Neutral Citation Number: [2026] EWHC 970 (Ch)

Case No: CR-2024-000517
Case No: CR-2024-004284

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION: INSOLVENCY AND COMPANIES LIST

Rolls Building
Fetter Lane,
London, EC4A 1NL

Date: 24 April 2026

Before:

Upper Tribunal Judge Andrew Scott sitting as a deputy High Court judge

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Between:

KEVIN CHAVE **Petitioner**

V

(1) ADAM FARNSWORTH
(2) VAN EXTRAS LIMITED
(3) ESSEX AND EAST LONDON VAN SERVICES LIMITED **Respondents**

And between:

ADAM FARNSWORTH **Cross-petitioner**

V

(1) KEVIN CHAVE
(2) ESSEX AND EAST LONDON VAN SERVICES LIMITED **Cross-respondents**

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Stuart Benzie (instructed by **Buss Morton Law LLP**) for the **Petitioner/ Cross-respondents**
Martin Young (instructed directly) for the **Respondents/ Cross-Petitioner**

Hearing dates: **16, 17, 18, 19 and 20 February 2026**
Written submissions: **27 February and 6 March 2026**

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Approved Judgment

This judgment was handed down remotely at 10.30am on 24 April 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Upper Tribunal Judge Andrew Scott sitting as a deputy High Court judge:

INTRODUCTION

The dispute in outline

1. This case concerns a dispute between Mr Kevin Chave and Mr Adam Farnsworth in relation to Essex and East London Van Services Limited ("EELVS") (and I refer to those individuals in the remainder of this judgment as Kevin or Adam with no intended disrespect). It is common ground that Kevin and Adam, who have held the voting shares in EELVS equally since 1 July 2014, intended to, and did in practice, operate EELVS as a quasi-partnership — at least until May 2023.

2. What has happened since then is very much not common ground and the subject-matter of a petition and cross-petition issued by Kevin and Adam respectively on 29 January 2024 and 18 July 2024, seeking relief under s. 994 of the Companies Act 2006 ("CA 2006") for unfair prejudice caused by the other.

3. The nominal share capital of EELVS is £100 consisting of 88 "A" shares of £1 each and 12 "B" shares (non-voting) of £1 each. Adam and Kevin hold all of the voting "A" shares in equal shares (so that Kevin holds 44% of the issued share capital of the company and Adam also holds 44%). Of the twelve "B" shares, five are held on trust by Adam for his son (George Robert Farnsworth) and five are held on trust by Adam for his daughter (Matilda Willow Farnsworth). The remaining two "B" shares are held by Mr Philip Cunningham.

4. Adam and Kevin were the only directors of EELVS at the material times. EELVS traded as Van Extras and its principal business was the conversion of vans and the sale of van accessories (hence its trading name).

5. In addition, Adam had also incorporated a separate company (Van Extras Limited ("VE")). Adam's intention at the time of its incorporation had been to use VE as the retail arm of the business. But VE was not in fact used for that purpose and was a dormant company until August 2023.

6. Before becoming a director and shareholder of EELVS, Kevin also had his own company, Car Extras Limited ("CE") (formerly UK Towbars Direct Limited). But, after Kevin became associated with EELVS, CE became dormant. That remained the position until, on 18 May 2023 and with no prior discussion with Adam, the company's name was changed from CE to Kent Van Solutions Ltd ("KVS"). On the same day, Kevin resigned as a director of CE/KVS and transferred all of his shares in CE/KVS as follows:

    i) 50% of the shares were transferred to Kevin's wife, Mrs Janet Chave, who worked in a freelance, non-employed capacity for EELVS;

    ii) 25% of the shares were transferred to Kevin's son, Mr Aaron Chave, who had been an employee of EELVS (working as a fitter) since September 2014; and

    iii) 25% of the shares were transferred to Mr Luke Irvine, who had been employed by EELVS from January 2023 as a sales manager.

7. I refer in the remainder of this judgment to Mrs Janet Chave, Mr Aaron Chave and Mr Luke Irvine as Jan, Aaron and Luke respectively with no intended disrespect.

8. The circumstances leading up to the events of 18 May 2023 are at the heart of the dispute between Kevin and Adam.

9. In essence, Adam regarded the 18 May 2023 restructuring of CE/KVS as a betrayal by Kevin of their relationship: he considered that there was a conspiracy between Kevin, Jan, Aaron and Luke to create a company that would directly compete with, and undermine the commercial viability of, EELVS and, consequently, allow Kevin to acquire Adam's shares in EELVS at a much-reduced value.

10. As a result of this belief, Adam caused letters to be sent on 26 May 2023 (without any prior discussion with Kevin about his concerns) to Kevin, Jan, Aaron and Luke purporting to end their employment relationships with EELVS. Adam took other steps to exclude Kevin from the management of EELVS. In August 2023 Kevin secured that the EELVS bank account (held with Santander) could not be used to make payments (including payments to staff and suppliers) without his consent. At the end of August 2023, Adam transferred the tangible assets of EELVS to VE together with the staff of EELVS: in effect, EELVS ceased to operate as a going concern as from that date. Adam considers that this was a proportionate action justified to protect the interests of EELVS, including its staff, from the actions of Kevin and his co-conspirators.

11. Kevin has consistently denied having any involvement in KVS and, in particular, denies that there has been a conspiracy along the lines alleged by Adam. He sees himself as a victim of the wrongful acts of Adam, who has (in his view) in substance appropriated the business of EELVS to Adam's own company (VE) without giving any value to Kevin for Kevin's interests in EELVS.

The law in outline

12. Section 994(1) of CA 2006 provides:

> "(1) A member of a company may apply to the court by petition for an order under this Part on the ground—
>
> (a) that the company's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of members generally or of some part of its members (including at least himself), or
>
> (b) that an actual or proposed act or omission of the company (including an act or omission on its behalf) is or would be so prejudicial."

13. Section 996(1) and (2) of CA 2006 set out the remedies which the court may grant if the court is satisfied that the petitioner has established unfair prejudice:

> "(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.
>
> (2) Without prejudice to the generality of subsection (1), the court's order may—

> (a) regulate the conduct of the company's affairs in the future;
>
> (b) require the company—
>
> > (i) to refrain from doing or continuing an act complained of, or
> >
> > (ii) to do an act that the petitioner has complained it has omitted to do;
>
> (c) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;
>
> (d) require the company not to make any, or any specified, alterations in its articles without the leave of the court;
>
> (e) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly."

14. In *THG Plc v Zedra Trust Company (Jersey) Ltd* [2026] UKSC 6 ("*Zedra*") (which was released after the hearing in this case), the Supreme Court (in a judgment given by Lord Hodge and Lord Richards with whom Lord Lloyd-Jones and Lord Briggs agreed) noted at [137] that the court "has the widest possible discretion as to the orders it may make, examples of which are listed in paragraphs (a)-(e) of section 996(2)".

15. At [145] Lord Hodge and Lord Richards continued:

> "145. […] It is for the court to decide what it considers to be the appropriate orders to make, and it does so by reference to the state of affairs existing when it gives judgment: *Grace v Biagioli* [2005] EWCA Civ 1222; [2006] 2 BCLC 70 at paras 73–74. […] Other factors relevant to the exercise by the court of its discretion as to the relief, if any, which it will give are the proportionality of the remedy to the conduct found to be unfairly prejudicial (*Re Phoenix Office Supplies Ltd and others* [2002] EWCA Civ 1740, [2003] 1 BCLC 76 at para 51) and the petitioner's own conduct (*Interactive Technology Corporation Ltd v Ferster* [2016] EWHC 2896 (Ch) at para 318 and the cases there cited).
>
> 146. The court's order may provide for the payment of a specified sum, by way of compensation or otherwise …"

The relief sought by Kevin and Adam

16. Kevin seeks an order under s.996 of CA 2006 for the purchase by Adam of Kevin's shares in EELVS on the basis of a proportionate value of the whole of the company as at 1 May 2023. He also sought in his petition compensation for lost "salary payments" of £169,500 to which he says he was entitled (which, prior to the disputed events, he received as a mix of dividends and salary). In post-hearing submissions, Mr Benzie refined this somewhat to a claim for compensation equal to salary payments received by Adam since 25 May 2023 until the date of the court's order (less any actual income received by Kevin

in that period) plus an amount equal to 50% of the dividends received by Adam in the same period (less any dividends actually received by Kevin in that period).

17. Adam seeks an order under s.996 of CA 2006 for the purchase by Adam of Kevin's shares in EELVS on the basis of a proportionate value of the whole of the company as at 18 November 2023. This date was chosen as the valuation date as it fell six months after KVS commenced trading (18 May 2023) in circumstances where it said that this caused loss to EELVS. The date also falls at a time when EELVS was no longer a going concern.

