Neutral Citation Number: [2025] EWHC 2226 (Ch)

Case No: BL-2020-CDF-000003

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS IN WALES
BUSINESS LIST (ChD)

Cardiff Civil Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: 27 August 2025

Before:

HIS HONOUR JUDGE KEYSER KC
sitting as a Judge of the High Court

- -

Between:

CRAIG LLOYD	**Claimant**
- and -	
(1) RICHARD HAYWARD	
(2) SIROCCO HOLDINGS LIMITED (a company registered in Jersey)	**Defendants**

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- -

Natasha Dzameh (instructed by **Mogers Drewett LLP**) for the **Claimant**
Greville Healey (instructed by **Underwood Solicitors LLP**) for the **Defendants**

Hearing dates: 28, 29, 30, 31 July and 1 August 2025
Further written submissions: 6 and 13 August 2025

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Approved Judgment

This judgment was handed down remotely at 10.30am on 27 August 2025 by circulation to the parties or their representatives by email and by release to the National Archives.

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HIS HONOUR JUDGE KEYSER KC

Judge Keyser KC :

Introduction

1. This case, which was commenced on 6 April 2020, concerns a joint venture ("the Joint Venture"), whether or not constituting a partnership, between the claimant, Mr Lloyd, and either (as Mr Lloyd says) the first defendant, Mr Hayward, or (as the defendants say) the second defendant, Sirocco Holdings Limited ("Sirocco"), a company registered in Jersey and owned by a discretionary trust of which the principal beneficiaries were Mr Hayward and members of his family. The Joint Venture related to the development and management of part ("the Site") of the SA1 Business Park in Swansea ("SA1", also at times referred to as "AWCO"), involving the construction there by Mr Lloyd of small industrial or commercial units and the letting of those units to third parties. At all material times until 10 October 2014 Sirocco was the registered proprietor of SA1. On that date Sirocco sold SA1 to Alymere Holdings Limited ("Alymere"), a Jersey-registered subsidiary of Sirocco. Mr Hayward, trading as Richard Hayward Properties ("RHP"), was at all material times the managing agent of SA1 for Sirocco and later Alymere. It was he who made the day-to-day management decisions for Sirocco, and later for Alymere, on behalf of the sole director of those companies, Mr Simon Baigent, to whom he also reported on a regular basis and from whom he sought approval for major decisions.

2. In its essentials, Mr Lloyd's pleaded case is as follows.

    i. The Joint Venture was agreed in October 2010 between Mr Lloyd and Mr Hayward personally. There was no mention that Mr Hayward was acting for Sirocco. The claim against Sirocco is pleaded in the alternative.

    ii. The Joint Venture was either a partnership within the terms of the Partnership Act 1890 or a contractual relationship with equivalent obligations.

    iii. The key terms of the Joint Venture were these: Mr Hayward would make the Site available for the construction and letting of units. He would also contribute £20,000 towards the initial cost of constructing units and a further £5,000 for advertising. Mr Lloyd would contribute his prior work at the Site in constructing units (which he had undertaken in anticipation of a proposed lease that was superseded by the Joint Venture) and further work to construct more units for letting, and would thereafter source tenants and manage the units, which would include the collection of rent. The Joint Venture would bear the costs of developing and running the Site and would receive the rental income. The net profits would be shared equally between Mr Lloyd and Mr Hayward (or, in the alternative, Sirocco). The Joint Venture was for a minimum term of 15 years, which had been the proposed term of the intended lease that had been superseded by the Joint Venture. (Alternatively, the minimum term was 5 years.)

    iv. The Joint Venture continued actively until about September 2017. However, for several years before that, Mr Hayward had been failing to pay Mr Lloyd the moneys he was due from the Joint Venture. In about September 2017, after Mr Lloyd had completed work on the construction of units at SA1, Mr Hayward

excluded him from any part in the operation of the Site, and Mr Hayward has contended that the Joint Venture was terminated in December 2013 or early 2014 by reason of Mr Lloyd's inability to perform his duties while he was in custody on remand between October 2013 and April 2014. Mr Hayward thereby repudiated the Joint Venture in about September 2017. Mr Lloyd does not say that he has accepted that repudiation and terminated the Joint Venture: it is his primary case—pursued tentatively—that the Joint Venture has continued; in the alternative, he says that the earliest date for the termination of the Joint Venture is September 2017.

v. Further, Mr Hayward has wrongly sought to treat as expenses of the Joint Venture mortgage interest payments made by Sirocco in respect of a loan that was secured on SA1 for Sirocco's own purposes.

vi. Mr Lloyd seeks an account of the profit-share due to him, alternatively damages for breach of the Joint Venture agreement.

3. The defence and counterclaim of Mr Hayward and Sirocco may be summarised very briefly as follows.

i. The Joint Venture agreement was made in about December 2010 between Mr Lloyd and Sirocco. Mr Hayward was merely the agent of Sirocco.

ii. The Joint Venture was not a partnership, because it did not involve the parties carrying on a business in common.

iii. The key terms of the Joint Venture were these. Mr Lloyd would produce evidence to substantiate his purported expenditure of £80,000 on works at the Site before the Joint Venture was agreed. Mr Lloyd would personally devote such time as was necessary to the development and management of the site, and he would account to Sirocco for the rent received and the expenses incurred. The rental income would be applied as follows: first, to reimburse Sirocco for the payment of interest under its mortgage over SA1 (or, more accurately, such of the interest as might be applied to the Site on a pro rata basis); second, to pay all other costs and expenses; third, to pay Mr Lloyd £20,000 per annum; fourth, to share any remaining money equally between Mr Lloyd and Sirocco.

iv. The Joint Venture was terminated by Sirocco in about December 2013, because Mr Lloyd was unable on account of his incarceration to carry out his duties and a temporary alternative, whereby his father would carry out those duties in his place, had not worked out. In May 2014 Mr Lloyd asked Mr Hayward (on behalf of Sirocco) to renew the Joint Venture, but Mr Hayward declined. Further work carried out by Mr Lloyd at SA1 was done by him on behalf of two companies, Topgrade Property Management Limited ("Topgrade") and A.D.E.L. Construction Limited ("ADEL") and was invoiced by them to Alymere. (Mr Lloyd says that it was agreed that payment of these invoices would be treated as drawings by him from the Joint Venture.) Further, Mr Lloyd never produced invoices to evidence the expenditure of £80,000 on works at the site before the Joint Venture was agreed.

v. It is admitted that Sirocco treated the mortgage interest payments as expenses of the Joint Venture, but this was proper and in accordance with the agreement.

vi. Mr Lloyd's claim for damages or an account is statute-barred by reason of section 5 or section 23 of the Limitation Act 1980. (Mr Lloyd admits that, if the Joint Venture was terminated in December 2013, his claims are statute-barred. But he denies that it was terminated then.)

vii. Each defendant brings a counterclaim against Mr Lloyd for reimbursement of the cost of leasing vehicles for his benefit.

4. The trial before me has been limited to questions of liability, with any accounts or monetary remedies to be considered later. In what follows, I shall begin with a chronological outline of the facts, referring only to such matters as I consider necessary and to such documents as seem most relevant to the issues, although I have considered all of the evidence. Then I shall address the questions that arise from the facts. The counterclaims will be addressed separately.

5. I am grateful to Miss Dzameh and Mr Healey, counsel respectively for the claimant and for the defendants, for their helpful submissions and for their conduct of the case generally.

The Facts

6. In 2009 RHP engaged Lambert Smith Hampton and Cooke & Arkwright as joint agents to market units at SA1. In November 2009 Mr Lloyd met a representative of Lambert Smith Hampton at SA1 and made a proposal to take a lease of the Site, which comprised a large and partially derelict building there. His intention was to divide the building (Unit A) into small units, which he would then sub-let. He had carried out similar projects at other sites previously. Originally, he intended to carry out the project along with two other people, Mr Mark Collings and Mr Graham Craig, though by the time things came to fruition they had decided not to proceed.

7. On 12 January 2010 Lambert Smith Hampton produced Heads of Terms for a proposed lease of Unit A between Sirocco and a new company to be called SA1 Business Park Limited ("SA1 Ltd"), which they had been informed would be incorporated for the purpose of taking the lease. The Heads of Terms recorded that the lease was to be for a 15-year term. The first six months of the term were to be rent-free; thereafter the rent would be £25,000 for months 7 to 12, £98,000 in year 2, £120,556 p.a. in years 3, 4 and 5, £144,667 p.a. in years 6, 7, 8, 9 and 10, and £168,778 p.a. in years 11, 12, 13, 14 and 15.

8. Mr Lloyd procured the incorporation of SA1 Ltd on 14 January 2010 and was appointed its first director on that date. On 3 February 2010 Mr Collings and Mr Craig were appointed as additional directors, though they resigned as directors in March 2010 after deciding not to proceed with the project. Mr Lloyd instructed Morgan LaRoche to act as SA1 Ltd's solicitors. RHP instructed an employee called Mr Christopher Coates to act for it; he was a solicitor though he did not have a current practising certificate. The Heads of Terms were sent to Morgan LaRoche no later than 19 January 2010.

9. After further discussions, Lambert Smith Hampton produced Revised Heads of Terms dated 24 February 2010. These showed revised provisions for rent: the first six months of the term were to be rent-free; the rent for months 7 to 12 would be £12,500; the rent for months 13 to 18 would be £12,500; the rent for months 19 to 24 would be £49,000; the annual rent in years 3, 4 and 5 would be £128,556; the annual rents thereafter would be as shown in the original Heads of Terms. On 24 February 2010 Lambert Smith Hampton sent the Revised Heads of Terms to Morgan LaRoche and to Mr Lloyd, confirming that the terms were agreed. In the first week of March 2010 Mr Lloyd instructed Peter Lynn & Partners to act for SA1 Ltd in place of Morgan LaRoche, and Mr Coates sent a copy of the Revised Heads of Terms and a draft lease to those newly instructed solicitors.

10. The solicitors then dealt with the preparation of contractual documentation, including an Agreement for Lease and a draft Lease. On 13 April 2010 Mr Coates wrote to Peter Lynn & Partners by fax:

> "I enclose draft side letter for your approval.
>
> I understand that Richard [Hayward] released keys to Craig [Lloyd] yesterday and so the term commencement date in the documentation should be 12 April 2010."

The side letter was headed in Sirocco's name and addressed to SA1 Ltd and provided for signature on behalf of each of those companies. On 14 April 2010 Peter Lynn & Partners wrote to Mr Coates, confirming that Mr Lloyd had signed the Agreement for Lease and that, subject to one point of collateral agreement between Mr Lloyd and Mr Hayward, the side letter was acceptable. Under cover of a letter dated 20 April 2010 Peter Lynn & Partners sent the Agreement for Lease to Mr Coates. It was signed in two places—neither of them the correct place—by Mr Lloyd. I have not seen a copy signed on behalf of Sirocco, but I am satisfied that a copy was signed and, more importantly, that both sides regarded themselves as bound by the Agreement for Lease. (I refer to, but need not quote from, correspondence between the solicitors in October 2010.) Both the Agreement for Lease and the draft Lease annexed to it showed the parties as Sirocco and SA1 Ltd. I shall say a little more about the terms of the draft Lease below.

11. On 27 April 2010 Lambert Smith Hampton sent to Mr Lloyd, for his approval, a draft press release concerning the letting of Unit A. The draft referred to "landlord Richard Hayward Properties". The description of RHP as landlord originated in an internal email to Lambert Smith Hampton's marketing executive from a director, Mr Thorne, who certainly knew the true identity of the landlord, namely Sirocco.

12. I find as a fact that Mr Lloyd knew that Mr Hayward was not the owner of SA1 and that he was the managing agent for the owner, Sirocco. In his oral evidence at trial, Mr Lloyd said that he had known nothing of Sirocco until 2011, when he saw it named on a bank statement. (In a witness statement made in support of an application for pre-action disclosure, he identified the date when he saw the bank statement as 7 September 2011.) He said that he had not read the legal documentation concerning the Agreement for Lease but had left such matters to his solicitors; so far as he was concerned, he was dealing with Mr Hayward. Although that is possible, I do not consider it at all likely. The documents showed clearly that the landlord was Sirocco, and it is improbable that

Mr Lloyd failed to see this, especially as the terms of the draft Lease had been the subject of revision. It is also probable that solicitors acting for SA1 Ltd on Mr Lloyd's instructions will have gone through the terms of the Agreement for Lease, the draft Lease and the side letter with him and, in doing so, will have drawn his attention to the parties. Again, although Mr Lloyd has identified 7 September 2011 as the date when a bank statement brought Sirocco to his attention, the documents show that in January 2011 he had acted in connection with the grant of a tenancy at will of a unit at SA1 by Sirocco; and in cross-examination Mr Lloyd accepted that he had known of Sirocco by that date. He points, fairly enough, to the mention of RHP as the "landlord" in the Press Release. I do not doubt that Mr Lloyd knew of Richard Hayward Properties or that he also knew that Mr Hayward was the man with effective day-to-day control of SA1. But I find that he knew that SA1 was owned by Sirocco. Mr Lloyd was well able to understand the distinction between companies and those who run them, as demonstrated by the fact that he was proposing to operate through SA1 Ltd.

13. Lambert Smith Hampton had issued an invoice to Sirocco in March 2010 for £9,662.33 plus VAT for their work in negotiating the letting of Unit A to SA1 Ltd. Six months later, that invoice remained unpaid. (Apparently, Cooke & Arkwright, who were joint agents, never issued an invoice.) On 1 October 2010 Mr Thorne wrote to Mr Kane Athay, Mr Hayward's stepson, who worked at RHP, reminding him that he had stated that he was approving a payment of half of the invoice. Mr Athay replied to the effect that the lease had not yet been signed but should be signed soon and that he would do his best to get payment of half of the invoice shortly afterwards.

