

ENGLAND AND WALES / JUDGMENT

Del Bosque Limited v Amir Shafie & Ors

COURT
IN THE HIGH COURT OF JUSTICE

BEFORE
4 September 2026
HIS HONOUR JUDGE CHARMAN (Sitting as a Judge
of the High Court)

Source: caselaw.nationalarchives.gov.uk · Research copy typeset by Esheria. Not court-issued or certified.

Source record

OFFICIAL

[2026] EWHC 2292 (Comm)

Case No: CC-2024-BHM-000031

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS IN BIRMINGHAM

Circuit Commercial Court (KBD)

Before: 4 September 2026
HIS HONOUR JUDGE CHARMAN (Sitting as a Judge of the High Court)

Between: -----
DEL BOSQUE LIMITED
- and -
(1) AMIR SHAFIE
(2) FARSHID SHAFIE
(3) RAKESH KUMAR MAL
(4) INFINITE ICT LIMITED

Claimant
Defendants
Mr Benjamin Lewy (instructed by Field Fisher LLP) for the Claimant
Mr Paul O'Doherty and Ms Alexandra Murphy (instructed by Davis Woolfe) for the
First
Defendant
The Second and Third Defendants appeared in person and the Fourth Defendant
appeared by its
Directors, the Second and Third Defendants
Hearing dates: 10 – 12 June 2026

JUDGMENT

(Draft Judgment 21 August 2026) This judgment was handed down remotely by circulation to the parties' representatives at 10.30 am on 4 September 2026 and by release to the National Archives OFFICIAL OFFICIAL His Honour Judge Charman

1. This claim is part of a wider dispute between the Claimant ("DBL") and the First Defendant ("Mr Shafie"). DBL operates in the construction industry, providing project management services. At the material time its largest client was the Department for Work and Pensions ("DWP"). Mr Shafie was a director and 25% shareholder in DBL as well as an employee. He was suspended from his employment in November 2023 and resigned his employment the day before a disciplinary hearing was due to take place on 28 February 2024, alleging repudiatory breach of his employment contract by DBL. Mr Shafie has brought a claim against DBL for unfair dismissal and intends to present a petition under section 994 of the Companies Act 2006 ("the 2006 Act") alleging unfair prejudice in relation to his shareholding in DBL.
2. The Second Defendant is the father of Mr Shafie ("Farshid Shafie"). He is a retired teacher of IT and a director and shareholder in the Fourth Defendant ("Infinite"). Infinite was in the business of providing IT support services. At the material time, DBL was its only customer. The Third Defendant ("Mr Mal") is also a founder, director and a shareholder of Infinite. Mr Mal worked full time for the Wolverhampton and Dudley Education Department at the times material to this action. Mr Mal had been a student of Farshid Shafie and they had become friends. 3. In this claim, DBL alleges that Mr Shafie acted in breach of his duties as a director in appointing Infinite as DBL's IT contractor without disclosing his connection with it through his father. DBL also claims that Farshid Shafie, Mr Mal and Infinite dishonestly assisted those breaches of duty. DBL also claims that Mr Shafie made unauthorised disclosures of confidential information to third parties. DBL also alleges that the Defendants, or some of them, conspired to unlawfully access DBL's computer system and copy a large volume of its data; that Infinite was responsible for an email systems failure and that Infinite has retained usernames and passwords necessary to control DBL's domain name. The Issues 4. In their skeleton argument, Mr O'Doherty and Ms Murphy argued on behalf of Mr Shafie that he is entitled to a whistleblowing protection and to defend the claims OFFICIAL OFFICIAL against him on that basis. Mr Lewy objected as no such defence, or the facts which would make out such a defence, had been pleaded. After hearing argument, I agreed with Mr Lewy and determined that as the facts necessary to make out any such defence were not pleaded, it was not open to Mr Shafie to advance a whistleblower defence in this action unless he sought to amend his pleaded Defence. When I asked Mr O'Doherty if he had a proposed amendment or would like a short period to formulate one, he stated that Mr Shafie would not seek to amend his statement of case and would proceed with his Defence as pleaded.