18. A joint expert (Mr Matthew McDevitt of BDO) was instructed to value the company at those different dates (1 May 2023 and 18 November 2023) on instructions given to him by the parties. The instructions to Mr McDevitt included valuing certain transactions made after 1 May 2023 that Kevin contended should be "added back" to any valuation of EELVS as at 18 November 2023: the assets in question were referred to in Mr McDevitt's expert report (dated 10 December 2025) as the Transferred Assets.

19. In Mr McDevitt's comprehensive report, he valued EELVS as at 1 May 2023 at £669,965, using, for the reasons explained in his report, the market approach to valuation and using an EBITDA multiplier of 6.3. The value of Kevin's shares as at that date was, therefore, £294,785 (rounded up to the nearest pound). Subject to one point, Adam (through his Counsel, Mr Young) did not dispute the calculation by Mr McDevitt: he did though submit that a more appropriate EBITDA multiplier would be four.

20. Mr McDevitt valued EELVS as at 18 November 2023 at £146,473, using, for the reasons explained in his report, the cost approach to valuation: this was on the basis that, as at that date, EELVS was, in Mr McDevitt's opinion, not a going concern. This valuation took no account of the Transferred Assets. The value of Adam's shares as at that date (and without the Transferred Assets being "added back") was, therefore, £64,448 (rounded down to the nearest pound).

21. If account is taken of the Transferred Assets together with certain other matters identified by Mr McDevitt in his report, the valuation of EELVS as at 18 November 2023 would be £228,740, which would mean that Adam's and Kevin's shares would be valued at £100,646.

22. In addition to a transfer to Adam of Kevin's shares valued at £64,448, Adam submitted that he should be compensated by Kevin for the fall in value of Adam's shares as a result of the conduct of Kevin, namely a fall from 1 May 2023 to 18 November 2023 in the value of the shares from £294,785 to £64,448. This represents a loss to Adam of £230,337. Once the value to be obtained by Kevin for Adam's shares is offset against the alleged loss to Adam, the result would be that, on Adam's case, Kevin would owe Adam £165,889.

23. In summary, therefore:

    i) Kevin seeks relief in the form of an order for Adam to purchase his shares in EELVS for £294,785 and for Adam to provide additional compensation to Kevin as described above at [16]; and

ii) Adam seeks relief in the form of an order for a purchase by Adam of Kevin's shares in EELVS with credit for a loss in the value of Adam's shares in EELVS allegedly caused by Kevin with the net result being that Kevin should pay Adam £165,889.

FACTUAL FINDINGS

Witness evidence

24. Mr Benzie called the following witnesses on behalf of Kevin about whom I have the following observations:

    i) Kevin was a reliable and credible witness. He did not claim to have a better recollection of events than was to be expected and was, throughout his testimony, consistent in denying any conspiracy and in querying why it would have made sense for him to have left a profitable business to set up business in concert with Aaron. There were a few times when he was somewhat defensive, with a tendency at times to keep to his witness statement as much as possible and with a reluctance to accept anything put to him in cross-examination by Counsel, including disputing whether transcripts of conversations were genuine. But this did not detract from his clear desire to assist the court or from his reliability or credibility.

    ii) Aaron came across as a straightforward witness and I consider that he was credible and reliable. He described himself as "not good with words". From the testimony he gave, I would say that his skills lay elsewhere: my impression was that he was a practical man and was not sophisticated in business affairs.

    iii) Jan tried her best to assist the court and was a credible and reliable witness.

    iv) Luke was initially a very careful witness, taking his time to be sure that he was not "caught out" by questions posed in cross-examination by Counsel. He became more confident later and was steadfast in defending answers that Counsel doubted. Overall, I would regard him as a reliable and credible witness.

25. Mr Young called the following witnesses on behalf of Adam about whom I have the following observations:

    i) Adam came across as an honest and reliable witness who exhibited a genuine belief that he had been wronged. He often agreed with contentions put to him by Counsel while, at all times, emphasising the extent to which, in his view, Kevin had been duplicitous. There were a few occasions when he would react quite forcefully to questions. My overall impression was that he was self-assured and was a leader who was capable of inspiring (and who did inspire) loyalty in others. Once he was sure in his own mind about a version of events, he did not appear to be someone who was especially open to the possibility that there might be other explanations for events.

    ii) Ms Sapphire Sharp was an honest and reliable witness.

    iii) Mrs Samantha Farnsworth came across as hesitant and unsure about events (possibly as a result of nerves). Although I found her to be an honest witness, I did not find her to be convincing.

iv) Mr Lee Hillier was honest but gave unconvincing answers to most questions asked of him. Overall, he was not an impressive witness although I have no reason to doubt his honesty.

v) I found Mr Stephen Fenn to be defensive, verging at times on the monosyllabic. Although he did his best to assist the court, I did not derive much assistance from his testimony.

vi) Mr Danny Wratten was particularly nervous, taking a long time to answer simple questions. He undoubtedly did his best to assist the court but I found his evidence of little assistance.

vii) Mr Shaun Fenn was a combative and argumentative witness and appeared keen to be defending Mr Farnsworth. I have found his evidence of little assistance.

viii) Mr Nicholas Livermore was an honest and particularly humble witness, evidently trying to help the court as much as he could. I found him to be credible and reliable.

ix) Ms Lorraine Allpress was combative but I consider she was, to an extent, responding in kind to a particularly combative cross-examination. Nonetheless, I found her to be credible and reliable.

x) Mr Keith Hutchison was also combative and argumentative and, at times, came across as actively spoiling for a fight. Overall, I derived little assistance from his testimony although I have no reason to doubt his honesty.

26. In addition, there was a witness statement by Mr Paul Fenn but he did not give live witness evidence.

Factual findings

The negotiations for Kevin to become a business partner with Adam

27. Before becoming associated with EELVS, Kevin was a director and member of CE. Negotiations took place between Kevin and Adam with a view to a merger between EELVS and CE, recorded in emails in March and May 2014. Various factual inferences can be made about the background leading to Kevin's association with EELVS the most significant of which are that:

i) Kevin promised to transfer customers to EELVS (such as Staplehurst Transits);

ii) Kevin brought to EELVS his knowledge and contacts among the business sector in Kent, East London and Essex relating to the supply and fitting of post-manufacture components to cars, vans and lorries; and

iii) Kevin would secure that CE would become dormant.

28. The last point duly came to pass: CE ceased to carry on business of any kind once Kevin became a director and member of EELVS. CE was, however, used as a passive recipient of what were described as consultancy payments from EELVS.

29. Mr Young (on behalf of Adam) sought to put some weight on the fact that CE remained in existence with an implication that it was standing ready to be activated should it be needed in the future. I do not accept that there is any significance in this. Indeed, in cross-examination, Kevin confirmed that the essential point was that CE should not compete with EELVS, which had become Kevin's sole commercial focus. Kevin also said that there was sense in not immediately winding up the company in case his new venture with Adam did not work out. There is, in my view, certainly nothing surprising, or untoward or sinister, in Kevin's continued, passive use of CE.

30. The above arrangement embraced a common understanding to carry on the business of EELVS as a quasi-partnership. There was no dispute between Adam and Kevin about this.

31. The relationship between the two men was not always harmonious. There was a deterioration in the relationship in 2019 when Kevin suggested the possible purchase by Adam of his shareholding in EELVS for £350,000; and this continued into the next year when the dissolution of EELVS was also contemplated. That also came to nothing and the position became steadier as Kevin and Adam pulled together to get EELVS through the impact caused by the Covid-19 pandemic.

32. There was a submission from Mr Young that the 2019 offer suggested that Kevin had a personal strategy of wishing to divest himself of his stake in EELVS when the moment suited him for maximum value and that this is relevant background to the events of 2023. There is, in my view, nothing in this submission. The fact that, during the nine-year period from 2014 to 2023, there was a serious discussion (conducted over a relatively short period) about the two business partners going their separate ways is not particularly surprising and, in my view, tells us little (if anything) of significance about the events of 2023.

33. What it does show is that Kevin was commercially aware and that he was careful and assiduous to act in his own interests. And that is, in my view, the relevance of these matters to the 2023 events: Kevin was open about expressing his interests, was a careful negotiator and was not someone who acted impulsively or took undue risks.

Aaron joins and leaves EELVS

34. Aaron joined EELVS on 15 September 2014. He signed a new contract on 2 July 2021, which included restrictions on the use of confidential information and restrictive covenants. I accept the evidence of Aaron that he agreed his new contract without reading, or realising the significance of, these contractual provisions. I also accept the evidence of Kevin given to the same effect.

35. It was agreed between Kevin and Adam that, in the light of the fact that Kevin was Aaron's father, Adam should deal with pay and other terms of Aaron's contract with EELVS. In accordance with that understanding, Adam agreed a pay rise with Aaron on 30 March 2023.

