

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)
IN THE MATTER OF NEW LINE POLYMERS LIMITED (IN LIQUIDATION)
(CRN.07919076)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986

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

Date: 14/03/2025

Before :

ICC JUDGE PRENTIS

Between :

MANOLETE PARTNERS PLC

Applicant

- and -

1. GRAHAM DOWELL BROWN

Respondents

2. HUSSEIN USAM AL-UZRI

3. THOMAS GRAHAM BROWN

4. TONI CONSTANCE BROWN

5. PAUL ANDREW BENNETT

Phillip Gale (instructed by **Collyer Bristow**) counsel for the **Applicant**
The First, Third and Fourth Respondents appeared in person

Hearing dates: 9-13, 16 December 2024

JUDGMENT

ICC JUDGE PRENTIS :

Introduction

1. After many successful years in the waste recycling industry, on 23 January 2012 Graham Brown (“Mr Brown”) incorporated New Line Polymers Limited (the “Company”) as a family business in which he and his son Thomas (“Thomas Brown”), who had himself been in the industry since leaving school, were directors and equal shareholders. That model was disrupted in an unforeseeable way. Mr Brown likes the horses. At Ascot in 2013 he met Jalal Harake, a former investment banker. They got talking. Mr Harake was interested in the business, and believed he could interest others. So, as Mr Brown said, he, the man from Wallsend, found himself in a Mayfair apartment surrounded by wealthy and sophisticated Middle Eastern investors. They put more than £3.1m into the Company. On 5 July 2017 it entered creditors’ voluntary liquidation. Their investment was wiped out.
2. This is the trial of the claims of Manolete Partners plc (“Manolete”), assigned from Mehmet Arkin, the liquidator, and the Company on 19 January 2022 and issued by way of a part 7 claim and an insolvency application notice on 21 June 2023. It proceeds against Mr Brown, Thomas Brown, and a daughter, Toni Brown (“Mrs Marley”) only (together, “the Browns”). The claim against another director, Hussein Al-Uzri was discontinued recently, on 7 October 2024, for reasons unknown. That against Paul Bennett, also a director, was stayed as a bankruptcy order had been made against him in the Middlesbrough County Court before issue of proceedings, on 6 December 2022.
3. The claims are diffuse, and nobody has found them easy to follow (Mr Gale was not their pleader). To delineate them:
 - 3.1 Each of the Browns was for a time a de jure director of the Company; and for the few months over 2012 and 2013 when he was not, Mr Brown is said to have been a de facto or shadow director.
 - 3.2 As such they were subject to the pleaded duties under section 171(b) and sections 172-177 of the *Companies Act 2006*, and as fiduciaries those of

loyalty, good faith, to avoid conflicts of interest and to use the Company's assets for its benefit.

3.3 In breach of those duties, they each caused or allowed the Company's Barclaycard issued in their name to be used for their own personal expenditure (respectively £58,707, £29,386 and £19,096); as did Mr Brown its debit cards (£159,669).

3.4 Mr Brown was also in breach of those duties in respect of £281,438 of payments made directly to him; £179,432 expended on luxury cars for the Browns; £752,856 for payments made to Newline Products Ltd ("Products"); £843,919 for payments to unknown recipients by 401 of the Company's cheques; £268,351 for payments to unknown bank accounts; and £250,000 for the Company's assets which he removed.

3.5 Which duty was breached in respect of each of these is not pleaded precisely, each being said to be a breach of all of the duties; but all would fall within section 172 at least.

3.6 As made in breach of his duties, or in breach of trust (unspecified), or because he had "no valid entitlement", Mr Brown is alternatively said to have been unjustly enriched by the £281,438 direct payments.

3.7 As to the credit card (£27,498), debit card (£18,717) and direct payments (£217,674) made within 2 years of the onset of insolvency, so from 5 July 2015, these are said alternatively to be transactions at an undervalue pursuant to section 238 *Insolvency Act 1986*.

3.8 Thomas Brown was paid £126,425 directly by the Company. This is said to be entirely repayable on the basis of unjust enrichment, that being because of his breach of his duties (despite his being a director for only some of the time), or a "breach of trust" (unspecified), or as having no valid entitlement.

3.9 Alternatively, there is a breach of duty claim for the £29,386 credit card payments and £67,221 received during his time as director.

3.10 By further alternative there is a transaction at an undervalue claim against him for £24,023 of the credit card payments and £69,948 of the direct payments made within the two years.

3.11 The pattern for Mrs Marley is similar to her brother's. She was paid £43,062 directly by the Company, and is said to have been unjustly enriched for the same respective reasons as her brother; so the only fresh element in this claim is that they were made without valid entitlement.

3.12 The breach of duty claim against her is for credit card payments of £19,096 and receipt of the £43,062.

3.13 The transaction at an undervalue claim against her is for £13,394 of the credit card payments only, there being no direct payments within the relevant period.

4. These claims as pleaded make no allowance for any salary for the Browns.
5. As to Mr Brown it is put that he was further in breach of his (unparticularised) duties in, "To the extent any [such] payments... were or are claimed to have been payments of salary", "causing or allowing the Company to pay a salary to himself which was excessive and commercially unjustified". It can be noted first that this is a reactive rather than primary plea; and secondly that this is not a plea that, to the extent there was salary, it was constitutionally unauthorised. There is, therefore, no pleaded challenge on that basis.
6. As to Thomas Brown, each of the three bases of claim is averred to be qualified by the words "except insofar as it related to payments of salary to which he was reasonably entitled", or some such. For Mrs Marley that is the same.
7. Manolete did not concede any element of salary in closing. But it is to be underscored that there is no challenge to such salary as each is proved to be due. As to the averral that such proof could not extend beyond reasonable entitlement, and as with Mr Brown's stated excessive and unjustifiable payments, there is at trial no expert evidence.

8. It is additionally pleaded that the Company was throughout its life insolvent. That is an answer to any attempt to rebut the section 240(2) presumption (the Browns each being connected persons as defined). In closing Mr Gale tried to take the plea a stage further by using it as an additional way of framing the breach of duty claims against each by reference to the further pleading that such payments were “made when the Company was making a loss/ insolvent and [Mr Brown/ Thomas Brown/ Mrs Marley] knew or ought to have known of the same”. Even assuming that the requisite particulars of knowledge had been given, covering the various stages of the Company’s business and prospects at the relevant times, (there are none), this does not constitute a cause of action: paying away the Company’s money when it is known to be insolvent is not without more a breach of duty: see, if authority is needed, each of the judgments in *BTI 2014 LLC v Sequana SA* [2022] UKSC 25, [2024] AC 211. Compensatable loss would also have to be pleaded and proved.
9. Finally, there is no plea against, relevantly, Mr Brown that in breach of (at the least) a duty of stewardship he caused the destruction of company documents; or a further plea that (say) in breach of section 171(b) and/ or section 172 and/ or section 173 and/ or section 175, he did so to protect his own interests and not those of the Company. Nor is there any plea that his duty of stewardship, or any statutory duty, was breached in his failing to ensure on the resignation of his directorship that control of the Company’s documents, accounts and/ or records was given to its ongoing directors.
10. I raise these matters not to detract from the principle that a party is not obliged to plead all causes of action available to it, but to discover the boundaries of Manolete’s case; and to ensure that, particularly where the Respondents have been acting in person throughout (Mr Brown had pre-claim representation), the case against them is put fairly and comprehensibly; and in accordance with what has been formally pleaded.

The witnesses

11. As will be investigated further below, there is now a dearth of contemporaneous documents to the disadvantage of all at trial. For the witnesses it is also many years since the events.
12. Those were factors emphasised by the main witness, Mr Brown. He was a patriarchal figure, not just in his desire to found the Company for future generations, but in his domination at trial of Thomas Brown and Mrs Marley. He undertook the cross-examination, and made the submissions, Mrs Marley assisting in pointing him to documents. As he acknowledged, he is someone for whom “waffling has been a lifelong trait”. The trouble was that along with the repeated themes of the passage of time and the lack of documents, there was very little engagement with the substance of the claim or effort at genuine recollection, which led to over-generalities: to take an on-point example, we had either 10% or 40% of documents available at trial. Nor were the documentary deficiencies all that he presented: at the first directions hearing, on 3 August 2023, I ordered that the Respondents were to have supervised access to the Company books and records held by Mr Arkin. No advantage was taken of that, yet even in their incomplete state Mr Brown might have found items which would have justified his stances. So, although I think he was right on some themes, for example Manolete’s intermittent attempts to finger him for the destruction of the Company records, overall his evidence must be treated with caution.
13. Thomas Brown and Mrs Marley filed evidence in very similar and sometimes identical terms, with which their father had assisted. They were, though, very different characters.
14. As became evident for the first time at trial (despite the pre-trial review at which this ought to have been raised by the Browns) Thomas Brown was a vulnerable party. He is dyslexic, and probably has a form of ADHD. So, while he can read, he can have trouble processing the information; he is also more easily upset than most, especially in stressful situations. His cross-examination was taken more slowly than others’; and I am satisfied that he could understand and respond to Mr Gale’s probing questions. His bemusement at the claims against him, for the most part (and surely, in reality,

throughout) a mere employee, obeying instructions, was founded not in miscomprehension, but understanding. He was a reliable witness.

15. Mrs Marley was an engaged and feisty witness who, unlike her brother or father, has a degree, in business. She had attended to the relevant schedules concerning the claim against her, and at the outset corrected her witness evidence to add an admission that among the dozens of items one, a 1 November 2014 payment to Smyths Toys of £154.95 had indeed been personal expenditure; but that that was why she had repaid it in full, straightaway, as recorded in the schedule two days later. As with her father's and brother's written evidence, hers was slight and supplemented orally; but unlike her father's, not in a way which was contrary to the original. She was an impressive and reliable witness.
16. Three other witnesses were called for the Browns.
17. Kyle Hillcoat had been the factory manager for the Company, the day-time equivalent for Thomas Brown, who worked nights. Again his oral evidence was wider than his written, as in among his straightforward answers was the revelation that some of the Company's documents had been destroyed, during or just after their transfer to the Jarrow premises of Monarch International Solutions Ltd ("Monarch"), which after liquidation bought certain assets direct from Mr Arkin, and took on some of the Company's employees, including himself. He was a good and unbiassed witness, not to be led into giving answers which he could not, even when they might have helped the Browns.
18. Also an entirely straightforward witness was Robert Mason, a legal executive who between December 2013 and about November 2014 had been employed as the Company's legal adviser, but whose duties extended into being, as he said, a general dogsbody.
19. Jalal Harake, the original introducer of the investments, and the payment of whose purported salary is an element of the debit card transaction claims against Mr Brown, was, through no fault of his own, of less assistance. To him especially everything was a long time ago, and doubtless these were no more than some dealings amongst many.