14. In fact, the lease was never finalised. It was agreed instead to proceed on the basis of a Joint Venture between Mr Lloyd personally and one or other of the defendants. (SA1 Ltd has no further part in the story and was dissolved on 18 November 2014.) The parties are agreed that the Joint Venture began to operate in the late part of 2010. However, there are issues as to the parties to the Joint Venture and the terms of the Joint Venture. The Joint Venture was never reduced to a written agreement, and there is no joint document of the parties that sheds light on these issues, though there are a number of documents emanating from the defendants' side, none of them sent to Mr Lloyd, to which I shall refer presently.

15. The Joint Venture was first discussed in October 2010. I find as a fact that the first relevant meeting was at RHP's offices on 21 October 2010 and was between Mr Lloyd and Mr Athay. (Mr Athay has been able to verify the date and place of the meeting by reference to his Outlook calendar.) Mr Athay stated (witness statement, paragraph 23): "At the meeting, Craig said he didn't have enough money to continue doing the pods. That was a complete surprise to us." This meeting is referred to in a letter dated 22 October 2010 from Mr Coates to Peter Lynn & Partners concerning the Agreement for Lease, in which Mr Coates wrote: "Craig was in the office yesterday to discuss the project generally and he is due to meet Richard again to consider different ways in which the project may proceed. So we may in due course agree to ditch the existing contract anyway!"

16. Mr Athay has confirmed, by reference to his Outlook calendar, that a follow-up meeting took place at Swansea on 25 October 2010. Mr Hayward's evidence was to the following effect. The meeting took place at the Site and was attended only by himself, Mr Lloyd and Mr Athay. It was arranged because Mr Lloyd had told Mr Athay on 21 October that he was having problems funding the works. At the meeting, Mr Lloyd

said that he had run out of money and could not proceed further. He said that he had already spent £80,000, but Mr Hayward was sceptical of this and thought that what had been done would have cost about £40,000. In the course of the discussion it was agreed that the parties would proceed by way of a joint venture instead of a lease. "There was no suggestion that anyone other than Sirocco would be party to the agreement—it was definitely Sirocco. There was no discussion that I recall of whether SA1 Ltd or Craig Lloyd personally would be the other party" (witness statement, paragraph 40). The gist of the agreement was that Sirocco would pay £20,000 for materials, Mr Lloyd would pay for labour, build the units and collect the rent, and (witness statement, paragraph 45) would have a "priority return" of £20,000 p.a. All expenditure would be deducted before the profits were divided equally. "There was no limit to the relevant expenditure discussed, and in particular it was not agreed that mortgage interest would be excluded" (witness statement, paragraph 40). Mr Hayward's evidence was that there were two other stipulations: Mr Lloyd would carry out the management of the site personally and would not delegate those duties; and Mr Hayward said that he would not "do [the] deal" unless Mr Lloyd could demonstrate that he had spent £80,000 as he claimed to have done (witness statement, paragraphs 42 and 43). I shall say more about those stipulations later.

17. Mr Lloyd's evidence has, I think, conflated the meeting on 21 October and the meeting on 25 October. He said that he attended at RHP's offices after receiving an invitation to meet with Mr Hayward. Mr Athay was also present; so too was Mr Coates, who was taking notes throughout the meeting. Mr Hayward showed him an invoice from Lambert Smith Hampton for a sum of nearly £20,000 and said that he did not want to pay it, as he did not feel the agents had earned it, and he would rather use the money in a joint venture with Mr Lloyd. This, said Mr Hayward, would be more advantageous to Mr Lloyd than the proposed lease: "You've got no landlord worries, with no bills, no rent. All we have to pay is the utilities." The profits would be split 50:50. Mr Hayward would put the £20,000 that would otherwise have gone to the agents into the joint venture as a contribution to the costs of the works. "Because the lease I had been discussing with LSH [Lambert Smith Hampton] was for 15 years, Richard said that the JV would be for longer than the lease; he didn't say an exact term, but [he] said that it would be more advantageous to do the deal with him than signing the lease" (witness statement, paragraph 29). In oral evidence Mr Lloyd said that Sirocco had not been mentioned and that the proposed joint venture was to be between himself and Mr Hayward personally. His evidence was that he had confirmed agreement to the proposal by a telephone call a few days later—he did not recollect a second meeting—and that Mr Hayward had said that he would get Mr Coates to get something drawn up. Mr Lloyd's evidence regarding the Lambert Smith Hampton invoice is inconsistent. In his witness statement he describes being shown the invoice, looking at it and seeing the logo and the amount. However, the invoice was for £11,353.24, not for nearly £20,000, and does not correspond to the promised investment that was said to replace it. In cross-examination, Mr Lloyd said that he had been *told* that the invoice was £20,000. That is materially different from his written evidence, in which he had made a point of having seen the logo. Further, the suggestion that £20,000 might have been the total sum of two invoices—the other being from Cooke & Arkwright—, though in itself plausible, is problematic because the uncontradicted evidence is that Cooke & Arkwright never submitted an invoice.

18. On 26 October 2010 Mr Coates made a manuscript note, which was headed "SA1" and read as follows (I mark the two parts I cannot decipher):

> "Cancel Agreement for Lease
>
> Replace with a JV Agreement
>
> We pay £20,000
>
> He finishes off 10 units → (Kane has it all written down)
>
> He will manage the old [?] unit and old SW Windows unit (F1 and F2) → so all expenditure (rates utilities etc) covered by JV
>
> Pay £5,000 in to advertising
>
> 50% of profit after deduction of expenditure etc security guard
>
> Sirocco to invoice
>
> [?]"

In examination-in-chief at trial, Mr Coates said that he would have made the note after either a meeting with or an instruction from Mr Hayward or Mr Athay or both, and he confirmed that "We" referred to Sirocco and "He" to Mr Lloyd. Mr Hayward said in evidence that he believed the note was made to reflect what had been said in a meeting between himself and Mr Coates; I accept that as being probably correct.

19. Mr Coates made a number of preliminary efforts at drafting a formal agreement for the Joint Venture.

- The first draft was no more than a print-out of a form from the Encyclopaedia of Forms and Precedents, on which he had made some manuscript annotations. The only relevant annotation is to show the first party as Sirocco, which was also the case with the further efforts.

- The second draft, in manuscript, is undated but provided for a date of execution in 2010. It had a backsheet showing the parties as Sirocco and Mr Lloyd, but in the text of the agreement Mr Lloyd's name had been crossed through and SA1 Ltd had been substituted. The recitals referred to the Agreement for Lease for a term of 15 years "following completion of certain works undertaken by the Owner [i.e. Sirocco]" and continued: "The Owner's works are partially completed and preparatory works undertaken by the Manager [i.e. SA1 Ltd] are partially completed but the Manager is unable to complete its proposed preparatory works". A further recital stated the parties' agreement to proceed instead by an agreement that the Manager would manage "the Estate". In the operative parts of the draft, clause 3 provided for each party to complete certain works. Clause 3.3 provided: "The Owner shall contribute up to £20,000 towards the Manager's Works such contribution to be made [direct to contractors] against invoices properly raised and addressed to the Owner in respect of the

Manager's Works." Various other provisions in the draft were either incomplete or, as in the case of "Remuneration", entirely empty.

- The third draft, also undated but providing for a date of execution in 2010, represented a typed-up and more nearly completed version of the second draft, though it contained manuscript alterations. In clause 3 the requirement for Sirocco to complete further works was deleted in manuscript. Clause 3.3 provided: "The Owner shall contribute up to £20,000 towards the Manager's Works such contribution to be made [direct to contractors] against invoices properly raised and addressed to and approved by the Owner in respect of the Manager's Works." (I have added the underlining to show the text added beyond that in the second draft.) A manuscript addendum read: "5 year deal with 3 years notice either side." Like the second draft, the third draft made no provision in respect of the remuneration payable to SA1 Ltd.

- A fourth document on Mr Coates's file, though not a draft agreement, is a note dated 10 January 2011. In its material parts it reads:

  "Re: Craig Lloyd

  JV – part of AWCO

  3 years notice

  Contribute up to £20,000 for works

  £5,000".

20. A further document from RHP's files was created by Nicola Crickmore, now Nicola Smith, who was an accountant employed by Mr Hayward between 2005 and 2013 and who gave evidence at trial. It is headed as a Joint Venture Agreement dated in 2011 between Mr Lloyd and Sirocco. The material text is mainly typed but in part (shown here in italics) in manuscript.

> "It is agreed that the JV covers the buildings marked with a red border on the attached plan.
>
> It is agreed that the first £80,000 per annum (ex VAT) of rent produced by these buildings is paid to Sirrocco [sic] Holdings Ltd to cover interest.
>
> It is agreed that all costs such as rates, utilities, insurance and service charge and any maintenance will then be paid.
>
> It is agreed that Craig Lloyd will then keep £20,000 per annum.
>
> It is then agreed that the [sic] any further monies will be split 50/50 between the parties.
>
> It is also agreed that Craig Lloyd's next of kin will receive his share of the income for 5 years if he were to die.

SA1 Business Park

Share of rental income per annum

Level 1 – 1st £80,000 – allocated to loan interest

Level 2 – Then next level of rent – allocated to rates/utilities/insurance/service charge

Level 3 – Then next level of rent - £20,000 allocated to Craig Lloyd

Level 4 – Then next level of rent – split 50/50".

21. There are several disputed issues regarding the terms of the Joint Venture. I shall discuss these below but identify them here. (1) Was Sirocco or was Mr Hayward the party to the Joint Venture? (2) What was agreed regarding the allocation of £80,000 to mortgage interest payments before the profits were divided? (3) When was it agreed that £20,000 would be allocated to Mr Lloyd before the profits were divided? (4) What if anything was agreed about the term of the Joint Venture?

22. As I have said, no documentation was ever finalised. Mr Lloyd implies that Mr Hayward had no intention of putting anything in writing, because he was "playing the long game", but I find no adequate basis for such a conclusion and it is clear that Mr Coates did work on producing a form of agreement. I think it more probable that Mr Coates became overburdened by other work and that, as the Joint Venture was actually operating well enough in practice, the question of a written agreement was simply put to one side and then overlooked. (That was the explanation that Mr Coates thought most likely when he gave evidence at trial.)

23. At all events, the Joint Venture was put into effect in November or December 2010. Mr Hayward, who was involved in many other developments, had little practical involvement with it; the day-to-day affairs of the Site were dealt with by Mr Lloyd and Mr Athay. The £20,000 investment mentioned in the meeting on 25 October 2010 was paid, and Mr Lloyd's recollection is that by the summer of 2011 ten or eleven units at the Site had been completed and let. The rent invoices were in the name of Sirocco. The rent was paid into an account in the name RHP Sirocco. Mr Lloyd says that he did not know why the account had that name or, in particular, what the reference to Sirocco was. As I have indicated, I do not accept that evidence. The rental income was "going straight back in" (Mr Lloyd's witness statement, paragraph 39): that is, it was being used to fund the ongoing works to develop the Site.

24. Until 2013 the Joint Venture continued to operate smoothly, on the whole. (An issue concerning mortgage interest payments will be considered separately below.) Then in June 2013 Mr Lloyd was arrested on suspicion of theft. He was again arrested on suspicion of further offences several times over the following weeks. The details of the arrests and the alleged offences do not matter. Mr Lloyd was in due course acquitted of such charges as had not already been dropped, except for one charge of perverting the course of justice (giving false information about a speeding offence), for which he received a custodial sentence that, after taking account of time spent on remand, allowed his immediate release. One of the arrests related to Mr Lloyd's possession of

money that he said he had collected as rent from tenants at SA1. On 25 June 2013 Ms Crickmore wrote by email to South Wales Police:

> "Mr Lloyd has asked me to e-mail you about his relationship with us at the Awco building in Swansea.
>
> We are the managing agent appointed by the landlord (Sirocco Holdings) and Mr Lloyd has entered into a joint venture with the landlord on part of the building.
>
> He is authorised by us to collect rents on behalf of the joint venture which may be paid by cash, cheque or by direct transfer in the bank. He then accounts to us for rents collected. In addition as part of the jv arrangement he is responsible for the building and maintenance works carried out."

Immediately after sending that email to the police, Ms Crickmore forwarded it to Mr Lloyd.

25. On or about 10 October 2013, having been arrested again, Mr Lloyd was remanded in custody, where he remained until about 6 May 2024. In the meantime he was unable to perform any of his duties under the Joint Venture. His evidence was that construction work at the Site had stopped in that month for unrelated reasons and that the only job that would have been left for him to do under the Joint Venture was the collection of rent. He said that his father, Mr George Lloyd, took over the rent-collection duties and was able to do most of this by telephone, as the majority of the tenants at the Site paid their rent through BACS. Mr Lloyd said in evidence that the arrangement with his father had worked out well and that Mr Athay had not undertaken any additional tasks but merely liaised with George Lloyd as he had previously liaised with him (Mr Lloyd). Mr George Lloyd's evidence was to similar effect: he had agreed with his son to collect the rent and make any necessary payments; he personally dealt only with the paperwork but got one of his employees to do the "legwork"; he had no contact directly with Mr Hayward but did have some contact with Mr Athay; at no time did Mr Athay express any dissatisfaction with the way his role was working out. Mr George Lloyd was insistent that Mr Hayward did not tell him that the Joint Venture was at an end.