36. Subject to one point, I accept Aaron's account of the subsequent dealings between him and Adam about his pay. As mentioned above, I found Aaron to be a credible and reliable witness. Negotiations took place between Aaron and Adam about Aaron's pay in April 2023. In his evidence, Aaron said that there was a meeting between him and Adam on 30

April 2023 where there was a further discussion about his pay. Even though it was pointed out to him in cross-examination that this was unlikely to be case (as that date was a Sunday), Aaron stuck to his guns and insisted that a meeting did happen in person on the Sunday or, if not, the next day (which was a bank holiday). I do not accept that particular part of Aaron's evidence but nor do I think that this has anything like the significance which Mr Young sought to attach to it in his submissions. This relatively minor quibble is not sufficient to make Aaron an unreliable witness. It is, in my view, likely to be a mistake about the date of the meeting or about how the discussion took place (which might have taken place on the phone): it is understandable that, in cross-examination, Aaron did not want to accede too readily to the suggestion that his witness statement was wrong in this (minor) respect.

37. The particularity of the negotiations between Aaron and Adam about Aaron's pay is less important than the fact that, as at 30 April 2023, it was clear that Aaron was at, or close to, the point of leaving EELVS: there was correspondence between Kevin and Adam on that date (in the form of Whats App messages) in which Adam was told by Kevin that Aaron was going to hand in his notice as he "wants to go out on his own". The way in which those messages were expressed is, in my view, consistent with the fact that, up until that time, Aaron had not accepted that there was no further possibility of an increase in his pay.

38. The actual point of no return was reached on 4 May 2023 when Aaron emailed his resignation to Adam. His leaving date was 2 June 2023. As at 4 May 2023, I do not consider that Aaron had any fixed plans other than to leave EELVS. I also find that, except by way of support given as a father, Kevin took no active part in Aaron's planning to leave EELVS. Indeed, Kevin tried his best to intervene with Adam so as to keep Aaron at EELVS.

39. Although Adam gave evidence that, by about the time Aaron had decided to leave, there were concerns from some employees about Aaron's attitude (apparently focused on the way in which his van was parked), there is, in my view, nothing to suggest that this constituted an element of sabotage against the company. The limited evidence of poor conduct by Aaron so far as concerning the parking of his van falls some distance short of being sufficient to make out such a finding.

40. I also find of limited significance the fact that, in March 2023, Parksafe Ltd supplied particular electrical components to Aaron. I accept Aaron's evidence in cross-examination that the purchase of those components was for his use in his EELVS van. Aaron undoubtedly used the good name of his father in securing a competitive deal with Parksafe Ltd but, despite the submissions to the contrary by Mr Young, there is no reason for the email in question about the deal (sent by Aaron to Shaun Crane on 27 March 2023) to have come directly from Kevin. It was all somewhat marginal in terms of price and significance for the business of EELVS as a whole.

41. Similarly, the fact that Aaron did a job for £150 cash on 12 April 2023 is, in my view, evidence only of the fact that, as was accepted by Adam in his own cross-examination, EELVS occasionally took cash payments for some of its transactions. The fact that Kevin was blind-copied into the email between the customer and Aaron about the job does not, in my view, constitute evidence that Aaron was beginning to plot with Kevin a move away from the company.

Restructuring of CE to become KVS with Aaron, Jan and Luke as shareholders

42. The evidence of both Kevin and Aaron (which I accept) was that the decision to use CE as a company through which Aaron would carry on business on his own account was taken on 17 May 2023. This restructuring was put into effect the next day (18 May 2023) where, following an email sent by Kevin to the corporate service provider, the name of CE was changed to KVS; Kevin resigned as a director; Aaron, Jan and Luke were all appointed as directors; and the shares in the company were transferred so that Jan had 50% of the shares and Luke and Aaron each had 25%.

43. I accept Aaron's evidence that he was the one who made the suggestion to Kevin on 17 May 2023 to use CE. It was obviously convenient to use an existing (and dormant) company for this purpose.

44. I find that Kevin's role was limited to the provision of general advice to his son. Despite the suggestion made by Mr Young to the contrary, I do not find it in the least bit surprising that there are no emails or other documentary evidence leading to the decision to use CE in this way. Kevin and Aaron were cross-examined in detail about the arrangements, and, in my view, their evidence, robustly and consistently given, is credible: the use of CE was a simple and quick way of allowing Aaron to set up on his own account. I also find it significant that Kevin resigned as a director from CE: in his cross-examination, he gave evidence (which I accept) that he resigned so as to avoid any conflict of interest arising between any continued role in KVS and EELVS.

45. There is, in my view, an absence of evidence that there was a conspiracy between Kevin and Aaron (and also Jan and Luke) to run down the business of EELVS. Mr Young referred – ambitiously in my view – to the creation of "plausible deniability" in leaving no evidence of this conspiracy. In my view, it is much more likely than not that there is a simple reason for the absence of any direct evidence: there was, in fact, no such conspiracy. Quite apart from the absence of evidence, it does seem to me that, as Kevin said numerous times in his evidence and in his cross-examination, it would make little sense for Kevin to act in this way against the company which he had not only helped to make a success but which represented his main source of income.

46. I also consider it relevant to test the likeliness of this by reference to my finding that Kevin was a careful and astute businessman, keen to act in his own interests. It would have represented a very significant gamble to have acted in the way suggested by Mr Young. It would also, in my view, have been out of character for Kevin to have done so: he did not strike me as a risk-taker or as impulsive. The points about Kevin's care in negotiating hard in his own interests (as he did in 2014 and again in 2019/2020) tell against Adam's case rather than (as submitted by Mr Young) for it.

47. There is, moreover, no tangible evidence of Kevin acting as a shadow director. The most that could be said in this connection was the possible need for Kevin to give a guarantee in relation to any account that KVS would have with Parksafe Ltd, as indicated by what Mick Barber (on behalf of Parksafe Ltd) said to Adam. There was in fact no direct evidence that any such guarantee was actually sought let alone given. In fact, viewed in the round, it seems to me that it would have made more sense for Kevin to have acted as a possible guarantor of KVS if Kevin had no involvement in that company. By contrast, it would have made much less sense if Kevin was, as a shadow director, in reality pulling all the strings behind the scenes.

48. In addition, Mr Young sought to attach some weight to the fact that, on 11 May 2023, Kevin emailed customer quotes and price lists to Jan (and subsequently deleted these emails from his company 'sent' email folder): the contention was that this was done so as to enable KVS to be able to use information to its benefit at the expense of EELVS. I do not accept that. Kevin's answer to the questions on this topic in cross-examination was that he was working from home at the time and that explained the sending of the emails. That seems to me in the circumstances to be a reasonable explanation. I am satisfied that this was not evidence of an attempt by Kevin to secure information to the detriment of EELVS in the way suggested by Mr Young. There is no other evidence to bear out this suggestion and, as I have found, there is a credible explanation for the sending of the emails.

49. On 24 May 2023, Kevin created folders on the EELVS server and downloaded a modest number of documents onto his laptop relating to customer quotes, completed work, photographs of work done and EELVS price lists. Kevin's explanation for this – which I accept – is that, as he was working from home at the time, it was convenient for him to act in this way. While it may be true that he could have accessed the same documents remotely without downloading them onto his laptop, the fact that he did not do so is not, in my view, evidence of a sinister purpose. As he candidly said in cross-examination, he was not the most computer literate of persons. I have no reason not to accept that evidence at face value.

50. I also accept the evidence given (and vigorously tested in cross-examination) by Kevin, Aaron, Jan and Luke about the reasons for the particular arrangements in relation to the structure of KVS. Aaron struck me as someone who, as he said himself in cross-examination, was not so adept at the day-to-day running of a business such as invoicing and keeping on top of the financial arrangements. In those circumstances, it seems to me to be credible that Janet's 50% shareholding and directorship were designed so that she could keep a firm eye on this side of the business and that the investment of £10,000 by Kevin's sister in KVS (intended to fund the purchase of tools and a van) was conditional on Jan's involvement in this way. Jan's evidence, which I accept, was that she had been asked by her sister-in-law to be a director and shareholder of KVS because she "wanted me as a safe pair of hands". I also accept that, as she was not an employee of EELVS but acted on a self-employed contractor basis, she did not consider that acting in this way gave rise to any conflict of interest.

51. Aaron's skill set lay elsewhere: he was a more practical man, skilled as a fitter and, in a previous life, as a jockey. I accept that, as Mr Young submitted, Jan was of practical use to Aaron in KVS as she had knowledge of the customer base of EELVS and how that company operated. Indeed, she did. But it was her knowledge of running a company that was of real benefit to Aaron rather than her particular knowledge about the clients of EELVS.