20. Aside from Mr Arkin, Manolete's only witness was Mahdi Sajjad, then Mr Harake's brother-in-law, and one of the original Middle Eastern investors. Faced with Mr Brown's lengthy statements, which with some prompting occasionally brought a question, he did his best to assist, as would be expected of a man with such a highly distinguished business career; and despite the understandable grievance that this was his only investment which had not succeeded, his evidence was reliable.
21. Mr Arkin has had the difficulty over the years of dealing with Mr Brown's verbosity, and accusations that he was not doing his job properly, and multitudinous accounts of how the Company's business was carried on and what happened to the investments. He appeared jaded by it, and was unable to concede any ground during Mr Brown's questioning. He was, though, an entirely frank witness, doing his best in difficult circumstances; and he gave helpful assistance to the Court and its questions.

Facts and findings: background

22. "My background", said Mr Brown, "is engineering and recycling not financials". The Company was incorporated in order to take advantage of a perceived opportunity in the market to recycle currently unrecyclable plastics. Companies House records its "Nature of business" as the "Treatment and disposal of non-hazardous waste". Its ability to do so, though, depended not on exploiting an established processing line, but on first discovering what that line would be: "initially we were based on taking plastic from farmers/ horse trainers and doing trials to make a system to clean and recycle material never before recycled". Before mid-2013 and the arrival of the Middle Eastern investment Mr Brown "was covering the expenses of the business with regards to its set up and the start of the research and development we were carrying out". One of his mantras was that this was an R and D company, so could never have been expected to turn a profit until the production stage was attained: the "business was set up as an R and D business and the plan was always to open more depots once the R and D was concluded, unfortunately

due to issues with the shareholders and incoming investment this never occurred”.

23. The expertise to carry out the R and D was Mr Brown’s: despite his own experience, there is nothing to indicate that Thomas Brown could have carried it through without his father. Nor was Thomas Brown funding the Company.
24. Mr Brown’s resignation as a director on 3 October 2012 is therefore a surprise which he himself could not initially explain: his answer to a Part 18 request of 7 February 2024 was that “So much time has passed I don’t exactly remember why I resigned in 2012”. He was replaced by another daughter, Amy (“Amy Brown”), whose experience and abilities are unstated, before re-assuming office on 22 April 2013, the same date as Mrs Marley became a director. It is Manolete’s case that through this hiatus he remained “at all material times the controlling mind of the Company and/ or assumed the status and functions of a director and was therefore a shadow director or alternatively a de facto director”. It is not said of whom he was the shadow, and that can be put aside; but his continuing as a de facto director is plain: nobody else was funding the Company, or had the ability without him to carry on its research and development; and he was not a man not to be involved in his own dynastic project. The answer he was able to give in cross-examination is a good example of an oral improvement of his written evidence: he now recollected that he had resigned because he had been offered a job at HW Morton & Sons, and the Company was not really trading at the time so Thomas Brown and Amy Brown could run it; the new job came to nothing. There is no evidence that the Company was not trading, and its accounts filed to 31 January 2013 are not on a dormant basis. Nor has anyone spoken to why Amy Brown was appointed in his stead. The new explanation therefore does not displace his very probable ongoing de facto involvement.
25. Aside from her being of the family, neither do we have any explanation for why Mrs Marley became a director; nor for why 7 days after her appointment and her father’s formal re-appointment, on 29 April 2013 Mr Harake became a director. Although denied by Mr Brown, it was surely because the Middle Eastern investment had by then become at least a serious-enough possibility to

overcome the conception of the Company as a family business. That itself indicates that Mr Brown had a significant on-going role in the few months when he was not formally a director. Mr Harake had been at Merrill Lynch. He was Lebanese, but had lived in London for over 20 years. “I was the person who discussed with Graham and initiated bringing investment into his recently formed business, following a meeting at Ascot Racecourse”. With the anticipated investment came other appointments to the board: Hisham Nizar Abdelkathem Shamkhani and Hassan Soufan, both on 13 May 2013. Given the timing of those groups of appointments, Mr Gale was surely right in his suggestion to Mr Brown (which was rejected) that the family appointments in 2013 were to ensure that at this stage the board was still the Browns’, four to three.

26. It is notable that Mr Harake calls the Company Mr Brown’s. Mr Brown’s points of defence aver that “my original agreement was that my shares would be depleted and passed onto new investors when they became shareholders”. So, both just ignore Thomas Brown’s holding of 50 of the 100 issued shares, and the registration of other family directors: again, the Company is equated with Mr Brown only; and even at trial it seemed to come as some surprise to Mr Brown that Thomas Brown had had an interest equal to his own.
27. The shareholder position is complicated, including by the use of offshore companies, although no one has felt a need to delve into the specifics. The original 100 shares were increased to 1,000 by a 7 June 2013 allotment. Following it, Mr Brown’s shareholding was 490 and Thomas Brown’s 5. There were ten new shareholders. By September 2014 there were only four, and, unless there were trust or nominee relationships, none was Middle Eastern: Mr Brown, who was always the largest, was up to 494, Mr Bennett, Mr Mason and a David Gloyne holding the rest. They remained the shareholders, their respective holdings shifting between them, at least until May 2015; and by January 2015 Mr Brown was up to 745 shares. By May 2016, though, his holding had reduced to 260 shares; Mr Moussawer, Mr Al-Soufi, and Mrs Chmayassani were back on board, with the same holdings as

they had had at January 2014; and there were ten new Middle Eastern investors.

28. Mr Brown's defence says that "the vast majority of what is now referred to as the debt was actually the investments that were not due to be paid back". That might be taken to mean that the June 2013 allottees made payments to the Company of capital above the £1 nominal value of each share; and Mr Brown pursued that line in his submissions. However, its filed accounts to 31 July 2014, 31 July 2015 and 31 December 2015 each record them as creditors, albeit falling due after 1 year; and so too the unfiled accounts to 31 December 2016, said to have been approved by the board on 16 January 2017, and to be signed by Mr Brown.
29. On this and other matters it would have been informative to see a copy of the 9 November 2015 shareholders' agreement, which presumably covered the relationships between the last group of shareholders and, according to Mr Brown's email to Mr Arkin of 26 May 2017, also provided the terms of repayment for shareholder loans.
30. It would also have been interesting to know what Thomas Brown, Mr Brown, or any other shareholder ever received on the transfer of their holding; but that was another topic untouched by any evidence.
31. Nor does anyone explain properly the shifts in the directorships (the only attempt is by Thomas Brown and Mrs Marley, in identical words, that having been appointed as directors they were "asked to remain temporary in name only while the new shareholders joined, they then resigned me"), or the links between the changing membership and the directorships (although there obviously were such). Mr Shamkhani resigned on 28 February 2014; Wissam Slim was appointed on 1 March 2014 (and resigned on 22 September 2014). Mr Soufan resigned on 23 July 2014; Mr Bennett was appointed on 25 July 2014. Thomas Brown, Amy Brown, Mrs Marley and Mr Harake all resigned on 13 November 2015; the same day Mr Al-Uzri and Mohamad Mansour were appointed. Mr Bennett resigned on 26 August 2016, leaving Mr Brown, Mr

Al-Uzri and Mr Mansour. Mr Brown is recorded as resigning on 25 May 2017, although he says he had done so on 22 May 2017.

32. The Middle Eastern investors were a powerful group of friends largely based in Lebanon. Mr Brown's descriptions of them are probably not entirely accurate, but at the least show his perceptions: Mr Harake the former merchant banker; Mr Mansour the chief compliance officer of the Bank of Qatar; Mr Al-Uzri, a politician and "Former Chairperson of... the Trade Bank of Iraq"; Kassem Rahal, the general manager of Al Rostamani Pegel, "one of the largest construction companies in the UAE"; Mr Sajjad "Founder and Chairperson of Gulfsands Petroleum and Chairperson of Euphrates energy". Mr Al-Uzri, who according to Manolete "ran the Company along with [Mr Brown] including acting as an intermediary between [Mr Brown] and the Company's shareholders", so taking over that board role from Mr Harake, came with an assistant (at least according to Mr Brown), Ammar Al-Rikabi, who was an accountant who had previously been a "senior manger in the Iraq banking system". Mr Brown believed that Mr Al-Rikabi had also been appointed a director on 11 November 2016; but unlike the other appointments nothing was filed at Companies House, Mr Brown did not inform Mr Arkin of such appointment, and there is no evidence that he ever acted as such.
33. It is not surprising that Mr Brown saw this unanticipated interest from such investors in his company, for which he had such ambition, as a "huge opportunity"; nor that, as he said, he was as excited as a little boy coming to Mayfair to meet them.
34. The identity of the investors caused its own problem, though. At around the end of 2014 or early 2015 the Company's Barclays account was shut, and moved to the NatWest, and its solicitors resigned, following the instigation of a SOCA investigation which in the event did not lead to further action. Mr Brown blamed this on Mr Sajjad's investment as being "from an unacceptable foreign account", but he acknowledged that he was not aware of the details, and was actually wrong as to the origins of that investment.

35. Mr Sajjad's view of Mr Brown had tarnished quickly. In May 2014 he visited the Company's premises on the Glover Industrial Estate in Washington, Tyne and Wear. Two things struck him: the row of high-end cars parked outside; and inside, and in contrast, "old and very rudimentary equipment": this was not the "advanced technology" he had expected.
36. "What I saw aroused my suspicion that Graham Brown and his children were using the money invested by the other shareholders to enrich themselves and live a luxury lifestyle". "I also noticed that Graham Brown was driving a new Range Rover, and that other family members and staff were driving Audis, Jaguars and other expensive cars, all paid for by the Company. This and other excessive expenditure were certainly not commensurate with the Company's turnover or cashflow". By this point Mr Sajjad had already invested his £300,000, in two tranches, through his company Wickham Holdings SA. "The (low) quality of that equipment did not seem to warrant all the cash raising that Graham Brown had engaged in to fund the Company". "I began to wonder if this was a business of any substance at all. My main concern was the lack of activity and production on site. Graham Brown kept on asking for further funding to buy equipment, but I could not see where this was being spent... He kept insisting on new equipment to boost capacity, but I could not see where all this was going"; "there was not the sophisticated equipment or industrial process that warranted the investment and expenses... and I felt that we had been misled". Although it seems to have had no effect "I also raised a 'red flag'" with the other members of his group "telling them that there was a lack of transparency in terms of the financial and general management of the business".
37. Mr Sajjad knew of what he spoke: a man who had come to this country in 1976 and who had 26 years experience in mining and engineering, including spending six years after his degree at an engineering company in the North of England. Further, what he saw contrasted uncomfortably with his own venture, which at the time had a market capitalisation of £400m. As he said in cross-examination, he had a hunch that there was something untoward in this family business.