26. Mr Hayward's evidence was to this effect. Mr Lloyd rang him after being remanded in custody and told him that there was no need to worry about the Site, because he would not be in custody for long and in the meantime his father would be able to take over his duties. A few days later he met with Mr George Lloyd and, despite having misgivings about the latter's ability to attend to the Site as well as to his own business (Mr George Lloyd had a motor repair business, and even in retirement he still works six days in each week), agreed to let him stand in for his son. It very quickly became apparent that the arrangement was not working out, because there was no one in attendance at the Site. Mr Hayward had a further meeting with Mr George Lloyd one or two weeks after the initial meeting. Mr Hayward said that the position could not continue, because he did not know what was going to happen to Mr Lloyd and Mr Lloyd was not in a position to continue in the Joint Venture. "He acknowledged that we couldn't have uncertainty and said he agreed. He asked whether, when things with Craig were resolved, we would be prepared to work with him in another capacity, to which I said firstly we would have to terminate the current arrangement [and] find someone else to take over the role, and

then, when Craig does reappear, we can look at what work we have available and may be able to offer him. It was all quite amicable, we didn't fall out and I felt sorry for them" (witness statement, paragraph 70). After that meeting, Mr Hayward spoke to Mr Lloyd again by telephone: "I said we have to terminate the joint venture because you cannot be here and there's no certainty as to when you can. I said that his father had agreed that the situation is hopeless at the moment and he concurred that the joint venture was at an end, but there was the possibility of us offering appropriate work, which is what happened later. Craig did not argue about or contest it, but was grateful at that stage for the possibility of future work" (witness statement, paragraph 72).

27. Mr Athay gave evidence that he had been present at two meetings at which Mr Hayward and Mr George Lloyd had been present, but he was unable to disentangle them clearly: one was while Mr Lloyd was in prison, and the other was the meeting on 14 May 2014, which is described below. He stated (witness statement, paragraph 49) in connection with the first meeting: "There was some suggestion that his father might get involved in the management of the Site but I didn't take it seriously because I didn't think he had the necessary experience." In oral evidence he said that he had no particular issue with the suggestion that Mr George Lloyd should stand in for his son, but he knew that he (Mr Athay) would end up doing the work, as Mr George Lloyd did not know the tenants and was not a property manager. He stated (witness statement, paragraph 50) of one or other of the meetings (he could not say which): "Richard said we cannot be associated with criminals and therefore the joint venture is at an end. I think it was also discussed that the joint venture wasn't making any money anyway." In his oral evidence, however, he said that he believed that the reason for the termination of the Joint Venture was that Mr Lloyd was unable to carry out his duties, not that he was a criminal.

28. On 14 May 2014 a meeting took place between Mr Hayward, Mr Lloyd and Mr George Lloyd. It is common ground that both in the meeting and subsequently there were discussions concerning the financial consequences of terminating the Joint Venture. However, the parties give different accounts of the nature of those discussions: Mr Lloyd says that they were discussing the terms on which the Joint Venture might be brought to an end by agreement; Mr Hayward says that they were discussing the financial consequences of the fact that he had terminated the Joint Venture.

29. Mr Lloyd's evidence is that he was probably released from custody on 6 May 2014 and that he returned to work on the Site after having two days at home with his children. On that basis, he would have been back at work when the meeting took place on 14 May, but I find that that was not the case. Mr Lloyd's written evidence regarding the meeting, which was substantially the same as his oral evidence, was as follows:

> "117. We had a meeting in May 2014, after I got out of prison, with my dad and Richard. I went to the meeting and I hoped that Richard try and sort everything out, but that never happened. Richard was really rude to us; he just 'pooh-poohed' everything we said. My father after the meeting that he didn't seek how it could keep carrying on like it was if he was treating me like this. There was no discussion in the meeting about the JV having ended, or going to end, or that there were any issues with what my father had been doing in my absence.

> 118. I had no correspondence with Richard at that point. There was no discussion about the joint venture ending at that point. …"

In context, the reference to "sort[ing] everything out" is to issues that Mr Lloyd raised concerning what he said were excessive drawings made from the Joint Venture by Mr Hayward and inadequate payments made to Mr Lloyd.

30. Mr Hayward's account was different:

> "78. Craig accepted that the joint venture was over, but by then he was somewhat aggrieved by this and suggested it might be renewed, which was rejected. He also suggested he was entitled to sums due to him up to the date of termination and was asking what was the value of the joint venture. I said I would write to him and set out what I thought the value was, and I think Kane and said it was worth nothing. The meeting was civil, we didn't fall out, and next day I wrote the letter."

31. On 15 May 2014 Mr Hayward wrote to Mr Lloyd as follows.

> "I refer to our meeting yesterday and I fully endorse the position that your Father put forward.
>
> He said there was no point in continuing to talk about the Joint Venture going forward and the only issue is what if any compensation you should receive. I am not convinced that we should pay you any monies as I keep asking both you and our Accountant to show me receipts for the money you have paid which amounts to £80,000. I have not seen that evidence and therefore cannot accept your claim that the money has been paid.
>
> Notwithstanding this issue I also understand that I have a continuing liability to pay approximately £24,000 in monthly payments and £28,000 in a balloon payment. The option is available to pay the balloon payment by returning the vehicles.
>
> I make the point that on our figures you have received from the Joint Venture a sum vastly greater than you were entitled to. This is largely a matter of record.
>
> I find it very difficult to reconcile any payment to you under all the circumstances.
>
> For me to consider an offer I need from you:
>
> 1. Proof that you paid out £80,000 for the cost of the units. This has to be in the form of receipts or other legitimate payment forms which will be acceptable to our audit Accountants.
>
> 2. Your proposals for settling the finance on the cars.

3. How you suggest we deal with the issue of inequality of drawings

You should be able to resolve the first issue by production of the paperwork. The issue on finance you may be able to resolve by either selling the vehicles or placing them in part exchange against new cars. The problem on the drawings could be resolved by adding back your total drawings and working out your actual entitlement.

Once I have answers to these questions we will ask our Accountants to give us advice on the value of your interest."

32. Mr Lloyd replied to that letter by an email on 27 May 2014, as follows.

"Hello Richard thank you for your letter dated 15th May.

Firstly can I assure you that I do not want to fall out over this situation as I feel there are still other ventures similar in the future that can be done together. I have done what you asked and got invoices for SA1 totalling well over 80,000 so far which I spent in the time frame of March 2010 to Oct 2010 when you came on board and joined the venture. I think the final figure of invoices will come to well over 100k that I've spent sole[l]y in that period, I can also can show the remortgage and loans where this came from as you requested. I'm hoping that you can rethink this whole thing through as you and I know SA1 was created solely by me and the other several hundred thousand investment has all come from rents paid to our venture, by several tenants who were with me before. I would like you to come back to me with a sensible fair offer seeing as if I'd not taken you up on your offer of the jv and carried on alone I would be now 100% shareholder in the units with an income of around gross 400k with a rent to RHP of £ 120,000. and in years 11-15 £168'000.

However this is in the past now and the future must go on and to do the other projects I have in mind to make up for you ejecting me out of the SA1 venture once it was finished I'm going to need money and that is where I hope you can find a sensible and fair figure to come back to me with and obviously it can be subject to me providing the invoices which I do have.

Also the drawings figures you have are extremely wrong the cash withdrawals I took from the bank were for wages paid to LK Installations for the works carried out.

So if we are not able to go forward on the figures we know exist for the 8 units I built sole[l]y then I will need all the accounts that have been filed copys [sic] of all invoices since 2010 and also all the bank statements for Barclays RHP Scirocco [sic] sent to me as soon as possible please.

I hope your [sic] in good health !!!"

33. At the end of May 2014, after that exchange of correspondence, there was a further meeting between Mr Lloyd, Mr Hayward and Mr Athay. Unbeknown to Mr Hayward and Mr Athay, Mr Lloyd recorded the meeting. Two transcripts are in evidence, though very little reference was made to them at the trial. I have mainly used the one made by Marten Walsh Cherer Ltd, though the other is at times a useful supplement. It seems to me that the conversation can be read in more than one way; it does not unequivocally support one party's case over the other's, though I have a view as to its most natural interpretation.

33.1 In the early part of the conversation Mr Hayward was insisting on the need for invoices to verify Mr Lloyd's expenditure; it is clear that he had not received the invoices at that point. Later the conversation turned to the circumstances in which the Joint Venture had replaced the Agreement for Lease:

"RH: You can't contribute.

CL: I know, but what I am trying to obviously say is from my point of view, if I had just done what I was going to do originally I wouldn't have this problem and it wouldn't be …

RH: You couldn't.

CL: No, no. I did it because I did what I did, I agreed with you.

RH: You couldn't because you didn't have the money. You came to us and said 'Look, I am sorry, I can't do this.'

CL: Can I just say, because I don't want to argue, right, I really don't, but you have got that slightly wrong honestly. Let me just explain it one more time because this is how it happened. You called a meeting here and I came up and you asked me how I was getting on, and obviously I wasn't going to tell you, 'I have got loads of money, I am flying, I have got this, that and the other', because my rent was due in a couple of months. But what had happened was I said to you, I said 'Things are all right', I said, 'We are going forward. We have got a couple of tenants blah blah blah, whatever. You have been down there.' And you said 'Yeah, it looks all right, it looks all right. I have got this bill for Lambert Smith Hampton.' (You had it there, £20,000-odd whatever it was.) 'I don't want to pay that', you said, 'you know, that is throwing money away. I would rather do something where, you know, perhaps I give you the £20,000 and we do the rent between us. That way if you are a bit strapped for money you can carry on building as opposed to waiting for the rents to come in and we will do it 50/50.

You will have no rent on the building, so you are 50/50 venture-wise, but obviously with you not having any rent.' So, obviously, I thought, yes, great, that sounds marvellous.

RH: I don't remember that. What I remember was that you came to us and you said, 'I would like to do this.' Your partners from when you first came along had somewhat – you told me one of them had let you down and didn't have the money to do this going forward, which is why I then said to you, 'All right. Well look, we will put some of the money up. How much do you need?' I have forgotten how much it was now but it was us having to put money in. We certainly had to put money in, was it £20,000?

CL: It was £20,000, yes. It was £20,000 in a couple of payments that they put into it.

RH: I remember that and, you know, we then do it on a JV basis. That is what I remember.

CL: Yes. No, it was. That is exactly what it was but it wasn't the fact that I don't have money. I was just – all I was doing, because I didn't have bundles of money, I wasn't building fast, I was just plodding on. That is all it was. That is all it was. You said, 'How many more units will £20,000 do?' And I said, 'I am up to, like, (whatever it was,) eight units and obviously ...'

RH: What do you think about that?

KA: I honestly think you came to us and said, 'I am struggling with money.'

CL: Right. Well …

KA: That is my memory. It was a long time ago but maybe that is what we took from what you said.

CL: Maybe, yes.

KA: That is not what you were saying but that is it. You know, we were (unclear). I think that that (unclear) pay rent here."

33.2 There was then conversation about the future.

"CL: I will be honest with you, I would love to come out of here happy and say, 'Me and Richard, you know, we parted, everybody is happy, there is no problem.' If you have got any problems in SA1, any issues, I will help you always. I'd rather (unclear). I am more than fair, you

> know. All the bits I have done, running around and never changed anybody anything for what I basically run around for, bits of money I have collected and this, that and the other because I am not a penny pincher. You know, I may be pound foolish, but I am not … I don't know, I am just not like that.
>
> RH: Similarly, Craig, we're probably your best allies in some ways and it is not in your interests to fall out with us either, is it?
>
> CL: I don't want to fall out with anybody, you know, but I just don't want to feel – like obviously in the first, the meeting before last, I felt like I was being kicked in the teeth and I felt like, touch wood, nobody has ever taken the piss out of me ever, touch wood, and that is what I felt like in a way, you know. I am just being straight with you. That is what it felt like."

Mr Lloyd went on to explain how he thought he could be of use to Mr Hayward on further jobs, and Mr Hayward indicated very tentative but non-committal willingness to consider such involvement, though making it clear that this would be on a different basis from the Joint Venture. A few pages later in the transcript:

> "RH: Right. I think the way that you go forward is don't fall out with us. It is silly to fall out with us, is what I think.
>
> CL: I don't want to. I don't want to.
>
> RH: Well, don't. Don't fall out with us because I don't bear a grudge with anybody in life, you know, if I don't like somebody I'll tell them. But go and find something that is meaningful to do. I am not worried if I spend £10 million or £20 million. I am not bothered about the size of the deal. …"

33.3 There was a fairly lengthy discussion (pages 13 to 15 of the transcript) about cars that were subject to leasing agreements. Mr Hayward said that he was "quite happy to go on at the moment"—that is, making the payments for the cars; he said, "You know, you need a car." Mr Lloyd said that he would happily let his Audi go and have a more practical vehicle—something with which he could tow a trailer—so as "to carry on with what I am doing." (He went on to talk about a site in Llanelli, which had planning permission for development as a care home.) The conversation continued:

> "CL: The thing is the car is obviously -- the cars are okay because you need a car to drive around in, but I would sooner have a lump of money in my pocket and not have the car at all, because obviously I could do stuff with that. The car is not earning me any money, you know what I

mean? Like for you it is different, you have got the car because it doesn't matter but, you know, if you were in my position the cars aren't ….

RH: The company hasn't got the money. The trouble is it is an offshore company. The bank hasn't given us any money in that company for years. Everything that we have done we have had to fund ourselves.

CL: Yes.

RH: That's what has created the business.

CL: Yes.

RH: We are owed 400,000-odd by that company. That is how much we have put in in total."

33.4 There was discussion about the payment of mortgage interest as an expense to be deducted before the profits of the Joint Venture were calculated. At page 22 of the transcript Mr Lloyd said, "[O]bviously you have got to look at the figures of £30,000 a month, the interest which I didn't want to pay but we agreed at £8,000."