52. I find that, as Aaron and Luke said in their evidence, Luke was given a 25% shareholding in KVS in return for the use of his booking system app. In particular, I do not consider that Luke was, as Mr Young submitted, offering his contact book in return for the shareholding. This was strongly denied by Luke in cross-examination. As Luke explained, he had a good job with an established company with a significant turnover which would allow him to make a good living through the earning of commissions: in the circumstances, it would make little sense to swap all of those benefits to join a one-man band with considerable risk as to future profitability. It does seem to me, however,

that Luke got a relatively good deal from this arrangement. Although he was offering something tangible in return, the cost to Luke in providing the app (which was in substance a favour from his brother) was limited but the upside in the shareholding was potentially of greater value. My overall impression of the evidence given by Luke, together with what was said about him by others in evidence, is that he was someone always on the look-out for ways to augment his income: as he put it in cross-examination, the opportunity presented itself "as just another way to make money". There was, however, nothing to suggest that Luke was a big risk-taker.

53. It was submitted by Mr Young that Jan's 50% shareholding in KVS together with Kevin's sister investment of £10,000 in the company implied a value of the company of £40,000, which indicated confidence in the customer base and implied support from Kevin. There is no evidence, however, that any valuation was put on the company at the time the shareholdings were transferred. When asked in cross-examination how much he thought the company was worth when the change in the corporate structure was put into effect on 18 May 2023, Aaron said the company was worth nothing. At the time, KVS was likely to have little (if any) goodwill. It had no clients. It had no intellectual property or tangible assets. It appeared to have nothing other than the cash investment given by Kevin's sister and the use of the app provided by Luke.

54. It is also worth testing the credibility of the alleged conspiracy by reference to matters that took place after Aaron had resigned from EELVS. Aaron had said to Adam as well as fitters in the workshop that he wanted to work as a sub-contractor. It was accepted by Adam that, in principle, any such work by Aaron as a sub-contractor could have extended to his doing work for EELVS. But I also accept Adam's evidence that no rates or formal agreement had been reached with Aaron to that effect. Nonetheless, it is plain that Aaron was not hiding the fact that he was hoping to work as a sub-contractor. In the circumstances, it would have been reasonable to conclude that one possible company with whom he might seek to act as a sub-contractor was EELVS itself. And if Aaron acted as a sub-contractor for EELVS, that would significantly reduce or, depending on the extent of the sub-contracting, eliminate any risk that clients would leave EELVS directly for KVS.

55. Indeed, on 25 May 2023, an arrangement was made, in a telephone conversation that was audible to Mrs Samantha Farnsworth and others in the office, for work to be done for a client of EELVS by Aaron after his departure. The terms of the arrangement meant that both EELVS and KVS benefited.

Adam's knowledge of the CE/KVS restructure

56. I find that Adam did not, until 24 May 2023 (when he received from Mr Lee Hillier, who acted as EELVS's accountant, the Companies House documentation about the re-structure of KVS), know about the involvement of Jan or Luke in KVS. It was striking to me that, in his cross-examination, Adam was clearly still upset about what he saw as a betrayal of him by Jan (and by extension Kevin) and Luke in their direct involvement in Aaron's new venture. Adam did not object so much to Aaron setting up on his own account as to the fact that there was involvement of other close colleagues working for EELVS in Aaron's new company without having discussed the arrangements with Adam beforehand.

57. I have some sympathy with Adam in his being upset about this. It would undoubtedly have been prudent for Kevin to have talked this through with Adam. But, as I have found above, Kevin's role in the arrangements was limited to the use by Aaron of Kevin's previously dormant company (CE) and to the giving of general advice to his son. There was no conspiracy between Kevin, Aaron, Jan and Luke. If – which he did not – Adam had raised his concerns directly with Kevin, all of this would no doubt have been explained to Adam.

The Hylton-Potts Legal Consultants' letters of 25 May 2023

58. But that was not the course that Adam chose to follow. He was evidently suspicious that something was afoot and asked Lee Hillier to investigate. Having discovered the arrangements in relation to CE/KVS (as a result of searches at Companies House of information relating to CE), Adam did not attempt to talk to Kevin. Instead, he instructed Hylton-Potts Legal Consultants LLP ("HPLC"), a firm owned and managed by a struck-off solicitor, Mr Rodney Hylton-Potts, to write what Adam described in his witness statement as "strongly worded" letters to Kevin, Aaron, Jan and Luke. That is a considerable understatement.

59. The letters (which were dated 25 May 2023 and sent and served the following day or, in the case of Luke, on his return from holiday) were incendiary – as can be seen by the following extracts from the letter sent to Kevin:

> "18 In breach of one or more of the obligations you have:
>
> > (a) To attempt to deceive EELVS by concealing the organisation and purpose of Kent van solutions Ltd ('Kent')
> >
> > (b) You have undoubtedly breached the terms of the "inter alia" Computer Misuse Act 1990 by indulging in unauthorised access to computer material which has criminal sanctions.
> >
> > That means that it is open to our clients to contact the police, with a view to reporting you for a criminal offence and to press for your early arrest.
> >
> > (c) You have conspired with others to steal our client intellectual property and to use their offices and staff, and confidential information, to promote a company in direct competition
> >
> > (d) You have committed theft as defined by the Theft Act 1968, and fraud as defined by the Fraud Act 2006.
>
> <u>The Consequences of your Actions</u>
>
> 19 On our advice a fully detailed and carefully prepared dossier has been prepared of your criminal activity and civil wrongs with everything indexed. You should also be aware that evidence has been collected from clients of the EELVS and staff of your verbal and written poaching. You are required forthwith to cease and desist your activities and to:

1. Immediately cease any use of the EELVS domain name ??? or email addresses associated with it.

2. To cease to hold yourself out as having any connection with EELVS.

3. To disclose to our clients all contractual arrangements you have entered into with clients of EELVS and any others, and all income received by you to date and in future.

4. To undertake that you will forthwith cease any of the activities listed above, or any other activity of which EELVS is not aware which is in breach of your obligations of good faith to the company.

20 Unless our clients are satisfied that you have agree to all this in writing and stick to it, without further notice or warning an application to the High Court will be made for an injunction against you which will involve a claim for substantial damages and legal costs.

The order will be obtained with a penal notice attached so that you will go to prison if you break the court Order.

You should be in no doubt whatsoever of our clients determination that you should not get away with your dishonourable and dishonest conduct and Mr Adam Farnsworth is saddened and angered, that you should abuse what he thought was a friendship in this way.

In view of the requirement to respond rapidly to avoid High Court action, we suggest that you email your response which must be received within two working days, after which we are to report to our clients on the next steps.

<u>The legal consequences of your conduct</u>

21 It is clear that you have fundamentally broken your obligations and are dishonest. You must immediately resign as a Director of our clients and transfer your shares to Adam Farnsworth (at nil consideration) forthwith. Clearly, High Court litigation is going to be taken against you for damages - and you will make things worse for yourselves by resisting the inevitable. For example, if you refuse to resign as a Director and hand over your shares, that will be included in the relief being sought from the High Court, with the consequence of a sharp increase in costs.

<u>The company's premises</u>

You are now forthwith barred from entering EELVS' premises, or speaking to or approaching any of our client's staff, customers or suppliers.

Your sudden desire for a company laptop and access to the IT software for accounting and bookings is clearly an attempt to dishonestly use the data to promote your secret new company.

That is not going to happen. If you attempt to get access, it will be an offence under the Computer Misuse Act.

Conclusion

22 Put bluntly, you have picked the wrong Claimants and the wrong lawyer to try your scam.

> 1. A full enquiry will be instigated to establish whether you have benefited from your underhand plan. If you have, every penny will be claimed, and therefore you are invited to come clean now and explain exactly what has been going on and to demonstrate the amount for which you have benefited and to pay it back.
>
> 2. Our clients are minded to immediately apply to the High Court for an injunction restraining you, Aaron Chave, Janet Chave and Luke Irvine from continuing this dishonest scheme to divert our clients' business and profits. Kent Van Solutions Ltd would also be a Defendant in the High Court action and all of you would be liable for very heavy legal costs and damages.

Criminal litigation

23 Apart from your civil liability, a number of criminal offences have been revealed:

> (a) Conspiracy to defraud
>
> (b) Computer Misuse Act 1990
>
> (c) Companies Acts 2006 (as amended).

24 On our advice, our clients are completing a substantial dossier they have prepared for the Police and will be handing it over. Because of the seriousness of this and the fact that it is a commercial matter, apart from registration with the UK ActionFraud website a direct report is going into the City of London Police, Economic Crime Directorate, Guildhall Yard, London EC4V 5AE. Our client will be pressing for your early arrest.

Derivative Action

25 If you are thinking that EELVS through their director, Adam Farnsworth, does not have the power to do what we are setting out, think again. You have forfeited all your rights by your conduct.

