VAT registration as the rest of WWF Rusholme's business. If, by then, Arshad was mistaken about the ownership of the business so as potentially to found a claim based on estoppel, there is again no convincing evidence Pervez was aware of his mistake. Pervez can be taken to have been aware that Arshad was entitled to remuneration from the net profits for so long as he managed the business and was afforded a wide latitude in doing so. It matters not whether this was routed through ALL. However, had the arrangement transmuted into one in which Arshad was somehow to be treated as the owner of the business, Pervez could reasonably have expected to be advised that this was the case or, indeed, that Arshad intended to proceed on this basis. No doubt, the terms on which this happened would then have been subject to negotiation. On Arshad's own case, it is unlikely Pervez would have been aware of Arshad's putative mistake given that they were barely communicating with one another throughout the relevant period. Whilst Kashif himself came to treat Arshad as owner of the business at Cheetham Hill and thus sought to assist him by arranging for the disposal of the business to be recorded in WWF Rusholme's accounts, this was done without canvassing the matter with Pervez prior to the meeting at which Pervez signed off WWF Rusholme's accounts for the year ending on 31 May 2016. By the time Pervez signed off the accounts, Arshad had obviously been made aware that WWF Rusholme was the original vehicle for the Cheetham Hill business. It was for precisely this reason that he attended to the acquisition of WWF Cheetham Hill and the appropriation of the Cheetham Hill business. He did so without consulting Pervez.

624. Whilst, Arshad also came to treat WWF Birmingham and its businesses as his own, his proprietary estoppel claim to WWF Birmingham and the Birmingham businesses also fails. Again, it fails on the basis that, following the initial meeting in 2003 at which Kashif,

Arshad, Zahid and Shahid agreed, in the absence of Pervez, that shares should be allotted to all five brothers, there was never any subsequent discussion or agreement with a view to transferring or otherwise disposing of shares in the company to Arshad other than Kashif's allotment of 200 shares. It was always understood that the shares in respect of WWF Birmingham were separate from the 2003 project to transfer the shares of the trading companies to AIL. The shares in WWF Birmingham were treated differently from the shares in the other trading companies since the five participating brothers each agreed to take their shares in WWF Birmingham on the understanding they would be allotted to the brothers and held by them personally. Until then, shares in the trading companies had been vested in trustees or nominees on the understanding they would be held by them on the family trusts. When the project to transfer shares in the trading companies to AIL was finally abandoned at the end of May 2004 or thereabouts, it is thus impossible to infer a common intention that ownership of WWF Birmingham would be severed in the same way as the other trading companies. Following the abandonment of the project, the brothers continued to be recorded as shareholders in the company's accounts and dividends were declared on the footing that they were all shareholders.

625. The participating brothers did not make any promises or representations to Arshad about their shares in WWF Birmingham nor was anything said to them to make them aware Arshad was mistaken about his rights. More likely than not, Arshad was not initially mistaken about his rights. Following the initial meeting with his brothers in 2003 and the allotment of shares, he would initially have been aware that he was not the sole owner of the company or the businesses. Whilst he might eventually have come to regard himself as the owner of the Birmingham businesses, this was not as a result of any promises or representations on the part of his brothers, implicit or otherwise.

626. In any event, Arshad can have no acquiescence-based claim against his brothers in respect of WWF Birmingham. Such a claim would have to be based on a unilateral mistake about his rights in the company of which his brothers somehow became aware so as to bring into play the fourth element of Fry J's so-called probanda. This element is critical to the equity since it gives rise to the unfairness on which the equity is based. From a very early stage, Arshad was responsible for the management of the Birmingham businesses and drew his remuneration from the profits of the business. However nothing was done

to put his brothers on notice that Arshad had mistakenly come to believe he was sole owner. For many years, the company returns and accounts showed otherwise and, as late as 28 March 2013, Arshad approved company accounts in which dividends were declared in favour of all five brothers from the company's realisable profits.

627. For many years, the companies banked with National Westminster Bank plc. They had the benefit of an aggregate overdraft facility applicable collectively to all the associated companies. In support of his proprietary estoppel claim in relation to WWF Manchester, WWF Birmingham and the Cheetham Hill business, Arshad relies on the steps allegedly taken on his behalf, with effect from March 2015 or thereabouts, to persuade the bank to separate the banking arrangements, in particular the collective overdraft facility, of the companies under his management from other companies in the group. This includes exchanges of emails, in March and April 2015, between Mr David Stelfox, of the Bank, and Arshad, in connection with alterations to the bank facilities to the group companies and revised guarantees.

628. It is Arshad's case that he asked Kashif to separate the overdraft facilities and banking arrangements available collectively to the group as a whole so as to enable companies under his control, particularly WWF Birmingham, to borrow from the Bank without netting off the amounts advanced to other Worldwide Food companies. He was advised this could be achieved if he made a payment of £1.35 million and released to ALL monies owed to companies under his control in respect of the IRHP claim against the Bank. By implication, the claim against the Bank was valued at £250,000 since he contended, in Para 164 of his witness statement, that "in total, £1.6 million I paid". It is implicit in his case, although not put this way in his witness statement, that he paid this amount in reliance upon the belief that one or more of the relevant companies or businesses - WWF Manchester, WWF Birmingham and the Cheetham Hill store – was in his sole ownership.

629. In my judgment, this does not assist Arshad in his case based on proprietary estoppel in respect of WWF Manchester, WWF Birmingham or the Cheetham Hill store.

629.1. Firstly, the factual basis for this part of Arshad's case is obscure. Whilst there is some contemporaneous documentation to show that steps were taken to re-arrange the banking facilities and separate the companies' overdraft facilities, this documentation is limited in scope and certainly does not, in itself, establish each

element of Arshad's case. There is a paucity of contemporaneous evidence in relation to the quantification of Arshad's £250,000 claim against the Bank. He was not personally entitled to such a claim and, to the extent any of the companies had a cause of action against the Bank, the claims were not simply within Arshad's gift. There certainly appears to have been a transaction in which WWF Birmingham credited AIL with the sum of £1.35 million and this may have been required by the Bank to achieve severance. However, it would appear from WWF Birmingham's annual accounts for the year ending on 31 May 2014 and 2015, that this sum was payable in respect of its extant liabilities to AIL. It can be seen from WWF Birmingham's balance sheet as at 31 May 2014 that it then owed some £2,572,624 to "related undertakings" of which some £1,465,892 was owed to AIL. It can also be seen from its annual accounts for the following year that, as 31 May 2015, the debt to AIL was reduced to £291,004 after accounting for wages re-charged of £91,571.

629.2. It is more than conceivable that Arshad agreed to arrange for WWF Birmingham to discharge part of its liabilities to AIL as part of the arrangements to separate its overdraft facility from the facilities provided to the trading companies under the management of Pervez, Zahid and Shahid. However, this is not the way in which Arshad put his case in his witness statement. According to his witness statement, the overall context for the payment was simply that Pervez's "accounts were usually around £1.35 million into the overdraft" and Arshad's accounts, by which he meant the accounts of his trading companies, "were all in credit by around £1.5 million". As it happens, it can be seen from WWF Birmingham's annual accounts that, on 31 May 2014, it owed £221,166 to the Bank due in less than one year and another £1,899,380 in respect of bank loans due after more than one year. As at 31 May 2015, these had climbed to £314,093 for amounts due in less than one year and £2,679,986 in respect of "bank loans and overdrafts". There is no separate balance sheet for the business at Cheetham Hill. As at 31 May 2014, WWF Manchester had only a minimal liability to the Bank in respect of amounts falling due within one year of £14,104. However, when asked, in cross examination, to explain the disparity between his evidence that his companies were in credit to the Bank and the indebtedness shown in the accounts for WWF Birmingham, Arshad appeared to accept the liabilities to the Bank as

recorded in its accounts but insisted that the putative liability of £2,572,624 from WWF Birmingham to “related undertakings” was incorrect (Day 9/83/10-13).

629.3. Secondly, on the hypothesis – itself doubtful – that it could be shown Arshad initiated the arrangements to separate the overdraft facilities for each company in reliance upon the mistaken view that, by this stage, he was the sole owner of WWF Manchester, WWF Birmingham or the Cheetham Hill store, there is no evidence from which I can reasonably infer that Pervez or, indeed, any of his other brothers were aware of Arshad’s putative mistake at the time nor is there evidence that, mindful of his mistake, they sought to take advantage of it for their own benefit. When, Adil subsequently requested Kashif to explain, by email, the reason for the transfer of the sum of £1.35 million, Kashif’s explanation was essentially that, by sharing the overdraft facility, the associated companies were not properly accountable for exceeding the overdraft facility. He also pointed out that the WWF Rochdale and AIL bank accounts were constantly overdrawn and, in this context, the sum of £1.35 million had been transferred by WWF Birmingham to AIL. However, there was no suggestion in contemporaneous documentation that Arshad was the owner or believed he was owner or, indeed, the sole owner of any relevant company or business.