38. His concerns were not allayed at a later visit to the plant in late 2014 or early 2015. Mr Brown had refused to explain on what the investment monies had been disbursed, and “was almost trying to extort further investment from us on the basis that the business would otherwise fold”. “Graham Brown’s resistance to sharing financial information made it impossible for the shareholders to get proper clarity on the Company’s financial situation. Whenever we spoke to him, he would ask for more money but never produced documents to show how that money would be spent”. Mr Sajjad told his fellow investors to stop sending good money after bad.
39. Mr Brown repeatedly told the court that there was original investment promised of £5m, and he suffered ongoing frustration at those promised monies not being forthcoming. Mr Sajjad said he had never heard mention of that figure, and was aware of no business plan, although there must surely have been discussions about how anyone’s investment fitted into the Company’s intended development. By November 2015 he had instructed his solicitor, Ergin Balli, to make investigations on behalf of himself, Mr Rahal, Mr Chouman and Mr Mansour (just or soon to be appointed as a director), which do not seem to have elucidated anything. As Mr Sajjad said, his reality was that “I had bigger fish to fry”.
40. We will return to the £5m in a moment, but what is noticeable from this account is that Mr Sajjad’s point of contact is Mr Brown rather than anyone else (including his then brother-in-law Mr Harake). Mr Sajjad confirmed orally that Mr Brown was central to everything; and that while he had tried to give them some guidance, the non-UK directors understood neither their governance nor fiduciary duties.
41. Mr Sajjad was not himself a director, nor had a nominee on the board, but his perception appears more accurate than Mr Harake’s view that the business was not under the control of Mr Brown who “was the puppet on the ground, passing on the instructions from the Board of Directors to the on-site management team. Grahams Role being Operations”; “The Board of Directors controlled the finances and the investments, bringing new investors to achieve the investment target”. Mr Brown’s view was the same: “I was

actively in charge of newline polymers staff on a day-to-day basis, but in simple terms passed the instructions I was given from the BOD except on operational points”.

42. There is no evidence of any such oversight from the others, apart from the admitted role of Mr Al-Uzri, nor clue as to what accounts or information they might have considered in order to exercise it. No doubt Mr Brown had no control over when investments (i.e. lending) might arrive; and no doubt his main concern was with the physical recycling rather the finances: Mr Mason noted that “Graham Brown’s role was the production side of things with them providing the finance”; he also recollected that “Graham Brown was constantly on Skype meetings” with the investors, and that “Graham Brown ran the factory side of things- very much the nuts and bolts of the design and construction of a process”.
43. The centrality of Mr Brown is demonstrated by his own account of events in Autumn 2016. “I was consistently overruled by other members of the board, in October 2016 I resigned because of the lack of clarity on so many things and broken promises on investments, all shareholders and Directors flew to the UK and convinced me to rescind my resignation with assurances that these issues should be dealt with, which I did”, continuing: “the issues never were resolved and this led the business to where it liquidated”.
44. The notion that Mr Brown was in some way subordinate to the other board members at any time is therefore one which must be rejected. But so too must the notion that the other board members were all necessarily subordinate to him. As described, they were substantial and wealthy businessmen. Moreover, and to repeat, it is Manolete’s own case, in line with Mr Arkin’s evidence, that Mr Al-Uzri (based, like Mr Harake, in London) “ran the Company along with [Mr Brown] including acting as an intermediary between [him] and the Company’s other shareholders”; that being in contrast to the directors based abroad, as to which “I have found no evidence... of any of them playing an active role in the running of the Company”. At frequent points during trial Manolete has treated Mr Brown alone as running the Company; but that is not its pleaded case.

45. Mr Al-Uzri is an important, if for us silent, character in another way. Products had been incorporated on 18 November 2013 with Mr Brown as sole director and shareholder, and Mrs Marley as secretary (not, as pleaded and put, director). By 12 October 2014 Mr Al-Uzri's Arch Investment Partners Limited ("Arch") held 288 of the 450 issued shares, Mr Brown the rest; and Mr Al-Uzri had been appointed director on the day Mrs Marley resigned as secretary, 17 March 2014. By transfer on 25 May 2016 Arch became sole shareholder. Mr Brown resigned as director on 19 September that year. From 1 January 2019 there were further allotments by which Mr Al-Uzri came to hold 248,000 shares, and Arch its 450. Products was dissolved on 16 March 2021.
46. So Mr Al-Uzri was sole director of Products from 19 September 2016, by when he was also one of the three directors of the Company. Mr Brown says, and there is nothing to gainsay it, that Products was run by Mr Bennett whose directorship of the Company had ceased on 26 August 2016. He also says, and this is not contentious, that while he had incorporated Products as a shelf company, he had "next to zero" involvement in it, never attending a board meeting. At least from 31 December 2015, the two companies shared an accounting year-end date. They also shared the premises at Washington and, as we shall come to, staff and services. Products' business was, though, distinct: it sent out its vans and men to install domestic insulation, supported by government grants.
47. There was another important figure, Joshy (or, sometimes, Joshi) Mani. Manolete says that he was employed as the Company's bookkeeper between 20 May 2013 and 28 June 2017: that is, from shortly before the increase in share capital in June 2013 until shortly before voluntary liquidation. He it was, rather than Mr Brown, who would deal with all the Company's filings and financial paperwork. He also dealt with Products'. He had his own office at the premises where, Mr Brown says, "every record from the business was kept"; he controlled the server; and the "majority of the time" he held the Company's bank cards "as he needed them to make payments to suppliers etc"; so, he "was, in fact the company accountant and held a position of

considerable trust given that he had control of all finances”. For this he received a salary of “at least £60,000 plus the use of an Audi Q7 car and expenses”.

48. All the descriptions of Mr Mani are of a meticulous bookkeeper. He was “fastidious” said Mr Mason, who confirmed he organised payments, the payroll and (euphemistically) the ordering of paperclips. Mr Hillcoat said that “Joshi Mani the accountant had his own Office suite and ran all of the financials for the business”: he would go to see him if there were issues over pay, or smaller items needed in the factory. Mrs Marley said that her “employment commenced in August 2013, PAYE and NIC were always deducted from my salary. Joshi Mani was in control of this”, and that as office manager she “reported directly to Paul Bennett and to Hussein Al-Uzri along with Joshi Mani”.
49. There is also independent evidence of his qualities. Grunberg & Co were the accountants to Products. On 26 July 2021 they wrote to Mr Al-Uzri to confirm that they prepared its financial statements “based on the Sage bookkeeping files that were prepared by Joshy Mani, who we understand was also the bookkeeper for Polymers. We have done a full analysis of the intercompany account on Sage between Products and Polymers... In the year where there was a balance owing by Polymers to Products, we received a confirmation from Joshy Mani, showing the Sage printout of the ledger held in Polymers Sage records with Products. This balance agreed... As the inter-company balances appeared to agree, and the bookkeeping was performed by the same person, it can be assumed that this was replicated in the books of Polymers. Please note that we did not make any entries onto the Sage software, and we used the Sage backup that was sent to us by Joshy”.
50. This is a significant letter. The only case cited at trial by Mr Gale has been *Re Mumtaz Properties Ltd* [2011] EWCA Civ 610, [2012] 2 BCLC 109, for the (unquoted) dictum at [16]-[17] and its principle that directors who fail to maintain or hand to an officeholder a company’s accounts could not at trial gain advantage from their own breach; at [14] Arden LJ had also observed that

“contemporaneous written documentation is of the very greatest importance when assessing credibility”.

51. It is everyone’s case at this trial that Mr Arkin has not received all the documents which the Company ought to or did create. What is in dispute is whether that is owing to Mr Brown.
52. Before looking at the facts, a slightly wider view of the law is perhaps appropriate. In *Re Shahi Tandoori Restaurant Ltd* [2021] EWHC 337 (Ch) at [32] I observed that, while an aspect of his statutory duties, a “director is anyway under the separate fiduciary obligations to cause the company to keep proper records of its transactions, and to provide an account of his own dealings with company property, of which he is treated as being a trustee”: the director as steward. So, as Newey J said in *Re GHLM Trading Ltd* [2012] EWHC 61 (Ch), [2012] 2 BCLC 369, at [149], “once it is shown that a company director has received company money, it is for him to show that the payment was proper”. There is then the classic exposition by Lesley Anderson QC in *Re Idessa (UK) Ltd* [2011] EWHC 804 (Ch), [2012] 1 BCLC 80, at [28]:

“I am satisfied that whether it is to be viewed strictly as a shifting of the evidential burden or simply an example of the well-settled principle that a fiduciary is obliged to account for his dealings with the trust estate that Mr Aslett is correct to say that once the liquidator proves the relevant payment has been made the evidential burden is on the respondents to explain the transactions in question. Depending on the other evidence, it may be that the absence of a satisfactory explanation drives the court to conclude that there was no proper justification for the payment. However, it seems to me a step too far for Mr Aslett to say that, absent such an explanation, in all cases the default position is liability for the respondent directors. In some cases, despite the absence of any adequate explanation, it may be clear from the other evidence that the payment was one which was made in good faith and for proper company purposes”.

53. Mr Gale accepted that wider evidence proposition.

54. However, it will be understood from Mr Brown's resignation on 22 or 25 May 2017 that this case engages a modification of these principles so far as they concern delivery up. Mr Brown resigned, as he was entitled to do, leaving Mr Al-Uzri and Mr Mansour the Company's directors. To put it generally (because there may feasibly be nuances as to ongoing matters), he was no longer obliged to ensure the maintenance of records, nor to speak to transactions, insofar as they concerned post-resignation matters. Thus, save insofar as he retained company records, the obligation to deliver them up to Mr Arkin as liquidator was no longer his. In other words, the critical obligation as to records here was that between him and the Company at his resignation. Absent citation of any direct authority, it would not be appropriate to go further than to say that Mr Brown was under a duty to ensure that at that point the Company was put in possession of and had access to the maintained records, its rights to compel him to provide a full account remaining; and that a failure to comply with that duty would engage the *Mumtaz* principle.
55. Without diminishing those obligations, on appointment Mr Arkin as liquidator would also have separate power to compel the delivery up of the Company's property under section 234, or the giving of information as to its affairs under sections 235 or 236 of the *Insolvency Act 1986*.
56. By the middle of May 2017 the Company was still running, but only in the sense that its employees were still attending the premises. On 10 February 2016 it had entered a large contract with SCA Hygiene Products UK Limited ("SCA"), a substantial operation now known as Essity UK Limited. The Company required a number of permits to carry on its business, including from the Environment Agency. In mid-April or early May they shut it down having found among the piles of material for recycling contaminants outside the Company's licence. The material derived from SCA. Mr Brown says the fault was SCA's, too. That is not clear from the correspondence. On 19 May Phil Curran of SCA emailed him, attaching a letter. "In essence the letter is stating that SCA will take responsibility for the removal of the residual trash stocks subject to Newline agreeing that no further claims would be made".