33.5 The last part of the meeting began with this exchange:

"CL: So where are we now, what do you think, money wise? (Unclear) I have found other things. There will be other things ----

RH: I haven't really made my mind up, Craig. You know, at the moment I am happy to sort out those cars with you I think is where I am. (Unclear) That, you know, that is something which I think I am going to do. So, you know, that is going to cost me £50,000, is the (unclear) that that is going to cost me. So I am happy to do that. Beyond that, I don't think it is worth any more ----

CL: Whatever you get me, whatever you write a cheque for me for, whether it is one cheque every three months, every six months, whatever. Whatever you give me, I guarantee you I will make you quadruple in probably two or three years. I am being serious. There is not many people that ----

RH: I am not prepared to write you out a cheque for hundreds of thousands because ----

CL: No, I am not saying in one go. I know you aren't going to. You could do it. You could do whatever – you know, you have got the facility and ----

> RH: Craig, it's not worth it to me. I might as well just (unclear).
>
> CL: No, but it will be worth it to you.
>
> RH: But it's not ----"

That was the tenor of the rest of the conversation. Mr Lloyd explained that he was in severe financial difficulties and sought to persuade Mr Hayward of the advantage of giving him financial backing for a project. Mr Hayward made clear that he was going to take a hard-headed commercial view of any proposal and would not make commitments that he did not regard as financially prudent. He invited Mr Lloyd to think things over and come back to him if he had a firm and costed proposal (transcript, page 29).

34. The transcript of the meeting is perhaps, when read alone, capable of more than one interpretation; it does not by itself conclusively support any party's case on the issues. However, I make a few observations arising from my own interpretation of the meeting. First, the entire conversation seems premised on the Joint Venture having come to an end. There was much discussion about future collaboration between the parties, but none of it seems to me to have been to do with the continuation of the Joint Venture. Indeed, the discussion about financial matters for the future seems, on my reading, to have been based on the understanding that the Joint Venture was over. This is also consistent with Mr Lloyd's email of 27 May 2014, which is clearly premised on the Joint Venture having ended and refers in terms to making up "for you [Mr Hayward] ejecting me [Mr Lloyd] out of the SA1 venture once it was finished". Second, Mr Hayward had not received invoices to prove Mr Lloyd's expenditure. Third, I do not think that the transcript gives much support to Mr Lloyd's contention that the idea for the Joint Venture came from Mr Hayward as a device for avoiding having to pay Lambert Smith Hampton's invoice. Certainly, Mr Lloyd made that allegation in the meeting. But Mr Hayward and Mr Athay, who did not know that the meeting was being recorded, purported not to have any such recollection. Fourth, Mr Lloyd accepted that he had agreed that the Joint Venture should bear the interest payments (I discuss this matter below). Fifth, there was some sort of accepted position regarding the leased vehicles, which are the subject matter of the counterclaims.

35. There was further correspondence after this meeting, which I set out at length as it has some bearing on the parties' understanding at the time. On 15 July 2014 Mr Lloyd wrote to Mr Hayward in the following terms.

> "Further to your letter of the 15th May and our recent meeting, I would like to firstly thank you for agreeing to see me to discuss the joint venture, its progress and the future. I am very pleased that you wish to continue working with me on future projects and I am actively looking at those, but as indicated I do have some financial difficulties in that the JV Partnership is not producing any income for me at the current time.
>
> You have indicated that the car payments will continue to be made and you will no doubt recall that this was originally a part of our agreement in any event. What is more disconcerting is

> that I am not receiving any proper accounts for our partnership for the significant income that has been received. As you are aware under the partnership I have grown the income up to a figure in excess of £38,000.00 per month and receivable from the tenants at the Awco site for Scirocco Holdings Limited. You have said in your letter and indeed in our recent meeting that there are significant outgoings and that you also believe that I have received more than my share of the profits due to me, however I have received no proper accounts or Bank statements in respect of the same. Perhaps you can let me have a copy of the draft accounts, the management accounts and the Bank statements for the past 12 months for our joint venture partnership.
>
> As per your request I am putting together the invoices, payment schedules and evidence showing the sums in excess of £110,000.00 that I have paid in out of my own money into the joint venture. I am very pleased that we are discussing matters amicably and looking at a way forward for the future and I trust that I am able to receive this information showing the current position of the accounts, the partnership and current drawings, profit share etc. as it would appear from our meeting that you felt that there was insufficient funds to pay any further drawings to either of us. I am of course confused by this as I am aware of the significant income but I am perhaps not fully aware of all of the outgoings, some of which you explained during our meeting.
>
> To this end it would be very helpful if the accountants could send me the full information through as I am also concerned regarding the tax position, in particular my own personal tax position in having to account for profits and losses in this joint venture partnership.
>
> I will revert to you as soon as I have a further project going forward based on the information that you suggested, but in the meantime I look forward to receiving the documentation as requested above."

36. On 17 July 2014 Mr Hayward replied:

> "Thank you for the letter.
>
> Your invoices would be helpful and I suggest when you are ready, come and see me and we can look at them. In the meantime I am asking Kane to have a Surveyor look at the work and give us a costing.
>
> I enclose a summary of the figures which is helpful. Kane has all the back-up figures and, again, we can go through these when we meet."

It is unclear what document the "summary of the figures" enclosed with that letter was, though its nature appears from the next correspondence.

37. On 27 August 2014 (the letter is mis-dated 2015) Mr Lloyd replied:

> "Thank you very much for your letter of 17th July enclosing the summary of figures for the accounts for 10 months ending April 2014.
>
> I am still putting together all of the invoices to show the £110,000.00 plus which I have paid into the joint venture and I am pleased that Kane is also arranging for a surveyor to confirm verify those figures and costing. Please ask the surveyor to contact me if he needs any information with regard to the building works or the costings themselves, as I am happy to help.
>
> Although the summary figures that you sent through are a great help, they of course do not give the full income and expenditure in the period from the start of the joint venture in June 2011, when we varied our agreement from a formal lease through LSH to this joint venture. From that time under our joint venture I have built out the units, found tenants and they have obviously been paying rent. For my own tax purposes I need to have accounts in respect of this joint venture partnership from that period up to date.
>
> I will also need to have a breakdown of the figures as I do not understand the £74,481.00 of direct property costs relating to the joint venture in that 10 month period to April 2014. Similarly I do not understand 'general costs' at all as these were never discussed or agreed as being deductable (sic) from the joint venture proceeds, neither was the company's 'interest charges' and finance payments part of our deal. Those finance costs had already been incurred prior to the joint venture and were never to form part of the joint venture deductions.
>
> You will recall we varied our agreement on my lease on the basis that I would build out the unit, find tenants and other than direct costs in respect of that project and the units themselves the proceeds would be split 50/50. As you recall I have an e-mail in September 2011 confirming this, including at that time a Bank statement for the joint venture showing a significant credit balance to be divided between us.
>
> I am under some pressure to produce proper accounts and do tax returns and therefore it is really important that I do have the full accountancy information for this joint venture showing the full income and a full breakdown of any costs that are to be deducted. Clearly, I need to agree those costs as at the current time I have no idea what 'general costs' and 'finance costs' are which you have deducted from our joint venture income.

> If it is easier I am happy to speak directly with Peter [Symons] the accountant to provide this information but I do need it going back to the start date of 2011 for the joint venture.
>
> I am pleased that the Kings Dock project has been concluded and that you are happy with it and I shall send my invoice for this over to you shortly as discussed. If you need any additional help on the Kings Dock at all I have told Richard Pretty to contact me, I would be delighted to help.
>
> Finally, as you are aware I am also looking at further future projects for our joint investment and I hope to have good news with this in the next few weeks.
>
> I really do now need to hear from the accountants with regard to documentation and as I say I am happy to speak directly with Peter the accountant on this if it saves your time."

38. Mr Hayward replied on 1 September 2014:

> "I received your letter of the 27th August 2014 and I best send you a copy of the letter sent to you on the 15th May 2014 setting out what we required to look into the value of the JV (if any).
>
> I have accounts but these are incomplete until such time as we have the requested invoices etc.
>
> I have also asked why we would owe you money at Kings Dock and I cannot recollect you doing any work for me. If you have worked on the instruction of anyone else then let me know. It is not a problem.
>
> Finally am anxious to resolve these issues as I have other big potential purchases in hand and they would suit your skills."

39. The following day, 2 September 2014, Mr Peter Symons, an accountant employed by RHP, sent to Mr Hayward and Mr Athay an email with the subject line "Sirocco – Joint Venture P+L" and an attachment called "Joint Venture P+L accounts as at Apr 14". The email said: "I have added contingency amortisation of £25000 into the accounts for the period 10mths accounts to April 2014." The following points may be noted in respect of these accounts.

- They include figures for the entire period of the Joint Venture up to April 2014: 7 months to June 2011 (implying a start-date in December 2010, which is probably more or less right), the 12 months to June 2012 and to June 2013, and the 10 months to April 2014. As the yearly figures are for periods to the end of June, it is reasonable to infer that the 10-month period is to the end of April 2014. The latest figures, both in this document and in the one sent to Mr Lloyd on 17 July 2014, are not for the full year. I can see no particular reason why they would not have gone up to June 2014 and covered the full year; Mr Lloyd

had not asked for figures for a shorter period. The obvious inference is that they were prepared on the understanding that the Joint Venture was not continuing.

- One further possible inference is that the end point of the accounts was the termination of the Joint Venture, though that is not stated on the document. (I return to this point below.)

- The figures showed net profits in the year to June 2013 and the ten months to April 2014, but the substantial losses shown for the initial 7-month period and the year to June 2012 meant that the final balance still showed a deficit of £39,031.

- The final deficit was increased by the inclusion, apparently by way of revision, of £25,000 for amortisation in the final period. This reduced the profit for the ten months to April 2014 from £40,199 to £15,199.

40. There was renewed correspondence concerning the Joint Venture in 2015. In my view, none of it tends to indicate that the Joint Venture was continuing. On 6 February 2015 Mr Lloyd wrote "without prejudice":

> "I am writing with regards to the monies due and still outstanding from Jv at alco.
>
> My Solicitor has agreed to proceed under a no win no fee contract and is now pressing me to commence legal proceedings against you.
>
> …
>
> Therefore my question is, would you prefer to settle this out of court?
>
> I would need to hear from you with your proposals by return."

Mr Hayward replied:

> "I am still awaiting to hear from you with the information that was requested.
>
> If you were to instruct a lawyer we would do the same and we would immediately stop the payments for your vehicles.
>
> It would also stop all further business between us and again I cannot think how that is helpful to you."

And Mr Lloyd replied:

> "Richard I do have the invoices for over 114k as I've previously discussed with you, but my position is that because I gave all paperwork and emails regarding Jv from day one to the solicitor in June 2014 they want to proceed on a no win no fee and if I do not then I have to pay for work done up to date which they say

> is around 3k. I also am struggling to raise finance myself on several things atm with lack of deposits. I would like a resolution and put it behind us so we can move forward with other things too, I've never been anything other than honest and true to you which is why I hope we can continue to do business."

41. In further exchanges on 13 and 14 February 2015 Mr Lloyd pressed Mr Hayward for proposals to avoid legal action and made clear his determination to recover the "substantial amount of JV monies owing to [him]". Mr Hayward replied:

> "You must do what you feel is right for you and in the meantime we will now consider our position in relation to the finance agreements we are paying on your two vehicles.
>
> As we are to have a fight then there is no reason for us to continue with that cost and I must ask you to return the vehicles to us within the next week and to remind you that any misappropriation will be considered as theft and criminal consequences will flow.
>
> It is a pity that our relationship has fallen to this level but we have repeatedly asked you to let us have the information but despite your confirmation that you have them we are yet to receive the invoices."

Mr Lloyd's further response said in part:

> "I brought copies of these invoices along to a meeting that I had with you, however you were not interested in them as you stated that you just valued the joint venture as the total of the cars.
>
> You say you want the invoices, I hope this means that you are now prepared to pay me the money on receipt of these invoices."

42. On 15 February 2015 Mr Lloyd wrote:

> "Just to clarify one or two things, firstly I have not pursued the Jv money issue for the moment, because you assured me that last year I would have many more opportunities with you, however it was in fact the case that I've collected numerous debts all at no cost and also the jobs I was promised in Newport were never given to me for the sake of a couple of grand. Also I've sold numerous vehicles for you at no benefit to me.
>
> …
>
> I've already put every penny I had into the Alco Jv venture, and with the paperwork & statements I have, any jury will see what you have done to me and my family.
>
> I did want to continue to work with you as I respected and liked you, but I know it's only business for you, but not fair business,

> you are cold and calculating and will obviously stop at nothing to avoid paying me. You are the one steering this towards the court by your complete denial of the monies you owe to me."

Mr Hayward replied:

> "Despite what you say about the invoices I have not seen any papers which substantiate your claim. I know what money we have introduced but I have no idea what your figures are. You did produce a pile of invoices when you came to the office but they could have related to any job you were doing at the time and were no conclusive evidence and further could have been paid by our money as opposed to yours.
>
> The rest of what you write is not accepted. I had hoped that you would take up the offer and try to find other properties which we could have worked on together and which would have provided some income for you. So far you have not produced one property that we could buy. …
>
> If you change your mind and want to be involved then I leave the door open for you to come back but other than that you must do what you want."

43. I accept Mr Hayward's evidence that, after his release from custody in May 2014, Mr Lloyd did no further work at SA1 for a considerable period. The probability, which gains some support from the evidence of Mr George Lloyd, is that Mr Lloyd was traumatised by his period in prison and took a while to recover. However, he did do further work from around the spring of 2015 until 2017. Mr Lloyd says that this was pursuant to the Joint Venture and that he continued to work on the Joint Venture until September 2017, when Mr Hayward told him it was at an end and Mr Athay would be taking over. He says that in around June 2015 it was agreed that he should receive the first £20,000 of the net profits of the Joint Venture, and that from July 2015 he was paid £1,000 per month in respect of his profit share. I find, however, that the agreement that Mr Lloyd should receive the first £20,000 of the net profits was part of the original agreement in 2010, not a post-2014 variation of the agreement. As for the payments of £1,000 per month, they were in fact made by Alymere to Topgrade and ADEL, two companies of which Mr Lloyd was a director and had significant control, upon invoices for property management services, works done at SA1, and commission fees for finding further tenants for units at SA1. I find that the work and the payments were not pursuant to the Joint Venture but, in accordance with what had been previously discussed as a possibility, were pursuant to subsequent contractual engagements of Mr Lloyd's companies by Mr Hayward on behalf of Alymere, which had acquired SA1 in October 2014.

