



IN THE HIGH COURT OF JUSTICE

Case No: BL-2021-LDS-000053

**BUSINESS AND PROPERTY COURTS IN LEEDS
BUSINESS LIST (Ch D)**

Business and Property Court in Leeds
4th Floor
Westgate
6 Grace Street
Leeds LS1 2RP
Date: 29 December 2025

Before :

**UPPER TRIBUNAL JUDGE MARK WEST
SITTING AS A JUDGE OF THE HIGH COURT**

Between :

**(1) UMER SUFWAN PERVAZ
(2) MUMTAZ AKHTAR PERVAZ**

Claimants

- and -

**(1) MEHBOOB AHMED PERVAZ
(2) MOHAMMED KASIM PERVAZ
(3) MOHAMMED HASHIM PERVAZ
(4) THE ESTATE OF THE LATE SHAHZADA KHALID PERVAZ
(represented by the Claimants)**

Defendants

Mr Steven Fennell (instructed by Schofield Sweeney LLP) for the Claimants and the Fourth Defendant

Dr Mike Wilkinson (instructed by Sandhill Solicitors) for the First to Third Defendants

Hearing dates: 23-27, 30 June, 2 July 2025

Remote hand-down: This judgment was handed down remotely at 4pm on 29 December 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

JUDGMENT

Introduction

1. This is a long-running family partnership dispute. The partnership was known as the Medina Meat & Poultry Group (“Medina”). It is common ground that the partnership was dissolved as long ago as 7 July 2016 on the death of one of the partners, but a whole host of issues remain between the parties, as set out below. I must begin by paying tribute to the counsel who represented the parties at the trial, Mr Steven Fennell and Dr Mike Wilkinson. The documents in the case were voluminous, running to over 15,000 pages, but they proved (with the assistance of the court staff, to whom I also pay tribute) to be masters of the technology and presented their cases with economy and succinctness, which enabled the trial to be completed within its time estimate.

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Parties

3. The parties are all members of the same family and share the same surname. To avoid any possible confusion, they were all referred to at trial by their first names and, meaning no disrespect to any of them, I shall adopt that procedure in this judgment. At the heart of the dispute are the relations between two brothers, Khalid (the elder brother) and Ahmed (the younger brother), although the dispute also concerns other members of the family. Khalid died on 7 July 2016 and his as yet unadministered estate appears as the Fourth Defendant, represented by the Claimants.

4. The family business was originally started by their father, Shahid, who died in 1995. Khalid was married to Mumtaz, who is the Second Claimant. Their son is Sufwan, who is the First Claimant. Their daughter, Isha, gave evidence on behalf of her mother and brother and her father's estate, although she is not a party to the proceedings. They had two other daughters, Asiya and Amna, who are not parties to the litigation, although they were referred to in evidence. Sufwan and Amna live with their mother. Isha lives in one of two houses constructed on part of the land which originally formed part of the curtilage of her parents' land. Her sister Asiya lives in the adjacent house.

5. Ahmed, the younger brother, is the First Defendant. He is married to Sajida, who is not a party to the proceedings. Ahmed is bankrupt, although his trustee in bankruptcy declined the invitation to be made a party to the proceedings. His sons are Kasim and Hashim, who are respectively the Second and Third Defendants. Ahmed, Kasim and Hashim all have their own houses. All of the parties to the litigation, as well as Asiya, Isha and Amna, live in various parts of Huddersfield.

6. Sufwan and Mumtaz as Claimants and Ahmed, Kasim and Hashim as Defendants, together with Khalid's unadministered estate as Fourth Defendant, are therefore the parties to the action and Isha also gave evidence on the Claimants' behalf and on behalf of her late father's estate. However, they are part of a more extended family, some of whose members were referred to during the trial, and I asked counsel to provide a more extended family tree to set out the family relationships in more detail. I have retained that document as an aide-mémoire, but do not need to set out its contents in any detail in this judgment.

7. On 7 July 2016 Khalid died at the age of 58. It is common ground that there was no written partnership agreement and that there was, on his death, a statutory dissolution under s.33(1) of the Partnership Act 1890 ("the Act") on that day and that all appropriate accounts and inquiries need to be taken and made upon dissolution.

8. There were, however, a considerable number of issues on which the parties were not able to agree, including the partnership assets, the identity of the partners from time to time, the partners' accounts, Khalid's dealings and other accounting issues involving Sufwan, Mumtaz, Ahmed and Kasim. By the conclusion of the trial, some of the issues were no longer live for decision, but most of them remained unresolved.

9. It was common ground that there will need to be a further hearing about a month after the handing down of this judgment, once the parties have reflected on its terms, not least to work out the details of the order and, unless the parties can now come to terms, to set out the parameters of the accounts and inquiries which will still need to be taken before a District Judge, together with a timetable for the filing and service of accounts, notices of objection in answer and responses to the notices of objection.

Overarching Chronology

10. At this point in the narrative it is perhaps convenient to set out a brief overarching chronology, as the parties had done before the outset of the trial, to explain in broad outline the background and context in which the various disputes have arisen. I will revert to a more detailed chronological background to the dispute below after I have dealt with the various discrete evidential issues.

11. The table sets out the date in the first column and the event in the second column:

c.1989	Partnership between Shahdin, Khalid and Ahmed known as Medina Poultry
29 November 1990	Khalid registered as proprietor of Turley Cote Farm (WYK250998)
12 October 1992	Khalid and Ahmed registered as joint proprietors of Brookwoods (WYK380090)
c.1995	Shahdin dies, Khalid and Ahmed continue partnership
31 May 1999	Partnership business transferred to Medina Poultry (Halifax) Ltd. Directors are Khalid, Mumtaz, Ahmed and Sajida; shareholders are Khalid (50%) and Ahmed (50%)
30 May 2001	Business transferred to the Partnership
31 May 2002	Partnership's first annual accounts (now only extant in draft form) show Khalid and Ahmed as equal partners
31 July 2003	Partnership's annual accounts show partners' profit share as Khalid (35%), Ahmed (35%), Kasim (15%) and Sajida (15%)
31 July 2003 – 31 July 2007	Partnership's annual accounts show partners' profit share as Khalid (25%), Ahmed (25%), Kasim (25%) and Sajida (25%)
2005-2009	Expenditure on construction costs (£265,000) as recorded by Khalid
31 July 2008	Partnership's annual accounts show partners' profit share as Ahmed/Sajida (combined 34.72%), Khalid (17.36%), Kasim (17.36%), Sufwan (15.28%), Mumtaz (15.28%)
19 May 2009	Khalid and Ahmed interviewed by HMRC
31 July 2009	Partnership's annual accounts show partners' profit share as Ahmed/Sajida (combined 22.22%), Khalid (17.78%), Kasim (17.78%), Sufwan (17.78%), Mumtaz (17.78%), Hashim (6.66%)
31 July 2010	Partnership's annual accounts show partners' profit share as Khalid (27%), Kasim (20.5%), Sufwan (20.5%), Mumtaz (27%), Hashim (5%). Ahmed/Sajida do not receive a profit share, but retain their current/loan account

31 July 2011-31 July 2014	Partnership's annual accounts show partners' profit share as Khalid (20%), Kasim (20%), Sufwan (20%), Mumtaz (20%), Hashim (20%). Ahmed/Sajida do not receive a profit share, but retain their current/loan account Nominal ledger shows purchase of items of plant and machinery associated with oil business
29 July 2015-30 July 2015	Khalid withdraws £134,000 insurance monies re Rolls Royce claim
31 July 2015	Partnership's accounts (disputed) show Mumtaz receiving no profit share, her capital account withdrawn in full, £270,409 cash introduced by Ahmed Separate nominal ledger for purchase and sale of oil
21 October 2015	Medina Group Ltd incorporated; Ahmed is sole director and shareholder
24 June 2016-28 June 2016	Cheques made payable to Sufwan by Premium Poultry Products Ltd
7 July 2016	Khalid dies, partnership dissolved
15 July 2016	Application to register Medina Group Ltd with FSA
23 February 2017	Medina Group Ltd grants debenture to Nat West Bank
2 October 2018	Ahmed demands payment of £250,316.02 from Mumtaz
7 February 2021	Claim form issued
2 June 2021	Bankruptcy petition in relation to Ahmed
1 April 2022	Bankruptcy order in relation to Ahmed

Witnesses

12. During the first week of the trial, I heard oral evidence from Sufwan, Mumtaz and Isha for the Claimants and Ahmed, Kasim and Hashim for the Defendants.

13. I also heard oral evidence from three other witnesses for the Defendants, Abdullah Rana ("Mr Rana"), Shafiq Ahmed ("Mr Ahmed") and Aftab Iqbal ("Mr Iqbal"). Mr Rana worked for Ahmed in his company, Premium Poultry Products Ltd, which he had set up in Bolton to supply poultry to local shops. He was employed by Ahmed as a manager to look after the day to day affairs of the company. Mr Ahmed had been a

meat wholesaler since about 2000. In the early days he had traded in partnership with a Mr Anwar Ul Haq; the partnership was called Al Aqsa Halal. Mr Iqbal was currently an employee of Medina as a senior commercial manager, although he had previously supplied red meat to local shops around West Yorkshire and Lancashire, since around 1998 in partnership with his brother, Mr Shahzad Iqbal, trading under the name of IQ Butchers. I shall refer in more detail to their evidence below.

14. On the sixth day of the trial I also heard oral evidence from the jointly appointed expert witness, Mr Raymond Davidson.

15. The Court did not sit on the seventh day of the trial, to allow the parties to produce closing submissions, to which they spoke on the eighth day. I reserved my judgment.

16. I give my impressions of the live witnesses here. It is inevitable in recording those impressions that I will have to explain in more detail in some instances and at this point in the narrative why I formed the impressions which I did, although I have not yet introduced into the narrative some of the factual background and the issues which arise out of them. The judgment must, of course, be read as a whole and, when read as a whole, it will be seen how the impressions which I formed are relevant to the outcome of my decision overall.

17. **Sufwan**: he gave evidence for the whole of the second day. In summary, I did not find Sufwan to be a reliable witness.

18. I found Sufwan to be an argumentative and evasive witness. He would frequently seek to ask questions of counsel rather than answering questions put to him. I formed the distinct impression that he was ill at ease in giving much of his evidence. Most revealing was his mini-explosion just before lunch on the second day when he was being (perfectly properly) pressed on a point and he shouted “Do you not like my words or something? I don’t know why you don’t like my words. I have just explained it to you.” That was indicative of much of his cross-examination.

19. Even more revealing was the incident that afternoon when he was being questioned about the poultry in book. What he had said in paragraph 21 of his witness statement was that

“There were two cash books used by all the partners to keep a record as outlined below.

21.1. Book 1 - petty cash/general expenditure. This has been disclosed in the litigation.

21.2. Book 2 - my dad’s personal week to week cash flow book- this outlined Hashim’s house spend and renovation - initially the house spend pages had been removed by the Defendants a week after my dad’s passing. Two weeks later the whole book went missing.”

(It is common ground that the second book was a book with a yellow cover and it was referred to as “the yellow book”. The yellow book has never been produced. So that the point of what follows is clear, the partnership poultry in book, part of which was in the trial bundle, had been disclosed, although not all of it was replicated in the trial bundle. That poultry in book is a book with a black cover.)

20. With regard to the yellow book (which he called the cash flow book, although it was in fact the poultry in book), he was asked (with emphasis added)

“Q. How do you know the contents of the book?

A. It is in the bundle. [Here referred to pages 13861 to 13866]. That is the book.

Q. But this is the poultry in book with the weights of the chickens. This book has not been lost. This is not the cash flow book.

A. This is the book which shows cash flow. You have only disclosed 5 or 6 pages out of the book. You have cherry-picked it.

Q. Your witness statement para. 21.2. You mean the book about the weight of chickens? This is the poultry in book. It is different from the cash book.

A. Cash flow: what was made that week. Breakdown: what was sold, how much money was left over as profit; what was made that week.

Q. Are you now saying that it was the poultry in book? Or are you saying there was another book?

A. The breakdown. *The yellow book. Pages have been torn out of that book and put in this book. Contained details of renovations of Hashim's house.*

Q. This book does not refer to money on Hashim's house. It has not had pages removed from it. It has not been reconstituted from another book.

A. Can you look at the binding?

[At this point Sufwan was given the book and leafed through it, obviously trying to find the inserted or torn out pages, but could not find any and I asked to see the book and examined it]

Q. This is not the book you are describing in para. 21.2.

A. That book was a yellow book. The information in that book: livestock in, sales, profits, what was coming in, what was sold. In the back of the book there was a list of Hashim's breakdown of renovations. *This is the same data as in the yellow book. Pages were ripped out.*

Q. Do you accept that pages have *not* been ripped out of this book?

A. Yes. *I accept that.*

... Pages from the back were removed from this book.

Q. *Could you see any pages removed from this book when it was handed up?*

A. *No, I couldn't see any."*

21. I also examined the book overnight. It was clear that the book was the poultry in book, not a cash book. It was also clear that pages had not been ripped out of the book and it was equally clear that pages had not been inserted in the book from another source. The binding was pristine and showed no signs of tampering. What this episode demonstrated, apart from Sufwan's apparent inability to distinguish the cash flow book from the poultry in book, was Sufwan's propensity to make wild and

unsubstantiated allegations. Pages had not been ripped out of the poultry in book; pages had not been inserted into the book from another source, nor had the binding been tampered with in any way. The point is that he made a wild and baseless allegation which had not the slightest foundation in fact. He made the allegation before even seeing the book. When he did see it, he had to row back on the evidence which he had given and accept that he had not seen evidence of any pages being ripped out when the book was handed up to him.

22. He was taken through his handwriting on various documents until he finally accepted that he had filled in the poultry in book and had been at work right up to 15 August 2016 (i.e. 38 days or five and a half weeks after his father's death). Having accepted his handwriting in the poultry in book, he could not, however, give an explanation as to why he had asserted in paragraph 35 of his witness statement that he had been excluded from the business and was unable to retrieve his father's documents at a meeting in the week following the fire on 16 July 2016. He denied starting a fire (as to which I make no findings, as I explain below), but accepted that there was a meeting at which he was asked to leave. When challenged on his account that he still went back to the factory after that, he could not explain and changed his evidence. When taken back to the poultry in book that he had admitted to writing out earlier, he then suggested that "my poultry manager might have". He then said that it might not have been two weeks when he was excluded and referred to trauma.

23. Moreover, his account about the cash book implicating Hashim and it being in the Defendants' interests to destroy it rang hollow. Sufwan accepted the existence of the book and himself gave a date when it disappeared. His account that he could not have retrieved that book as he was excluded from the premises was abandoned when he accepted that he still went back to the business for three weeks after the fire.

24. Not only did Sufwan say that the poultry in book had been fabricated and included pages from the yellow book and that the poultry in book had been restitched, but there were also other instances where he lashed out, making *ad hominem* attacks and scandalous accusations. When questioned about drug dealers attending at his home demanding money, he came out with an account for the very first time that they had only demanded money from him because the Defendants had stolen it from them and

he suggested that he should call Ahmed to ask him to settle the debt to resolve that problem. His unconvincing explanation for not referring to that in his witness statement was that he did not want to allege serious things, yet that self-same statement contained statements alleging criminality in several ways (including setting fire to the Rolls Royce, stealing wheels, having him beaten up and destroying evidence). When questioned about the application for a new licence being in fact made in the name of the partnership and challenged on his case that it was the company Medina Group Ltd which had made the application, he was heard to say that application was a forgery. He also tried to suggest that the Defendants had destroyed the cash sheet documents (when they were clearly temporary documents to be inputted into the system and then discarded).

25. As I have said above, Sufwan was argumentative and evasive. He had to be asked three times, for example, if he had been accused of harassment by an official of the Official Veterinarian's office, before finally conceding that there was a complaint, but only after he had been shown the letter which his father had written in response. He suggested that Ahmed was trying to get him to do menial work, particularly driving lorries, but when he was challenged about that he conceded that he did not have an HGV licence and in 2009 he had been banned from driving for drink driving.

26. Dr Wilkinson argued that he also sought to dress up his evidence to make it sound good in order to serve his purposes, rather than to say things plainly. There was indeed such a tendency in his evidence. With some effort he finally conceded he was not employed on a wage aged 16 as suggested by his witness statement and that he had just "helped out". When it was put to him that he did not work on the line, he tried to argue that he was involved in another capacity in "production". He had not dropped out of college to work at Medina full time; he had just not completed his course because he was working full time. His witness statement referred to implementing a new system which stopped cash going missing, but when questioned about that no sensible explanation was given beyond the use of an envelope and label and pen. When he was asked about what quality control he did, he suggested that he would let people know if he saw feathers in the chicken being sold. He sought to suggest that Medina was selling deadweight red meat only before 2009, downplaying the volume of contract kill business which he had done since 2004. He conceded that contract kill

was done before 2009, but only after being taken to his handwritten invoices. His witness statement suggested that he was asked repeatedly by his father to move over to the poultry side in 2009, as if there were an alternative, when the reality was that there was no red meat side of the business after July 2009.

27. It was nevertheless a theme of Sufwan's evidence that Khalid just did what he wanted. His witness statement referred at paragraph 8 to Khalid going into red meat and testing the market before 2004 before contract kill began (in 2005). When it was put to him that Khalid just made decisions for the business, Sufwan accepted that, although he sought to argue that he would do it in agreement with Ahmed. It was put to him that Khalid just bought the oil plant, coming back from Pakistan, wanting to get liquid gas vehicles and coming back from auction in Yorkshire having bought oil plant to get into oil business; that was accepted. He sought to suggest that Khalid did everything with agreement of Ahmed and he became argumentative when it was put that he could not have witnessed all of the conversations, for example before Khalid bought the red meat plant.

28. He accepted that the poultry lines and the red meat lines were separate, that red meat was done at night and that Ahmed worked in the day managing the line in the poultry factory. He then sought to suggest Ahmed did both and also worked on red meat side at nights when not doing poultry on slaughter days. He also suggested that Ahmed might be responsible for failure to put contract kill or Raffi invoices through the books (notwithstanding those not being Ahmed's customers).

29. He accepted that Andrew Atkinson Livestock Ltd delivered on to Medina on all of the dates shown in their invoices, but sought to suggest that might have been for other customers (despite the customer activity report being for the customer named at the head of the document: IQ Halal Butchers).

30. He accepted that Raffi Meats was his customer, that he would also sell poultry and that he wrote out poultry invoices. He accepted that he collected monies from customers, set prices and did some of the banking. He accepted that Khalid managed his own customers and did collections on the red meat side and appeared to accept that he would also manage what went in the books.

31. Having accepted that the tenant was his father's contact, he gave an account which sounded hollow about his father collecting the rent from Mr Zaman, but then passing it to Kasim to put in the safe, suggesting that Khalid would account to Kasim and that Kasim would handle all of the money and knew what was due.

32. As Dr Wilkinson submitted, Sufwan's resort to unfounded but distracting accusations was also characteristic of his other evidence, such as that Ahmed had completed his and Mumtaz's tax returns, that it was Ahmed who dealt with the accountants or that Kasim knew all about what money was made on the red meat side.

33. As to his other evidence, Sufwan eventually accepted (after being asked three times) that he had not seen or agreed the accounts, certainly not for the years ending 2008 and 2009. His account that he "would have " seen the later years' accounts was unconvincing.

34. He also accepted that Ahmed had come off as a partner with effect from the y/e 2010 and that Kasim and Hashim had come on as equal equity partners in their own rights.

35. **Mumtaz:** although Mumtaz was the Second Claimant, she gave her evidence before Sufwan so that it could be completed on the first day. I did not find her to be a reliable witness. It was a constant refrain of her evidence that something was "not to my knowledge" or "I don't know about that" or that that was something which Khalid had told her.

36. Even on matters which should have been easy to ascertain and which ought not to have been controversial, she gave evidence which was plainly incorrect. Thus she said in her witness statement that it was Khalid who had started the Medina Poultry business, when it was in fact Shahid and he had subsequently been joined in partnership by his two sons Khalid and Ahmed. It was not Khalid's goodwill to bring Ahmed into his business in the early 1990s as she attested. The partnership accounts for Medina Poultry showed Shahid, Khalid and Ahmed as partners from 1990 onwards.

When it was put to her that Khalid had not been slaughtering animals in the late 1980s she said that “I never ever knew about this; I thought it was just my husband”.

37. She attested that Turley Cote Farm had been purchased by Khalid in 1988, but the office copy entries showed that it had been purchased in late November 1990. When it was put to her that Ahmed was a partner in 1990 when Turley Cote Farm was purchased she said “Yes, I don’t know; I was led to believe it was my husband and others; he [Ahmed] could have been a partner, but I was not aware of it.” Then she accepted that Khalid told HMRC that he had bought it for the partnership in 1990 and that he had used the sheds for the business in 1990, though she could not say whether or not Ahmed had reared the chickens at that time, nor whether the property was subsequently rented out.

38. She said that she was “all over the place” when she made her statement because she had just lost her husband, but Khalid had died in July 2016 and the statement was made on 27 January 2023. This confusion at the outset of her evidence as to matters which should not have been controversial is indicative of the problems which I had with relying on much of Mumtaz’s evidence.

39. The very strong impression which she gave was that she had helped out in the business in the most general way, but that she had not really been involved in it since 1998. She accepted that it was at that point, not in 2008, that she stopped doing the banking for Medina, although she later accepted that she would bank cash for her husband when asked. Dr Wilkinson submitted that the change in her evidence, that she did not do the banking until 2008 but had in fact stopped in 1998, was to distance herself from her husband, who stood accused of diverting the partnership’s business income inter alia from contract kill (from 2004/2005 to 2009), but in my judgment the reality is that Mumtaz was not trying to distance herself from her husband, but was in reality confirming that she had very little to do with the business and had very little knowledge of it. To the extent that she helped out generally, it was as a family member, not as a business partner in any significant or substantive sense:

“Q. What work did you do for the partnership?”

A. What jobs needed to be done. My husband told me to do things. I had to do them.”

40. She appeared to concede that she was not a partner of the business in the normal sense, but rather was Khalid’s nominee. She accepted that he made all of the decisions and that she went along with that and let him do that. As she put it in a revealing section of her cross-examination:

“Q. He made most of the decisions, yes.

Q. When it came to the partnership business, was it Khalid who led and decided for the household?

A. Yes.

Q. In 2010 did Khalid and Ahmed agreed on matters for their families?

A. Yes.

Q. There were no partnership meetings. Presumably he told you what you needed to know?

A. He told me bits of it, but not all of it.

Q. Yes, you let him decide what to do?

A. Yes.”

41. She did not see the partnership accounts:

“Q. Did you see these [2008] accounts?

A. No, no. I left it to my husband.

Q, Is that the same for the subsequent accounts?

A. Yes.

...

Q. You were not involved at all in the partnership accounts, but you husband agreed things for you?

A. Yes.”

42. She accepted that the partnership was supposed to be 50/50 between the two families and she accepted that Khalid could pick who on his side could go on and that the partnership was supposed to be half and half as between the families. After 2010, she accepted that the position changed as regards Ahmed. She accepted that he and his wife left the partnership to let Hashim come on to the partnership properly in his own right and for both Kasim and Hashim thereafter to be equal equity partners:

“Q. Ahmed also says that it was 50-50. Until 2010 it was his, but he had to come off to get his sons on?

A. Yes, I agree with that.

...

Q. They never agreed that you could come on as a partner. That is what Khalid did, not what was agreed?

A. Yes. Yes, I was nominated to receive part of his half.

...

Q. You accepted that Ahmed resigned in 2010 to let his sons come in?

A. Yes.

Q. In 2010 [Ahmed] let his sons run it with Khalid and Sufwan?

A. Yes.

Q. Ahmed was still involved after 2010?

A. Yes. The same with my husband.

Q. He could put on who he liked, couldn't he?

A. Yes.”

43. As for her coming on as a partner in 2008, she accepted that she never had any agreement with Ahmed, or his wife Sajida, or Kasim about her becoming a partner. The conversation about it had been between Khalid and Ahmed. When the case was put that she was a nominee to receive Khalid's share and could then be removed in the same way, she could not say that she was a proper partner involved in the

business, but appeared to accept that she could be put on and taken off at Khalid's behest. What was apparent was that Khalid did not discuss the business with her:

"Q. Khalid must have discussed things with you and Sufwan?

A. He didn't discuss the business side of things."

44. Mumtaz denied that she knew and agreed that she should be removed as a partner and denied getting her accountant's letter with her tax returns. It was her case that Khalid had challenged the accountants about removing her, but she did not give a clear account about when that was, first trying to suggest that it would have been in email and then that it was over the telephone and at one stage she appeared to also say that Peel Walker had been told verbally. I do not accept that evidence, about which I will explain in more detail below under Issues 6(a) and 21(a).

45. As to the falling out between her husband and Ahmed in 2015 she said that

"Q. Did you know about the falling out in 2015, that Ahmed threatened to leave?

A. Yes, I knew about the argument.

Q. Ahmed said "Enough: it is time to part ways".

A. He [Khalid] never discussed that sort of thing with me. Never discussed it. We never discussed anything like that."

46. That served to confirm that, even when she had been a nominal partner, she would not have been party to the affairs of the partnership because she was in reality Khalid's nominee and would not have discussed (and did not discuss) the business with him. On her own evidence, they never discussed anything like that.

47. She confirmed that the remortgage on her and Khalid's property had been repaid by the partnership and also that was what she was told by Khalid. She seemed surprised when reminded that her case was that it was not.

48. She denied that Khalid used partnership money to pay the deposit for her daughter's car "no, he never bought any car for my daughter" (but that was despite Sufwan confirming precisely that in his live evidence).

49. About the family meeting in August 2016, Mumtaz suggested that no offers had been made (despite Sufwan's case and the letter from Reiss solicitors).

50. When questioned about what money she had used to buy 16 Britannia Crescent, Mumtaz became evasive. She said for the first time that her brother Mohammed Iqbal had lent her the full £161,000 which was paid to her solicitors, a matter on which no disclosure was given (and she did not mention any money (£24,000) coming from Isha despite the bank statements referring to that on the bank statement for 19 and 22 August 2016).

51. She was also not straightforward when explaining the situation with the Princewood properties in which Isha and Asiya live. She asserted that they were hers outright. She did not say that they had been transferred into the three names of herself, Sufwan and Isha or that they had been put into a discretionary settlement nor did she explain the terms of the settlement. Whilst it is correct that her name appears on the legal title to the properties, the legal title is not held solely in her name. Moreover it is wrong to say that they are hers beneficially outright. It turns out that the terms of clause 13 of the trust in fact preclude either capital or income of the property even being applied in Mumtaz's favour as settlor. She had also divested herself of £325,000. The Princewood properties are therefore not hers in the way that she asserted and her explanation about that was either disingenuous or she simply does not know or understand. In either case her evidence given to the Court was unreliable and was not straightforward.

52. Dr Wilkinson also criticised her for being reluctant to disclose the existence of Khalid's other child in Pakistan, Maria, by his other wife Nazra, asserting in answer to his question that Khalid's children were "my children; Khalid's children are my children" until he put it to her directly about the existence of Nazra and Maria. That criticism I do not, however, accept. Her reticence in that regard I put that down to embarrassment about her husband's other marriage and child, about which she was plainly and

understandably embarrassed and reluctant to speak. Nevertheless I did not find her overall to be a good or reliable witness. What her evidence did serve to confirm, however, was that she was no more than a nominal partner and was never party to the affairs of the partnership because she was in reality Khalid's nominee and would not have discussed (and did not discuss) the business with him.

53. **Isha:** Isha gave evidence on the third morning. She was not a party to the proceedings and had never been a partner, but she gave evidence for her mother and brother. She was a much more confident witness than her mother. It was clear, however, that she knew very little about the running of the business above and beyond what her father had told her or what she had gleaned in general terms from the family. Her statement contained a number of unevidenced and contentious generalisations, such as that her father had instilled good Islamic values into his family and that money was never a motivator, but that by contrast her uncle's family was the reverse, living the high life, changing cars, wearing designer clothes and going on holiday. She said that Ahmed's family had not been fair and reasonable and had deflected attention away from the claim and, rather than work with Khalid's family, they had made irrelevant claims and accusations against her father and were now trying to ruin her family financially. That was also a feature of her evidence in cross-examination.

54. The bulk of her witness statement (paragraphs 5 to 21 of 23), and much of her oral evidence, was directed to the meeting with Ahmed just after Khalid's death, in mid-July 2016, which had been covertly recorded by her sister Amna without Ahmed's knowledge (a fact of which Isha herself was not aware until her sister told her after the meeting). She was, however, unable to explain convincingly why she had not referred to the recording when she produced her witness statement. Her explanation that it was "not intended to be used as evidence" was unconvincing. Her evidence, which was not credible on the point, was that she had prepared the witness statement from memory *without* listening to the recording until a later date. I do not accept that she could have had so detailed a recollection of the July meeting from memory without listening to the recording to refresh her memory. The reality is that she must have listened to it to have produced so detailed an account of the meeting and yet chose not to disclose that fact in the body of her statement.

55. Although what purports to be a transcript of the meeting was prepared by Amna in advance of the trial, I place relatively little weight on the contents of the transcript, although Ahmed was not disposed to take issue with much of the transcript. Amna was not called as a witness nor was there any independent verification of the contents of the recording. Significantly, however, there was no suggestion from any of Khalid's family to Ahmed that Mumtaz still had a share in the partnership. Given that most of Isha's witness statement and much of her cross-examination concentrated on the events at the meeting and that she had very little knowledge of the affairs of the business, Isha's evidence overall did not do much to advance the Claimants' case, which largely depended on the evidence of Sufwan, whom I did not find to be a reliable witness.

56. Isha said that the property at 4 Princewood Lane, where she lived, was not in her name. However, her name appeared on the legal title. It was disingenuous to say that, especially when she knew that it had been transferred into the joint names of her mother, herself and her brother Sufwan and was held on a trust pursuant to a settlement which had not been disclosed before the trial.

57. **Ahmed:** Ahmed I found to be probably the best of the family witnesses, although that is not to say that by any means I accepted everything that he had to say.

58. In the inevitable absence of Khalid, the evidence of his brother took on all the more significance. I therefore exposed his evidence to detailed consideration and listened to the entirety of his oral evidence, not once but twice, before reaching my conclusions. (I should say that I also listened twice to the evidence of Sufwan.)

59. On the whole, I found that Ahmed was a quiet and generally thoughtful witness. He was even self-deprecating at times.

60. He was quite properly exposed to a detailed and searching cross-examination by Mr Fennell, but in marked contrast to Sufwan he kept his temper and was not riled by his searching cross-examination, for example he remained equable and even-tempered when it was put to him that his evidence about his agreement with Khalid

over Mumtaz's removal as a partner was false, although he did not always convince me in some of the evidence which he gave.

61. In particular, and as explained below, I did not accept his evidence in relation to the issues of the Premier Halal rent and the mortgage and I have significant reservations about some of what he said in relation to the Barclays account.

62. Despite my reservations about some of what Ahmed said in evidence, in general, where there was a conflict between them, I preferred the evidence of Ahmed to that of Sufwan.

63. **Kasim:** he was cross-examined for just over one and a half hours on the fifth morning. I did not find Kasim to be a particularly impressive witness, though I found him to be more guileless rather than deliberately obfuscatory.

64. Perhaps the most notable facet of Kasim's evidence was that Dr Wilkinson had to re-examine him at some length to counter the poor impression which he had made in cross-examination by Mr Fennell. In particular he seemed genuinely flummoxed when asked what he understood by the term "joint senior partner".

65. He had clearly given no real thought to how a buy out of the partnership assets would be achieved, as I make clear towards the end of this judgment when dealing with Issue 5.

66. Nevertheless I do not dismiss his evidence entirely and I accept some of the evidence which he gave, in particular about a book being used by Khalid to record cash receipts. Kasim gave evidence about a book used to record all of the cash receipts, including from contract kill income to be off-book. There is no book otherwise recording the contract kill income and all property expenditure and there had to have been one. That I find is the now missing yellow book.

67. **Hashim:** he was cross-examined for just over half an hour on the third afternoon. He maintained that the witness statement was in his words, not those of his solicitor, although when it was put to him that his evidence was not a fixed event, he rather

weakly said that he could not recall; when it was put to him that it was fluid and changeable, he again said that he could not recall; when it was put to him that it was vulnerable to external influences, he again said that he could not recall. He denied that he was incapable of remembering what happened and stated that he remembered everything in his statement.

68. He accepted that Ahmed was the head of his side of the family and he asserted that Ahmed had come off the partnership so that he could go on (“he came off when I went on”). As to the position between his father and Ahmed, he said that after Ahmed came off the partnership he was not involved in the management of the business, but was on the factory floor with Hashim. Khalid was the senior partner, he was in charge of orders and in charge of terms of sales and of the vehicle fleet (“Khalid was the elder; in our religion, he is treated with respect”). It was Khalid who had found his nephew his house and told Ahmed about it; it was Khalid who asked Hashim if he liked the house.

69. He did not know about Mumtaz ceasing to be a partner nor did he know about Sufwan’s tax returns. It was not in issue that eventually Hashim was promoted to the role of production manager and then ran the factory. He also carried out the maintenance with his father. Eventually he was also tasked with hiring and firing of production staff and did the time sheets and payroll. Hashim was also in charge of technical control systems for which suitable qualifications which he had: Level 2 in Principals in Hazards and Animals Critical Control Points (HACCP), Level 2 in Food Safety for Manufacturing, Level 3 in Food Safety Supervision for Manufacturing and Level 3 in HACCP Food Manufacturing. He was also the qualified animal welfare officer.

70. Mr Fennell asked him about whether payments to him went through the books and he asked “What do you mean?” Mr Fennell took him to the 2011 accounts and asked him whether he had ever seen them before, to which he replied “No, Khalid never showed this to me”. The point that Mr Fenell was making was that he could hardly have lived on his drawings of £18,000, £15,000 and £11,000 respectively for the three years from 2011 to 2013, to which his plaintive reply was “I have no idea what this is about. I was not shown these by Khalid”. He said that he had no other

expenses and that he was still living at home. Mr Fennell put it to him with reference to the 2014 accounts that he could not live on drawings of £18,000 and that he had made up his evidence because he must have had far more than that, to which his reply was "How can you say that? Khalid was in charge of all finances; he kept me away from it." Mr Fennell put it to him that he did his job very well, that his job was hugely demanding and yet that all he was being paid was less than the minimum wage; that evidence was totally unbelievable. To that he did not reply. In re-examination he maintained that he had not seen the annual accounts. He was just paid his wages of £100 per week when he started, for about 2 years, then £250 per week and when he got married in 2013 he was given £450 per week, which was counted as drawings. He was just paid those wages and nothing else. The original £100 was paid in hand; the balance was by bank transfers.

71. Overall Hashim added little to the evidence and I have not had cause to delve into his evidence in much greater detail than I have set out above. The clear impression which I had from his evidence was that Hashim kept his head down and concentrated on the more technical side of the business (food safety, safety supervision and animal welfare) which he did very well and to a very high standard.

72. Dr Wilkinson in his written closing submissions spent some time dealing with the evidence of the Claimants' witnesses. Mr Fennell did not essay a similar exercise, although he did comment in closing on the evidence of the various witnesses. That is no criticism of him, particularly given the volume of the evidence and the multiplicity of the issues for determination. In any event I had largely formed the impressions which I did of the Claimants' witnesses for myself and found myself agreeing in large measure with the criticisms of Dr Wilkinson. If I have not essayed as detailed a discussion of my impressions of Ahmed, Kasim and Hashim as I have of Mumtaz, Sufwan and Isha, that is because in large measure I was more broadly in agreement with Dr Wilkinson rather than Mr Fennell, although as explained above I have reservations about certain of the aspects of the evidence of Ahmed and Kasim as well.

73. Mr Iqbal, Mr Ahmed and Mr Rana (in that order) all gave short evidence in the first half of the third afternoon, before Hashim gave his evidence.

74. **Mr Iqbal:** Mr Iqbal was currently an employee of Medina Group Ltd as a senior commercial manager, although originally he and his brother ran a partnership called IQ butchers. His family had been buying chickens from Medina, originally for sale in their family shop in Dewsbury since 1992. When Medina started the red meat operation, Mr Iqbal and his brother moved their business to Medina as it was virtually on the doorstep. His evidence related to the volume of business which had and his brother had done with Medina Poultry. He explained that:

“10. All our animals were supplied by Andrew Atkinson Livestock of Harrogate Ltd. We did business with them for nearly 30 years.

11. We would have the animals delivered to Medina direct from our supplier in Harrogate. After, the animals were processed we would be issued handwritten invoices, we paid monies direct to Khalid. I recall that it was mainly in cash. Sometimes he would call for the money to be dropped off at his house, which I did on many an occasion. I remember this because the payments were made to him at his home late in the evening.

12. On average we slaughtered around 900 animals, and our average bill was around £6,000 per week. However, near Muslim festive days, such as Eid it would be around £20,000 per week. I know this because I would deal with the money side of the business.

13. We were with Medina for around 5 years in total until 2009. For the five years they were our only exclusive slaughterhouse. We did not use anyone else.

...

15. My brother, Shahzad was responsible for buying and production side of the business whereas I did the selling door to door. I would also load and collect the lamb and sheep from Medina. Shahzad also did the finances.

16. The charges for contract kill were around £5 per animal but varied. Lambs were cheaper whereas sheep were dearer. We did a substantial business with Medina. The First Defendant, Ahmed, has shown me Medina's ledger record sheet which only has about 27 entries in total under our name. These are selective and do not reflect the business we did with Medina. I have obtained our activity report from Atkinsons which paint a totally different picture. We did business with them in millions. However, the amounts shown in Medina's ledgers do not reflect the number of animals that went through their slaughterhouse.

It would not be too difficult to work how much money we paid to Khalid by multiplying the number of animals delivered by £5.00 on average.

17. Khalid also did not reimburse us for the skins and ropes. Either he or Medina kept the money. It happened during all the festive periods when the kill numbers were higher than normal and Khalid promised that he would correct it but never did as he knew we were not in a position to argue.

18. As well as us there were around the same [time] others using Medina for contract kill and I recall the following businesses:

- i) Al Aqsa Halal
- ii) Mustafa Premier Halal
- iii) Lancashire Meats (Kham Ghalib)
- iv) Raffi Halal Meats
- v) Qamar Zaman.”

75. Mr Fennell put it to Mr Iqbal that he was not involved in selling animals to Medina, but he explained that both he and his brother were involved in that aspect of the business and that he was aware of what his brother was doing on his side of the business. It was put to him that he had made up his evidence about going to Khalid's house late at night to take cash payments to him, but he rebutted the charge and was not shaken in his evidence on the point. He had obviously been to the house and could draw a plan of Khalid's personal room where they had sat down together. He was not a friend of Khalid and had no other reason to go to his house. I accept Mr Iqbal's evidence. He knew that a lot of livestock was sent straight to slaughter at Medina and that the business had been put through Khalid. The invoices adduced from Andrew Atkinson were real sales and were income which never went through the books of the partnership. Mr Fennell submitted that his evidence about going to the house late at night to deliver large sums in cash was inherently implausible, but given the wholly informal way in which the Medina business was conducted I do not find that inherently improbable at all, although I take Mr Fennell's point that the matter was not put to any of the Claimants' witnesses (although given the fact of Mumtaz's and Isha's non-involvement in the business I doubt that they could have given evidence on the point in any event).

76. **Mr Ahmed:** Mr Ahmed had been a meat wholesaler since 2000. In the early days he had traded in partnership with Mr Anwar UI Haq under the name of Al Aqsa Halal. Mr Ahmed's witness statement was to the effect that:

“4. At the time we did not have any premises as such, we would take prebooked orders, collect meat from the supplier and deliver direct to butcher shops. We did this daily. The business that we generated was not exclusive to us as the buyers, mostly shop keepers, would also purchase from other suppliers and nor were they bound to buy from us. We had many a competitor. Moreover, we were always fearful that drivers might leave us one day and start up on their own once they had learned the ropes. That's how easy it is to set up in wholesale side of the business. All you need is a refrigerated van. Load up the van and call on shops, door to door.

5. Between 2007 and 2009 we branched out and started buying our own animals for slaughter. We would have these killed by Medina Meat and Poultry Group on contract kill basis. We would have our animals delivered to their premises to be processed. We were charged around £4.00 up to £6.00 per animal. The prices varied according to whether it was a lamb or sheep.

6. All our business dealings were with Khalid. We would be issued handwritten invoices which we paid mostly by cheque, sometimes cash I think but cannot with passage of time remember whether these were open cheques but could have been.

7. I have been shown a number of invoices which appear as item 22 on the Defendants' disclosure list. I confirm that these relate to Al Aqsa contract kill animals and we made payments in full on weekly basis to Khalid: and because of this I know that no money was due when Medina shut the contract kill business.”

77. Mr Fennell submitted that Mr Ahmed's statement should never have been served. He was clearly unable to understand its contents. That would, he submitted, have been immediately obvious to the solicitor interviewing him, as it was to everyone in the Court when he struggled to read the oath from the card. If Mr Ahmed was to give evidence at all, it should have been in the form of a statement in a language which he spoke fluently with a certified translation. The words in the statement were obviously those of the solicitor and the statement should be disregarded in its entirety.

78. Dr Wilkinson countered that Mr Ahmed was clearly not a well-educated man, but he was insistent that he could read, albeit with more difficulties than many. Any slowness in literacy should not disqualify his account. He had read his statement and gave live evidence in Court that Al Aqsa had put a lot of contract kill business through Medina, paying Khalid and keeping up on its bills. When taken to invoices, he confirmed that they were the ones and had been paid and were in respect of sales actually made.

79. Mr Ahmed gave his evidence in English. He verified his witness statement in English, was cross-examined in English and was re-examined in English. It was clear that he had difficulty in reading English, but he was able to understand English, converse in English and be questioned in English. Thus the question is whether the preparation of a witness statement in English by a bilingual claimant is compliant with the CPR or in breach of 32PD 18.1 which states that:

“The witness statement must, if practicable, be in the intended witness’s own words and must in any event be drafted in their own language.”

80. I was not addressed by counsel on the case, but have done my own research on the case of ***Afzal v UK Insurance Ltd*** [2023] EWHC 1730 (KB). In that case Freedman J referred at [24] to the then Chancery Guide at 19.13, which stated:

"If a witness is not sufficiently fluent in English to give his or her evidence in English, the witness statement should be in the witness's own language and a translation provided. If the witness is not fluent in English but can make himself or herself understood in broken English and can understand written English, the statement need not be in his or her own words provided that these matters are indicated in the statement itself. It must however be written so as to express as accurately as possible the substance of his or her evidence."

81. At [25] the Judge added that the Practice Direction should be understood in the context of the persuasive guidance of the Business and Property Courts Guide, from April 2021, which states at para.3.3:

“A trial witness statement must comply with paras 18.1 and 18.2 of Practice Direction 32, and for that purpose a witness’s own language includes any language in which the witness is sufficiently fluent to give oral evidence (including under cross-examination) if required, and is not limited to a witness’s first or native language.”

82. He continued:

“37. In my judgment, assistance is derived from the references to the guides, and especially to the extract from the Business and Property Guide because this postdates in time the provisions of CPR 32, PD 18.1. It is significant in my judgment that the authors of the guide referred to the witness statement having to comply with paras.18.1 and 18.2 of Practice Direction 32. They could not have been taken then to have been intending to give a new meaning to paras.18.1 and 18.2, but rather to have spelled out what the meaning and effect of 18.1 and 18.2 were.

38. The reference to "for that purpose the witness's own language includes any language in which the witness is sufficiently fluent to give oral evidence (including under cross-examination if required) and is not limited to a witness's first or native language" are in my judgment words of clarification rather than gloss. Perhaps it had occurred to them that there was a need for an explanation to be set out, but in my judgment this points significantly to the correct understanding of the meaning and effect of paras.18.1 and 18.2.

39. It does seem unlikely that it was intended that a separate regime would apply in relation to the Business and Property Courts as opposed to that which would apply in other courts that were not governed by that guide.

40. This construction accords with the purpose of the relevant Practice Direction. The background to it was the concern about what would happen to witnesses who were not proficient with the English language; the problems of vocabulary and nuance that were described by the Judge at paras.8 and 9 of her judgment. That does not mean that it was intended that those who were bilingual, or those who were sufficiently fluent in English to give oral evidence including under cross-examination, should not be able to give their evidence in English.

41. Attention has been drawn to the practical problems that would arise if the Practice Direction had a meaning, the effect of which would be that where somebody's native language was a foreign language but they were sufficiently fluent in English to

give evidence in English, that they would then have to prepare statements in that foreign language.

42. My attention was particularly drawn to the fact that there may be millions of people in England and Wales who are sufficiently fluent in English but have a different mother tongue or first language. There may be repercussions for access to justice, and indeed other considerations, in the event that they were required, notwithstanding their sufficiency in English, to provide a witness statement in their mother tongue.

43. All of these points simply give further force to my judgment that the intention of the provision at PD 32, para.18.1 does have the meaning referred to in the Business and Property Courts Guide; that a witness's own language includes any language in which the witness is sufficiently fluent to give oral evidence including under cross-examination if required.

44. It therefore follows that in my judgment the Judge was wrong to reach a conclusion that the language of the witness statement had to be the first language of the claimant, and that it was highly relevant that the claimant read, understood, conversed and gave instructions in English. If there were doubts about the proficiency of the claimant as to whether the claimant was sufficiently fluent, then that could have been tested with a view to considering whether the evidence should be excluded. There was no such exercise before the court.”