Nevertheless, on a belt and braces basis, they will take derivative action in this situation where the proper Claimant for wrongs committed against the company by its directors, is the company itself. The decision whether to sue therefore lies with the directors rather than the shareholders.

> Shareholders are normally precluded from taking action on behalf of the company. The shareholders however can intervene where certain specified types of wrong are committed by the directors. This applies to this case. The action will be brought if necessary by our client in his own name on behalf of the company (a derivative action). The Companies Act 2006 provides that a derivative action may be brought where the company suffers loss as a result of a director's default, breach of duty and/or breach of trust. You have committed all four civil wrongs. (Companies Act 2006 as amended) (Sections 260 to 269).
>
> Warning Against destruction of evidence
>
> 26 You are required to retain and not destroy all records, emails, WhatsApp's, correspondence and documents in relation to the conspiracy and if you attempt to destroy any or conceal them, this will amount to perverting the course of justice and offences under the Computer Misuse Act. Our clients will expect everything to be produced and examined forensically including all phone records.
>
> No further warning or notice will be given.
>
> Legal advice and access to Essex premises
>
> 27 What we suggest you do is to immediately take legal advice and then email us to indicate that you realise you have been caught out, will now take no further steps to be involved in Essex and will not compete further, attempt to go on the premises or speak to staff, customers or suppliers.
>
> If you do that, you will save yourself a huge amount of expense and aggravation and make things better for yourself. We are quite sure that any competent, experienced lawyer will advise you that that is the only approach for you now.
>
> Our clients will also be taking action against Aaron and Janet Chave, and Luke Irvine, as well as Kent Van Solutions Ltd. All of them are in the conspiracy with you.
>
> There is no question of any further notice, extension or negotiations. Either you respond, positively, or the consequences will not be to your liking."

60. At the time the letters were sent, there was no dossier of evidence. The evidence (such as it was of criminal conspiracy) was almost entirely non-existent. To have sent such a letter without intimating, or even hinting at, these concerns beforehand to his business partner struck a decisive and terminal blow to Kevin and Adam's business relationship. Although, as I note above, it is understandable why Adam might have felt let down by the manner in which Aaron came to use CE to pursue his own independent business, that does not, in my view, come close to justifying the sending of these letters in the terms in which they were sent.

61. Having caused the letters to be sent, Adam then – after the event – sought to find evidence justifying their contents.

62. For example, once Aaron's EELVS van was obtained by Adam on 26 May 2023, it was claimed that there was more stock on it than could be justified by reference to the jobs that Aaron would fulfil in his remaining (two days) of employment with EELVS. The implication was that the stock had been diverted (likely stolen) for use by Aaron on behalf of KVS. I do not accept that. Aaron was cross-examined in detail on this allegation, and his evidence was that the stock in his van was sufficient (and no more) to meet his remaining jobs. In cross-examination, Aaron said that it was not unusual to have a lot of different service parts on his EELVS van for use on lorries, and Aaron's work for EELVS in his final two days was of such a kind. I accept that it is more likely than not that this was indeed the case.

63. Although there was much heat and noise concerning this throughout the trial, there was no direct documentary or other evidence that could be said to undermine the evidence given by Aaron. If, as was alleged, the overstocking had occurred with a view to the subsequent unlawful use of it by Aaron for his personal gain, it is surprising that no allegation to that effect was made to the police. In any event, there is, in my view, no evidence at all that in any way implicates Kevin in any of this alleged wrongdoing.

64. Evidence was also given by a number of current employees of VE to the effect that, in the light of what happened in May 2023, they now considered that there might have been some similar "overstocking" in the months leading up to Aaron's departure from EELVS. I have carefully considered the testimony of all of those concerned but I am unable to accept that such unlawful conduct has taken place. Nothing was said at the time of the alleged unlawful conduct. There is a dearth of direct evidence substantiating these serious allegations.

Exclusion of Kevin from business

65. The HPLC letters of 25 May 2023 were followed by other action taken by Adam to exclude Kevin from the business. This included the following:

    i) Adam contacted the company's IT providers so that someone was on standby at the end of 26 May 2023 to prevent Kevin, Jan, Aaron and Luke from accessing emails and the EELVS systems;

    ii) from 26 May 2023 to 30 May 2023, a "security and dog unit" was deployed to secure the EELVS premises;

    iii) on 30 May 2023 Adam called a staff meeting at which he told those present that Kevin, Aaron, Jan and Luke had set up a new company operating from Kevin's home address and that Adam had taken steps to remove them from the business to protect EELVS;

    iv) on 30 May 2023 the office locks were changed; and

    v) on 31 May 2023, all computer passwords were changed and Kevin's previously locked account was unlocked and the passwords changed.

66. It is also worth noting that, when cross-examined about these steps, Adam acknowledged that they were taken as preventative measures. At the relevant times, Kevin had not

retaliated in any way or threatened to do so. Instead, Adam had, as he put it in cross-examination, "prepared for the worst".

67. Once Adam had committed to that path, he was not to deviate from it to any extent. He was single-minded in his focus to prove – after the event – that there was just cause in his acting as he did. There was no thought of compromise. He doubled-down on the accusations. In my view, he was – despite his genuine belief that he had been betrayed – clearly wrong to behave as he did. Having declared war by causing the HPLC letters of 25 May 2023 to be sent, Adam showed no signs of rapprochement. It was very much 'my way or the highway'.

68. So, for example, on 31 May 2023, a conversation took place between Adam and Mick Barber, the owner of Parksafe Ltd and a close friend of Kevin's. Among other things, and as recorded by Adam in his witness statement, Mr Barber offered to speak to Kevin "almost as a go between, but I declined this offer and told him that Kevin, Jan, Aaron and Luke all should seek legal advice".

69. The next day (1 June 2023), Kevin telephoned Adam and claimed everything was all a misunderstanding: he offered to meet Adam for a coffee and a full discussion. However, and again as set out in Adam's witness statement, Adam declined this offer "because of possible legal proceedings". Adam also noted that, during their conversation, Kevin "claimed to not know about Luke and Aaron's plans to take customers, as well as not know, that what he had done was wrong".

70. Shortly put, Adam was not, in my view, interested in hearing Kevin's account of events. I consider that it is clear from the evidence overall that Adam had already decided what had happened. He acted throughout as if his suspicions were the objectively-determined truth: all Kevin had to do was to recognise his wrongdoing.

71. This explains, in my view, why Adam was so unyielding in the offers he made to unlock the dispute. For example, in an email sent by Adam to Kevin on 9 June 2023, headed "Final proposal before High Court action", Adam set out what he described "as a final proposal (pending terms and conditions applied) for Kevin Chave to buy out Adam Farnsworth". Kevin was given three options:

    i) option 1 was to "go to court where he [Kevin] is sued for both civil and criminal actions in direct conflict with his role as a company director, he will be banned as director and sued for damages. This action is both a civil and criminal matter";

    ii) option 2 was to resign as director of EELVS and forfeit all shares with a direction that Kevin "does not talk to or approach any van extras customers and staff, does not attempt to steal any business existing or act in a way defamatory to Van-extras or Adam Farnsworth"; and

    iii) option 3 was for Kevin to offer to buy the remaining 54% of the shares in EELVS for £600k.

72. It was then said that, in the event that Kevin chose option 3, "all charges civil and criminal against the other parties will be withdrawn".

73. This is not, in my view, a reasonable way to conduct negotiations between the two business partners. Moreover, the accusations of criminal conspiracy were repeatedly made in communications after 6 June 2023 as well: examples are the email from HPLC of 13 June 2023 and the letters of 19 and 23 June 2023 to Luke. Although I would not accept the attempt by Mr Benzie (on behalf of Kevin) to characterise this as blackmail, it is a decidedly asymmetrical way of valuing the respective shareholdings in EELVS: in substance, Kevin was either to forfeit his shares and promise not to compete with EELVS or he would agree to buy out Adam's shares for £600,000. This was heads Adam wins and tails Kevin loses.

74. By the middle of June 2023, the relationship between Adam and Kevin had broken down, and Adam, as he agreed when the question was put to him in cross-examination, had excluded, or had attempted to exclude, Kevin from EELVS completely. As is set out above, Kevin made various overtures to Adam but every time he did so he was rebuffed. For the relationship to recover, some non-judgmental step by Adam needed to be taken.

The Lee Hillier investigation and the allegations of fraud

75. But Adam, feeling deeply wronged by what he saw as a betrayal by Kevin, moved in the opposite direction. He made forensic attempts to find evidence – after the breakdown of relationship – justifying the way in which he had acted. The evidence he found included the discovery in June 2023 of various invoices issued in October 2022. Having asked Mr Lee Hillier to investigate, Adam considered the findings to constitute fraud and reported them as such to the police.