629.4. In the hypothetical event Arshad could show that he released the Bank or caused it to be released from a claim for £250,000 in reliance upon the same mistake, there is no evidence upon which I can reasonably infer his brothers were aware of such a mistake or that he was acting in reliance upon it.

630. Arshad’s case is not based on estoppel by convention. However, he has no room for such a case. Regardless of whether contract-based, it is axiomatic such a case must be based on a *shared* assumption for which the estopped parties assume responsibility by conveying to the other party an understanding they expected him to rely upon it, *Tinkler v HMRC [2021] UKSC 39 at [45]*, endorsing the guidance of Briggs J in *HMRC V Benchdollar [2009] EWHC 1310 at [52]*. If Arshad came to believe that he was the owner of the Cheetham Hill business and property or the entirety of the shares of WWF Birmingham, this was inconsistent with the understanding of his brothers with the exception of Kashif. His other brothers did not collectively assume or share any assumption that Arshad was

owner or sole owner nor can they be said to have taken responsibility for Kashif's mistaken assumption.

(h) Conclusions on beneficial ownership of shares

631. Following the registration of Pervez, Arshad, Kashif and Sumera as initial family shareholders, each allotment is in issue. Subject to this, beneficial ownership of the disputed shareholdings is as follows or is, at least, to be treated as such.

631.1. AIL: Arshad holds his original share in the company on trust for Pervez, Zahid, Shahid and Kashif, in addition to himself, as beneficial tenants in common in equal shares.

631.2. WWF Birmingham: Pervez holds his original share on trust for Arshad, Zahid, and Shahid in addition to himself, as beneficial tenants in common with Arshad beneficially entitled to two fifths and Pervez, Zahid and Shahid each entitled to one fifth.

631.3. WWF Manchester: Pervez and Arshad hold their shares on trust for Arshad as sole beneficial owner. If not, Arshad is entitled to be treated as sole beneficial owner under the doctrine of proprietary estoppel.

631.4. WWF Rusholme: Kashif holds his share on trust for Pervez as sole beneficial owner.

632. There is no issue for determination, in the statements of case, about the ownership of the share capital of WWF Rusholme. Arshad contends that AIL and WWF Rusholme respectively hold or historically held the freehold title to the Cheetham Hill store and the business of the store on trust for himself personally. He did not contend that the WWF Rusholme share was held on trust for him. However, to the extent this is in issue, I am satisfied Kashif holds his share in WWF Rusholme on trust for Pervez as sole beneficial owner. The shares of Al Halal and Pennine Distribution are also held on trust for Pervez as sole beneficial owner. Kashif and Sumera hold their shares in WWF Rochdale on trust for Zahid and Shahid.

(8) The putative share allotments

633. The Articles of Association of each company conferred powers of allotment on the directors. However, at least in the case of AIL and WWF Birmingham, these were only exercisable for a period of five years from incorporation. They were thus exercisable on or before 7 July or 15 July 2004 respectively. The Articles also incorporated, by reference, most of the *Companies (Tables A to F) Regulations 1985*, including *Regulation 32(a)*, which provided for a company itself to increase its share capital, by ordinary resolution, through the issue of new shares of such amount as the resolution shall provide.

634. Unissued or newly created shares were subject to a right of pre-emption exercisable, on notice, by the existing members. However, *Regulation 5 of 1985 Regulations* provided that “except as required by law, no person shall be recognised by the company as holding any share upon any trust and (except as otherwise provided by the articles or by law) the company shall not be bound by or recognise any interest in any share except an absolute right to the entirety thereof in the holder”. This is consistent with *Section 126* of the *Companies Act 2006*. There are statutory restrictions on the alteration of share capital in *Section 617* of the *2006 Act*.

635. The powers of allotment exercisable by directors were, of course, exercisable for proper purposes only, *Hogg v Cramphorn [1967] Ch 254*, *Howard Smith v Ampol Petroleum [1974] AC 821*, under principles now codified in *Section 171* of the *Companies Act 2006*.

636. In the present case, five sets of allotment are in dispute or potentially in dispute. These are as follows.

636.1. The allotment, on 25 June 2003 or thereabouts, of some 999 shares in respect of WWF Birmingham to the five brothers.

636.2. The respective allotments, on 29 September 2003 and 29 March 2004 or thereabouts, of 99 shares and 1,152 shares in AIL, consisting first of 99 shares to Arshad then 369 shares each to Pervez and Zahid, 123 shares to Arshad, 123 shares to Kashif and 118 shares to Sumera.

636.3. The allotments, on or about 15 July 2004 and 15 July 2006, of additional shares in AIL so to raise the shareholdings of Pervez and Zahid to 738 shares each with 446 shares for Arshad, 246 shares for Kashif and 236 shares to Sumera. It appears from company returns that Arshad was initially allotted an additional 150 shares so as to

raise his allocation to 273 shares. His allocation was then increased, again, to 446 shares. If valid, an additional 2,404 shares were allotted in respect of AIL at this stage.

636.4. The allotment, on 15 July 2013 or thereabouts, in respect of AIL following which 18,979 shares were issued to Pervez and 273 shares to Arshad.

636.5. The allotment, on 12 August 2014, of some 20,000 shares in respect of WWF Birmingham, each of which were allegedly issued to Arshad.

637. The allotment, on 25 June 2003, of 999 shares in respect of WWF Birmingham is evidenced by a company return, filed by Kashif, showing that an additional 999 shares were allotted to the five brothers at about that time. Immediately prior to the putative allotment, Pervez was sole shareholder. The putative allotment would have been made when specific powers of allotment were conferred on the board of directors in addition to the rights of Pervez, as sole shareholder, albeit subject to the family trusts. There were two directors at the time, namely Arshad and Kashif. Pervez held his share on trust for all five participating brothers, Pervez himself, Arshad, Zahid, Shahid and Kashif.

638. Whilst the contemporaneous documentary evidence is sparse, I am satisfied that all five brothers ultimately assented to the decision to make the June 2003 allotment. It can thus be taken to have been a unanimous decision of the directors, shareholder and beneficiaries. It is best treated as a members' decision validated by the *Duomatic* principle (as clarified by the Privy Council in *Ciban Management Corporation v Citro (BVI) Ltd [2020] UKPC 21*). This is on the basis that, as sole shareholder, Pervez had the consent of all beneficiaries. Indeed, he did little more than endorse the proposal of his participating brothers. If viewed as a decision by Arshad and Kashif as directors, it is not argued the decision was taken for an improper purpose but, if it was, Arshad was plainly himself party to the decision. If they were not party to the decision, Pervez and each of the other beneficiaries consented to it. They did so unanimously.

639. However, no steps were taken to register Arshad, Zahid, Shahid or Kashif as shareholders following the June 2003 allotment. It follows that, whilst WWF Birmingham is under a duty to maintain a register of shareholders and Arshad, Zahid, Shahid and Kashif are each entitled to be registered as such, Pervez remains the sole registered shareholder. Pervez holds his share in WWF Birmingham on trust for the five participating brothers,

Arshad, Zahid, Shahid, Kashif and himself, on the basis that the company was originally acquired on the common understanding that it would be held subject to the family trusts. If their subsequent agreement or understanding superseded the family trusts, the outcome is essentially the same with Pervez, Arshad, Zahid, Shahid and Kashif equal beneficial owners under a common intention constructive trust.

640. The allotments on 29 September 2003 and 29 March 2004 in respect of AIL were part of the project to transfer to AIL the share capital of the relevant trading companies. The allotment on 29 September 2003 was made by Arshad in his capacity as shareholder. By then, Pervez was already sole director. In respect of the subsequent allotment, Pervez signed minutes of AIL board meetings attended by himself, as chairman, and Kashif, as company secretary separately resolving, in respect of each relevant trading company, that it was in AIL's interest to buy its shares and that, pursuant to share purchase agreements for each such company, 369 shares in AIL were being issued to Pervez and Zahid, 173 shares to Arshad, 173 to Kashif and 118 to Sumera.