83. It is apparent from this that a witness's own language includes any language in which he is sufficiently fluent to give oral evidence, including under cross-examination if required. Mr Ahmed was able to give oral evidence, including cross-examination, in English. In that event the witness statement was drafted in his own language and did not need to be in the form of a statement in his mother tongue, a language which he spoke fluently, with a certified translation. I do not therefore accede to Mr Fennell's submission that the statement should be disregarded in its entirety. The weight to be accorded to it I shall consider in due course.

84. **Mr Rana:** Mr Rana worked for Ahmed in his company, Premium Poultry Products Ltd. Ahmed had set up that business in Bolton to supply poultry to local shops. Mr Rana was employed by Ahmed as a manager and to look after the day-to-day affairs. The main supplier was Medina Poultry, but they also sourced poultry from other sources. It was then sold wholesale in the Greater Manchester area. Ahmed would only call at the unit every other day, usually only for a few hours. Mr Rana's evidence

related to the two cheques totalling £65,000 to Sufwan. He explained in his witness statement that:

“6. In or about June 2016 Khalid came to collect cheques for previous invoices. He asked these to be made out in his son’s name. The cheques were in large amounts. I asked him as to why this was, he replied that Sufwan was looking to put down a deposit on a house. I then made out the cheques as asked. I remember this clearly as in my mind something was not right and I therefore decided to keep copies to cover myself. I normally would not do this as the cheque stubs are sufficient for record purposes. I can also confirm that this was the only time any cheques were made out to Sufwan.

7. When Ahmed turned up at the unit next time, I told him that Khalid had come around to collect payment but strangely he had asked for the cheques to be made out to Sufwan and I also gave Ahmed copies of the two cheques. Ahmed responded by saying as long as Khalid recorded the payment being received by Medina that would be okay. However, if Khalid disputed the money as having been paid we could produce the copy cheques. I remember it well as it was not normal to issue cheque payments to Medina as the usual method was by BACS.

8. I have been shown two cheques which appear as item 66 in the Defendants’ disclosure list and I can confirm these are the same copy cheques that were made out to Sufwan Pervaz on Khalid’s request.”

85. In his oral evidence he explained that Ahmed did not come into the office every day, but that he had a practice of pre-signing a batch of cheques for completion. Mr Rana said that he had a good relationship with Ahmed and that he trusted him. He always came and pre-signed the cheques. Mr Rana would tell him when he next came and gave him a note of the cheques which had been completed. He explained that in the case of these cheques, they were not written out by Ahmed, but only pre-signed by him. The person who had filled in the details of the payee and the amount on each cheque was Mr Mahmud Akhtar, the part-time bookkeeper on the staff. It was he rather than Mr Rana who filled in the details on the cheques as Mr Rana was not a literate man (he had been to school in Pakistan, but only until he was 16). He explained that there were 3 desks or tables in the same room in the portacabin which served as an office. Khalid had come in and asked for cheques to be made out in his son’s name as he had explained in his witness statement. All three – Khalid, Mr Rana and the

bookkeeper - had been present in the office when the cheques were completed with Sufwan's name and the amounts of the payments.

86. Mr Fennell submitted that Mr Rana's written evidence was that, in response to a request by Khalid, he made out the cheques as asked, but in oral evidence he conceded that he did not make out the cheques at all: rather Ahmed signed them and his bookkeeper wrote the payee details and the amounts. It was, he submitted, inherently unlikely that Ahmed would have pre-signed blank cheques to be completed by others in his absence. It was overwhelmingly likely that Ahmed signed the cheques knowing that the payee was Sufwan and intending to pay the money to him.

87. Dr Wilkinson submitted that Mr Rana also was not an educated man and that his account as to how the cheques came to be written and pre-signed might well appear unusual, with the bookkeeper being present in the portacabin when Khalid visited, but he was not lying to the Court and, whilst it might seem unusual for an employee to have hold of pre-signed cheques from the boss, that was normal for this particular business and that was how things were done in practice.

88. I accept Mr Rana's evidence as to the circumstances in which the cheques to Sufwan were completed. He was not shaken on the relevant points in cross-examination. Mr Fennell also cross-examined Ahmed on the point and he reiterated that he did pre-sign blank cheques. Mr Fennell submitted that it was inherently unlikely that Ahmed would have pre-signed blank cheques to be completed by others in his absence, but again given the informality with which the affairs of the various family businesses and companies were conducted that does not surprise me, particularly if Ahmed was not coming into the Premium Poultry office every day. (The wisdom or prudence of such a practice is another matter.) Ahmed would pre-sign the cheques, but he did not complete them and I accept Mr Rana's evidence as to how the two cheques to Sufwan came to be filled in by the bookkeeper pursuant to Khalid's request on the day. I do not accept that Ahmed signed the cheques knowing that the payee was Sufwan and intending to pay the money to him.

89. **Mr Davidson:** on the sixth day of the trial I heard evidence from the joint expert, Mr Raymond Davidson. Mr Davidson is a forensic accountant of over 30 years'

standing and has extensive experience in the provision of expert reports and conducting investigations in both civil and criminal matters. He has attended Court on many occasions to give evidence.

90. By letter dated 10 July 2023 Mr Davidson had been jointly instructed to:

“a) address issues relating to income and expenditure, business assets and disposals, capital introduction and account of drawings of the Partners and the First Defendant, of and into Medina Poultry, the Abattoir Business, Medina Oil and Medina Group Limited between 7 July 2009 and 7 July 2016; and

b) Finalise cessation accounts and balance sheet as at 7 July 2016”.

91. The specific issues which he was instructed to address were:

“a) An account of all Partnership dealings and transactions between the partners after the end of the last settled account between the partners namely 31 July 2014 until the date of Khalid's death namely 7 July 2016;

b) An account of the credits property and effects belonging to the Partnership at 7 July 2016;

c) An account of the Partnership debts and liabilities at 7 July 2016;

d) An inquiry as to what has become of the Partnership property and whether any and if so what parts thereof remain on the Property or are undisposed of;

e) An inquiry as to whether any and which of the Partnership debts and liabilities have been since paid or satisfied and by whom and out of what fund;

f) The rental income from property leased to Premier Halal Meats Ltd for three years between 2009 and 2011 the rental income of which was received by Khalid not accounted to the partnership;

g) Motor vehicles comprising of a Bentley YG65 FKP, Mercedes YR64 NZW and BMW OU16 RFZ purchased with partnership money but retained and disposed of by Khalid's family following his death;

- h) Payments received from 2009 from Contract Kill (third parties who use the lamb processing plant to slaughter animals and pay fixed fee per animal slaughtered), but not accounted to the partnership;
- i) Proceeds of a motor insurance claim on a Rolls Royce which was a partnership asset but was damaged in an accident resulting in an insurance payment of £134,250 paid to Khalid of which only £100,000 was paid to the partnership;
- j) Two cheques made payable to Sufwan dated 24 June 2016 and 28 June 2016 each for £32,500 from Premium Poultry Products Limited relating to invoice 71488 which not paid to the partnership;
- k) The payments, dealings and transactions relating to Khalid's construction of houses, using money belonging to the partnership, one being at 362 Birkby Road, Huddersfield, and two four bedroom detached houses in the grounds of 362 Birkby Road, Huddersfield;
- l) Proceeds of the sale of machinery and equipment from the lamb processing plant sold for cash and which was taken by Khalid totalling approximately £17,140;
- m) The sum of £290,000 paid out of the partnership to Khalid to discharge his mortgage; and
- n) The payment of bad debts, owed to the partnership but collected by Khalid”.

92. On the basis of those instructions, Mr Davidson had prepared a report dated 22 January 2024, a supplemental report dated 4 April 2024 and answers to a list of questions from the Defendants on 14 June 2024. As one would expect, Mr Davidson was a very impressive witness and I accept his evidence. Where I find that the Defendants' case is not made out in particular instances, that is not because I doubt the evidence of Mr Davidson, but because I find that a particular aspect of the case is not made out on the balance of probability on the evidence of the witnesses of fact in the light of the documentary evidence.

93. **Khalid:** by definition Khalid is not here to give evidence since it was his death on 7 July 2016 which triggered the dissolution of the partnership. I am therefore faced with the situation of having to make findings about him in the absence of any direct oral evidence from him. I have considered very carefully the extent to which I should

do so. In significant measure my conclusions depend on the documentary evidence and also the quality of the evidence of Ahmed since the essence of the dispute (which clearly did exist, as evidenced by the emails from March 2015 onwards) was as between the two brothers and I have expressed my reservations about various aspects of the evidence of the other family witnesses, as well as my reservations about certain aspects of Ahmed's evidence. Nevertheless, I am satisfied that a sufficiently clear picture of Khalid and his activities emerges from the evidence and that I can properly make the findings about him which I do.

Fact Finding

94. In this context I refer to (and adopt) what HHJ Matthews (sitting as a Judge of the High Court) said in ***Smith & Patrick v Crawshay*** [2019] EWHC 3507(Ch)

“15. In this case there is an acute conflict of evidence on certain points. That means that I must first decide what happened, before being able to apply the law to the facts. The lawyers involved in this case will know this already, but for the benefit of the non-lawyers, I make clear that judges have no superhuman skills when it comes to deciding what happened. They must rely on the evidence in the case, and on their own assessment of the witnesses that they observe giving evidence. Where *hearsay* evidence is admitted, and there is no witness to observe, the judge gives that evidence such weight as he or she thinks fit, bearing in mind that the witness has not sworn (or affirmed) to tell the truth, cannot be cross-examined or asked any supplementary questions, and cannot be observed by the judge whilst giving evidence.

16. Generally speaking, a party to civil litigation who asserts something has the burden of proving it. Civil judges decide what happened on the balance of probabilities, that is, that a thing is true if the judge thinks, on the basis of the evidence which the parties have adduced, that it is more likely to have happened than not. That means that decisions made by civil judges are not necessarily the objective truth of the matter. Instead, they are *the judge's assessment of the most likely facts* based on the materials *which the parties have chosen* to place before the court. But, whilst judges give reasons for their decisions (as I am doing now), they cannot and do not explain every little detail or respond to every point made during the trial. These reasons must be read in that light.

17. One problem in this case is that the events concerned go back more than twenty years. But human memory is well-known

to be fallible. In *Gestmin SGPS SPA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm), [16]-[20], an experienced commercial judge, Leggatt J (as he then was), commented on modern research into the nature of memory and the unreliability of eyewitness evidence. Another problem in this case is that the testatrix, one of the main protagonists, who was involved in many of the important events which fall to be considered, is now dead and therefore cannot give evidence about what happened. For these two reasons, therefore, the documentary evidence available to the court becomes even more important.

18. In the *Gestmin* case, Leggatt J said this (at [22]):

[I interpose the preceding paragraph into the narrative:

“21. It is not uncommon (and the present case was no exception) for witnesses to be asked in cross-examination if they understand the difference between recollection and reconstruction or whether their evidence is a genuine recollection or a reconstruction of events. Such questions are misguided in at least two ways. First, they erroneously presuppose that there is a clear distinction between recollection and reconstruction, when all remembering of distant events involves reconstructive processes. Second, such questions disregard the fact that such processes are largely unconscious and that the strength, vividness and apparent authenticity of memories is not a reliable measure of their truth.”]

"22. In the light of these considerations [about the unreliability of memory], the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

I propose to adopt a similar approach.”

95. As he also said in **James v Scudamore** [2023] EWHC 996 (Ch) at [18]:

“Reasons for judgment

18. ... judges are not obliged to deal in their judgments with every single point that is argued, or every piece of evidence tendered. They deal with the points which matter most. Moreover, it must be borne in mind that specific findings of fact by a judge are inherently an incomplete statement of the impression which was made upon that judge by the primary evidence. Expressed findings are always surrounded by a penumbra of imprecision which may still play an important part in the judge's overall evaluation. Put shortly, judgments do not explain all aspects of a judge's reasoning, although they should express the main points, and enable the parties to see how and why the judge reached the decision given.”

96. That echoes the words of Lewison LJ in **Fage UK Ltd v Chobani UK Ltd** [2014] EWCA Civ 5 at [115]:

“It is also important to have in mind the role of a judgment given after trial. The primary function of a first instance judge is to find facts and identify the crucial legal points and to advance reasons for deciding them in a particular way. He should give his reasons in sufficient detail to show the parties and, if need be, the Court of Appeal the principles on which he has acted and the reasons that have led him to his decision. They need not be elaborate. There is no duty on a judge, in giving his reasons, to deal with every argument presented by counsel in support of his case. His function is to reach conclusions and give reasons to support his view, not to spell out every matter as if summing up to a jury. Nor need he deal at any length with matters that are not disputed. It is sufficient if what he says shows the basis on which he has acted. These are not controversial observations: see *Customs and Excise Commissioners v A* [2002] EWCA Civ 1039 [2003] Fam 55; *Bekoe v Broomes* [2005] UKPC 39; *Argos Ltd v Office of Fair Trading* [2006] EWCA Civ 1318; [2006] UKCLR 1135.”

Other Evidential Matters

Pleading Points

97. In opening Mr Fennell submitted that I should make preliminary rulings in the case of Issue 12 (now Issue 18) in relation to the personal expenditure of £215,000 and Issue 15 (now Issue 17) in relation to the alleged misappropriation of cash of £134,785.

98. As to the former, Mr Fennell submitted that the claim was unparticularised. Mr Davidson explained that he had been given a list of alleged payments by the Defendants and that very little in the way of information had been provided to him in support of the payments. He went on to conclude that there was some double counting in the figures provided. Mr Fennell submitted that the Defendants had not asserted a proper pleaded case and had adduced no proper pleaded evidence and the issue should not be allowed to proceed.

99. As to the latter, he submitted that the evidential basis for the claim was thin. It was based on a handwritten list of payments and the Defendants had cherry picked a number of entries and asserted that Khalid's drawings were to be amended accordingly without giving credit for all of the other payments, including those received by them. There was no properly particularised pleaded allegation of misappropriation and the issue should not be allowed to proceed.

100. In both cases I declined to make a preliminary ruling. I took the view that I should hear the evidence *de bene esse* and make my ruling as part of my judgment.

101. Dr Wilkinson submitted that Mr Fennell's submissions did not preclude the Court from making findings on the issues or granting the relief sought in respect of them. That was for three reasons. First, whilst these proceedings were subject to CPR Part 7, it was relevant to note that partnership disputes and applications for accounts often proceed under Part 8 which are not subject to the same strictures of Part 7 pleading requirements.

102. Second, it is (and was always) the Defendants' clearly pleaded case that there were things not shown in the accounts which should have been declared, but which were not, which Khalid had taken and for which his estate must account; no one had been confused or misled about that case and everyone was clear about the issues raised. Indeed, the list of issues was agreed. It was not a case, for example, where

the Defendants avoided pleading impropriety. Paragraph 31 of the Re-Amended Defence and Counterclaim specifically pleaded misappropriation. It alleged the taking of money which was not Khalid's and to which he was not entitled and for which he must account. That was in fact fraud on the partnership. Whilst that could perhaps have been pleaded in more clearly expressed terms, it did not mean that the Defendants were not able to proceed to argue that issue on a trial which had just taken place.

103. Thirdly, the jurisdiction for opening accounts was not one dependent on proof of fraud (if matters had indeed been settled by accounts, which was a separate issue). Fraud need not be established where the Court could instead grant relief as a result of errors in the account. Guidance given in *Hayel v Hayel* [2024] EWHC 885 (Ch) in response to similar pleading points was apposite here:

“24. The Claimant complains, however, that although the counterclaim is based on alleged errors, the First Defendant has come close to making un-pleaded, or at any rate complex and unparticularised, allegations of serious breach of duty on the part of the Claimant in seeking to establish such errors, but has not actually made any such allegations. On that basis, the court is urged to make no findings that the Claimant has been in breach of his duties, and in any event to proceed with anxious caution.

25. ... In the first place, if the First Defendant can obtain the relief he seeks without having to establish a case of wrongdoing, I see no reason why he should not do so. In the second place, the First Defendant's case is set out in a way which makes it clear exactly to what the Claimant needs to respond. In the third place if, in the process of establishing the existence of an error, one also establishes what needs to be done to correct it and why, there is no point at all in failing to do so right away.

26. The conventional approach to an attempt to reopen accounts or to obtain permission to surcharge and falsify items within accounts is to adopt a 2-stage process. The first stage is to obtain permission to reopen them, or to give notice of the particular items to be challenged, and the second is to retake the accounts, or to correct the particular items. The first stage can often be carried out in a fairly summary way. That did not happen in the present case, when the first stage has been the subject of an extensive trial. In the present case the First Defendant invited me, effectively, to carry out the first stage and, at the same time, as much of the second stage as I found I could. Counsel for the

Claimant accepted that this was the basis upon which the matter had been case managed through to trial, and the evidence had been prepared. I see nothing wrong with it in principle. The 2-stage approach may be a matter of practice, but the practice may be departed from, and the two stages may be collapsed or shortcut where convenient and just, as it is here. A similar approach was adopted, for example, in *Montgomery v. Cameron & Ors* [2007] Scot CS CSOH 63 (23 March 2007), and is referred to in *Lindley & Banks, Partnership*, 21st ed., at 23-122. This does not affect the burden of proof, which I accept remains upon the First Defendant throughout. On that basis, and by agreement, the First Defendant opened the case and called his witnesses first.

27. The Claimant also sought to argue that the First Defendant had adopted an incorrect approach, by bringing a claim that accounts should be reopened without there having been any antecedent judicial findings or admissions as to breaches of duty on the part of the Claimant, so that at the outset of the trial the First Defendant did not in fact know if there were any errors at all. If this is a different submission from those with which I have dealt in the preceding paragraphs, I do not follow it. Distinct errors were alleged and the allegations were supported by evidence, and it was upon that basis that the First Defendant sought to meet the Claimant's case that the accounts in question were settled accounts. The trial was largely concerned with establishing whether there were such errors so that the accounts should be reopened and, if possible, corrected."

104. In that event the Defendants did not have to prove dishonesty to reopen any matters which were settled by accounts (if they were indeed settled). They could, in effect, show that Khalid was at fault for the errors in the account and that would suffice for the Court's jurisdiction to reopen accounts (if required) and to require Khalid to account for money to which he was not entitled which he had given himself and his family.

105. Issue 12 (now Issue 18) was pleaded as follows in paragraph 31 of the original version of the Defence and Counterclaim:

"31. Following Khalid's death, it has come to light that, in breach of his duty of good faith, some of the outstanding bad debts had been collected by Khalid but not accounted for to the partnership, that Khalid has used the partnership money to settle his personal credit card balances, to lend money to his family, to pay private tuition fees, the payments, dealings and transactions of Khalid's

construction of houses, that Khalid used money belonging to the partnership to pay for the construction of houses for the personal use and benefit of him and his immediate family, one being at 362 Birkby Road, Huddersfield, and two four bedroom detached houses in the grounds of 362 Birkby Road, Huddersfield and to pay £80,000 to his brother in law Pervaiz Iqbal.”

106. In the List of Issues it was recorded as:

“The personal expenditure. Did Khalid use Partnership money to which he was not entitled for himself and his family including but not limited to:

- a. to settle his credit card bills?
- b. to lend money to his family?
- c. to pay tuition fees?
- e. to meet construction costs for building work at 362 Birkby Road (see para 6.1 of the forensic accountant’s report)?

If so, what adjustment, if any, needs to be made to the partnership accounts and/or his account?

107. It is slightly differently formulated as Issue 18, but the substance is the same. Paragraph 31 of the originally pleaded case was stated to be the source of the allegation, both generally and with regard to the credit card bills, the loans and the tuition fees. For heads (c) and (e) [sic] Paragraph 52(1)(a) and Paragraph 52(9) of the originally pleaded case are said to be the sources, although those references must be to Paragraphs 52(7) and (11)(a):

“52. As part of the accounts, the Defendants will seek directions and orders for an account as to:

...

(7) the payments, dealings and transactions relating to Khalid’s construction of houses, using money belonging to the partnership, one being at 362 Birkby Road, Huddersfield, and two four bedroom detached houses in the grounds of 362 Birkby Road, Huddersfield (as referred to in section 6 of the Report),

...

(11) In respect of the misapplication of Partnership money referred to above in paragraph 31 and not referred to in paragraph 52(1) to (10) above being:

a. the Partnership assets or sums due to the Partnership which were misappropriated and paid to Khalid and his family for their use and benefit and including the personal expenditure, tuition fees, advances to family members (as referred to in paragraphs 8.17 to 8.24 of the Report, and paragraph 8.34 of the Supplementary Report) ...”

108. Issue 15 (now Issue 17) was not originally separately pleaded, although I take it that it was encompassed within Paragraphs 31 and 52(11)(a) of the originally pleaded case.

109. In the List of Issues it was recorded as

“The allegation of misappropriation of cash. Did Khalid take cash of £134,785 without posting the same as drawings (see para 6.1 of the forensic accountant’s report)? If so, what adjustment needs to be made to any accounts?”

(Again it is slightly differently formulated as Issue 17, but the substance is the same.)

110. Whatever may have been the deficiencies of the originally pleaded case, the two issues are clarified in the list of Issues and it is apparent that they crystallised with the service of Mr Davidson’s original report and in particular Issue 12 (now Issue 18) as set out in paragraphs 8.17 to 8.24 of his report and Issue 15 (now issue 17) as set out in paragraphs 6.21 to 6.26 of his report. The pleaded case was amended to make specific reference to those paragraphs of the report (although in the case of the latter issue the reference was more generically to section 6 of the report rather than the precise paragraphs, but the source of the averment was clear enough). After service of the amended version of the Defence and Counterclaim, in conjunction with Mr Davidson’s report, the Claimants could have been in no doubt as to the precise case which they had to meet in relation to those two issues.

111. I therefore find against Mr Fennell’s preliminary objection and will consider the two issues on their merits.

The Defendants' Witness Statements

112. At the outset, Mr Fennell submitted that I should disregard the witness statements of the Defendants in their entirety due to non-compliance with CPR Part 57AC. Again I decided to hear their evidence *de bene esse* and to make my decision after the trial. Accordingly, Ahmed, Kasim and Hashim were all called to give evidence, in Ahmed's case for a whole day.

113. Mr Fennell submitted that they admitted that their statements did not comply with CPR PD 32 at para. 18.1 and PD 57AC at para. 3.3 in that they were not in their own words. He submitted that, when the obvious copying was challenged at the pre-trial review, the Defendants filed and served revised statements containing the following identical final paragraphs

“My statement has been prepared by my solicitor having spoken to all of the Defendants and [he] has suggested wording when drafting the statements which is common to more than merely my statement. I have considered the wording of my statement very carefully and want to confirm to the Court that I am happy with this wording and want to adopt it as my own.”

114. The witness statements were not only exposed to all of the risks of contamination identified in PD 57AC and the lines of cases running from ***Gestmin*** at [15-23]. They were the product of the Defendant's solicitors, not the genuine recollection of the Defendants themselves.

115. No application was made to strike out the witness statements at the pre-trial review: the copying and pasting was referred to at the pre-trial review on the basis that it would be a matter for the trial judge as to what weight, if any, to attach to them, see ***Cumbria Zoo Ltd v The Zoo Investment Co Ltd*** [2022] EWHC 3379 (Ch) at [42-59] for discussion of the options open to the Court and discussion of the relevant prior authorities, including ***Greencastle v Payne*** [2022] EWHC 438 (IPEC). It was not simply for the parties to determine how the Court should deal with non-compliance with PD 57AC.

116. In closing, Mr Fennell again submitted that the Court should disregard the entirety of the evidence given by and on behalf of the Defendants, save to the extent that it was inherently probable and/or corroborated by contemporaneous documents. As to the Defendants' evidence, each of them refused to accept the truth of the final paragraph inserted when the statements were re-served. Each one of them maintained that the words were his own, despite the admission that the words were those of their solicitor, Mr Suleman which each Defendant had "*considered very carefully*" and "*want[ed] to adopt it as my own.*" Even if they had been honest witnesses, Mr Suleman's conduct in speaking to all of the Defendants and then suggesting the wording for each of them, instead of following the approach of one-on-one interviews clearly set out in PD 57AC, meant that there is a strong likelihood of their recollection being contaminated.

117. Dr Wilkinson for the Defendants countered Mr Fennell's submission on three grounds. First, the matter was really a jury question, not one about procedural compliance. To dress it up otherwise missed the point. The Court had the statements and had heard the evidence of the witnesses on them. Having done so, either the Court would be satisfied that the statements contained the witnesses' evidence, or not. If the Court was not satisfied, then the fact the statements were expressed in parts by using wording which was common with other statements and drafted by solicitors was, candidly speaking, the least of the Defendants' worries, but on the other hand, if having heard the evidence the Court was satisfied that the statements contained the witnesses' evidence, the point was really a non-point.

118. Second, the Claimants' reliance on both ***Gestmin*** and ***Cumbria Zoo*** went too far:

(1) ***Gestmin*** was not authority for the proposition that the evidence of the witnesses in this case was bad for unconscious bias. The entire branch of philosophy known as epistemology – how we know what we know – has still not been reduced down into a narrow set of procedural rules as Mr Fennell seemed to suggest. It was overly simplistic to contend that the involvement of a solicitor in formulating statements contaminates all of the witnesses' recollection or indeed that, if PD 57AC is complied

with, the evidence will be untainted and unbiased, but if not then it will be completely unreliable.

(2) **Cumbria Zoo** was not a case about common wording or solicitor's wording, but about submissions being made in statements to argue the case and the value of those submissions being worthless. The evidence of the Defendants and their witnesses was not replete with submissions (unlike the statements of the Claimants and Isha). They were criticised instead about using their solicitor's language. That was not what **Cumbria Zoo** was about. As in **Cumbria Zoo**, the approach adopted by the Defendants was not to cross-examine witnesses on their submissions where they argued the case, but to focus on the matters of fact which they say they recalled.

119. Third, until technological advances enabled witness statements to be taken without involving a solicitor, a lawyer's input was inevitable. Language was also not property (outside of copyright). Are these Shakespeare's words or mine? Witnesses will always want to expand their vocabulary and to adopt others' words where they more succinctly explain the phenomena which they are trying to describe. It was not unusual for statements to contain wording suggested by solicitors, especially where more than one person is describing the same thing. If the same thing were expressed in different ways just to avoid using the same wording, that would be artificial and unnatural.

120. I do not accede to the submission that I should disregard the evidence of the Defendants in its entirety. In my judgment, the appropriate course is to admit their evidence and to give it such weight as is appropriate in the circumstances.

121. As to the submission that the words in the witness statements were those of their solicitor and not their own words, Mr Fennell perfectly properly put the point to each of the Defendants and each of them asserted in response that the words were their own words and not those of their solicitor. I am satisfied that the certificate at the end of the statements reflects the process which was gone through in the production of the statements, namely that the statement in each case was prepared by the solicitor, having spoken to all of the Defendants. When drafting the statements, he suggested

wording which was common to more than merely the individual statement. In each case the witness considered the wording of his own statement and confirmed that he was happy with that wording and wanted to adopt it as his own. That does not make the statement the solicitor's words rather than the individual Defendant's words. The precise weight to be ascribed to such statements is another matter.

122. It was also put to them that, having reread their statements several times, their evidence was not reliable. Again, each of them asserted in response that their evidence was reliable. (How reliable the Court finds it is another matter, but that is not a basis for excluding it or disregarding it altogether.)

123. I entirely accept the point that, particularly in Kasim's and Hashim's statements, there are passages which are identical or virtually identical, although for the most part they relate to matters of background rather than matters in issue between the parties which I have to decide. As to their accounts of the fire at the partnership premises on 16 July 2016, Kasim on his own admission was not there on that day and I have not made any findings on the origin of the fire (or indeed on any other matters of alleged criminality), as I make clear below.

124. I agree with Dr Wilkinson that **Cumbria Zoo** was a very different case. In that case as the Judge found:

"47. Ms Janette Kemp, the Managing Director of the Defendant, signed a witness statement (her third in this litigation) for the purpose of the trial. The certificate of compliance was signed by Ms Kate Andrews, who signed as a partner in Hamlin's solicitors.

48. The statement is littered with comments and expressions of belief many of which can only at best be based on unattributed hearsay. In paragraph 33, under the heading "Reliance on Witness Evidence", Ms Kemp states:

"Much of the argument depends upon the differing accounts and interpretations of the parties and it is understandably difficult for the Court to decide which version of events is more accurate. I therefore believe it is relevant to initially consider the consistency, or otherwise, of the accounts being given, how this is supported by the hard written and photographic evidence and how this

reflects upon the reliability or otherwise of the main witnesses."

49. She proceeds over the following 21 paragraphs to scrutinise various documents, carefully explaining to the reader how she says those documents undermine the Claimant's case. The witness clearly wishes the reader to be in no doubt about what she is doing, given that in paragraph 48 she concludes one section of commentary by saying,

"... I submit that the clear written evidence covering a considerable period of time and involving Karen Brewer, her co-directors and other advisers clearly shows that any statement made by them cannot be relied upon as being truthful."

50. The witness statement thereby flatly contradicts the injunction in paragraph 3.6(4) of the Appendix to the Practice Direction against "commentary on other evidence in the case (either documents or the evidence of other witnesses), that is to say set out matters of belief, opinion or argument about the meaning, effect, relevance or significance of that other evidence." Indeed, the statement reads as though the maker (and whoever certified compliance with the Practice Direction) considered that it was positively desirable to include such commentary."

125. The witness statement evidence of the Defendants in this case was not replete with submissions as was the case in the **Cumbria Zoo** litigation. The weight that I should ascribe to it is a different matter.

126. I do not therefore accede to the submission that I should disregard the evidence of the Defendants in its entirety. In my judgment, the appropriate course is to admit their evidence and to give it such weight as is appropriate in the circumstances.

127. What I do derive of assistance from the **Cumbria Zoo** decision is the point made in the judgment at [43]:

"Some aspects of the factual disputes can satisfactorily be resolved by reference to contemporaneous documentation. In other respects, there are gaps in the documentation that lead the court to apply the approach of the Court of Appeal in *NatWest Markets Plc v Bilta (UK) Ltd* [2021] EWCA Civ 680 at 51:

"[51] Faced with documentary lacunae of this nature, the judge has little choice but to fall back on considerations such as the overall plausibility of the evidence, the consistency or inconsistency of the behaviour of the witness and other individuals with the witness's version of events; supporting or adverse inferences to be drawn from other documents; and the judge's assessment of the witness's credibility, including his or her impression of how they performed in the witness-box, especially when their version of events was challenged in cross-examination."

Disclosure Generally

128. Both sides made a number of submissions about the deficiencies of the other side's disclosure.

129. I shall consider the Claimants' criticisms and then the Defendants' criticisms in turn before drawing all the threads together and reaching my conclusions on the disclosure matters.

The Medina Emails

130. Mr Fennell first submitted that the Defendants' evidence as to the preservation/alleged loss of the email accounts of Khalid and Sufwan was unsatisfactory.

131. On 4 August 2016 Reiss, the solicitors then acting on behalf of the Defendants, made a without prejudice offer in contemplation of this litigation. It was to be inferred that they had complied with their obligation to advise the Defendants to preserve data by that date at the latest. The date of the alleged transfer of the servers referred to in Mr Dean Turner's email of 27 June 2025 was January 2017, some five months later.

132. The text of Mr Turner's email, which was only produced on the Monday morning, the sixth day of the trial, was, Mr Fennell submitted, suspicious. It was not suggested that the email itself was concocted, i.e. that it was sent by someone other than Mr Turner. It was suggested that Mr Turner did not write the email himself, or at least not the whole of it. The language of the second paragraph in particular was remarkably similar to that used by Mr Suleman in the witness statements written by him and the correspondence sent by him. Moreover, it contained the sentence: "*All of the websites*

were moved over to a new webserver the email were not do to no need as they should have been downloaded by the clients.” That *might* conceivably be Mr Turner using the technical term “client” meaning a program which, as part of its operation, relies on sending a request to another program or computer, such that email clients receive email from email servers. That seemed unlikely, but the decision not to call Mr Turner meant that he could not be asked.

133. In cross-examination, Kasim denied any knowledge of any contact from anyone on his side with Mr Turner, despite the fact that Ahmed had clearly been in contact with him, which led to the email. No explanation was given by the Defendants for their failure to make the email known to the Claimants before Monday 30 June. It was made clear that any evidence from Mr Turner ought to come in the form of a witness statement, in Mr Turner’s own words, verified by a statement of truth and that Mr Turner should come to court on 30 June to give evidence. No explanation was given for the decision to rely on an email apparently prompted by communications between Ahmed and Mr Turner. The decision not to call Mr Turner to give evidence meant that he could not be asked about back-ups, storage of emails not downloaded and so on.

134. Dr Wilkinson submitted that, in cross-examination, it was put to Ahmed that he had had all of Khalid’s emails, that he always had had access to them and still had access to them. He denied those allegations. It was suggested that the email which he subsequently obtained from Mr Turner may have been fabricated (despite inspection of the metadata being offered). That was a desperate attempt to disparage Ahmed and it had no proper foundation. No adverse inference should be drawn against Ahmed at all. He did not get those documents nor appreciate that he could and the evidence was, as he suggested in re-examination, that the emails were no longer available and were deleted shortly after being downloaded: Mr Turner confirmed that in his email of 27 June.

135. Mr Turner sent an email to Ahmed at 9.20am on the morning of Friday, 27 June 2025 in which he provided information about the old email server. The server on which Medina Group emails/website were held was decommissioned in January 2017; that was done by the hosting company. All of the websites were moved to a new server, but the emails were not since there was no need to do so since they should have been

downloaded by the clients. Again in 2023 the server for the website was decommissioned and moved on to a newer webserver. That was done because of the need to keep all of the websites secure and to make sure that they had the latest security updates. The two servers which were decommissioned were due to the operating system being at the end of their life. There were two ways of accessing emails, POP/SMTP and IMAP, of which Medina was using the former. In POP/SMTP emails received were stored on the server and downloaded to the client's computer. These were deleted usually after 14 or 28 days if they had been downloaded. All of the sent items were not stored on the server at all. One could not sync any email on multiple devices i.e. mark as read/deleted and so on. (IMAP by contrast took up a huge amount of server space and was generally not offered by a normal hosting company. Mr Turner did not have any users on any of his servers using IMAP; if a client requested it, he usually ported them over to a Microsoft server.)

136. As to this matter, my conclusion is as follows. Mr Fennell rightly did not contend that the email was concocted in the sense of being sent by someone other than Mr Turner, but he said that the text of Mr Turner's email was suspicious. He suggested, however, that Mr Turner did not write the email himself, or at least not the whole of it in that the language of the second paragraph in particular was remarkably similar to that used by Mr Suleman, the Defendants' solicitor, in the witness statements written by him and the correspondence sent by him. That submission, however, goes beyond any conclusion which I can properly draw in the absence of Mr Turner to give evidence and to explain the circumstances in which the email was written. Mr Suleman did not give evidence and it would not be proper on the limited material before me to draw any adverse inference against him. Nor can I draw any adverse inference from the fact that Mr Turner did not come to Court to give evidence, in particular given how late the matter emerged in the course of the proceedings.

137. Mr Fennell submitted that he had made it clear to Kasim that any evidence from Mr Turner ought to come in the form of a witness statement, in Mr Turner's own words, verified by a statement of truth and that preferably that Mr Turner should come to Court on 30 June to give evidence. The point only arose in the course of Ahmed's cross-examination on the Thursday of the first week of the trial and the email was sent on the Friday morning before Court. There may have been any number of reasons why

Mr Turner could not produce a witness statement and/or come to Court on the Monday morning to be cross-examined and it would not be proper to draw any inference against him (or the Defendants) in those circumstances.

138. Ahmed's evidence in re-examination was that the emails were no longer available and were deleted shortly after being downloaded: "He was asking how much data storage do you want. We opted for 30 days or something. After 30 days they were gone off the servers." I accept that evidence and I do not find that Ahmed had access to all of Khalid's emails, had always had access to them and still had access to them such as was alleged against him.

Donna Newton

139. In cross-examining Ahmed, Mr Fennell suggested that the Court should not believe what the Defendants said about Khalid inputting data to Medina's systems and giving details to the accountant because Ahmed and his sons had not chosen to call Donna Newton, Medina's bookkeeper, as a witness.

140. Dr Wilkinson submitted that that was a bad point. It was only when the explanation for not adducing relevant evidence was unsatisfactory that a Court should draw adverse inference from such failure (see Phipson on Evidence, 20th ed. at 45-35).

141. It was not the case that there was a failure to explain why Ms Newton had not been called, which was cause for drawing adverse inference. That was so for five reasons:

(1) it was not the case that Ms Newton could add significantly to the other witness evidence about what Khalid did in the office, to which Kasim spoke. It was not like in **Vardy v Rooney** [2022] EWHC 2017 (QB), where the key witness with knowledge of the texts and the circumstances of the phone allegedly falling into the North Sea was not called. Ms Newton only worked Monday mornings and she had limited involvement.

(2) Ahmed gave a perfectly good explanation: Ms Newton was not called because she would be accused of bias as she had continued to work for Medina Group Ltd.

(3) it was not put to Kasim as to why Ms Newton was not called. It might be that Kasim could have given an explanation to the Court. He was the one who had closest dealings to her, having worked in the office. He gave evidence about what he witnessed with Khalid giving instructions, managing the accountants and arranging for data to be inputted to Medina's systems which eventually populated the Sage records.

(4) there was no property in a witness. Ms Newton was a partnership employee and not the Defendants' witness.

(5) it was always open to the Claimants to call Ms Newton or to take a statement from her. Her name and her address were provided to their solicitors. It was not like the **Post Office** Horizon litigation where the undisclosed persons who had all of the relevant knowledge could not be called. Here, the Claimants could hardly invite the Court to infer that Ms Newton would have said things which they themselves could have procured by adducing that evidence themselves.

142. This was not a case, said Dr Wilkinson, of the Defendants holding back evidence, but a case where both sides had not called a person who used to work for the partnership. There was no more reason to infer that she would say things against the Defendants than there was to infer that she would say things against the Claimants; and quite the contrary – Kasim spoke to what she would say and the Claimants had not given any such account.

143. The position about drawing adverse inferences was set out in Phipson at 45-35:

“The court may be entitled to draw adverse inferences from the absence of a witness who was available to and might have been called by a party. However, the court does not usually do so, not least because there may be all sorts of reasons why a particular witness is not called and one usually cannot be confident to infer what the witness would actually have said. Further, in general it is for a party to choose which witness he wishes to call and there is no property in a witness, and in the case of a witness in the

jurisdiction the opposing party can seek to compel a witness's attendance by means of a witness summons."

144. As to that matter my conclusion is as follows. In my judgment it is not appropriate to draw an adverse inference from the fact that Donna Newton was not called as a witness, not least because there may be all sorts of reasons why she was not called. Given the intractable and long-standing nature of this family partnership dispute, she may well have wished not to be involved, and perfectly understandably so. She was, after all, only a bookkeeper who worked for 2 or 3 hours on a Monday morning. Ahmed gave a perfectly good explanation: she was not called because she would be accused of bias as she had continued to work for Medina Group Ltd. In general it is for parties to choose which witnesses they wish to call. There is no property in a witness and in the case of Ms Newton the Claimants, had they wished to call her, could have sought to compel her attendance by means of a witness summons. They chose not to do so, no doubt for perfectly good tactical reasons, but they can hardly invite the Court to infer that she would have said things which they themselves could have procured by adducing that evidence themselves.

The Claimants' Disclosure

145. By contrast, the Defendants say that the Claimants and Khalid's estate have failed to comply with their disclosure duties without any satisfactory explanation, with the consequence that adverse inferences should be drawn against them. The disclosure failures were multiple and, whilst some might be less serious than others, taken together or in combination they painted a concerning picture. They included:

(1) failures to give standard disclosure for Khalid's estate.

(2) shortcomings with the disclosure statement which had been given.

(3) failures to disclose Khalid's personal cash book which, admittedly, recorded transactions off books and their effect on available cash-flow.

(4) failures by Sufwan to give his bank statements, despite solicitors' pre-action correspondence specifically calling for them.

(5) failures to disclose the trust deed concerning the two properties at 4 and 6 Princewood Lane, despite the ownership of the properties being a relevant issue to the Defendants' claim and the assertion that they were held on trust for the partnership.

(6) failure to disclose the covert recording with the disclosure statement in Isha's witness statement and the failure to certify Isha's witness statement initially and to refer to documents relied upon to make it, in particular the covert recording (which was the main subject of Isha's witness statement).

(7) failure to disclose the accountants' file.

(8) failure to disclose Ramsdens' file for Khalid's estate and its assets.

(9) failure to disclose the documents relating to the car finance.

Standard disclosure

146. Whilst Dr Wilkinson had a number of strictures about the adequacy of the disclosure in the case of Khalid's estate, the adequacy of the disclosure statement which had been given and indeed whether standard disclosure had been given at all in that case, much of what he said relates to the interlocutory skirmishing before DJs Bond and Royle and before HHJ Judge Jackson. I do not think it profitable to recite that skirmishing at length, particularly given the length of this decision, and I therefore pass over heads (1) and (2) to concentrate on the other individual matters of which complaint was made.

The cash book

147. Dr Wilkinson submitted that the biggest disclosure failure (addressed in connection with Sufwan's evidence in the section above) was that of Khalid's personal cash book, the "yellow book". The Court would be invited to find that Sufwan was responsible for that document going missing and not being disclosed. He was the only witness who spoke to when it went missing and claimed that he could not retrieve it as he had been excluded from the premises when that account was patently untrue. He should not be believed at all on the issue; rather a finding should be made that the

book had been retrieved, in all probability by Sufwan. Inferences could and should properly be drawn that the book disclosed cash which was not put through the books (as Sufwan well knew in 2016) and that Khalid has taken the sums of which complaint was made.

148. I have dealt with this matter in the course of my consideration of Sufwan's evidence above and will deal with it further below. Suffice it to say here that I find that Sufwan's account was highly suspect and I do not accept his evidence on the point. The more likely inference is indeed that the book had been retrieved, in all probability by Sufwan. I am satisfied that it is proper that inferences can and should properly be drawn against Sufwan that the book disclosed cash which was not put through the books (as well Sufwan knew in 2016 since he was referring that very matter to his solicitors as early as 1 August 2016) and that Khalid had taken at least some of the sums of which complaint was made by Ahmed in the months leading up to Khalid's death. Precisely which sums I shall deal with below when I consider the individual issues in dispute.

The bank statements

149. Dr Wilkinson submitted that Sufwan was not only ordered by the Court to produce his bank statements, but was asked by Mr Davidson to provide them. They were relevant pre-action and, as far back as 28 June 2019, the Defendants' solicitors were chasing Sufwan's solicitors for information about monies paid into his account (as well as Khalid's). In the context of a partnership dispute which Sufwan had himself instigated with solicitors acting in 2016, he must have been advised to give his explanation and to gather and preserve relevant documents.

150. It fell to be inferred that such advice was given and that Sufwan did not get his bank statements at a stage when he still could have got them (going back presumably six years at least to 2013). It further fell to be inferred that the statements would show the two cheques, each for £32,500, which the Defendants alleged that Sufwan banked.

151. I deal with this matter in more detail below in the context of Issue 20, although I have also referred to Mr Rana's evidence about it above. For present purposes it suffices to say that I am satisfied that Sufwan did not get his bank statements at a

stage when he still could and should have obtained them (going back six years at least to 2013). I am also satisfied that it falls to be inferred that the statements would show the payment of the two cheques, each for £32,500, which it is alleged that Sufwan banked.

The trust deed

152. In the course of the trial, the Claimants produced a discretionary settlement dated 13 April 2018 between Mumtaz as settlor and Sufwan and Isha concerning the two properties at 4 and 6 Princewood Lane. Mumtaz as settlor had transferred a share in each of the two properties (to the value of £162,500 in each case) to her children to be held on discretionary trusts. The discretionary beneficiaries were the settlor's children and remoter issue, the spouses, widow and children of such children and remoter issue and any such other persons as might be added under clause 3. By clause 13.1 the settlor (i.e. Mumtaz herself) and any spouse were excluded from any benefit as to capital or income of the trust fund.

153. The TR1 was also not disclosed and appears to contain a provision inconsistent with the trust deed. The Additional Provisions section in box 11 indicates that the first £325,000 of value was Sufwan's and Isha's and the balance was for Mumtaz on terms of the settlement. She appears therefore to have divested herself of £325,000 already and that cannot be said to be hers, but the terms of the settlement preclude her from obtaining any benefit thereunder.

154. Mr Umer, the Claimants' solicitor, explained in his witness statement of 29 June 2025 that his firm had drafted the settlement. He said that it had not been disclosed as it related to property at 4 and 6 Princewood Lane belonging to Mumtaz alone and which had previously been owned by her and her late husband Kahlid as joint tenants. It was not relevant as there was no counterclaim in the litigation against Mumtaz nor was there any counterclaim in the litigation alleging that any of the Defendants had any sort of proprietary claim against 4 or 6 Princewood Lane or against the title at 362 Birbky Road, from which those titles were derived. The only counterclaims were monetary claims against Khalid's estate and against Sufwan. For that reason Mumtaz's dealings with 4 and 6 Princewood Lane were not relevant to the issues in the litigation. Mr Fennell explained that to the Court and further explained that the

document was provided voluntarily, not by way of further disclosure, but rather to rebut the allegation put to Isha by Dr Wilkinson that she had lied about the discretionary settlement.