76. In my view, this has little direct relevance to the dispute. The role of Kevin in the alleged matters was minimal. He authorised a number of payments of modest amounts (totalling £3,527) to the ultimate benefit of Luke via entities operating under (seemingly unconnected) trading names. But the evidence – significantly tested in the cross-examination of Luke – is clear that EELVS itself benefited from the transactions. There is an issue about why the invoices were made out to various trading names rather than to Luke directly. But, whether or not there was anything untoward in this, there is nothing to implicate Kevin in any wrongdoing.

77. Nonetheless, this was not how Adam saw matters. The day after reporting the alleged fraud to the Essex police, Mrs Samantha Farnsworth sent an email (on 7 July 2023) to O2 (EELVS's phone supplier) stating that "we need this account secured URGENTLY. There has been fraudulent activity by an ex-employee and director (Kevin Chave) who is currently being pursued through the High Courts for theft and fraud". Again, there is no justification for sending an email in these terms.

78. Kevin managed to reactivate this account on 11 July 2023 but, despite what was said on Adam's behalf about it (including the possible use of what was described as a 'false' email address to secure the reconnection to O2), this is not evidence of a conspiracy involving Kevin to act against the interests of EELVS. On the contrary, it was reasonable at the time for Kevin to wish to maintain as much of the normal working arrangements involving EELVS as he could. Having access to the phone number on which clients of EELVS would contact him was one way of achieving that.

The Santander bank account and transfer of business of EELVS to VE

79. It was after this allegation of fraud (but not necessarily because of it) that Adam took steps to try to remove Kevin from the EELVS bank account held with Santander. Adam had previously, and unsuccessfully, attempted to remove Kevin from the Santander bank account. But the fact that Santander was made aware that there was an allegation of fraud (reported to the police) involving Kevin did lead Santander to remove Kevin's access to the accounts. His access was, however, subsequently restored and, when Kevin did access the accounts, he noticed a number of payments of concern to him chief among which was the payment of £20,000 to HPLC on 9 August 2023.

80. Kevin responded by asking Santander to put a restriction on the bank account so that withdrawals could be made only with the consent of both directors. He did not inform Adam about this. Adam discovered the existence of the restriction on 21 August 2023, and, on the next day (22 August 2023), having spent time in the Santander branch, he was able to reverse the restriction and take steps to pay all suppliers and staff salaries a week early. The restriction was subsequently reinstated on 29 August 2023.

81. In the meantime, Adam had set up a new bank account in the name of VE (Van Extras Limited), which at the time was still inactive. Letters were sent to customers and suppliers of EELVS advising them of this. Stock and other tangible assets of EELVS were then transferred to Adam's company (VE) at around the end of August 2023, described by Adam in an email of 30 August 2023 as a situation where, following the reinstatement of the restriction on the Santander account, "as a matter of urgency we now have no alternative but to trade from Van Extras Limited".

82. The transfer of the tangible assets was for a value (£44,900) which, albeit on limited evidence, can reasonably be regarded as a fair value for the tangible assets that were actually transferred, disregarding what I regard as an immaterial error relating to value added tax. The transfer was funded by an inter-company loan, a matter which was recorded in the relevant accounts. The transfer took place without Kevin's knowledge.

83. In my view, Kevin's course of action in relation to the Santander bank account was a reasonable one to take although there was no good reason not to have informed Adam of the placing of the restriction on the Santander bank account when it was obtained. Despite claims to the contrary made by Adam, this did not amount to the freezing of the account. It was, moreover, not an act of finality although it was, of course, consistent with a breakdown in the relationship between Kevin and Adam.

84. By contrast, the transfer of all of the tangible assets of EELVS to VE by Adam, the re-employment of EELVS staff by VE, the use by VE of the premises previously used by EELVS and the contacting of clients and suppliers by Adam who were expressly led to believe that, in effect, VE had (following Kevin's actions) succeeded to EELVS's business were, and were intended to be, the end of the affair so far as Adam was concerned.

Other matters

85. Finally, I deal with other allegations that are said by Adam to be evidence of a conspiracy between Kevin, Aaron, Jan and Luke.

86. On 2 July 2023 Kevin logged into the company computer system (using Aaron's logon details) to view customer bookings. I do not regard this as significant. At the time, Kevin was a director and member of EELVS and fully entitled to act as he did.

87. On 19 July 2023, Kevin attended the EELVS premises and told staff that he had a job to complete at HTC, a customer of EELVS. He was wearing an EELVS staff sweatshirt at the time. However, there is no record of any order being submitted to, or invoice rendered by, EELVS. Kevin also attended the premises on 9 August 2023. On that occasion, Kevin said that he had nothing to do with KVS and that he was still working for EELVS, mentioning in terms the work at HTC. He also said that the work was done for HTC for free. When cross-examined about his work for HTC, Kevin repeated that he did the work for free, noting that it was not unusual to do what he described as "development work" to maintain good relationships with a valuable client.

88. I accept Kevin's evidence in relation to the work done for HTC. It also seems to me that, if he was in fact doing the work for KVS (as submitted by Mr Young), it was an odd decision to wear clothing associated with what would have been a competitor. Similarly, it would have been a brazen show of defiance by Kevin to have been quite so candid about what he was doing in the light of the serious allegations made against him in the HPLC letters of 25 May 2023.

89. The evidence was clear that, on 19 July 2023, Kevin had a frosty – verging on a hostile – reaction from the staff currently working for EELVS. Evidence given by the staff involved was very much in keeping with Adam's version of events. This is not particularly surprising as Kevin had not been afforded any real opportunity to explain events from his perspective. Kevin's visit to the premises on 9 August 2023 was similarly one in which it was clear that he was considered by staff not to be welcome. They took steps to exclude him and, when Kevin did not co-operate, they called the police.

90. Kevin visited EELVS premises at both times while a director and shareholder of EELVS with the hope (albeit fading) of a resolution to the dispute. In his cross-examination, Kevin said that he did not realise that the staff would be so "antagonistic" towards him on 9 August 2023. I accept that evidence.

91. Sapphire Sharp gave evidence that, while working as a receptionist at VE, she fielded queries from companies asking for Luke and asking whether the number called was the number for KVS. This was said to have happened on 27 November 2024 and also a few times in the following months. I accept Ms Sharp's evidence in these respects but it tells me little of relevance in relation to the material events of the dispute. The inference that I draw from this evidence is that some businesses were unsure about how to contact Luke or KVS. It is not evidence of the existence of a conspiracy between Luke, Aaron and Kevin in the months leading up to, and following, May 2023.

92. I also consider that there is no evidence that KVS took any steps to "poach" clients of EELVS. Adam did, however, give evidence – which I accept – that some clients brought by Kevin to EELVS (such as Beadles (Dartford and Chelmsford), Axis Europe plc, JRL Plant and Logistics Ltd, Claygate, Staplehurst Transits and HTC) no longer put much business the way of EELVS. That is as far as the evidence goes. There is no evidence that any of those companies were contacted by Aaron or anyone else on behalf of KVS to persuade them to cease to give work to EELVS and transfer their business instead to KVS.

APPLICATION OF LAW TO THE FACTS

Unfair prejudice

93. In the light of my factual findings as set out above, it cannot be seriously doubted that Adam has acted in a way that has prejudiced Kevin's interests as a shareholder in EELVS and that he has done so in a way that is, on an objective basis, unfair. The breakdown in the relationship between Kevin and Adam arose as a result of Adam's unreasonable response to Aaron's departure from the company. The HPLC letters of 25 May 2023 were incendiary. The factual basis for the allegations made in the letters was non-existent but Adam was consistent in his belief that the opposite was true. He was at no time interested in hearing Kevin's version of events.

94. Kevin's attempts to maintain his involvement in EELVS (as both a director and shareholder) were, in my view, reasonable. Kevin was not part of a conspiracy with Aaron, Jan and Luke to run down EELVS to the direct benefit of KVS. There is no cogent evidence that Kevin did anything from April to August 2023 that could reasonably be said to have been detrimental to the interests of EELVS. I have dealt above with the relatively few allegations that are said to constitute evidence of the conspiracy but Kevin has a plausible explanation, tested in cross-examination, that I accept in respect of all of these allegations.

95. It follows from this that none of the action that Adam took in the period from 25 May 2023 to the end of August 2023 in relation to Kevin's involvement in EELVS has any proper justification. That includes the transfer, in substance, of the business of EELVS after August 2023, without Kevin's consent or involvement. The particular reason given for this was the fact that Kevin had unjustifiably taken steps to "freeze" the company's bank account so as to destroy EELVS. As detailed above, that is not a fair description of what happened. In my view, Kevin was simply taking reasonable steps to maintain his existing interest in EELVS.