641. In my judgment, each AIL allotment is voidable. Regardless of whether made in full compliance with the provisions of the company's Articles, the initial allotments are voidable because they were made on the understanding that the shares in WWF Manchester, WWF Rochdale and Al Halal would be transferred to AIL. This was an essential condition of the allotments which was never satisfied. In any event Pervez did not make his allotment within the proper exercise of his powers as director. Although each of the brothers was ultimately content with Pervez's subsequent decision to abandon the whole project, they never unanimously consented to the allotment of shares in AIL in the proportions for which the March 2004 allotment provided and certainly did not do so or evince any intention to do so in the absence of corporate restructuring. Kashif was aware of the allotment and was content to proceed with it on the basis that the whole project was indivisible. Whilst, in all likelihood, the other brothers were aware of the project and are likely to have had a vague perception that the shares were held for the participating members of the family, they were not aware of the method for allotment of shares among trustees. This includes Arshad who was then registered as sole shareholder. Pervez himself appears to have been unhappy, if not a little confused, with the intended

share allocation. I am satisfied that the 29 March 2004 allotment is voidable at Arshad's election.

642. The subsequent allotments in 2004 and 2006 are recorded in company returns during the period. However, it is unclear how and precisely when the allotments came to be made. They are not recorded in the minutes of a meeting. Until 15 July 2005, powers of allotment were conferred on the board of directors. Pervez was sole director and Kashif company secretary. If Pervez purported to make such an allotment in his capacity as director, his purposes for doing so are obscure but it is inherently unlikely that, when objectively construed, his primary purpose was simply to advance the company's best interests as envisaged in *Hogg v Cramphorn (supra)*, for example raising capital for further acquisitions of property. It is conceivable that, at Kashif's request, Arshad signed documentation handed to him in connection with the allotment of shares in AIL. However, there is no evidence of this. Moreover, if Arshad signed such documentation, there is no evidence this was pursuant to an informed decision to authorise the allotments in his capacity as shareholder. On such a hypothesis, it is inherently unlikely that he consulted his brothers as beneficiaries or considered their interests. In reality, he was unaware that he held the sole registered share in the company and did so as a trustee for himself and his brothers. Moreover, he had no concept of the role and duties of a trustee.

643. On 5 September 2011, a company return dated 15 July 2011 was filed for AIL showing the allotment of some 18,000 shares in AIL so as to increase the aggregate share capital to £19,252. This was signed by Pervez and, in cross examination, Pervez accepted that it was his decision to allot the shares (Day 26/71/12-14). The identity of the persons to whom these shares were being allotted was not identified in the return itself but, in cross examination, Pervez confirmed that he allotted or purported to allot the shares on the understanding that they were being allotted to himself personally so as to give himself a majority of the shares in the company (Day 26/72/9-13). This is plainly an improper purpose. By then Pervez had long since ceased to have powers of allotment as a director under AIL's Articles but, had he been authorised to make the allotment, it would have been void on the basis that it was made for an improper purpose.

644. On 15 July 2013, a company return was filed for AIL showing that, by then, 19,252 shares had been issued in respect of AIL with 18,979 shares issued to Pervez and 273 shares

issued to Arshad notwithstanding that Arshad had previously been shown to hold 446 shares. This return was signed by Pervez. There is no evidence Arshad authorised or consented to any corresponding allotment of shares and it is inherently unlikely he did so.

645. I am thus satisfied there has been no valid allotment of shares in AIL since Arshad was first registered as sole shareholder. Arshad remains the sole shareholder of AIL. He holds his share on trust for Pervez, Shahid, Zahid, Kashif and himself in equal shares.

646. The putative allotment, on 12 August 2014, of 20,000 shares in WWF Birmingham is also void. This allotment was based on documentation filed at Companies House on 13 August 2014 by Muqim on Arshad's behalf. The documentation incorporated the minutes of a putative meeting of WWF Birmingham's shareholders on 12 August 2014, signed by Arshad.

647. Although Arshad contends that there was never any agreement or understanding for each of the brothers to be allotted with 200 shares in the company, the signed minutes recorded that he was present at the meeting and had been provided with proxies by Pervez, Zahid, Shahid and Kashif on the basis that they each held 200 shares in the company.

648. There was also a resolution providing for the issued share capital of the company to be increased from 1,000 to 21,000 issues share of £1 each and recorded that the resolution had been passed by the owners of a majority of the shares present. This was not initially reflected in the company's annual returns. However, in the company's annual return made up to 15 July 2015, the aggregate share capital was shown to have increased to £21,000 on the basis Arshad held 20,200 shares and the other participating brothers 200 shares each.

649. Arshad, Muqim and Mr Sawhney were each cross examined on the relevant documentation, which included signed minutes of the putative meeting, draft minutes of a meeting of the directors on the same day (12 August 2014) at which Arshad is alleged to have resolved that the relevant resolution "be put to the members" and draft proxy forms in the names of Pervez, Zahid, Shahid and Kashif. Whilst the evidence of Arshad, Muqim and Mr Sawhney was internally inconsistent, I have reached the following conclusions

649.1. The documentation was prepared by Mr Sawhney in draft.

649.2. Contrary to Muqim's evidence, the proxy forms were not sent to Pervez, Zahid, Shahid and Kashif. They were entirely unaware of the putative shareholders meeting or, indeed, of any intention to call such a meeting.

649.3. No meetings took place. However, Arshad signed the minutes of the shareholders' meeting.

649.4. Muqim then sent a copy of the minutes to Companies House.

650. Although repeatedly he stated, in cross examination, that he did not know anything about this (see, for example, Day 2/52-53), Arshad was aware at the time that the minutes were sent to Companies House in order to create the false impression that the authorised share capital of the company had been increased to £21,000 at a validly convened shareholders' meeting. No such meeting took place and the putative resolution to increase the share capital of WWF Birmingham to £21,000 was and is void.

651. Having acquired Kashif's interest, Arshad is entitled to be entered on the register of shareholders as the holder of 400 ordinary shares in WWF Birmingham. Pervez, Shahid and Zahid are each entitled to be registered as the holders of 200 ordinary shares each. If not, Pervez holds his share in WWF Birmingham on trust as to 2/5^{ths} for Arshad and 1/5th each for Shahid, Zahid and himself.

(9) Determination and disposal of claims

652. Under my order dated 28 September 2021, determination is now required of all issues save for relief. All issues on the Derivative Claim in the Birmingham proceedings are for determination later.

653. Having determined all issues in relation to ownership of the shares, properties and allotment of shares and, to a substantial extent, the secondary questions arising from such issues, the remaining issues are narrow in scope.

(a) Unfair Prejudice Petition

654. Arshad's Unfair Prejudice Petition was based on the propositions that AIL was and is a "quasi-partnership" for the benefit of Arshad and Pervez only, formed for the purpose of acquiring business properties and supporting their financial interests, and that Pervez and

Arshad each shared an expectation they would together participate in the management and operation of AIL's affairs.

655. Contrary to Arshad's case, I am satisfied that AIL was acquired as a vehicle for the business and investment property interests of all five participating brothers or their companies, not Arshad and Pervez alone. Moreover, there was never an expectation that Arshad would participate in the management of AIL's affairs. AIL was essentially a property holding and investment company. It wasn't envisaged, at the outset, that Arshad had particular skills or experience which would warrant entrusting him with a management role in such a company. In practice, the management of AIL was left to Pervez and Kashif. Although Arshad was initially appointed a director, notice of his resignation was filed when it was considered appropriate for Pervez to formally resume office after he had been sentenced for the health and safety offences. This was on 18 November 2002. Arshad never played a substantial management role in AIL and it was never envisaged he would do so. He was never appointed to a formal office in the company again.

656. However, from an early stage, there was a shared understanding or expectation among all five brothers that they each had a stake in AIL and would continue to do so as the businesses developed and expanded. This was on the basis that AIL would be deployed as holding company for the trading and investment properties with the trading companies collaborating with one another in business and co-operating in connection with the acquisition of such properties. This was generally funded by bank loans on the understanding that, where the properties were acquired in support of the business activities of a trading company, the trading company would repay the loan. However, this was not on the basis that the trading company would thereby acquire an interest in the property.

657. With the exception of WWF Birmingham - treated as a special case - these expectations continued for many years. Since WWF Manchester held only a short term tenancy of the Longsight store, nothing was done to transfer the Longsight store to AIL. However, the neighbouring freehold premises at 28 Slade Lane were subsequently transferred to AIL. This was, of course, consistent with the established model. All other properties were generally acquired and introduced to AIL on the same basis.