Issues on the Claim

44. A number of issues arise for consideration on Mr Lloyd's claim, and I shall address them in what I consider to be a convenient order.

When did Mr Lloyd commence work on the Site?

45. This was at one time an issue in the case but largely fell away during the course of the evidence. It remains of some relevance and therefore I shall discuss it briefly.

46. Mr Lloyd's case has consistently been that he commenced works on the Site before the Agreement for Lease was signed. Although his detailed evidence has not, I think, been entirely consistent as to the date when works commenced, his position in the end was that he had gone onto the Site in late 2009 and commenced work either then or in early 2010. By contrast, the case being advanced on behalf of Mr Hayward was that Mr Lloyd did not have access to the Site until he was given the keys on 12 April 2010, as mentioned by Mr Coates in his fax dated 13 April 2010. However, in cross-examination Mr Hayward said that Mr Lloyd had wanted to begin works before the Agreement for Lease was finalised and had gone onto the Site in 2009 in order to start making preparations for the works that would be undertaken; he was unsure whether works had actually started in 2009. In the circumstances, it is unnecessary for me to analyse the evidence in detail. I accept that Mr Lloyd had access to the Site before the Agreement for Lease was drawn up and signed. It is possible that he had some access to do some preparatory work in late 2009, but despite the evidence of Mr Hayward I tend to think that he did not. The evidence as to the dates of his first visit to the Site and the initial preparation of documentation makes it more likely that he was allowed some access to the Site when, or perhaps shortly before, the Revised Heads of Terms were agreed at the end of February 2010 and that he began some works no later than March 2010.

47. The only point to which any of this was relevant concerned the question of the genuineness of invoices that Mr Lloyd relies on to support his claim as to the amount of moneys he has expended on the Site. The invoices are in the name LK Installations, which was the trading name of Mr Lee Knuszka; they are headed "Work carried out at SA1 Business Park" and are dated from March 2010 until July 2011. If genuine, they are evidence that Mr Lloyd had commenced work on Site before April 2010. On behalf of Mr Hayward the genuineness of the invoices has been questioned on three main grounds: first, that they pre-date the commencement of works; second, that, if genuine, they would have been produced to Mr Hayward much earlier than they were in fact produced; third, that the business address shown on the invoices is of a property that Mr Knuszka did not own when the invoices were purportedly made. However, I find that the invoices are genuine. Once the point about the date of the works falls away, the contention that they are false documents is much weakened. I do not regard the point about late production of the invoices to be very strong; clearly some works were indeed done, and false documents could as well be produced sooner as later. Mr Knuszka gave evidence at the trial by video link from abroad. He confirmed that he had done work at the Site, but at this remove of time he was unable to specify dates or to give positive confirmation that the invoices were genuine, though he said that they had the appearance of being so. He gave an explanation for the address shown on the invoices, which though not entirely unproblematic is far from incredible and has not been shown to be false. It was not put to him or submitted in argument that he had personally fabricated these invoices at a date later than they bear. The inference that Mr Healey invited me to draw was that, at some date after the relationship with Mr Hayward had broken down, Mr Lloyd had fabricated the invoices to support his claim, and that he had given himself away by dating the first one too early and including an

address that Mr Knuszka did not use until later. Neither of those points is persuasive and I decline to draw the conclusion that the documents are false.

Why was the Agreement for Lease replaced by the Joint Venture?

48. This question, too, has little if any relevance. Such importance it might possibly have relates solely to the parties' respective motivations and, in turn, to the bearing those might have on the inherent probabilities regarding what was agreed. In a nutshell, Mr Lloyd says that the Joint Venture was proposed by Mr Hayward as a device by which to enable him to invest £20,000 into the Site instead of giving it to the property agents, and Mr Hayward says that the proposal arose because when the time came for the lease to be executed Mr Lloyd said that he had financial difficulties and was unable to proceed. In my view, Mr Hayward's account is more likely to be substantially correct, although there is probably a small element of truth in Mr Lloyd's account.

49. It is instructive to consider the terms of the draft lease annexed to the Agreement for Lease. The draft lease did not actually specify a rent-free period at all. It provided for rent of £25,000 to be payable from the commencement date. This suggests that the six-month rent-free period related not to a period during the term of the lease but rather to the period between the making of the Agreement for Lease and the commencement of the term of the lease. As the Agreement for Lease was being signed in April 2010, it appears that the parties were looking to execute the lease in mid-October 2010. It is unnecessary to suppose that the discussion of the Joint Venture arose because Lambert Smith Hampton was seeking payment of its invoice at the beginning of October 2010 or that it had anything to do with the invoice. I do not think it likely that Mr Hayward had the idea of the Joint Venture in order to avoid paying the invoice, as he was a property developer who would be well used to paying agents' fees in large amounts and, moreover, had good reason not to "try it on" (so to speak) with agents with whom he would probably wish to do future business. On the other hand, it is very plausible that he would use the substitution of the Joint Venture in place of the lease as an opportunity to invite the agents to forego their fee on this occasion, with the prospect of a mutually profitable relationship in the future; and, indeed, Mr Hayward more or less said as much in his oral evidence.

50. However, I find that the question of a joint venture arose, as Mr Hayward and Mr Athay say now and as they said in the recorded meeting with Mr Lloyd, because Mr Lloyd told them that he had run out of money. He had originally intended to proceed together with Mr Collings and Mr Craig, but they had pulled out, leaving him by himself. It is true that the documentation was in the name of a limited company, SA1 Ltd, and imposed no personal liability on him. But the company had no other apparent source of funds until units were sub-let, and as I have mentioned there was no further rent-free period once the lease was signed. Further, Mr Lloyd had probably by this time spent at least £25,000 and possibly a good bit more (he says £80,000) since March 2010; he would not wish to waste his investment. My conclusion is that, when the time came when the parties had anticipated executing the lease, Mr Lloyd said that he had run out of money and could not afford to pursue the business model he had planned. Mr Hayward thought of a joint venture as a way of addressing the difficulty while at the same time obtaining benefit from Mr Lloyd's business model. An added benefit for Mr Hayward was that Sirocco could only require SA1 Ltd to execute the lease when it had completed certain Landlord's Works set out in the Schedule to the Agreement for Lease; there is evidence that they had not been completed by October 2010, and indeed

the requirement for them was not carried over into the Joint Venture. It is probable that Mr Hayward mentioned to Mr Lloyd that he would use the substitution of a joint venture as a way of persuading the agents to waive their fee, enabling the money that would have gone in payment of the fee to be used to invest in the Site. But that was not the reason for proposing a joint venture.

Who were the parties to the Joint Venture?

51. Mr Lloyd says that the Joint Venture was between himself and Mr Hayward personally. Mr Hayward says that it was between Mr Lloyd and Sirocco. I find that Mr Hayward is correct.

52. I think it unlikely that the discussions between Mr Lloyd and Mr Hayward on the matter involved any express reference either to Sirocco or, indeed, to the involvement of SA1 Ltd or any explicit statement in terms as to the identity of the parties to the Joint Venture (though no issue has ever been raised about Mr Lloyd's personal involvement in the Joint Venture). However, I have already stated my finding that Mr Lloyd knew that SA1 was owned by Sirocco, not by Mr Hayward personally, and that Sirocco was to be the landlord under the proposed lease that was replaced by the Joint Venture. I do not accept his evidence that he first learned of Sirocco at some later date, during the operation of the Joint Venture. In the circumstances, I do not regard it as a sensible interpretation of the agreement to suppose that Sirocco had been replaced by Mr Hayward personally. Mr Lloyd knew very well that Mr Hayward was the man acting for Sirocco on the ground. The Joint Venture was being agreed as a way of achieving the benefits that had been intended to be achieved under the proposed lease. The agreement to cancel the Agreement for Lease and SA1 Ltd's obligation to take the lease and to replace it with the Joint Venture can only have been made on behalf of Sirocco. (Miss Dzameh pointed to a number of omissions in the Agreement for Lease as meaning that there was no binding contract. In fact, I think that the common law has the tools to remedy any gaps. But I also regard the point as irrelevant; what matters is that the parties clearly understood themselves to be bound by the Agreement for Lease.) As a matter of common sense, this is confirmed by Mr Lloyd's insistence that an attraction of the Joint Venture was that there was to be no rent payable, whereas he (or, at least, SA1 Ltd) would have had a liability for rent under the lease. The removal of the rent obligation makes sense only if it was the proposed landlord that was a party to the Joint Venture; otherwise, the owner of the Site would be deprived of the benefit of the user of the Site by reason of a deal struck between two other persons who would be taking the benefit for themselves. Mr Lloyd's case makes good sense on, but only on, its own terms: that Mr Hayward owned the Site and was taking the benefit of the Joint Venture instead of the entire rent that would have fallen due under the proposed lease. If, however, Mr Lloyd knew that Sirocco was the landlord, his case ceases to make practical sense. Essentially the same point is highlighted, from a different angle, by the terms of paragraph 65 of Mr Lloyd's witness statement:

> "Richard did nothing personally in the joint venture other than facilitate the office and provide the administration services. I was doing all the work, and he was provid[ing] the administration involvement. He funded the £20,000 and nothing else. Apart from that, he never actually put any money in."

This is entirely to gloss over the fact that the principal benefit being provided by the other side of the Joint Venture was the value of the use of the Site. The owner of the Site was providing Mr Lloyd with a share of the profit from letting the units to the individual tenants (plus a further £20,000 per annum). If Mr Hayward had been the owner of the Site, he would have been providing this benefit, though Mr Lloyd barely acknowledges it. As Sirocco was, and was known by Mr Lloyd to be, the owner of the Site, a Joint Venture between Mr Lloyd and Mr Hayward would have taken Sirocco's profits. Although such an agreement might have been possible (whether or not lawful), it is much more likely that Sirocco was agreeing to share net profits by way of remunerating Mr Lloyd for his work.

53. The purely internal documents made by Mr Coates and Ms Crickmore can bear only modest weight, as they do not appear ever to have been seen by Mr Lloyd. They do, however, show that RHP was proceeding on the basis that it was simply acting for Sirocco. This is also apparent from Ms Crickmore's email to South Wales Police on 25 June 2013, which stated in terms that the Joint Venture was with the landlord, Sirocco. As noted above, Ms Crickmore forwarded that email to Mr Lloyd immediately after sending it to the police. Mr Lloyd refers to the email in his witness statement, but neither when he received it nor subsequently did he express any concern or surprise at the assertion that his Joint Venture was with Sirocco.

54. Mr Lloyd placed reliance on an email sent to him by Mr Coates on 10 April 2019, in which Mr Coates referred to the joint venture being "between you [Mr Lloyd] and Richard personally". When cross-examined about this, Mr Coates said that he had written the email without any reference to documents and without any expectation that he would be questioned on its wording in court, and he insisted that his own understanding was that the agreement was made by Mr Hayward in person but acting on behalf of Sirocco. I accept that oral evidence, which reflects the understanding manifest in the contemporaneous documents.

What were the terms of the Joint Venture?

55. Most of the other central terms of the agreement are not in dispute. Mr Lloyd would carry out the construction works and would manage the Site. For this, he would be paid £20,000 per annum. (In fact, Mr Lloyd says that the agreement for this annual payment was made at a later stage, but the weight of the evidence is against him on that, and I reject what he says.) The expenses of running the Site would be deducted from the income, and the balance would be split equally between the two parties to the Joint Venture. The main issues to be addressed seem to me to be the following: (i) What was the nature of the personal obligation on Mr Lloyd? (ii) What was agreed in respect of the provision by Mr Lloyd of documentary evidence of his expenditure on the Site before the Joint Venture was agreed? (iii) Were payments of mortgage interest properly deductible as an expense of the Joint Venture before the division of profits? (iv) What was agreed in respect of the term and the termination of the Joint Venture?

Mr Lloyd's personal obligation

56. The defendants' pleaded case is that it was a term of the Joint Venture that Mr Lloyd would "personally devote all his working time, alternatively such time as was necessary, to the development and management of the Site." At trial, Mr Healey advanced only the latter alternative (the obligation to devote such time as was

necessary). Mr Lloyd's Reply admitted that he had impliedly agreed "to devote such time as was necessary to perform his obligations pursuant to the Joint Venture."

57. The agreed position on the statements of case clearly means that Mr Lloyd was required to devote his own time to the Joint Venture. He had responsibility both for the development of the Site and for its management, and his personal involvement was, in my view, understood to be necessary to the operation of the Joint Venture. Equally clearly, however, this did not mean that he could not engage others to carry out aspects of the work for him. Mr Hayward's evidence was to the effect that, having little day-to-day involvement with the Site, he did not know precisely how Mr Lloyd discharged his duties, but he would not have objected in principle to Mr Lloyd appointing an agent to collect the rents and actually did agree to Mr George Lloyd carrying out the functions on a short-term basis. The important question, which I shall address below, is whether Mr Lloyd was unable to perform his obligations for a substantial period or to a substantial degree.

Proof of the cost of works

58. The defendants' pleaded case is that there was a term of the Joint Venture that Mr Lloyd would produce evidence to substantiate the prior expenditure of £80,000 on works at the Site. Mr Lloyd's Reply denies that there was any such term and avers: "At the time of entering into the Joint Venture the parties agreed that Mr Lloyd had already carried out works at a cost in the region of £80,000. At no time prior to these proceedings has either Defendant suggested that Mr Lloyd was contractually required to produce evidence substantiating that expenditure."