96. I repeat again that, in my view, Adam genuinely believed that he had been wronged and it was the sense of betrayal that lies behind his reaction. I do not accept that that he was seeking to find an excuse to engineer circumstances where he could acquire Kevin's shareholding for nothing. That does not, however, alter an objective assessment of whether his conduct caused unfair prejudice to the value of Kevin's shareholding in EELVS. In my view, it clearly did.

97. The result was that, as a result of the combined effect of Adam's actions (up to and including the transfer of the tangible assets of EELVS to VE), the value of EELVS was seriously diminished. This plainly constitutes prejudice in respect of Kevin's shareholding in EELVS.

Appropriate relief

98. Before determining the terms of the appropriate relief for Kevin in respect of the unfair prejudice he has suffered, it is convenient to consider the key authorities that I consider relevant to my determination.

99. I have already set out above how the Supreme Court referred in *Zedra* to the fact that s.996 of CA 2006 gives the court the "widest possible" discretion to order the relief it

considers appropriate, which, among other remedies, includes the power to order wrongdoing directors to pay compensation (see *Re Hut Group Ltd* [2021] EWCA Civ 904 at [66]).

100. As the Supreme Court made clear in *Zedra*, a claim for relief under s.996 of CA 2006 is a statutory one and is not a claim for equitable relief. At [161] and [162] of *Zedra*, Lord Hodge and Lord Richard dismissed the submission that Zedra's claim for "equitable compensation" against the company's directors under s.994 of CA 2006 was a claim for "equitable relief", agreeing with the reasons given by Lewison LJ in the Court of Appeal at [85] of his judgment for dismissing that submission:

> "162. […] Zedra is not claiming equitable relief. It is claiming relief from unfairly prejudicial conduct in the management of the Company and that relief is available only because section 996 of the 2006 Act gives the court power to grant such relief […]."

101. Lord Burrows gave a dissenting judgment in *Zedra* in which he observed at [227], in the context of considering the relationship between limitation and the equitable doctrine of laches, that "although the unfair prejudice provisions — and hence the judicial discretion conferred by statute both as regards whether to make any order and if so what order — are not the same as an equitable discretion (which is judge-made), the two are clearly closely linked".

102. The reference to the close linkage between the judicial discretion conferred by the statute and equitable principles governing the discretion to award equitable relief is a reflection of what Lord Hoffmann said in *O'Neill v Phillips* [1999] 1 WLR 1092 at [1098E and F]:

> "The concept of fairness must be applied judicially and the content which it is given by the courts must be based upon rational principles. […]
>
> Although fairness is a notion which can be applied to all kinds of activities, its content will depend upon the context in which it is being used."

103. Lord Hoffmann explained at [1098H] that the context includes the fact that "company law has developed seamlessly from the law of partnership, which was treated by equity […] as a contract of good faith" and that this "leads to the conclusion that there will be cases in which equitable considerations make it unfair for those conducting the affairs of the company to rely upon their strict legal powers". He continued at [1099B] that the concept of unfairness in s.994 of CA 2006 runs in parallel to the concept of "just and equitable" as a ground for winding up a company, agreeing with Lord Wilberforce *In re Westbourne Galleries Ltd.* [1973] A.C. 360 that it "would be impossible 'and wholly undesirable' to define the circumstances in which the application of equitable principles might make it unjust, or inequitable (or unfair) for a party to insist on legal rights or to exercise them in particular way" before going on to conclude as follows:

> "that does not mean that there are no principles by which those circumstances may be identified. […] The way in which such equitable principles operate is tolerably well settled and in my view it would be wrong to abandon them in favour of some wholly indefinite notion of fairness. […] The parallel is not in the conduct which the court will

> treat as justifying a particular remedy but in the principles upon which it decides that the conduct is unjust, inequitable or unfair."

104. Subsequent judicial authority, relying on the dicta of Lord Hoffmann in *O'Neill*, is to much the same effect. A good illustration of this is what Oliver LJ said in the Court of Appeal in *Re Bird Precision Bellows Ltd* [1986] Ch.658, describing the relief provided for by s.996 of CA 2006 at [669D] as one under which the court has:

> "[…] a very wide discretion to do what is considered fair and equitable in all the circumstances of the case, in order to put right and cure for the future the unfair prejudice which the petitioner has suffered at the hands of the other shareholders of the company …".

105. That case was cited by the Court of Appeal in *Grace v Bagioli* [2005] EWCA Civ 1222 where the court emphasised that it was necessary to consider all of the relevant circumstances in deciding what kind of order it was fair to make, commenting at [74] and [75] in these terms:

> "74. It was, therefore, incumbent on the judge to consider the whole range of possible remedies and to choose the one which on his assessment of the existing state of relations between the parties was most likely both to remedy the unfair prejudice already suffered and to deal fairly with the situation which had occurred. […]
>
> 75. In most cases, the usual order to make will be the one requiring the Respondents to buy out the petitioning shareholder at a price to be fixed by the court. […] The reasons for making such an order are in most cases obvious. It will free the petitioner from the company and enable him to extract his share of the value of its business and assets in return for foregoing any future right to dividends."

106. As noted in *Bagioli*, relief in the form of a purchase of shares in the company is the usual order for the reasons given there. The starting point is that the valuation date should be the date on which the court makes the order. However, it is obvious that there will be circumstances in which a valuation of shares on that date might not provide the appropriate relief, notably where the conduct giving rise to the unfair prejudice has already diminished the value of the company.

107. One such case was *Profinance Trust SA v Gladstone* [2002] 1 WLR 1024, a decision of the Court of Appeal in which Robert Walker LJ (as he then was) discussed when it might be appropriate for the date of valuation to be before the date of judgment. The case concerned a decision of the High Court to order a purchase of shares valued at a date before the judgment together with an award of compensation to the petitioner in the form of interest running from that date (described by Robert Walker LJ as "quasi-interest"). At [30] and [31] Robert Walker LJ said this:

> "30. We have described the issue of quasi-interest as logically anterior to the exercise of discretion as to the choice of the valuation date. But in practice the two cannot be completely separated, because the circumstances in which it may be fair for the court to take an early valuation date (or in which it is simply not possible to take a more recent date) may also be highly relevant to the petitioner's claim for the equivalent of interest. If (to take an extreme example) a majority

> shareholder had used his control to misappropriate a company's staff, customers and goodwill so as to make the company's shares virtually worthless by the time of the hearing, the only fair valuation date may be the date of presentation of the petition (and there will probably also be a notional adjustment to allow for the misappropriation, a course specifically approved, in relation to s.210 of the Companies Act 1948, by the House of Lords in *Scottish Co-operative Wholesale Society v Meyer* [1959] AC 324, considered further below). But in the meantime the petitioner has (in an extreme case of that sort) been receiving no benefit of any sort from his membership of the company, either in the form of dividends, or in the form of director's remuneration, or otherwise. He has been locked into an investment which has been made worthless as a result of the majority shareholder's oppression. […]
>
> 31. In our judgment the deputy judge was right in his view that an order for the equivalent of interest is not beyond the powers of the court under s.461(1). The court has repeatedly emphasised the width of the discretion conferred by that subsection, which is not limited to the particular powers enumerated in subsection (2). The House of Lords has (in relation to the court's closely comparable powers under s.210 of the Companies Act 1948) approved the making of adjustments in the valuation process which mean that the court is actually valuing shares, not as they are, but as they would have been if events had followed a different course; and that practice is regularly followed by the court in orders under s.461(1)."

108. The court referred in *Profinace* to the decision of the House of Lords in *Scottish Co-operative Wholesale Society v Meyer* [1959] AC 324. That was a case on s.210 of the Companies Act 1948 under which a petitioner had to establish oppression rather than unfair prejudice. In that case, the co-operative society had formed a 51 per cent-owned subsidiary where the other shares were owned by two external directors. When those directors refused to sell their shares to the society, the society in effect moved its business to a different department and, as a result, the shares of the subsidiary fell sharply in value. The Court of Session ordered the society to buy the shares of the directors valued at the commencement of the proceedings and on the assumption that there had been no oppressive conduct. That order was upheld by the House of Lords.

109. Lord Denning explained at [369] why:

> "One of the most useful orders mentioned in the section … is to order the oppressor to buy their shares at a fair price: and a fair price would be, I think, the value which the shares would have had at the date of the petition, if there had been no oppression. … It is, no doubt, true that an order of this kind gives to the oppressed shareholders what is in effect money compensation for the injury done to them: but I see no objection to this. The section gives a large discretion to the court and it is well exercised in making an oppressor make compensation to those who have suffered at his hands."