The letter records a 17 May conversation between the two of them in which “you told me that Newline are not financially in a position to continue with the Contract. A significant problem is that there is an estimated 500 to 600 tonnes of Material... which you say you are unable to process. That is in addition to the 682 tonnes already removed by SCA at our expense. You say that without us accepting your proposal, the probability is that the burden of you disposing of this Material will close Newline down”. The “directors’ anger was towards me as I set up the contract” said Mr Brown, who also told of the screaming at meetings as he tried to garner more money from the investors, and of their rejection of an offer of his to buy them out.

57. In an email to them all of 19 May Mr Brown wrote “I am not willing to be singled out as the target”, as he was only one among the board. He also wrote that “I have every communication be it Email Skype WhatsApp Text with the BOD, which will show I have always acted in the best interest of the company and also show what has been shared with the BOD, all financial and operational dealings have been well documented in a legal and proper manner”.
58. In the end, he had enough. It is likely that his resignation was on 22 May, as on 24 May Mr Al-Uzri contacted Mr Arkin for advice. Mr Brown was anyway off for a long-planned journey to the Monaco Grand Prix with his wife, in celebration of their 30th wedding anniversary. He said he had some belief that, as they had done the previous autumn, the investors would turn round and ask him back; and that despite the difficulties he had no notion that they would seek to liquidate the Company.
59. At 19.42 on 25 May Mr Arkin emailed Mr Brown to introduce himself: “I have today received an instruction from the Board of Directors... to advise them in relation to the Company’s financial affairs... I will urgently need some information from you to take the matter forward”, so asked for a telephone call the next day. This they had, and arranged a meeting for Thursday 1 June.

60. However, on 26 May Mr Brown was in contact to say that his assistance would “now be limited to what my legal adviser suggests”. That was because he had notice of a circular sent by the Company’s directors the same day to its staff, informing them that the Company had ceased trading “temporarily”; that “Mr Graham Brown has resigned and no longer has any authority in relation to the company”; that the earliest he could meet “our instructed adviser” was next Thursday; and that as “the directors of the company are mainly based outside of the UK... we have been left in a very difficult position”.
61. The meeting was rearranged for Friday 2 June, including “the handover of financial information as discussed last week”.
62. On 31 May Mr Arkin emailed to say he would “send over a list of information I need shortly” and that the “directors need to take control of the premises as a matter of urgency and I believe they sent security personnel there last week who were turned away by Jake who I have been informed is a relative of yours. They are now considering getting the police involved...”. In cross-examination Mr Brown confirmed that Jake was the security guard, but not a relative. On the same day he wrote to Mr Arkin to tell him that “what is being said [with] regards to being in control this is absolutely incorrect, the BOD have made no effort at all to take possession of the building”. Mr Arkin replied that he had “asked the Board to get all the locks changed... We will therefore not be able to meet at the premises unless I can get access on Friday”. The evidence at trial was that keys were held by security.
63. It is not possible to resolve whether Mr Arkin and Mr Brown visited the premises together when they actually had their meeting, on 6 June, Mr Brown having returned from Monaco on the first (a file note would have helped). Nor do I think it matters. Mr Gale essayed a case theory that Mr Brown had caused his family, via Jake, to prevent access to the premises after 26 May 2016, so they could control them and their contents; so it was that there was little left at the 6 June visit, because they had stripped the site. That was not a theory supported by Mr Arkin, though, who confirmed that while he believed information had been deliberately withheld from him, to put him off the trail, he was not saying that Mr Brown was behind this. In his witness statement he

said that when he did obtain access to the premises “the server had been disposed of”; “I have been unable to establish since then what happened to the server and am concerned that it may have been deliberately removed and concealed... to prevent my access to it”.

64. What is important is what records Mr Arkin asked for; when, and from whom; what he was given; when, and by whom. As to this the evidence is most unsatisfactory. I have been taken to no contemporaneous demand of anyone for specific documents. Mr Arkin said orally that he had asked Mr Brown for the books and records at the outset, but had just been drip-fed certain documents. Those did not include, for example, board minutes; nor the documents which we know were under his control from Mr Brown’s 19 May email. They have yet to be located. Mr Brown brought a computer to trial which he said contained relevant documents, and Collyer Bristow helpfully offered to extract the documents from it; but nothing was produced to the court.
65. What Mr Arkin actually received, it seems from Mr Bennett and it is not clear when, was the Sage back-up and twelve boxes of physical records. The Sage back-up was not complete, and included some 6,000 reversals, an unusually large number in Mr Arkin’s experience. The documents had “huge gaps”, and he said he “formed the impression that the physical records had been ‘sanitised’ before they were handed over to me as documents I would have expected to see were missing” (he does not say what, although board minutes were an oral example).
66. Mr Hillcoat provided an explanation for the missing physical files. “I can confirm that the documents from Newline Polymers were in the hands of Joshi Mani which he had stored at his home, when I was in my role at Monarch International. Joshi brought the documents to Paul Bennett at the Monarch factory, I was aware of this as I unloaded the boxes and put them in the factory, also monarch was a small team, and as Factory Manager I was generally aware of most things day to day”. He expanded that account orally, confirming that he had assisted in the destruction of some documents; we do not know on whose instructions.

67. Mr Arkin said that was the first he had heard of the passage of the documents, but that the destruction made sense; and that likewise he had not been told before Mr Brown suggested it that the Company's server was also that used by Mr Mani for constructing Products' accounts, so had simply moved with it. Those who had not told him included Mr Al-Uzri, Mr Bennett, and Mr Mani.
68. That indicates that, as would be expected, Mr Arkin had asked them for documents; but we have no specifics. It also seems that Mr Brown's suggestion was right: Products and the Company were at the same premises, both using Mr Mani and some other staff. Moreover, we know from the Grunberg letter that Mr Mani had post-liquidation access to the server which contained the Company's documents, perhaps (it is ambiguous) even into 2021. We also know from the SOCA investigation that if there were calculated destruction of documents, this is not a case in which there was only one theoretical culprit.
69. Mr Brown's position is simple. He resigned. He left the premises. At the point he left, all the computers and documents were there. Apart from those emails forwarded to himself, which were on the newly-produced computer, they would all be on the server, or the desktops, which were all shared with Products.
70. In the end, that is the most likely scenario. Mr Gale drew attention to post-letter-before-claim correspondence in early 2021 between Paul Dodds Law, then representing Mr Brown, and Collyer Bristow, in which Mr Kramer of the latter complains about the non-surrender of the server, and how Mr Arkin had been told by Mr Mani that it had been "cleared' and disposed of"; and how at the visit with Mr Brown he had been told that the premises had been cleared "as a safeguarding exercise because there was a risk that the landlord would take back the premises". That last is not in Mr Arkin's trial evidence, but anyway does not itself speak either to who gave the safeguarding instructions, or any non-disclosure instructions. As to Mr Mani, what he said was manifestly wrong given the Grunberg letter. It is also notable that this short exchange was initiated by Paul Dodds Law's statement that Mr Arkin would

have “effective control” of all information “via the company’s servers and the like”: a dangerous point to make if Mr Brown had deliberately hidden it.

71. It is a great pity to the discovery of the truth, as Mr Brown hoped would happen at trial, that neither side called Mr Al-Uzri or Mr Mani, the last of whom could almost certainly have cut through swathes of this case (Mr Gale says that Mr Mani was unwilling to get involved). I am also puzzled that the Grunberg letter did not prompt an immediate request or, if refused, application for the production of the server on which the Company’s apparently accurate Sage records were to be found. But as it is, had one been alleged, I can see no breach of Mr Brown’s duty on resignation to ensure the retention by the Company of its financial information. Instead, it seems that its information passed to Products, itself under the control not of Mr Brown, but Mr Al-Uzri; the latter also being one of the Company’s two ongoing directors; yet the demands and requests on whom are unspecified.
72. This is therefore not a case in which there is an analogous strict application of the *Mumtaz* principle: the Company compiled detailed records, and the failure to deliver them up is not to be laid at Mr Brown’s feet.
73. However, in the wider *Idessa* consideration of all the evidence, account must be taken that the documentation provided to Mr Arkin was incomplete; and more pertinently that the Browns have failed to inspect the records which do exist, pursuant to the 3 August 2023 directions order, and have therefore failed to take every reasonable opportunity to justify their case; or to produce more documents, as they were given the opportunity to do under the 11 November 2024 PTR order.
74. Finally by way of general matters there is a topic on which we do have relevant documents, the insolvency of the Company.
75. The filed accounts show continuous and increasing balance sheet insolvency: £36,808 at 31 January 2013; £1,454,232 at 31 July 2014; and £2,142,706 at 31 July 2015; aside from net current assets in the 31 July 2014 period of £23,047, a small and probably snapshot figure, there were net current liabilities of £79,823 in 2013 and £397,038 in 2015. There are unfiled and unsigned

accounts for the year ended 31 December 2016 showing a loss of £566,533 and a negative balance sheet of £2,940,303. As those last indicate, there was also a substantial loss, of £494,841, in the period 1 August 2015 to 31 December 2015. Finally, a management account for the month January 2017 showed a loss of £28,469.

76. Within those accounts, as mentioned the Middle Eastern investment is treated as falling due after more than one year. There is no debtor figure which would indicate any obligation to invest £5m. Mr Harake refers to the “initial target” as being to “raise up to £5m to build the plant”, and how “we received assurances from several parties that they would move forwards with arranging the full funds required”; but nothing in those statements adverts to an obligation. Mr Brown, writing to Mr Arkin on 10 August 2017, said “I was told to build the first plant based on an initial investment of £5m+, needless to say the ‘initial’ investment was substantially less than this and resulted in the business having to source much cheaper alternative plant and equipment which was far inferior to the kit that was originally specified- this pattern of promised but undelivered investment repeated itself throughout the life of the business”. Again, promises rather than agreements; and a business which, in Mr Brown’s eyes, was not in a position to achieve its maximum.
77. The accounts tell the story of constant balance sheet insolvency, and near-constant cashflow issues. Mr Brown said, bravely, that “I never believed [cashflow] to be an issue until close to the time I resigned”, as staff and suppliers were being paid; it became an issue with the withdrawal of the SCA contract “that gave us the majority of our turnover”, after which “things were very tight”. As the accounts show a non-annual obligation, it is possible that he was right to say that the investors would be paid once the Company was “out of R&D”, and they could be paid from profit; and, whether reflective of the shareholder agreement terms or not, that was the content of his post-SCA 2017 offer to buy out the other shareholders. But Mr Brown was constantly chasing money from the investors; promised monies would not arrive “on time”; there was little he could do about it because of the “relative informality of the relationships”; and monies would come “piecemeal which caused huge

operational and cash-flow difficulties to the extent that the Company had bailiffs chasing before the process plant was even in place”. As he stated in cross-examination, the Company’s finances depended on the investors, of whom only Mr Slim and Mr Sajjad put in what he was expecting. As a result, among others not being paid was HMRC, with whom there was a time to pay agreement ongoing at the cessation of the SCA contract.