59. I find that there was agreement between the parties that Mr Lloyd would produce the documentation to verify his expenditure before the Joint Venture commenced. It is not plausible, either as a matter of common sense or having regard to Mr Hayward's commercial experience and evident hard-headedness, that the estimated round figure of £80,000 would simply have been accepted without the production of invoices. Further, the communications between the parties in May 2014 tend to confirm this conclusion. In his email of 27 May 2014 (quoted more fully above) Mr Lloyd said, "I have done what you asked and got invoices for SA1 totalling well over 80,000 so far which I spent in the time frame of March 2010 to Oct 2010 when you came on board and joined the venture. I think the final figure of invoices will come to well over 100k that I've spent solely in that period." This was picked up by Mr Hayward in the meeting later that month; here I use the version produced by Mr Lloyd's solicitors, which is clearer on this point. A short extract will suffice:

> "RH You've got to, um, I mean when you say, um, I dunno, we've got invoices for SA1. I mean, you didn't send me the invoices did you?
>
> CL: What the, how do you mean? The ones, sent you them when?
>
> RH: Well, you said in the first paragraph here [that is, of the email] 'I've done that, what you asked and got what invoices for SA1 totalling well over £80,750'.

> CL: Yeah. That's right.
>
> RH: Um, 'I think the final figure on the invoices like come to well over a hundred K'
>
> CL: Yeah.
>
> RH: 'That I've spent certainly in that period, I can also show the re-mortgage and the loan'. But you didn't attach those invoices.
>
> CL: Oh no, no, I haven't attached anything, no, I've said, just obviously saying to you obviously you're not going to give me anything until you see, see all the paperwork but it's pointless me bringing everything up to you and then you still saying well there's this, that and the other. …"

60. On behalf of Mr Lloyd, Miss Dzameh pointed to Sirocco's statutory accounts for the years ended 30 June 2012 and 30 June 2013, which showed Mr Lloyd as a creditor for £80,000 in respect of the building of units at SA1. Mr Hayward did not agree that this indicated acceptance that Mr Lloyd had in fact spent that amount of money. He said (to paraphrase) that this was by way of a provisional figure given to the accountant, Mr Symons, and that the actual sum spent would have had to be verified before there were any final settlement. Although the entry of the figures in the accounts does give pause for thought, I accept Mr Hayward's explanation. In fact, there is an email from Mr Symons to Mr Lloyd on 19 June 2012, in which Mr Symons says that he is urgently preparing Sirocco's management accounts for *inter alia* 2012 and needs to know what Mr Lloyd spent from his own funds on SA1. (He requested some supporting documentation, but he had a 24-hour deadline and there is no indication in the papers that he actually received documentation.) It is relevant that the £80,000 was shown in the accounts as a *loan*, which shows that there had been no settlement. The communications in May 2014 also show that Mr Lloyd was contending that his expenditure entitled him to payment out of the Joint Venture (that is, that he had not received a payment that credited him for it). The same communications also show Mr Lloyd's acceptance that he did not expect to receive any payment on the basis of that expenditure without providing the documentation to substantiate it. His suggestion in evidence that no verification was required, because the figure had been accepted or because Mr Hayward had verified it independently, is not in my view supported by the objectively ascertainable facts.

61. At times in his evidence, Mr Hayward expressed himself as though the requirement for documentary evidence of the expenditure were a condition precedent to the very existence of the Joint Venture: indeed, he said in cross-examination, "He never showed me the invoices, so there was no joint venture." That is clearly not the case and Mr Healey did not maintain any such contention.

Attribution of mortgage interest to the Joint Venture

62. Mr Lloyd's case is that the expenses to be borne by the Joint Venture before the division of profits did not include any interest payments in respect of Sirocco's loans secured on SA1: particulars of claim, paragraph 3.5.7. However, the defendants' case is that "it

was an express, alternatively an implied, term of the Joint Venture that the cost of servicing the mortgage lending was to be the first item deducted from the rent, before payment of any other expenses and before the split of the remainder between the parties."

63. In his witness statement, Mr Hayward said at paragraph 40:

> "It was agreed that all expenditure would be deducted before the profits would be divided 50:50. There was no limit to the relevant expenditure discussed, and in particular it was not agreed that mortgage interest would be excluded. We would not have gone into the joint venture if we had had to pay the interest. This was particularly so in that Craig Lloyd was getting a wage or priority return. I would not have agreed to interest being excluded, not least because that would have been a cost for Sirocco alone, he had no downside, only upside."

This appears to mean that Mr Hayward understood mortgage interest payments to be included because they had not been expressly excluded when it was agreed that expenses would be deducted. But Mr Hayward's oral evidence made clear that not only was mortgage interest not mentioned expressly but Sirocco covered the entirety of the mortgage interest in the first year of the Joint Venture and the need for the Joint Venture to bear the interest payments became apparent only later. He said (according to my note, which is not verbatim but believed to be accurate): "I didn't discuss the costs of the mortgage at the time when we made the agreement, but it became clear that we couldn't afford to carry on unless the mortgage interest was borne."

64. The documents confirm Mr Hayward's oral evidence, at least as to the sequence of events. The manuscript note made by Mr Coates on 26 October 2010, probably to record what he was told in a meeting with Mr Hayward, says, "so all expenditure (rates utilities etc) covered by JV"; there is no mention of mortgage interest payments, though those would have been significant. The final, but still incomplete, draft agreement prepared by Mr Coates in late 2010 shows "Agreed Expenditure" as a defined expression; there is no typed text next to it, but in manuscript is written, "incl. insurance & service charge agency fees rates water maintenance of units": again, there is no mention of mortgage interest. The first mention of mortgage interest in the documents is in Ms Crickmore's draft, apparently from 2011, when it was recorded that the first £80,000 would be paid to Sirocco to cover interest.

65. On 10 September 2012 Mr Symons, an accountant employed by RHP, sent to Mr Hayward, Mr Athay and Ms Crickmore a revised projection of the finances of the Joint Venture for the following twelve months. The email to which the projection was attached reads as follows:

> "This is my final adjustment to this projection at least today.
>
> It's been decided to charge the Joint Venture interest based on the square footage of the total site. According to Kane's schedule the joint venture total space is 67.98 % of the site. Therefore, based on my interest projection the joint venture will pay for 67.98 % or £ 89921.

> All other assumptions remain the same:-
>
> …
>
> Annualised rent for September 12 is £ 271712.
>
> …
>
> Drawings:-
>
> 1st £ 20000 to Craig Lloyd spread evenly over the year.
>
> 50% share in the surplus thereafter.
>
> Surplus is calculated after deducting the Cap Ex on each new unit built.
>
> Surplus is after deducting £88921 of loan interest projected per annum
>
> Projected drawings Craig Lloyd - £ 74352 pa
>
> Projected drawings RHP - £ 54352
>
> Ability to pay drawings depends on Sirocco company cash liquidity."

Again, on 7 November 2013, Mr Athay sent an email to Mr Symons, copied to Mr Hayward, with the subject line, "JV with Criag (sic)". The attachment, titled "Sirocco Status as at 6th October 2013 Kane Updates", was a Profit & Loss forecast for the coming 12 months. The notes on the deductions included this:

> "JV Interest is based on £89921 allocated to Joint Venture – Richard decision 12 mths ago"."

66. These are purely internal documents for RHP, but I note the following points. First, Mr Hayward had decided (a) to deduct mortgage interest before arriving at the surplus for distribution and (b) to apportion the deductible interest on the basis of the area of the Joint Venture Site as a proportion of the entirety of SA1. Second, it appears that the decision on apportionment of interest was the reason for the revised projection, so it is likely to have been in the nature of a new instruction to Mr Symons. Third, it does not follow that the deduction of mortgage interest was itself a new matter, though it might have been. Fourth, the documents say nothing about what had been agreed with Mr Lloyd. (I mention, also, the fact that the projected drawings are those of Mr Lloyd and RHP. This could support the inference that Mr Hayward was the other party to the Joint Venture. However, Mr Symons' projection itself is headed in the name of Sirocco and the operations of Sirocco were in reality almost entirely in the hands of RHP as managing agent. I have not regarded this as providing significant support for Mr Lloyd's contention that the Joint Venture was with Mr Hayward personally.)

67. Ms Nicola Smith's evidence was that she was present at a meeting when Mr Hayward told Mr Lloyd that the Joint Venture would have to start contributing to the interest

payments in respect of the loan with which SA1 had been purchased. She thought that the meeting took place about a year after Mr Hayward and Mr Lloyd started working together, and she expressed the view that Mr Hayward had "just moved the goalposts" because he saw that the project was generating lots of money. Ms Smith said that Mr Hayward had "sold" the requirement to Mr Lloyd on the basis that the mortgagee was increasing the interest payments and threatening to call in the loans and that the Site was at risk of repossession. She acknowledged that there were indeed a number of loans "coming up to fruition" but she doubted that the mortgagee would have called them in.

68. In his oral evidence, Mr Lloyd accepted that he had indeed agreed that the Joint Venture should bear pro rata responsibility for the mortgage interest payments; he said, "I didn't want to agree it, but I did." That was consistent with what he had said in the meeting at the end of May 2014. The position is therefore fairly clear in outline. At the outset there was no mention of mortgage interest. If it had been intended that the Joint Venture bear mortgage interest payments, they would have been mentioned; I reject the contention that they were included because not expressly excluded. The mortgage interest was a substantial liability and it stands on a quite different footing from liabilities that are, in the ordinary course, necessary incidental to the occupation of land, such as rates, insurance, and utilities. Mr Hayward clearly understood this and did not seek to pass the interest payments on to the Joint Venture until the Joint Venture had been in operation for some time.

69. The precise date when agreement on the point was reached is unclear. Ms Crickmore's draft agreement from 2011 might indicate that the point was raised at some time that year, probably towards the end of the year. However, I bear in mind that the document was an internal document and was not shown to Mr Lloyd. Mr Symons' projection in September 2012 and Mr Athay's forecast in November 2013 refer to a decision taken in about September 2012. Mr Lloyd's witness statement (paragraph 52) says that there were "heated discussions" in late 2012 or 2013 when Mr Hayward started taking interest payments out of the Joint Venture account. The most likely conclusion, in my view, is that Mr Lloyd's agreement to the interest payments being treated as deductions under the Joint Venture was in late 2012 but that it involved acceptance of the interest payments already made. I do not know when the interest payments from the Joint Venture account began.

70. In closing oral submissions and subsequent written submissions, Miss Dzameh submitted that Mr Lloyd's subsequent agreement that the Joint Venture should bear mortgage interest payments was voidable as being the result of economic duress. She said that Mr Lloyd had been in a "financially awkward position" that had left him no option but to agree to the interest payments, and she pointed to his remark in the second meeting in May 2014 that he had not wanted to agree to the interest payments. Mr Hayward's insistence that mortgage interest be paid involved an implied threat to break the Joint Venture agreement and was not a legitimate form of commercial pressure.

71. Mr Healey observed that no such case had been pleaded, though he made clear that he was not taking a pleading point. However, the absence of a pleaded case does create real problems, because none of the salient matters had been raised at all. The particulars of claim merely allege the deduction of interest payments in breach of the Joint Venture agreement (paragraph 5). The reply denies the existence of any express or implied agreement to bear interest payments (paragraphs 4.7 and 4.11). The statements of case

do not say anything about any threat, the illegitimacy of any threat, any agreement procured by pressure or any causal potency of the pressure. This is important, because the case did not proceed on the basis that the reasons and justification for any demand by Mr Hayward or any agreement by Mr Lloyd were in issue. As a result, these points were not properly explored.

72. I reject the submission that Mr Lloyd's agreement in respect of interest payments is to be avoided on the grounds of economic duress. First, although Mr Healey did not wish to take a pleading point, it is an entirely unpleaded case, and one moreover that was not even mentioned until the evidence was completed. I do not refuse to entertain the argument for this reason—perhaps, if objection had been taken, Miss Dzameh would have applied to amend—but I repeat that the lack of pleading has made it difficult to explore the point properly, which has consequences for Mr Lloyd's ability to establish the case now advanced. Second, I am not persuaded that Mr Hayward made any threat, express or implied, to break his agreement with Mr Lloyd. He simply insisted that financial pressures on Sirocco made it unaffordable for it to bear all of the interest while receiving only half of the rent. Third, I am not persuaded that any pressure brought to bear by Mr Hayward on behalf of Sirocco was illegitimate. The financial realities that obtained at the time, specifically regarding the position of the mortgagee, have not been explored in any detail, either by witness evidence or more importantly by documentation, and it is not apparent to me that Mr Hayward was wrong to say that Sirocco could not meet its obligations to the mortgagee, and thereby continued to perform the Joint Venture, if it had access to only half the rental income. Fourth, I am not persuaded that Mr Lloyd was coerced into agreeing that the Joint Venture should bear the interest payments, in the sense of having no practical alternative but to agree. (See *Morley v Royal Bank of Scotland* [2021] EWCA Civ 338 at [52]-[53].) If Mr Lloyd considered Mr Hayward's position to be unmeritorious, he could have said that this was not what he had agreed and that Sirocco had the benefit of the loan and should pay the interest. If he recognised the merit of Mr Hayward's position, however, the likelihood is that his agreement was voluntary, motivated by a matter of perceived practical fairness, rather than the result of coercion, even if the agreement were reluctantly given. Fifth, if I had thought that Mr Lloyd acted under economic duress, I should nevertheless have considered that he had lost the right to avoid his agreement. The agreement was made, probably, in the latter part of 2012. In 2014 and 2015 Mr Lloyd was robustly challenging Mr Hayward regarding the moneys he said had been withdrawn from the Joint Venture and the moneys he said he was owed. Whatever the position regarding termination of the Joint Venture, he cannot in my view reasonably be supposed to have remained under any duress at that point. (If the Joint Venture had ended, the position is *a fortiori*.) Even on Mr Lloyd's own case, the Joint Venture ended in about September 2017. He instructed solicitors the following month and they sent a letter of claim to Mr Hayward in 2018. Before closing submissions, he never claimed to avoid the agreement to deduct interest payments and, indeed, consistently denied the existence of any such agreement. I agree with Mr Healey that it has long since been too late for the agreement to be avoided.