5. The issues arising for determination in this claim are:
- (a) Was Mr Shafie's appointment of Infinite as DBL's IT provider done in breach of his directors' duties?
 - (b) If so, are any or all of Farshid Shafie, Mr Mal and Infinite liable for dishonestly assisting him in those breaches of duty?
 - (c) Did any of Mr Shafie's dealings with Infinite during the contract amount to breaches of directors' duties?
 - (d) If so, are any or all of Farshid Shafie, Mr Mal and Infinite liable for dishonestly assisting him in those breaches of duty?
 - (e) Is Mr Shafie entitled to relief from any liability for any breach of duty, in whole or part, pursuant to section 1157 of the 2006 Act?
 - (f) Did the Defendants or any of them access DBL's computer systems and copy data between January and March 2024 in breach of the Computer Misuse Act 1990 or otherwise unlawfully?
 - (g) If so, did any of the Defendants engage in an unlawful conspiracy to do so?
 - (h) Is Infinite liable for DBL's email system failure in March 2024?
 - (i) Is Infinite obliged to handover usernames and passwords necessary for the controlling of DBL's domain name?
 - (j) What remedies is DBL entitled to and from whom by reason of any liability of the Defendants? Approach to the Evidence 6. I have considered and borne in mind all of the oral evidence and the evidence included in the trial bundle, including the evidence introduced during the trial. I cannot sensibly summarise everything I heard or read in evidence or determine each and every dispute of fact however tangential its relevance and I do not propose to do so. I have however considered and taken into account everything that was before me OFFICIAL OFFICIAL and I will refer to the evidence as necessary throughout this judgment. I have attempted to distil into this judgment only such material as is necessary for the parties to understand what I have decided and why. My not mentioning a particular matter should not therefore be treated as my having overlooked it. 7. I have been assisted by very helpful skeleton arguments from Mr Lewy on behalf of DBL and of Mr O' Doherty and Ms Murphy on behalf of Mr Shafie. Farshid Shafie and Mr Mal also filed a joint skeleton argument which clearly set out their case and that of Infinite. I am grateful to each of them and also for the polite and professional way in which the trial was conducted by each of them, despite the very serious allegations and attacks on the honesty of some of the participants which were raised.
8. When considering the evidence, I bear in mind the observations of Leggatt J in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 Comm at paragraphs

[15] - [22]. These include that:

- (a) Memory is especially unreliable when it comes to recalling past beliefs, which are revised to make them more consistent with present beliefs.
 - (b) The process of civil litigation itself subjects the memories of witnesses to powerful biases because witnesses often have a stake in a particular version of events.
 - (c) Considerable interference with memory is introduced into civil litigation by the procedure of preparing for trial; the effect of the process of preparing to give evidence is (1) to establish in the mind of the witness matters in his or her own statement (whether they be true or false) and (2) to cause the witness's memory of evidence to be based increasingly on this material and later interpretations of it rather than on the original experience of events.
9. Leggatt J went on to state that in commercial cases, the best approach is to base findings of fact on inferences drawn from documentary evidence and known or probable facts, rather than the recollections of witnesses. As explained by Floyd LJ in *Martin v Kogan* [2020] FSR 3, a proper awareness of the fallibility of memory is necessary but does not relieve judges of the task of making findings of fact based upon all of the evidence.
10. This approach applies to all cases and not just commercial ones, as explained by Mostyn J in *Carmarthenshire County Council v. Y* [2017] EWFC 36: "In my opinion this approach applies equally to all fact-finding exercises, especially where the facts in issue are in the distant past. This approach does not dilute the OFFICIAL OFFICIAL importance that the law places on cross-examination as a vital component of due process, but it does place it in its correct context."
11. In addition, as was observed by Arden LJ in *Wetton v Ahmed* [2011] EWCA Civ 610 at [14], contemporaneous written documentation is also important in assessing credibility.
12. This is a commercial case, and I have these observations in mind when considering the evidence, but my conclusions have been reached after consideration of all the evidence advanced by the parties. The Witnesses
13. DBL called as witnesses its Chief Executive and shareholder, Sean Byrne, and two other shareholder-directors, Keith Johns and Bradley Greensmith. Mr Shafie gave evidence on his own behalf. Farshid Shafie also gave evidence on his own behalf and on behalf of Infinite. Mr Mal also gave evidence on his own behalf and on behalf of Infinite.
14. This is a case in which each of the defence witnesses have a direct financial interest in the outcome and Mr Shafie has a greater interest by reason of its potential impact on other proceedings. Similarly, each of the Claimant's witnesses have an indirect financial interest in the outcome as major shareholders in DBL, and an interest in the outcome in respect of its potential effect on other litigation between DBL and Mr Shafie. In my judgment, to varying degrees, this interest had some effect on the approach of each of them to the giving of their evidence and I bear this in mind when considering their evidence. This is a further reason