155. Dr Wilkinson submitted that that was an untenable assertion in a case where the Defendants had pleaded a case that the Princewood properties were built using misappropriated partnership funds and sought declarations from the Court that the Princewood properties belonged to the partnership. The ownership and subsequent disposition of those properties was quite obviously relevant to the pleaded case, but that was especially so given the statutory duty on all partners to render full information and a true account of matters relating to partnership property.

156. As far back as 2016, the Defendants asserted that these properties were built with partnership money. On 4 October 2016 their solicitors asserted that “The partnership did however have a financial interest in the three properties situated at Birkby”.

157. Rather than giving full information about those properties, Dr Wilkinson submitted that Mumtaz disposed of them into trust and held back the document until after she had given her evidence.

158. That explanation for not disclosing the trust deed and documents relating to the subsequent disposition of the properties built with partnership funds seriously undermined any confidence which the Court could now place in the Claimants and their solicitors about compliance with their disclosure duties.

159. As to this matter my conclusion is as follows. The Counterclaim as amended averred (with emphasis added) that

“51A. At all material times, whilst they were partners, each of the partners owed the Partnership a duty of good faith and such fiduciary duty included: a duty of honesty; an obligation not to benefit at the expense of their co-partners; an obligation to account for any private profits; and/or a duty to render a true account and full information of things affecting the Partnership.

And the First to Third Defendants will rely upon sections 28-29 of the Partnership Act 1890 for their full terms and effect;

51B. In accordance with the said duties, the partners are required to account for the following which should be taken into account in the calculation of the final account on the Partnership's dissolution:

a. Khalid and accordingly his estate, including the Claimants as his representatives, are liable to account to the Partnership in respect of the matters referred to in paragraphs 31 and 32 above as well as in paragraph 52(1) to (5) and 52 (7) to (10) below and failing to do so constitutes a breach of his duty of good faith ...

...

52. As part of the accounts, the Defendants will seek directions and orders for an account as to:

...

(7) the payments, dealings and transactions relating to Khalid's construction of houses, using money belonging to the partnership, one being at 362 Birkby Road, Huddersfield, and two four bedroom detached houses in the grounds of 362 Birkby Road, Huddersfield (as referred to in section 6 of the Report)".

160. Paragraph 2 of the prayer for relief sought an order that "any houses found to have been purchased or constructed by Khalid out of partnership money, be declared to be partnership property". In my judgment, the Defendants are right about their criticism of the Claimants' deficient disclosure. The Defendants had, even originally and certainly latterly by amendment, pleaded a case that the Princewood properties were built using misappropriated partnership funds and sought declarations from the Court that the Princewood properties belonged to the partnership. The ownership and subsequent disposition of those properties were obviously relevant to the pleaded case, but I agree that that was especially so given the statutory duty on all partners to render full information and a true account of matters relating to partnership property. Even taking matters at their lowest, the failure to give proper disclosure and to be frank about the existence of the trust deed and the TR1 reflects adversely on the credibility of the Claimants and Isha.

The covert recording

161. Isha gave evidence about the meeting which was covertly recorded by Amna shortly after Khalid's death in July 2016. She accepted first that she had referred to the recording when preparing her statement, but then seemed to change her case about that, suggesting instead (which I find inherently unlikely given the degree of detail which it encompasses) that she prepared the statement from memory.

162. In any case Isha says that her solicitors had been sent the recording. Mr Umer was asked to prepare a witness statement on the understanding that the recording had not been supplied to the solicitors prior to disclosure. A witness statement was then prepared, but it confirmed that the solicitors had the covert recording in May 2022 before the Claimants gave disclosure.

163. Mr Umer's witness statement does not provide any satisfactory explanation for the Claimants' failure to disclose the recording. Mr Umer suggests that he could not make out what was being said clearly on the recording, but he had still been told what was on the recording. I accept that Mr Umer's understanding of Urdu and Punjabi may be limited and that the recording was of poor quality and not easy to understand (having been recorded covertly on a mobile phone),

164. That is not, however, a sufficient explanation for not disclosing the recording. Mr Fennell was not made aware of the existence of the recording until June 2024. He too had problems with hearing what was said on it, but as soon as he was provided with a transcript, he immediately informed Mr Umer that the transcript of the meeting was relevant and disclosable, and rightly so. It was then disclosed, as was an MP4 file of the recording. No criticism can attach to Mr Fennell, who acted perfectly properly and promptly as soon as he was alerted to the existence of the recording and read the transcript of its contents.

165. Dr Wilkinson argued that it should be inferred that the document was held back to wait to see what Ahmed might say about the meeting with a view to catching him out, but that in any case the failure demonstrated that the Court was dealing with parties who were not straightforwardly seeking to comply with their duties.

166. In the absence of hearing directly from Mr Umer, I am prepared to give him the benefit of the doubt that the Claimants were properly advised as to their disclosure duties. He had, however, drawn entirely the wrong conclusion about the relevance and obligation to disclose the recording, as was immediately evident to Mr Fennell. I put that to one side, however, as a side issue. Nevertheless, what is significant in the saga of the recording is that Isha's explanation that she did *not* listen to the recording before producing her statement and that she had done it from memory is not credible; it is wholly implausible, as in reality she must have listened to the recording before making her statement, given the extraordinary amount of detail to which she descended in her statement, but she did not refer to it as a source on which she had drawn before making her statement or list it as a document on which she had relied in her witness statement. That lack of candour is a matter which again in my view permits inferences to be drawn against the Claimants and their credibility as witnesses.

The accountancy file

167. Dr Wilkinson submitted that on 8 September 2016 Sufwan's solicitors asked Peel Walker to provide their file, including a raft of business documents relating to the tax returns of Mumtaz, Khalid and Sufwan. It seemed that the emails which the accountants had on file with Khalid had been disclosed (in the form of screen shots of emails on Khalid's laptop). However, the remainder of the file, which was presumably provided (at least insofar as it related to Mumtaz and Sufwan, if not Khalid personally) did not appear to have been disclosed at all. For example, Mumtaz had not got from HMRC the signed tax return which was submitted.

168. In a case where Mumtaz and Sufwan alleged that it was Ahmed who completed their tax returns and that Khalid challenged his accountant about removing her from the partnership accounts, those failures were stark. Inferences, he submitted, were to be drawn against the Claimants that:

(1) Mumtaz knew and agreed that she was removed as a partner and that her capital was to be transferred, or Mumtaz had authorised Khalid to deal with her share as a nominee partner, not a real partner of the business, but merely a person nominated to receive a part of her husband's share; and /or

(2) Khalid did not challenge the accountant about Mumtaz being removed.

169. I agree. The failure is indeed stark. Moreover, for the reasons set out below, I am satisfied that Mumtaz authorised Khalid to deal with her share as a nominee partner, in that she was not a real partner of the business, but only a nominee and/or that Khalid did not challenge the accountant about Mumtaz being removed because in reality he had authorised her removal.

Khalid's estate and assets

170. Dr Wilkinson submitted that Khalid's estate file had not been disclosed, despite there being solicitors acting for (at least) Sufwan. The Defendants' solicitors had called for them as long ago as 30 January 2019 to produce the estate file. Sufwan's application for a grant of representation exhibited a witness statement dated 14 December 2021 in which he said he could not get the estate file, which seemed improbable given that the same solicitors had acted for him and were doubtless advising on what was required to apply for a grant and deal with IHT.

171. On 4 October 2016, the Defendants' solicitors asserted that Khalid had taken partnership money to build houses and taken rents. What assets Khalid had had out of the partnership was a live issue, especially when Sufwan appeared to have believed that his father had property in Pakistan and assets worth £4m. The documents relevant to applying for a grant or passing over Khalid's named executors and all documents relevant to his assets had not been disclosed. That failure can hardly be gainsaid. I agree.

Car finance

172. Dr Wilkinson submitted that there was no disclosure of the car finance settlements and what sums were realised upon sale and profits made (save for Khalid's Bentley). It was to be inferred from the conspicuous absence of disclosure of relevant documents in that regard that the Claimants did not make a loss and only realised enough to settle the finance and that there was no evidence to contradict the values which Mr Davidson gave for the vehicles.

173. I shall deal with that matter when I consider Issue 10 below, but again I agree with Dr Wilkinson's criticisms of the Claimants' deficient disclosure.

Conclusion on the Claimants' Disclosure

174. These matters are not just one or two instances of failure to give disclosure. Some matters are of less importance than others. Some go to issues of credibility, others to more minor issues, but I regard as serious those relating to the failure to disclose Khalid's personal cash book, Sufwan's failure to provide his bank statements when he could and should have done so, despite solicitors pre-action specifically calling for them, the failure to disclose the accountants' file, the failure to disclose Ramsdens file for Khalid's estate and its assets and the failure to disclose the trust deed and the TR1, despite the ownership of the Birkby Road and Princewood Lane properties being a relevant issue to the Defendants' claim and the assertion that they were held on trust for the partnership.

175. In the light of so many concerted failures, a pattern of obfuscation emerges and I am satisfied that in those circumstances, coupled with the unsatisfactory nature of the Claimants' evidence, it is appropriate to draw adverse inferences against the Claimants in the light of so many failures of disclosure, far beyond just one or two small isolated matters.

Criminal Behaviour

176. In reaching my conclusions, I have not made any findings about the various allegations of criminality which have been made in the case, whether the setting of the factory fire by Sufwan, the theft of Rolls Royce wheels by Hashim, the mugging of Sufwan at the behest of Ahmed, the arson attack on the Rolls Royce by the Defendants, the threats to Sufwan by Hashim and a third party, Sufwan's arrest for harassment, Sufwan's threats to kill Hashim or Sufwan's involvement with drug taking and drug dealers.

177. The quality of the evidence adduced was not commensurate with the gravity of the allegations, the issues which the allegations raise are not ones which I have to determine (save to the extent that they might impinge on credibility) and I see no purpose in further fanning the flames of familial ill-will by further expanding this

judgment to deal with matters which are not directly germane to the issues between the parties, although the raising of such issues does in part explain why the dispute has proved so intractable and why it is still on foot more than 9 years after the dissolution of the partnership consequent on Khalid's death.

Factual Background

178. Before turning to the outstanding issues between the parties, it is appropriate to set out the background to the history of the dealings between the parties. To the extent that it is uncontroversial and common ground, I do not need to record it as such. It is only to the extent that it is in issue that I will flag up the dispute. In that case I make the relevant findings of fact of fact about it and record it as such. In some cases, at this stage I will only record what Ahmed says about the matter before returning to the individual matters later in this judgment when I am considering the disputed issues.

179. In or around 1987 Khalid and Ahmed joined their father, Shahdin, at his shop trading as "Medina Warehouse" from 10 Thornton Lodge Road, Huddersfield. It mainly sold Asian groceries. Shahdin opened the shop in or about 1985. From about 1989 the business structure changed from one of a sole trader to partnership. Thereafter Khalid and Ahmed and their father Shahdin ran a partnership which was known as "Medina Poultry", continuing to use the core of the business name of the grocery shop business which Shahdin had run beforehand, namely "Medina". In addition to selling groceries, they branched out to purchasing live chickens from farms across the county for slaughter and processing from rented premises in Wyke near Bradford for onward sale from the shop and some for wholesale to local shops. In 1990 they decided to cease the retail side of the business to concentrate on the poultry wholesale side of the business, which was more profitable. As such the partnership operated on an equal share basis, but they continued to trade from the Thornton Lodge Road premises. That was their base. They also continued to purchase live chickens from across the region before processing them for onward wholesale to independent retailers.

180. Shahdin died in 1995, but his sons continued the business after his death.

181. In 1990, Turley Cote Farm was purchased and was registered in Khalid's sole name on 29 November 1990. One of the issues between the parties is the basis on

which Turley Cote Farm was acquired and whether it formed an asset of the partnership at the date of Khalid's death and the dissolution of the partnership.

182. On 7 August 1992, with the help of a loan from National Westminster Bank, the brothers acquired bigger premises at Brookwoods Industrial Estate, Burrwood Way, Holy Green, Halifax HX4 9BH for the purpose of a slaughterhouse ("Brookwoods"). The premises had to be kitted out as they were not in fit condition, having previously being a haulier's garage. After purchase, the premises were fitted out as a slaughterhouse and registered with the local authority as such, but that took some time, about 12 to 16 months. On 12 October 1992 Khalid and Ahmed were registered as joint proprietors of Brookwoods. After fitting out, that property was used for the poultry business. In 1993, when the premises at Brookwoods were operational, the business moved in and the partnership started trading from there, initially in the business of poultry slaughter and processing. Later, a lamb slaughter processing plant was also added. Ahmed's evidence, which I accept, was that when the premises were being purchased, Khalid told their father that he was going to put it in his sole name, which Shahdin relayed to Ahmed. Ahmed said that he kicked off and put his foot down, threatening to dissolve the partnership. Khalid then relented and put the property in their joint names. I refer to this for two reasons. First, it shows that Khalid, even in the lifetime of their father, was wont to make decisions suggestive of the fact that he was taking the leading role in the business. Second, it was the first occasion of bad blood between the brothers, which seems to have simmered on under the surface for many years before breaking out into the open many years later and leading to the present litigation.

183. The business carried on after the death of Shahdin in 1995. In the following years Ahmed worked alone as Khalid was ill, had to take time off work and had to have two operations. For the next few years Khalid did not take an active part in the running of the business, but continued to receive his share of the profits. Ahmed looked after the running of the partnership for the next few years. Khalid returned to work around 2000.

184. Except between 1999 and 2001, the business was run as a partnership. There was an attempt to transition the business over to a limited company and it took on the business, but not all of the property, for a relatively short period of time, before

transferring the business back to the partnership. What happened was that on 31 May 1999 the business of the partnership was transferred to a company called Medina Poultry (Halifax) Ltd. The directors of the company were the two brothers and their spouses, Khalid, Mumtaz, Ahmed and Sajida. The shareholding was divided equally between Khalid and Ahmed 50-50. On 31 July 2001 the business was transferred back to the partnership.

185. In 2002 Kasim left school at 16 and joined the firm. He was put on the factory floor to learn all the production side of the business. Kasim passed his driving test at 17 and was put on the road chasing new business along with Khalid, a role from which Khalid stepped back in 2003. In 2004 Ahmed's other son, Hashim, left school at 16 and started work for the firm in the processing plant. Hashim was paid a nominal wage, but worked the long hours. He quickly learned the trade and oversaw production soon after, along with his father to guide him. It was Ahmed's case that it was at this time that Khalid started his building programme of houses and spent only a few hours a day at work in the morning from 7am until 11.00am. From then onwards, said Ahmed, it became his day-to-day routine.

186. Since 2004/2005, the business also engaged in red meat slaughter (sheep and lamb), using one of the units at the Brookwoods site, purposefully kitted out. The firm was then known as "Medina Meat and Poultry Group".

187. In or around 2005, Khalid's son, Sufwan joined the business. He was told to report to the lamb plant manager, Sajid, who ran the night shift. A number of allegations were made in the following paragraphs of Ahmed's witness statement about Sufwan's behaviour, which I have decided are not matters which I need to resolve (as to which see above). What they do demonstrate, however, is that here was no love lost between Sufwan on the one side and Ahmed's family on the other and that that dislike was of long standing and well entrenched on both sides, even in Khalid's lifetime.

188. The red meat business ran for about 5 years until Khalid took the decision to shut it down in July 2009. Sufwan then joined the poultry side of the business.

189. The contract kill business started in 2005 when the red meat plant first opened. Along with the firm's own lamb slaughter operations, other businesses in the trade were able to use its plant facilities. These were also hired out to customers (on a "contract kill" basis) for a fixed fee per animal slaughtered. Invoices were created by Khalid, many of which were informally handwritten. It is Ahmed's case that these invoices were not all being processed as sales in the normal way in the partnership and that the money collected for the use of the plant services was being taken home by Khalid, who had only partially accounted the monies to the partnership.

190. At about the same time as the closure of the lamb processing plant, Ahmed and his wife Sajida left the partnership, although the accounts showed that he was still owed money. It was Ahmed's case this was so that his younger son, Hashim, could replace them as a partner. Ahmed's case was that his role from then onwards was purely on the production floor and he was supposed to have been put on PAYE, although in fact money to pay him was taken from his partnership loan account. Ahmed said that he would do six days a week pattern, from 5am to 8-9pm in the evening on the three kill days and 12 hour shifts on the three non-kill days, with Sunday off. He said that, even so, he only received a fixed amount of £400 gross per week irrespective of the hours which he did, although that was disputed by Mr Fennell who put it to him that he was receiving far more than that from the firm's resources.

191. After the lamb plant's closure it remained empty for a year or so and in 2013 all of the plant and machinery was removed from the building. It is Ahmed's case that most of the machinery was scrapped and that only a few items were sold. It is his case that the money for those items was paid in cash amounting to £19,240.00 which was paid to Khalid which he took home. That is one of the disputed issues.

192. For a time, from 2014 onwards, the business also experimented in selling cooking oil which it would rebottle using machinery which was bought by Khalid. The oil bottling plant was set up from the now surplus lamb plant premises. This was not a separate entity and was part of Medina Meat and Poultry Group. Ahmed's youngest son, Hamza, who is not a party to the litigation, came to work for Medina and helped him to refit the lamb building and the setup of the oil systems. Hamza was tasked with generating business by visiting existing customers and taking orders. He was also put

in charge of bottling while Ahmed was the project manager. However, owing to a falling out between Khalid, Sufwan and Hamza, Hamza left Medina at the end of 2015 and the oil business was closed.

193. The composition and the shares of the partnership changed over time, but it appeared to be common ground on both sides that the partnership was supposed to be owned 50/50 as between Khalid's family and Ahmed's family. That was a matter on which all of the family witnesses on both sides were agreed and I accept that evidence.

194. It is one of the curiosities and oddities of this case that, despite that common understanding, the partnership accounts do not reflect that agreement, save for the first few years after the transfer back to the partnership of the business of the company in 2001. The accounts do not show the percentages of the individual partners' shares, although they do provide the end of year figures from which the percentages can be readily worked out. According to Mr Davidson, whose evidence on the point I accept, it is not unusual for percentage shares not to be set out explicitly in partnership accounts.

195. The first set of annual accounts dated 31 July 2002 (now only available in draft form) show Khalid and Ahmed as equal partners. The next set of accounts for y/e 2003 show the partners' profit shares as Khalid 35%, Ahmed 35%, Kasim 15% and Sajida 15%, thus giving Ahmed's family 65%. In the next 3 years y/e 2004 to y/e 2007 the partners' profit shares are shown as Khalid 25%, Ahmed 25%, Kasim 25% and Sajida 25%, thus giving Khalid's family 25% and Ahmed's family 75%.

196. In the year y/e 2008 by contrast the partners' profit shares are shown as Khalid 17.36%, Mumtaz 15.28%, Sufwan 15.28%, Ahmed and Sajida combined 34.72% and Kasim 17.36%, thus giving Khalid's family 47.92% and Ahmed's family 52.08%.

197. Again by contrast, in the year y/e 2009 the partners' profit shares are shown as Khalid 17.78%, Mumtaz 17.78%, Sufwan 17.78%, Ahmed and Sajida combined 22.22%, Kasim 17.78% and Hashim 6.66%, thus giving Khalid's family 53.34% and Ahmed's family 46.64%. Thus, between y/e 2007 and 2009 Khalid's family share has increased from a low of 25% to a high of 53.34%, whilst correspondingly Ahmed's

family's share has decreased from a high of 75% to a low of 46.64%. Hashim has come on as a partner, but only to the extent of 6.66%, whilst Kasim's share has decreased from 25% to 17.36% and then gone slightly up to 17.78%

198. By way of yet further contrast, in the year y/e 2010 the partners' profit shares are shown as Khalid 27%, Mumtaz 27%, Sufwan 20.5%, Kasim 20.5% and Hashim 5%, thus giving Khalid's family 74.5% and Ahmed's family 25.5%. However, Ahmed and Sajida did not receive a profit share, but retained their loan/current account. That is consistent with Ahmed's case that he came off as a partner in 2010. Kasim's share has increased slightly, but Hashim's has decreased and remains very small.

199. Finally, for the 4 years y/e 2011 to y/e 2014 the partners' profit shares are shown as Khalid 20%, Mumtaz 20%, Sufwan 20%, Kasim 20% and Hashim 20%, thus giving Khalid's family 60% and Ahmed's family 40%. Again, Ahmed and Sajida did not receive a profit share, but retained their loan/current account. However, Kasim and Hashim's share are now at a constant 20%, the same as the other partners, but not such as to give their family equality with Khalid's.

200. For the y/e 2015 the disputed partnership accounts show Mumtaz receiving no profit share and her capital account as being withdrawn in full, whilst £270,409 cash was shown as being introduced by Ahmed. The partners' profit shares are shown as Khalid 25%, Sufwan 25%, Kasim 25% and Hashim 25%, thus finally giving Khalid's family 50% and Ahmed's family 50%.

201. These various shares were varied on the face of the accounts in the profit share column only, but there was no explanation that there was any change to shares since the previous year nor was there any reference to any agreement to vary the shares.

202. As I have said, the surviving partners' clear evidence on both sides was that the division was supposed to be 50/50 between the two families, that they did not agree to deviating from that division, that they did not agree to altering their shares in each year and that they had not specifically agreed the accounts or appreciated what was said about their shares. Sufwan said in his evidence that he was unaware about the accounts, certainly in the y/e 2007 and 2008, and how they referred to the shares. So

too did Mumtaz. So too did both Kasim and Hashim, who explained that they did not see or agree to the accounts.

203. Ahmed said that he and his wife had come off the partnership so that Hashim could come on. In fact in the year y/e 2009 the partners' profit shares showed Ahmed and Sajida combined with 22.22%, Kasim 17.78% and Hashim 6.66%, thus giving Ahmed's family 46.64%, so Hashim was a partner, but with only a very small share.

204. In the year y/e 2010 the partners' profit shares (when Ahmed and Sajida no longer appeared as partners, although they retained their loan/current account) showed Kasim with 20.5% and Hashim 5%, thus giving Ahmed's family 25.5%. That results in Hashim having a smaller share and Ahmed's family overall also having a smaller share.

205. By contrast, for the 4 years y/e 2011 to y/e 2014 the partners' profit shares showed Kasim 20% and Hashim 20%, and thus Ahmed's family at 40%.

206. It is only for the y/e 2015 that the partners' profit shares are shown as Kasim 25% and Hashim 25%, thus giving Ahmed's family 50%.

207. The reason for the almost annual changes to and discrepancies in the figures is a puzzle and one which I am not able to resolve, but I accept the general thrust of Ahmed's evidence that the reason that he and his wife ceased to be partners was so that Hashim could come on as a full partner, even though that process took some time and some twists to achieve, but that eventually the position was reached that each side of the family held 50% of the interest in the firm.

208. It is also tolerably clear that the business of the partnership was not transacted by the partners in regular meetings. Whatever may be the Claimants' case about Ahmed, I am satisfied that a number of things done by Khalid were not done with the express agreement of other partners, whether Mumtaz or Sufwan or Kasim and Hashim. Khalid and Ahmed were the heads of their respective families and the members of their respective families very much deferred to them. This was not a case of a business run by all of the partners regularly meeting and discussing things before

they were done. It is Ahmed's case that it was Khalid who always looked after the money side of the business and that it was he who dealt with accountants, tax returns, payments to creditors and money received, whereas Ahmed's role had always been to look after the production side of the business from day one, except for the few years when Khalid was off for prolonged period due to his ill health.

209. On 19 May 2009 there was an investigation meeting involving HMRC into the y/e 31/07/2005 and minutes of the meeting were drawn up explaining aspects of the business. The minutes were signed as a true record of the meeting by Khalid, Ahmed, their accountants and the HMRC officials who took part in it. I shall refer again to this meeting below. What was said at that meeting impacts, for example, on the question of the status of Turley Cote Farm and whether it was or was not a partnership asset.

210. For present purposes I need only extract certain of the paragraphs from the record of the meeting. The full note of the meeting ran to 165 paragraphs.

211. The purpose of the meeting was explained at the outset:

“5. PFA [of HMRC] stated that the purpose of the meeting was to discuss the way the business operated in general, the cash side of the business, the partners drawings from the business, the business recordkeeping procedures and the partners' own personal finances. The meeting should help to move the enquiry forward. PFA added that, as mentioned earlier, the partnership accounts for year ended 31 July 2005 were being checked. Consequently PFA's questions would be focusing on that year, rather than what was happening with the business presently. PFA asked the partners to bear this in mind during the meeting and that his questions were directed to what was happening 4 years ago. PFA appreciated that, in view of the time that had elapsed, the partners may not always find this easy but HMRC's income tax enquiries were nearly always historical in nature.”

212. The partners explained the background in the immediately following paragraphs:

“11. During the year under enquiry, chickens, lamb and sheep were slaughtered. The business started to slaughter sheep and lamb in April 2004. There were 2 slaughterhouse units in operation; one dedicated to poultry and the other to sheep and lamb. These were the only slaughterhouse units in operation at

the Brookwoods Industrial Estate. The business did not operate any slaughterhouses anywhere else. There were chillers/refrigeration facilities at both units. Chickens were put into plastic baskets but, apart from that, the business did not undertake any packaging or labelling on behalf of its customers. With sheep, the whole carcass was supplied.

12. All chickens were killed on the same day they were delivered. Sheep could be slaughtered anywhere between 5 and 12 hours after delivery to Medina. Chickens had to be chilled to a temperature of minus 4 degrees for a 24 hour period prior to dispatch. Animals were slaughtered on Mondays, Wednesdays, and Fridays only. Deliveries of lamb and sheep were restricted to those slaughter days with chickens being delivered 6 days a week. Health Inspectors and vets were present each day monitoring the animals, the conditions they were kept in, and the slaughtering process, to ensure that the various regulations relating to hygiene and production were met. The partners had to ensure it complied with all the regulations. The business was completely shut on Sundays and Khalid (SKP) commented this was the only day the partners had off. PFA [of HMRC] referred to a planning application he had come across (on the website for Calderdale MBC) relating to the extension of opening hours, enabling the business to operate and also receive deliveries on a Sunday. Khalid (SKP) advised the application related to deliveries only and recalled only one person had complained about this and he had not lived very near the premises. The application had not been successful and they did not open on Sundays.

13. Most of the meat was sold to butchers or Asian food stores which always had their own butchers attached to them. About 50% of the sheep and lamb was sold to butchers in the Manchester area.

14. The description "oven ready big and small" shown on the sales invoices simply related to large and small chickens that had their heads and guts removed.

15. Contract Kill Sales - amounting to £77,501 in the year - related to customers who brought their own sheep and lamb to be slaughtered at Medina's premises. These customers would take the slaughtered sheep away and sell them on themselves, this was quite common on the red meat side of the business.

16. Skin Sales - amounting to £107,580 in the year - represented the sale of the hides of the slaughtered animals and were simply a by-product of the slaughtering process. The only customer for this in year ended 31 July 2005 was Bradford Skin and Hide.

17. The general social climate/economy could have an overall impact on demand but any specific peaks in sales would occur at Christmas or during periods of religious sacrifices, the time of the latter varying from year to year and lasting 10 days.

18. Medina's customers were located in Bradford, Leeds, Huddersfield, Halifax, Dewsbury, Manchester and surrounding areas. There were no customers further away in other parts of the country. On the poultry side, one or 2 wholesalers collected the chickens from Medina and then distributed the chickens on themselves. Contract Kill customers collected the carcasses from Medina's premises. Most of the slaughtered animals were delivered by Medina to their customers.

19. The partners did not specifically set out to try and obtain new customers and expand the business. They were really content to deal with the customers they already knew. This was because they found that when they did take on new customers this often resulted in bad debts because they turned out to be bad payers. PFA noted that sales had increased by nearly £1M in the year to 31 July 2003 and then again by nearly £1M in the year ended 31 July 2005. The partners stated that movements in poultry prices had a significant impact on the turnover of the business. When poultry prices were low, Medina's main customers started to look elsewhere and this affected sales. In 2004 chicken prices had collapsed and some of Medina's main customers had just walked away to buy cheap chickens from elsewhere. Price fluctuations in the poultry market had a big impact on the business and after a quiet period caused by a fall in chicken prices it was like starting all over again.

...

27. There was no pricing policy as such and it was not possible to achieve a constant profit rate. Medina charged whatever the customers were willing to pay in the context of the overall market prices for poultry at any one time. Poultry prices moved up and down on a weekly, sometimes daily, basis. Because of the limited shelf life of the product, there was very little, if any, scope to hold out in the hope that market prices may go up so Medina could thereby achieve a better price. Medina's prices were also dictated by what other abattoirs were charging and if the other abattoirs reduced their prices then Medina had to react and adjust their prices accordingly. There were good times and bad times depending on the market price which constantly fluctuated. The numbers of chickens ordered from Sullivan's, and the prices to be paid to Sullivan's, were fixed at the beginning of the 13 week cycle. Therefore the partners had to try and work out what they needed over that 13 weeks period but market prices could easily change within that time frame so the price Medina could

charge to their customers also fell as well. If prices did fall, then they could not renegotiate a price with Sullivan's and Sullivan's certainly would not take the hit. It was very difficult to try and plan that far ahead. If market prices fell then Sullivan's certainly would not take the hit. Also, if Medina did not respond to changes in the market price for poultry, then some of the big cutting plants they supplied - for example Bakesa in 2004-05 - would certainly have gone elsewhere."

213. Matters then turned to cash control and banking procedures:

"34. The business was normally paid in cash or by cheque with very few, if any, BACs payments. The partners found it difficult to estimate what proportion of sales would be paid for in cash. The method of payment depended on the customer. For example, the large cutting plants that Medina supplied always paid by cheque. They were allowed 3 or 4 weeks credit to pay so a large cheque - up to £20,000 - may be received in one week. Consequently, in that week when a large cheque was received, a greater proportion of sales would be paid by cheque. The "good" customers, those that could be trusted, were allowed to pay by cheque as there was less chance their cheques would bounce. Other customers who were not as trusted, and smaller or irregular customers, had to pay in cash. The proportion of cash to cheque sales therefore varied week by week, depending on who was paying. But, overall, SKP thought the split between cash and cheques was approximately 50/50.

35. The business did have a safe. At the time in 2005 this was a small key operated safe hidden away in a cabinet in the office at the business premises. A couple of years ago the safe itself had actually been stolen from the office so the partners had purchased a new much larger safe which was bolted down to the floor and could not be removed so easily. Cash together with spare keys to the business vans and wagons were kept in the safe. All the partners had keys and access to the safe. No one else could get in to the safe. No one partner in particular was specifically responsible for controlling the cash side of the business. Most of the cash received was collected from the customers, usually by SKP's nephew, but some customers did come to Medina's premises and pay in cash at the office.

...

38. Only the partners could accept a cash payment from a customer. No employees could take cash from a customer.

39. Cash received from customers was put into the office safe straight away before being banked. During 2004-05 cash and

cheques were banked 3 times a week but at the moment cash and cheques are banked every day. If there was an unusually large amount of cash received then this was banked as soon as possible. When MAP's son collected cash from a customer, he kept a note of how much had been paid by each customer in a separate folder containing each customer's account details. This was then brought back to the office along with the cash.

40. Business cash was never taken home, it was always kept in the safe at the office.

41. The partners did not use night safe facilities.

42. PFA asked if the amount of cash on hand was ever counted by the partners and, if so, how often, and whether any attempt was made to balance and reconcile the amount of cash on hand. MAP [Ahmed] requested clarification as to exactly what PFA meant by this. PFA explained he was asking if the partners had ever counted the cash on hand and then tried to reconcile the amount counted with the cash on hand brought forward, plus cash received, less cash paid out since the last time cash was counted. In theory, the cash on hand at say week 1 plus cash received, less any cash expenditure, should equal the cash on hand as counted at say week 2. If there was a difference this meant something was wrong somewhere. MAP confirmed they had never counted and reconciled the cash position and this was why he had to ask what PFA had meant.

43. PN [the accountant] commented that the cash processes were now a lot tighter than they had been previously.

44. The amount of petty cash normally kept on hand was somewhere in between £500 and £1,000. This was kept in the safe and only the partners had access to the petty cash. The maximum amount of business cash on hand at any one time was estimated to be up to £40,000 representing 2 or 3 days cash sales. The partners considered it was possible for them to have as much as £70,000 cash on hand at some time. PFA noted the cash on hand figure as at 31 July 2004 was nearly £74,000. Paul Davison (PD) [the accountant] pointed out this would include both cheques and cash.

45. The partners confirmed that during the enquiry period cash was banked, along with cheques, 3 times a week. Banking was undertaken by MAP's son and wife. Apart from the petty cash, all cash received was banked."

214. The question of trade debtors was also set out in the note of the meeting:

“76. In 2004-05, customers were usually allowed, on average, 21 days to make payment. Originally, customers were supposed to have paid on a week by week basis but bad payers had stretched the amount of time taken for customers to settle their bills. The partners tried to recover outstanding monies by making personal calls to the customers. Over the years, the partners had tried from time to time using debt collection agencies but this had not really worked. Legal proceedings had never been used to try and recover outstanding debts. With their regular customers they preferred to trust them to eventually pay the outstanding amount. On looking at the sales invoices SKP commented regarding one for Umar Halal Butchers that showed an outstanding balance of £11,345 with no payments received. This invoice was dated 16 October 2004 and SKP said that Umar’s balance was now over £40,000. Outstanding amounts were only written off as bad debts as a last resort. Each year the accountants discussed the debtor’s position with the partners and identified those where payments would not be forthcoming. The increase in year ended 31 July 2005 was probably due to removing some debts which had been on the system for a long time.

77. PFA explained that during the enquiry it had emerged the amounts included in the accounts as trade debtors were substantially wrong. PFA understood that the customers in question had in fact paid in cash so they did not owe the amounts as shown in the business’ Sage records. The total amounts incorrectly treated as trade debtors were £66,870 in year ended 31 July 2005 and £26,139 in year ended 31 July 2006. PFA understood this related mainly to cash on delivery transactions.

78. PFA asked if the partners could offer any explanation as to how this had come about. The partners had no idea how this had happened and as far as they were concerned they had given all the necessary information to the bookkeeper and he was supposed to deal with it. The error had not been discovered by the new bookkeeper but had been advised to Peel Walker by the previous bookkeeper, Steve Scotland-Judd. The computer disk for the 2006 accounts had been accompanied by a brief note from Scotland-Judd stating that the trade debtors had been overstated. Scotland-Judd had sent Peel Walker a printout of the aged debtor’s analysis (at 31 July 2005) and highlighted those debtors who had paid in cash. This was in November 2007. Peel Walker had made the necessary adjustment in one total in the 2006 accounts. It was only during the enquiry, when PFA had asked for some more information about the debtors, they had come to realise that some of the debts identified by Scotland-Judd must relate to 2006. This was because the invoices concerned had only been issued after 31 July 2005 and could not therefore be debtors at that time. Beyond the note from Scotland-Judd, Peel Walker had no further information about

this. This was the way Scotland-Judd had communicated with Peel Walker. The partners reiterated this was all down to the bookkeeper. There was no further information that the partners or Peel Walker could provide about the debtor's error.

79. PFA thought the essential point was that the trade debtor's figures were substantially incorrect and this showed again that the control of cash in the business was very poor, placing question marks over the reliability of all the figures in the accounts. A large amount of cash was coming into the business that was not effectively recorded. The additional cash received had been regarded by Peel Walker as increasing the amount of each partner's drawings and correspondingly reducing debtors. If this was so then, not only was cash coming in without being properly recorded, but the partners were also taking cash out as and when required without being recorded.

80. PFA thought there were 2 possibilities regarding the cash received from debtors. Firstly, the cash could have been taken out by the partners as additional drawings. Secondly, the cash could have been used to purchase stock for slaughter with both the purchase and sale of the stock going unrecorded.

81. SKP stated this was simply not possible and they did not consider buying and selling off record stuff in the way PFA suggested. Everything that came into the business and everything that was sold was fully recorded. The business had certainly not omitted any sales and they had been relying on their bookkeeper to whom they had given absolutely everything. The partners could only tell PFA what they knew about. SKP pointed out that everything that went through the slaughterhouse was heavily monitored and regulated and the health/hygiene people would have their own records detailing what had gone through the slaughterhouse in terms of weight. All animal purchases were recorded by weight and all the sales invoices showed the weights sold. SKP was sure they could compare the health/hygiene office records with their own records to show that they had not made off-record purchases when compared to the health/hygiene records. The weights in the health/hygiene records would match the weights in their own records. PFA doubted there would be any realistic prospect of making such a comparison and it would not be possible to tie up the 2 sets of records. PN also unsure as to how this could be done. SKP was nevertheless convinced that if necessary they could show, by using the meat/hygiene records, that the business had not made off-record purchases as suggested by PFA."

215. So far as future record keeping was concerned, the note recorded that

“90. PFA advised the partners that they were under an obligation to maintain and retain full and accurate records of all business income and expenditure. The records should be kept up to date regularly and in sufficient detail to allow them to make a correct and complete return and enable HMRC to check any figures on the return. PFA stated it was important that the record keeping procedures improved in future, in particular in the area of recording and controlling cash. From what PN had said earlier in the meeting, it did seem as though the cash side would have been tightened up. It was felt that the new bookkeeper who was qualified would have improved the position and got matters in hand.”

216. There was then a break for lunch before the afternoon session reconvened to discuss the partners’ personal finances:

“102. PFA explained he now needed to continue to discuss each of the partner’s own personal finances and spending. PFA pointed out the partners’ respective personal finances were confidential to each partner and he wanted to make sure both partners were perfectly happy to discuss their own finances fully and openly in front of each other. If necessary, separate meetings could be held. The partners confirmed they had no problem discussing their personal finances in front of each other.”

217. Of that discussion I need only set out one paragraph, which was in the context of the discussion about Khalid’s finances:

“146. PFA asked whether SKP owned or had an interest in any other land or property, apart from his house at 362 Birkby Road and the let property which had been discussed earlier with Ahmed. SKP stated there was some land at Turley (?) Court Farm that he had purchased in 1990. This had originally been bought with the intention of using it for the business right at the very beginning. The title deeds were in SKP’s name only. SKP was holding onto the land in the hope that he would obtain planning permission. There was approximately 3 acres of land that was now derelict. Originally, it was used for chicken sheds in the very early days of the business.”

218. This is relevant to the question of the ownership of Turley Cote Farm and I will refer to it further in that context below.

219. To compound matters, the bank realised that more money was being drawn from the business than was being put into it. The partners were called in by the bank and it resulted in the business being put on the bank's watch list. The bank wanted monthly management accounts for a period to satisfy itself as to the financial health of the business. The arrangement in fact lasted for two years.

220. It is Ahmed's case that this resulted in a shortfall in working capital and in 2010 a mortgage from the Halifax was taken out by Khalid against his house in the sum £370,000 and was introduced by way of capital injection by Khalid and Mumtaz. The accounts for the period show that the capital accounts of Khalid and Mumtaz were likewise each credited with £185,000. The Halifax mortgage was interest only and the monthly payments were made by the partnership. By 2012 as well as the interest instalments, £76,000 of the capital sum borrowed had been paid off. The Halifax mortgage was finally paid off by the partnership in 2014. The outstanding balance due at that time was £294,000 and it was paid off in full, but Ahmed's case is that it was not reflected on Khalid's side of his capital account and needed to be accounted for. That is another of the disputed issues.

221. As mentioned above, it also appears to be common ground that Ahmed and his wife Sajida ceased to be partners in 2010 in order for Hashim to come on to the partnership (at least in substantial form beyond his relatively token share). Mumtaz accepted that Ahmed worked for the partnership since 2010, but that he was no longer a partner and that he had come off in order to put both of his sons on (although that latter point cannot be right since Kasim already had a significant partnership share). She said she thought that Ahmed was being paid a wage for carrying on working after that. To the extent that there was any disagreement by the parties, and with the caveats which I have set out above about the evolution of the partnership shares in the accounts between 2009 and 2015, I accept the general thrust of Ahmed's evidence that he came off the partnership to put Hashim on in his place, at least in substantial form.

222. It also seemed to be common ground between the two sides about Kasim and Hashim coming on as partners in their own right and being proper partners of the business and not mere nominees.

223. The same can be said for Sufwan. Whilst it was not agreed that he was to be a partner when he first came on, it was eventually accepted that he became a partner in his own right and was not a mere nominee for Khalid.

224. Although he had ceased to be a partner, Ahmed remained an employee of the partnership. He carried on working full time, managing the poultry unit on the factory floor, together with Hashim. Kasim worked in the office together with Sufwan at least since 2009 (when the latter stopped working nights for the red meat factory, which was subsequently rented out). In the office both were under Khalid's supervision. Since the closure of the red meat business in 2009, Sufwan generally worked in the office, taking orders, collecting payments and dispatching chickens. Sufwan had tried to run the oil business for a short time in or around 2015, but that was unsuccessful. Khalid managed the office, supervising Kasim and Sufwan and directed them as to what to do. He had overall control and responsibility for arranging the supplies and collections, and dealing with payments generally.

225. It is common ground that there was a falling out between Khalid and Ahmed at the very latest by March 2015 and it is common ground that Ahmed challenged Khalid about taking money out of the partnership and not accounting to it and that he refused to carry on working for the partnership.

226. Ahmed's case is that it was obvious that not all cash was being put through the books and banked as it should have been. Throughout the partnership he had had suspicions and there would be constant family quarrels over it. He held his tongue because of their mother. His case is that working with blood on the production line day in day out (with which his family was tasked) was not pleasant; he was physically and mentally worn out with the stress of running the factory with its constant problems from staff to machinery and the constant rigours of the Food Standards Agency, coupled with the long hours.

227. However, by early 2015 things had come to a head and culminated with heated exchanges between the two brothers, Ahmed complaining that Khalid did not treat the business as a partnership, but saw it as his business alone. It is apparent to me that

the disagreements over the treatment of money had been going on for some years and that there had been arguments over the way in which Khalid had been allegedly extracting money from the business. It was the eruption of a volcano, but the fires had been being stoked for a considerable number of years.

228. That falling out is evidenced by a chain of emails starting at 11.12 on 17 March 2015 from Khalid to Ahmed. It is clear that matters had been bubbling up between the brothers for some time, but this is the first record of what had been simmering between them for at least 18 months, if not far longer. I set out the text of the emails verbatim and with the original punctuation:

“Mr ahmed .you need to sort your self out point one all my life I have not enquired into your spending or asked you .because I know the answer or I didn't want know it will bring bad feelings .tom lane .dubai .credit card spending .money spent on women .cars sold without telling me .business ventures went tits up. cars bought not talking to me and how they were funded. All my expenditure is through the books and is fully recorded and tax deductible to the company .you object me spending on my family. If you want I will calculate your monthly spending I will take that much as well .you know I get £230 a week .whenever you want to sit down I am ready .i bet you any money you will lose out financially .regards partner”.

229. To that Ahmed replied by email at 16.11 that afternoon with an attachment to the email in the following terms:

“Salaam
After a lifetime of giving you respect I was expecting a better response from you than an email full of false accusations and aspersions. AND Mr Ahmed

But seeing as you are not the man or brother I thought you was so in response to your accusations which I assume you mean misappropriation of funds. Any shortfall of money is clearly evident in yearend accounting. AND THERE HAS BEEN NON contrary there has always been overfunding to the accounts so your accusations are unwarranted unproved and petty at best.

The only time there was a consistent shortfall of money year after year was when your wife was doing the banking. Every year 70 to 80 k was missing money in not made it to the bank? There was no cash payments made without invoice and all employees

were on the books every year invoices were created for hens and David Sykes to cover this short fall you are fully aware of this. And when the banking was taken away from her the shortfalls suddenly stopped and yet you know this over 350k was taken by your wife in a 5 year period more from previous years so don't point your finger at me. I am talking facts

IT WAS ONLY AFTER I TOOK OVER THE BANKING THAT THIS COMPANY STARTED MAKING A PROFIT. WHY????????????

Nobody has worked harder than me to make this company 30 years I have put into it Kasim 13 years Hashim 10 years. all you have done is draw money to fund your life and building projects to the point the company was on the verge of bankruptcy when year on year your drawings was exceeding profits and the bank stepped in to stop it and yet you don't see this.

As for your accusation of company's going TITS UP I presume you are referring to VIP as previously discussed with you I left that company to concentrate on medina. VIP was a company that was making me good money a sacrifice that you do not APPRECIATE. I realise now that was a big mistake.

It did not go tits up that is wishful thinking on your part.

I brought this situation to your attention over 18 months ago when there was complete breakdown of control of funds. all money being spent by your family i.e. credit cards, cash taken from business and cheques being issued to for personal use and you have not resolved the cash exiting the business for your family instead it is worse.

I no longer wish to continue in this current situation

As you said at the time

"YOU WALK AWAY OR I WALK AWAY"

I REQUIRE A RESOLUTION TO THIS MATTER ASAP AS WE CAN NO LONGER WORK TOGETHER

WASSAAALM".