Duration of the Joint Venture

73. Mr Lloyd's evidence was as follows (witness statement, paragraph 29): "Because the lease I had been discussing with LSH was for 15 years, Richard said that the JV would be for longer than the lease; he didn't say an exact term, but it said that it would be

more advantageous to do the deal with him than signing the lease – he was trying to make it an attractive deal to me."

74. In his witness statement, Mr Hayward said, "It was intended that the joint venture would go on for a period of time, a minimum period of five years in my mind" (paragraph 44). That is a statement of one party's understanding; it does not in terms assert that any minimum period was actually discussed, though it might perhaps imply it. In cross-examination, Mr Hayward said, "We did not agree a 15-year term. We agreed a 5-year term." Mr Athay too denied that there was any agreement for a 15-year term and, indeed, said that he could not recall any discussion about how long the Joint Venture would last: "It was relatively fluid. We would just see how it went." He accepted that there might have been discussions between Mr Hayward and Mr Lloyd to which he was not privy.

75. The possibilities are that nothing was said about a term or that there was mention of a specific term. I think it inherently improbable that nothing at all was said: Mr Lloyd would have wanted some assurance that a joint venture would be worth something to him, and Mr Hayward plausibly says that he had thoughts on the matter. The weight of the evidence suggests that there was no mention of a 15-year term: indeed, no one says that there was express mention of a 15-year term, and I very much doubt that Mr Hayward would have been willing to commit to such a term in such an agreement. (The Joint Venture was not similar in nature to a lease, so the term of one is not an indication of what parties are likely to agree in the other.) Although Mr Hayward might have said that a joint venture would be more advantageous to Mr Lloyd than taking a lease, it seems unlikely that he said that the joint venture would be for longer than the lease, while not explaining what he meant. Although confidence cannot be achieved, I think it likely that Mr Hayward mentioned a minimum term of 5 years with a minimum notice period of 3 years, and that this was the basis of the agreement. This accords broadly with Mr Hayward's evidence, and it gains some support from Mr Coates's draft agreement, albeit that the draft was not shared with Mr Lloyd.

Was the Joint Venture a Partnership?

76. I do not think that the answer to this question is of practical significance, and I shall therefore address it fairly shortly.

77. Section 1 of the Partnership Act 1890 provides in material part:

> "1. *Definition of partnership*
>
> (1) Partnership is the relation which subsists between persons carrying on a business in common with a view of profit."

78. Mr Lloyd's case is that the Joint Venture resulted in a business carried on in common with a view of profit and therefore constituted a partnership within the terms of section 1 of the Act. Mr Hayward's case is that there was no partnership because the parties were not carrying on "a business in common", as Mr Lloyd was simply being remunerated for his provision of services as manager of the Site.

79. Section 2 of the Partnership Act 1890 provides in material part:

> "2. *Rules for determining existence of partnership*
>
> In determining whether a partnership does or does not exist, regard shall be had to the following rules:
>
> …
>
> (2) The sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived.
>
> (3) The receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business; and in particular—
>
> …
>
> (b) A contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as such:
>
> …".

80. In *Worbey v Campbell* [2017] CSIH 49, Lord Glennie, delivering the Opinion of the Inner House, Court of Session, said at [66]:

> "Putting the matter broadly, what section 2 makes clear is that the carrying on of business (in whatever way) by a number of individuals with a view to making a profit and sharing such profits between them does not necessarily mean that there is a partnership. The matter is pre-eminently one for the first instance judge hearing all the evidence and submissions pertaining to the business relationship between the parties."

In the same paragraph Lord Glennie remarked: "Certain aspects of the relationship, such as agency (sections 5 and 6) and joint and several liability (section 9), are of importance to the existence of a partnership." I was also referred to the judgment of HHJ Mithani QC in *Patel v Barlows Solicitors* [2020] EWHC 2753 (Ch), [2021] 4 WLR 6, at [100]-110], and to the views expressed by the author of *Lindley & Banks on Partnership* (21st edition, with 1st supplement) at paras 2-16 and 5-10 to 5-12.

81. In agreement with the submissions of Mr Healey, I do not consider that the Joint Venture constituted a partnership; rather, it was a contractual joint venture. There was no business in common. Sirocco was the landlord of the Site. It alone invoiced the

tenants for the rent, was entitled to receive the rent from the tenants and had mutual rights and obligations vis-à-vis the tenants. Mr Lloyd was Sirocco's agent for collecting rent, managing the Site and carrying out construction works at the Site. On the evidence before me, there was no contractual relationship between Sirocco and those engaged by Mr Lloyd to carry out the works. What happened was simply that Mr Lloyd contracted on his own account and then was reimbursed within the accounting process of the Joint Venture. In short, neither party acted in relation to third parties in such a manner as to impose joint and several liability on the other party. The nature of the arrangement between Sirocco and Mr Lloyd was in essence simply that Mr Lloyd provided services to Sirocco, for which he was remunerated by a combination of a fixed fee of £20,000 per annum and a share of the net profits generated by the letting of the units on the Site.

82. The reason why this conclusion does not appear to have any importance is that it is common ground between the parties that, while the Joint Venture existed, Mr Lloyd was entitled to a share of the net profits and that, in principle and subject to questions of limitation, he is entitled to an account of those profits. (See Mr Healey's Skeleton Argument, paragraph 21.) The substantive relief sought by Mr Lloyd in these proceedings is an order for the taking of an account and an order for payment of the moneys found due to him on the taking of the account, or in the alternative damages for breach of contract. The existence of a partnership is unnecessary for the entitlement to any of these remedies. The particulars of claim do allege that the defendants were subject to a number of duties of good faith or of a fiduciary nature by reason either of the existence of a partnership or of the "relational" nature of the contract. However, the existence of those duties does not feed into the remedies claimed, which rely simply on the terms of the agreement for the Joint Venture.

When and how was the Joint Venture terminated?

83. This is an issue for which the slight ambiguity of the documents and the passage of time combine to create problems additional to those presented by the risks of deliberate falsehood. A year ago I gave judgment refusing to strike out Mr Lloyd's claim on the grounds of *Grovit v Doctor* abuse of process: [2024] EWHC 2033 (Ch). The fact remains, however, that Mr Lloyd's dilatoriness in pursuing his claim means that the court is now being required to consider issues of fact concerning events that took place up to nearly 12 years ago.

84. Mr Hayward's evidence, most fully set out in paragraphs 67 to 72 of his witness statement, was to the following effect. There was initially an idea that Mr George Lloyd might stand in for his son at the Site. It very quickly became apparent that the arrangement was not working, and other arrangements would have to be and were made. (I discuss below the way the work was done on the Site while Mr Lloyd was in custody.) In December 2013 Mr Hayward told Mr George Lloyd that the Joint Venture would have to be ended, though he left open the possibility that there might be a working relationship with Mr Lloyd in the future. Mr Hayward then had a telephone conversation with Mr Lloyd, in which he told him that the Joint Venture was at an end because Mr Lloyd was unable to perform his duties and there was no certainty as to when he would be able to do so. Mr Lloyd accepted this position, but he was grateful for the prospect that Mr Hayward held out to him of further work in the future.

85. Mr Lloyd's evidence was to the effect that the Joint Venture remained on foot when he and Mr Hayward met in May 2014; that the discussions then were focused on how to

take it forward and expand into other projects; that such talk as there was about a parting of the ways was because his father had suggested that the Joint Venture had no future, in view of Mr Hayward's attitude, so that the talk concerned merely the financial terms on which they might agree to bring the Joint Venture to an end; and that in fact they never did bring it to an end before Mr Hayward did so unilaterally in about September 2017. His evidence, supported by that of his father, is that Mr George Lloyd took over responsibility for the discharge of his duties and that neither Mr Hayward nor Mr Athay expressed any dissatisfaction regarding the position while he did so. Mr Lloyd says that the Joint Venture continued until it was terminated unilaterally by Mr Hayward in about September 2017.

86. I reject Mr Lloyd's evidence. I find as facts that Mr Hayward had purported to terminate the Joint Venture before the meeting on 14 May 2014; that Mr Lloyd sought to get him to agree to change his mind, but Mr Hayward refused to do so; that Mr Lloyd nevertheless sought to persuade Mr Hayward to give him further work, which indeed Mr Hayward was in principle willing to do and actually did in due course; and that the further work carried out in 2015, 2016 and 2017 was done by way of the separate engagement by Alymere of Mr Lloyd's companies, Topgrade and ADEL, not in pursuance of the Joint Venture. I make the following observations.

1) Mr Hayward's letter of 15 May 2014 shows that Mr Lloyd's account of the meeting cannot be correct. Mr Lloyd says that there was no discussion about the Joint Venture being over or about ending it, and that it was after the meeting that his father said to him that Mr Hayward's attitude made it pointless to continue. But Mr Hayward himself records that Mr George Lloyd had said, in the meeting, that there was no point talking about the Joint Venture going forward.

2) Mr George Lloyd's comment, as recorded by Mr Hayward, accords with Mr Hayward's evidence that Mr Lloyd was trying to get him to renew or revive the Joint Venture; that is, that he accepted it had by that point been brought to an end but he was asking Mr Hayward to change his mind.

3) This, again, accords with Mr Lloyd's letter of 27 May 2014, which acknowledges that Mr Hayward had "eject[ed]" him from the Joint Venture.

4) On this basis, the natural reading both of the transcript from late May 2014 and of the further correspondence is confirmed. The Joint Venture was over, and Mr Lloyd was looking at two matters: first, payment of what he said he was due from the Joint Venture; second, opportunities to do work on other projects with Mr Hayward.

5) This, too, makes sense of the evidence as to what happened after May 2014. I find as a fact that Mr Lloyd did no work at the Site until the following year. As his father was, I find, also no longer involved with the Site (he may have assisted Mr Lloyd with other, unrelated business ventures), this would be hard to understand on the basis of a continuing Joint Venture. The work that was done thereafter was invoiced by Topgrade and ADEL to Alymere, and the invoices were paid accordingly. Mr Lloyd's case is that the invoices were a sham, by which the newly agreed additional payment of £20,000 under the Joint Venture was paid to him. However, his evidence as to the agreement for £20,000 is

incorrect: that sum was part of the original agreement. And, absent good evidence to the contrary, I do not consider that the invoices ought to be taken to be other than they appear.

6) The evidence concerning Mr George Lloyd's involvement is also relevant. He kept manuscript notes of money received and banked for, or paid out in respect of, Mr Lloyd or his businesses. Almost none of the entries have to do with the Site or the Joint Venture. There is an entry in November 2013 mentioning Mr Hayward; this probably relates to the Joint Venture. There is an entry in December 2013 that mentions "SHC"; this was the name of a tenant at the Site and it might possibly refer to rent for a unit there, though it is far from clear to me that it does indeed relate to rent. There is nothing in the period January to May 2014 that I can relate to the Site or the Joint Venture, and Mr George Lloyd did not identify anything as so relating. In short, I see no objective evidence that Mr George Lloyd was doing any work on the Joint Venture after 2013.

7) As already mentioned, the profit and loss accounts prepared by Mr Symons on 2 September 2014 appear to be inconsistent with any belief that the Joint Venture was continuing. If it had been continuing, they would have gone up to June 2014 at least.

87. Further support for these conclusions is found in the written evidence of Ms Smith (formerly Ms Crickmore), which included the following:

> "41. I first became aware of problems between Mr Hayward and Craig when Craig was arrested.
>
> 42. When he found out that Craig had been arrested by the Police, I think Mr Hayward believed he could use this incident to get his hands on the whole SA1 project; Mr Hayward said he couldn't possibly be seen to be involved with someone who had been involved with the Police.
>
> 43. … Craig was in prison for quite a long time before he was released, and so Mr Hayward essentially had a free hand he didn't have to share the joint venture money, in his eyes. He acted as though Craig wasn't going to be getting anything from him or the business after his arrest.
>
> 44. … As soon as Craig was in prison, Kane took over his role, dealing with the tenants and collecting rents etc. I understand from Craig that he was eventually released but it seemed like he was in custody for a very long time, it felt like it went on for ever.
>
> …
>
> 46. Craig's arrest was really the catastrophic event that triggered Mr Hayward to take control of SA1. Mr Hayward's approach was effectively, 'this is no longer a joint venture.' …"

Ms Smith left her employment with RHP in late 2013; in cross-examination she said that she finished on 1 November 2013 and had no knowledge of the Joint Venture after that date. Her direct knowledge of events therefore finishes at that point in time, which was well before Mr Lloyd was released from custody. Her evidence nevertheless is of interest in several respects. First, it shows no knowledge of Mr George Lloyd's involvement to cover for his son. Second, it suggests that Mr Lloyd's remand in custody appeared at the time to be very prolonged. The chronology as it appears from the evidence suggests that, by the time Ms Smith left her employment, Mr Lloyd had only been in custody for three weeks. But the impression it made on her is striking and suggests a perception at the time that he was unlikely to return for the foreseeable future. Third, Ms Smith's evidence tends to support the inference that Mr Hayward was concerned about reputational damage caused by Mr Lloyd's arrest and remand. Fourth, it also supports the finding that Mr Hayward purported to treat the Joint Venture as at an end before the end of 2013.