why in this case, I regard the contemporaneous documents as generally the most reliable evidence of what occurred and as reliable indicators of what was in the mind of the protagonists from time to time.

15. Mr Byrne made by far the longest witness statement on behalf of DBL and was cross examined at greater length than the other directors. A striking feature of Mr Byrne's oral evidence was his reluctance to give Mr Shafie credit for anything at all and his readiness to presume a dishonest explanation for Mr Shafie's conduct at every opportunity. Notably, in his witness statement he accuses Mr Shafie of corruption, stating that he was taking "a backhander" in the absence of any evidence to support such a very serious allegation. In his closing submissions, Mr Lewy pointed to the considerable acrimony between the Claimant's witnesses and Mr Shafie, which he submits is justified in the light of the evidence, and said that I should not conclude OFFICIAL OFFICIAL that Mr Byrne was partisan in his evidence. There clearly is considerable acrimony between DBL and Mr Shafie and in the light of some of the evidence to which I refer later in this judgment, such acrimony is at least to some degree understandable. However, I agree with Mr O'Doherty that parts of Mr Byrne's evidence were so clouded by his hostility towards Mr Shafie that some doubt is cast on his wider evidence so that it must be treated with some caution. Examples include the refusal to accept in cross examination that Mr Shafie raised a concern about "ghost" employees (to which I refer in more detail below) at any point, when the evidence is that he did raise the matter and Mr Byrne refers to his doing so in his witness statement, and a refusal to accept that Mr Shafie did a good job in resolving complaints raised by an important client contact when the contact himself said as much in an email.
16. The cross examination of each of Mr Johns and Mr Greensmith was much shorter than that of Mr Byrne. I make the same observations about their evidence as I have about his in that I do consider that the evidence of each was clouded by their hostility towards Mr Shafie, although to a slightly lesser extent in the case of Mr Johns. It was also apparent that IT matters were the purview of Mr Shafie in the early years and later of Mr Byrne. Mr Johns and Mr Greensmith only became concerned with them when it directly affected their own day to day work and when it was raised at a board meeting, so their evidence is peripheral to parts of the claim.
17. I found Mr Shafie to be an unusual witness in that his answers in cross examination varied between open, frank and in my judgment, honest answers combined with reasonable concessions at times, and at others, answers which were obviously wrong and which the contemporaneous documents indicate that he did not believe at the time were true. As Mr Lewy pointed out, his evidence in his witness statement contradicts his case as pleaded in his Defence in a number of respects, and this alone raises questions as to his credibility. During his cross examination, I informed Mr Shafie of his privilege against self-incrimination and reminded him of it on several occasions. Mr Shafie chose not to rely on that privilege at any point and advanced an explanation for each of the allegations put to him. I formed the view that he is highly intelligent and was very good at his former job with

DBL. He believes that he has been treated unfairly by DBL and that its directors unreasonably failed to appreciate what he did for the business. He may be at least partly correct about that. However, I do consider that parts of his evidence were unreliable and clearly untrue and that affects his wider OFFICIAL OFFICIAL credibility. For that reason, I treat his evidence with considerable caution where it is not supported by contemporaneous documentation.