110. Other cases illustrate circumstances in which a purchase order of shares can itself include a compensatory element for conduct (as was the case in *Profinace* and *Meyer*) or is regarded as an alternative remedy to another one proposed:

i) In *Re Abbington Hotel Ltd* [2012] 1 BCLC 142, David Richards J (as he then was) dealt with the date on which the shares should be valued, accepting the proposition that the shares should be valued at an earlier date so as to provide a remedy for the exclusion of Mr D'Angelo from the company.

ii) In *Sikorski v Sikorski* [2012] EWHC 1613 (Ch) the remedy sought by Joe Sikorski against his brother (Stefan) was based on the allegation that, for many years, Stefan had failed to cause the company to obtain rentals for the use of a hotel at the agreed rate. The relief sought was to make good all accrued arrears of rent and pay future rent at the agreed rate. The possibility of the more normal relief of an order for the purchase of shares as an alternative was made only in closing submissions.

iii) In *Re Cumana Ltd* [1986] BCLC 430, the Court of Appeal considered whether the shares should be valued at the date of the petition. The court held that the judge was entitled to find that the diversion of business from the company to another company had caused unfair prejudice and that the compensation for wrongs done to the petitioner would be rectified by the purchase of shares: "what the judge was deciding was the amount of the compensation which Mr Bolton should pay Mr Lewis for the wrong he had done him" (see [437(a)]).

111. In his submissions about the remedy, Mr Benzie (on behalf of Kevin) relied on a number of authorities dealing with equitable remedies such as *Mitchell and another v Sheikh Mohamed Bin Issa Al Jaber* [2025] 3 WLR 849 (and, in particular, dicta in that case to the effect that equity is not concerned with issues of remoteness and foreseeability) and *AIB Group (UK) plc v Mark Redler & Co Solicitors* [2015] AC 2503. He was seeking in terms a reparative remedy designed to make good the loss caused by breaches of equitable duties by Adam. Mr Benzie seemed to be making his submissions on the basis that the award of relief under s.996 of CA 2006 was the exercise by the court of an equitable remedy.

112. As explained above, that is not the case; but, again, as set above, equitable principles do have a role to play in determining, assessed in the round and having regard to all the relevant circumstances, the statutory relief to be awarded, on the basis of what the court considers to be fair, "to put right and cure for the future the unfair prejudice which the petitioner has suffered at the hands of the other shareholders of the company" (*Bird Precision Bellow)*. As the cases above clearly show, the date on which the valuation of shares is made may, in appropriate circumstances, include compensation in respect of action done by the respondent. The question then is whether, in addition to an award of relief that includes a compensatory sum along those lines, it would also be fair to order a further compensatory sum.

113. It seems to me that applying the statutory test, properly understood in the light of the relevant authorities as I have set them out above, the appropriate order to make in this case is to order Adam to buy Kevin's shares valued at a time before the unfair prejudice occurred, namely as at 1 May 2023, but not to make any further award in respect of Kevin's "lost wages" or losses caused by breaches of duties of Adam.

114. Plainly, valuing the shares as at 1 May 2023 includes a compensatory award that takes account of the unfair prejudice: after all, taking the 18 November 2023 valuation of the shares as a proxy for their value as at today's date, Adam would be paying significantly more for those shares than, as at today, they are worth. The case here is similar in that

respect to cases such as *Profinance*, *Cumana*, *Abingdon Hotel* and *Meyer* where the relief (and the only relief) granted by the court was the purchase of shares at a value that was adjusted to take account of the matters complained of and where the reasoning was clear that this provided compensation for the wrongs done by the respondent.

115. The valuation of the shares at 1 May 2023 also includes, as a component of a fair price, the right to obtain future dividends (a matter expressly referred to at [75] in *Bagioli*). To award Kevin a further sum in respect of his "lost wages" would, in my view, entail a substantial element of double recovery.

116. So far as the lost wages include dividends, proper account is taken of that element in the early valuation date. So far as the lost wages include actual salary that Kevin might have earnt, it is of relevance – as Mr Young submitted on behalf of Adam – that Kevin has in fact done no work for EELVS or VE since his exclusion from the business. It would not, in all the circumstances, be fair to expect Adam to pay, out of the profits of VE, further amounts to Kevin where, on the facts, he has done nothing in return for the "salary".

117. Mr Benzie's principal submission was that Adam had, in breach of fiduciary duty, taken all of the assets and business of EELVS and "used them" to generate profits: having misappropriated assets, he should be subject to an order to compensate Kevin. But there is, in fact, no evidence whether the value of VE since Kevin's exclusion from EELVS derives from the tangible assets of EELVS (of a very modest amount) transferred to VE or from the goodwill of EELVS.

118. As to the goodwill of EELVS, it is true that EELVS traded under the name of Van Extras but it does not follow, without evidence, that the profits of VE can be said to derive from the use of the name alone or from anything else that could constitute the goodwill of EELVS. And, of course and more fundamentally, the valuation of the shares of EELVS as at 1 May 2023 in effect does include a valuation to some extent of the goodwill of EELVS: indeed, the valuation of the goodwill in a company is, in effect, the same as a fair price for the shares in the company less the fair value for any identifiable assets. As a matter of substantive reality, a purchaser of shares is buying a company which has the potential to make future profits by reference to, among other things, its then existing goodwill.

119. It is also relevant in determining the overall fairness of the relief in respect of the unfair prejudice suffered by Kevin to consider an order where Adam buys Kevin's shares at their current valuation together with compensation for what, in his petition, Kevin claims he has lost in salary. If we take a valuation of the shares of EELVS as at 18 November 2023 but taking account of the Transferred Assets and other items identified by Mr McDevitt in his expert report (so that credit is given for those matters in the valuation), Kevin's shares would be valued at £100,646. If further credit of £169,500 is then given for the asserted loss by Kevin of his salary and other benefits, Kevin would receive in total £270,146 or, put another way, 92% of the value of the shares as at 1 May 2023. That is, in my view, a useful cross-check to assess the overall fairness of the order I am proposing to make. It reveals, via a different route, the extent to which the valuation of the shares as at 1 May 2023 (as compared to 18 November 2023 or today's date) does, in effect, include a compensatory element.

120. Having regard to all the circumstances, I consider, therefore, that, for the reasons given above, the most appropriate relief is to order a purchase by Adam of Kevin's shares in

EELVS for the value they had as at 1 May 2023 but that it would be unfair to provide any further relief.

121. The final issue is whether to accept the 1 May 2023 valuation of the shares contained in Mr McDevitt's report or substitute a lower EBITDA multiplier as contended for by Mr Young on behalf of Adam (while leaving all other matters in the report undisturbed).

122. Mr McDevitt gave clear and convincing answers while being subject to cross-examination by Mr Young about the multiple of EBITDA chosen to value EELVS on 1 May 2023. In particular, Mr McDevitt recognised that most of the companies used to determine what he considered was an appropriate multiplier were significantly larger or more diverse than EELVS and also operated in a different marketplace, namely, the European Union rather than the United Kingdom. However, the point which he made in different ways to questions addressed at the same concern was that the link between the value of a company and its EBITDA was driven by the "broad" market in which the company operates. In the case of EELVS, the market concerned was one for the provision of small parts to vehicles. If an appropriate market can be found, it could then be assumed that the market forces and economic trends would be similar. It was, as Mr McDevitt noted in his cross-examination, very rare to find directly comparable companies.

123. Mr McDevitt also noted that he had applied discounts to an appropriate extent, expressly taking account of a control premium and his instructions not to give a discount for a minority holding. As he explained, the former was largely an inverse of the latter. And he confirmed that he was aware, and took account of, the regional market in which EELVS operated but pointed out that there had been no suggestion that EELVS was dependent on a particular client or clients for its profitability.

124. When pressed on whether it might have been appropriate for the EBITDA multiplier to be 4 or 4.5, Mr McDevitt responded by saying that he continued to think that the multiplier he preferred was a reasonable one. The only material supplied to him suggesting a different multiplier was that supplied by Lee Hillier, and Mr McDevitt lucidly explained in his report why there was no real evidence supporting that multiplier.

125. In my view, the EBITDA multiplier and the valuation put on the shares of EELVS by Mr McDevitt, fully explained in his closely-reasoned report and tested thoroughly in cross-examination, was a fair one. Each of the steps in the determination of the fair value of the shares of EELVS as set out in Mr McDevitt's report is, in my view, justified for the reasons more fully set out there.

126. I find, therefore, that, as at 1 May 2023, a fair value for Kevin's 44% shareholding in EELVS was £294,785.

DISPOSITION

127. For the reasons given above, I find that Kevin's petition under s.994 of CA 2006 is well-founded and that Adam's cross-petition under that section is not well-founded.

128. I consider that the appropriate relief under s.996 of CA 2006 in respect of the matters complained of by Kevin is for the purchase by Adam of Kevin's shares in EELVS for the sum of £294,785. The claim for further compensation payable by Adam to Kevin is dismissed.

129. I would ask the parties to agree an order giving effect to this judgment. If the parties cannot agree an order, then the matter will have to come back for a consequentials hearing, to take place within the period of six weeks after the handing-down of this judgment.