78. Mr Arkin observed pithily that that the Company was carrying out research and development did not mean that it did not have to pay its debts. Nor were Mr Brown’s comparisons with neighbouring, and highly-capitalised, Nissan apt. Before the investments he had provided the funding himself. Mr Mason, present from December 2013 to around November 2014 recalled it at that stage as “very much an R&D operation... not much actual commercial recycling took place”. It remained sufficiently such to qualify for an HMRC R&D rebate, after what Mr Brown remembered as weeks of investigations in 2016, in the large sum of £650,510, of which about £200,000 was actually received (the rest, presumably, being set off against liabilities). Mr Brown was also of the firm view that no rebate would have been received unless HMRC were satisfied that the Company were solvent. No legislation or guidance has been cited for that; and on these figures it is impossible to see how HMRC could ever have come to that conclusion: as Manolete pleads, the Company was balance sheet insolvent “from at least 1 February 2013 until it entered liquidation on 5 July 2017”, and was “trading at a loss from at least 31 January 2013 and was therefore cashflow insolvent from at least this date”. Over its life its turnover was to begin with non-existent and then slight; it was consuming money as it carried out its R&D; it was entirely dependent on the injections of more money from the investors or Mr Brown himself; and that was never sufficient to acquire the machinery which Mr Brown considered it needed were its project to work optimally.

Facts and findings: the claims

79. These will be dealt with in the same order as in the particulars, although it is convenient to deal with the Barclaycard claims against all the Browns together.

Barclaycards

80. Barclaycard issued credit cards to the Company. Each card had a unique pin; and each bore the name of the authorised user: relevantly, Mr Brown, Thomas Brown and Mrs Marley. (Mr Bennett at the least also had a card, because there was a similar claim made against him).
81. Mr Arkin has trawled through the card statements. He has found that between 14 August 2013 and 23 May 2017 there was £58,707 on Mr Brown's which he would attribute to personal expenditure, "including expenditure on dining, entertainment, hotel costs and DIY"; £49,740 on Thomas Brown's between 9 September 2013 and 24 May 2017 of which £29,386 was while he was a director; and £30,051 on Mrs Marley's, of which £19,096 was while she was a director.
82. The respective transaction at an undervalue figures, being s.240's two years prior to the onset of insolvency, are £27,498; £24,023; and £13,384.
83. Manolete claims against each of the three that causing or allowing such personal payments was in breach of duty, the duty being unspecified, but which we can take as being primarily s.172 and self-dealing/ non-profit. The claim against each is only for the period for which they were a director; and the sums which they themselves received.
84. It is pleaded, and confirmed by Mr Arkin, that of these sums "the Liquidator [has] found nothing within the Company's documents books or records indicating such payments were for the benefit of the Company". Those records are, of course, limited.
85. There are hundreds of transactions on each schedule, the dates of the use of the cards overlapping. There is a huge range of expenditure: building materials, household appliances, industrial supplies, payments to government,

food and drink, and accommodation from Travelodge to Malmaison, for examples. On their face, those are transactions which might be business related and might not be.

86. The Browns' evidence on this was consistent from defences onwards, and supported by the reliable Mr Mason. That the relevant card was in their name did not mean that each transaction on it was theirs, in the sense that they made it for their own benefit. On the contrary, these were company cards, issued as such and used as such. None was in the unique possession of the relevant holder; and the same was true for Mr Bennett's. Instead, the card was held centrally, by the Company's accounts team, being Mr Mani; the "Barclaycard was in my name but rarely in my possession" said Thomas Brown; it was "only issued to us if we needed to pay something on behalf of the business" said both he and his sister; and that was true for everyone at the Company.
87. Mrs Marley said that the cards were "used for business expenses and daily payments to Land Registry and other official bodies, the cards were rarely in my possession as payments of land registry fees etc of which there were many each day was carried out by Joshi Mani the accountant".
88. Thomas Brown described Mr Mani as making mobile payments using the cards: he had no app on his phone which could do that; and how anyone who worked in the factory could use the cards.
89. Mr Brown pronounced orally company policy, applying to everyone within working hours, that if they were travelling, it would pay meals and accommodation and fuel although receipts would be required by Mr Mani, who would log the expenses onto Sage. That policy does not explain meals from the local Washington branch of McDonald's, nor expenditure at the Jockey Club catering at Haydock Park; although the latter Mr Brown attributed to typical business expenditure.
90. There can be no doubt that the cards were not in the exclusive use of the named person. For example, Mrs Marley was responsible for payments to government bodies, yet many of these appear on Mr Brown's card. We also have Mr Mason's evidence: "There were business Barclaycards, and most

days I would be given one to go to buy materials”. He said the materials might be nuts and bolts, or detergent (of which the Company used a lot); there were any number of cards which he would be given, but he was never given cash. Mr Mani would give him the card. When a purchase was made he would always retain the receipt and invoice, and on his return give them to Mr Mani. Mr Mani was “fastidious”, and would not let you get away otherwise.

91. Mrs Marley said that Mr Mani held all the cards, with the pins on pieces of paper for those who did not know them. “I was also responsible”, she said, “for arranging board meetings, arranging food etc, and accommodation on the direction of the directors/ shareholders, the cards would also be used for this, as we also had teams of installers travelling the country daily to carry out their duties and installations, they would need hotels and travel expenses, this would be carried out by the accounts using the same cards. I at no point used the cards on personal items”. There appears to be some conflation here between the Company’s business and Products’; their interaction will be addressed further below, and is not relevant to this.
92. Manolete relied on theoretical propositions for its attribution of the spending on a card to the personal purposes of the holder. First, the card was in that person’s name and no other’s. Secondly, as Mr Arkin said, each had its own unique pin which was not permitted to be shared. Neither displaces the factual evidence, and each is trumped by the very fact that these were business cards, to be used for the Company’s purposes.
93. That does not mean there are not transactions which need some explaining to come within the business remit. £300 at the Seaham Hall Hotel on 18 December 2014 Mrs Marley could not explain save that it was not hers; but the £232 at “Revolution- Newcastle” two days later she could, as a Christmas night out for staff, with receipts to Mr Mani. Outside the period she was taken to a 21 April 2016 £535 to Jet2Holidays.com, which she could not explain; nor twelve payments on 11 March 2017 around various Newcastle bars; she knew that was not hers, as she would “not be seen dead in ‘Flares’”.

94. I believe her. She is a credible witness, supported in her account of the use of the Barclaycards by another credible and independent witness, Mr Mason. More, there are two matters which support her case, and that of her father and brother, that Barclaycard expenditure was not the personal expenditure of the named person. First, as already referred to, there is the striking fact that on 3 November 2014 she repaid the £154.95 dispensed two days earlier to Smyths Toys UK Ltd. Why would she do so for that transaction, but none of the others? Second, Mr Mani was meticulous. Yet there is no apparent loan account for any of the Browns, and certainly not one which covers these payments: at note 9 of the 31 December 2016 there are “Directors’ loan accounts”, falling due after more than one year, of £2.974m, and £2.875m the year before; there is no obvious relationship between those figures and the Barclaycard payments; there are no other accounting entries which would identify these as personal payments.

95. The Barclaycard claims fail.

Debit cards

96. The Company operated accounts with Barclays and NatWest. The NatWest account was opened on around 16 January 2015, and Mr Brown had sole authority to make unlimited payments from the NatWest account, and had the sole business debit card; Mr Bennett, Mr Mani and Mrs Marley had group signing rights. Although it has taken longer to ascertain, he also had sole signing rights for the Barclays accounts, on which from 20 May 2013 Mr Mani and Mrs Marley also had group signing rights.

97. Mr Arkin has collected debit card expenditure into four categories of complaint. From 11 April 2012 to 26 June 2017 £8,334 was spent on shopping. From 10 April 2012 until 5 April 2017 £82,410 was spent on the combined headings of gambling and cash. From 16 August 2013 to 9 October 2013 £46,450 was paid to “Smart Trading Co”. From 7 June 2012 to 17 March 2017 £22,474 was spent on “travel and related costs such as hotels and car hire in places including Alicante, Benidorm, Switzerland, Germany and

New Zealand. [Manolete] avers that the Company did not carry on any business outside of the United Kingdom”.

98. £18,717 of these payments, which total £159,669, are said to fall within s.238. Otherwise, the claim is again that they were made for the personal benefit of Mr Brown in breach of the composite duties.
99. Some of the same points can be made as with the Barclaycards. The evidence is that these cards were also used commonly, so payments on them are not necessarily attributable to Mr Brown; and for the NatWest online payments he described Mr Mani’s holding a purple pin-machine in the office, which he, under Mr Bennett’s instruction rather than Mr Brown’s, would effect. There is no director’s loan account which obviously includes the transactions; although that is of lesser substance considering Mr Brown alone, as he maintained rights, again not obviously reflected in any accounts, to being paid for the machinery he had put into the Company at the outset valued at £300,000; he also maintained rights to £156,000 per annum salary, which will be looked at below.
100. As a first step, the onus is on Manolete to show that these were on all the evidence, bearing in mind that which is lacking, probably personal payments.
101. It was not possible to cross examine Mr Brown on each entry, and he has not engaged with the schedule in that way; instead, within these rough parameters I deal as best I can by category. The personal shopping category begins with a payment to “Equestrianworld” of £286: that is probably something to do with Mr Brown, and there is no justification. It continues with a payment to Wetherby racecourse, and six days later Jockey Club catering; these and suchlike are on the evidence acceptable, as (whatever pleasure Mr Brown was doubtless garnering on the side), the Company’s business did concern recycling from the racing industry and it was keen to advertise itself there. McDonald’s/ KFC/ service station payments: all acceptable. PC World: acceptable. Clothing: acceptable. Numerous Apple iTunes: surely personal. DIY stores: acceptable. Pitcher & Piano and Gusto restaurant Mr Brown explained as being related to investor entertainment, so are permissible. So

too the payments to Harrods for Christmas hampers. £365 to Wheelers Luxury on 11 June 2023 is not proven: it is not clear on its face what this was for, nor whether it benefitted Mr Brown rather than the Company.