230. On the following two pages Ahmed set out the expenditure of which he was complaining. On the first page he wrote

“KHALID

house 225,000

Company drawing 350,000

Convert garage, big house extension, asiya new house, new garage proved from company accounts

Asiya 15,000 deposit for first house

Manchester collection 20,000

Bashir 5,000

Dadipatel 10,000

Aysha 1,140 costs for buying first house

Aysha 15,000 cash

Foxcroft 7,000 cash

Mustafa 110,000 rent cheques taken minimum likely more

Iqbal 80,000 barclays

Barclaycard in one year 17,631 PERSONAL USE lot more in later years

wife cars 4 81,000 20k to bilal

Rolls Royce 175,000

Aysha build so far 155,000

Extra drawing 100,000 20 year period AV 5k per year more rent +draw)

Pakistan trips 120,000 4k per trip average 2trips per year 15 years

Turley cote farm 80,000 asset withdrawn from partnership for maria

wife 350,000 stolen from company minimum likely more

Sufwan 20,000 asiya_sufwan private education

£1,856,771 plus Purchase hawes av This is only what I can remember it is a lot more

Ps nothing was tax deductible all went to drawing and tax was paid on all of it".

231. On the following page he wrote (obviously seeking to contrast his family's position with that of his brother's)

"AHMED

House 150,000
Aston 100,000

Number plate 6,000
Bathroom repairs 5,800

House extention [sic] 45,000
Sajida car 10,000

Wedding 15,000".

232. Khalid replied at 18.10, within 2 hours of Ahmed's email (again as set out in the original):

"Dear ahmed. Since I do not read whole of any letters but got your jist Thank you for clearing the air .as for your information.[1]£15k paid to ahsia was in Glasgow you were still in school.[2]Manchester collection would have paid in company or I used it not £20k.[3] bashir paid in company and used some.[4]dadipatel some whent into company some used if you look back I was not even drawing wabethings were that bad. [5]aysha I paid £20k not £15k borrowed and she borrowed of her inlaws.£17 k I still owing to her which was spent on my house and ahsiah house because company was fucked. [6]john foxcroft £7k you banked it. I only took out what he paid me £700 10% for changing £20 notes.[7] Mustafa rent you give me exact figure I used .you banked them.if taken it woul have been spent on house which would be calculated building of the houses[8]iqbal £80k that was spent on house repaid debt. [9]barclay card bought things for house give me exact figure .i have already added it on building of the house which we will sit down and add total figure spent on the which was going spend the same amount for kassam and hashims houses. [10]wifes cars was paid by the company and tax deducted.how many ahmeds wives had cars bought and sold out of company control. [11]rolls Royce

paid £175k you did not mind getting DB9 £125k when things were cheaper .[12] ayshas house £155k accept. this would have been taken into account when buy kassam and hashim houses. [13]20 years of drawings of £100k I will accept.[14]turley cote farm paid £27k and is still hear.[15]wife stealing £350k don't take me for fool.[16]sufwan £20k accept.as for going to Pakistan keeping my farthers dream going I accept what ever you want.as for company doing well when you run it and did banking .i didn't interfere.when it got bad I had to come back and mortgage my house the company owes me £30ok for bailing it out.i didn't see any of your drawings or spending.khalid.”

(I add parenthetically that this is evidence that a book existed recording the property expenditure: Khalid implicitly refers to it in this email of 17 March 2015 at 18.10 at [12] where what he is in essence saying is that he recorded everything spent on houses, but these sums are not recorded. I find that that record was in the now missing yellow book).

233. Khalid followed that up at 19.04 in the form of two emails. The first was short corrective to the effect that “Sorry yes paid ahsia £15k in partnership”. The second, of somewhat more significance, stated

“Thank you .you win tell me what you want to do.”

234. Khalid’s next email followed at 21.53 and stated that

“Dear ahmed .i have read your letter. now first my wife did not steal any thing you are accusing she stole £350k in 5 years .ie=shortfall of £70k a year which you said was covered up by adding false invoices .first of all when there is short of funds .you do not add xtra invoices that makes it worst .you only add invoices when there is more cash in bank than sales .thats when you add invoices to balance the books.we had accounts problem upto 2008 .tax inquire for 2004.she stopped banking 2001 when kasam came .this accusation is false by your own evidence .the only time we have started making money was when we sorted cng.gas.electric .water charges.even now you add utility bills £350k to accounts now we will be in red even now .your list of my drawings and your list of drawings is pure fiction.as for respect when I gave you respect.i said to you that I gave you full partnership when you didn't ask for it. Your answer was you wouldn't have done anything till you were full patner.so from start you did it for the money .and I was honoured to think you

respected your brother .but your own words were you did it for the money. You are correct it is time to part .stopped my check .stopped my credit card .been hearing same accusation from your wives for 10 years now you said the same bullshit to me .i should have listened to my mother when she said khalid walk away .ahmeds wives are saying these things.i told her then when ahmed says it me I will believe It that time is now .you were doing milk round when I brought you with me I paid your £5k debts to give you fresh start .we will see what future brings .i will be happy with mine .regrets for you.no regrets with life .i am happy with my allah.

235. Khalid's next email was sent at 5.56 on 19 March 2015 to the effect that

“Dear ahmed .can you make all files relating credit cards available in office .can you cancel DD for American express nothing should be purchased on that card for medina.i need financel records how hashims car ball was paid no record of it in the books.how Hamza golf was paid and how much.how was the jaguar paid and how much.how the range rover was paid and how much.and dubai trips things bought from dubai for company I do not see any money taken logged in cash book.how dubai trips funded no record in cashbook.i need list of all cars that are insured and paid by the company.i now kasam have been paying and some checks for barkley account were banked in other accounts.if kasam dose not record any funds paid out and not recorded I will have no choice but to dismiss him since you have said you can not make ends meet .but your life style and money spent seems flash.these concerns need to be addressed so we can put the company record are correct .then I can consider winding the company or finding a buyer.khalid.”

236. On 18 May 2015 Khalid forwarded to Ahmed the details of a property in Norwood Park, Huddersfield, which he was offering to buy in cash for £750,000.

237. On 20 August 2015 Khalid sent three emails in the course of just over an hour in the evening, seeking to justify his conduct and explaining why he wanted to put his daughter's car through the books:

19.27: “Dear ahmed .since you think I am a thief and no respect for me .and if you think me and my family is burden to you. it is not worth making things worse by carrying on with this partnership you have no respect for your father and his legacy what I spent on billal,s house was to keep mother happy at any cost which you also you got credit till you said it your self he is

not entitled to it and kept saying to mother point one he was your brother plus he is looking after your mother plus if you can not understand that we have nothing more to say my advice to you do not make mother unhappy you will regret it for rest of your life .or are you past caring you going to haj and your heart is hard even to mother .seeing mother with loving eyes is equal to accepted haj. spending money to go to haj when mother is not happy .is wasted money and yes you know all this I do not understand what is happening to you I will pray for you your loving blood brother.khalid.”

20.00 “Dear ahmed. Regarding your sons how many years I spent training kasom and hashim .how many times I got bolloking of mother I am always swearing at them they are hard working and of the streets which I got no thanks .you were too busy with wives regarding Hamza since he started when ever I asked him to do some thing he all ways too busy and was doing some thing else .all ways got answer for every thing .thats why I do try to say anything to him he has all ways got a bullshit answer ready what you sow you reap. I know things you do not understand that's why I told you every thing so you could take over after my death madrasa charity work so you will cope with it .like my father told me every thing and I tried to educate you the same way why have you taken the wrong path every thing I said to you .you took it the wrong way you have broken my heart in the past years but I never gave up on you .kept on trying and ignoring things you did i am lost ahmed .i want the family together if you are not going to make the effort that's up to you I have done my best.”

20.38: “Dear ahmed. Regarding the purchase of the car I told you the 20 k I am putting in cash from Pervez funds .and told you I will take it out when there is profit if you remember our earlier conversation we decided when we got funds we will share the profit between us 2 .since you are in such a rage you took it the wrong way again may be i should have said I will take it out when we share the profits not on top like I said this is personnel expender and is nothing to do with factory cost I hope this clears this matter .the reason I want to put threw books is we can use spent as payments for car and receive depreciation or chq later to put in barcleys .you need to understand I am all ways planning ahead. please make your mother happy I am with you but do not do this to her and make our enemy happy and them laughing at us.”

238. What I do derive from these emails is that Ahmed had brought the situation to Khalid’s attention over 18 months previously, that he no longer wished to continue with

the current situation and that they could no longer work together, such that matters required a resolution since he need to walk away from the partnership.

239. It is also clear that the business was in difficulties because of the flooding of the market by cheap Polish chicken, as Ahmed explained in his evidence. Between December 2015 and April 2016 Khalid wrote to Medina's main poultry supplier, in effect begging for large reductions and bemoaning the crippling conditions in the market and the lack of any future for the business. One email, for example, ended "I cannot survive with this kind of losses. Worried, Khalid".

240. It is also apparent that Khalid was unwell in the months leading up to his death, although his death, when it occurred, was unexpected. It is possible that he may have had intimations of mortality, but he certainly wanted to put his affairs in order. In the period leading up to his death, Khalid contacted the accountants Peel Walker. On 6 May 2016 he chased the 2015 accounts. On 23 May 2016 he gave instructions about wanting to transfer his interest in the partnership property to Sufwan. The accounts for y/e were drawn up on 25 May 2016 and they show Mumtaz's capital in effect transferred to Ahmed (whether that is what actually happened is another issue in dispute between the parties, to which I refer below). I appreciate that there is a £15,000 discrepancy between the one figure and the other, but nothing turns on that (Ahmed said that the balance was made up of wages due to him) and, as a matter of substance, I proceed on the footing that what they purport to show is Mumtaz's capital in effect being transferred to Ahmed. Ahmed's opening balance is shown as £196,600 and net cash introduced is £270,409, leaving him with a closing balance of £467,009. By contrast Mumtaz's opening balance is shown as £255,861, but her closing balance is shown as nil.

241. On 16 June 2016 Khalid and Peel Waker discussed transferring Khalid's 50% share to Sufwan, removing himself from the partnership and adding someone else to leave 2 partners on each side of the family ("in the meantime I like to put my affairs in order. I am 59 years old now"). It is apparent that he did not regard Ahmed as being a partner and that, so far as he was concerned, the partners on that side of the family were Kasim and Hashim. Peel Walker responded and referred to knowing that Ahmed was not a partner.

242. On 23 June 2016 Peel Walker sent Mumtaz a letter enclosing her income tax return and confirming “you have now ceased in partnership”. The enclosed tax return also confirmed that state of affairs.

243. What also happened in late June 2016 was that a major customer of Medina run by Ahmed, namely Premium Poultry Ltd, made out two cheques to Sufwan. Mumtaz gave evidence that she was given them by Khalid and asked to hold on to them for a few weeks before banking them and that she gave them to Sufwan. His bank statement has not been produced showing when they were banked, but Sufwan does not advance a case that he did not bank those cheques. The significance of those cheques and the effect that their receipt has on Sufwan’s share is one of the issues between the parties which I must determine, again as set out in more detail below.

244. It is common ground that Khalid kept several cash books which he filled in by hand, one of which is missing. I have referred to this above in the context of Sufwan’s evidence, but I repeat the point here to put it in context. It is accepted that the book which is missing recorded cashflow, which Sufwan accepted in live evidence was intended to mean income, expenditure and its effect on available cash. The missing cash flow book was said to be a yellow book and I refer to it as such. As mentioned above, Kasim gave evidence (which I accept) about a book used to record all of the cash receipts, including from contract kill income to be off-book. There is no book otherwise recording the contract kill income and all of the property expenditure and there had to have been one.

245. Khalid also kept an intake book which recorded poultry in (but not red meat). I have previously referred to it in the context of Sufwan’s evidence, but refer to it again here to put it in context. That book has been disclosed (although only parts amounting to some 28 pages had been put in the bundle). It is a black book. That is the book which recorded Sufwan being last on the Medina premises on 15 August 2016.

246. Khalid also kept another black book, the cash book which recorded payments out (“Paid Out”) on its front cover. That was also in evidence and was complete. It runs to

some 116 pages. It records some details of Khalid's property expenditure to which Mr Davidson refers in his report.

247. The oral evidence of Mr Davidson was that the receipts into a Barclays account and transactions on it had not been put through the books. Those bank account statements were obtained by Ahmed following Mr Davidson's report upon the latter's suggestion that they might be provided by bank headquarters on a subject access request as the bank retains the microfiche. As summarised in the schedule of payments, the Barclays bank was used to repay Khalid's mortgage and

(1) to buy the oil plant, which Sufwan accepted in his witness statement and in oral evidence that his father had bought.

(2) to pay Ramsdens, the solicitors who corresponded with Khalid about settling the costs dispute consequential upon an unsuccessful PI claim against the partnership (which is one of the issues which I have to determine, although it is one which can be dealt with briefly).

(3) to buy a fleet of gas-powered trucks and to buy the gas infrastructure to run the gas-powered vehicles which Khalid is said to have purchased.

248. I shall refer in more detail to the Barclays account below in the context of the management of the partnership.

249. Although he had not been well for several months, Khalid died unexpectedly on 7 July 2016.

250. On 15 July 2016 Ahmed was invited to a meeting with Isha which happened the day before a fire at the partnership premises (not on the day of the fire at the factory premises as suggested in the transcript). It is common ground that he did not know that he was being recorded in that meeting and Dr Wilkinson submitted that it was relevant to treat any of his unguarded comments made to family members in that context with care, although Ahmed himself was not disposed to challenge the accuracy of the transcript beyond a few words here and there. A transcript, with what were said

to be the relevant parts of the meeting highlighted, was produced during the trial. The fact that there was a recording at all in the immediate aftermath of the death of the senior member of the family and that it was done covertly is indicative of the bad blood in the two sides of the family about a number of aspects of the running of the business immediately after Khalid's death and before there had been any serious intimation of litigation.

251. However, what I do note and find to be of significance was that:

(1) there is no reference to Mumtaz being removed as a partner, suggesting that that was not in issue.

(2) Khalid's share is referred to as being a quarter (which suggests that, with Sufwan's share, Khalid's side of the family had a half share of the partnership and Ahmed's side, however constituted, the other half share).

(3) Ahmed complained about Khalid taking money out of the business and needing to account.

(4) Ahmed complained that Sufwan was not putting in the work to make the business viable.

(5) Ahmed said that the oil business was not running and that equipment stood still.

(6) Ahmed asserted that there needed to be an account in respect of the cars.

252. On the following day there was a fire at the partnership premises, although it was put out. There had been an argument between Sufwan and Ahmed about the running of the business and thereafter a fire was reported upstairs in the storage area. The fire was extinguished. As explained above, I make no findings about whether the fire was started deliberately or accidentally and, if the former, by whom. The significance of the events of the day is that it marked a watershed and that Ahmed's family decided that they could no longer work with Khalid's family which, in the context after the death of his father, meant Sufwan.

253. It is the Claimants' case that, following his father's death, Sufwan took a period of time away from the office and returned to work on or about 14 July 2016 to find that all of the computer logins had been changed, the login details for the partnership bank accounts had been changed, the slaughter licence had been reapplied for in the name of Medina Group Ltd rather than the partnership, the locks had been changed on the office doors and pages had been ripped out of the cash book, which subsequently went missing. This was all done by Ahmed, Kasim and Hashim and thereafter they excluded him from the premises and the business. Subsequently, it is the Claimants' case, the Defendants have purported to transfer the business and its assets to the company without accounting for them to the Claimants and Khalid's estate.

254. I prefer the Defendants' account of what happened on Sufwan's return to work to the account given by Sufwan. The reality is that Sufwan perforce had to leave the running of the business to the Defendants because he lacked the necessary ability and experience to run it himself. His exclusion from the premises was engendered by their belief (whether correct or not, as to which I make no findings) that he had been responsible for the fire at the premises on 16 July 2016. It is, however, clear from the poultry in book that Sufwan had access to the premises as late as 15 August 2016. As I have explained above, I do not accept Sufwan's evidence about pages having been ripped from the yellow book by the Defendants.

255. Sufwan sought to argue that the application for a new licence to run the business premises was made in the name of the company, Medina Group Ltd, but it is apparent that the application was initially in the name of the partnership and only later was it varied to the name of a new company, again suggesting that Sufwan's account of what happened on his return to work is not accurate.

256. There was a bigger family meeting, thought to be on 3 August 2016, in which settlement was discussed, although the terms are disputed. It is apparent that more than a dozen members of the family were present and that a wide range of issues were discussed. Ahmed's case, which I accept, is that he told his brother's family that the partnership was over (that much was clear from March 2015 at the latest) and ended with Khalid's death (it is common ground that the partnership ended on Khalid's

death) and that his family wanted to go on their separate ways (that again is not surprising given what had been said in March 2015 and given the bad blood between Sufwan and his uncle and cousins, which would have been exacerbated by their suspicions, whether justified or not, about the origin of the factory fire on 16 July 2016). His family offered to relinquish total control of the partnership, with the partners resigning and for Khalid's family to keep the business. Effectively, they would walk away subject to payment of any credit balances on the partners' capital accounts. Khalid's family immediately declined the offer as none of them had the knowhow, ability or experience to run the business. Ahmed and his sons were the backbone of the business. I accept that evidence. Sufwan alone could not have done the work of Ahmed, Kasim and Hashim. On his own admission at the time he knew little about the financial details of the business. The alternative solution was for the Defendants to buy out Khalid's and Sufwan's shares in the business and for them to continue the business. It was decided that, in the first place, cessation accounts would be done and the families would take matters forward from there.

257. Ahmed's family instructed solicitors, Reiss, to write to Mumtaz and Sufwan that they no longer wished to work in partnership and offered to purchase their interest, if any, subject to valuation of the assets, to be assessed by the partnership accountants.

258. It is, I find, of significance that Sufwan instructed his solicitors as early as 1 August 2016 that it was unlikely that cash was going through the books:

"Whilst Sufwan was also employed in the business, he knows little about its financial details. It was pretty much a cash business which cash is unlikely to ha[v]e gone through the books and accounts [as] featured in the end of the year accounts."

259. Peel Walker, the partnership accountants, had done the partnership accounts since 2003 and were approached to prepare the cessation accounts, but they declined to do so. Another firm, Consortio Professional Services, were then instructed to prepare the cessation accounts.

260. After the cessation accounts had been prepared, another meeting was called. The Claimants were unhappy with the cessation accounts and instructed Ramsdens

solicitors to resolve cessation accounts and bring the partnership to an end, if indeed it had not already been terminated with Khalid's death. Ramsdens put forward a shortlist of three accountants and Sheards were then jointly instructed by the families and paid jointly by both sides. They prepared draft final cessation accounts, although they could not be agreed.

261. A company called Medina Group Ltd had been incorporated on 21 October 2015. At its incorporation Ahmed was its sole director and shareholder. Hashim and Kasim were appointed directors on 1 August 2016. Hamza (Ahmed's other son) was appointed director of the company on 1 July 2019. The current shareholding of the company is now Kasim and Hashim 35% each and Hamza 30%. On 23 February 2016 the company granted a debenture to National Westminster Bank which created fixed and floating charges over all of the company's assets.

262. The Defendants referred in subsequent correspondence to it being clear after the August 2016 meeting that Sufwan did not want to take on the business. On 9 May 2018, Reiss solicitors wrote to him about that meeting "it was clear to our clients when your clients declined to take on the business that it was in everyone's best interest to see if the business could be carried on".

263. On 17 August 2016 the executors of Khalid's will renounced their role. No one else applied for a grant.

264. On 29 November 2016, Mumtaz bought a property at 16 Britannia Crescent, Huddersfield in a cash purchase (with no mortgage), £24,000 having been transferred to her by Isha.

265. Mumtaz was not then represented by Sufwan's solicitors and the first time she was professionally represented was in 2019.

266. Proceedings were finally issued by Mumtaz and Sufwan as First and Second Claimants against Ahmed, Kasim and Hashim on 7 December 2021. It was only much later that Khalid's estate was joined as Fourth Defendant. Ahmed was served with a bankruptcy petition on 2 June 2022 and was adjudicated bankrupt on 1 April 2022. He

remains bankrupt, although his trustee in bankruptcy declined the invitation to take part in the proceedings. I do not need to set out the interlocutory history of the proceedings prior to the trial of the action.

Issues at Trial

267. A significant number of issues were live at the trial. As listed before me they were as follows:

Partnership Assets

1. Whether the Oil Business still traded after 2015?¹
2. Was Turley Cote Farm an asset of the Partnership? If so, did it cease to be a partnership asset prior to the dissolution date? If not, what directions if any should be given at the account stage to account for it or its value?
3. The parties have produced a Scott Schedule showing competing lists of tangible assets as at the dissolution date (including assets said to have been used in the Oil Business as well as commercial vehicles, but not cars used by the Partners personally). In respect of each item where the lists differ, the Court will be invited to make findings about whether the same was property of the Partnership at dissolution and, as relevant, what condition it was in and/or what it consisted of?
4. Are the partners entitled to a share on dissolution of the value of any goodwill in the partnership and, if so, what was its value (if any) and/or what directions, if any, should be given for the account stage to determine its value?
5. As for the Partnership Property, what directions, if any, should be given at the account stage to determine its value and in respect of the counterclaim for orders permitting the Property to be transferred?

The Partners

6. Who were the partners at dissolution and in particular:
 - a. Did Mumtaz cease to be a partner in 2014?

¹ It is now common-ground that the Oil Business was a part of the Partnership and not a separate business and that the partnership still had assets which were used for the Oil Business at the dissolution date, but there is a dispute about whether it was trading.

b. Was Ahmed no longer a partner on 7 July 2016? Did he resign in 2010 when his place was taken by Hashim?

The Partners' Accounts

7. Were the partnership accounts settled accounts and, if so, what bearing does that have on any claims insofar as they need to be reopened?

Khalid's dealings

8. *The Bad Debts.* Did Khalid or Sufwan receive any of the debts recorded as bad debts and listed at para 5.16 of the forensic accountant's report? If so, what adjustment, if any, is to be made to his account or any other accounts? Have these bad debts been double-counted as (i) owed by Britannia Poultry Products and Sifko and (ii) the accounting treatment of Al Haq ALHA02 showing a bad debt despite continuing trading/payments?

9. *The Allegations of Diverting Income.* Did Khalid divert and not account for income, including the following income due to the Partnership:

a. *Rental income* from Premier Halal Meats Ltd pursuant to the three-year lease starting on 17 July 2009 (with property being vacated on 7 May 2012)? Or was it received mainly by Kasim?

b. *Contract kill income* from Premier Halal Meats Limited, Aqsa Halal Meats and others?

And other partnership income as set out in the forensic accountant's report. If so, what adjustment, if any, is to be made to the partnership accounts and/or his account?

10. *The cars.* Were the motor vehicles YG65 FKP, YR64 NZW, OU16 RFZ purchased with Partnership money? If so, what adjustment, if any, is to be made to the partnership accounts and/or any partner's account?

11. *The insurance payment.* Was the insurance payment of £134,250 made to Khalid an asset of the Partnership? If so, how much should he have accounted for and how much did he account for? What adjustment, if any, needs to be made to the partnership accounts and/or his account?

12. *The personal expenditure.* Did Khalid use Partnership money to which he was not entitled for himself and his family, including but not limited to:

- a. to settle his credit card bills?
- b. to lend money to his family?
- c. to pay tuition fees?
- d. to meet construction costs for building work at 362 Birkby Road (see para 6.1 of the forensic accountant's report)?

If so, what adjustment, if any, needs to be made to the partnership accounts and/or his account?

13. *The lamb processing machinery.* Did Khalid sell Partnership assets worth £19,240? If so, did he account to the Partnership for the money? What adjustment, if any, needs to be made to the partnership accounts and/or his account?

14. *The mortgage.* Did Khalid use £294,000 of Partnership money to discharge his own mortgage? If so, what adjustment, if any, needs to be made to the partnership and/or his accounts?

15. *The allegation of misappropriation of cash.* Did Khalid take cash of £143,758 without posting the same as drawings (see para 6.1 of the forensic accountant's report)? If so, what adjustment needs to be made to any accounts?

16. Are Khalid's drawings to be amended by all or any part of the sum of £161,440.71 as set out in the forensic accountant's report? If so, what adjustment needs to be made to any accounts?

17. *Unaccounted personal payments.* Did Khalid receive all or any part of the £134,785 shown at para 6.24 of the forensic accountant's report? If so, what adjustment needs to be made to any accounts?

18. What, if any, adjustment to Khalid's or any other account is to be made in respect of the sum of £215,000 discussed at paras 8.17 to 8.24 of the forensic accountant's report? If so, what adjustments are needed to any accounts?

19. Did Khalid take cash of £28,000 as discussed at paras 8.38 to 8.40 of the forensic accountant's report? If so, what adjustments are needed to any accounts?

Other account issues

20. Did Sufwan receive payment of two cheques of £32,500 each paid by Premium Poultry Products Limited to the Partnership as discussed at paras 8.31 to 8.37 of the forensic accountant's report? If so, what adjustment, if any, needs to be made to his or any other account?

21. Further accounting issues:

a. On what basis was Mumtaz's account reduced by £255,861 in 2014/15?

b. On what basis was Ahmed's account increased by the same amount? Should those transactions be reversed?

c. Did Ahmed introduce capital of £270,409 in the year ended 31 July 2015?

d. Of the cash of £103,691 received by Kasim as set out in his witness statement dated 29 November 2024, how much, if any, was he entitled to receive? What adjustments, if any, should be made to his account?

268. By the conclusion of the trial, however, several issues were no longer live or no longer needed to be pursued.

269. Issue 1 was no longer in dispute and Issues 12 and 15 were accepted at the outset of the trial as being duplications of Issues 18 and 17 respectively, which were still pursued.

270. As a result of submissions in the course of closing speeches, Issue 3 is no longer a live issue and Mr Fennell did not need to address me on it. I record the agreed position in that respect towards the end of the judgment.

The Order of the Remaining Issues

271. It seems to me that a more logical grouping of the issues would be as follows:

(1) the start of the partnership and its property – Turley Cote Farm (issue 2).

(2) who were the partners at dissolution and how the shares were divided – Ahmed and Mumtaz (issues 6(a)-(b) and 21(a)-(c)).

(3) how the partnership was managed – the Barclays account and the cash book.

(4) the relevance of the settled accounts (issue 7).

(5) Khalid's dealings (issues 8-19).

(6) Sufwan's dealings (issue 20).

(7) Kasim's dealings (issue 21(d)).

(8) the partnership's property in 2016 – the plant and machinery (issue 3).

(9) the relief which it is appropriate to order – the claims for accounts and inquiries and transfers and outstanding issues such as goodwill (issues 4 and 5).

Issue 2: Turley Cote Farm

272. I am satisfied that Turley Cote Farm was an asset of the partnership from 1990 to 1999. Mumtaz's evidence was that the money for the purchase was loaned to Khalid by her now deceased brother, Naeem Iqbal, and that it was never used for the business of the partnership. Whatever the original source of the funds, I do not accept Mumtaz's evidence that the Farm was never used as part of the partnership business. On the contrary, it is clear that the Farm was at the outset a partnership asset, as is apparent from its inclusion in the partnership accounts for the y/e 31 May 1991 to 1994 inclusive. It would be highly unusual for Khalid to have contributed the Farm to the partnership's capital (as confirmed by the accounts for these years) if he had paid for it privately. Whilst it is not included in the subsequent partnership accounts by name, I am also satisfied that it is included within the broader category of property which is valued at £666,729 for y/e 1995, with no additions or disposals being noted. That remained the position up to 1999: the accounts do not show any disposals other than the Blacker Road shop for £90,000 and there are no significant additions, merely the sum of £10,879 for y/e 1997 and £5,162.04 for y/e 1998.

273. Before the interposition of the limited company, Medina Poultry (Halifax) Ltd, the position is that Turley Cote Farm was held by Khalid on trust for the partnership. There was no evidence that Khalid and Ahmed ever agreed that the Farm should be treated as Khalid's own or that it should no longer be held on trust for the partnership.

274. Mr Fennell submitted that the onus was on the Defendants to show that the Farm was an asset of the later partnership after the period of ownership by the limited company and that there was no evidence to suggest that it was transferred from the original partnership into the limited company nor that it was introduced into the later partnership. Dr Wilkinson countered that the Farm remained on trust, notwithstanding the temporary interposition of the company. In the absence of any case that it should be transferred out to Khalid exclusively, the only conclusion to draw was that the agreement between Khalid and Ahmed was that the Farm should remain a partnership asset and not be kept outside the business by the brothers. That was the proper conclusion to draw from the evidence and s.20(1) of the Partnership Act 1890 accordingly applied:

“All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement”.

275. I agree with Dr Wilkinson. Whatever the origin of the purchase monies, which I find were more likely to have been partnership funds than a loan from Naeem Iqbal, the Farm was undoubtedly originally brought into the partnership stock or acquired on account of the firm, or for the purposes and in the course of the partnership business. In the absence of any case that the Farm, which was clearly initially a partnership asset, should be transferred out to Khalid exclusively, the proper conclusion to draw was that the agreement between Khalid and Ahmed was that the Farm should remain a partnership asset, notwithstanding the temporary interposition of the company, and that it became an asset of the new partnership. Accordingly, s.20(1) of the Partnership Act 1890 applies because the Farm was acquired on account of the firm and for the purposes of the business and must be held and applied by the partners exclusively for

the purposes of the partnership and in accordance with the partnership agreement. The correct analysis, it seems to me, is that Turley Cote Farm was originally brought into the partnership stock or acquired on account of the firm, or for the purposes and in the course of the partnership business and that it was held on trust by Khalid for the partnership. It did not pass to the company, but remained in his name on trust for the partnership and, when the business which had been transferred to the company was transferred back to the partnership, the Farm remained in Khalid's name, but still remained as a partnership asset as it had originally been.

276. Mr Fennell submitted, however, that at the meeting with HMRC on 19 May 2009, Khalid told HMRC, in Ahmed's presence, that the Farm was his personal property. Ahmed signed the note of the meeting. If Ahmed had believed that the Farm was partnership property, he could and should have taken steps after the 2009 meeting to regularise the position, but he did not do so.

277. However, the paragraph in the meeting notes which refers to the Farm is, at the very least, more ambiguous than Mr Fennell suggests. What paragraph 146 records is that

“PFA asked whether SKP owned or had an interest in any other land or property, apart from his house at 362 Birkby Road and the let property which had been discussed earlier with Ahmed. SKP stated there was some land at Turley (?) Court Farm that he had purchased in 1990. This had originally been bought with the intention of using it for the business right at the very beginning. The title deeds were in SKP's name only. SKP was holding onto the land in the hope that he would obtain planning permission. There was approximately 3 acres of land that was now derelict. Originally, it was used for chicken sheds in the very early days of the business.”

278. So Khalid was stating that he purchased the Farm in 1990 and that it had originally been bought with the intention of using it for the business “right at the very beginning”, although the deeds were in Khalid's name only. Originally it had been used for chicken sheds in the early days of the business, but was now derelict. Khalid was holding on to the land in the hope of obtaining planning permission. The text of the paragraph is somewhat ambiguous, but it is consistent with the Farm having been acquired as a partnership asset, albeit in Khalid's sole name, and remaining a

partnership asset, notwithstanding its redundancy, being kept in the hope of obtaining planning permission. What is not unequivocally asserted was that the Farm had ceased, by agreement between the partners, to be a partnership asset and was now Khalid's personal property. The more likely impression which HMRC would have drawn from the paragraph, as explained by Khalid, is that the Farm was partnership property, albeit held in Khalid's sole name, and that he was holding on to it in the hope of obtaining planning permission. Given that the record of the meeting does not assert that the Farm had ceased by agreement to be a partnership asset and was now Khalid's personal property, I do not consider that Mr Fennell's criticism of Ahmed for not raising the issue with Khalid and thus dealing with the matter is made out. What was said at the meeting was at the very least consistent with the Farm having been acquired as partnership property and remaining as such.

279. Moreover, the conclusion that the Farm was an asset of the later partnership is borne out by the 2003 accounts, which record land and buildings with net book values of £768,518 with no disposals. That figure is significantly greater than the £600,000 which Brookwoods was thought to be worth and is consistent with inclusion of Turley Cote Farm as a partnership asset. That is also consistent with the accounts 5 years previously, which show all of the property (including the Farm) as being worth £576,729 for the y/e 1997 and £592,771 for the y/e 1998.

280. If that is wrong and the Farm does not appear in the 2003 and subsequent accounts, that is not fatal to the Defendants' case. As appears from the decision of HHJ Judge Eyre QC in *Wild v Wild* [2018] EWHC 2917 (Ch), it would not matter that the accounts failed to show the Farm as a partnership asset, even if the accounts were to be regarded as settled. As Judge Eyre QC explained

“52. Mr. Pritchett argued that the Farm had been included in the accounts as partnership property; that the accounts are to be seen as having been settled and signed accounts; that the court should not reopen those accounts; and that, therefore, the court was bound to regard the Farm as partnership property. The flaw in this argument is that it is based on a misunderstanding of the effect of settled accounts and the approach taken to them. In his closing submissions Mr. Pritchett contended that settled accounts are “conclusive as to their content” but that overstates the position. The true position is that an account which has been

agreed between the partners is regarded as a settled account and “constitutes a good defence to an action seeking a further account of any transactions or dealings covered thereby” (Lindley & Banks 23-110 emphasis added). Save to the extent that a settled account provides a good defence in respect of a further account covering the same dealings it is not “conclusive as to its contents”. Settlement of an account during the life of the partnership does not prevent dissolution accounts being drawn up on a correct basis. This is consistent with the approach which was taken in *Ham v Bell* and in *Barton v Morris* where the courts did not regard the entries in the accounts as conclusive as to the question of whether or not particular assets were or were not partnership property. The editors of Lindley & Banks advert at 23-111 to the possibility of dissolution accounts leading to different outcomes from those shown in earlier accounts thus:

“Equally where an account has been settled up to the date of dissolution it does not mean that the partners have foregone their right to have full dissolution accounts taken thereafter, without reopening the settled account. The corollary is that it cannot be assumed that an amount shown as due to a partner in a settled account is necessarily payable to that partner since it may be affected by subsequent accounts which have not yet been taken.”

53. In applying that general approach to the effect of settled accounts the particular circumstances of this case must be borne in mind. If the Farm was not in reality a partnership asset then as between the Claimant and the First Defendant it cannot be appropriate for the final accounting on the dissolution of the partnership between them to be on the basis that it was an asset of the partnership. Neither the Claimant nor the First Defendant is the legal or beneficial owner of The Farm nor does either have any interest in it unless it is held by the Second Defendant for the partnership. In those circumstances neither of them could require the accounting by the other to proceed on the basis that the partnership has an asset which it does not have.”

281. So here, if the Farm was in reality a partnership asset then, as between the Claimants and the Defendants, it cannot be appropriate for the final accounting on the dissolution of the partnership between them to be on the basis that it was not an asset of the partnership. In those circumstances the parties could not require the accounting to proceed on the basis that the partnership does not have an asset which it does in fact have. If the Farm was held by Khalid on trust for Khalid and Ahmed in 1999, it never passed to the company and remained on trust for them when the company transferred the business of the partnership back to them in 2002.

282. There are other, but lesser, indications that the Farm was a partnership asset. In 2011-2012 Yorkshire Water wrote to Khalid about water charges owing by him for the Farm. Some at least of the correspondence was addressed to "Medina Poultry" and water bills were sent to "Medina Abattoir". As Dr Wilkinson said, whatever he told Yorkshire Water led them to write to him as a partner for the payment.

283. In February 2016, the partnership was invoiced for planning works undertaken at the Farm and it would appear that Khalid arranged for the bill to be sent to the partnership and for the partnership to pay it.

284. Finally, in the ill-tempered email correspondence between the brothers in March 2015, Khalid did not assert that the Farm was his. Ahmed emailed Khalid at 16.11 on 17 March 2015 with an attachment, alleging that Khalid had to account to the partnership for a number of sums, including £80,000 for the Farm which was "an asset withdrawn from partnership for Maria". Khalid's response at 18.10 that day only took issue with how much it was worth and the assertion that it had been withdrawn from the partnership to "maria". He denied that it was worth £80,000 or that it had been withdrawn, saying "turley cote farm paid £27K and is still hear [sic]". He did not, however, assert that it was his personal property, but instead asserted that it was "still hear" [sic].

285. I therefore conclude that Turley Cote Farm, as well as Brookwoods, was partnership property, held on trust for the partnership, and that the valuation of those properties, as at 7 July 2016, was £65,000 and £750,000 respectively, as appears from Mr Steel's valuation. An up to date valuation will need to be undertaken to account for any change in value since 2016.

Issue 6: who were the Partners at dissolution

Changes to Shares

286. I agree with Dr Wilkinson that what became apparent in evidence was that all parties expected the partnership to be owned equally between the two sides. Indeed there was no disagreement on that point. Since 1990, until the business was transferred to Medina Poultry Halifax Ltd, the partnership was run by Khalid and

Ahmed (as well as their father Shahdin, who died in 1995) and held in equal shares. It was supposed to be held equally. That was one of the few things on which both sides of the family were agreed in evidence.

287. However, as is apparent from what I have explained above, the accounts of the partnership frequently did not evidence that agreement. On the contrary, they were sometimes significantly inconsistent with it, as is apparent from the sometimes annual fluctuations. The accounts in each year did not clarify whether or not there had been a change to the partners' shares by reference to previous years (or generally).

288. Mumtaz's evidence was that she had no idea what was in the accounts and did not agree to them. In any event, as I explain below she was only a nominee partner. Sufwan's evidence was also that he did not see or agree them, certainly in 2008 and 2009. I accept their evidence in those respects. Sufwan said that the accounts for the subsequent years 2010 to 2014 "would have been" seen by him, but he did not positively assert that he had seen them nor did he explain what had happened to change the practice of the two preceding years and I find it more likely than not that he did not see them.

289. For their part, Hashim and Kasim gave similar accounts that they had not agreed the contents of the accounts. I also accept that evidence.

290. When Ahmed was shown the accounts which indicated that he, Sajida, Kasim and Khalid each had a 25% share, he did not accept that he knew and agreed to the deviation, but rather gave clear evidence, which I accept, that "it should have been 50/50".

291. In order to settle changes to the shares, the accounts should have been clear. Either the previous year's shares should have been shown or there should have been an explanation somewhere either in or alongside the accounts to the effect that the shares had been changed. The partnership accounts do not clarify that. There would need to be more than what is in the accounts to clarify that the changes of shares had been agreed.

292. It was not the Claimants' case that it was explained to them around the time of the completion of any accounts that such accounts settled once and for all what had been agreed in terms of changes to the shares of the partners. Far from it, even on their own case.

293. If I am wrong about that, I am satisfied that the accounts were to that extent incorrect and did not reflect what the parties had agreed about the shares. I shall revert to this aspect of the matter when I deal with the question of settled accounts below.

Mumtaz

294. I accept Mr Fennell's proposition that the starting point is that, by virtue of s.25 of the 1890 Act, a partner cannot be removed against her will. I am satisfied, however, that the evidence in fact establishes that Khalid arranged for Mumtaz to be removed as a partner and that he did so with her agreement, whether expressly or implicitly. Mr Fennell accepted in closing (rightly in my judgment), in the light of Mumtaz's evidence, that Khalid had authority to act on her behalf and that I find is what he did with regard to her share. As she said in her evidence, she let him deal with things for her and he would tell her what she needed to know. The likelihood is that he would have told her about the changes to her share which he had made and that she did not demur to them.

295. Both Mumtaz and Sufwan sought to argue that they did not authorise or know about the contents of their own tax returns, but I find that proposition to be wholly implausible in both their cases.

296. In box 17 of both Mumtaz's tax return for 2015 and her tax calculation summary, it was confirmed that she was no longer a partner; that was why she was claiming to reduce her payment on account. The return and the calculation summary were completed by Peel Walker, the same accountants who also acted for the partnership. Mumtaz's tax returns were sent to her home address at 362 Birkby Road, Edgerton, Huddersfield HD2 2DN. Sufwan's tax returns were similarly addressed to his parents' address there. There is no suggestion that Ahmed (or any member of his family) controlled or had access to their post.

297. Moreover, Peel Walker wrote to Mumtaz at her home address on 23 June 2015 to advise her of what was due and confirmed that they had reduced her 2015/2016 payments on account to nil as she had now ceased in partnership. There was consequently £966.54 for Mumtaz to pay and it was paid by the partnership in accordance with its practice of paying out partners' tax.

298. I do not accept that Mumtaz did not authorise her tax return to be submitted. Equally I do not accept that Sufwan did not authorise the submission of his tax return. In one of the more telling exchanges in his evidence, Mr Davidson confirmed that it was highly unlikely that the accountants would have submitted returns for Mumtaz or Sufwan without their authority, or on only Ahmed's instructions since he was no longer a partner and it was highly unlikely that HMRC would have accepted unsigned tax returns. It is also inherently unlikely that Peel Walker would have acted on instructions from Ahmed, as again confirmed by Mr Davidson, since they clearly knew that he was no longer a partner, as acknowledged by Mr Nutton's email to Khalid and Ahmed of 20 May 2016, referring to Ahmed "even though he is not a partner".

299. I agree with Dr Wilkinson that the allegation smacks of precisely the scapegoating which was characteristic of Sufwan's evidence: the book was falsified, the application was falsified.

300. Rather I approach their evidence in the light of the contemporaneous documentary record and according to the guidance in *Gestmin* at [22]. That does not bear out their contentions of ignorance.

301. Their case was that Khalid challenged the accountants about Mumtaz being removed from the partnership, but on the contrary it is clear from his emails to Peel Walker that he never raised any such challenge. The correspondence all points to him (rather than Ahmed) dealing with the accountants: that is why he was chasing the accounts for 2015 in 2016. Peel Walker prepared the partnership accounts for 2015 and they were submitted for the partnership and were relied upon by the partners. In effect the 2015 accounts show Mumtaz ceasing to be a partner, with her current

account being withdrawn and a closing balance on her account of nil. Whilst Mumtaz was named, that was for comparison purposes and preferable to listing her as creditor in order to deal with issues with her as an outgoing partner.

302. The dissolution accounts subsequently prepared by Consortio did not list Mumtaz as a partner. When Ramsdens (although then acting only for Sufwan) proposed Sheards to prepare dissolution accounts and then jointly instructed them, they did not ask them still to list Mumtaz as a partner. The resulting draft dissolution accounts prepared by Sheards on Sufwan's instructions listed profits and losses as being divisible only in respect of himself, Kasim, Hashim and Khalid (and thus not in favour of either Mumtaz or Ahmed as partners). As mentioned above, Ramsdens' file has not been disclosed by the Claimants, despite their being Sufwan's solicitors and despite them collecting documents from the accountants in September 2016.

303. Following Khalid's death in 2016, it is significant that Mumtaz, although claiming to be a partner, did not press any claim through solicitors nor was any such claim asserted on her behalf, whether by Sufwan or Isha. She did not assert that she was entitled to any share as a remaining partner until Schofield Sweeney, her present solicitors, began to act for her on 4 December 2019. This was despite Ramsdens engaging in extensive pre-action correspondence since 2016 and despite the fact, according to Sufwan, that Ramsdens had advised his family after his father's death.

304. Even if Mumtaz did not expressly agree to being removed as a partner and her share being transferred, I am satisfied that Khalid still had the right to do so. It was clear from her evidence that she let Khalid put her on the partnership and she was a nominee whom Khalid could add to receive his share. There was no account at all in her evidence about the agreement to add her as a partner or why she was added as a partner. There was nothing to suggest that she was added as a partner because of anything she could do for the business. On the contrary, it was tolerably clear that the agreement between Khalid and Ahmed (at least until 2010 as far as Ahmed was concerned, when he ceased to be a partner) was that they could nominate who in their family could take their own half shares (or the balance of their own half shares); it is moreover apparent that those family members who were recipients of those shares

consented to that arrangement. That agreement is sufficient for the purposes of s.19 of the Partnership Act 1890 to vary the rights of partners by consent:

“The mutual rights and duties of partners, whether ascertained by agreement or defined by this Act, may be varied by the consent of all the partners, and such consent may be either express or inferred from a course of dealing”.

305. Dr Wilkinson cited the decision in ***Ward v Newalls Insulation Co Ltd*** [1998] 1 WLR 1722. In that case the share of a wife, who was a sleeping partner, was treated as her husband’s share when it came to assessing what share of the partnership he owned (in a loss of profit claim) because (per Potter LJ at p.1730G-H):

“Though Mr Ward and Mr Eid made their wives sleeping partners, there was no formal partnership deed entered into between them. Given the informality of the arrangements, this is not surprising. But given that informality, it is quite clear that the arrangements between the husbands and wives existed from year to year, and were terminable at will. Mr Ward and Mr Eid together controlled all of the five companies that were passing on the management fees, the partnership depended on them totally and consequently they could at any time have terminated any arrangements. In practice they could have apportioned to themselves whatever percentage of the profits they thought fit, and obviously the arrangements made with the revenue would not affect that in any way. The husbands would simply declare the change when it happened.”

306. It seems to me that a situation very like that existed in this case in relation to Mumtaz. Here, when Mumtaz was added as a nominee of Khalid’s share, Khalid and Ahmed between them were the heads of their respective families. As between themselves, they could have made decisions about who would take their individual shares and they could have agreed to nominate and remove their wives in that same capacity. They did not treat Mumtaz as anything more than nominal partner. They did that with the consent of the respective family members and consequently her rights as a nominee partner were limited by the agreement between Ahmed and Khalid in accordance with the provisions of s.19 of the Act. That they treated their sons somewhat differently is not surprising. Ahmed clearly regarded Kasim and Hashim as the lifeblood of the business and they were treated as substantive partners and never

as nominee partners. Likewise Khalid so regarded Sufwan, although the other side of the family clearly had a jaundiced view of him. By contrast, Mumtaz could never be regarded as the lifeblood of the business given her lack of involvement in it.