658. These shared expectations were a function of the brothers' family association and the *ad hoc* relationship between the various businesses. It was based on mutual confidence rather than a discernible contractual framework and it was not contemplated that any of the brothers would take out their stake and go elsewhere. They would not all participate in the management of AIL itself but AIL would hold the assets for the corporate vehicles of each associated business and the brothers would each participate in one or more of such businesses. Consistently with this, a practice subsequently developed under which a substantial part of the brothers' remuneration from the trading companies was routed through AIL itself.

659. In my judgment, the brothers' common understanding that they each had a stake in AIL coupled with their expectations that they would collaborate with one another in business and co-operate to acquire properties on behalf of AIL furnished them with an equity to which I should have regard in determining whether AIL's affairs have been conducted unfairly in the sense envisaged by Lord Wilberforce in *Ebrahimi v Westbourne Galleries* [1973] AC 360.

660. As a shareholder, Arshad plainly has standing to present a *Section 994* petition. Since he is the only registered shareholder, an issue could potentially arise as to whether he has sustained prejudice to which *Section 994* can apply. Consistently with the observations of Knox J in *re Baltic Real Estate Ltd (No. 2)* [1993] BCLC 503, 507, Peter Gibson LJ has stated that "...prejudice will not be unfair to the petitioner's interests where the petitioner had available to him a method of bringing that prejudicial state of affairs to an end", *re Legal Costs Negotiators Ltd* [1999] 2 BCLC 171 at 197e-f. However, in my judgment the alleged prejudice of which Arshad complains is not capable of disposal in this way since Arshad holds his share on trust for himself and his brothers as equal beneficial owners. On that basis he is beneficially entitled to a minority interest only. As a trustee, he is not entitled to use the trust property or exploit his position for his own personal advantage. However, he can present a *Section 994* petition in support of his rights as beneficial owner.

661. To succeed on a petition under *Section 994(1)(a)*, it is axiomatic that the petitioner must show that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of the members generally or some part of the members (including at least himself).

662. Through each of the disputed allotments of shares in AIL in 2004, 2006 and 2011, Pervez caused the company's affairs to be conducted in a manner unfairly prejudicial to the interests of Arshad in his capacity as beneficial owner of the share capital. Pervez made the 29 March 2004 allotment in his capacity as director without obtaining Arshad's consent. Arshad is likely to have been aware, in general terms, of the restructuring project but there is no evidence from which I can reasonably infer he was aware of the specific apportionment of all the shares earmarked for allotment. In any event, it was an essential part of the transaction that the shares in the trading company would be transferred to AIL. This never happened. In these circumstances, the 29 March 2004 allotment cannot have been made for AIL's proper purposes and would at the very least be voidable on that basis.
663. The subsequent allotments were all made without Arshad's knowledge or consent. By the time, Pervez purported to make the 2006 allotment and the allotment of 18,000 shares on 5 September 2011, no power to make such allotments was vested in him in his capacity as director and Arshad did not authorise them in his capacity as sole registered shareholder.
664. If these particular allotments were and are void and thus did not involve the conduct of the company's affairs within the meaning of *Section 994(1)(a)*, Pervez subsequently approved company accounts and conducted the affairs of the company on the footing that they were valid allotments.
665. This conduct was unfair in that it amounted to a repudiation of their shared understanding that each of the brothers had a stake in AIL, based on their beneficial interest in the share capital. It undermined their relationship of confidence. It also amounted to a breach of Pervez's duties as director to exercise his powers for a proper purpose and to avoid exploiting the powers of his office for his own personal gain.
666. Not only was this unfair to Arshad, it was also prejudicial to his interests as a shareholder on the basis that it has jeopardised the value of his shareholding in AIL.
667. On this specific basis, Arshad has succeeded in establishing that AIL's affairs have been conducted in a manner that is unfairly prejudicial to his interests as a member.

668. However, I am not persuaded that any of Arshad's other claims on the Petition are capable of sustaining a successful claim.

668.1. It is contended (in Para 7.2.2 of the Petition) that Pervez was never appointed as a director in accordance with the Articles and this amounts to unfair prejudice. Whilst it is implicit that Pervez has thus acted as a *de facto* director, it is facile to suggest that this would amount, in itself, to unfair prejudice. In any event, I am not persuaded that this part of Arshad's case can be sustained. The Articles excluded *Regulation 73 of Table A* which would otherwise have provided for the reappointment of directors each year at the company's annual general meeting. Whilst they incorporated *Regulation 78* so as to provide for the company to appoint directors by ordinary resolution, no minutes of any meeting or other documents were admitted to show that Pervez was appointed on this basis. However, Arshad's resignation and Pervez's formal appointment were as long ago as 18 November 2002. It is unrealistic to suggest Kashif filed the relevant notices at Companies House without mentioning it to Arshad. Pervez has acted as director since that time, if not before. Throughout that period, Arshad and his brothers were and are fully aware that Pervez was in control of the affairs of AIL. Arshad did not take action to challenge Pervez's appointment until the exchanges on their behalf which presaged the commencement of proceedings. In all likelihood, the proper formalities were not followed when Pervez was initially appointed. Nevertheless, it is unlikely Arshad was entirely oblivious of Pervez's appointment. On the balance of probability, Kashif raised it with him and Arshad advised Kashif that he was content to proceed on this basis. Arshad can thus be taken to have approved or ratified the appointment, as indeed did his brothers. Pervez's appointment as director – recorded at Companies House since April 2003 if not before – was validated under the *Duomatic* principle. If not, it is too late for Arshad to take this point now.

668.2. In Para 7.2.3 of the Petition, Arshad relies on his exclusion from the management of the company as a ground for unfair prejudice. In my judgment, this ground also fails. Arshad never had a reasonable expectation that he would participate in the management of the company. Whilst he was appointed director for a short period following the commencement of the health and safety prosecution, he never took on

a substantial role in the management of the company. There is nothing to suggest he asked Pervez or Kashif to engage him in such a role but, in the hypothetical event he had done so, it is by no means clear they could reasonably have been satisfied he would be suitable for such a role.

668.3. In Para 7.2.4 of the Petition, Arshad relies on Pervez's failure to consult Arshad in connection with the management of AIL's affairs. This is, of course, limited to AIL's affairs and does not pertain to the affairs of the other companies or the collaboration between them. As the company's sole registered shareholder – beneficially entitled to 20% of his shareholding – Arshad was entitled to require Pervez to convene a general meeting, CA 2006 s 303. It was also open to him to make inquiries or submit requisitions for information in respect of the company's affairs. Had he done so, it is more than conceivable that Pervez could reasonably have been expected to answer them. As it happens, on Arshad's case, he cannot have made any such inquiries of Pervez since he maintains that they had ceased to communicate with one another by 2002. However, I can see no good reason to superimpose an additional duty on the directors, particularly Pervez, to take it upon himself to consult with Arshad in the absence of such inquiries.

668.4. In Para 7.2.5, it is contended that Pervez has conducted AIL's affairs in a manner unfairly prejudicial to Arshad as a member by causing AIL to commence the possession claim (Case No. EO6MA632). This contention also fails. The possession claim is not unfairly prejudicial to Arshad in his capacity as a member of AIL. It has been issued against a third party, WWF Cheetham Hill. WWF Cheetham Hill was itself acquired by Arshad independently from the family trusts or arrangements between Arshad and his brothers. It was formed as recently as 1 September 2015 and Arshad's interest in it is entirely separate from his shareholding in AIL.

668.5. As it happens, AIL has incurred substantial costs in support of its possession claim and the same has failed (see below). In these respects, it was not in AIL's interests to bring the claim and it was an error of judgment for it to do so without first inviting WWF Rusholme to serve notice of termination under *Part II* of the *Landlord and Tenant Act 1954* and joining WWF Rusholme as a party to the possession proceedings. However, in the absence of a considered compromise, it is contrary to the interests

of AIL and thus Arshad, in his capacity as a shareholder of AIL, for WWF Cheetham Hill to remain in possession of the Cheetham Hill store. There is no contractual relationship between AIL and WWF Cheetham Hill nor do they have privity of estate. It forms no part of Arshad's case on the Petition or WWF Cheetham Hill's case in the possession proceedings, that WWF Rusholme assigned its tenancy, if any, to WWF Cheetham Hill in compliance with *Section 52 of the Law of Property Act 1925*. To do so the parties would have been required to enter into a deed of assignment. Whilst WWF Cheetham Hill is in possession of the store, AIL thus has no contractual rights which it can enforce against it, whether for the payment of rent or otherwise.