88. I have had regard to witness evidence that tends the other way. Ms Julie Collier worked as Mr Hayward's PA from October 2015 until June 2016 and said in evidence that he was "not a very nice man". She said that it was common knowledge in the office that Mr Lloyd was Mr Hayward's business partner or that there was a joint venture; she said that both terms were used. Ms Adele Davies was employed as an accountant and Head of Finance for RHP and associated companies from November 2015 until July 2016. She gave evidence at trial on behalf of Mr Lloyd and did so with unconcealed hostility to Mr Hayward. She said that Mr Hayward introduced Mr Lloyd as his "partner in SA1 building the units", and that on a later occasion he said that Mr Lloyd would receive half of the money. She also said that in late 2015 or early 2016 she was present at a meeting at which Mr Hayward told Mr Lloyd that he had remortgaged SA1 (which, she said, was true) because the bank had changed the repayments (which, she said, was false), and that Mr Lloyd had objected that there was not meant to be any remortgage of the property. Mr David Ford was employed by RHP as a building surveyor between January and September 2016, and he said that Mr Hayward introduced Mr Lloyd to him as "one of my business partners". These pieces of evidence must be taken into account, but I do not find them persuasive against the conclusions expressed above. First, evidence of things said nine or so years ago has to be viewed with circumspection, particularly when weight is supposed to be put on particular words or expressions used in informal conversations. Second, this case has been brewing for many years; I am mindful of the risk of innocent contamination. Third, I cannot overlook the overt hostility to Mr Hayward demonstrated, in particular, by Ms Davies. Fourth, Mr Lloyd certainly was involved at the Site in late 2015 and throughout 2016, and I would not place much weight on remarks about him being Mr Hayward's "partner".

89. Fifth, Ms Davies's evidence regarding remortgage in late 2015 or early 2016 does not correlate with any clear evidence of Mr Lloyd's. I put it this way, because Mr Lloyd's written evidence and oral evidence regarding the mortgages were rather confused. Paragraphs 70 to 72 of his witness statement refer to finding out, through an email from Mr Kevin Hill of RHP, about a "Lombard loan application". This probably relates to emails in March 2016, when Mr Lloyd was told that Longbow Investment No. 3 S.A.R.L. had approved the release of funds to Alymere for payment to ADEL for the purpose of carrying out works at SA1. That does not appear to have been a remortgage; Longbow Investment had taken a charge over SA1 when Alymere purchased it from Sirocco. As regards any question of increased interest payments, there is no

documentation to show that this was an issue for Mr Lloyd or that it had any bearing on his position vis-à-vis SA1. His email of 16 March 2016 to Mr Hill simply begins, "Good news on organising the extra funds". Further, there is no reason why Mr Symons or anyone else should think that Mr Lloyd would be unhappy about further drawdowns under the mortgage. The only thing that would be of concern would be a requirement to make payments in respect of the interest on the further funds. There is no evidence that Mr Lloyd was asked to make additional payments. Indeed, there is no evidence at all that he was paying anything in respect of mortgage interest in 2015 and 2016, because at that stage he was simply receiving money on invoices from Topgrade and ADEL for such work as they carried out.

90. Finally on this point, I have borne in mind the facts relating to the counterclaim and in particular the fact that the vehicle leasing agreements for Mr Lloyd's benefit were continued after May 2014 and indeed a new agreement was taken out in 2016. This is relied on by Mr Lloyd as evidence that the Joint Venture was continuing. I have concluded that this is not the reason for the continuation of the leasing agreements. The matter is discussed further below.

91. There are two further questions. First, on what basis was the Joint Venture terminated? Second, when was the Joint Venture terminated?

92. As to the first question, I find that Mr Hayward validly terminated the Joint Venture on account of Mr Lloyd's substantial non-performance. Miss Dzameh's submissions did not seek to dispute that a substantial failure to perform would have given rise to a right to terminate the Joint Venture; rather she submitted, first, that Mr Hayward had not in fact purported to terminate the Joint Venture and, second, that there was not in fact a substantial failure to perform. I reject both of those submissions.

93. Mr Lloyd's case is that, while he was in custody, his father had been covering his work and done so satisfactorily. I reject that case. First, it rests on the idea that, when no construction works were being carried out, all that remained to be done was collection of rent from the few tenants who did not pay by BACS. I do not accept that. Mr Lloyd was responsible for the management of the Site; Mr Hayward's evidence was that this involved "the letting of the units and collect[ion of] the rents, much of which transpired to be cash. He had to arrange to keep the place clean and tidy, arrange repairs and manage the electrics, which were on a landlord's supply". Second, Mr Lloyd insisted that his father's involvement meant that Mr Athay did no more on the Site than previously. Again, I do not accept that. Mr Athay's evidence (witness statement, paragraph 51) was: "When Craig was in prison, the management of the Site was taken over by RHP, mostly by me. I did all the work he had previously done as well as the work I had been doing anyway, but Paul Hayward-Medway (husband of Richard's daughter Leone) may have helped. Craig's father had no involvement at all that I remember, and, being a car dealer in Swansea (to which I once went, GLC Autos), I think he had no relevant experience." In oral evidence he said: "There was some idea his father would do the work. I had no particular issue with this, but I knew that I would end up doing it, as I knew the tenants and he was not a property manager. I honestly do not remember what he did." I accept Mr Athay's evidence. Mr George Lloyd's evidence is significant. He said that he was working full-time on his own business but was able to afford an hour a day to the paperwork on his son's business affairs. Those affairs included other business activities, not just the Joint Venture, and as I have already indicated the records kept by Mr George Lloyd in relation to activity at SA1 are

negligible. Further, he did not carry out any practical activity in relation to any site where his son had business involvement; rather, he sent an employee, Mr Michael Davies, to do any necessary tasks. When cross-examined about the extent of his activities at SA1, Mr George Lloyd conceded: "I am not claiming that I took over Craig's role at SA1. I said I hadn't got the time." I refer also to the evidence of Ms Nicola Smith, a witness for Mr Lloyd, who said that his duties were taken over by Mr Athay.

94. The finding that Mr Hayward on behalf of Sirocco did indeed exercise the right to terminate the Joint Venture is supported by the evidence of Mr Hayward himself as well as that of Mr Athay and, indirectly, that of Ms Nicola Smith. Ms Smith left RHP before any purported termination, but her evidence shows clearly what Mr Hayward's attitude was and makes it very improbable that he did not act accordingly. (Both she and Mr Athay give some support to the view that Mr Hayward was largely motivated by concern at being seen to be in a close business relationship with someone implicated in criminal proceedings. Whatever his personal motivations may have been, however, the relevant question is of objective entitlement to terminate.)

95. As to the question of when the right to terminate was exercised, I find that it was exercised in about December 2013, as Mr Hayward has given evidence. The probability is that he did not wait long after he had formed the view that he should bring the Joint Venture to an end, which according to Ms Smith's evidence was within a few weeks of Mr Lloyd's remand in custody, and that he acted when Mr Lloyd had been in custody for a couple of months and there was no end in sight. The main piece of evidence that has caused me hesitation in reaching this conclusion is the Joint Venture profit and loss account produced by Mr Symons on 2 September 2014, which extends until April 2014 and might suggest that any purported termination of the Joint Venture was not until that date. In the end, I have come to the view that I should not rely on that document to override the other evidence. First, no one has suggested, in evidence or submissions, that there was a purported termination in April 2014. Second, I have not found any particular reason why that of all months should have been the date when Mr Hayward purportedly terminated the Joint Venture. Third, I think it very probable that the meeting on 14 May 2014 was not the occasion for the purported termination but was held after the purported termination and with a view to discussing the way forward. Anyway, a purported termination at that date would not justify choosing April as the termination date for accounts. Fourth, I do not know the basis on which the profit and loss account was prepared by Mr Symons, or indeed what if any use was made of it. The present question was not explored in evidence, nor was any mention made of the possibility that the document might be relevant in this connection.

Conclusions on the Claim

96. In the light of the foregoing discussion:

1) I hold that the Joint Venture was between Mr Lloyd and Sirocco.

2) I hold that the Joint Venture was validly terminated by Mr Hayward on behalf of Sirocco in December 2013.

3) In accordance with the agreed position of the parties, I hold that Mr Lloyd's claim for an account of the Joint Venture is barred by limitation of time.

The Counterclaims

97. It was common ground between the parties that Sirocco's counterclaim would fall to be dealt with, if at all, in any account of the Joint Venture. In the light of my conclusions on the claim, this counterclaim too is statute-barred and does not fall for consideration.

98. Mr Hayward's counterclaim is for £33,554.91 paid by him under leasing contracts for vehicles for the use of Mr Lloyd. It received very little attention at the trial. The case set out in paragraphs 8 to 17 of the defence and counterclaim is as follows.

- In September 2012 Mr Hayward entered into a leasing agreement for an Audi Q7 car for Mr Lloyd's use. He did this because Mr Lloyd could not take an agreement in his own name as he had a poor credit-rating. The leasing agreement was in Mr Hayward's name, because Sirocco was an off-shore company. Sirocco reimbursed him the payments under the leasing agreement, and these were to be treated as Mr Lloyd's drawings under the Joint Venture. There is no claim by Mr Hayward in respect of this 2012 leasing agreement.

- When the 2012 leasing agreement came to an end in March 2013, it was replaced by two new leasing agreements: one for an Audi A1 car, and one for an Audi A4 car. The basis of the arrangement remained the same. Mr Lloyd retained the cars after the Joint Venture ended. Mr Hayward was reimbursed by Sirocco until October 2014, when Sirocco sold SA1 to Alymere, but he bore the cost personally thereafter for 17 months.

- In March 2016 the leasing agreements for the Audi A1 and Audi A4 cars ended, and a new leasing agreement was taken out for an Audi A3 car, for which Mr Hayward paid for 29 months.

- Mr Hayward claims reimbursement of the payments made for 17 months for the Audi A1 and the Audi A4 (a total of £16,988.95) and the payments made for 29 months for the Audi A3 (a total of £16,565.96) on alternative bases:

    a) There was an implied term of the agreement between Mr Lloyd, Mr Hayward and Sirocco in 2012 that, if Mr Hayward was not reimbursed through the Joint Venture, he would be reimbursed by Mr Lloyd personally; and there was a corresponding implied term in the agreement between Mr Lloyd and Mr Hayward in respect of the leasing agreement in 2016.

    b) Mr Hayward is entitled to restitution on the grounds that "in anticipation of a contractually binding agreement for his reimbursement, and with Mr Lloyd's express encouragement, Mr Hayward entered into and discharged the liabilities under each of the above leasing agreements, to Mr Lloyd's incontrovertible benefit."

99. Mr Lloyd's case, as set out in paragraphs 8 to 18 of the reply and defence to counterclaim, is as follows.

- The leasing agreements and the payments made under them are admitted.
- The payments were to be treated as drawings by Mr Lloyd under the Joint Venture. (The very fact of the further leasing agreement in 2016 is evidence of the continuation of the Joint Venture.)
- As the agreement was that the payments were to be treated as drawings by Mr Lloyd under the Joint Venture, there was no basis for the implication of the term alleged by Mr Hayward. For the same reason, there is no basis for a restitutionary claim or for the allegation that Mr Hayward entered into the leasing agreement "in anticipation of a contractually binding agreement for his reimbursement".

100. I have already mentioned the transcript of the meeting in late May 2014, where the cars were discussed. It seems to me that, in circumstances where Mr Lloyd was complaining that he had not received his due under the Joint Venture and that he was in need of money, Mr Hayward was simply acknowledging Mr Lloyd's need for a car and inability to obtain finance for one himself and saying that he was willing to keep up the payments for which he was liable under the 2013 leasing agreement. That may be characterised either as a goodwill gesture or as a form of compromise or concession in the face of Mr Lloyd's claim to be owed more from the Joint Venture. But however one chooses to characterise it, it was I think gratuitous: there is no indication that Mr Hayward was asking or expecting Mr Lloyd to reimburse him, and the circumstances show that he could have had no such expectation. Therefore I do not accept Mr Lloyd's contention that the continued payments were evidence that the Joint Venture was continuing. On the other hand, the basis of Mr Hayward's agreement to go on paying for the cars (rather than handing them back and terminating the leasing agreements or asking for Mr Lloyd to cover the payments now that the Joint Venture was ended) is in my view inconsistent with either any implied term for reimbursement or any entitlement to restitutionary remedies.

101. As regards the leasing agreement in 2016, Mr Hayward's evidence was as follows:

> "88. When Craig was working for us on the basis described above, he said to me he wanted to get a new car for his wife, an Audi convertible. He still couldn't get finance himself so asked me again to take it in my name. Previously there had been two cars, which were then to go back as happened and with the new arrangement there would be only one, so my liability would be lessened. Also, at the time Craig was doing a fair amount of work for us, he was useful in several parts of the business and I wished to keep on good terms with him.
>
> 89. I therefore agreed to enter into the new finance agreement on the basis he would reimburse me, although in practical terms he never did. I was relaxed about this, because the amount was quite modest and his men who worked for us were good, we never had any complaint about them."

102. I accept the broad contours of that evidence. However, I do not accept that there was any agreed basis, whether express or implied, for payment by Mr Lloyd. This seems to me to be a matter of reading back into the situation something that was not there at the time but now has come to appear reasonable or even obvious. When cross-examined about paragraphs 88 and 89, Mr Hayward said, "I was doing him a favour." No doubt he meant only that the favour consisted in obtaining finance that Mr Lloyd could not obtain for himself. But I think the favour went beyond that. The original Joint Venture was over. But Mr Lloyd still had in the period 2015 to 2017 a very active commercial relationship, via Topgrade and ADEL, with Alymere and, accordingly, a continuing personal relationship with Mr Hayward. I think that, as Mr Hayward had been willing to continue to pay for the cars under the 2013 leasing agreement, he was willing to continue the same arrangement, albeit more cheaply, by entering the 2016 leasing agreement as a method of maintaining the good relationship and providing something by way of extra remuneration to Mr Lloyd. (Incidentally, although Sirocco did not reimburse Mr Hayward after selling SA1 in October 2014, I think it probable that Alymere did reimburse him. It is improbable that any of this money ultimately came out of Mr Hayward's own pocket.) The very fact that Mr Hayward did not actually receive reimbursement from Mr Lloyd and, so far as the evidence shows, never even asked for reimbursement, even though there could not be any question of recoupment via the Joint Venture, is itself strong evidence that repayment was not agreed and not expected.

103. Accordingly the counterclaims are dismissed.