307. In practical terms, Mumtaz was a partner entitled to the proceeds, but she only had that right since her husband had nominated her. She took no drawings at all (except payment of her income tax). She was a sleeping partner at all times, not a partner in the usual sense of being involved in the management of the business nor was she involved in management functions or decisions. As in *Ward*, her involvement could have been determined at any stage by her husband. She was therefore a partner in a nominal sense only; Khalid still had control of her share and the right to nominate who on his side of the family might take it. Had Mumtaz objected or sought to dissolve the partnership in her own right as a partner, she would have been stopped and rightly so because she did not have, and was never intended to have, such rights.

308. Those dynamics and the family context should properly be taken into account in considering Mumtaz's position (see Lindley & Banks on Partnership, 21st ed, para.4-23). They were apparent also when Mumtaz became a partner, which was without the express agreement of Kasim.

309. As stated above, in the light of Mumtaz's own evidence, Mr Fennell rightly accepted that Khalid had authority to act on Mumtaz's behalf.

310. He submitted that Khalid and Ahmed were seeking to resolve their differences as to the drawings (disclosed and undisclosed) paid to each side of the family. They did not reach any final overall agreement before Khalid died. To that limited extent I agree, but where I part company with Mr Fennell is the submission that any discussion as to the transfer of Mumtaz's account to Ahmed formed part of those negotiations which were unresolved on Khalid's death. I am satisfied that the transfer of Mumtaz's share was settled before Khalid's death and was not still at large when he died.

311. Nor do I accept the Claimants' contention that Ahmed unilaterally removed Mumtaz from the partnership when Khalid was in Pakistan and that Khalid remonstrated with him on his return. The evidence simply does not bear out any

suggestion that Khalid remonstrated about Mumtaz's removal from the partnership. On the Claimants' case the removal of Mumtaz, having been effected unilaterally and without Khalid's agreement, could have been easily and promptly reversed on Khalid's return from Pakistan, in which case any such action by Ahmed would have been pointless. By contrast, on the Defendants' case her removal makes sense if Khalid was trying to placate Ahmed when the simmering discontent about Khalid's abstractions from the partnership monies broke out into an open row, essentially by transferring Mumtaz's share to Ahmed in a partial attempt to begin to even up the partnership shares in the light of Khalid's dealing with partnership monies.

312. It follows that I reject the Claimants' case that Mumtaz remained entitled to the sums shown as owed to her in the 2014 accounts. That entitlement passed to Ahmed and, in the circumstances which have happened subsequently, to his trustee in bankruptcy.

Ahmed

313. In the light of the amendment of paragraph 5 of the Amended Particulars of Claim, it is no longer asserted that Ahmed was a partner in the business after 2010 (as set out in the accounts for y/e 2011).

314. The answer to Issue 6 is therefore that the partners at the date of dissolution were Khalid, Sufwan, Kasim and Hashim. Mumtaz had ceased to be a partner in 2014. Mumtaz's share was transferred with her express agreement, or by virtue of an implied agreement between her and Khalid. Ahmed was no longer a partner on 7 July 2016, having ceased to be a partner in 2010 (as set out in the accounts for y/e 2011). He resigned to allow his place, at least substantially, to be taken by Hashim.

Issue 21(a)-(c): Mumtaz's and Ahmed's Accounts

315. The resolution of Issue 21(a) in relation to Mumtaz's share follows from what I have said immediately above. Mumtaz's account was reduced by £255,864 in 2014/2015 because she had ceased to be a partner, either with her express agreement or by virtue of an implied agreement between her and Khalid. She was only ever a nominee partner, not a real partner and could be (and was) removed at Khalid's behest and direction. That transaction should not be reversed.

316. The resolution of Issues 21(b) and (c) also follows from what I have said above. It was on the basis of Mumtaz's ceasing to be a partner and her share being transferred with her consent to restore equality to each side of the family that Ahmed's account was increased by virtually the same amount (the small balance apparently being made up by a claim for unpaid wages). That transaction should not be reversed.

317. In the light of those conclusions, Ahmed should be treated as having introduced capital of £270,409 in the year ended 31 July 2015. That transaction should also not be reversed.

The management of the partnership – the Barclays account and the cash book

318. Although this was not formally one of the issues on the list of issues, the management of the partnership, the dealings with the accountants, the cash book and the Barclays account are issues which need to be resolved before some of the disputed issues on the list can be resolved.

319. Mr Fennell submitted that, during his cross-examination, Kasim accepted that Ahmed was the head of his side of the family for the partnership. That was obviously true, despite Kasim's attempt to row back from that in re-examination. His sons clearly took instructions from Ahmed and deferred to him on financial matters. The suggestion that Kasim and Hashim would have worked for Khalid without asking questions about the partnership's finances was inherently implausible. It was inherently likely that Khalid and Ahmed ran the partnership as joint senior partners, with Khalid enjoying the seniority which came with being the elder. As Ahmed said at the covertly-recorded family meeting: "At the end of the day right, no when your dad was here, he was the highest position, he was my big brother, but we were equal partners."

320. With regard to the operation of the Barclays Bank account, Mr Fennell submitted that the account was obviously controlled by Ahmed and not by Khalid and was used by Ahmed to take money for himself "off the books":

(1) the account was in Ahmed's sole name. Ahmed opened the account and closed it.

(2) the statements went to Ahmed's home address.

(3) Khalid was never a signatory on the account.

(4) Ahmed had provided no evidence at all beyond his bare assertion that Khalid had any means of transacting on the account. As the sole named signatory on the account, Ahmed was able to transact on it, and indeed signed the cheque for £80,000 which now formed part of his counterclaim.

(5) as the sole signatory, Ahmed signed cheques to the combined value of £797,401.31, as set out in Mr Davidson's supplemental report at para. 3.34. The figures were £536,026.69 for cheques with stubs and £261,374.62 for cheques with no details.

(6) no one has ever offered a suggestion as to why Khalid and Ahmed would have agreed to set up an account for Khalid's use in Ahmed's name. Ahmed's witness statement offered no explanation.

321. The fact that the Barclays account may have been used to make payments for the partnership's benefit did not change the nature of the account. It was Ahmed's "off the books" account, used by him to move money around and extract some, but not all, of it for his own benefit. Ahmed knew of all the transactions on the Barclays Bank account in his sole name.

322. Each side of the family enjoyed the same standard of living. Ahmed operated his own bank account to move money off the books. Kasim banked large sums without accounting for them. There was no evidential basis to infer that Khalid took substantial sums without the other partners' knowledge and consent. It was inherently far more likely that both sides of the family took roughly the same.

323. For the Defendants, Dr Wilkinson submitted that there were diametrically opposing accounts as to who collected cash, transacted matters on the Barclays account, dealt with contract kill income (I will deal with that again in the context of Issue 9 below), inputted sales into the Medina system, instructed the accountants and had

kept Khalid's cash book and that the Defendants' case should be preferred on all counts.

324. I shall deal in turn with the management of the partnership, dealings with the accountants, the cash book and the Barclays account.

The Management of the Partnership

325. In my judgment it was Khalid who was the dominant force in the partnership. As Dr Wilkinson put it, "Khalid was a big personality and he did what he wanted." Mumtaz said he wore the trousers in his marriage, but that is hardly surprising given the age and background of Mumtaz and Khalid. Of more significance is the fact that he was the elder brother in his family, with all that that entailed in a traditional family of Punjabi origin.

326. Moreover he was of a controlling disposition. His email of 19 March 2015 at 5.56 threatening to dismiss Kasim confirms that: "I will have no choice but to dismiss him", as if expulsion from the partnership of an equal partner were a decision for him alone rather than a matter for collective decision. His emails also refer to him being a harsh disciplinarian, regularly swearing at Ahmed's children and pushing his weight around, such as the email of 20 August 2015 at 20.00. It is more likely than not that his unilateralism was such as to take control of the finances and dealing with the books.

327. As far as the two families were concerned, I accept that Kasim and Hashim deferred to their father, whether or not he was a member of the partnership. They clearly took instructions from Ahmed and deferred to him on financial matters. Mr Fennell submitted that the suggestion that Kasim and Hashim would have worked for Khalid without asking questions about the partnership's finances was inherently implausible. Having seen them both give evidence I do not agree. Hashim in particular seems to have kept his head down and just got on with his work on the production line and keeping the equipment in working order and ensuring compliance with the onerous food standards regulations.

328. As between the two brothers, Mr Fennell submitted that it was inherently likely that Khalid and Ahmed ran the partnership as joint senior partners, with Khalid

enjoying the seniority which came with being the elder and he relied on what was said at the covertly-recorded family meeting: “At the end of the day right, no when your dad was here, he was the highest position, he was my big brother, but we were equal partners.”

329. What I find, however, was that whilst the brothers were partners and in that sense equal, it was Khalid who was the dominant personality in that partnership. As Ahmed said, “he was the highest position, he was my big brother”. In the circumstances of this family, that meant that Ahmed was second fiddle to his elder brother, although by no means a passive or submissive younger brother.

330. That it was Khalid who paid for Kasim’s and Hashim’s weddings and paid the deposits for their houses is entirely consistent with that dynamic as between the two brothers which I have found to exist.

Dealings with the Accountants

331. I am satisfied that it was Khalid rather than Ahmed who dealt with the accountants. The emails in the bundle dealing with the accountants are all from Khalid, not Ahmed. There are no emails and no documentary evidence suggesting that it was Ahmed who dealt with them. It was common ground that Ahmed ceased to be a partner before y/e 2010. Mr Davidson’s evidence, which I accept, was that it was improbable that any accountants would deal with Ahmed thereafter in relation to the partnership tax affairs given that they knew that he was no longer a partner. They would only have done so after he ceased to be a partner if they knew that he had been expressly authorised to deal with them, which was not suggested and which was not supported by any evidence.

332. There was no suggestion that either Kasim or Hashim had anything to do with instructing the accountants.

333. There is other evidence which suggests that it was Khalid rather than Ahmed who instructed the accountants. The changes to the partnership shares declared on the accounts after Ahmed ceased to be a partner favoured Khalid’s side of the family 60-

40. If it had been Ahmed who instructed them, it was more likely that the shares would have reflected a 50-50 split. Kasim's introduction of capital was not credited; instead, it was Khalid who was credited with at least part of the money which Kasim had introduced. If it had been Ahmed instructing the accountants, that is hardly likely to have happened on either count. After being unable to leave and remaining in place, Ahmed was not in fact paid PAYE. Instead he had his historical capital account abated by the amount of his wages. As Dr Wilkinson asked, why would he do that when he could have paid himself £400 per week?

The Cash Book

334. As set out above, I am satisfied that there was a yellow cash book kept by Khalid which has gone missing and which was therefore not in evidence before me.

335. In live evidence Mumtaz confirmed she knew that there was a cash book and that it had gone missing. Sufwan's account of the book and when it went missing was suspicious from the outset. His case was that he could not retrieve it since it was in the Defendants' possession and he was excluded from the premises just after the fire and was not able to get the book. That case was disproven in cross-examination. He conceded eventually (but not before again alleging fabrication) that he may have been going in to the premises until 15 August 2016 and that he may not have been excluded once and for all two weeks later. In that event, I am satisfied that he is not to be believed on his case that he did not have access to take the yellow book.

336. Moreover, it would be the Claimants' interests, rather than the Defendants' interests, that the cash book should go missing. Indeed, the fact that Khalid had a cash flow book to record things not put through the partnership books is in itself suggestive about who was putting things on and off the books.

337. The parts of the personal books which are in evidence are damning: For example, they show a series of personal transactions between 2012-2016 being drawings not recorded. At Mr Davidson's Appendix I4 are four pages of Khalid's drawings from the cashbook from 2012 to 2016. The first page of the four will make the point:

Date	Description	Amount £
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07-Sep-12	Tiles	1,000.00
07-Sep-12	Decorator	260.00
13-Sep-12	Decorator	400.00
13-Sep-12	Windows	760.00
13-Sep-12	Uncle (Khalid)	80.00
04-Oct-12	Peter (Builder)	1,000.00
05-Oct-12	Sofas	1,000.00
08-Oct-12	Wardrobe	3,000.00
11-Oct-12	Wardrobe	580.00
24-Oct-12	Bilal / Builder	1,700.00
07-Nov-12	Uncle (Khalid) - Dave Electrician	250.00
07-Nov-12	Builder Toilets	300.00
07-Nov-12	Builder Toilets	500.00
14-Nov-12	Sofas	525.00
24-Jan-12	Khalid	100.00
30-Nov-12	Insulation	60.00
08-Dec-12	Kitchen & Bathroom	1,200.00
13-Dec-12	Khalid	85.00
13-Dec-12	Grandma	2,000.00
17-Dec-12	Peter (Builder)	1,000.00
21-Dec-12	Concrete	700.00
04-Jan-13	Materials	270.00
14-Jan-13	Khalid parts	100.00
21-Jan-13	Khalid	2,100.00
25-Jan-13	Khalid	40.00
06-Feb-13	Electrician	150.00
16-Feb-13	Khalid	1,000.00
02-Mar-13	Khalid - air tickets	1,400.00
07-Mar-13	Uncle (Khalid)	100.00
07-Mar-13	Uncle (Khalid)	2,000.00
04-Apr-13	Uncle (Khalid)	70.00
11-Apr-13	Uncle (Khalid)	1,330.00
17-Apr-13	Khalid - Pakistan	1,000.00
27-May-13	Khalid	2,000.00

29-May-13	Uncle (Khalid)	185.00
29-May-13	Uncle (Khalid)	100.00
19-Jun-13	Uncle (Khalid)	100.00
04-Jul-13	Peter (Builder)	1,200.00
15-Jul-13	Peter (Builder)	190.00
29-Jul-13	Peter (Builder)	700.00
05-Aug-13	Khalid	3,000.00
05-Aug-13	Peter (Builder)	500.00
14-Aug-13	Peter (Builder)	1,000.00
22-Aug-13	Peter (Builder)	1,800.00
29-Aug-13	Peter (Builder)	600.00
02-Sep-13	Bath	700.00
06-Sep-13	Peter (Builder)	700.00
13-Sep-13	Peter (Builder)	500.00
20-Sep-13	Peter (Builder)	500.00

338. The following 3 and a half pages are to the like effect with references to builders, joiners, electricians, plasterers, roof, doors, stairs and the like, and run to a total of £134,785.

339. The probability is that the yellow book likely showed more transactions. For example, the contract kill money is recorded nowhere, but must have been recorded somewhere.

The Barclays Account

340. I am bound to say that I have found this question to be one of some difficulty on the face of the evidence before me and I have considered it for some time. I am also bound to say that much of the operation of the Barclays account remained wholly opaque, even at the conclusion of the trial.

341. In addition to its Nat West Bank account, there was also a Barclays bank account which was used by the partnership (reference to a Barclays account is to this account ending -983). No separate ledger account was set up for this account on Sage, as Mr Davidson confirmed at paragraph 2.48 of his original report. In paragraph 2.50 of his

report he considered that it was this account which may have been used to receive unrecorded cash receipts. At Mr Davidson's suggestion, Ahmed managed to obtain statements for this account from Barclays going to back to 2008. Upon review thereof, Mr Davidson has calculated that cash and cheques went into the account amounting to just over £2.2m (paragraph 3.7 of his supplementary report), including Premier Halal rent in the sum of £112,800 and he identified in the period between 21 October 2008 and 11 July 2016 an amount of £1,170,489.01 of transactions relating to the partnership.

342. Mr Fennell made a powerful submission that the account was obviously controlled by Ahmed and not by Khalid and was used by Ahmed to take money for himself "off the books". He submitted that the account was in Ahmed's sole name and that Ahmed opened the account and closed it. The statements went to Ahmed's home address. Khalid was never a signatory on the account. Ahmed had provided no evidence beyond his bare assertion that Khalid had any means of doing transactions on the account. As sole named signatory on the account, Ahmed was able to do transactions on it and indeed signed the cheque for £80,000 which now formed part of his counterclaim. As sole signatory, Ahmed signed cheques to the combined value of £797,401.31, as set out in Mr Davidson's supplemental report at paragraph 3.34. The figures were £536,026.69 for cheques with stubs and £261,374.62 for cheques with no details. No one had ever offered a suggestion as to why Khalid and Ahmed would have agreed to set up an account for Khalid's use in Ahmed's name.

343. It was clear from his response that Dr Wilkinson accepted the force of those submissions, although he submitted that in fact Khalid's fingerprints were also all over the Barclays account.

344. The account was in Ahmed's name. It was, however, an account having the business trading name on it. For a period of time the address of the account was listed not as Ahmed's home address, but at the Brookwoods address where the business premises were. The account was also used for the business.

345. Khalid referred to this account in his emails. For example, in his email of 5.56 am on 19 March 2015 Khalid emailed Ahmed complaining that Kasim has used another

account and that “I now kasam have been paying and some checks for barkley account were banked in other accounts. if kasam dose not record any funds paid out and not recorded I will have no choice but to dismiss him”. On 20 August 2015 at 20.38 he emailed Ahmed and explained that he wanted “to put threw books” his daughter’s car using “chq later to put in barcleys”.

346. Moreover, many of the transactions on the Barclays account relate to things which Khalid was likely to have arranged. They include the payment of partnership suppliers, deposits on Sufwan’s car, £100,000 paid into the loan account as queried by Mr Davidson, vehicles on the vehicles register, repayments of his own mortgage with the Halifax and the purchase of oil-filling equipment from Eddisons.

347. The spreadsheet referencing page numbers of transactions (which was introduced into the trial bundle during the course of the trial) also refers to different transactions which appear to have been transacted by Khalid, such as dealing with Ramsdens and buying the oil plant and the fleet of gas powered vehicles. It was this account which also received much of the rent (£112,800) from Mr Zaman, Khalid’s contact at Premier Halal, which Mr Davidson confirmed in his supplementary report at paragraph 3.13. It was implausible that Khalid would have collected rents and then accounted to Kasim for them, as Sufwan sought to suggest in his oral evidence. Khalid’s handwriting is also on some of the copies of the payment confirmations in evidence.

348. In my judgment, but not without some hesitation, the evidence justifies a finding that Khalid put through the books money owing to the partnership by using this Barclays account. I am satisfied, however, that Ahmed had access to the account and that he was able to transact business through it.

349. If anything the account seems to have been used to make payments for the partnership’s benefit, but also for the brothers’ personal use, although the precise amounts involved are at some points not clear. I do not accept that, as Mr Fennell sought to argue, that it is correct to categorise was Ahmed’s “off the books” account. That Ahmed may have extracted some monies for his own benefit does not justify

treating the account simply as Ahmed's "off the books" account, given the evidence of Khalid also extracting monies from it.

350. Nevertheless, I am satisfied that, within the parameters of Mr Davidson's findings (and subject to the points which I make below when dealing with the individual accounting issues) the relevant transactions currently in issue on the Barclays account represented partnership matters for which Khalid's estate is liable to account.

Issue 7: the relevance of the settled accounts

351. There was no difference between the parties as to the principles underlying the reopening of settled accounts. In order to constitute a settled account, the matter being dealt with in the account needs to be clearly stated somewhere in the account. It is only a defence to a claim for an account that the account is settled where the thing claimed falls within the ambit of the matters that were settled and where they were settled for that purpose, see Blackett-Ord and Haren, "Partnership Law", 6th ed., 14.42. It follows that settled annual profit and loss accounts may not therefore be binding on all matters which only become relevant upon a dissolution: see **Re White** [2001] Ch 393, as cited in Blackett-Ord.

352. In any case a settled account can be reopened for fraud, misrepresentation or errors, see Lindley & Banks, Partnership, 21st ed., 23-186.

353. In that context, both parties cited the decision of HHJ Cadwallader (sitting in the High Court) in **Hayel v Hayel** [2024] EWHC 885. I set out below the text of his decision at [18-26] in full since it is authority for a number of propositions:

"The approach to errors in the accounts

14. The defendant's counterclaim as regards errors in the accounts is in the nature of an action for an account. That is an appropriate form of action whenever money allegedly belonging or owing to the firm in respect of a partnership transaction is sought to be recovered from a partner unless an account has already been taken or (exceptionally) taking an account would serve no useful purpose: see Lindley & Banks, Partnership, 21st ed., 23 – 119. A partner (in his capacity as a partner) does not have an action at law to recover monies due from his fellow partners otherwise than by means of such an action: see Lord

Millett in *Hurst v Bryk* [2002] 1 AC 185, 194, obiter. The general rule, at least, is that an account can only be taken between partners following or with a view to a dissolution, as in the present case: Lindley & Banks, Partnership, 21st ed., 23 –135ff. The right of a partner to bring an action for an account for these purposes is to be distinguished from his or her right to an account under section 28 Partnership Act 1890, which is directed to the provision of information. An action for an account is directed to the ascertainment and payment of whatever sum is due to the partner in question: Lindley & Banks, Partnership, 21st ed., 16-41ff, 23-118.

15. The allegation that an account has already been agreed between the partners is one of the defences which may be raised to an action for an account. That involves alleging that the partners against whom the defence is raised have received and acquiesced in the account which has been rendered, both as to the principles upon which the account was prepared, and as to the items included in it. See Lindley & Banks, Partnership, 21st ed., 23-138ff.

16. The Claimant raises that defence in the present case, on the basis that the accounts sought to be impugned were received by the other partners (as I have accepted) and either positively agreed to by them (as appears from their having signed them) or at least acquiesced in by them (as appears from their having taken no objection to them for many years). The First Defendant accepts that the accounts are indeed settled accounts. That is on the basis that even if 2008 or the 2011 accounts were not signed by the First Defendant, the 2016 and the 2018 accounts were so signed, and a later settled account implicitly settles earlier accounts: see Blackett-Ord and Haren, Partnership Law, 6th ed., 14–42. I agree that must be so where, as here, the accounts run on from year to year.

17. That acceptance is, however, slightly equivocal: it is said on his behalf that they are settled 'on their face.' I do not accept that the accounts are settled merely 'on their face'. The basis upon which the First Defendant argues for this qualification is that the signature of the First Defendant was a matter of form, but not substance, because he should not be taken to have understood and approved them, signing merely because he trusted the Claimant, without any independent verification, or any involvement with the record keeping, and without even being able to read the accounts. I accept those features of the case as matters of fact. Nonetheless, it seems to me that by his signature he must be taken to have indicated that he approved the accounts, whether he understood them or not. That makes them settled accounts. The features upon which the First Defendant

relies are, however, relevant to the question whether they should be reopened even so.

18. The parties do not disagree on the substantive law: a settled account is binding on the parties who agree it and will not normally be reopened to any degree, absent a specific direction to that effect: see *Lindley & Banks, Partnership*, 21st ed., 23-186. This only applies within the ambit of the matters for the purpose of which the account was agreed, however. Settled annual profit and loss accounts may not be binding on matters which only become relevant upon a dissolution: *Re White* [2001] Ch 393; and see *Blackett-Ord and Haren, Partnership Law*, 6th ed., 14.42. In the present case we are in terms addressing annual accounts rather than dissolution accounts; but since the matters at issue in relation to those accounts are also matters which would affect the preparation of dissolution accounts, it is sensible to approach the matter on the footing that the annual accounts are binding in relation to those matters for present purposes.

19. A direction to reopen a settled account may be obtained nonetheless if fraud, misrepresentation or errors can be proved. The First Defendant in the present case relies only upon errors. The position is stated in *Lindley & Banks, Partnership*, 21st ed., at 23-188ff.

"Where errors affect the whole of a settled account, a new account will be directed, unless the account has stood unimpeached for many years. Lord Lindley explained:

"... if no fraud be proved, an account which has been long settled will not be reopened in toto; the utmost which the Court will then do will be to give leave to surcharge and falsify [i.e. permission to challenge specific items in the account]; and there are cases in which, in consequence of lapse of time, the Court will do no more than itself rectify particular items, instead of giving leave to surcharge or falsify generally."

23-189

In any other case, permission to serve notice of objection to specific items in the account will be the only available remedy. An item omitted by mutual mistake will normally be put right. However, the mere fact that items are treated in an improper way, or are improperly omitted, is not in itself sufficient to induce the court to reopen a settled account; if the partners knew about those items and no fraud or undue influence can be proved, it will be inferred that they were dealt with in an agreed manner.

23-190

In order to impeach a settled account, any errors must be positively identified and proved; similarly, where the account is settled on an "errors excepted" basis.

23-191

If permission to serve notice of objections is obtained, errors both of fact and law can be corrected. All parties to the action will normally be given such permission."

20. Although in formal terms the First Defendant sought to 'surcharge and falsify' specific items in the alternative to a claim to reopen the accounts entirely, the impracticality of doing so was recognised in submissions before me, and I did not understand the First Defendant to be seeking with any enthusiasm an order to reopen the accounts. That seems a realistic approach in the present case, given the extent of the exercise involved.

21. As the Claimant points out, and I understood the First Defendant to agree, it follows that the burden is on the First Defendant positively to identify and prove any errors upon which he seeks to rely.

22. Counsel for the Claimant goes further, in suggesting that if there is any doubt on the matter, the case will be determined against the person seeking to surcharge and falsify. This is on the basis of no lesser authority than the judgment of Jessel MR in *Gething v Keighley* (1878) 9 Ch D 547, 552. However, the whole passage (as far as relevant) reads as follows.

"...why should I make entries in those books conclusive evidence if the person complaining of them, can by clear evidence at this distance of time shew that there is an error in the books? Where there is a question of surcharging and falsifying accounts, the case alleged must be clearly proved by the person impeaching them, and if there is any doubt it will be determined against him."

I do not understand him, in context, to have intended by that to change the test, or to alter the standard of proof, which remains the balance of probabilities. I therefore reject this submission on behalf of the Claimant.

23. The First Defendant has, in his statements of case and indeed evidence, positively identified the errors upon which he seeks to rely. Nor was there any misunderstanding about them at trial. The question is whether they are proved.

24. The Claimant complains, however, that although the counterclaim is based on alleged errors, the First Defendant has come close to making un-pleaded, or at any rate complex and unparticularised, allegations of serious breach of duty on the part of the Claimant in seeking to establish such errors, but has not actually made any such allegations. On that basis, the court is urged to make no findings that the Claimant has been in breach of his duties, and in any event to proceed with anxious caution.

25. It is right to say that no cause of action other than the right to an account and the existence of errors sufficient to justify at least obtaining permission to surcharge and falsify specific items in the settled accounts has been pleaded. Moreover, it is right to say that the First Defendant seeks such specific findings as the court feels able to make at this stage as to what corrections should be made to the accounts, and in particular seeks corrections to be made on the footing that certain sums have been applied to the benefit of the Claimant when either they have not been accounted for, or have been accounted for on the footing that the benefit was not exclusively that of the Claimant. Since, on the facts, the Claimant is alleged to have been the person in control both of the money and of the partnership records, and the preparation of the accounts, it is easy to see that claims might have been (but have not been) formulated on the footing of wrongdoing on the part of the Claimant, and that in the process of making findings which might support the making of corrections to the accounts, the court might make findings of wrongdoing, or of facts which implied wrongdoing, on the part of the Claimant. While this may be uncomfortable for the Claimant, I do not see that it creates a problem with the First Defendant's case. In the first place, if the First Defendant can obtain the relief he seeks without having to establish a case of wrongdoing, I see no reason why he should not do so. In the second place, the First Defendant's case is set out in a way which makes it clear exactly to what the Claimant needs to respond. In the third place if, in the process of establishing the existence of an error, one also establishes what needs to be done to correct it and why, there is no point at all in failing to do so right away.

26. The conventional approach to an attempt to reopen accounts or to obtain permission to surcharge and falsify items within accounts is to adopt a 2-stage process. The first stage is to obtain permission to reopen them, or to give notice of the particular items to be challenged, and the second is to retake the accounts, or to correct the particular items. The first stage can often be carried out in a fairly summary way. That did not happen in the present case, when the first stage has been the subject of an extensive trial. In the present case the First Defendant invited me, effectively, to carry out the first stage and, at the same time, as much of the second stage as I found I could. Counsel for the

Claimant accepted that this was the basis upon which the matter had been case managed through to trial, and the evidence had been prepared. I see nothing wrong with it in principle. The 2-stage approach may be a matter of practice, but the practice may be departed from, and the two stages may be collapsed or shortcut where convenient and just, as it is here. A similar approach was adopted, for example, in *Montgomery v. Cameron & Ors* [2007] Scot CS CSOH 63 (23 March 2007), and is referred to in *Lindley & Banks, Partnership*, 21st ed., at 23-122. This does not affect the burden of proof, which I accept remains upon the First Defendant throughout. On that basis, and by agreement, the First Defendant opened the case and called his witnesses first.

27. The Claimant also sought to argue that the First Defendant had adopted an incorrect approach, by bringing a claim that accounts should be reopened without there having been any antecedent judicial findings or admissions as to breaches of duty on the part of the Claimant, so that at the outset of the trial the First Defendant did not in fact know if there were any errors at all. If this is a different submission from those with which I have dealt in the preceding paragraphs, I do not follow it. Distinct errors were alleged and the allegations were supported by evidence, and it was upon that basis that the First Defendant sought to meet the Claimant's case that the accounts in question were settled accounts. The trial was largely concerned with establishing whether there were such errors so that the accounts should be reopened and, if possible, corrected."

354. I did not understand HHJ Cadwallader to be saying anything different from what Mr Nicholas Thompsell (as he then was, sitting in the High Court) had said in *Holden v Holden* [2023] EWHC 3292 (Ch) at [179-181].

355. For the Claimants, Mr Fennell contended that the test for reopening the accounts requires proof of fraud, undue influence, misrepresentation, or serious and numerous errors. In the case of errors, the Court retains a discretion, as explained in *Hayel* at [19], quoting from *Lindley & Banks*:

"However, the mere fact that items are treated in an improper way, or are improperly omitted, is not in itself sufficient to induce the court to reopen a settled account; if the partners knew about those items and no fraud or undue influence can be proved, it will be inferred that they were dealt with in an agreed manner."

356. He submitted that fraud was not pleaded against Khalid in the Re-Amended Defence and Counterclaim. The pleading against him was for breach of duty only (Re-Amended Defence and Counterclaim paragraph 31 and 51C).

357. Accordingly, the question for the Court was whether or not the other partners knew about the items now challenged and, if so, whether the inference that they were dealt with in an agreed manner was rebutted.

358. He submitted that the Defendants not only knew exactly what Khalid was doing, but they also acted in exactly the same way. The inference of acquiescence was not rebutted.

359. If the Court were minded to reopen earlier years' accounts, and if it found that the Barclays account was controlled by Ahmed, the order would need to provide for Ahmed to bring his unaccounted-for payments into account. That followed from the maxim that he who seeks equity must do equity – see Snell's Equity, 35th ed. at para 5-010.

360. Further, in exercising its discretion, the Court was entitled to have regard to proportionality. Mr Davidson had provided Excel versions of the documents in Appendix P. Updated versions showing the changes contended for by the Claimants were served prior to final submissions. They were not submitted as a final calculation of the amounts due, but merely as an indicative document showing the issues still to be resolved by the District Judge as part of the final account and inquiry and the likely sums involved. That would assist the Court in considering the proportionality of the relief sought by the Defendants in the context of the sums in question.

361. Dr Wilkinson by contrast contended that the accounts were not settled accounts or, if they were, they were entirely false and incorrect and at the very least contained mistakes or misleading information.

362. In the first place, they did not reflect what Khalid was doing in any way nor the changes which he was making to the shares. Accounts were evidence of matters and could constitute a settlement of such matters, but only where they dealt with such

matters and dealt with them clearly. Here the accounts were not evidence of what was actually happening.

363. None of the partnership accounts referred to any of the matters which were in issue in these proceedings, either expressly or by necessary implication. They were not clear on their face. It was not explained around the time that these accounts settled what Khalid had taken out or not declared in terms of, for example, contract kill income. There would need to be clarity before the doctrine of settled account or any estoppel arose. The accounts did not deal with the Barclays account or the cash book or partnership shares. They were not evidence of those matters being settled.

364. Alternatively, if they were clear about what was being settled, they were entirely false and incorrect and at the very least contained mistakes or misleading information.

365. If the Court considered that matters were settled by the accounts, as in *Hayel* at [26], it was invited, upon finding that errors had been proved, to permit falsification of the accounts, which was the first stage, and insofar as the Court considered that it was in a position to do so, to carry out as much of the second stage as it could, or if unable to do so, then to direct the balance of the second stage regarding rectification to be dealt with separately by way of account.

366. The Court could and should accept that Ahmed was not agreeing things in conjunction with Khalid, but was constantly wrestling with his elder brother, dealing with the aftermath of what he had created, trying to rein him in.

367. If, as the Defendants contended, Khalid had repeatedly and consistently over many years given false and misleading information to the accountants as to what he was up to and hidden his dealings from the accountants, those were matters which would still need to be accounted for and were not to be treated as settled. In any case a settled account could be reopened for fraud or misrepresentation or error, see *Lindley & Banks*, 23-186.

368. In terms of errors, generally where there were errors in sufficient number or of sufficient magnitude to warrant it, the entire account could be re-opened (Lindley & Banks, 23-189) and in other cases the Court would permit leave to correct matters on proof that the account contained errors. That was ordinarily done as a two-stage process, whereby the first stage proved the falsity of the entry and the second stage clarified the rectification and surcharge to be made, but that process could be done in one step where possible and the Court was in a position to do so (see *Hayel* at [26]).

369. My conclusions on this matter are as follows. The accounts do not reflect what Khalid was doing with the partnership monies. The accounts could constitute a settlement of such matters, but only where they deal with such matters and deal with them clearly. Here the accounts were not evidence of what was actually happening in terms of Khalid's treatment of the partnership monies.

370. None of the partnership accounts refer to the matters which are in issue in these proceedings, either expressly or by necessary implication. Moreover, it was not explained around the time when these accounts were produced what Khalid had taken out or not declared in terms of, for example, contract kill income (and the other matters in dispute). Indeed, even on the Claimant's own case, neither Mumtaz nor Sufwan had ever seen the accounts (certainly on Sufwan's evidence he had not seen them in 2008 and 2009 and I have found that it was more likely than not that he did not see them subsequently either) and indeed, as Sufwan admitted to his solicitors as early as August 2016, he knew little about the internal finances of the partnership, save that he believed that much was being done of the books. The accounts are not therefore settled accounts. For the sake of completeness, however, I shall go on to consider the position on the footing that the accounts were settled accounts.

371. There was some debate about whether the case against Khalid had been pleaded in terms of fraud or not. I do not need to determine that because it is sufficient that a case of error can be made out, as is apparent from the extract from *Hayel* at [25] cited above:

"25. It is right to say that no cause of action other than the right to an account and the existence of errors sufficient to justify at

least obtaining permission to surcharge and falsify specific items in the settled accounts has been pleaded. Moreover, it is right to say that the First Defendant seeks such specific findings as the court feels able to make at this stage as to what corrections should be made to the accounts, and in particular seeks corrections to be made on the footing that certain sums have been applied to the benefit of the Claimant when either they have not been accounted for, or have been accounted for on the footing that the benefit was not exclusively that of the Claimant. Since, on the facts, the Claimant is alleged to have been the person in control both of the money and of the partnership records, and the preparation of the accounts, it is easy to see that claims might have been (but have not been) formulated on the footing of wrongdoing on the part of the Claimant, and that in the process of making findings which might support the making of corrections to the accounts, the court might make findings of wrongdoing, or of facts which implied wrongdoing, on the part of the Claimant. While this may be uncomfortable for the Claimant, I do not see that it creates a problem with the First Defendant's case. In the first place, if the First Defendant can obtain the relief he seeks without having to establish a case of wrongdoing, I see no reason why he should not do so. In the second place, the First Defendant's case is set out in a way which makes it clear exactly to what the Claimant needs to respond. In the third place if, in the process of establishing the existence of an error, one also establishes what needs to be done to correct it and why, there is no point at all in failing to do so right away.”

372. However, I agree with Mr Fennell that the case pleaded against Khalid in paragraphs 31 and 51C of the Re-Amended Defence and Counterclaim is one of breach of duty rather than fraud. Dr Wilkinson contended that what Khalid had done was a breach of his duty of good faith to the partnership and that that constituted fraud on the partnership, but I agree with Mr Fennell that if it had been sought to run a case in fraud, that should, explicitly and in terms, have been pleaded as such, see **Three Rivers DC v Governor & Company of the Bank of England** [2003] 1 AC 1 at [186].

373. In terms of errors, where there are errors in sufficient number or of sufficient magnitude to warrant it, the entire account can be re-opened (Lindley & Banks, 23-189).

374. Mr Fennell submitted that the question for the Court was whether or not the other partners knew about the items now challenged and, if so, whether the inference that they were dealt with in an agreed manner was rebutted. He submitted that the

Defendants not only knew exactly what Khalid was doing, but they also acted in exactly the same way so that the inference of acquiescence was not rebutted.

375. On the Claimants' own case, neither Mumtaz nor Sufwan ever saw the accounts (on Sufwan's own evidence not in 2008 or 2009 and as I have found not subsequently either). On the Defendants' side both Kasim and Hashim said, and I accept, that they did not see the accounts. In any event, they would have deferred to their father as the head of their side of the family. Their position is not different from that of Ahmed. The key question therefore is whether Ahmed acquiesced in what Khalid was doing. If he acquiesced, his sons would not have gainsaid that.

376. As I have made clear above, however, I am satisfied that Ahmed did not acquiesce in what Khalid was doing. I repeat here what I said there for ease of reference. It is common ground that there was a falling out between Khalid and Ahmed at latest by March 2015 and it is common ground that Ahmed challenged Khalid about taking money out of the partnership and not accounting to it and that he refused to carry on working for the partnership. Ahmed's case, which I accept, is that it was obvious that not all cash was being put through the books and banked as it should have been. Throughout the partnership he had had suspicions and there would be constant family quarrels over it. He held his tongue in her lifetime because of their mother. His case is that working with blood day in day out (with which his family was tasked) was not pleasant; he was physically and mentally worn out with the stress of running the factory with its constant problems from staff to machinery and the constant rigours of the Food Standards Agency, coupled with the long hours.

377. However, by early 2015 things had come to a head and culminated with heated exchanges between the two brothers, Ahmed complaining that Khalid did not treat the business as a partnership, but saw it as his business alone. It is apparent to me that the disagreements over the treatment of money had been going on for some years and that there had been arguments over the way in which Khalid had been allegedly extracting money from the business. It was the eruption of a volcano, but the fires had been being stoked for a considerable number of years.

378. Mr Fennell's submission was that the Defendants not only knew exactly what Khalid was doing, but that they also acted in exactly the same way so that the inference of acquiescence was not rebutted. If, however, the Defendants were doing exactly the same as Khalid's family it is difficult to see why there had been a falling out in the first place. If both families were doing equally well from the partnership, why would Khalid and Ahmed have fallen out in the first place? That was never explained by the Claimants. The more likely inference to draw from the falling out is that the two families were not doing equally well out of the business, compounded by the long hours which Ahmed, Kasim and Hashim were putting to the business compared with Khalid and Sufwan, but that Khalid's side of the family were profiting to a much greater extent than Ahmed's side of the family, particularly given that Ahmed was no longer a partner after 2010, although he was continuing to work hard in the business. That the two sides of the family were not doing equally well out of the business is indicated, for example, by the fact that work was done on Kasim's and Hashim's houses, but just by way of decoration because their houses were new or nearly new whereas by contrast Khalid constructed two entirely new properties for his side of the family within the curtilage of his home which were also finished to a considerably higher standard than those of Ahmed's sons.

379. What emerges from the attachment to Ahmed's email to Khalid at 16.11 on 17 March 2015 is that, in Ahmed's eyes, there was a massive imbalance between what the brothers had had out of the partnership. Ahmed's calculation was that Khalid had had £1,856,771 out of the business whereas he had had only £331,800. That supports the inference which I draw in the immediately preceding paragraphs.

380. I referred above to the fact that, where there are errors in sufficient number or of sufficient magnitude to warrant it, the entire account can be re-opened. That, in my judgment, is the case here. The errors are sufficiently egregious and large scale, as the report of Mr Davidson shows, that the Court should exercise its discretion to direct the reopening of the accounts even if they were settled (which I find they were not).

381. Pragmatically, and to try and cut down the ambit of the remaining areas of dispute, I have carried out as much of the second stage in *Hayel* at [26] as I can in the light of

Mr Davidson's various reports and evidence rather than to direct the balance of the second stage regarding rectification to be dealt with separately by way of account.

Khalid's dealings

Issue 8: bad debts

382. The issue is raised by the Counterclaim in paragraph 52(10) and covered by Mr Davidson at paragraph 5.1 to 5.25 of his report, paragraph 5.7 of his supplemental report and written answer no. 8 of his replies to questions.

383. Mr Davidson said that:

"5.1. I attach at Appendix H1 hereto, a schedule of the total amount of bad debts shown in the profit and loss accounts of the Partnership, Medina Meat and Poultry Group, for the years ended 31 July 2002 to 2015 and for the period ended 7 July 2016, the latter being as per the accounts prepared by Sheards, Chartered Accountants.

5.2 In the absence of the Sage nominal ledgers of the Partnership for the years prior to that ended on 31 July 2013, I have not been able to ascertain the composition of the bad debts written off in the Partnership accounts for the years up to and including that ended on 31 July 2012.

5.3 Whilst a review of the Sage audit trail shows the amounts of various bad debts written off between 1 August 2001 and 31 July 2012, I have not been able to reconcile these to the total amounts as shown in the Partnership profit and loss accounts (Appendix H1) for the years ended 31 July 2002 to 2012.

5.4 I attach at Appendix H2 hereto, extracts from the Sage audit trail showing bad debt write offs, or what in my opinion appear to be bad debt write offs, between 1 August 2001 and 1 August 2012. I have highlighted the relevant entries in orange thereon. With regard thereto the write offs on 1 August 2012 would appear to relate to the year ended 31 July 2012. On reviewing these bad debt write offs I note the following:

- On 1 August 2011 there is a bad debt of £14,483.70 in respect of account PREM01. This relates to Premier Halal Meats Ltd (see paragraph 4.7 above).

- On 1 August 2011 there are bad debts of £16,853.48 in respect of account IQ0002 and £32,499.19 in respect of account IQ0003. These accounts relate to I Q Halal Meats and I Q Halal Contract

Killing respectively. I have referred to I Q Halal at paragraphs 4.19 to 4.29 above in the context of possible unrecorded sales invoices.

- Whilst in my opinion there are a large number of other bad debt write offs, I list below the most significant of these, being amounts in excess of £10,000.00:

Date	Account No.	Customer	Amount
			£
31.07.2002	BASH01	B A Poultry Supplies	17,918.98
31.07.2002	ISLA01	Talamabad Poultry	25,591.78
31.07.2006	CHAU01	Chaudry Bros	22,705.02
31.07.2006	MUSL01	Muslim Butchers	13,026.97
31.07.2006	SHAU01	Eastern Foods	22,434.42
01.08.2006	DADI01	Dadipatel Poultry	18,625.76
01.08.2006	MUGH01	Mughal	14,260.99
01.08.2006	MUGH02	Mughal Manchester	13,185.15
01.08.2006	NAFE01	Nafez Superstore	10,953.66
01.08.2008	EUR02	Euro Halal Meat Poultry Ltd	12,813.91
01.08.2008	MALI01	Malik Poultry	31,728.97
01.08.2011	BILA001	Bilal Poultry Products	50,765.54
01.08.2011	QUAL11	Paak Poultry Products	13,286.54
01.08.2012	JAMI01	Pakeezah Superstore	123,932.00
			£391,229.69

5.6 With regard to the bad debts written off per the Partnership's profit and loss account for the year ended 31 July 2013 of £371,094 (Appendix H1), I attach at Appendix H3, a copy of the Sage nominal ledger bad debt provisions account for the year ended 31 July 2014 which would appear to support this figure in the form of the opening balances brought forward. Although the amount of £371,294.14 per the nominal ledger at Appendix H3

is £200 more than that shown in the profit and loss account for the year ended 31 July 2013 I am not aware of the reason for the difference.

5.7 Based on the figures at Appendix H3, I note that in the year ended 31 July 2013, two significant amounts were written off, namely £309,196.35 in respect of account LANC01 – Lancashire Poultry and £44,555.37 in respect of account UMAR01 – Umar Halal Meat Butchers.

5.8 With regard to the bad debts written off per the Partnership's profit and loss account for the year ended 31 July 2014 of £77,169 (Appendix H1), I attach at Appendix H4, a copy of the Sage nominal ledger bad debt provisions account for the year ended 31 July 2015 which would appear to support this figure in the form of the opening balance brought forward. Furthermore, the debits posted to this nominal ledger account (Appendix H4) amount to £78,418.39 and excluding the opening balance, the credits amount to £1,249.01, resulting in a net amount of £77,169.38, and would therefore appear to represent the composition of this amount.

5.9 Based on the figures at Appendix H4, I note that in the year ended 31 July 2014, there were two significant amounts written off, namely £24,398.79 in respect of account KHAW01 – Khawaja Food Store and £31,023.68 in respect of account YASI01 – Noshi Food Store.

5.10 With regard to the year ended 31 July 2015, the profit and loss account includes an amount of £64,975 in respect of bad debts (Appendix H1) but I have not seen any details as to the make up of this amount as between individual customers. This would possibly appear to be in the nature of a provision made for bad debts as I note that this amount has been carried forward to the final accounting period ended 7 July 2016.