(b) The Possession Claim (E06MA632)

669. The parties to the Possession Claim are AIL and WWF Cheetham Hill, not WWF Rusholme. The claim is confined to the Cheetham Hill store.

670. I shall briefly reiterate the factual background.

670.1. AIL is registered at HM Land Registry as leasehold owner.

670.2. Having acquired the premises in April 2008, AIL permitted WWF Rusholme to take possession and commence business from the same according to the usual model with WWF Rusholme repaying the amounts advanced for the purchase of the property from its business revenue. Shortly after WWF Rusholme commenced business from the Cheetham Hill store, it appointed Arshad to manage this part of its business. He did so for several years until 30 November 2015 or thereabouts.

670.3. On 30 November 2015, Arshad transferred or purported to transfer the business to WWF Cheetham Hill. This was done without first advising Pervez or obtaining his consent as sole director of both companies. Since this time, WWF Cheetham Hill has been in possession of the premises and it has operated as the vehicle for the business.

670.4. On 10 May 2017, Pervez signed off WWF Rusholme's accounts for the year ending on 31 May 2016. In his Directors Report, Pervez originally referred to a transaction for the transfer of WWF Rusholme's assets and liabilities at net book value notwithstanding that there had been no such transaction. WWF Rusholme's accounts were retrospectively corrected.

670.5. In the absence of such a transaction, AIL contends that WWF Cheetham Hill has no contractual right to possession.

670.6. By letter dated 21 November 2018, AIL's solicitors demanded WWF Cheetham Hill to vacate. It failed to do so.

670.7. On 10 December 2018, AIL thus commenced proceedings for possession.

671. WWF Cheetham Hill's case is based on the following alternative propositions:

671.1. AIL holds the property on constructive or resulting trust for Arshad or WWF Cheetham Hill;

671.2. AIL is estopped from denying that Arshad or WWF Cheetham Hill has a beneficial interest in the property;

671.3. the commencement of possession proceedings amounts to unfairly prejudicial conduct to Arshad in his capacity as shareholder of AIL; he was and is thus entitled to petition for relief under *Section 994* of the *Companies Act 2006*, including an order staying the possession proceedings; and

671.4. WWF Cheetham is entitled to a periodic tenancy of the property. Since it is and has been, at all material times, in occupation of the property for business purposes, it is entitled to statutory security of tenure under Part II of the *Landlord and Tenant Act 1954*.

672. I shall deal later with the issue of whether WWF Cheetham Hill is entitled to a periodic tenancy and a latent issue as to the identity of the owner of any immediate interest in reversion. Subject to these issues, there is no substantial conceptual or evidential basis for WWF Cheetham Hill's case in answer to the Possession Claim.

673. For the reasons outlined (7(ii)(e) above), AIL does not hold the property on constructive or resulting trust for Arshad. It was purchased on behalf of AIL, not Arshad, and it was purchased with the intention that it would be an asset of AIL. Whilst the property was purchased in contemplation that WWF Rusholme would set up business from there and thus generate funds for the repayment of the bank loan, it was never envisaged WWF Rusholme would itself own the property. At the time of purchase, WWF Rusholme was generally liable with other group companies for repayment of the amounts advanced to

them by the Bank (including the amounts advanced for the purchase of the property) but it did not enter into specific contractual commitments to repay the amounts advanced in respect of the property itself. Whilst there was a common understanding between AIL and WWF Rusholme that the loan would be repaid from funds generated by WWF Rusholme itself and, in due course, AIL invoiced WWF Rusholme for the payment of rent, WWF Rusholme did not otherwise assume or enter into a specific commitment or liability to repay the loan, certainly not at the time of acquisition within the sense envisaged by Peter Gibson LJ in *Curley v Parkes* [2004] EWCA Civ 1515. Subsequent loan payments were not part of the purchase price and are not to be treated as such.

674. Nor is the property held on constructive or resulting trust for WWF Cheetham Hill. WWF Cheetham Hill was not formed until 1 September 2015, upwards of seven years after the initial acquisition of the property and commencement of business. Having acquired the property in April 2008, it was never envisaged that AIL would hold it on trust for WWF Cheetham Hill and there can be no room for the operation of the doctrine of resulting trusts.

675. Arshad's estoppel claim is based, in part, on the proposition that he caused WWF Rusholme and, subsequently, WWF Cheetham Hill to make mortgage payments "pursuant to the shared common understanding that [AIL] held the property for the benefit of the Cheetham Hill business, which was owned by Arshad" (See, for example, Para 39 of the Defence). However, it was never understood that Arshad would personally own the Cheetham Hill business. The business was placed in the ownership of WWF Rusholme, not Arshad. Moreover, the purported transfer, on 30 November 2015, was to WWF Cheetham Hill not Arshad. In any event, the payments were made from the revenues of WWF Rusholme's business. Arshad had a management role in the business but he was not entitled to treat the receipts of the business as his own money. Moreover, if and to the extent that Arshad was mistaken about this, there could have been no reason for Pervez to share his mistake or be aware of it.

676. In Paragraphs 41-45 of the Defence, it is alleged that Arshad arranged for the payment of £1.6m to AIL in reliance upon Kashif's promise or representation that he would thus "receive" the Cheetham Hill store, whatever that may be intended to mean. However, there is no evidence on which I can reasonably infer that Kashif or anyone else made such

a promise or representation to Arshad. In 2015, arrangements were made to separate the group overdraft arrangements. However, there is no evidence to suggest this was done on the understanding that Arshad or any companies associated with him would somehow acquire an interest in the Cheetham Hill store or, indeed, that anyone else could have been expected to know that Arshad somehow believed he would thereby acquire an interest in the store.

677. Nor is there any room for WWF Cheetham Hill to have somehow acquired an interest in the Cheetham Hill store by proprietary estoppel. Arshad initially arranged for WWF Cheetham Hill to take over the business without notifying Pervez or his brothers. When this was subsequently brought to Pervez's attention, Pervez did not immediately take action to challenge the transaction. However, it is inherently unlikely that, had it not been for Pervez's delay in doing so, Arshad would somehow have acted differently and is thus furnished with a case based on proprietary estoppel.

678. I have already dealt with Arshad's case that the commencement of possession proceedings amounts to unfairly prejudicial conduct to Arshad in his capacity as shareholder of AIL. I am not persuaded this is so, see (9)(a) above.

679. This leaves the issue of whether WWF Cheetham Hill is entitled to a periodic tenancy.

680. In support of its case on this issue, WWF Cheetham Hill relies on a series of monthly invoices raised between June 2011 and November 2018. Each invoice was addressed to "Worldwide Foods (Cheetham Hill) Limited" notwithstanding that WWF Cheetham Hill was not formed until 1 September 2015 and there is nothing to suggest that there was any company bearing that name before it was incorporated. This is, in itself, surprising. However, the names are not identical since, in the name of WWF Cheetham Hill itself, "Cheetham Hill" is not in parenthesis. The initial use of this name does suggest that, in some respects, Kashif was already treating the business of the Cheetham Hill store separately from the rest of the WWF Rusholme business before it was purportedly transferred in November 2015. It also suggests that he envisaged the rent would be paid from the revenues of the Cheetham Hill store.

681. In any event, the authenticity of the invoices was not challenged. It is thus significant that from June 2011 to November 2018, AIL raised invoices for the payment of the

“monthly rent” in the sum of £12,333.34 plus VAT and, in succession, WWF Rusholme and WWF Cheetham Hill paid or accounted to AIL for the invoiced amounts for a substantial part of this period. It can be seen from Ms Plummer’s analysis that AIL was in receipt of these amounts until November 2017 and they were utilised to repay the loan for the purchase of the Cheetham Hill store, itself finally repaid in December 2017. Since the rent was paid from the revenues of the Cheetham Hill business, it ceased to be paid by WWF Rusholme from November 2015 or thereabouts. For a period of some two years, it was thus paid by WWF Cheetham Hill.

682. The first question that arises is whether WWF Rusholme became entitled to a periodic tenancy of the Cheetham Hill store before it ceded possession to WWF Cheetham Hill. In my judgment, the answer to this question is yes.