102. Mr Brown is much the most likely person to have been in possession of his debit card round about; the more so where gambling and cash are involved, even if he viewed Mr Bennett and Mr Mani as other potential withdrawers.
103. In his witness statement, Mr Brown said he had never gambled with company money. That is wrong: whatever use the cash was put to, and many entries on this schedule are from ATMs at racecourses, there are specific entries for “Totepool vouchers” on 27 August 2013, along with others on the same date which show this was at Newcastle races, for £500, £550 and £550: not the spinster’s flutter.
104. Another justification for horseracing expenditure was that the “first meeting with the initial investors/ directors was at a racetrack”; but that was mere coincidence. They would later meet there: “once the business grew and the investors came in the link with racing continued horses were owned/ sponsored as were races”; the investors were “wealthy extravagant business men racing lovers”. Sponsorship would be permissible expenditure for this company; but cash withdrawals or gambling has no direct link with that. The investors might be surprised to learn that Mr Brown was there spending what had been their money, rather than his own.
105. A further alternative is that these were “expenses related to horse racing where we were establishing the business in that sphere”. Again, that does not cover gambling; and given the personal pleasure aspect as well, Manolete having established that the debit cards were used for Mr Brown’s probable personal benefit, it is for him to justify the particular payments. I have had pause over the single £5,000 to Johnson Racing on 29 June 2012, as it looks like a payment for an interest in a racehorse when the evidence is that the Company did sponsor a horse; but that would have been easily provable by Mr Brown from general racing records.

106. Mr Brown also recollected that his personal bank account, held with Barclays, and the Company's Barclays account, were "automatically linked" online, such that Mr Arkin might have been looking at the wrong account. That confirms the theoretically personal nature of these payments; and Mr Arkin has reiterated that he has looked at the company account only.
107. As to the cash, Mr Brown said this: "the reason lots of cash would be used generally whether from my personal or business account is as a new business no one would give credit to a new R and D business", which cannot explain cash, which is anti-credit; "and we also did not want credit, so literally everything we bought was cash, as generally no one accepted cheques either", which also makes no sense, besides not explaining why so much cash was drawn at the races. In cross-examination Mr Brown said that pallet deliveries were paid for in cash, but there is nothing more to support that.
108. This £82,410 is therefore proved in full.
109. The transfers on the Company's debit card to Smart Trading Co were of £10,400 on each of 16 August and 9 October 2013; and £25,560 on 13 September 2013. Mr Brown says that "Smart Trading was the company owned by... Jalal Harake , these were his salary he was the CFO"; and Mr Harake confirmed such payments, on invoices rendered, for his services as CFO. Orally, he said he was paid because he was bringing in the overseas investors.
110. Mr Harake was not on the company payroll records, so these payments cannot be checked off against those. Mr Arkin has located one invoice, dated 1 May 2014, from Smart Trading (offshore) S.A.L with a Beirut address, to the Company for £10,400 "As per Service Contract Agreement dated November 2012- Monthly". Whether this was paid is not known. The Service Contract Agreement is unproduced, and a November 2012 date is before Mr Harake started as a director of the Company (as well as being in the period when Mr Brown was not registered as director). However, in the circumstances the best explanation we have is that these were payments for the services of Mr Harake; and there is nothing to link them to the benefit of Mr Brown.

111. So this sub-head fails.
112. As to travel, the evidence from both sides is exiguous. Manolete, on whom the onus initially rests, has nothing to link Mr Brown with these uses of the debit card save that he is the most likely user, and that this appears to have no link with the Company's business. For his part, Mr Brown has not provided diaries, or passports, or photographs, which might show where he was on those dates or what he was doing while there. The same points, going each way, can again be made on the lack of loan account.
113. What Mr Brown does do is explain travel to some of the destinations. So, he confirms that he was in Alicante and Benidorm; and so confirms as well that the debit card was probably used for those journeys. There was actually a business reason for travel to those holiday destinations: to purchase the shredder from Silmisa. So, too, he travelled to Beirut to meet the investors, and to Germany to visit a machine supplier and a trade show. He had gone to France to meet potential customers. He said he had never been to Switzerland or Sweden or New Zealand; and was surely right that the New Zealand payments, of £46.92 and £72.97 were just descriptive of the destination of the payments made to AirportRentals.com, for, respectively, €57.51 and €89.46. In among this international travel is to be found £65 for a 5 August 2015 night at the Beeches Hotel, Grimsby. That may fall within the earlier category of covering staff expenses when away from home; and Mr Brown said the same was true when staff travelled abroad, as several had done: "staff would go to see new machinery etc and exhibitions".
114. I do not consider that Manolete has shown these to be personal payments on all the evidence. The exception is the first group of payments, six of them, all on 7 June 2012, relating to a holiday in Magaluf, of which Mr Brown pronounces "Magaluf was in 2012 when I owned 100% and all money in the business was mine".

Direct payments to Mr Brown

115. This category is for £281,438 of payments made between 11 August 2014 and 7 February 2017. Among the 60 or so two are in three figures, and four in

five; but otherwise they are in the thousands; and only three are not in round figures. Mr Arkin cannot find explanation for these in the company records; and as these are direct payments from the Company to Mr Brown, the onus is on him to explain them in all the circumstances.

116. The three non-round figures are £9,006 on 27 February 2015; £9,007 on 26 March 2015; and £9,774 on 28 January 2016, the first and last recorded as “Bill Payment”, the middle just “Online Transaction”.
117. Properly, Mr Arkin has drawn attention to these three payments having some corroborative paperwork. They appear on the Company’s payroll records as net payments to Mr Brown for months 11 and 12 in the year ending 5 April 2015, and month 10 for the next year’s. The first two are against gross monthly pay of £13,000, the last of £14,610; each is the net amount. There are also records which show month 10 2015 gross pay of £13,000 but a net amount of £11,461; and in the next year, the same gross pay for months 7 and 8, with varying net amounts of £11,045 and £9,016; and a month 11 pay of £14,610 with a net amount of £7,034; no payment can be traced to these amounts.
118. There is a “New Starter Form” for Mr Brown at the Company, dated by him on 2 June 2013, but not completing either employment start date or rate of pay.
119. There are also unapproved board minutes from 3 March 2017 to which a staffing list is attached, with Mr Brown at £156,000 (which would be £13,000 monthly).
120. Mr Brown says that these direct payments were in part his salary, met in dribs and drabs as “I delayed being paid my salary in full when money was tight”. The payments would never have been made by him, but by Mr Mani. How much of this was salary he was unable to say; he was himself “never 100% sure” what were salary payments.
121. “The offer of salary was made early by Jalal Harake, and others involved at the outset. It is discussed and mentioned in Board minutes... I as everyone

had contracts that are needed by law and were held in the personnel files”. We have no contract, nor these board minutes. Mr Brown’s defence says that “The salary that the investors offered me when they became a part of the business was £156,000 per annum... I never actually received this amount on a regular basis”. His 7 February 2024 response to issues said that “My salary had been agreed at early meetings with the investors and was agreed at £156k”. In cross-examination he said his employment contract had been approved by Mr Al-Uzri, Mr Harake, Mr Soufan, and Mr Shamkhani in April 2013.

122. Mr Harake was also of the view that Mr Brown’s salary was £156,000.
123. Mr Sajjad recalled that the £156,000 salary had been discussed in November 2015, but that he had objected to it, given the £125,000 annual salary paid by his listed business to a “highly experienced 55 year old reservoir petroleum engineer with a masters from Oxford University and an MBA from London Business School”; a salary of £156,000 “was not commensurate with a business in Newcastle is my observation”.
124. For five months of the Company’s trading, and that in two blocks, Mr Brown was treated in the books as entitled to salary at £13,000 per month. He received the three payments Mr Arkin identifies. Mr Brown said that he was not filing tax returns in this period, as he was on PAYE. We do not therefore have available his own records.
125. I am not satisfied that there was anything beyond a majority understanding that he ought to be remunerated at £13,000 per month, which understanding was occasionally actioned. But anyway, he could not now in equity offset unpaid salary against these otherwise unexplained payments.
126. Another explanation for these payments is that “I was also to receive a lump sum for the initial business and machinery that I owned 100% prior to the investments”. “The lump sum was agreed by all involved initially. Jalal Harake, Hyder Shamkhani, and several others... I believe the amount was 300k, which again there was an agreement on file at Newline. During the first two years of the business, I had premises at an address in Jarrow... where all

machinery had been built and purchased by me... This was prior to any investment... The machinery was a full shredding and washing and drying process”. In another iteration, “Before the shareholders and directors were involved I had built the original factory with my own money... all machines were owned by me, they were transferred to the new premises with agreement I would receive payment for them, again as so long has passed the exact details of this agreement are vague, although again all documents relating to this would have been on the premises after I resigned... I believe the amount was to be £300k for everything I brought across”.

127. In cross-examination he said there was an agreement that the Company would pay £300,000 for the machinery, but that Mr Mani would not know about it.
128. Mr Harake gave a different account. He said that “Agreement was reached on a financial payment to Graham for relinquishing his shares and for his assets and good will already in his business”; “I believe that was to be £300k”.
129. Mr Sajjad’s evidence was that “None of the investors, to my knowledge, were told that Graham Brown was to receive £300,000 for his shares in the Company or agreed to this”.
130. What is notable is that neither Mr Harake nor Mr Sajjad is speaking to a payment by the Company to Mr Brown for the assets he put into it. They are talking about payments for shares, and therefore necessarily by persons other than the Company.
131. It is perhaps because there is nothing in the Company’s accounts showing a payment due to Mr Brown for assets injected that he said that Mr Mani, otherwise treated as financially omniscient, would not know of the agreement; but it may also be because any agreement had nothing to do with the Company. As to what passed on the share transfers, I have already complained that the court has been told nothing; so, to the extent that it were suggested that Mr Brown had to live off something, so must have had an agreement that he be paid a salary or otherwise draw from the Company, the proposition is diluted.

132. Mr Brown has also said of these direct payments that they were repayments of loans: “I made several short-term loans, buying machines etc when cash flow was tight”; “I also loaned the money when cash flow was tight, this was invariably because investments that were due never materialised or were paid slower than had been agreed”. Again, there is nothing in the company records. And again, though he must have his own personal records evidencing these payments, nothing has been produced.
133. Mr Brown is therefore liable in misfeasance for £281,438 less the £27,788 which was demonstrably for remuneration. The unjust enrichment claim is duplicative, and the s.238 unnecessary.

Cars

134. The particulars say this, under a heading “Leasing luxury cars”.
- “Between 2 May 2013 and 28 April 2017, the Company paid the total sum of £179,432.86 to Civilised Car Hire in leasing payments for luxury/ high performance cars which were personally used by the First, Third and Fourth Defendants”.
135. The claim against Mr Brown is that he was “in breach of the Director Duties in relation to the following... Leasing of luxury/ high performance cars (£179,432.86)”. “Such breaches arose as these payments/ actions were (a) Cause or allowed to be made by the First Defendant. (b) Not to the benefit of the Company or its interests. (c) For the personal benefit of the First Defendant and immediate members of his family”.
136. Those are the generic terms of all the misfeasance claims, set out here to show that the only pleaded claim is that in breach of duty Mr Brown caused or allowed the Company to make leasing payments for luxury/ high performance cars used by the Browns.
137. It is not pleaded directly why that was a breach of duty. Nor until Mr Arkin’s third statement is there any clue. There it is said that it “was certainly not the intention of the investors” that “at least 11 individuals... including himself,

two of his children... and Mr Harake” should have leased for them these cars; and “nor have I seen any evidence that [Mr Brown] ever considered whether such excessive and disproportionate expenditure... by a loss-making business was justified or in the interest of the Company and its creditors”. That alludes to plenty of possible causes of action, all of which would require crafting.