5.11 The profit and loss account of the accounts prepared by Sheards Chartered Accountants in respect of the period ended 7 July 2016 includes a figure for bad debts of £409,360.00 (Appendix H1). This amount comprises of bad debts written off of £328,204.55 in the period plus a general bad debt provision of £146,130.00 as at 7 July 2016 less the provision of £64,975.00 brought forward from the year ended 31 July 2015 (paragraph 5.10 above). With regard to the amounts written off amounting to £328,204.55 details as to which customers this relates to are per the Sage nominal ledger accounts 1101 and 8100 in respect of the period ended 7 July 2016, copies of which I attach at Appendices H5 hereto.

5.12 In connection with the preparation of the cessation accounts of the Partnership as at 7 July 2016, I have been provided with a further schedule in respect of debtors as at 7 July 2016 showing details of the aforementioned bad debts written off of £328,204.55, and a copy of this is attached at Appendix R3 hereto. The amount of £328,204.55 is the total of the second column of figures shown on the schedule headed 'Bad Debt Woff' amounting to £474,334.55 less the general provision of £146,130.00.

5.13 With regard to the balance of the amounts owed to the Partnership as at 7 July 2016 amounting to £730,649.11 (Appendix R3) I understand that these were to be collected by Medina Group Limited. The schedule at Appendix R3 shows amounts recovered by Medina Group Limited, amounting to £483,917.13. This would leave amounts not recovered by them of £246,731.98 (£730,649.11 - £483,917.13). The schedule at Appendix R3 however shows bad debts written off in Medina Group Limited of £278,846.37, which is £32,114.39 more (£278,846.37 - £246,731.98). In the circumstances I assume that this difference of £32,114.39 represents the write off of additional debts incurred as a result of sales made by Medina Group Limited following the cessation of the Partnership.

5.14 With regard to the amounts written off in the period ended 7 July 2016 amounting to £328,204.55 (paragraphs 5.11 and 5.12 above), whilst there is a large number of individual write offs, the most significant of these, being amounts in excess of £10,000, are as follows:

Account No.	Customer	Amount
		£
ALHA02	Al-Haq	26,576.54
ALNA02	Al Nafaj Halal Meat	11,823.43
BEES01	Beeston Halal Meat	15,601.79
DADI02	Dadipatel	12,829.45
IMRA01	Imran Ali	10,729.83
SHAM01	Sham-UI-Haq	47,826.28
SIFK01	Sifko Ltd	62,655.36
		£188,042.68

5.15 The aforementioned amounts totalling £188,042.68 represent 57% of the write-offs of £328,204.55 (£188,042.68 x 100/£328,204.55).

5.16 With regard to the amounts not recovered by Medina Group Limited totalling £246,731.98 (paragraph 5.13 above), the following amounts in excess of £10,000 are also noted:

Account No.	Customer	Total Amount	Partnership Debt W/off	Company Debt W/off
		£	£	£
AZEA02	Azeam Grocery & Halal Meat	14,951.27	14,951.27	-
EAST01	Eastern Foods Leeds Ltd	15,882.75	15,882.75	-
KHAW02	Khawaja Poultry	37,784.04	37,784.04	-
PAKE01	Pakeezah Superstore	34,887.19	30,507.05	4,380.14
PAKS01	Pak Scotland	31,276.21	31,276.21	-
PREM02	Premium Poultry	28,604.24	28,604.24	-
RBHA	R B Halal Poultry	15,637.10	15,637.10	-
		£179,022.80	£174,642.66	£4,380.14

5.17 The aforementioned amounts of Partnership's debts written off of £174,642.66 represent 71% of the Partnership debts not recovered by Medina of £246,731.98 ($£174,642.66 \times 100/£246,731.98$).

5.18 Included in the bad debts not recovered by Medina Group Limited per paragraph 5.16 above, is an amount of £28,604.24 in respect of Premium Poultry. As per paragraph 8.33 below I understand that this is Premium Poultry Products Ltd, a company of the 1st Defendant, Mehboob Ahmed Pervaz.

5.19 With regard to the partnership debtors as at 7 July 2016 which total £1,058,853.66 (Appendix R3), the amounts written off total £574,936.53 (£328,204.55 (paragraphs 5.11 and 5.12) + £246,731.98 (paragraph 5.13)). These write offs therefore represent 54% of the debtors as at 7 July 2016 ($£574,936.53 \times 100/£1,058,853.66$).

5.20 In view of the number of bad debts, in my opinion it is unlikely that these are all genuine bad debts. In view of the allegations made by the Defendants about monies having been received by both Khalid and Sufwan and not being accounted for to the Partnership it is in my opinion likely that some or possibly

the majority of these were paid in full or in part, but the receipt has not been reflected in the Sage accounting records. This would in my opinion appear likely particularly as I understand many customers paid in cash.

5.21 On querying the position with the Defendants via their solicitor I have been advised as follows:

'There are customers who have not paid and some customers have stated that they have paid direct to Sufwan which hasn't been received by either the partnership or Medina Group Ltd and therefore not accounted in the records for Medina Group Ltd.

Some have previously been collected by Khalid in his lifetime.

Sufwan made a point of going to all the customers and claiming that all the balances were due to him and not the new limited company and that they should refuse to pay.

Some customers did pay Medina Group Ltd and some refused as the money was not payable to the new company and we could not enforce the debt.

We can only account for monies received by Medina Group Ltd.

We were promised that the debt carried forward would be paid by some customers whilst we continued to trade with them but in reality this never got paid and was later put to bad debts.'

5.22 In view of my comments above and the points made by the Defendants it is not possible to identify which of the bad debts are genuine bad debts from those where the customer has paid but the receipt has not been recorded. In addition, I have not been able to check the amounts received post 7 July 2016 in the absence of any detailed records of receipts and amounts paid into the bank accounts of the Partnership and Medina Group Limited.

5.23 In my opinion it would appear likely that many, if not nearly all the bad debts written off, particularly in the period ended 7 July 2016, are not genuine bad debts. In this respect these have potentially been paid but the amounts received have not been accounted for and not recorded in the computerized Sage accounting records.

5.24 Unfortunately, there would not appear to be any records available which would enable me to check whether amounts have been received, but not recorded on the Sage computerised system. Whilst I note that the sales invoices issued would appear to include a note of amounts paid, I assume that if these are computer generated they will only show the amounts actually entered on the system.

5.25 In my opinion in order to ascertain the amount of cash that may have been received, but not accounted for it would assist if the parties could identify which of the bad debts written off are genuine bad debts, due to the customer being bankrupt, insolvent or otherwise not being able to pay. Having eliminated these customers the remainder would potentially represent customers who have paid but the amounts received from them have not been recorded.”

384. In his supplementary report he said that:

“5.7 As I have noted at paragraph 3.69 above, the cash and cheques received and paid into the Barclays Bank account may, in my opinion, in part relate to recorded sales made by the Partnership, but written off as bad debts, as the amounts received were not recorded in the accounting records. In addition, it is possible that in part they relate to sales made, including ‘contract kill’, where neither the sale or the amounts received have been recorded in the accounting records.”

385. Finally, in his written answer 8 he said that:

“If monies in respect of sales made have been collected by Khalid and subsequently by Sufwan, but they have not been accounted for to the Partnership, then assuming that such sales have been invoiced, the amounts outstanding as shown in the sales ledger from the relevant customers who have paid Khalid and/or Sufwan will be overstated. I assume that such outstanding balances will then have been written off as bad debts in the profit and loss accounts, hence reducing the profits of the Partnership for allocation to the partners.

If such monies collected were to be accounted for to the Partnership, then bad debts would be less and profits for allocation to the partners higher, thus increasing the balances on their capital accounts. Any monies collected and accounted for, if retained, would effectively be additional drawings of Khalid and/or Sufwan and would therefore reduce the balances on their capital accounts.”

386. For the Defendants, Dr Wilkinson invited the Court to do the best it could to find a minimum figure which it was satisfied was taken out by Khalid in unrecorded sales/ wrongly declared bad debts later written off and thereupon adjust the accounts by that figure.

387. He submitted that that approach was appropriate in the circumstances of the case in that:

(1) Mr Davidson was firm in his response to Mr Fennell's questioning about his views on bad debts:

“I have been in the profession a long time and seen accounts and how businesses operate and the level of bad debts looked particularly excessive and the fact that customers were allowed to continue to receive goods even though they had not paid out debts seemed uncommercial.”

(2) there was a consistent pattern of writing off debts and not recording sale for which Khalid was responsible. There was a conspicuous absence of documentation relevant to that, for example any correspondence chasing those debts, or relating to meetings discussing the debt or recording any motivated decision to write them off.

(3) Mr Davidson expressed the view that there appear to have been sales made in transactions which were not recorded. For example, he identified sales to P Waddington which do not appear to be recorded at all.

(4) as he also identified, there were also large amounts of bad debts said to be written off by the partnership, for example £1,730,745. Mr Davidson concluded that much of that £1.7m was probably not bad debt at all, but had been payments collected and not accounted for. He also identified that in the period between 21 October 2008 and 11 July 2016 an amount of £1,170,489.01 was transacted on the Barclays account relating to the partnership.

(5) Mr Davidson believed that the cash and cheques paid into that account could relate to what was written off as bad debts (but which was not in fact bad debt) or sales not

recorded, particularly relating to contract kill income. That was the overwhelming likelihood. It was Khalid and Sufwan who mainly ran the office and were responsible for debt collection, albeit with Kasim being responsible for a part of the collections.

(6) the Court heard the live evidence of two witnesses who ran businesses which were significant clients of the partnership, Mr Iqbal and Mr Ahmed. They confirmed that their businesses engaged in greater sales than were recorded and that they were not bad debtors, nor chased for debt, nor did they give reason for the partnership to write off any debts.

388. Dr Wilkinson submitted that the extent of the bad debts may never be known. Mr Davidson could not provide a definitive figure. The Defendants did not wish to invite cost-ineffective directions for further accounts. In the circumstances, they proposed to invite the Court to make a finding that Khalid had had out of the partnership in cash sums which he wrongly declared as bad debts and to adopt a fraction of the total, for example £500,000. That approach appeared to be appropriate since that was a mere fraction of the total, less than 1/3; there was likely to be more; there was also likely more in unrecorded sales and Mr Davidson's opinion was that "some or possibly the majority of these were paid in full or in part but the receipt has not been reflected".

389. Alternatively, the Defendants would invite the Court to take a pragmatic approach to the issue along the lines discussed in questions with Mr Davidson, namely for each withdrawal which the Court found that Khalid made (on the other issues below), to find that an equal and opposite amount of income was made either by way of wrongly declared bad debt write offs or unrecorded sales. Mr Davidson considered that approach to be appropriate and perfectly reasonable. Whilst that was a rough and ready approach, it was appropriate and a matter of proportionality. There could well be a lot more, but the Defendants wanted finality and did not want to incur more costs. Thus the Court was invited to do the best it could on the evidence which it had on the issue, but to balance the income found with withdrawals.

390. In answer to issue 8 therefore, he submitted that:

(1) the Court should do its best to arrive at a figure, adopting a fraction, for example £500,000, upon being satisfied that such sum appeared to have been had out;

(2) or to the extent that it was found that Khalid had taken cash, to find that an equal and opposite amount was made in income through bad debts or unrecorded sales;

(3) or leave should be given to rectify the erroneous bad debts entries with liberty to falsify and surcharge upon an account directed of Khalid's estate.

391. Whilst I entirely agree with Mr Davidson that the level of bad debts which the business allowed to accrue was particularly excessive and the fact that customers were allowed to continue to receive goods even though they had not paid out debts was entirely uncommercial, that was a constant theme of the running of the business. When the issue was raised during the meeting between Khalid and Ahmed and their accountants and HMRC on 19 May 2009 with regard to the partnership return for y/e 5 April 2006, which was based on the accounts for y/e 31 July 2005, the minutes of the meeting record that:

“Trade Debtors

76. In 2004-05, customers were usually allowed, on average, 21 days to make payment. Originally, customers were supposed to have paid on a week by week basis but bad payers had stretched the amount of time taken for customers to settle their bills. The partners tried to recover outstanding monies by making personal calls to the customers. Over the years, the partners had tried from time to time using debt collection agencies but this had not really worked. Legal proceedings had never been used to try and recover outstanding debts. With their regular customers they preferred to trust them to eventually pay the outstanding amount. On looking at the sales invoices SKP commented regarding one for Umar Halal Butchers that showed an outstanding balance of £11,345 with no payments received. This invoice was dated 16 October 2004 and SKP said that Umar's balance was now over £40,000. Outstanding amounts were only written off as bad debts as a last resort. Each year the accountants discussed the debtor's position with the partners and identified those where payments would not be forthcoming. The increase in year ended 31 July 2005 was probably due to removing some debts which had been on the system for a long time.

77. PFA explained that during the enquiry it had emerged the amounts included in the accounts as trade debtors were substantially wrong. PFA understood that the customers in question had in fact paid in cash so they did not owe the amounts as shown in the business' Sage records. The total amounts incorrectly treated as trade debtors were £66,870 in year ended 31 July 2005 and £26,139 in year ended 31 July 2006. PFA understood this related mainly to cash on delivery transactions.

...

79. PFA thought the essential point was that the trade debtor's figures were substantially incorrect and this showed again that the control of cash in the business was very poor, placing question marks over the reliability of all the figures in the accounts. A large amount of cash was coming into the business that was not effectively recorded. The additional cash received had been regarded by Peel Walker as increasing the amount of each partner's drawings and correspondingly reducing debtors. If this was so then, not only was cash coming in without being properly recorded, but the partners were also taking cash out as and when required without being recorded.

80. PFA thought there were 2 possibilities regarding the cash received from debtors. Firstly, the cash could have been taken out by the partners as additional drawings. Secondly, the cash could have been used to purchase stock for slaughter with both the purchase and sale of the stock going unrecorded."

392. Moreover, what emerged on the first day of the trial were three stray pages from the firm's collection list, which Kasim by chance found that he had photographed and which were still on his mobile phone. The basis figures in the four left hand columns would have been automatically generated by the computer system. That would show the customer reference, the outstanding balance on the account and the date of that balance, and the amount of the most recent invoice. Someone in the office (not necessarily the same person) would manually have entered the amounts actually paid on the day and in the week specified at the head of the page. Ordinarily the collections list would be destroyed a few weeks later once the figures had been inputted on to the system, but the record of these three pages had perchance survived.

393. What survives were the first page of the collections list for the week commencing 8 June 2015 and the full 2 pages of the list for the following week commencing 15

June 2015. As to the former, what the automatically generated columns demonstrated was as follows:

Reference	Balance (£)	Date	Last Invoice (£)
A & S Halal	4,084.56	06/6	658.73
Al Nafaj	61,823.43	28/3	13,649.35
Al Poultry	7,173.88	06/6	1,454.88
Amaan	6,262.60	06/6	3,004.49
Arif	30,741.27	06/6	5,093.61
Awami C/O	12,939.35	06/6	3,256.72
Azeem	7,446.76	06/6	1,372.20
Bali	6,806.26	06/6	466.40
Beeston Meat	10,072.21	06/6	2,603.31
Britannia	85,545.80	06/6	49,362.06
City Store	4,876.70	06/6	808.64
Dadipatel 2	23,975.96	04/6	6,767.60
Eastern	20,937.37	06/6	4,281.95
Ghanis	5,554.93	06/6	657.02

394. Payments were made on some of these accounts, the most substantial being payments of £12,000, £6,000 and £16,000 on the Britannia account, on an outstanding debt of £85,545.80.

395. Only the first page of the first week was the subject of questions by counsel, but a similar pattern is to be observed if one looks at the second page of the list for the second week. Again to take but some examples:

Reference	Balance (£)	Date	Last Invoice (£)
Grantham	11,788.58	20/9	206.26
Karwan	8,721.79	13/6	4,226.67
Khan	4,907.44	13/6	517.98
Khwaja	45,033.45	13/6	20,256.08
Manningham	4,076.51	13/6	2,153.69

Mobasher	4,675.75	13/6	933.03
Paak Poultry	165,790.74	13/6	28,343.90
Pak Super	54,651.07	13/6	8,459.30
R B Halal	12,374.05	13/6	3,586.80
Shabbir BFD	4,503.87	13/6	1,056.16
Shakoor	8,050.13	13/6	1,230.82
Shams	105,085.51	13/6	45,012.48
Takbeer	6,565.38	09/5	403.13
Today	32,045.80	04/10	2,050.06

Small payments were made on some of these accounts. The only one of substance was £58,580 on the Shams account, on an outstanding debt of £105,085.51.

396. In the light of this, Mr Fennell submitted that the practice from 2004/2005 in letting customers run up bad debts never changed. The partnership never kept proper records of cash transactions and the simple fact was that it was now impossible to work out who received what from whom and when.

397. I see the force of Mr Fenell's point and have paused over this issue for some time. Nevertheless, I have concluded that Dr Wilkinson is right that there was a consistent pattern of writing off debts and not recording sales for which Khalid, as the dominant partner, was ultimately responsible. There is indeed a conspicuous absence of documentation relevant to that matter, for example correspondence chasing those debts or relating to meetings discussing the debt or recording any motivated decision to write them off. That said, it is a conspicuous feature of the affairs of the partnership, as demonstrated by the minutes of the HMRC meeting in 2009 and the collection lists from 2015 that debtors were allowed to run up very significant arrears without apparently being chased or payment or still being granted the facility to transact business notwithstanding persistent defaults.

398. Mr Davidson identified that there were large amounts of bad debts said to be written off by the partnership, in the region of £1,730,745, although he concluded (and I accept) that some at least of that sum was probably not bad debt at all, but had been

payments collected and not accounted for. I also take into account that Mr Davidson identified that, in the period between 21 October 2008 and 11 July 2016, an amount of £1,170,489.01 was transacted on the Barclays account relating to the partnership. It is also significant that both Mr Iqbal and Mr Ahmed, who ran businesses which were significant clients of the partnership, confirmed that their businesses engaged in greater sales than were recorded and that they were not bad debtors, nor chased for debt, nor did they give reason for the partnership to write off any debts.

399. I also agree with Dr Wilkinson that the real extent of the bad debts may never be known, given that even Mr Davidson could not provide a definitive figure. I see no attraction in ordering yet further accounts to pursue a will o'the wisp. The simplest and most proportionate way to proceed is to make a finding that Khalid had out of the partnership in cash sums which he wrongly declared as bad debts and to adopt a fraction of the total. Dr Wilkinson clearly accepted that any such sum would have to be very heavily discounted in the light of the attendant uncertainties surrounding the bad debts. He proposed a figure of £500,000, which he said was appropriate since it was a mere fraction of the total, in fact less than 1/3.

400. That even on the Defendants' best case Dr Wilkinson was only proffering a figure of 30% of the total amount is indicative of the difficulty of the exercise. In my judgment, that figure is too high, particularly given the ongoing nature of the running up of bad debts throughout the life of the business. Taking all of the attendant uncertainties into account, the appropriate figure to ascribe to Khalid's abstractions is 20% of the total figure, which comes to just over £346,000, which I have rounded up to £350,000. In answer to issue 8 therefore: I find that Khalid had out of the partnership in cash sums which he wrongly declared as bad debts and that the appropriate figure to ascribe to that situation is £350,000, being approximately 20% of the alleged total figure.

Issue 9: diversion of income

401. This issue has two parts: (a) the Premier Halal rent and (b) the contract kill monies and they need to be treated separately.

(a) Premier Halal Rent

402. This issue is raised by the Counterclaim in paragraph 52(2) and covered by Mr Davidson at paragraphs 3.1 to 3.30 of his report and paragraphs 3.8 to 3.21 of his supplemental report.

403. In his original report Mr Davidson said:

“3.1 I have been provided with a copy of a Commercial Lease Agreement dated 17 July 2009 between Medina Poultry (the “Landlord”) and Premier Hallal Meats Ltd (the “Tenant”). It would appear that in the agreement ‘Halal’ has been misspelt as ‘Hallal’ and therefore I assume the correct name of the tenant is Premier Halal Meats Ltd. A copy of this Commercial Lease Agreement is attached at Appendix F1 hereto.

3.2 The lease relates to commercial premises at Unit 2, Brookwoods Industrial Estate, Holywell Green, Halifax. The lease was for a period of three years commencing on 17 July 2009 at an initial rent of £2,000 per week (the “Base Rent”). The rent was subject to annual reviews.

3.3 Whilst there is no reference to VAT in the lease agreement, I note from the documentation provided that Medina Poultry had opted to tax the property for VAT purposes.

3.4 I have been provided with a schedule purporting to show the rents received under the lease (Appendix F2 hereto). I understand that this schedule was prepared by or on behalf of the Defendants, but I have not seen the source information from which it was prepared.

3.5 With regard to this schedule the rent for the first year is shown at £2,000 per week as per the lease agreement (Appendix F1) to which standard rate VAT has been added at the appropriate rate at the time it was received. Thereafter the rent would appear to have increased to £2,900 per week inclusive of VAT. I however note from the schedule at Appendix F2 that when the standard rate of VAT increased from 17.5% to 20% the amount received remained at £2,900 per week and was not increased to reflect the higher rate of VAT.

3.6 It is noted that there are only 146 weeks rent included on the schedule provided (Appendix F2), whereas there should be 156 weeks had the full three years rent been paid. In this respect I am advised that the tenant left the building on or around 7 May 2012, the date of the reading on the final electricity bill rendered to them.

3.7 With regard to the property leased, this forms part of the freehold property with Land Registry Title Number WYK380090, known as Medina Poultry, Brookwoods Industrial Estate, Burrwood Way, Holywell Green, Halifax HX4 9BH.

3.8 The Land Registry shows that the freehold title to this property was on 12 October 1992 registered in the names of Shazada Khalid Pervaz and Mehboob Ahmed Pervaz (Appendix J2).

3.9 This property was shown as an addition to the partnership assets in the accounts of S S, S K & M A Pervaz T/A Medina Poultry for the year ended 31 May 1993 at a cost of £215,000.

3.10 On 31 May 1999, when the trade of the partnership was transferred to the limited company, Medina Poultry (Halifax) Limited (paragraph 2.4 above) the property was not transferred and remained in the ownership of Shazada Khalid Pervaz and Mehboob Ahmed Pervaz.

3.11 Following the transfer of the trade from Medina Poultry (Halifax) Limited to the new partnership on 31 July 2001 (paragraph 2.7 above) the property would appear to have been introduced into the Partnership by Khalid and Ahmed Pervaz.

3.12 From the information provided it would appear that there were two main buildings on the land, known as units 2 and 4.

3.13 On the basis that the property had been leased for three years from 17 July 2009, I would expect there to be shown rent received therefrom in the accounts of the Partnership for the years ended 31 July 2009, 2010, 2011 and 2012. I note however that there is no separate amount shown in the accounts for those years in respect of rent received.

3.14 Without the availability of the full accounting records, and in particular the full computerised Sage records for those years, I have had to refer to the Sage audit trail provided which covers the period from 1 August 2001 to the cessation of the Partnership in 2016.

3.15 On reviewing the Sage audit trail, I note that 28 sales invoices appear to have been raised by the Partnership to Premier Halal Meats Ltd between 3 August 2009 and 8 February 2010. These represent 28 weeks rent being 22 weeks at £2,800 (Net £2,500, VAT £300) totalling £61,600 (Net £55,000, VAT £6,600) and 6 weeks at £2,850 (Net £2,500, VAT £350) totalling £17,100 (Net £15,000, VAT £2,100). As a result, in total, invoices were raised amounting to £78,700 (£61,600 + £17,100) the net amount of which was £70,000 (£55,000 + £15,000) and VAT

£8,700 (£6,600 = £2,100) (see extracts from Sage audit trail at Appendix F3 hereto on which I have highlighted the relevant entries in orange).

3.16 I however note that credit notes were subsequently raised by the Partnership effectively cancelling certain of these invoices. These credit notes totalled £28,300 (Net £25,000, VAT £3,300) (see extracts from Sage audit trail at Appendix F3 on which I have highlighted the relevant entries in green).

3.17 Deducting the credit notes from the invoices leaves £50,400 invoiced (Net £45,000, VAT £5,400). This equates to 18 weeks rent at £2,800 per week. Whilst the net amount of £45,000 appears to have been initially credited in the Sage records as income of the Partnership (Sage nominal ledger account No. 4500), it was then transferred and credited to the drawings account of Khalid Pervaz (Sage nominal ledger account No.8710). The narrative in respect thereof was 'Reverse rental – Private Income' (see extract from Sage audit trail at Appendix F4 hereto on which I have highlighted the relevant entries in blue). As far as I can ascertain from the limited accounting records available to me no adjustment was made in respect of the VAT of £5,400.

3.18 I note that the amounts invoiced per paragraph 3.15 above are £500 per week more than the amounts shown on the schedule of rents received at Appendix F2 hereto. The Sage audit trail shows the weekly invoice total as £2,800/£2,850 whereas the schedule at Appendix F2 shows only £2,300/£2,350. It would appear that this difference comprises of a weekly charge of £500 to cover rates and insurance.

3.19 In addition to the invoices raised, the Sage audit trail shows 18 receipts from Premier Halal Meats Ltd of £2,800 each although 10 of these appear to have been subsequently deleted (see extracts from Sage Audit trail at Appendix F3 hereto on which I have highlighted the relevant entries in blue). As a result, there are only 8 receipts of £2,800 each recorded totalling £22,400 against the recorded invoices totalling £50,400 (paragraph 3.17 above). In the circumstances there would appear to be unpaid invoices of £28,000 (£50,400 - £22,400).

3.20 I have also looked at the Partnership bank account statements at around the time the above-mentioned invoices in respect of rent were raised.

3.21 With regard to National Westminster Bank account No, 00876186, I have identified, net of represented cheques, 8 amounts paid into the account of £2,800 each between 27 August 2009 and 25 November 2009, all of which I assume were

from Premier Halal Meats Ltd. This therefore agrees with the 8 receipts referred to at paragraph 3.19 above. Whilst the aforementioned amounts of £2,800 are shown as separate receipts on the bank statements, it is possible that further amounts were paid into this account and included as part of larger amounts banked. However, without details showing the composition of the amounts banked it is not possible to ascertain whether or not this is the case.

3.22 I have also looked at the bank statements for the former number 2 account of the Partnership, National Westminster Bank account No. 24128376. With regard thereto I note that between 23 December 2009 and 10 January 2011 there are net of represented cheques, 4 receipts of £2,850 each and 32 receipts of £2,900 each shown thereon. These total £104,200 (4 x £2,850 + 32 x £2,900). Once again it is possible that further amounts were paid into this account and included as part of larger amounts banked but without details showing the composition of the amounts banked it is not possible to ascertain whether or not this is the case.

3.23 I have not been able to locate the recording of these receipts into the number 2 bank account on the Sage audit trail of the Partnership. It is possible that amounts equivalent thereto were drawn in cash, which were also not recorded in the Sage records and effectively cancel the aforementioned amounts paid into the number 2 bank account.

3.24 Whilst this may be the case it would appear that the number 2 bank account may possibly not have initially featured in the Partnership accounts and accounting records at all. In this respect the bank statements for this account show that £153,188.03 was held in it at 31 July 2010 (Appendix F5) but this balance does not appear to be included on the Partnership balance sheet at that date. Furthermore, I note that on 11 January 2011, an amount of £215,578.76, which represented the majority of the funds held in the number 2 bank account at that date were transferred into the main Partnership bank account with National Westminster Bank, account No, 00876186 (see copy bank statements for the two accounts at Appendix F6 hereto). The Sage audit trail classifies the amount of £215,578.76 as a bank receipt (BR) and describes it as a transfer from Khalid (see extract from Sage audit trail at Appendix F7 hereto on which I have highlighted in blue this entry). I have not however been able to ascertain how the other side of this transaction has been reflected in the Partnership accounts and accounting records.

3.25 With regard to the rent paid I have been provided with a copy of a letter from Ghulam Mustafa Zaman, who was a director

of Premier Halal Meats Ltd (copy attached at Appendix F8 hereto), confirming payment of the rent under the lease (Appendix F1). In this letter he states that he paid Mr Khalid Pervaz the rent in cash and if cash was not available he was paid by an open cheque.

3.26 An online search of Companies House records reveals that there have been two companies with the name Premier Halal Meats Ltd. The first was incorporated on 19 June 2008 with Company Number 06624083 and was dissolved on 5 October 2010. The second was incorporated on 5 October 2010 with Company Number 07396325 and was dissolved on 17 March 2020. Ghulam Mustafa Zaman is recorded as having been a director of both these companies. I also note from Companies House records that neither company filed any accounts with Companies House and in the circumstances the state of their accounting records may in my opinion be questionable and hence also the accuracy and reliability of the contents of the letter from Ghulam Mustafa Zaman (Appendix F8).

3.27 Furthermore, in the aforementioned letter (Appendix F8) he refers to each payment as being £2,900 but the schedule provided of rents received (Appendix F2) only shows this as the weekly amount received from 23 July 2010.

3.28 As mentioned at paragraph 3.17 above rent of £45,000 was transferred to the drawings account of Khalid Pervaz according to the Sage audit trail provided and was described as private income. This related to the period August 2009 to November 2009 which falls into the tax year ended 5 April 2010. Whilst I have not seen his personal self-assessment tax return for that year I have seen those for subsequent years. In particular the return for the year ended 5 April 2011 includes UK property pages and refers to one property being let jointly, but no rent is shown thereon. I am not however aware as to what property is being referred to and it may therefore not be the Partnership property subject to the lease.

3.29 Even if the rent received was not to be regarded as Partnership income, as the title to the property is registered in the names of Shazada Khalid Pervaz and Mehboob Ahmed Pervaz (paragraph 3.8 above), I would have expected any rent received to be split equally between them.

3.30 In view of my comments above and with regard to the schedule provided of rents received (Appendix F2) I conclude as follows:

- As far as I can ascertain from the entries on the Sage audit trail no rent has been included in the profit and loss accounts of the Partnership.

- Whilst rent receipts from Premier Halal Meats Ltd have been identified as having been paid into the Partnership's two National Westminster Bank accounts, the majority of these were paid into the number two account, which until 11 January 2011 may possibly not have been included within the Partnership's accounts (paragraph 3.24 above).

- With regard to the eight rent receipts paid into the Partnership's National Westminster Bank account No. 00876186 (paragraph 3.19 above) I assume that these were posted to the sales ledger against the invoices raised net of credit notes (paragraphs 3.15 to 3.17 above).

- The schedule provided (Appendix F2) shows VAT on the rent. I assume that apart from the VAT on the invoices less credit notes recorded (paragraph 3.17 above) no further VAT on the rent received has been accounted for to HMRC. Therefore, any VAT on the rent received not accounted for is due to HMRC.

- With regard to the rent shown on the schedule at Appendix F2 and the amounts received I note that up until 16 July 2010 the amounts shown thereon do not agree with the amounts received and would appear to be understated by £500 per week. This amount would appear to be an additional charge for rates and insurance (paragraph 3.18 above). No VAT appears to have been due on these additional charges as per the invoices posted per the Sage audit trail.

- With effect from 23 July 2010, the schedule at Appendix F2 shows a total amount of £2,900 per week inclusive of VAT. If this includes rates and insurance, then VAT has been calculated on the rates and insurance element as well as the rent from that date.

- The total VAT shown on the schedule at Appendix F2 amounts to £61,065.61. If this figure is correct and on the basis that VAT of £5,400.00 has been properly accounted for on the invoices less credit notes which would appear to have been accounted for in the Partnership's Sage accounting records (paragraph 3.17 above) then the amount of VAT due to HMRC would be £55,665.61 (£61,065.61 - £5,400.00).

- If none of the rent and other amounts received in respect of the property have been recorded in the Partnership's profit and loss accounts then its profits for the years ended 31 July 2009, 2010, 2011 and 2012 will have been understated by the amounts

receivable in those years net of VAT. Furthermore, the allocation of profits as between the partners will also be understated in those years.

- Based on the net rental figures per the schedule at Appendix F2 and including an extra £500 per week for rates and insurance, up to and including 16 July 2010 (week 53), the Partnership's profits have potentially been understated by the following amounts:

Year Ended 31 July	Net Rent (Appendix F2)	Additional £500 per week	Total Potential Understatement
	£	£	£
2009 (52 weeks)	6,000	1,500	7,500
2010 (52 weeks)	104,936.18	25,000	129,936.18
2011 (52 weeks)	126,798.28	-	126,798.28
2012 (39 weeks)	94,250.13	-	94,250.13
Total (146 weeks)	£331,984.39	£26,500	£358,484.39

- Furthermore, if Khalid Pervaz has received this rental income, then the amounts inclusive of VAT should have been treated as additional drawings of his in the Partnership's accounts. In this respect the total amount inclusive of VAT would be £419,550.00 (£358,484.39 + VAT of £61,065.61).

- This amount would however appear to need reducing by £5,400 being the VAT on the £45,000 previously transferred and credited to his drawings account (see paragraph 3.17 above). This results in a revised amount of £414,150 (£419,550 - £5,400).

- Based on the information and documentation currently available to me it is not possible for me to say with any degree of certainty the actual amounts of rental income that Khalid Pervaz may have received and not accounted for to the Partnership. In particular, and as referred to at paragraph 3.24 above, the position regarding the number two bank account (into which rental income appears to have been paid) and the transfer

of the balance thereon to the main Partnership bank account is unclear.”

404. In his supplemental report he said that:

“Rental income from property leased to Premier Halal Meats Ltd between 2009 and 2012

3.8 In section 3 of my report dated 23 January 2024, I considered matters relating to the treatment of the rental income from the Partnership’s property at Unit 2, Brookwoods Industrial Estate, Holywell Green, Halifax. As per paragraphs 3.1 and 3.2 of my report the Partnership leased the property to Premier Halal Meats Ltd for a period of three years commencing on 17 July 2009. Whilst the lease should have run up to 17 July 2012, I am advised that the tenant left the building on or around 7 May 2012 (paragraph 3.6 of my report of 23 January 2024).

3.9 As per paragraph 3.30 of my report dated 23 January 2024, I concluded that as far as I could ascertain from the Sage audit trail provided that no rent had been included in the profit and loss accounts of the Partnership. Furthermore, I calculated that rent plus additional amounts for rates and insurance amounting to £358,484.39 excluding Vat, had not been included in the accounts, thus potentially understating the Partnership’s profits for the years ended 31 July 2009 to 2012.

3.10 In addition, I concluded that if Khalid Pervaz had received this rental income and had not accounted to the Partnership therefore, then the amounts inclusive of Vat should have been treated as additional drawings of his in the Partnership accounts. In this respect I calculated additional drawings of his in the years ended 31 July 2009 to 2012 of £414,150 (paragraph 3.30 of my report of 23 January 2024).

3.11 With regard to the amounts received in respect of the rental income due, as per my report of 23 January 2024, I identified the following receipts which appeared to relate thereto:

- Net of represented cheques, 8 amounts of £2,800.00 each paid into the Partnership’s National Westminster Bank account No. 00876186 between 27 August 2009 and 25 November 2009 (paragraph 3.21 of my report of 23 January 2024). These amounts total £22,400.00 (8 x £2,800.00).

- Net of represented cheques, 4 amounts of £2,850.00 each and 32 amounts of £2,900.00 each paid into the Partnership’s National Westminster Bank account No. 24128376 between 23

December 2009 and 10 January 2011 (paragraph 3.22 of my report of 23 January 2024). These amounts total £104,200.00 (4 x £2,850.00 + 32 x £2,900.00).

3.12 As noted at paragraphs 3.21 and 3.22 of my report dated 23 January 2024, it is possible that further amounts in respect of rent were paid into the aforementioned Partnership bank accounts and were included as part of larger amounts banked. However, without details showing the composition of the amounts banked it is not possible to ascertain whether or not this is the case.

3.13 With regard to the Barclays Bank account No. 60231983, for which further information has now been provided, additional receipts of rental income from Premier Halal Meats Ltd have been identified. These amounts which total £112,800.00, are per Appendix D7 hereto, and were received between 5 April 2011 and 25 April 2012.

3.14 Whilst the narrative on the printouts received from Barclays bank show these amounts as 'Prem Hal Ltd Premier Halal rent', it is possible that other amounts in respect of rent may have been paid into this account by cash and/or cheque. However, without further details regarding the sources of the cash and cheques paid into this account it is not possible to say whether or not these include any further rent receipts.

3.15 I note for example that of the cheques paid into this account (Appendix D2 hereto), that in March 2011 there were five amounts received of £2,900.00 each, although two of these were unpaid. In my opinion these were possibly rent receipts from Premier Halal Meats Ltd.

3.16 With regard to the amounts of the rent received per Appendix D7 hereto, I note that whilst these initially started in April 2011 at £2,900.00 per week, they then increased to £2,950.00 per week from May 2011.

3.17 The amount of £2,900.00 per week accords with the schedule provided to me (paragraph 3.4 and Appendix F2 of my report of 23 January 2024). I am not aware as to why the amounts received increased by £50.00 to £2,950.00 per week. It is possible that this was due to either a further increase in the rent or the charges for rates and insurance, in which case there would be a further understatement of rent receivable, including Vat thereon, and Partnership profits. Alternatively, the increase may possibly be to make up for previous underpayments. Without any further details I am not able to say what the correct position is regarding the additional amount received.

3.18 Based on the above I have in total now identified rental receipts of £239,400.00 (£22,400.00 and £104,200.00 (paragraph 3.11 above) + £112,800.00 (paragraph 3.13 above).

3.19 From the schedule provided to me (paragraph 3.4 and Appendix F2) of my report of 23 January 2024), the total amount receivable, including Vat, should have been £393,049.65. As per paragraphs 3.18 and 3.30 of my report of 23 January 2024, the amounts shown on the schedule at Appendix F2 of that report required increasing by £500.00 per week in respect of rates and insurance up to and including 16 July 2010 (week53). Adding 53 weeks at £500.00 per week increases the amount due by £26,500.00 to £419,549.65 (£393,049.65 + £26,500.00).

3.20 Deducting the identified receipts of £239,400.00 (paragraph 3.18 above), from the total of the amounts due of £419,549.65 (paragraph 3.19 above) leaves an amount of £180,149.65 in respect of which no receipts have been specifically identified.

3.21 The rental receipts into the Barclays Bank account do not appear to have been reflected in the accounting books and records of the Partnership. I am therefore of the opinion that these receipts do not alter the treatment adopted in my report of 23 January 2024 regarding the rent receipts unaccounted for, in which I treated them as additional drawings of Khalid Pervaz. The only possible impact is that if the amount payable did increase from £2,900.00 per week to £2,950.00 per week (paragraph 3.17 above), then there may be a further understatement of profits in the Partnership accounts, as well as a further understatement of Vat payable to HMRC. In addition, the amounts withdrawn by Khalid Pervaz may also be understated. However, without further details I am not able to comment upon these points further.”

405. For the Defendants Dr Wilkinson argued that:

(1) On 17 July 2009, Premier Halal Meat Ltd took a lease of part of the Brookwoods property and occupied the premises for 146 weeks until 7 May 2012 when it appears that an early surrender was accepted.

(2) Sufwan accepted that Premier Halal’s Mr Zaman was Khalid’s contact and paid him the rents (albeit suggesting it was paid on to Kasim). Mr Zaman says that he paid the rent to Khalid mainly in cash, but no rent was accounted for to the partnership and no VAT was paid despite apparently being charged.

(3) Mr Davidson identified rental payments from Premier Halal Meats Ltd totalling £239,400: net of cheques, £22,400 to 23 December 2009 and £104,200 from 23 December 2009 to 10 January 2011 paid into NatWest account and £112,800 paid into the Barclays account (-986).

(4) Mr Davidson identified the shortfall between rents due and those identified receipts as being £180,149.65, but concluded it likely this balance would have been paid. That could be inferred from Mr Zaman saying that he paid in cash and the absence of any dispute with the tenant.

(5) In answer to issue 9(a) therefore, the profit and loss figures needed to be corrected to record the income from rent and account for VAT liability as an expense and £414,550 should be debited from Khalid's capital account.

406. My findings on this matter are as follows. I accept that on 17 July 2009 Premier Halal Meat Ltd took a lease of part of the Brookwoods property and occupied the premises for 146 weeks until 7 May 2012 when it appears that an early surrender was accepted (see paragraphs 3.2 and 3.6 of Mr Davidson's report).

407. Mr Davidson explained that:

“3.4 I have been provided with a schedule purporting to show the rents received under the lease (Appendix F2 hereto). I understand that this schedule was prepared by or on behalf of the Defendants, but I have not seen the source information from which it was prepared.”

408. However, what emerged in Ahmed's cross-examination was that it was a document created by Ahmed:

“Q. How was this prepared? Who created this?”

A. We did. I did. From the time the lease started to the time he left.

Q. In fact it is a list of rent *payable*, not rent *received*?

A. It was a list of what was paid when he was in occupation.

Q. What is the basis of saying that this was money received by the partnership?

A. It was received and some of it was processed through the partnership accounts. It was processed by Khalid and Sufwan.

Q. How do you know it was received?

A. I spoke to Mustafa [Zaman] about it.”

409. I shall come back to Mr Zaman. Mr Fenell put it to Ahmed that he had no first hand or personal knowledge that the sums had actually been paid. Mr Fennell asked him whether he had gone through the bank statements one by one and Ahmed accepted that he had not. Mr Fennell put it to him that this was in fact a calculation of what was payable under the lease and that Ahmed had spun a figure out of it. The response was that this was the amount due, but not showing on the partnership accounts. I am satisfied that the Appendix F2 was a document created by Ahmed, but that it is in fact a schedule showing the rent due under the lease, not the rent actually received from the lessee and that Ahmed had no first hand or personal knowledge of the sums actually received under the lease.

410. That was confirmed by the terms of Dr Wilkinson’s re-examination of Ahmed. Dr Wilkinson referred him to Appendix F2 to Mr Davidson’s report and asked him whether the document was based on what he inferred had been received or on what was actually due and paid. The response was

“According to the dates of occupancy. What *would have been* received.

Q. So it is not based on your personal knowledge.

A. What *would have been received* on the dates he occupied the building.”

411. Ahmed said that he knew that the rent on the schedule had actually been paid because he had spoken to Mr Zaman about it and he had said that it had been paid (“He said Yes, I have paid. I don’t owe a penny”). He sought to rely on an undated but signed letter from Mr Zaman to that effect in the trial bundle:

“To whom it may concern

I Ghulam Mustafa Zaman of 119 healds road Dewsbury West Yorkshire

Confirm that I was the director of premier halal meats limited and I entered in to a lease agreement with Mr Khalid Pervaz of Medina Meat and Poultry Group for the lamb slaughterhouse commencing from 17th July 2009 till the 1st May 2012.

I can also confirm the rent paid was plus vat as per lease agreement and recorded as such on my company accounts.

I paid Mr Khalid Pervaz the rent in cash and if cash was not available he was paid by an open cheque

The amount I paid each was £2900.00

I am willing to give a formal statement if and when required.”

412. I am not prepared to receive such a document as evidence that the full rent was actually paid under the lease. As Mr Fennell rightly submitted, Mr Zaman had not been called as a witness (he was in Pakistan), there was no witness statement from him signed with a statement of truth and there had been no application from the Defendants for him to give video evidence.

413. Moreover, and more fundamentally, Ahmed was seeking to rely on Mr Zaman as being an honest man, but his evidence in his first witness statement was to precisely the opposite effect:

“25. The lamb plant and building fully fitted out was then leased out by Khalid to Premier Halal Meats Ltd, a business owned by Mustafa Zaman, pages 7-27. This was from 17 July 2009 to 1 May 2012 for £2,400 per week for the first year then £2,900 per week None of the money has not been accounted for by Khalid in the partnership accounts which he alone collected. I believe Khalid kept the money for himself. There is nothing in the ledgers showing money having been received.

26. It was strange for the business to be shut so suddenly and more strange to be rented out the premises to Premier who were fairly new customers with less than four months business with us. Since Khalid's death I have found various papers relating to

it at work, I also went on the Companies House website to have a look at their records. To my surprise they have never ever filed any accounts. Premier Halal Meats Ltd, number 6624083 was incorporated on 19 June 2008 and dissolved on 5 October, 2010, Premier Halal Limited, number 07252271, incorporated on 10 May 2010 and dissolved on 24 May 2011. The registered address is Unit 2 Brookwoods Industrial Estate. A third company is then incorporated with the same name, Premier Halal Limited number 08181906 on 16 August 2012 and dissolved on 10 June 2014. Every time the modus operandi is the same. Run the company for a year or so then close it down and not file any accounts. It appears that, Mr Zaman was running the business under false pretences and would routinely open and close companies.

27. I found a letter dated 29 May 2012 amongst the papers. This is letter from Dodds Co accountants demanding payment, which is of note is a staggering amount of money owed by the company (over £600k!).

28. More worrying is a letter from the regulator, Food Standards Agency, (39 of the Defendant's disclosure bundle) pages 31 32. It seems that when the first company was dissolved, they had not been informed and Mr Zaman continued operating illegally. With each set up you need to apply afresh for a licence and go through the process again. I don't believe for one minute that they would have got a licence because Mr Zaman would have been investigated and he would not have passed the Fit and Proper person test. It seems to me the regulator was about to take enforcement action."

414. The Defendants cannot have it both ways: they cannot rely on Mr Zaman as an honest man in relation to the payment of the rent in full at the same time as saying the precise opposite.