683. When, in April 2008 or thereabouts, AIL first completed the transaction for the purchase of the property, it permitted WWF Rusholme to take possession. WWF Rusholme then remained in possession until November 2015. Although it can be seen from the available accounting records that AIL invoiced WWF Rusholme for rent from June 2011 only, it is likely WWF Rusholme accounted to AIL for rent throughout the period in which it was in possession. In *Javad v Aqil* [1991] 1 WLR 1007, Nicholls LJ observed, at 1012D-G that, where one party permits another to go into possession on payment of a rent, they will be taken to have intended to grant and take a periodic tenancy in the absence of any inference to the contrary based on the surrounding circumstances or the parties’ agreed terms although, in suggesting that this amounted to a presumption, rebuttable only by express agreement to the contrary, the tenant had overstated his case, 1011H-1012B/C. Consistently with this proposition, the Court of Appeal were satisfied the tenant was entitled to a tenancy at will only since he had been allowed into possession in anticipation of a lease. At 1019, Nicholls LJ reiterated the observation of Scarman LJ in *Hagee v Erikson* [1976] QB 209, 217, that “entry into possession while negotiations proceed is one of the classic circumstances in which a tenancy at will may exist”.

684. In the present case, possession was given to WWF Rusholme with minimal levels of formality, typical of the way in which the brothers generally conducted their business. It was selected as the corporate vehicle for the new business, initially under the management of Zahid, in anticipation that the loan would be repaid out of the revenues

of the business. It was envisaged that this would be achieved through the payment of rent. Until November 2015, WWF Rusholme was in possession of the Cheetham Hill store on this basis, conducting the business and paying the monthly rents for which it was invoiced. The “classic circumstances” of a tenancy at will were not present. WWF Rusholme was not given possession pending negotiations for an agreement nor did it, any stage, hold over following the termination of an agreement. In the absence of any inference to the contrary, WWF Rusholme thus became entitled to a periodic tenancy.

685. Although the rent was payable monthly, it was apparently calculated on a yearly basis. The invoiced rent was £12,333.34 plus VAT. It can reasonably be surmised that this was the rent payable from the outset. This equates with a yearly sum of £148,000.08, rounded down to £148,000. On this basis, WWF Rusholme can be taken to have become entitled to a yearly tenancy, *Richardson v Langridge (1811) 4 Taunt. 128, 131*.

686. The next question is whether WWF Rusholme’s tenancy has terminated. Since there is no evidence that AIL has ever taken action to terminate the tenancy by notice, this question turns on whether WWF Rusholme’s tenancy has been surrendered by operation of law.

687. In my judgment, the answer to this question is no. When WWF Cheetham Hill informally took over WWF Rusholme’s business at the Cheetham Hill store, it took possession of the premises. It then started to pay or account to AIL for the monthly rent and continued to do so until November 2017, if not longer. However, WWF Rusholme did not assign its tenancy to WWF Cheetham and it did not enter into a contractual commitment to do so. In any event, the parties did not enter into a deed of assignment so as to satisfy the statutory formalities in *Section 52 of the Law of Property Act 1925*. Nor did they enter into an executory agreement in compliance with *Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989*. Moreover, none of the parties took action inconsistent with the continuation of the tenancy so as to give rise to a surrender by operation of law. Third party payment and acceptance of rent does not effect a surrender if, as in the present case, such rent equates with the amounts previously payable and there is no outward evidence of a common intention to surrender the tenancy, *Mattey Securities v Ervin [1998] 2 EGLR 66*. By May 2017 at the very latest, AIL must be taken to have had notice that WWF Cheetham Hill was paying the rent since, by then, Mr Steiner

had advised Pervez of the purported disposal of the business to WWF Cheetham Hill. This is so regardless of how Pervez might have understood the putative transaction at the time. However, AIL did not do anything to recognise that WWF Rusholme's tenancy had come to an end.

688. In view of the fact that WWF Rusholme remains entitled to a yearly tenancy, a question arises as to WWF Cheetham Hill's rights of occupation and possession. In my judgment, the short answer to this question is that WWF Cheetham is entitled to a yearly sub-tenancy. This is on the basis that, once WWF Rusholme ceded possession to WWF Cheetham Hill, it must be taken to have done so on the basis that WWF Cheetham Hill accounted to AIL for the yearly rent. Having assumed responsibility for the payment of rent, WWF Cheetham Hill paid the rent to AIL. WWF Rusholme can thus be taken to have granted a sub-tenancy to WWF Cheetham Hill in accordance with the principle described by Nicholls LJ in *Javad v Aqil (supra)*. There is, again, nothing in the surrounding circumstances nor any agreement to suggest otherwise. Although the sub-tenancy is itself a yearly tenancy, WWF Rusholme's intermediate reversionary interest was not and is not analogous to a lease for a fixed term nor was it to be treated as such when the sub-tenancy took effect, *Oxley v James (1844) 13 M&W 209*. Since AIL had not initiated the process of terminating WWF Rusholme's tenancy, WWF Rusholme was itself entitled to serve notice terminating the sub-tenancy in the expectation that its own tenancy would continue afterwards notwithstanding the possibility that its own tenancy might be terminated first. It follows that the sub-tenancy would not be deemed to have taken effect as an assignment.

689. It is submitted, on behalf of WWF Rusholme, that WWF Cheetham Hill cannot be treated as a periodic tenant since it must be taken to have entered as a trespasser and there was no intention to enter into legal relations. This involves eliding two separate propositions. However, the submission is based on a passage in *Megarry and Wade on the Law of Real Property (9th edn) Para 16-088* together with the authorities cited by the editors in support. The passage is at a high level of abstraction and amounts to an assessment of probability rather than a statement of principle, namely "it is unlikely that a periodic tenancy will arise where the occupant has entered land as a trespasser and the owner has subsequently accepted payment for his or her use and occupation". The three cited

authorities are *Westminster CC v Basson* (1990) 62 P&CR 57, *Brent LBC v O'Bryan* (1992) 65 P&CR 258 and *Vaughan-Armatrading v Sarsah* (1995) 27 HLR 631.

690. These authorities are judgments of the Court of Appeal in which the occupier failed to establish entitlement to a periodic tenancy. In *Basson*, the putative landlord requested payment pending compliance with a demand for possession. In *O'Bryan*, the occupier took possession without entering into contractual commitments or paying rent. In *Sarsah*, the occupier held over following the expiry of a lease to his mesne landlord.

691. On analysis, however, the passage from *Megarry and Wade* is of limited assistance in the present case and the three cited authorities are readily distinguishable. The present case didn't simply evolve from an act of trespass. At the outset, it comprehended issues of agency, authority and breach of duty. Moreover, in each of the cases cited in the passage from *Megarry and Wade*, the ultimate outcome was dictated by particular features which are not present in the current proceedings. Unlike *Basson*, WWF Cheetham Hill was not asked to pay rent pending compliance with a demand for possession and, unlike *O'Bryan*, WWF Cheetham Hill's case is founded on the payment of rent coupled with possession. The *Sarsah* case does not add weight to the relevant passage in *Megarry and Wade* since it did not involve an unlawful entry by trespass. The Court of Appeal reached their conclusion, in *Sarsah*, on the basis it was obvious from the overall context that, following expiry of the previous tenancy, the parties' arrangements for periodic payments, denoted as rent, were not intended to give rise to a tenancy. Had the context been more closely analogous to the present case – a putative business tenancy rather than a student letting – it could easily have been treated as a tenancy at will.

692. In the present case, Arshad did not have authority from WWF Rusholme to permit WWF Cheetham Hill to take possession and, initially, Pervez was unaware it had done so. However, as WWF Rusholme's sole director, Pervez plainly did have such authority. By 10 May 2017, at the latest, he was aware WWF Cheetham Hill had taken over the management of the business from WWF Rusholme and was thus in possession of the premises. Whilst he did not fully understand the scope and nature of the purported transaction - in particular the extent to which it involved the disposal of WWF Rusholme's business assets at Cheetham Hill - he can be taken to have known that WWF Cheetham

Hill had assumed responsibility for the monthly rent and was paying the rent to AIL. By omitting to do anything to challenge this arrangement – indeed permitting it to continue - until October 2017, Pervez adopted the arrangement on behalf of WWF Rusholme, if indeed, he did not simply ratify it with retrospective effect. He could reasonably have been expected to do so within a month of the meeting with Mr Steiner at which he signed off WWF Rusholme’s accounts. Consistently with Nicholls LJ’s guidance in *Javad v Aqil (supra)*, the parties can be taken to have intended to grant and take a yearly tenancy at the latest with effect from 10 June 2017, if not 30 November 2015. More likely than not, the yearly tenancy thus commenced on or about 10 June 2017.