138. Mr Gale’s skeleton raises three points.
139. First, “there is no documentary evidence that anybody was entitled to cars as part of any remuneration package”. That is not pleaded. Neither is it in the evidence. It would also make particularly curious the plea concerning only the Browns’ cars.
140. Secondly, looking at the Browns’ responses, he observes that “claims that government allowances were adhered to and deductions made from salary are unsupported”. He is right, but that is not a positive claim.
141. Thirdly, he says “none of this was in the interests of the Company or its creditors”. Even if it could, that does not add content to the plea.
142. The pleading might be read as alleging a breach of duty by Mr Brown in causing the Company to lease luxury/ high performance cars for the benefit of himself, Thomas Brown, and Mrs Marley, the ill being their “luxury/ high performance” nature. But there is nothing inherently wrong in a company paying for a luxury car, or a high performance car, or one which is both. Further, “luxury” and “high performance” are both inherently comparative; but for neither is it stated as against what. It might well be thought that the real ill was that expressed by Mr Sajjad: the investors were putting their money into the Company; it was expending it on over-expensive cars rather than R&D; or, to put it more formally, any decision of the directors to provide vehicles ought to have considered the cost of any car to the Company relative to the benefit to and state of its business; but that is not pleaded.
143. So, this claim cannot on its face succeed.

144. To record the evidence, Mr Brown said it was Mr Harake who had introduced Civilised Cars; and Mr Harake concurred. The cars were “part of the employment packages. The management team were supplied with cars”, this including Mr Al-Uzri and Mr Bennett and Mr Harake; other staff “also had vehicles supplied commensurate with their role”.
145. Mr Brown had a Range Rover, as he was driving one already; he was told by the investors to “pick whatever you want”, although other versions had the tag “within reason”; an alternative was the “luxury car of your choice”. Mr Al-Uzri also chose a Range Rover, as did David Gloyne, Lee Webster and Michael Massey. More modestly, in among the others, Thomas Brown had a Volkswagen and Mrs Marley an A-class Mercedes.
146. What emerged from the evidence was that among the cars the Company was leasing were cars for Products’ staff as well, for which it would be reimbursed.
147. Mr Brown described how, outside of the scheme, some employees “supplied their own cars and claimed mileage for work carried out as per government’s scheme”. Where Civilised Cars was used “they would put mileage claims in to accounts at government scheme pence per mile and any short fall on the monthly payment was deducted from their salary to be paid to Civilised Cars”.
148. There is nothing to gainsay Mr Brown’s evidence that he was entitled to a car as part of his package, even if he could not be 100% sure that it was a term of his employment agreement. From about May 2013 to April 2017 the Company was month-on-month contracting with Civilised Cars for his car and many others’, including co-directors Mr Harake and Mr Al-Uzri; which cars were, as Mr Sajjad reported, lined up outside the premises.
149. Thomas Brown says that he “was supplied with a company vehicle (as were my counterparts in the same roles) as part of my role was to deal with suppliers and to manage all spare parts and collect them from various locations”. There was rarely a deficit on the government scheme “as the mileage I travelled was high”. “Other members of staff in the same position as me, had the same salary and vehicle arrangements”.

150. Mrs Marley said that her salary was “£40,000 per annum and I was supplied with a company vehicle, which was run under the government’s mileage scheme”. “In my role it was my responsibility to meet all funding suppliers, as well as all of the power and insulation companies, as well as running the installation teams”. Again, there she has elided work for the Company, and that for Products.
151. It follows that, if the intent of the pleading were to locate the wrongdoing in preferential treatment of the Browns, that could not succeed: they were treated no differently from any other employee at the Company: a car was provided, paid for, and used.
152. There is a degree of discomfort in this, because Mr Sajjad’s complaint did have substance. The evidence did not disclose much thought in the decisions to lease these cars: Mr Harake had suggested the course, and Mr Brown and the other directors had taken it up without any apparent regard to the Company’s overall financial position. The best Mr Brown could do was to say that his Range Rover cost less per month than a Jaguar. Nor has there been comprehensible explanation of the interaction between the payments to Civilised Cars, and the government mileage scheme, when (presumably) the lease payments were themselves treated as a deductible. On the other hand, had these matters been put directly in issue, better answers may have ensued.
153. Even if there were a breach established against Mr Brown, this aspect would still have failed. First, Manolete has not established what payments were made separately in respect of the Browns’ cars. Secondly, the evidence is that each of the three was entitled to some car from the Company; and as Mr Gale said during cross-examination, had they been driving more modest vehicles there would probably have been no claim. Thirdly, at the end of trial I have no evidence, expert or otherwise, which would guide me on the difference to the Company of the cost of a lease of a Range Rover and that of an old Subaru Forester (or whatever an appropriate vehicle might have been).
154. This head therefore fails.

Payments to Products

155. This is another sparse plea.
156. “Between 4 April 2014 and 4 March 2017 the Company paid the sum of £752,856.30 to Newline Products purportedly in respect of ‘management fees and expenses’. The Liquidator has been unable to identify or locate any documentation in respect of the same”.
157. The generic breaches are then listed.
158. Mr Arkin’s evidence says the above; adds that these payments “enriched Newline Products at the expense of the Company”; and notes that “Newline Products also made payments to the Company totalling £491,985.55”; which would leave a balance of £260,897.
159. Mr Gale’s skeleton speaks of no “sufficient justification for the payment of significant sums”.
160. Again, the onus here is on Manolete; and again there is a sense that this issue has been placed in front of the court without preparatory foundations, which might have included formal interviews with the directors (if there were such, there is no reference to them), as some sort of roving enquiry of uncertain scope: is the underlying complaint that Products was simply not entitled to receive anything, or not entitled to receive certain payments? Again, Mr Brown’s evidence is also slight; but again, had matters been put more directly, he might have had more understanding of the particular issue.
161. Products and its trading has already been described. Mr Brown said it was “formed initially to be a trading arm for [the Company], it was never used for that purpose and at first was dormant”. From 2014 it began its supply of installation services. It shared premises with the Company. It “occupied the majority of the downstairs of the premises being several thousand square feet”. For “the majority of the time” Mr Bennett controlled it on behalf of Mr Al-Uzri. Mr Bennett and a number of the Company’s staff, including Mr Mani and Mrs Marley, worked for both. That was in part because the Company required “minimal office staff” whereas Products needed many, because its business relied on government grants with the associated heavy paperwork and

compliance. So “it had been agreed that... Products would pay a service charge to [the Company] to cover shared rent, services, and amenities etc.”.

162. There was another aspect to their dealings described by Mr Brown. “Everyone, including me, was aware that when either company was in need of funds, monies from one company were transferred to the other company and vice versa... Alternatively, the service charge would not be charged if Products were awaiting payments, and then would be paid back at a later date. I was assured that this was a legitimate transaction, so long as all monies were balanced and accounted for correctly”, which was Mr Mani’s role, assisted by Mr Al-Rikabi.
163. Mr Brown considered that both companies had been funded by the investors, and this “arrangement whilst not of my making was beneficial to both”. He himself had little involvement with Products after Mr Al-Uzri invested in it (and, as above, he resigned as a director on 19 September 2016).
164. We have already seen an example of the Company bearing and then recharging expenditure, being the car lease payments, and adverted to Mrs Marley’s dual role. This is her description. “In my role I reported to Paul Bennett, who reported to Hussein Al-Uzri. My role was office manager at first with Newline Polymers and then I transferred to do the same for Newline Products working for Hussein Al-Uzri and Paul Bennett”. “I was a PAYE employee of Newline Polymers and was then transferred to the employ of Newline Products... I received payslips. And did not hold a decision-making role in the business... I worked 40 hours per week as an office manager, working for Paul Bennett and Joshi Mani on a daily basis”. “I had day to day control of the office that handled the administration for both Newline Products and Newline Polymers, as well as other managerial duties. I controlled approx. 15 members of staff, and reported directly to Paul Bennett and to Hussein Al-Uzri along with Joshi Mani”. “In my role it was my responsibility to meet all funding suppliers, as well as all of the power and insulation companies, as well as running the installation teams”. “I was also responsible for arranging board meetings, arranging food etc, and accommodation...”.

165. In cross-examination she was not sure when she had transferred from the Company to Products, not least as she was working from the same office, some weeks three days for one and two for the other, others the other way round. At least according to the claim against her, which will be addressed below, for payments from the Company which might or not be salary, those ended in March 2015; and a cropped screenshot of her employment history has an April 2015 date.
166. In cross-examination Mr Brown gave the example of where the Company was awaiting investment monies, but needed a new belt to keep the equipment running, Products would loan it the monies which would later be repaid, albeit “I was never involved in repayments”.
167. A claim that the Company had no basis on which to pay Products is therefore untenable. It is also a strange claim to bring given the Grunberg letter, which confirmed Mr Mani’s working for both the Company and Products; and provided its inter-company balances, including “the intercompany movements in each year together with the corresponding amounts and which accounts they were posted to on Sage”; and recorded having confirmed the balance with Mr Mani for the year when Products owed the Company: that was to 31 December 2015, and the balance was £15,727. The final balance, according to the Grunberg analysis, is a debt of £50,307 as at 31 December 2017.
168. The Grunberg letter identifies “a ‘management charge’ put through from April 2014 to September 2016 for wages and rent, totalling £10,000 per month”. Mr Arkin queried that in his oral evidence, but averred no positive case. He also stood by his analysis of the bank statements, which, as he said “cannot lie”, showing the Company as a significant creditor. However, bank statements do not include, for example, transactions by offsets. Whatever, the Grunberg letter tells us that Mr Mani’s accounts were accurate, and those for Products may be assumed to be reflective of the Company’s as to their inter-company dealings. Not only is it too late to pick holes in individual entries (and from the pleading view irrelevant) but the best evidence is the Grunberg account.

169. This part of the claim therefore fails. There were legitimate transactions between the Company and Products.

Cheque payments

170. In generic breach of duty, and so said to have been paid to Mr Brown, is the “£843,919.49 ... paid by the Company by way of 401 cheque payments to payees cashed between 3 May 2012 and 18 April 2017... [for which] the Liquidator has been unable to identify or locate any documentation”.