415. The Claimants' case is that Premier Halal had a bad payment record and ceased trading owing over £75,000 in rent. Ahmed said that that could not be the case since Khalid would have kicked Mr Zaman out long before, but given the partnership's lax attitude to bad debts, as set out in the notes of the meeting with HMRC in 2009 and the evidence of the collections list and non-payment of outstanding debts, that is not necessarily the case.

416. Mr Davidson identified rental payments from Premier Halal Meats Ltd totalling £239,400: net of cheques, £22,400 to 23 December 2009 and £104,200 from 23

December 2009 to 10 January 2011 paid into NatWest account and £112,800 paid into the Barclays account (-986). I accept that evidence.

417. Mr Davidson identified the shortfall between rents due and those identified receipts as being £180,149.65. Dr Wilkinson submitted that it was likely that that balance would have been paid (and, by implication, pocketed by Khalid). That, he said, could be inferred from Mr Zaman saying that he paid in cash and the absence of any dispute with the tenant. I do not, however, place any weight on the letter from Mr Zaman in the light of what I have said above and the absence of any dispute with the tenant is explicable on the basis of the partnership's lax attitude to bad debts.

418. In the last bullet point of paragraph 3.30 of his original report Mr Davidson stated that:

“Based on the information and documentation currently available to me it is not possible for me to say with any degree of certainty the actual amounts of rental income that Khalid Pervaz may have received and not accounted for to the Partnership. In particular, and as referred to at paragraph 3.24 above, the position regarding the number two bank account (into which rental income appears to have been paid) and the transfer of the balance thereon to the main Partnership bank account is unclear.”

419. In his supplemental report he stated that:

“3.20 Deducting the identified receipts of £239,400.00 (paragraph 3.18 above), from the total of the amounts due of £419,549.65 (paragraph 3.19 above) leaves an amount of £180,149.65 in respect of which no receipts have been specifically identified.

3.21 The rental receipts into the Barclays Bank account do not appear to have been reflected in the accounting books and records of the Partnership. I am therefore of the opinion that these receipts do not alter the treatment adopted in my report of 23 January 2024 regarding the rent receipts unaccounted for, in which I treated them as additional drawings of Khalid Pervaz. The only possible impact is that if the amount payable did increase from £2,900.00 per week to £2,950.00 per week (paragraph 3.17 above), then there may be a further understatement of profits in the Partnership accounts, as well as

a further understatement of Vat payable to HMRC. In addition, the amounts withdrawn by Khalid Pervaz may also be understated. However, without further details I am not able to comment upon these points further.”

420. Mr Davidson’s conclusion therefore is that it is not possible to say with any degree of certainty the actual amounts of rental income that Khalid may have received and not accounted for to the partnership. The only certainty is that deducting the identified receipts of £239,400.00 from the total of the amounts due of £419,549.65, there is a shortfall of £180,149.65 in respect of which no receipts have been specifically identified. In my judgment the fate of the shortfall is a matter of speculation. It is the Claimants’ case that Premier Halal was a bad payer and that there was a shortfall of over £75,000 when the company ceased trading.

421. The burden of proof is on the Defendants positively to identify and prove any errors on which they rely. The standard of proof is the balance of probabilities. The Defendants’ case ultimately rested on a rent schedule which turned out to be a schedule of rent payable under the lease rather than rent actually paid. The source for the contention that the rent had been paid in full was Mr Zaman, on whose letter (in the absence of proper testimony from him) I can base no weight whatever. In accordance with the expert evidence of Mr Davidson I find that it is not possible to say on the balance of probabilities the actual amounts of rental income which Khalid may have received and not accounted for to the partnership. I do not consider that it is for the Court to indulge in mental gymnastics to try and speculate on an intermediate figure which he might have received. Either the Defendants make out their case or they do not and I conclude that they do not.

422. In answer to issue 9(a) therefore: the Defendants’ case is not made out and no adjustments need to be made to the accounts in that respect.

(b) Contract Kill income

423. This issue is raised by the Counterclaim in paragraph 52(4) and covered by Mr Davidson at paragraphs 4.10 to 4.34 of his report.

424. Mr Davidson stated that:

“Aqsa Halal Meats

4.10 The schedule at Appendix G1 shows 66 invoices raised to Aqsa Halal Meats between 17 November 2007 and 7 February 2009. I have been provided with copies of these invoices which are numbered 12901 to 12974, I note however that there are no invoices numbered 12916, 12928, 12930, 12050, 12960, 12965, 12969 and 12970 and that number 12944 was cancelled. In addition, there are two invoices with the number 12914. I also note that there are in some cases small differences between the amounts shown on the invoices and those shown on the schedule. As per the schedule at Appendix G1 these invoices total £112,111.99 (Net £95,779.00 + Vat £16,332.99).

4.11 As to whether the invoices raised have been recorded in the Partnership's accounting records, I have again in the absence of the full accounting records of the Partnership for the period prior to 1 August 2012, referred to the Sage audit trail provided. As a result, I have not located any of the invoices shown on the schedule at Appendix G1 and it would therefore appear that these have not been recorded on the Sage accounting system. I did however find five invoices dated 14 February 2009 to 14 March 2009 to Aqsa Halal Meats recorded on the Sage system and in this respect I refer to the extract from the Sage audit trail at Appendix G3 on which I have highlighted these invoices in green. These five invoices total £8,421.44 (Net £7,323.00 + Vat £1,098.44).

4.13 I have been provided with a copy of a Sage nominal ledger account (account number 4006 Sales – Contract Kill) showing various sales invoices posted thereto, including the aforementioned five invoices to Aqsa Halal Meats which I have highlighted in green thereon. A copy of this is attached at Appendix G5 hereto.

4.14 I further note from a search of the Sage audit trail that on 1 August 2011 the total amount of these five invoices, £8,421.44 was written off as a bad debt (see extract from Sage audit trail at Appendix G4 hereto on which I have highlighted this entry in green).

4.15 With regard to the 66 sales invoices as per Appendix G1, as well as the other five invoices (Appendix G3), I have not been able to locate any receipts in respect of them and therefore I am not able to say whether or not any monies were received in respect of them. In my opinion it would be reasonable to assume that if payments were not being received then the Partnership would not have continued to let them use their facilities for a period of approximately 16 months from November 2007 to March 2009.

4.16 I have been provided with a Witness Statement of Shafiq Ahmed dated 26 February 2023, a copy of which I attach at Appendix G9 hereto. It would appear therefrom that Shafiq Ahmed was an owner of or involved with Aqsa Halal Meats. In his Witness Statement he refers to using Medina Meat and Poultry Group for the slaughter of animals. He states that all their business dealings were with Khalid. He further states that they were issued with handwritten invoices which they paid mostly by cheque and sometimes cash. He also states that they made payments in full on a weekly basis to Khalid and that no money was due when Medina shut the contract kill business.

Based on the information and documentation currently available to me, as well as my comments above, I conclude that:

- The 66 invoices raised to Aqsa Halal Meats between 17 November 2007 and 7 February 2009 (Appendix G1) do not appear to have been recorded in the Partnership's Sage accounting system and as a result sales and profits would appear to be understated by the net amount of £95,779.00 and VAT thereon has been underdeclared by £16,332.99. With regard to the sales of £95,779.00, based on the dates of the invoices shown on the schedule at Appendix G1, £51,070.30 relate to the year ended 31 July 2008 and £44,708.70 to the year ended 31 July 2009.

- No receipts appear to have been recorded in the Sage accounting records in respect of the 66 invoices or in respect of the further five invoices that were recorded in the Sage records.

- With regard to the five invoices which were recorded on the Sage system, totalling £8,421.44, these were subsequently written off as a bad debt.

- If monies have been received from Aqsa Halal Meats in respect of the invoices rendered to them, I am not able to say why they have not been recorded. If the amounts were paid to the Partnership, it is possible that amounts equivalent thereto have been drawn from the business which also have not been recorded as alleged by the Defendants. Alternatively, the monies may never have been paid into the Partnership, particularly if they were in cash. As per paragraph 4.16 above, Shafiq Ahmed of Aqsa Halal Meats refers to making payment in full on a weekly basis to Khalid.

4.18 With regard to the bad debt written off of £8,421.44 (paragraph 4.14 above), I am unable to say whether or not this is a genuine bad debt or whether the amount was received and not recorded against the invoices raised.

Other Contract Kill Customers

4.19 In addition to Premier Halal Meat Ltd and Aqsa Halal Meat I am advised by the Defendants of two other contract kill customers, namely IQ Halal and Raffi Meats.

4.20 With regard thereto I note that the copy nominal ledger account provided, account number 4006 – ‘Sales – Contract Kill’ (Appendix G5) shows various invoices rendered to IQ Halal between 28 May 2005 and 14 February 2009, account references IQ0002 and IQ0003.

4.21 In addition, I note from a review of the Sage audit trail that numerous sales invoices have been rendered to both IQ Halal and Raffi Meats, although in the absence of the sales invoices it is not possible for me to say what these relate to.

4.22 With regard to Raffi Meats, the Defendants have advised that this is a customer who has been supplied poultry by Sufwan which is unaccounted for. They further state that the poultry operation was run during the day and the meat operation was during the night and that Raffi was a contract kill customer who had his sheep processed at Medina at night. They then go on to say that Sufwan dealt with him on the meat side which was operational at night and had access to the fridges on the poultry side. With regard to the buying of poultry by Raffi they say that some has been accounted for on the Medina computer system but there are sales unaccounted for.

4.23 I note from the Sage audit trail provided that from in or around September 2005 to early 2009 numerous sales invoices have been raised to both IQ Halal (Account IQ0003) and Raffi Meats (Account RAFF01) on which VAT has been charged. These invoices bear numbers that are not part of the main sales invoice number sequence and as VAT has been charged on them, I assume that they are likely to relate to ‘contract killing’ as there would not appear to be any VAT due on the other sales made by the Partnership. I attach at Appendices G11(i) and G11(ii) schedules of sales invoices which I have extracted from the Sage audit trail in respect of IQ Halal and Raffi Meats respectively. It is also noted that the Sage audit trail includes sales receipts from both IQ Halal and Raffi Meats, schedules of which I attach at Appendices G12(i) and G12(ii) hereto.

4.24 Whilst some of the sales invoices to IQ Halal appear in the ‘Sales – Contract Kill’ nominal ledger account provided to me (Appendix G5 as highlighted in orange thereon and on Appendix G11(i)), the majority do not, and none of the Raffi Meats invoices

have been posted to this account. In the absence of the Sage nominal ledgers for the years concerned I can only assume that the recorded sales invoices not posted to the aforementioned nominal ledger account, have been posted to another sales account.

4.25 With regard to IQ Halal the Defendants have provided the following schedules of recorded sales to them:

- I.Q. Contract – I.Q. Halal Meats (Beef) – Appendix G6(i)
- I. Q. Chicken – I.Q. Halal (Chicken) – Appendix G6(ii)

4.26 I note that the sales to IQ Halal as per the schedule at Appendix G11(i) are not recorded on the aforementioned schedules.

4.27 I have been provided with a Witness Statement of Aftab Iqbal a copy of which I attach at Appendix G10 hereto. I note therefrom that he was in partnership with his brother, Shahzad Iqbal. He states that the partnership was named IQ Butchers. I assume that this is the same or part of the same business as IQ Halal. In his Witness statement he refers to purchasing poultry from Medina and to supplying them with animals for slaughter. He refers to the animals as being supplied by Andrew Atkinson livestock of Harrogate Ltd and delivered direct to Medina. He states that after the animals had been processed they would be issued with handwritten invoices. Furthermore, he states that they paid Khalid, nearly all of which was in cash.

4.28 In his Witness Statement, Aftab Iqbal also states that on average around 900 animals were slaughtered and the average bill was around £6,000 per week but near Muslim Festive days, such as Eid, it would be around £20,000 per week. He also refers to being with Medina for around five years until July 2009. He further states that Medina's ledgers do not reflect the number of animals that went through their slaughterhouse.

4.29 With regard to the points made by Aftab Iqbal in his Witness Statement, these would in my opinion appear to support the sales and receipts I have identified from the Sage audit trail in respect of IQ Halal (account reference IQ0003) as per Appendices G11(i) and G12(i). Whilst in my opinion it is possible that there are some unrecorded sales and receipts in respect IQ Halal, based on the information currently available to me I am not able to identify and quantify the same.

4.30 With regard to Raffi Meats, the Defendants have provided a schedule of recorded sales to them, a copy of which I attach at Appendix G7 hereto. The Defendants are of the opinion that this

schedule does not reflect all the sales made to Raffi Meats and refer to the period 1 April 2007 to 7 April 2008 where no sales are recorded.

4.31 In this respect the Defendants have provided copies of pages from a duplicate book of delivery notes which they advise are unrecorded sales to Raffi Meats. These copy delivery notes are in respect of the period 3 April 2007 to 14 July 2007, and would appear to relate to poultry sales. Every few days there is a summary page showing the previous days sales and the amount due in respect thereof. I attach at Appendix G8 hereto a summary I have prepared of the totals of the amounts due as per these pages. For the period 3 April 2007 to 14 July 2007 the total value of the sales made would appear to be £75,472.65 (Appendix G8). It is not however clear as to whether this was paid in full. I have not been provided with any information as to what the sales may have been for the remainder of the period 15 July 2007 to 7 April 2008.

4.32 If poultry sales made to Raffi Meats in the period 1 April 2007 to 7 April 2008 have not been recorded, then sales and profits per the Partnership's accounts will have been understated by the amount thereof. Furthermore, if monies have been received in respect of these sales and not recorded then the amount thereof will effectively be monies drawn from the Partnership.

4.33 With regard to 'contract kill', it would from the schedules at Appendices G11(ii) and G12(ii) hereto, appear that invoices were raised to Raffi Meats and monies were received from them between October 2005 and January 2009 and were recorded on the Sage computerised accounting system. These schedules include invoices raised and monies received between April 2007 and April 2008.

4.34 Based on the information and documentation currently available to me I am unable to comment further on the matter of the contract kill income and am unable to ascertain the full extent of sales and the monies received therefrom that may not have been recorded in the Partnership's accounting records and hence in its accounts."

425. My findings on this question are as follows. Before Premier Halal Meat Ltd occupied the red meat slaughterhouse on 17 July 2009, the partnership slaughtered client livestock (lamb and sheep) on a per-kill basis. That was done until the red meat plant was sold by Khalid in 2013. The slaughtering was done at nights, whereas poultry was processed in the day. Sufwan's evidence was that he worked 3 nights a week on

the red meat site which he managed, overseeing red meat production. That was also Hashim's evidence. Sufwan's evidence is that he handled payments from at least Rafi Halal, although he did not say that in relation to the partnership's main customer, IQ Halal Meats run by Mr Iqbal and his brother. I have accepted Mr Iqbal's evidence, which includes his evidence about the volume of business which IQ did with the partnership. In summary, IQ Halal had a large volume of lamb and sheep slaughtered by the partnership, around 900 animals a week being sent from Harrogate to Brookwoods. Mr Iqbal dealt with Khalid and paid cash in large sums of around £6,000 on average (for 900 animals) per week, but potentially as much as £20,000 around Eid. Khalid never paid for the skins or ropes.

426. Mr Ahmed, whose evidence I accepted, gave evidence that he ran a business called Al Aqsa Halal and paid £4 to £6 per animal for his animals to be slaughtered, dealing with Khalid and paying either cheques or cash weekly, keeping his account up to date. I have considered his evidence carefully, but have decided that he was correctly recollecting his dealings with Khalid and I accept that evidence.

427. In paragraphs 4.23 to 4.29 of his report Mr Davidson identifies that the sales to IQ were not recorded and that the accounts did not declare them. He reaches the same conclusion with regard to Al Aqsa at paragraphs 4.10 to 4.17 and Rafi Meats at paragraphs 4.30 to 4.33. I accept that evidence.

428. At paragraph 4.34 Mr Davidson concluded in his report that it was not possible to ascertain precisely how much income from contract kill needed to be accounted for, but as confirmed in his live evidence he was in a position to say that there was a minimal amount of baseline income generated from IQ, which was £205,098. There was a further floor figure of at least £128,233 to account for in respect of other contract kill customers such as Al Aqsa and a further £75,472.65 for only part of one year in respect of Rafi. In reality, he concluded, there was likely much more. I accept those figures.

429. Dr Wilkinson submitted that the Court could adjust the accounts to show withdrawals of income on sales not declared according to the bare minimal baseline figures discussed with Mr Davidson and direct that those sums be shown as a

withdrawal on Khalid's capital account and the same sums be treated as partnership income. In the alternative, the Court should give directions that Khalid should account for contract kill receipts.

430. It may be that in reality there is more income from contract kill which needs to be accounted for, but given that there are unchallenged minimum floor figures for contract kill income, I am satisfied that it is sensible and proportionate to adopt those figures and crystallise the issue now rather than to direct further accounts and inquiries.

431. In answer to issue 9(b) therefore I direct that the minimum sums set out above, namely £205,098 (IQ), £128,233 (Al Aqsa) and £75,472.65 (Rafi) in relation to contract kill income, be shown as withdrawals from Khalid's capital account and that the same sums be treated as partnership income.

Issue 10: the cars

432. This issue is raised by the Counterclaim in paragraph 52(3) and covered by Mr Davidson at paragraphs 9.29 to 9.36, 9.107 to 9.113, 10.09 to 10.10 and 10.37 of his report.

433. Mr Davidson said that:

“9.29 With regard to motor vehicles, as noted at paragraph 9.19 above, Eddisons have provided two valuations. Upon making further enquiries I have been provided with an email and schedule from Richard Temple of Eddisons showing their valuation of the individual vehicles, copies of which I attach at Appendix Q5 hereto. In the aforementioned email, Eddisons have acknowledged that the total figure for all motor vehicles shown in their report per paragraph 9.19 above was incorrect and the correct figure should have been £442,527 and not £437,439. I however note that the total of the values per the schedule provided by them (Appendix Q5) is actually £442,529. The figure of £423,435, excluding disposed vehicles, remains the same.

9.30 Whilst for the purpose of preparing my report I have used the valuations provided by Eddisons, I note that Sandhill Solicitors, who act for the Defendants, have queried the basis on which they were prepared and hence the reliability of them.

9.31 As per the accounts prepared by Sheards in respect of the period ended 7 July 2016, (Appendix E6) they include motor vehicles at a book written down value of £110,967 as per the schedule at Appendix Q4 hereto. This figure however excludes vehicles they have treated as transferred in the period ended 7 July 2016 to certain partners at a total book written down value of £351,579 (cost £456,980 less depreciation £105,401). These are disposals as shown on the schedule at Appendix Q4. In this respect the transfers were:

Transferred to	Vehicle	Written down value
		£
Shahzada Khalid Pervaz	Bentley YG65 FKP	120,729
Shahzada Khalid Pervaz	BMW Series 3 OU16 TFZ	34,008
Mohammed Kasim Pervaz	Bentley YG65 FKR	120,729
Umer Sufwan Pervaz	Mercedes Roadster YR64 NZB	44,446
Mohammed Hashim Pervaz	BMW MF62 DBX	31,667
		£351,579

9.32 The aforementioned amounts, with the exception of the £34,008 in respect of the BMW transferred to Khalid, are included within the respective partner's drawings as per the accounts prepared by Sheards for the period ended 7 July 2016 (see Appendices P3(i) to P3(v)). In respect of the BMW transferred to Khalid, an amount of only £28,500 was posted to his drawings (Appendix P3(ii)). The difference of £5,508 (£34,008 - £28,500) was incorrectly treated as a loss on disposal. Whilst it is noted that a further vehicle, a Porsche Cayenne, registration number HA54 HAM was transferred to Mehboob Ahmed Pervaz at a book written down value of £3,599 in the period ended 7 July 2016, from the schedule at Appendix Q4, this would appear to have been on 1 August 2015. As this vehicle has not been valued by Eddisons (Appendix Q5) I have left it within his drawings for the period ended 7 July 2016 at its book written down value of £3,599 (Appendix P3(i)).

9.33 In preparing my accounts for the Partnership, I have included the vehicles at paragraph 9.31 above as being partnership assets as at 7 July 2016 and have included them at the valuation figures provided by Eddisons (Appendix Q5). As to what subsequently happened to the vehicles I deal with this in section 10 below.

9.34 With regard to the matter of motor vehicles held by the Partnership as at 7 July 2016, it is necessary to address the matter of the amount of £143,695 shown on the schedule provided of 'Monies unaccounted for' (Appendix D3) and described as 'Cars taken by Khalid's family and sold. Equity in the cars amounting to £143,695'. A further schedule has been provided showing how this amount was arrived at, a copy of which I attach at Appendix Q6 hereto.

9.35 With regard thereto the matters referred to thereon affect the Partnership accounts for the year ended 31 July 2015, which I understand are not agreed (paragraph 9.7 above) or relate to the final period to 7 July 2016. In the circumstances I have made the appropriate adjustments to correct matters in preparing the Partnership's cessation accounts.

9.36 As referred to at paragraph 9.33 above the cars transferred to the partners per paragraph 9.31 above have been treated as Partnership assets as at 7 July 2016 and with regard to what happened to these vehicles on the cessation of the Partnership, I deal with this in section 10 below.

...

Hire purchase

9.107 Based on the documentation provided to me and the Sage nominal ledger for the period ended 7 July 2016, the Partnership appears to have had the following hire purchase commitments in that period:

- Mercedes-Benz Finance hire purchase agreement re Mercedes-Benz SL Series, SL400, Registration No. YR64 NZB, 29 September 2014 – amount of credit £58,884.
- Blackhorse hire purchase agreement re BMW 3 Series, Registration No. OU16 TFZ, 31 March 2016 – amount of credit £30,000.
- Northridge Finance hire purchase agreement re Bentley, Registration No. YG65 FKP, 1 September 2015 – amount of credit £92,500.

- Northridge Finance hire purchase agreement re Bentley, Registration No. YG65 FKR, 1 September 2015 – amount of credit £92,500.

9.108 With regard to the first of these agreements in respect of the Mercedes, the amount borrowed of £58,884 was repayable in 48 monthly instalments of £1,226.75 each and no interest was payable thereon. In the year ended 31 July 2015, 10 monthly instalments were paid and in the period ended 7 July 2016 a further 11 monthly instalments were paid. As a result, as at 7 July 2016 the balance outstanding was £33,122.25 (£58,884.00 – (21 x £1,226.75)).

9.109 With regard to the BMW the amount borrowed was £30,000. Hire purchase charges were £8,385 resulting in the total to be paid of £38,385. This was to be paid in 60 monthly instalments of £639.75 each comprising of a monthly repayment of £500 and charges of £139.75. In the period ended 7 July 2016, 3 instalments were paid. As a result, the outstanding amount, excluding charges, as at 7 July 2016 was £28,500 (£30,000 – (3 x £500)).

9.110 With regard to the two Bentleys the amount borrowed on each of these was £92,500. Hire purchase interest was £11,840 on each of them resulting in the total to be paid on each of them of £104,340. This was to be paid in 48 monthly instalments of £2,173.75 each comprising of a monthly repayment of £1,927.08 and interest of £246.67. In the period ended 7 July 2016, 10 instalments were paid in respect of each of the agreements. As a result, the outstanding amount, excluding interest, on each of them as at 7 July 2016 was £73,229.20 (£92,500 – (10 x £1,927.08)).

9.111 In the accounts prepared by Sheards for the period ended 7 July 2016 (Appendix E6), I note that the balances in respect of the aforementioned hire purchase agreements have been transferred to the partners current accounts of the partners who took over the respective vehicles.

9.112 In my opinion in order to properly reflect the position of the Partnership as at 7 July 2016 these liabilities should be included on the Partnership balance sheet as at that date. As a result the total hire purchase liability as at 7 July 2016 would be:

Vehicle	Paragraph	Amount
		£
Mercedes	9.108	33,122.25
BMW	9.109	28,500.00

Bentley	9.110	73,229.20
Bentley	9.110	73,229.20
Total		£208,080.65

9.113 I have checked the figure of hire purchase interest of £5,353 shown in the profit and loss account for the period ended 7 July 2016 (Appendix E6) and find that this agrees with the number of instalments and amounts as noted at paragraphs 9.108 to 9.110 above.

...

10.9 With regard to the Partnership's motor vehicles as at 7 July 2016, I refer to these at paragraphs 9.29 to 9.43 above. As per the valuation provided by Eddisons the value of motor vehicles was £442,529 (paragraph 9.29 above and Appendix Q5).

10.10 As noted at paragraphs 9.31 to 9.33 a number of vehicles were transferred to individual partners. In this respect the vehicles transferred, and the values thereof as provided by Eddisons at Appendix Q5, were:

Transfer to	Vehicle	Valuation Per Appendix Q5
		£
Shahzada Khalid Pervaz	Bentley YG65 FKP	114,375
Shahzada Khalid Pervaz	BMW 3 Series OU16 TFZ	27,825
Mohammed Kasim Pervaz	Bentley YG65 FKR	114,375
Umer Sufwan Pervaz	Mercedes Roadster YR64 NZB	43,207
Mohammed Hashim Pervaz	BMW MF62 DBX	28,450
		£328,232

...

Hire purchase

10.37 With regard to the hire purchase liabilities at 7 July 2016 of £208,081 (paragraph 9.112 above), I understand that these were taken over by the partners who withdrew the vehicles to which they relate (paragraph 10.10 above) as follows:

Partner	Vehicle	Hire Purchase Liability (paragraph 9.112)
		£
Shazada Khalid Pervaz	Bentley YG65 FKP	73,229.20
Shazada Khalid Pervaz	BMW 3 Series OU16 TFZ	28,500.00
Mohammed Kasim Pervaz	Bentley YG65 FKR	73,229.20
Umer Sufwan Pervaz	Mercedes Roadster YR64 NZB	33,122.25
		£208,080.65

434. Dr Wilkinson submitted that the Bentley YG65 FKP was paid for by the partnership, but became Khalid's and that its value at dissolution was £114,375. The Mercedes Roadster YR64 NZW was paid for the partnership, but became Sufwan's and was worth £43,207 at dissolution. The BMW 3 Series OU16 RFZ was paid by the partnership, but also became Khalid's and its value at dissolution was £27,825.

435. The hire purchase liabilities outstanding on the cars were taken over by the partners following dissolution, but they had significant equity thought to be worth at least £85,196. It was unclear what profit or loss was made by the Claimants on realisation as they had not accounted for those assets, despite them being the subject of pre-action discussions. There was no disclosure for the Mercedes Roadster YR64 NZW and the BMW OU16 RFZ, despite the Claimants' promises to disclose them when the log books were supplied.

436. In answer to issue 10 Dr Wilkinson submitted that the cars should be treated as partnership assets which were withdrawn by both Khalid and Sufwan, that Khalid's account should be debited by £120,729 for the Bentley and £28,500 for the BMW and Sufwan's account £44,446 for the Mercedes Roadster in accordance with Mr Davidson's report.

437. I agree, but the point made by Mr Fennell is that it was settled practice for both the family of Khalid and the family of Ahmed to purchase cars out of partnership assets and that what the Defendants were seeking to do was to reopen matters in relation to one family without giving credit for the cars used by the other family. I agree.

438. Two of the cars should therefore be treated as partnership assets which were withdrawn by both Kasim and Hashim. Kasim's account should be debited by £120,729 for the Bentley YG65 FKR and Hashim's account £31, 667 for the BMW MF62 DBX in accordance with paragraph 9.31 of Mr Davidson's report.

439. In answer to issue 10 therefore: the cars should be treated as partnership assets which were withdrawn by both Khalid and Sufwan. Khalid should be debited by £120,729 for the Bentley and £28,500 for the BMW and Sufwan £44,446 for the Mercedes Roadster in accordance with Mr Davidson's report.

440. In addition, two of the cars should be treated as partnership assets which were withdrawn by both Kasim and Hashim.

441. Kasim's account should be debited by £120,729 for the Bentley YG65 FKR and Hashim's account £31, 667 for the BMW MF62 DBX in accordance with paragraph 9.31 of Mr Davidson's report.

Issue 11: the insurance payment

442. I can take this issue relatively briefly since it appears to be agreed (see paragraph 49 of the Claimants' opening skeleton argument). The issue is raised by the Counterclaim in paragraph 52(5) and covered by Mr Davidson at 9.37 to 9.43 of his report.

443. Mr Davidson said that:

“9.37 In respect of the Rolls Royce, documentation provided to me indicates that the vehicle was written off as a result of an incident on 15 May 2015. As a result, the insurance company paid out in respect thereof the sum of £134,250 on 16 June 2015 by way of two cheques, one for £100,000 and one for £34,250.

It would appear that the cheques were made out to Shazada Khalid Pervaz who in the payment advices issued by the Insurers (Appendix Q7) is referred to as the Insured. I note however that the vehicle was regarded as a partnership asset and was included in the partnership accounts.

9.38 According to the Partnership's accounting records this vehicle was purchased for £174,000 in the year ended 31 July 2012 and at May 2015 had a book written down value of £75,870. In the circumstances the profit on disposal should be £58,380 (£134,250 - £75,870).

9.39 The accounting records and the accounts prepared therefrom for the year ended 31 July 2015 only show disposal proceeds of £100,000 and as a result a profit on disposal of £24,130 (£100,000 - £75,870), thereby understating it by £34,250 (£58,380 - £24,130).

9.40 As a result of making further enquiries, I am advised by Isha Pervaz, the daughter of the late Khalid Pervaz that the two cheques totalling £134,250 from the Insurers were paid into her late father's personal bank account with National Westminster Bank. This was account number 01004654, sort code 53-61-07, and a copy bank statement has been provided showing this amount paid in on 19 June 2015 (Appendix Q8).

9.41 I am further advised by Isha Pervaz that on 24 July 2015, her late father drew a cheque for £100,000 made payable to JCT600 in respect of the deposits on two Bentleys, on his aforementioned personal bank account. As per the copy bank statement provided this cleared the account on 30 July 2015 (Appendix Q8). However, with regard thereto, see paragraph 9.73 below.

9.42 A review of the Sage nominal ledger of the Partnership for the year ended 31 July 2015 shows that the balance of £34,250 was included as funds introduced by Khalid Pervaz in the year ended 31 July 2015. In this respect it is noted that £34,250 was paid into the Partnership's National Westminster Bank loan account No. 61123048 on 24 July 2015.

9.43 This is not the correct treatment as the £34,250 was Partnership monies and not Khalid's monies to introduce. I note that in preparing the accounts for the period ended 7 July 2016 that Sheards corrected the position in that period by reversing the £34,250 previously treated as capital introduced by Khalid and showing it as additional profit on disposal."

444. The Court should therefore treat Khalid as withdrawing the balance of £34,250.

445. In answer to Issue 11 the £134,250 was a partnership asset, only £100,000 of which has been paid to the partnership. As well as showing that as income, £34,250 needs to be shown as withdrawal (and any credit given to Khalid for that sum must be reversed). There was also a profit on a disposal and the profit and loss account needs to be corrected to show the profit in the same sum.

Issue 12 (not separately pursued since it is a duplication - now issue 18): the personal expenditure

446. The issue is raised by the Counterclaim in paragraph 52(11)(a) and covered by Mr Davidson at 8.17 to 8.24 of his report. There are 7 payments totalling £215,000.

447. Mr Davidson said that

“8.17 I have been provided with a schedule, a copy of which I attach at Appendix L1 hereto, purportedly showing the payments made by Khalid Pervaz to family members totalling £215,000. This schedule is headed ‘According to Khalid’s calculations money paid to his family members (from 2011 to 2016)’.

8.18 Very little in the way of information and documentation has been provided to me in support of these payments but based on what has been provided I would comment as follows.

8.19 The first payment shown on the schedule (Appendix L1) is a payment of £80,000 to Pervez Iqbal on 9 December 2011. A copy of a cheque book stub has been provided in respect of this payment (cheque number 100192) but as far as I can ascertain this would not appear to be a payment from any of the Partnership’s National Westminster Bank accounts. Whilst the cheque book stub does not show the bank or any details regarding the account the cheque was drawn on it is possible that this was on the Barclays Bank account No. 60231983 in the name of Mr Mehboob Pervaz trading as Medina Meat and Poultry Group, referred to at paragraph 2.47 above.

8.20 From the handwritten notes provided in connection with the cost of construction of houses by Khalid Pervaz (Appendix I1), which I understand were prepared by Khalid Pervaz, this amount would appear to be a payment back to Pervez Iqbal of monies lent in connection therewith.

8.21 The other amounts shown on the schedule at Appendix L1 would also appear to be from the handwritten notes at Appendix I1. In this respect the two amounts of £20,000 one to Aisha and the other to Bano are shown as amounts paid back on the notes at Appendix I1, and again would appear to be the repayment of monies lent.

8.22 The remaining amounts on the schedule at Appendix L1 which total £95,000 (Javaid Iqbal £40,000, Naeem Iqbal £30,000, Aisha Pervaz £17,000 and Sufwan Pervaz £8,000) would in my opinion appear from the handwritten notes at Appendix I1 to be amounts owed rather than paid. The handwritten notes are not however dated and therefore it is not known when they were prepared. It is therefore possible that the amounts shown thereon as monies owed may have subsequently been paid in full or in part.

8.23 I assume that the Defendants regard these monies as unaccounted for as they believe they were payments made from Partnership monies not accounted for in the Partnership accounts. Based on the information currently available to me I have not been able to say whether or not this is the case.

8.24 Furthermore, I am of the opinion that these amounts have been double counted as they also appear to be included within the first figure of £265,000 per the schedule at Appendix D3.”

448. The Defendants’ case with regard to this issue is that a further £215,000 should be shown as withdrawals from Khalid’s capital account with corresponding income accounted for.

449. Khalid’s handwritten notes which form Mr Davidson’s Appendix I1 provide a tally of sums amounting to £65,000 for his children Isha, Sufwan and Juwaid, indicating that these specific sums are “to be paid by Medina”. Page 2 of the same handwritten document refers to sums of £80,000, £20,000 and £20,000 as being “paid back” and also alleges that “in this period my drawings 50% less”.

450. When providing his first report, Mr Davidson had not seen the evidence that Iqbal was repaid by the Barclays account. That being the case, Dr Wilkinson submitted that it was to be inferred that the other sums had also been repaid - and repaid by partnership money.

451. Mr Davidson suggested that these appeared to be sums owed by Khalid, and suggested that it would be double-counting to require Khalid to repay both money had for building and money had to repay money borrowed for building. However in his live evidence he appeared to accept, however, that his rationale for that was based on an assumption about what the cost of building was and he accepted he did not know that cost.

452. I have been puzzled by the question of double-counting. The source of the figure of £215,000 which appears in Mr Davidson's Appendix L1 (extracted from Khalid's handwritten note at Appendix I1) is derived from the overview in Appendix D3 which states as entry number 7 "Payments to family members £215,000", whilst entry number 1 reads "Cost of construction of houses paid by Medina 2005-2009 (as per Khalid's notes in his own handwriting) £265,000". It seems to me that what has happened is that the words in brackets "(as per Khalid's notes in his own handwriting)" have been erroneously attached to entry number 1 rather than entry number 7 where they belong and that there is no element of double-counting in any event. The confusion may have arisen because both elements involve sums relating to the construction of houses (a potential elision which I myself have noticed several times in the writing of this judgment in relation to the nomenclature of the issues).

453. Dr Wilkinson submitted that it was reasonable to infer that the two houses and large extension at 362A Birkby Road were built with partnership money and cost far more than both of the two sums of £215,000 and £134,785 and the likeliest source of those funds was the missing rents or wrongfully declared bad debts or undisclosed sales.

454. I accept that submission to the extent that it relies on wrongfully declared bad debts or undisclosed sales (as is apparent from what I have said above I do not find the case proved in relation to allegedly missing rent). On the evidence before me, I am satisfied that it is proper to infer that the large extension at 362A Birkby Road and the two houses at Princewood Lane were built with partnership money. I am also satisfied that these combined building works cost significantly more than both of the two sums of £215,000 and £134,785 and that that means that Mr Davidson's surmise about the question of double-counting does not in fact arise.

455. In answer to issue 18 on the Defendants' case, £215,000 should also be debited to Khalid's capital account and the income need not be adjusted by the same sum if income greater than that amount has been adjusted elsewhere, for example with bad debts or undisclosed sales.

Issue 13: the lamb processing machinery

456. This issue is raised by paragraph 52(8) of the Counterclaim and dealt with by Mr Davidson at 8.25-8.30 of his report.

457. Mr Davidson said that

“8.25 I am instructed that following Premier Halal Meats Ltd vacating the Partnership's property at Unit 2, Brookwoods Industrial Estate, Holywell Green, Halifax in 2012 (see section 3 above), Khalid Pervaz sold the 'red meat' plant and machinery contained therein to Yorkshire Halal Meats and retained the monies received therefrom.

8.26 In this respect I have been provided with a schedule purporting to show the items sold and the amounts received in respect thereof totalling £19,240. A copy of this schedule is attached at Appendix M1 hereto together with a copy of a handwritten schedule also provided. The schedule at Appendix M1 also refers to many items given away free of charge to Yorkshire Halal Meats and the rest going to scrap.

8.27 Although the aforementioned schedule only refers to the items being sold in 2013 and does not show the exact date of sale, a review of the Sage nominal ledgers and accounts of the Partnership for both the years ended 31 July 2013 and 2014, shows that they would not appear to reflect the disposal of these items. In the circumstances the written down value thereof has probably been carried forward in the accounting books and records as well as the accounts of the Partnership up until its cessation in 2016. I have not however been able to specifically identify these items with the plant and machinery register provided in connection with the valuation of the Partnership's plant and machinery as at 7 July 2016 (Appendix Q3).

8.28 In view of my comments above I conclude that if these items were sold, the disposal thereof does not appear to be reflected in the accounting books and records or the accounts of the Partnership. As to the amount received and whether or not this

was retained by Khalid Pervaz, I am unable to say based on the information and documentation currently available to me.

8.29 If these items were sold for more or less than their book written down value there would be either a profit or loss on the sale which should have been reflected in the profit and loss account of the accounting year in which they were sold. Furthermore, in my opinion VAT should have been accounted for on the sale of these items but I assume it was not if the sale thereof has not been recorded. Without further details I am not able to comment on these points further.

8.30 In addition, it is not within my area of expertise to comment upon whether or not the amounts received on the sale of these items reflected their value at the time they were sold.”

458. Premier Halal Meats Ltd rented the premises for three years until 2012. After 2013, Khalid sold the red plant meat since there was no further use for it. There does not appear to be any dispute between the parties that the red meat plant was sold. However, Mr Davidson was unable to identify any payments in respect of the plant and machinery and the items were also not shown as disposals recorded in the register of plant and machinery for 2013 or 2014. He concluded, which I accept, that if the items were sold, their disposal does not appear to be reflected in the accounting books and records or the accounts of the partnership. The question therefore is what has happened to the proceeds of sale.

459. Sufwan said in his witness statement that his father sold the plant, but that the proceeds were put back into the partnership. In that witness statement he said nothing more about it. In cross-examination, however, he maintained something else:

“Q. You have no personal knowledge of Khalid putting the proceeds of sale from the red meat plant into the partnership, have you?

A. I have.

Q. What evidence?

A. I have seen the customer come down, purchased machinery. Payment would have ended up in Kasim’s hands. He would have given it to Kasim. I have seen it in his hands.”

460. It was put to him that he had said nothing about this in his witness statement, that he then said that it “would have” ended up in Kasim’s hands and finally that it *did* end up in his hands. Why was not any of this in his witness statement? Now he was asserting that he was actually there. Sufwan had no response to this line of questioning beyond lamely saying that:

“I didn’t feel the need to go through it to explain it to that degree/extent.”

461. I do not accept his evidence, which was clearly being embellished.

462. By contrast, it is the Defendants’ case that Khalid sold and scrapped the equipment and that he must have pocketed – indeed did pocket - the proceeds of sale. Ahmed believed that Khalid had taken the money home. He said that a lot of things had been done which on the face of it looked as if they were being done normally, but only later came out and it was then that he began asking “Where’s the money for this? Why isn’t the money showing up?”

463. The Defendants’ assertion is also supported by a handwritten note recording red meat plant, against which amounts have been written in Khalid’s handwriting, which records that £19,240 was made on the sale of various items of plant. The document was also transcribed in the trial bundle for ease of reference as follows:

“Two hock cutters front and back	£3000 each	£6000
One punching arm + steriliser		£1000
Brisket cutter + steriliser		£1500
All the hooks @ £8 each		£5040
Splitting saw + balancer		£2500
Splitting saw steriliser		£350
Spinal cord machine		£2500
Band saw		£100
Liver (pluck) rack		£250”.

464. I agree with Dr Wilkinson that it is too detailed and particular a number in terms of breakdown and values to be meaningless. It is clear from Mr Davidson’s evidence that the money for the items did not go through the books of the partnership. The red meat plant was the preserve of Khalid and Sufwan, not the Defendants. I also reject

Sufwan's evidence that he was there and that he saw the money for the sold items being given to Kasim. He said nothing about that in his witness statement, then altered his evidence to say that the money "would have" ended up in Kasim's hands and then that he saw it in Kasim's hands and had no proper explanation when taxed on the change of evidence. The inference which I draw from that conclusion and the figures on the handwritten schedule is that they are the figures likely to have been made on items which were admittedly sold. In the light of Khalid's other off books dealings, I am satisfied on the balance of probabilities that it was not paid into the partnership and I find that it is unlikely that Khalid accounted for it.

465. In answer to Issue 13, Khalid's capital account needs to be debited by £19,240 and the income revised by the same sum.

Issue 14: the mortgage

466. This issue is raised by paragraph 52(9) of the Counterclaim and dealt with by Mr Davidson at 8.3-8.16 of his report.

467. Mr Davidson said that

"8.3 On 25 February 2010, Shazada Khalid Pervaz and Mumtaz Pervaz, took out a mortgage of £390,000 with the Halifax secured on their property at 362 Birkby Road, Huddersfield.

8.4 The Partnership accounts for the year ended 31 July 2010 show funds introduced by Khalid Pervaz and Mumtaz Pervaz of £370,000 (£185,000 each). In my opinion it would not be unreasonable to assume that the source of these funds was the aforementioned mortgage taken out with the Halifax.

8.5 Without the full Sage accounting records of the Partnership for the period prior to 1 August 2012, I have reviewed the Sage audit trail and note therefrom that this shows on 1 April 2010 a loan of £390,000 from Khalid to pay Sullivans (see entry highlighted in green on extract from Sage audit trail at Appendix K1 hereto). Whilst this is shown as a bank receipt (BR), I have not been able to locate it as being paid into any of the Partnership's accounts it had with National Westminster Bank.

8.6 The following entry on the Sage audit trail (Appendix K1) is a payment of £249,264.18 on 1 April 2010. This is shown as a purchase payment in respect of account CULL01 and

designated 'Cash – Khalid'. The aforementioned account would appear to be that of Cullingworth, one of the two main suppliers of poultry to the Partnership, the other being Sullivans.

8.7 I have not been able to identify from the Sage audit trail how the remainder of the £390,000 introduced was utilised nor why the funds introduced per the accounts are only £370,000 (paragraph 8.4 above). As I have not been able to locate the amount of £390,000 as having been paid into any of the Partnership's bank accounts (paragraph 8.5 above), I can only assume that Shazada Khalid Pervaz made various payments on behalf of the Partnership which in total amounted to £370,000.

8.8 The amount of £370,000 corresponds with another schedule provided to me a copy of which I attach at Appendix K2 hereto. This schedule confirms the loan introduced of £370,000 and refers to repayments made against this amounting to £76,000. These repayments have been correctly posted to the drawings of Khalid Pervaz and agree with repayments made to the Halifax as per the mortgage statements provided. As a result, the balance on the loan would be £294,000 (£370,000 - £76,000).

8.9 A letter from T I B Accountancy Services dated 2 October 2018, addressed to Mumtaz Pervaz, a copy of which I attach at Appendix K3 hereto, refers to payments made to Halifax Bank by Mr Mehboob Ahmed Pervaz totalling £250,316.02 to settle the outstanding mortgage. These payments agree with the Halifax mortgage statements provided.

8.10 I note from the documentation provided to me that the aforementioned payments totalling £250,316.02 were made to Halifax from a Barclays Bank account, sort code 20-43-04 account number 60231983. This is an account in the name of Mr Mehboob Pervaz trading as Medina Meat and Poultry Group. As noted at paragraph 2.47 above I am advised that this was a savings account of the Partnership in respect of which Khalid Pervaz had control in his lifetime. In the circumstances it would not appear to have been a personal bank account of Mehboob Ahmed Pervaz.

8.11 Furthermore, as noted at paragraph 2.48 above this bank account and the transactions thereon would not appear to be recorded on the Partnership's Sage computerised accounting system. In addition, at paragraph 2.50 above, I note that in my opinion it is possible that this bank account was used to deposit the unrecorded cash and other receipts of the Partnership.

8.12 In the circumstances if the monies in this account are Partnership monies then the mortgage repayments therefrom

have been paid from Partnership monies and not from personal monies of Mehboob Ahmed Pervaz.

8.13 If, however the amounts paid were from personal monies of Mehboob Ahmed Pervaz it would appear from the Partnership accounts for the year ended 31 July 2015 that Mumtaz Pervaz may have effectively repaid this amount by the transfer to him of the balance due to her as per partners current account as at 31 July 2014 of £255,861 (Appendix E1 and paragraph 2.24 above). I note however that the Partnership accounts for the year ended 31 July 2015 are not agreed and in the circumstances I am not aware of whether this transfer was agreed between them in settlement of the mortgage payments made by Mehboob Ahmed Pervaz. I assume that this was probably not the case in view of the letter from T I B Accountancy Services dated 2 October 2018 (Appendix K3) asking for repayment.