693. Since WWF Cheetham Hill is in occupation for the purposes of a business, it is entitled to statutory security of tenure under the provisions of *Part II* of the *Landlord and Tenant Act 1954*. Since AIL has not yet taken steps to terminate WWF Rusholme’s tenancy under the *1954 Act*, it is likely WWF Rusholme will be treated as WWF Cheetham Hill’s competent landlord under *Section 44* of the *1954 Act*.

(c) The Birmingham Claim (BL-2020-MAN-000114)

694. No discrete issues arise for determination in respect of the Derivative Claim. Under my order dated 29 September 2021, these are to be disposed of separately.

695. However, the Personal Claim substantially succeeds. The putative allotment, on 12 August 2014, of 20,000 shares in WWF Birmingham was and is void for the reasons given above. At the time of the putative meeting, that day, of WWF Birmingham’s shareholders, Pervez was the sole registered shareholder although the five participating brothers were each entitled to be registered as shareholders under the allotment of 25 June 2003. If not, Pervez held his share on trust for the five participating brothers in equal shares. However, notice of the meeting was not served on Pervez or his brothers, they were unaware of the intention to call such a meeting and they did not send proxy forms to Arshad or anyone else. In so far as the purported minutes of the meeting, signed by Arshad, suggest otherwise, they are false.

696. At the time of the meeting, the five participating brothers were each entitled to be entered on the register of shareholders as the holders of 200 ordinary shares in the company and remained as such. However, contrary to the form of relief originally sought

on the declaration, they did not hold the shares for Pervez or on trust for him and never have done.

697. On 5 December 2017, Kashif delivered to Arshad a stock transfer form, signed by himself personally, in which he purported to transfer to Arshad his 200 ordinary shares in the company. Neither Arshad nor, indeed, Kashif has ever been registered as holder of the shares. However, in my judgment, Kashif was entitled to be registered as such, at the time he purported to transfer the shares and, by delivering a signed copy of the stock transfer form to Mr Sawhney, on Arshad's behalf, he did enough to assign his rights and dispose of his beneficial interest to Arshad. Arshad is thus entitled to be treated as the holder of 400 ordinary shares in WWF Birmingham. Pervez, Zahid and Shahid remain entitled to 200 shares each in the company.

(d) The Longsight claim (Case BL-2020-MAN-000105)

698. Arshad is registered, at Companies House, as sole director of WWF Manchester. Although Pervez's solicitors issued the Longsight claim in the name of WWF Manchester, they did not disclose the basis on which they were authorised to do so. For the avoidance of doubt, Pervez does not identify himself as a *de facto* director.

699. However, no specific point is taken about this issue. Moreover, in Arshad's defence the main point taken is that the business of the Longsight store is held on trust for him. The parties each invite me to rule on this issue and, in doing so, determine the ownership of the business or shares. WWF Manchester is a party to the conjoined proceedings as, indeed, are Pervez and Arshad. So too are Zahid and Shahid. Taking a pragmatic view with a view to achieving finality in relation to the critical issues of ownership, I intend to resolve the issues of ownership mindful that, for the most part, this will pre-empt the secondary issues in relation to Arshad's putative breaches of duty.

700. There remain two registered shares only in WWF Manchester. They are held in the names of Pervez and Arshad. In my judgment, they are held on constructive trust for Arshad as sole beneficial owner for the reasons given above. If not, Arshad's four participating brothers are estopped from denying that Arshad is the sole beneficial owner. At his request, Arshad is thus entitled to be registered as the owner of each issued share in the company.

701. The putative causes of action are based on the diversion of business to WWF Longsight and WWF Fruit & Veg. It is alleged that Arshad thus committed breaches of his fiduciary duties to the company as director. There is also a claim against WWF Longsight for dishonest assistance and knowing receipt of trust property together with a claim in tort against Arshad and WWF Longsight for conspiracy to injure. The right to bring a separate claim against WWF Fruit & Veg is specifically reserved.

702. Had it not been for Arshad's interest as sole beneficial owner, the essential elements for each of these claims could have been made out. However, Arshad's interest as sole beneficial owner makes all the difference. The business was diverted at Arshad's own direction and he can be taken to have consented to it on behalf of the company. If there is an issue, Arshad can attend to this now. Since Pervez holds his share on bare trust for Arshad, he must vote in accordance with Arshad's directions at any general meeting of the company on this or any other issue.

703. This is, of course, subject to Arshad's duty to the creditors in the event that WWF Manchester is or was insolvent, *BTI 2014 LLC v Sequana SA [2022] UKSC 25*. This matter is not in issue in the current proceedings. In the company's latest accounts for the year ending on 31 May 2022, it was shown to have net assets of £962,178. However, these are abbreviated accounts only.

(e) The Cheetham Hill Claim (BL-2020-MAN-000107)

704. In my judgment, WWF Rusholme has successfully established the essential elements of its claims against Arshad and WWF Cheetham Hill for breach of fiduciary duty, knowing receipt and dishonest assistance.

705. WWF Rusholme engaged Arshad to manage the Cheetham Hill Store shortly after it was first acquired. He was engaged as an employee. He was also authorised to act as the company's agent. As an employee, he owed the company a duty of fidelity and good faith together with a duty to account to it for all property entrusted to him. As a fiduciary, he owed a duty to avoid conflicts of interest and a duty not to profit from his position as WWF Rusholme's employee and agent.

706. By causing WWF Cheetham Hill to take over or appropriate the company's business at the Cheetham Hill store, Arshad committed breaches of his duty of fidelity and good faith

to the company. Since he was the sole shareholder and director of WWF Cheetham Hill, he thus exploited his position as manager of the store for his own personal advantage.

707. Since Arshad was the sole director of WWF Cheetham Hill and its controlling mind at the time it appropriated WWF Rusholme's business and assets at the store, WWF Cheetham Hill can be taken to have known these were WWF Rusholme's assets and they were being taken in breach of Arshad's fiduciary duties. The essential requirements for a claim of knowing receipt are thus satisfied, *El Ajou v Dollar Land Holdings plc* [1994] 2 AER 685,700.

708. Since WWF Cheetham Hill was deployed as the vehicle for the unlawful transaction, taking over the business and appropriating WWF Rusholme's assets, it plainly assisted Arshad in the commission of his breaches of duty. It played an essential role. Moreover, in causing WWF Cheetham Hill to appropriate WWF Rusholme's business and assets without first canvassing this with Pervez or doing anything to alert him to it, Arshad's conduct was dishonest when viewed objectively as envisaged in *Royal Brunei v Tan* [1995] 2 AC 378 and *Ivey v Genting Casinos (UK) Ltd* [2017] UKSC 67. Since WWF Cheetham Hill acted through Arshad as its officer and director, WWF Rusholme's claim based on dishonest assistance also succeeds.

709. Arshad and WWF Cheetham Hill do not have an answer to the case based on the supposition that Arshad believed he was the owner of the Cheetham Hill store at the time since, by then, it had been confirmed to him that WWF Rusholme was the vehicle for the business and it was for precisely that reason that he was seeking to orchestrate the transfer to WWF Cheetham Hill. Once it had been confirmed that WWF Rusholme was the vehicle for the business, he did not have reasonable grounds to believe that it belonged to him – at least not without substantial qualification - and he knew Pervez was likely to challenge any claim that he might advance to the business. With this knowledge, he concealed, from Pervez, his plans to appropriate and transfer the business to his own company and is likely to have done so deliberately. Whilst the relationship with Arshad and Pervez was strained at the time and they had had ceased to communicate freely with one another, Arshad could have been expected to raise the issue with Pervez and, at the very least, advise Pervez about his plans. If considered appropriate, this could have been done in writing or through agents or intermediaries.

710. WWF Rusholme contends that Arshad and WWF Cheetham Hill entered into combination with the *predominant purpose* of causing damage to WWF Rusholme. I am not satisfied there is a substantial evidential basis for such a claim. They entered into the transaction to advance their interests, in particular Arshad's interests, rather than cause damage to WWF Rusholme. For the avoidance of doubt, WWF Rusholme does not rely on an unlawful means conspiracy. Its claim based on conspiracy fails.

711. All issues in relation to relief are excepted from the preliminary issues. This applies to all five claims. However, for the avoidance of doubt, there has been no substantial argument on the issue of whether Arshad holds his shares in WWF Cheetham Hill on constructive trust for WWF Rusholme or, alternatively, WWF Cheetham Hill itself holds its business and assets on trust for WWF Rusholme. If and to the extent that these issues transcend relief, further consideration of such issues shall be adjourned for consideration at the same time. This includes any attendant issues connected with WWF Cheetham Hill's rights of occupation and the application of such rights.