171. As Mr Gale’s skeleton records, enquiries have been ongoing even after Mr Arkin’s third statement made in April 2014, and he has been able to obtain more of the cheques, of which Mr Brown signed “the vast majority”, which is to say by no means all. There are now bank statement entries for £161,822 of cheques drawn on NatWest, and £364,406 on Barclays, which are without explanation.

172. Mr Brown said he had “no idea” from the exhibit as to what the cheques were for, “but as they are payments from the business account I presume they were business costs where supporting documentation would have been available”. He would sign plenty of cheques: in the office there would be a Mani-an pile of invoices and payment slips with on the top cheques filled out and awaiting his signature. “Every cheque ever written would have had paperwork to back it up, also the majority of cheques would not be signed by me”, which last observation is probably not accurate.

173. One cheque from the list stands out in its size: £100,000 paid from Barclays on 9 July 2013. Mr Brown had “no idea” what that might be.

174. The puzzle here is why any of the outstanding cheques should be said necessarily to be in favour of Mr Brown. He was signing the majority, but not all. Where cheques have been found then, as Mr Arkin confirmed, despite the limited financial information they have all or mostly been correlated to provable business expenditure; and if that is so for those, which are, as it were, a random sample because they just happen to be those for which a copy

cheque has been found, there is no reason to think the same would not be true of the others.

175. This head fails.

Payments to unknown bank accounts

176. “Between 19 July 2012 and 28 November 2014 the total sum of £268,351.69 was paid by the Company to the following unknown [sic] bank accounts: a Barclays Bank account with account number 50000604 and sort code 20-31-81 (£112,690.24), a Barclays Bank account with account number 53090051 and sort code 20-33-51 (£112,000) and a bank account with “Prem Bank” with no account number identified (£43,661.45). The Liquidator has not encountered any documentation within the Company’s books and records which identifies to whom these accounts belong or provides any explanation as to what these payments refer to”. The generic breach of duty claim follows.

177. Mr Arkin’s third statement brings matters up to date. A part 18 request had brought the reply “I do not recognise these accounts”, and the speculation that “Prem” might be Premier Waste which took waste from the site. On 30 April 2021 Mr Brown had also said, through Paul Dodds Law’s reply to the letter before claim, that he “believes that [0604] may be a previous personal account of his. [He] believes that the payments referred to may relate to monies that he was due... from the company by way of salary and/ or loan repayment”.

178. No more information being forthcoming from Mr Brown, even as to the account he believed might be his, Mr Arkin turned to Barclays. It was unable to locate 0051, Mr Arkin says perhaps because it treated it as linked to a Leicester branch rather than Gateshead High Street; but the position has not improved in the meantime. As to 0604, this was indeed Mr Brown’s.

179. It follows from this, and from my conclusions on his salary and loan repayments, that Mr Brown is liable to repay the £112,690 transferred to his 0604 account. No other reason has been proffered for its receipt.

180. As to the other Barclays account, I think given the near similar amount, that the account is held in Gateshead, that there is no other explanation, and that Mr Brown has not been as open as he might over the 0604 account, it too was probably paid to him.
181. The Prem Bank payment remains more of a mystery. Mr Brown's oral evidence started with 99% certainty it was not his. Mr Gale suggesting that it might be a premier account he held with Barclays, we had shifts from don't know, to maybe, to probably, to 70% sure he had one, to 80%, to 90% "presuming" he had one.
182. In the context, and also given the ease with which Mr Brown could and should have disclosed his personal accounts over the periods, even if to allay this point, I think here too Manolete has discharged its burden.
183. I note that if the answer to all these was that they were remuneration, or repayment of a loan, or payment for assets, Mr Brown could have been upfront in saying so.
184. He is therefore liable for the payments to unknown accounts.

Removal of company assets

185. This is a very odd claim. "Company assets with an estimated value of £250,000 plus VAT were removed from the Company's premises but have not been accounted for in the Company's books and records". There is then the generic breach of duty plea. No identification of assets, or date of removal, or by whom, or of how (despite all that) they can be "estimated" as worth (for ungiven reasons) £250,000 plus VAT.
186. Mr Arkin's explanation is twofold.
187. First, the Sage ledgers show that between June 2012 and April 2017 asset purchases were £1,352,056, and there were sales of some of those of £236,946; a balance of £1,115,109. Applying a 25% depreciation rate over that 5-year period he calculates that "the Company ought to have had assets with a net book value of £265,849 at the cessation of trade". From that he

strides to the conclusion that therefore those assets are missing (and, presumably, taken at some unexplained point by Mr Brown).

188. That is no more than an exercise using figures in the accounts. Its probative value does not extend beyond an indication that there might be other assets.
189. Mr Gale enhances the argument a little in his skeleton. As Mr Brown was in control of the premises before they were cleared, and was responsible for preserving and delivering up the Company's property, so he has failed in his duties. That has already been addressed above, and is wrong. Mr Gale's other point is to contrast the amounts invested and the assets left. That does not advance the case much, not least as the Company was reliant on the investments for a large part of its income, which had to pay for everything.
190. Mr Arkin's second explanation is that after his appointment he had SIA Group Asset Ingenuity Limited ("SIA") value the Company's assets. "The assets identified by SIA did not include those referred to in a hire purchase agreement entered into by the Company and the lender Close Brothers which the agreement records were valued at £250,000 plus VAT. The Company's books and records do not record what happened to these assets which were seemingly removed from the Company's premises and, to the extent they were sold, the proceeds were not accounted for to the Company".
191. The destination of these supposed assets is therefore utterly speculative.
192. Further, Mr Arkin is simply wrong in saying that the SIA report did not include the Close Brothers assets. The report confirms a site visit on 19 June 2017. "Our valuations have been based on our asset inspections at the time of our visit and review of all information provided by the Company". The in situ valuation of the Company's assets, in the categories of "Office Furniture and Equipment" and "Machinery and Equipment", was £7,755. Appendix 1 recorded what they were. The narrative said the office furniture was of "basic quality, aged and minimal... It was clear that the offices had been 'cleared' prior to our visit and anything of significant value removed. The computer equipment was old standard specification equipment...".

193. Appendix 2 recorded “Machinery & Equipment Subject to Hire Purchase Agreement with Close Brothers Limited”. Again, this was itemised. The narrative confirms that SIA had seen it, and compared it with the Close Brothers agreement and its schedule, the agreement being dated 25 November 2016, so relatively recent, and giving a cash price, which was also the finance balance, of £250,000 (so, it is not correct to say that Close valued the machinery subject to its agreement at £250,000). The SIA narrative makes plain that it had examined all the equipment on site, including that subject to the Close charge.
194. “We compiled our own inventory at the time of our visit on the basis that all the process plant and machinery is subject to the Close hire purchase agreement as advised by the former director Graham Brown. It was difficult to identify some of the equipment as some of the processes have been reconfigured since the loss of the main contract. None of the machines have any identification plates on them which you would expect a finance company to have done and we were unable to find a manufacturer’s plate on some of them... Some of the equipment had been bespoke made”. Missing from the asset list was a log washer, which SIA had been told, and Mr Brown confirmed at trial, was being stored at O’Brien’s. It was not considered it “would have a hugely significant impact on the valuation or equity position”, as to which “We do not feel that in an orderly ex-situ sale we would achieve close to the outstanding balance considering the age and current condition of the assets”, the balance being about £307,000; and abandoning them to the landlord was a real option. In the event, Monarch, which took over some of the business and staff took a novation of the Close assets, such that on 23 August 2018 Close confirmed to the liquidator that no liability under the Company’s agreement remained, and that all assets subject to it “have been collected from the Company’s trading premises... [and] transferred to a new agreement”.
195. No missing equipment has been identified by Manolete, let alone equipment removed by Mr Brown.
196. This head fails.

Payments to Thomas Brown

197. Manolete challenges the £126,425 the Company paid to Thomas Brown between 26 September 2013 and 2 May 2017. “To the extent these were payments of salary, the Liquidator has found no documents which show [he] provided services to the Company commensurate with those payments”. That last phrase must be directed at the transaction at an undervalue claim which cover £24,023 of these.
198. To go over some old ground, Thomas Brown was originally a 50% shareholder in the Company and until 13 November 2015 registered as a director. Like his sister Mrs Marley he says he took no active part as a director, and was instead a full time employee. “I had several managers above me in the business as well as directors”. “I was a PAYE employee... I received payslips... I worked 60 hours per week as a shift manager, I have 15 years’ experience in the recycling business, and never received any monies from the business that were not part of my employment package”. He was “paid the equivalent to £15 per hour, I often work 50 to 60 hours per week”. As we have heard, Mr Hillcoat confirmed that Thomas Brown was the factory manager on the opposite shift to him. Mr Mason said “Tom also worked in the business, helping the factory manager with maintenance and the numerous trial runs of the shredder and other equipment”.
199. As already set out, there is no plea that such remuneration as Thomas Brown received was inherently illegitimate. More, it is plain that both he and Mrs Marley were employed by the Company: one of Mr Sajjad’s gripes was that “Graham Brown had employed his three children... on what seemed to me inflated salaries”. We have a new starter form for him dated 19 September 2012, again without start date or rate of pay, though somebody has written “40k” on it.
200. The new printouts on which Manolete relies show Thomas Brown receiving monthly amounts of around £2,500 until November 2015, with an apparent rise after that to around £3,100, the payment of which became more sporadic, presumably as cashflow problems increased. Those are plainly salary, and

there is nothing to indicate that the salary was an overvalue of the services provided.

201. Manolete says that leaves unexplained £19,439 of other payments. It is right that after all this time Thomas Brown had no full explanation for these. Of these, the larger, often round figure, items are clearly part payments of salary in months where cashflow was tight. The other payments are very precise: say £73.11 or £98.96 is paid monthly, so might indeed be reimbursement of expenditure; and they total a few thousand pounds. They do not have the look of nest-feathering, or improper exploitation of the Company.
202. In the end, Thomas Brown was an honest witness, and I believe him. This claim against him fails (and with it the connected breach of duty claim for those payments made while he was a director, and the undervalue claim).

Payments to Mrs Marley

203. This claim is for the £43,062 she received between 29 August 2013 and 6 July 2015, all of it while she was a director.
204. It is plain from the evidence already described that she was an employee of the Company. Insofar as she was working for Products her services were recharged. The £43,062 is made up of 19 payments from 29 August 2013 to 24 March 2015, each of £2,200 or so; together with one outlier, £67.41 on 6 July 2015. That just looks like a misposting, but, whatever, Mrs Marley was an entirely credible witness, and to suggest this does not constitute salary is in the end without foundation.
205. These claims fail.

Conclusions

206. Mr Brown is liable for certain of the debit card payments; £253,650 of the direct payments; and the £268,351 paid into the unknown accounts. The claims against him are otherwise dismissed.

207. The claims against Thomas Brown and Mrs Marley are dismissed in their entirety.