8.14 It is also not clear why the amount unaccounted for is £294,000 (Appendix D3) as opposed to £250,316.02 (Appendix K3), a difference of £43,683.98. The schedule provided (Appendix K2) however refers to £294,000 paid from Barclays Bank. On reviewing the documentation provided it would appear that a further payment of £20,000 was made from the aforementioned Barclays bank account on 1 March 2012, but this amount is not shown on the letter from T I B Accountancy Services (Appendix K3). A corresponding £20,000 is shown on the Halifax mortgage statement as being received on the same date.

8.15 In addition, the Halifax mortgage statements show that a further repayment of £40,000 was made on 2 April 2014 and I have identified that the source of this was also the aforementioned Barclays bank account. In the circumstances this increases the payments from the Barclays Bank account to £310,316.02 (£250,316.02 + £20,000.00 + £40,000.00).

8.16 In my opinion if Mehboob Ahmed Pervaz personally made mortgage repayments on behalf of Shahzada Khalid and Mumtaz Pervaz, and these were not made from a Partnership account, then strictly speaking this is a personal matter between them and should not affect the Partnership accounts. Unless there is an agreement between them that the amount owed will be dealt with by a transfer between their respective current accounts in the Partnership then it would be up to Mumtaz Pervaz and/or the Estate of Shazada Khalid Pervaz to repay the monies to Mehboob Ahmed Pervaz personally.”

468. The most significant document in this respect is the letter from TIB Accountancy Services to Mumtaz dated 2 October 2018. The text of the letter (with emphasis added) reads as follows:

“Mr Mehboob Ahmed Pervaz - £250,316.02

We act for the above named as Accountants and Advisors.

Our client made a series of payments directly to the Halifax Bank to settle your outstanding mortgage, these payments are detailed below.

21 February 2014 - £50,000
28 February 2014 - £50,000
7 March 2014 - £50,000
14 March 2014 - £50,000
21 March 2014 - £50,000
13 May 2014 - £316.02

Our client would respectfully ask the return of these funds, as this was a loan made by him in his personal capacity and was not made from the partnership.

Whilst understanding that this is a considerable sum, we would be grateful if you could contact us with some indication as to when the amount can be returned.”

469. This amounts to an unequivocal statement by accountants instructed by Ahmed and acting on his behalf that the sum of £250,316.02 was a loan made by him in his personal capacity and was not made from the partnership.

470. When this letter was put to Ahmed in cross-examination by Mr Fennell, he had no convincing or coherent answer to it:

“Q. The accountants say that this was a loan in your personal capacity, not from the partnership.

A. That’s how the accountants perceived it.

Q. Mr Davidson was of the same view. Both accountants came to the same view. Maybe it was a personal loan?

This was written on your instructions.

A. They wanted clarification.

Q. No, they didn't want clarification. They wanted Mumtaz to pay you £250,000 in your personal capacity.

A. She had clarified it. It was paid by the partnership. What the accountants say is irrelevant. Now we have the answer.

Q. This says there was a loan in your personal capacity.

A. That was not my intention. This is the accountants' interpretation of this. I didn't see the final version of this letter."

471. I do not accept that evidence. It is inconceivable that the accountants would have written that letter save on their client's express instructions and it is also inconceivable that Ahmed would not have seen both final draft of the letter and the final version of the letter once he had approved the final draft. I am therefore satisfied that the accountants' letter represented the correct position and that the sum of £250,316.02 was a loan made by Ahmed in his personal capacity and was not made from the partnership and that the resolution of any issue as between Mumtaz and/or Khalid's estate and Ahmed (and now his trustee in bankruptcy) is a personal matter outside the scope of this action. It may be (but I do not need to decide the point since it is outside the scope of this action) that Mr Fennell is right that the limitation period for any such claim would have started running at the latest when the demand was made by TIB on 2 October 2018 and expired on 2 October 2024, but that is a matter for Ahmed's trustee in bankruptcy.

472. In my judgment, the more likely conclusion is also that the additional sums of £20,000 and £40,000 paid on 1 March 2012 and 2 April 2014, which are not referred to by TIB, were further personal payments from Ahmed.

473. If, as I find in the light of the TIB letter, and as Mr Davidson concluded in his report, Ahmed personally made mortgage repayments on behalf of Khalid and Mumtaz by way of personal loan, that is a personal matter between them and should not affect the partnership accounts. There is no evidence of any agreement between them that the amount owed would be dealt with by a transfer between their respective current accounts in the partnership and it is therefore a personal matter as between Mumtaz

and/or Khalid's estate to repay the monies to Ahmed. It may be that such sums are due and owing, but that is outwith the scope of this partnership action.

474. In answer to issue 14 therefore: the Defendants' case is not made out and no adjustments need to be made to the accounts.

Issue 15: (not separately pursued since it is a duplication - now issue 17): the unaccounted personal payments (of £134,785 for house-building)

475. This issue is raised by paragraph 52(7) of the Counterclaim and dealt with by Mr Davidson at 6.21-6.26 of his report.

476. Mr Davidson said that

“6.21 With regard to the list of cash taken by Khalid and not posted to his drawings, I attach at Appendix I4 hereto a copy of the schedule I have been provided with headed 'Khalid drawings from cashbook 2012 – 2016' showing the composition of the total amount of £134,785.00.

6.22 I am instructed that whilst these amounts derive from a handwritten cash book that was maintained, the payments were not entered into the computerised Sage accounting records of the Partnership and as a result have not been included in the Partnership's annual accounts.

6.23 The payments shown on the schedule at Appendix I4, are dated from 7 September 2012 to 12 June 2016, and can be allocated to the following accounting periods of the Partnership:

Year/Period Ended	£
31 July 2013	30,535.00
31 July 2014	39,475.00
31 July 2015	32,125.00
7 July 2016	32,650.00
	£134,785.00

6.24 I note that the majority of the payments shown on the schedule at Appendix I4 relate to building works, including furniture, which I assume are in respect of Khalid's houses. In

addition, there are some payments described as ‘Khalid – air tickets’, ‘Khalid – Pakistan’, ‘Uncle (Khalid)’ and ‘Grandma’ as well as other just marked ‘Khalid’ with no further details. In summary the payments may be analysed as follows:

	£
Building works, including furniture	103,260.00
Khalid – air tickets	1,400.00
Khalid – Pakistan	4,000.00
Uncle (Khalid)	3,965.00
Grandma	2,000.00
Khalid	20,160.00
	£134,785.00

6.25 In my opinion it would not be unreasonable to assume that these payments were made from monies received and not accounted for to the partnership.

6.26 With regard to the figures as shown on the schedule at Appendix 14, I have accepted these as being correct and have not checked them to the handwritten cash book that was maintained (paragraph 6.22 above). Furthermore, the handwritten cash book would appear to be just a listing of payments made in cash as opposed to a proper cash book recording both receipts and payments in cash, cash banked and withdrawn from bank and the balance of cash held at any particular time.”

477. I am satisfied that Khalid used partnership funds to pay for building houses on his property. Mumtaz accepted that this house building was funded by the partnership, but sought to argue that it was covered by Khalid’s drawings. However, these drawings were paltry and said to amount to £230 per week (see his email to Ahmed of 11.12 on 17 March 2015) and which rarely show on Sage to be much greater than that (thus in 2009 they were less than £1,000 per month, as in 2014 - and in 2011 they were shown as less than £200 per week). The inference must be drawn that the additional sums came from partnership monies and were not (and could not have been) covered by Khalid’s drawings.

478. Mr Davidson was of the view that it was reasonable to infer from the cash book that at least £134,785 was taken from the partnership and not accounted to it in respect of thereof. It should be posted as a withdrawal. I accept that evidence.

479. Mr Fennell suggested to Ahmed that he had created the list of payments in Mr Davidson's Appendix I4 by cherry picking them without knowing what the entries meant. Ahmed disagreed and I am satisfied that the compilation of the list was a genuine attempt by Ahmed to document the expenditure by Khalid. It is notable that the overwhelming majority of entries are for things like builders, electricians, plasterers, plumbers, joiners and the like. Ahmed accepted that the payment out book was not a secret book and that several people had filled it in, but I accept that he did not delve into its contents at the time of the entries. That detailed scrutiny came at a later time. As he put it, "I didn't sit down and work it out till later; it was there but I never analysed it".

480. However, there are three entries where I accept Mr Fennell's criticisms of the schedule, in relation to the payments of £5,000 to Khalid on 3 May 2016, 1 June 2016 and 15 June 2016. They record respectively in Kasim's handwriting "Dad Arif £6,000 Basu Arif £5,000", "Dad Arif £6,500 Basu Arif £5,000" and "Dad Arif £5,500 Bam Arif £5,000". Ahmed accepted that the references to "Dad" were to him. I agree with Mr Fennell that these payments appear to be payments for the joint benefit of the brothers and that the payments to Khalid fall out of the equation. I have therefore reduced the sum in issue by £15,000 to take account of those three payments

481. There remains the question of £68,000 which Ahmed says that he had drawn down from his partnership account in June 2016. Ahmed accepted that he had had that money. As to that, Mr Davidson stated in his supplementary report that

"4.14 The Claimants further say that 'There appear to be an introduction of 3 separate payments of £70,000 for directors on the 22nd September 2016'. The Defendants' response is 'This is not partnership money. I had drawn down £68k from my partner account in June 2016 as per cash book and is accounted for and is personal money introduced. This was needed as it became apparent that the debt book was not real and monies had been collected by Sufwan. We were operating on a provisional 6

month licensee. In order to get the full licence a lot of investment had to be made in order to comply with the new regulations that apply to new applications’.

4.15 With reference to the drawdown of £68K referred to above, whilst it is not clear which of the first three Defendants is making this statement, I can find no reference to any of them drawing this amount in June 2016 from the Partnership nor any entry in the handwritten cash book provided. If this amount has been drawn from the Partnership by one of the partners in June 2016, then the balance on their capital account will need to be reduced by this amount. Furthermore, if this is the case it would in my opinion suggest that there may possibly be further amounts received which have not been accounted for.”

482. Mr Fennell asked Mr Davidson about this point at the very end of his questions to him:

“Q. You don’t understand how this £68,000 is said to have been taken, but if it was Ahmed his account must be debited for that sum?

A. Yes.”

483. In answer to issue 17, £119,785 should be debited from Khalid’s capital account to reflect sums taken and used for house-building. There should be a corresponding record that those sums represented income not accounted for.

484. Moreover, £68,000 should be debited from Ahmed’s capital account to reflect sums taken and used by him. There should also be a corresponding record that those sums represented income not accounted for.

Issue 16: the house construction costs

485. This issue is raised by paragraph 52(7) of the Counterclaim and dealt with by Mr Davidson at 6.12-6.20 of his report.

486. Mr Davidson said that

“6.12 With regard to the cost of materials bought for construction of houses amounting to £240,021.65, entered in the accounts as

repairs and renewals, I have been provided with a schedule of these, a copy of which I attach at Appendix I2 hereto.

6.13 On reviewing the schedule at Appendix I2, I note that the amounts I have highlighted in green thereon have in fact been posted to the drawings of Khalid Pervaz as per the Sage nominal ledgers provided. In this respect £220.00 is included in his drawings for the year ended 31 July 2013 and £45,843.00 (net of VAT) in his drawings for the period ended 7 July 2016.

6.14 In addition, I have on looking at the schedule at Appendix I2 and the nominal ledger accounts for repairs and renewals, noticed some other minor discrepancies. In the circumstances I attach at Appendix I3 hereto a schedule showing my adjustments to the figures provided, including the exclusion of those figures (paragraph 6.13 above) which are already included in drawings.

6.15 I also noted that in respect of the expenditure relating to the year ended 31 July 2013 that two payments had been posted in the Sage nominal ledger for that year to professional and legal fees rather than repairs and renewals and I have noted these on my schedule at Appendix I3. I have also included on my schedule at Appendix I3 an analysis of the adjusted figures as between the accounting years of the Partnership.

6.16 In summary and based on the figures provided it would appear that expenditure amounting to £161,440.71 (net of VAT) was put through the Partnership's books and records and incorrectly treated as an expense in its profit and loss accounts.

6.17 As per section 9 below, I am instructed to prepare final cessation accounts for the Partnership to 7 July 2016. Furthermore, as noted at paragraphs 2.19 above and 9.6 below, the last settled account between the partners was at 31 July 2014. In the circumstances I have amended Khalid's drawings for the year ended 31 July 2015 and period ended 7 July 2016 so as to reflect the aforementioned expenditure, including the VAT thereon, on the houses in those periods (Appendix P3(ii)). With regard to the expenditure prior to 1 August 2014 I have made an adjustment to the balance on his capital account in order to reflect this (Appendix P2).

6.18 As a result of removing this expenditure from the profit and loss accounts there is additional profits for those years equivalent to the net amounts thereof (see Appendix I3) as follows:

Year ended 31 July	Additional Profit
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	£
2009	1,068.00
2010	7,762.52
2011	14,789.62
2012	12,928.87
2013	10,741.01
2014	56,208.66
2015	36,988.99
Period ended 7 July 2016	20,953.04
TOTAL	£161,440.71

6.19 In addition, as this expenditure is of a personal nature, VAT input tax of £32,003.14 (£24,767.14 + £7,236.00) (Appendix I3) has been incorrectly claimed thereon and is therefore repayable to HMRC. I refer to this further in section 9 below in connection with the VAT position as at 7 July 2016.

6.20 For clarity. I have not been instructed to verify whether the aforementioned expenditure does actually relate to Khalid's houses, nor have I been instructed to consider whether there may be any further expenditure included in repairs and renewals which may not have been included on the schedule provided at Appendix I2."

487. Dr Wilkinson submitted that Khalid's account needed to be adjusted to show the £161,440.71 used for building houses as withdrawals and to correct the partnership accounts which recorded it as renewals and repairs.

488. Khalid and Mumtaz owned 362 Birkby Road and the adjoining land registered under title numbers WYK202777 and WYK278450 since 12 July 1994 and 8 July 2010 respectively and have built extensions to their own home and constructed 2 four-bedroom properties for their daughters using partnership funds: Mumtaz referred to this house-building being funded by Khalid's drawings in her witness statement. These are not recorded as withdrawals, save for limited sums posted against Khalid's drawings. The expenditure made in respect of these constructions was incorrectly accounted for as partnership expenses and should be posted as drawings.

489. I accept the Defendants' case in that regard in the light of the evidence of Mr Davidson. There cannot really be any argument but that Khalid and Mumtaz owned 362 Birkby Road and the adjoining land and have built extensions to their home and constructed 2 four-bedroom properties for their daughters. The photographic evidence was in the bundle and neither of the Claimants or Isha disputed that fact.

490. For the reasons given by Mr Davidson I also accept that expenditure amounting to £161,440.71 (net of VAT) was put through the partnership's books and records as repairs and renewals and incorrectly treated as an expense in its profit and loss accounts.

491. In answer to issue 16 therefore, Khalid's account needs to be adjusted to show the £161,440.71 used for building houses as withdrawals and to correct the partnership accounts which erroneously recorded it as renewals and repairs.

Issue 19: the PI claim - £28,000

492. This issue is raised by paragraph 52(11)(b) of the Counterclaim and dealt with by Mr Davidson at 8.38-8.39 of his report.

493. Mr Davidson said that

"8.38 I attach at Appendix O1 hereto, a note I have been provided with regarding this matter. In addition, I have been provided with some copy correspondence regarding these costs, including a letter dated 16 May 2011 from Ramsdens Solicitors addressed to Khalid Pervaz, a copy of which I attach at Appendix O2 hereto.

8.39 Whilst the amount of £28,000 is referred to therein I have not been able to ascertain from the documentation provided the date the £28,000 was paid. It would appear from the note provided (Appendix O1) that whilst the cheque was banked in the Partnership's bank account an equivalent amount of cash was taken by Khalid, which I assume was itself represented by cash received and not recorded or banked.

8.40 If Khalid Pervaz has incorrectly taken these monies, then £28,000 is due back to the Partnership. Furthermore, if this income has not been recorded in the Partnership's accounting records and accounts, profits will have been understated by

£28,000. Without any further details and/or supporting documentation I am not able to comment further upon this point.”

494. Again I can deal with this shortly. The position is that a former employee brought a personal injury claim against the partnership which was unsuccessful. An adverse costs order was made against that employee. On 16 May 2011 Ramsdens, the solicitors acting for the partnership, wrote to Khalid to confirm his instructions to accept £28,000 in settlement of the costs dispute consequential on the claim. A cheque in settlement, which was due to the partnership, was subsequently paid to the partnership. Ahmed gave evidence in his witness statement that that money belonged to the partnership. Having been paid into the partnership account, an amount of £28,000 was then withdrawn by Khalid as cash and retained by him.

495. There was no denial by the Claimants that that is in fact what happened to the money. Rather they said that it was an attempt to reopen a settled account. I have already rejected the argument that the account was settled. I also accept Ahmed’s evidence on the point.

496. In answer to Issue 19, the adjustments referred to by Mr Davidson need to be made with £28,000 income being shown and a corresponding withdrawal from Khalid’s capital account.

Issue 20: Sufwan’s dealings

497. In answer to Issue 20, I am satisfied that Sufwan received and banked two cheques, each for £32,500 and that Sufwan’s account needs to be debited by £65,000.

498. There were two cheques, both for £32,500, paid to Sufwan by Premium Poultry Products Ltd in June 2016 which should properly have been payable to the partnership. Sufwan accepted that two cheques were received by him and he banked them, although he has not disclosed any of his bank statements.

499. As set out above, I have accepted Mr Rana’s evidence that he was asked by Khalid to make the two cheques out to Sufwan when paying what was owing to the partnership and I am satisfied that it is these same (post-dated) cheques which were

made out in accordance with that request, albeit that the details of the name of the payee and the amounts were filled in by the bookkeeper Mr Akhtar rather than by Mr Rana himself, who had relatively basic literacy.

500. Mr Rana was in my judgment frank about his lack of literacy, which might well have been embarrassing to him, but maintained that it was that that led to the bookkeeper rather than him filling out the details on the cheques. That the events of the day were so unusual, since the amounts were so large and this was the only time that cheques were made out to Sufwan, so that he kept copies of the cheques to cover himself and mentioned it to Ahmed when he was next in the Premium Poultry office, has the ring of truth about it.

501. I also accept Ahmed's evidence that he was in the habit of pre-signing cheques for completion in his absence, particularly in the light of Mr Rana's evidence that Ahmed would call at the unit only every other day and that usually for only a few hours. Ahmed was pressed on the question of pre-signing cheques, but was not shaken in his evidence and maintained his position under challenge: he was in Halifax, not Bolton, that day. The prudence or wisdom of so doing is another matter, but I accept his evidence that that is what he did as a matter of practice.

502. I am also satisfied that it is appropriate to draw an adverse inference against Sufwan in this respect because of his failure to disclose his bank statements.

503. I do not therefore accept the Claimants' case that Ahmed signed the cheques knowing that they were to be given to Sufwan and intending that they be paid to him. As Ahmed himself said in evidence

“Q. *You* gave them to be passed on to Sufwan.

A. No. Why would I be doing that? This is June [2016]. I want out in July. It does not make sense to say that I will give away £65,000 if I want to take out £68,000 in July.”

504. It would have made no sense for Ahmed to be paying £65,000 to Sufwan when he was taking £68,000 out of the partnership in the following month.

505. Mr Davidson initially suggested that the two payments were unlikely to be in respect of the partnership's invoice to Premium Poultry Products Ltd dated 22 June 2016 as the payments were recorded as being made on 22 June 2016 whereas the cheques were dated afterwards on 24 June 2016 and 28 June 2016.

506. In my judgment, the likeliest explanation is simply that the Sage entry was simply erroneous.

507. Mr Davidson posited an alternative suggestion, but that does not bear scrutiny on the evidence. He suggested that Premium Poultry Products Ltd might have made a loan to Sufwan which was being repaid, but nothing in the evidence supports that surmise and it is not supported anywhere in the evidence.

508. Moreover, Sufwan advanced no case that he was lent money from Premium Poultry. Nor was that Mr Rana's evidence nor was it Ahmed's.

509. Sufwan's account therefore needs to be debited by £65,000.

Issue 21(d): Kasim's dealings

510. The issue 21(d) related to Kasim's dealings. The issue as formulated in the list of issues was "Of the cash of £103,691 received by Kasim as set out in his witness statement dated 29 November 2024, how much, if any, was he entitled to receive? What adjustments, if any, should be made to his account?"

511. It was, however, common ground at the trial that he had received into his Halifax and Barclays bank accounts the total sum of £96,719.00 and a spreadsheet to that effect was produced and inserted in the trial bundle. There were 34 payments totalling £82,556.68 into his Barclays account and 10 payments totalling £14,162.00 into the Halifax account. That figure fell to be slightly adjusted at the end of the trial because on 1 July 2025 Kasim disclosed a missing March statement, which showed a cash deposit of £14,460, making the total banked by him £97,639.

512. It was his case that he had lent £49,600 to the partnership, which had been repaid to him by a combination of 7 bank transfers totalling £37,600 and 2 cheque payments totalling £12,000. Mr Fennell accepted that Kasim had lent the partnership £37,600, being more than the sum shown in the partnership accounts and that he was entitled to repayment of that sum, but he disputed the balance of £12,000, as to which he asserted that Kasim had not produced the bank statements for the account on which he said that he drew the two cheques in dispute, nor had he produced the written record which he said that he had kept. The two cheques, said Mr Fennell, could have come from anyone.

513. I am not satisfied that Kasim lent £49,600, as opposed to £37,600, to the partnership. In the first place in his original witness statement of 23 February 2023 he asserted that he was never told the state of the business nor did he ever ask. However, around 2010/2011 he was asked to put money in the business as it was having cash flow problems. He then injected £20,000 of his own savings into the business. He remembered this well as it was the first time that he had had to put his own money in the business.

514. However, in his second witness statement of 29 November 2024 he said that he had guessed at the sum of £20,000, but that when he had gone through the partnership bank statements carefully his deposits in fact amounted to £49,600, not £20,000. I am bound to say that a discrepancy of so great an amount engenders some suspicion. Being out by a few hundred or a few thousand pounds is one thing. The difference between £20,000 and almost £50,000 is quite another.

515. Moreover, as Mr Fennell submitted, there has been no disclosure of the bank statements of the account on which the cheques were drawn. Nor has there been any disclosure by Kasim of his own records on which he relied in computing the figure of £49,600. Mr Fennell pointed to the email exchange between the solicitors about this in February and March of this year. On 19 February 2025 the Claimants' solicitors had asked:

“1. Please confirm on which bank account the 2 cheque payments were drawn?”

2. Where are the copies of the 2 cheques for the deposits on 11/6/10 and 29/10/10? Please provide copies.

3. If the bank statements are not available, please explain how D2 knows that these cheque deposits were made on his behalf?"

516. The reply to that on 7 March 2025 was

"1. Kasim's personal account

2. Not available

3. Kasim had a record of them."

517. Kasim accepted in cross-examination that he had kept his own record, but that he had not disclosed it. He said that Khalid also kept a record in his now missing book, but that does not absolve Kasim from giving disclosure of his own records, which he must have had when making his second statement, recording the two transactions in dispute.

518. There was no real explanation from Kasim as to why he had not produced his own record of the transactions which he admitted that he had and on which he relied in making his second witness statement.

519. Given that his non-disclosure was not satisfactory and that his explanation for the non-disclosure was also unsatisfactory, when the burden was on him to demonstrate his assertion that the two cheques were part of the repayment for the loan which he said that he had made, I do not accept that Kasim has proved that the loan which he made to the partnership amounted to £49,600, as opposed to the lesser figure of £37,600 (which is not in dispute).

520. As to the balance of the sums, Kasim explained in his second witness statement that

"8. Around 2014 my late uncle repaid himself by clearing off his mortgage from the Barclays account and he also started paying back my loan. When I got my house and needed to furnish the

house he increased payments. This was agreed and recorded by my uncle. The payment that went into my accounts is broken down as follows:

Loan repayment £49,600

Car fuel and Maintenance £7,000 pa x 3 £21,000

Rocar Garage payments (car servicing bills) £5,898

Car Repairs £632

House allowance 32 x £250 pm £8,000

Furniture for house £10,000

Medina Ltd £4,000".

521. As to the car fuel and maintenance payments of £7,000 per annum for 3 years (amounting to £21,000), Mr Fennell submitted that the explanation for the expenses lacked credibility. He argued that Kasim would not have had a separate flat rate allowance on top of the mileage allowance (to which the Claimants accepted that he was entitled). Kasim's case, as set out in paragraph 7 of his second witness statement, was that in addition to the repayment of the loan he was also entitled to a car fuel and maintenance allowance of £7,000 per annum. He was always on the road and averaged 25,000 miles per year. His fuel and maintenance (and repairs) were paid by him on his credit card. He submitted all of the receipts and was reimbursed. All of the invoices were processed into the accounts. He was sometimes paid by cheque for the larger payments and sometimes in cash. He drew attention to the note of the meeting with HMRC during the HMRC inquiry regarding disbursements in which Khalid confirmed how monies were accounted for (with emphasis added):

"46. No suppliers of stock were ever paid in cash. Some relatively small expenses may have been paid in cash, for example plumbing materials, nuts and bolts and things like that. All such cash expenditure was paid for out of cash sales. No

cash was withdrawn from the business bank account to cover cash expenditure. *More often than not if the partners were out somewhere and needed to pay cash for something they would use their own personal cash, and take the receipt back to the office, reimbursing the expenditure out of cash taken from the safe. This would not be for large amounts though. A note of the expenditure and the reimbursement would be left in the safe.* None of the employees were able to use business cash to pay for business expenditure. Occasionally an employee may need to put some petrol into one of the vans, in which case they would use their own cash and subsequently be reimbursed on return to the office. This did not happen very often.

47. As mentioned, the partners did sometimes pay for a business expense out of their own money. No major business expenditure would be paid for in this way, certainly no more than a maximum of say £200. Receipts were always obtained and placed in the supplier's folder. *The partners were reimbursed in cash taken from the safe but this reimbursement was not recorded anywhere*".

522. As to the additional car fuel and maintenance of £21,000, the annual mileage allowance based on business miles actually driven was shown on the partnership's Sage accounting system and credited to Kasim's account with the partnership. By contrast, there is no reference to the additional car fuel and maintenance allowance.

523. On balance, and given that I did not find Kasim a particularly satisfactory witness, I agree with Mr Fennell that Kasim's case in relation to the car expenses is inherently unlikely and that it is unlikely that he would have been entitled to a separate flat rate allowance on top of the mileage allowance to which it is accepted that he was entitled.

524. On the other hand, I accept Kasim's evidence about the car servicing bills of £5,898. As to the additional car repair bill for £632, that was for an engine rebuild to Kasim's Range Rover Evoque. His evidence about it was by no means clear, but it appears that the engine repair was in fact a warranty claim to which the partnership was entitled and he was not therefore entitled to that sum.

525. The house allowance of 32 instalments at £250 per month (amounting to £8,000) and the payments for the furniture for the house (£10,000) fall to be taken together. Mr Fennell put it to Kasim that his case was that Khalid took money out of the partnership

and should account for it. He agreed. Kasim then accepted Mr Fennell's assertion that, by the same token, he should have to account in the same way for his drawings as was the case with Khalid. Kasim should therefore account to the partnership for the £18,000 received by him for the payments which he received for his house and the furniture.

526. So far as the reference to "Medina Ltd £4,000" is concerned I accept as pleaded in paragraph 50A (vi) of the Re-Amended Defence and Counterclaim that the reference is incorrect and that the reference should be to Medina Group Ltd. £ 4,000 was not paid out to Medina Group Ltd, but was paid into Kasim's account by that company after the dissolution of the partnership. That matter therefore falls out of account and need not be considered further.

527. Kasim's account should be debited by the same amount as with which it was credited (£19,500), Khalid's account should be debited by the same amount with which it was credited (£15,200, of which £5,500 was transferred on 10 September 2010, £4,000 on 4 February 2011 and £5,700 on 14 February 2011).

528. Kasim should account for the £18,000 which he received for his house and the furniture, the £21,000 which he received for additional car fuel and maintenance and the additional sum of £632.

Issue 3: the partnership's property in 2016 – the plant and machinery

529. Fortunately, I can deal with this issue relatively briefly given the sensible and pragmatic approach taken by both counsel in closing submissions.

530. In his closing written submissions Dr Wilkinson made an open offer that the plant and machinery be valued at £250,000. In his oral submissions he said that the Defendants would be content with a figure between £250,000 and the figure stated in the 2016 accounts for the value of the plant and machinery, which was in the region of £350,000. In fact the figure when checked was £353,792.47. In that event Mr Fennell at the outset of his closing submissions invited the Court to fix the value of the plant and machinery at £350,000 and make that sum the figure for the value of the

plant and machinery as at the date of the dissolution. On that basis he did not need to address me further on the Scott Schedule or the spreadsheet.

531. I am bound to say that that was entirely sensible and has meant that I did not have to wade through the photographic evidence in the bundle and adduced in Court as to the individual items of plant and machinery, as to which both Ahmed and Sufwan were cross-examined at some length. The Scott Schedule contained 68 items and ran to myriad pages with multiple columns and tiny font and the exercise of making findings on all of the items in dispute would have been an extraordinarily and disproportionately time-consuming.

532. As Dr Wilkinson candidly admitted, the question of the individual items of plant and machinery was “problematic” and that, had the Court had to decide all the matters in issue under this head, it was a case of “do the best you can because it isn’t going to get any better”. The Court should take a pragmatic approach and deal with the case based on where the parties were and what had happened in the proceedings. The Defendants were keen to avoid more litigation and would ask for matters to be dealt with now, even if that involved a rough and ready approach because that was preferable to expanding the ambit of any subsequent hearings consequential on this judgment. Mr Fennell did not disagree with that approach.

533. In accordance with the indications of the parties, I therefore ascribe to the partnership’s plant and machinery as at the date of dissolution in 2016 the value of £350,000.

Issues 4 and 5: the relief which it is appropriate to order – the claims for accounts and inquiries and transfers and outstanding issues such as goodwill
Issue 4 Goodwill

534. I can take the issue of goodwill rather shortly.

535. Mr Fennell submitted that the case for an expert valuation of goodwill was overwhelming. As at the dissolution date, Medina Poultry had been in existence in one form or another for over 25 years. It had been turning over more than £3 million per annum since 2003 and more than £10 million per annum since 2012. All of the

Defendants' witnesses accepted that Medina had a good reputation. The fact that "Medina" was a widely used name made no difference: the partnership's suppliers and customers knew exactly with whom they were dealing. The fact that the business struggled financially in 2015 was not in itself enough to allow the Court to find that there is no point at all in having a valuation. The outcome of the valuation *might* be that the goodwill of a halal poultry producer in 2016 was of little or no value, but only an expert could say.

536. Dr Wilkinson submitted that the situation was not akin to a sale to an arm's length third party and it should not be presumed that goodwill was to be paid. Whilst a company, Medina Group Ltd, was engaged by Kasim and Hashim, that was their company and the position was more analogous to a buy-out by other partners. It was not a classical situation for paying goodwill. Moreover, the Claimants had had their chance to evidence goodwill, but had not done so. They did not get Mr Davidson to value it either in his report, questions on the report or in any questions eventually put to him in cross-examination. It was not accepted that this was a question for a Part 35 direction: this was the trial and the Claimants had had permission to get that evidence and squandered their opportunity. It was not desirable or just to permit them to get that evidence now, especially when it would be disproportionately costly in relation to goodwill, which had not been shown to be of any significant value. They had had their chance and should not be permitted another opportunity.

537. He argued that it would be disproportionate to value the goodwill given that the name Medina was common; indeed two of Medina's own customers were called Medina, the palm tree logo was hardly a valuable one, the market in which they operate had slim margins and Khalid described it in his email to suppliers as being unsustainable. It was a buyer's market and all of the wholesalers supplied had multiple options and power. Sufwan accepted in his live evidence that none of the regular customers (he gave three or four customer names) would be consistent customers as they would all have had three/four/five different suppliers; there was evidence of cheap meat from abroad; what goodwill there might have been appeared to have been bound up in the persons running the business: it walked out of the door with them and did not stay with the brand.

538. There was no obligation to sell goodwill in the course of a winding up and surviving partners were free to start up a new business with the old firm's name (see Lindley & Banks at 26-13). Here, it was inappropriate to direct any further valuation of goodwill: the partnership was not sold with the goodwill; the partners did not own a share of it or, if they did, it did not appear to be of any value. It was agreed in 2002 that it was not a business with any goodwill, as Mazars recorded. It was not given any value by Mr Davidson (notwithstanding that he was permitted to opine on the asset value) and there was no value in it for the reasons explained by Ahmed, namely it being a buyer's market with no customer loyalty and the business needing a licence.

539. However, as Mr Fennell explained in opening, the question for the Court was not to make final finding that there was goodwill of a particular value, or even of a substantial but unquantified value. It was only to decide whether or not the Claimants had made out a sufficient case under CPR Part 35 for the Court to direct further expert evidence. Whatever the Defendants' submissions and Ahmed's evidence, none of that meant that the Court could find that it was so obvious that there was no goodwill that no expert evidence should be allowed. I agree. There is much force to many of Dr Wilkinson's points, but I cannot say on the evidence that it is so obvious that there is no goodwill that no expert evidence should be allowed at all.

540. Mr Davidson made it clear that the valuation of goodwill was outside his remit and expertise and I do not therefore accept the criticism of the Defendants that the Claimants should have questioned him further on the matter such they should be precluded from arguing the matter on the accounts and inquiries.

541. I shall therefore direct that there is to be provision for further expert evidence to value any goodwill in the partnership and invite further submissions on the detail of that exercise and the procedural steps necessary to determine it.

Issue 5: Relief/Buy-Out Orders

542. Dr Wilkinson invited the Court to take a pragmatic approach to the case and to deal with the case based upon where the parties are and what has happened in the proceedings already and on the state of the current evidence. The Defendants were

keen to avoid more litigation when the costs of going off for accounts were likely to be disproportionate. They would ask for matters to be dealt with now even if that involved a rough and ready approach because it was appropriate as the Court could form a view on the evidence.

543. He submitted that it was appropriate for the Court to partition the assets and require Sufwan as outgoing partner to offer his share to the continuing partners for their value (see Blackett-Ord, 18.42). That was appropriate since the Claimants had not sought an order for sale to third parties (nor joined relevant parties) and they could not now seek sale given the delays, this dispute having begun nearly 9 years ago (see Blackett-Ord, 18.49). Open market sale, rather than a division at value, would be unjust in the circumstances here because the creditors could be provided for (Blackett-Ord, above, 18.45) and the business would be damaged (and customers spooked) (see Blackett-Ord, 18.48). Additionally, Sufwan, who was not in a position to continue in partnership, did not elect to have the partnership dissolved at the time when the Defendants offered to buy him out, but delayed and the difficulties dissolving the partnership were largely down to the disorderly way in which Khalid ran it.

544. Mr Fennell submitted that the question of relief had now become more difficult than anticipated in the Claimants' trial skeleton. Their position remained that they had no objection to being bought out by the Defendants. They were concerned that Ahmed and Kasim appeared to have given no thought to how much that exercise would cost or where the money would come from. The Claimants said that the Court should not give directions based on an anticipated buy-out unless the Defendants show some sort of proof of funding. He submitted that the Court's reserved judgment would give the parties a good indication of the likely amount required. The Court was asked to hand down its judgment at a non-attended hearing and to fix a consequential hearing a month or so later, with permission to the Defendants to file and serve further evidence as to proof of funding. If the Defendants were unable to satisfy the Court that they had the necessary funds available, the Court would be asked to make an order for the immediate sale of Brookwoods (and Turley Cote Farm, as to which I have found against the Claimants) with the proceeds to be held in escrow pending the final account.

545. I am bound to say that I found the lack of detail or thought in the Defendants' evidence about the cost of a buy out and the potential sources of funding very surprising, particularly given the dispute had been on foot for 9 years and that proceedings were issued as long ago as 2021. It was perfectly clear that neither Ahmed nor Kasim appeared to have given any thought to how much that exercise would or might cost or where the money would come from. Their evidence on that point might charitably be described as wholly inchoate and amorphous. Kasim in particular had clearly given no thought at all to the question of how to effect a buy out. Mr Fennell's cross-examination of Kasim on the point as most revealing in that regard. It was put to him that the valuation of Brookwoods was £1.29 million and that he wanted to buy Brookwoods into his company, to which he replied "No". The cross-examination continued as follows:

"Q. You want a buy out?

A. I don't understand any of this.

Q. If you win, what do you want the Court to do?

A. Well, put it through the accounts and then we'll see what's what. I don't know: we'll see what happens. Let's see what happens. I can't comment on that at the moment.

... Q. [It was put to him that on Mr Davidson's figures the balance on his father's account was £502,000]. If you succeed, your father's balance goes to his trustee in bankruptcy, not to him?

A. Yes, I think so. Yes, we will have to raise that money.

Q. Are you in a position to raise that sort of money?

A. Can't comment on that at the moment.

Q. The District Judge will be asked on the final hearing to make a buy out order, but can you afford it?

A. I don't know about that. Can't comment on it.

Q. Have you thought about it at all? Or have you just not bothered?

A. We'll see what Mr Davidson [the expert] says.

Q. You've not thought about buying out at all?

A. No.

Q. That is a lie. Your barrister would not have brought a document into Court saying you wanted a buy out unless he had your instructions to do so.

A. I don't know about that."

546. That said, it seems to me that a buy out of Khalid and Sufwan's shares would probably be the most sensible conclusion to reach, assuming of course that the Defendants have the wherewithal to effect such a buy out, which is wholly opaque to me at the moment, given that Sufwan has had no role in the business for a number of years and given that the Defendants have in fact continued to run the business, albeit under the aegis of the company Medina Group Ltd rather than the now dissolved partnership.

547. I will therefore grant a declaration that the partnership was dissolved on 7 July 2016 and an order that the affairs of the partnership be wound up. I will also grant an order that the errors in partnership accounts be corrected as set out above, and that such corrections be carried forward to subsequent years' accounts, so as to reflect the terms of this judgment. I will direct that any accounts and enquiries necessary for the winding up of the partnership be taken and made and that the parties have permission to apply in that behalf. I will hear counsel, if necessary, as to the precise terms of the order and as to costs, if those matters cannot be agreed, on a date to be fixed. In that event, counsel should submit their competing draft orders in good time before the hearing.

548. I agree with Mr Fennell that the Court should not give directions at this stage based on an anticipated buy-out unless the Defendants show some sort of proof of potential funding. I will give the parties a breathing space of 6 weeks in which to digest the consequences of this judgment. Thereafter I will fix a further consequential hearing to deal with the precise terms of the order with a provisional time estimate of 1 day. The Defendants are to have permission to file and serve evidence as to proof of funding within 4 weeks of the date on which this judgment is formally handed down. If the parties disagree with that provisional time estimate, they should inform the Court

within 21 days of the formal handing down of the judgment what their provisional time estimate for the further hearing should realistically be, if more than 1 day.

549. Ahmed's trustee in bankruptcy should be sent a copy of the formal judgment once it is handed down and he should be invited to participate in the further hearing if so advised. It is to give the trustee in bankruptcy sufficient time to consider the formal judgement and to indicate whether he is minded to participate in the further hearing that I have given the parties 21 days rather than 7 or 14 to inform the Court if they disagree with the provisional time estimate of 1 day for that hearing.

Answers to the List of Issues

550. The answers to the list of Issues are therefore as follows:

Issue 1: this is no longer in dispute

Issue 2: Turley Cote Farm, as well as Brookwoods, was partnership property, held on trust for the partnership. It did not cease to be a partnership asset prior to the dissolution date. The valuation of those properties, as at 7 July 2016, was £65,000 and £750,000 respectively, as appears from Mr Steel's valuation. An up to date valuation will need to be undertaken to account for any change in value since 2016.

Issue 3: in accordance with the indications of the parties, I therefore ascribe to the partnership's plant and machinery as at the date of dissolution in 2016 the value of £350,000.

Issue 4: the question for the Court was not to make final finding that there was goodwill of a particular value, or even of a substantial but unquantified value. It was only to decide whether or not the Claimants had made out a sufficient case under CPR Part 35 for the Court to direct further expert evidence. I direct that there is to be provision for further expert evidence to value any goodwill in the partnership and invite further submissions on the detail of that exercise and the procedural steps necessary to determine it.

Issue 5: see paragraphs 542-549 above

Issue 6: the partners at the date of dissolution were Khalid, Sufwan, Kasim and Hashim.

In particular:

(a) Mumtaz had ceased to be a partner in 2014. Mumtaz's share was transferred with her express agreement, or by virtue of an implied agreement between her and Khalid.

(b) Ahmed was no longer a partner on 7 July 2016, having ceased to be a partner in 2010 (as set out in the accounts for y/e 2011). He resigned to allow his place, at least substantially, to be taken by Hashim.

Issue 7: the accounts were not settled accounts and in any event, even if otherwise settled, can and should be reopened for serious error.

Issue 8: the bad debts: Khalid had out of the partnership in cash sums which he wrongly declared as bad debts and the appropriate figure to ascribe to that situation is £350,000, being approximately 20% of the alleged total figure.

Issue 9: diversion of income

(a) rental income: the Defendants' case is not made out and no adjustments need to be made to the accounts in that respect.

(b) contract kill income: the minimum sums of £205,098 (IQ), £128,233 (Al Aqsa) and £75,472.65 (Rafi) in relation to contract kill income need to be shown as withdrawals from Khalid's capital account and the same sums are to be treated as partnership income.

Issue 10: the cars: the cars should be treated as partnership assets which were withdrawn by both Khalid and Sufwan. Khalid should be debited by £120,729 for the Bentley and £28,500 for the BMW and Sufwan £44,446 for the Mercedes Roadster in accordance with Mr Davidson's report. In addition, two of the cars should be treated as partnership assets which were withdrawn by both Kasim and Hashim. Kasim's account should be debited by £120,729 for the Bentley YG65 FKR and Hashim's

account £31, 667 for the BMW MF62 DBX in accordance with paragraph 9.31 of Mr Davidson's report.

Issue 11: the insurance payment: the £134,250 was a partnership asset, only £100,000 of which has been paid to the partnership. As well as showing that as income, £34,250 needs to be shown as withdrawal (and any credit given to Khalid for that sum must be reversed). There was also a profit on a disposal and the profit and loss account needs to be corrected to show the profit in the same sum.

Issue 12: (not separately pursued since it is a duplication - now issue 18): the personal expenditure: see below.

Issue 13: the lamb processing machinery: Khalid's capital account needs to be debited by £19,240 and the income revised by the same sum.

Issue 14: the mortgage: the Defendants' case is not made out and no adjustments need to be made to the accounts.

Issue 15: (not separately pursued since it is a duplication - now issue 17): the unaccounted personal payments (of £134,785 for house-building): see below.

Issue 16: the house construction costs: Khalid's account needs to be adjusted to show the £161,440.71 used for building houses as withdrawals and to correct the partnership accounts which erroneously recorded it as renewals and repairs.

Issue 17: the unaccounted personal payments (of £134,785 for house-building): £119,785 should be debited from Khalid's capital account to reflect sums taken and used for house-building. There should be a corresponding record that those sums represented income not accounted for. Moreover, £68,000 should be debited from Ahmed's capital account to reflect sums taken and used by him. There should also be a corresponding record that those sums represented income not accounted for.

Issue 18: the personal expenditure: £215,000 should also be debited to Khalid's capital account and the income need not be adjusted by the same sum if income

greater than that amount has been adjusted elsewhere, for example with bad debts or undisclosed sales.

Issue 19: the PI claim: the adjustments referred to by Mr Davidson need to be made with £28,000 income being shown and a corresponding withdrawal from Khalid's capital account.

Issue 20: Sufwan received and banked two cheques from Premium Poultry Products Ltd in June 2016 which should properly have been payable to the partnership, each for £32,500 and Sufwan's account needs to be debited by £65,000.

Issue 21:

(a) Mumtaz's account was reduced by £255,861 in 2014/2015 because she had ceased to be a partner, either with her express agreement or by virtue of an implied agreement between her and Khalid. She was only ever a nominee partner, not a real partner and could be (and was) removed at Khalid's behest. That transaction should not be reversed.

(b) it was on the basis of Mumtaz's ceasing to be a partner and her share being transferred with her consent to restore equality to each side of the family that Ahmed's account was increased by virtually the same amount. That transaction should not be reversed. There is a small discrepancy between £255,861 and £270,409, but it is immaterial in the overall context of the claim.

(c) in the light of those conclusions, Ahmed should be treated as having introduced capital of £270,409 in the year ended 31 July 2015. That transaction should also not be reversed.

(d) **Kasim's dealings:** Kasim's account should be debited by the same amount as with which it was credited (£19,500), Khalid's account should be debited by the same amount with which it was credited (£15,200, of which £5,500 was transferred on 10 September 2010, £4,000 on 4 February 2011 and £5,700 on 14 February 2011). I am not satisfied that Kasim lent £49,600, as opposed to £37,600, to the partnership. Kasim should account for the £18,000 which he received for his house and the

furniture, the £21,000 which he received for additional car fuel and maintenance and the additional sum of £632.

Direction as to running of time

551. I direct that the time limit for any application for permission to appeal should run from the date of any judgment following the consequential hearing to which I refer in paragraph 548 above.