(10) Summary of Main Conclusions

712. The legal title to the disputed shares remains vested in the first family shareholders nominated for registration. Arshad is sole shareholder of AIL. Pervez is sole shareholder of WWF Birmingham. Kashif is sole shareholder of WWF Rusholme. Pervez and Arshad are the shareholders of WWF Manchester.

713. Arshad holds his issued share in AIL on trust for himself, Pervez, Zahid, Shahid and Kashif as beneficial tenants in common in equal undivided shares. This is subject to the issue of whether Kashif has disposed of his beneficial interest to Pervez (See Paragraph 715 below).

714. Each of the disputed allotments of shares in AIL is void. If not, Arshad is entitled to an order setting aside the allotments after 29 September 2003. This includes the allotments on 29 March 2004, 15 July 2004, 15 July 2006 and 15 July 2013. The putative resolution, on 27 November 2009, to transfer allotted shares to Pervez is also void. In all likelihood, the 29 September 2003 allotment is void but, if not, Arshad holds his rights, under the putative allotment, on trust for himself, Pervez, Zahid, Shahid and Kashif as beneficial

tenants in common in equal undivided shares on the basis that he made or must be taken to have made the allotment in his capacity as a trustee on their behalf.

715. Prior to delivery, I circulated a draft copy of this judgment to the parties' legal representatives. On behalf of Pervez, I was referred to a passage in Kashif's evidence in which he stated, in bald terms, that he had transferred his shares to Pervez (Day 11/92/22-93/14). Whilst this obviously applied to his share in WWF Rusholme, it was wide enough to include his putative shares under the void allotments in respect of AIL. This is perceived to be significant because I have found that Kashif is entitled to a beneficial interest in Arshad's share in AIL. However, I have not yet heard argument on whether Kashif has transferred or otherwise disposed of this interest to Pervez in compliance with the provisions of *Section 52 of the Law of Property Act 1925*. Further consideration of this issue shall thus be adjourned for determination when I deal with consequential orders and directions.

716. Arshad has standing to present a petition in respect of AIL under *Section 994 of the Companies Act 2006*. Whilst the disputed allotments were void or to be treated as such, Pervez has conducted the affairs of the company on the footing that they are valid and repudiated the understanding on which each of the brothers are entitled to a stake in AIL. He has thus caused the company's affairs to be conducted in a way that is unfairly prejudicial to the interests of Arshad as a shareholder in the sense envisaged in *Section 994(1)*.

717. Subject to Asif's interest, if any, in the property at 2 Dean Court, Rochdale, each of AIL's properties was acquired with the intention AIL would be sole beneficial owner. This includes the property at 28 Slade Lane, Longsight and the Cheetham Hill store. Whilst it was anticipated, in the case of the business properties, that funds to repay the mortgages would be generated from the relevant businesses, the trading companies did not acquire interests in the properties under a resulting trust nor did any of the participating brothers.

718. The allotment, on 25 June 2003 or thereabouts, of 999 shares in respect of WWF Birmingham was made with the approval and consent of all five participating brothers, Pervez, Arshad, Zahid, Shahid and Kashif. When this happened, Pervez was sole registered shareholder. However, he held his share on trust for himself and his participating brothers. On 25 June 2003, Arshad and Kashif were the only directors and remained as

such until Kashif's resignation on 2 August 2007. The 25 June 2003 allotment can thus be treated as a valid allotment following which the participating brothers were entitled to be registered with 200 shares each. If this allotment is void, Pervez holds his share on trust for himself, Arshad, Zahid, Shahid and Kashif as beneficial tenants in common in equal undivided shares.

719. However, since the 25 June 2003 allotment, there has been no valid allotment of shares in WWF Birmingham. The allotment, on 12 August 2014, of 20,000 shares in WWF Birmingham was and is void. If not, Pervez is entitled to an order setting aside this allotment.

720. On 5 December 2017, Kashif transferred to Arshad his equitable right to shares in WWF Birmingham under the June 2003 allotment. If the 2003 allotment is void, he thereby transferred to Arshad his beneficial interest in Pervez's share in WWF Birmingham under the family trusts.

721. Subject to the transmission of Kashif's interest under the 2017 transfer, the participating brothers do not hold their rights or interest in WWF Birmingham on trust or sub-trust for Arshad or Pervez and they are not estopped from asserting such rights against Arshad.

722. Pervez and Arshad hold their shares in WWF Manchester on constructive trust for Arshad as sole beneficial owner. If not, Pervez and each of his participating brothers are estopped from denying that Arshad is sole beneficial owner and entitled to be treated as such.

723. Kashif holds his share in WWF Rusholme on trust for Pervez as sole beneficial owner.

724. WWF Rusholme never entered into a contract with WWF Cheetham Hill for the sale of the Cheetham Hill business. The reference to such a transaction, in WWF Rusholme's accounts dated 10 May 2017, after WWF Cheetham Hill took over the business amounted to an *ex post facto* rationalisation for the disposal or appropriation of WWF Rusholme's business assets at the Cheetham Hill store. Having amended its accounts to eschew reference to the alleged transaction, WWF Rusholme is not precluded from challenging it, whether by estoppel or otherwise. Arshad has not personally acquired an interest in the Cheetham Hill business under the doctrine of proprietary estoppel.

725. WWF Rusholme has causes of action against Arshad and WWF Cheetham Hill for breach of fiduciary duty, knowing receipt and dishonest assistance.
726. However, WWF Cheetham Hill is entitled to a yearly tenancy of the Cheetham Hill store. This is a business tenancy for which WWF Cheetham Hill is entitled to statutory security of tenure under *Part II* of the *Landlord and Tenant Act 1954*.
727. I shall hear further from counsel in relation to all consequential orders and directions (including the matters identified in Paragraphs 711 and 715 above). Having attended trial to give evidence, Kashif and Asif are both aware of the proceedings and the issues to which they give rise. However, during trial, I confirmed it was my intention, following judgment, to make an order providing for notice of the judgment to be served on them under *CPR 19.13(1)* on the basis that the claims comprehend trust property and, whilst not formally joined as parties, Kashif and Asif are or may be affected by the judgment. Kashif should be referred specifically to Paragraphs 715 and 720.

APPENDIX

Abbrev.	Co. name and no.	Formation Date	Brief description.
AIL	Alam Investments Ltd (3807712)	15.7.99	Main property holding company. Controlled by Pervez.
WCCL	Worldwide Cash & Carry Ltd (1929098)	8.7.85 - 30.7.02	Original Rochdale trading company. Dissolved.
WWF Manchester	Worldwide Foods (Manchester) Limited (02916752)	7.4.94	Original Longsight trading company.
WWF Birmingham	Worldwide Foods (Birmingham) Limited (03807718)	15.7.99	Main Birmingham trading company. Started business in June 2003.
Al Halal	Al Halal Supermarket Limited (4049854)	9.8.00	Trading company operating several Bradford stores. Controlled by Pervez.
WWF Rochdale	Worldwide Foods (Rochdale) Limited (4065792)	5.9.00	Trading company currently operating Rochdale store. Managed by Zahid and Shahid. Zahid is now sole director.
WWF Rusholme	Worldwide Foods (Rusholme) Limited (0441940)	9.4.02	Trading company, operates Rusholme store. Previously operated Miles Platting and Cheetham Hill stores. Controlled by Pervez.
Pennine Distribution	Pennine Distribution Limited (08774409)	14.11.13	Warehousing, storing and logistics company which now provides services for companies managed or controlled by Pervez, Zahid and Shahid.
WWF Cheetham Hill	Worldwide Foods Cheetham Hill Limited (09756514)	1.9.15	Trading company acquired by Arshad to take over the Cheetham Hill store. Controlled by Arshad.

WWF Fruit & Veg	Worldwide Foods Fruit & Vegetables Merchants Limited (11482784)	25.7.18	Trading company acquired by Arshad to take over the market stall at New Smithfield Market, Manchester. Controlled by Arshad.
WWF Saltley	Worldwide Foods Saltley Limited (10423168)	12.10.16	Trading company acquired by Arshad to take over the Alum Rock store in Birmingham. Controlled by Arshad.
WWF Sparkhill	Worldwide Foods Sparkhill Limited (10423218)	12.10.16	Trading company acquired by Arshad to take over the Stratford Road Store, Birmingham. Controlled by Arshad.
WWF Small Heath	Worldwide Foods Small Heath Limited (11482784)	1.2.17	Trading company acquired by Arshad to take over the business of the Coventry Road store, Birmingham. Controlled by Arshad.