18. I also informed Mr Farshid Shafie of his privilege against self-incrimination and reminded him of it on several occasions during his cross examination. Unlike his son, Farshid Shafie relied upon that privilege. I accept Mr Lewy's general point that Farshid Shafie's evidence included answers that were not only wrong but which, as a clearly intelligent man, he must have known were wrong. Consequently, I also treat his evidence with considerable caution where it is not supported by contemporaneous documents.
19. I formed a different impression of Mr Mal. Mr Mal presented as considerably less commercially sophisticated than the other witnesses, even than Farshid Shafie. In my judgment, Mr Mal gave generally honest answers in cross examination and made reasonable concessions. Whilst Mr Mal's evidence included an inevitable element of self-justification frequently present in the evidence of those whose conduct and honesty is under attack, he was an essentially honest witness and largely simply confused as to how he found himself caught up in the proceedings as a result of helping a friend when asked. He presented no hostility towards DBL's witnesses despite the serious allegations that DBL makes against him and when engaged in cross examination sought confirmation from DBL's witnesses that they got on well with him and that he provided them with a good service, which they generally accepted. Mr Mal's witness statement included some matters which I have found cannot be correct and his involvement in the matters in dispute was at times rather greater than his statement acknowledges. In general, I consider that his oral evidence was predominantly honest but, in some places, naïve. The Law
20. The claims advanced by DBL engage a number of distinct causes of action. Counsel made submissions as to each. Directors' Duties
21. It is common ground that as a director of DBL, Mr Shafie owed it the statutory duties of a director as set out at sections 170 to 177 of the 2006 Act. DBL alleges that the following duties owed by Mr Shafie are of particular relevance to its claim:
 - (a) The duty under section 172 (1) of the 2006 Act, to act in good faith so as to promote the success of DBL for the benefit of its members as a whole. OFFICIAL OFFICIAL
 - (b) The duty under section 174 (1) of the 2006 Act to carry out the duties as a director with reasonable care, skill and diligence.
 - (c) The duty under section 175 (1) of the 2006 Act to avoid any situation where the director has a conflict of interest with the interests of DBL.

- (d) The duty under section 177 (1) of the 2006 Act, to disclose to the other directors the nature and extent of any personal interest he had in a proposed transaction to be entered into by DBL. The duty to disclose is not absolute in circumstances. Section 177 (6) provides that a director need not declare an interest in a transaction if the transaction cannot reasonably be regarded as likely to give rise to a conflict of interest, if, or to the extent that the other directors are already aware of it. The other directors will be treated as aware of anything of which they ought reasonably to be aware.
22. Mr Lewy drew to my attention the decision of the Court of Appeal in *Saxon Woods Investments v Costa* [2025] EWCA Civ 708 and relies upon it as authority that a director's duty to act in good faith includes a duty to act honestly towards the company, so that deliberately deceiving the company will almost always be inconsistent with that duty. That case has, since the trial, been considered by the Supreme Court. Its judgment is reported at [2026] UKSC 21. The Supreme Court emphasised that the test is concerned with whether viewed objectively a director's conduct is in accordance with the duty rather than the director's subjective intention. However, Mr Lewy's general point that a director who acts dishonestly towards his company to deliberately deceive it will usually be in breach of his duty under section 172 in my judgment remains correct, so far as it goes. In this case, I do not regard that as usefully adding to the clear words of section 172 itself.
23. In respect of the duty of disclosure owed under section 177, Mr Lewy submits that the requirement is to make full disclosure of all material facts, including the extent of the interest in the relevant transaction and the source and scale of the profit to be made, as was stated by Snowden LJ in *Humphrey v Bennett* [2023] EWCA Civ 1433. I accept that submission. A director's duty of disclosure under section 177 is to disclose all the material facts, so that the company's board of directors is fully informed of the position.
24. Mr Lewy further submits that, as stated by Mummery LJ in *Gwembe Valley v Koshy* [2003] EWCA Civ 1048, at paragraph 59, the duty cannot be discharged by a OFFICIAL OFFICIAL director's informal disclosure made piecemeal or by proving that the individual board members in fact had knowledge of the relevant facts. I agree.
25. Mr O'Doherty on behalf of Mr Shafie accepts that he owed to DBL each of the statutory duties during the period when he was a director of it. However, he submits, in reliance on the decision of the Court of Appeal in *Burns v Financial Conduct Authority* [2017] EWCA Civ 2140, that what is required to be proved to make out a breach of section 177 is that there is an actual conflict of interest or that objectively viewed, there is a real sensible possibility of a conflict arising from the relevant transaction. I accept that submission. Dishonest Assistance

26. A finding of dishonest assistance requires first that a primary breach of trust or fiduciary duty is found. A breach of directors' duties is sufficient. In order for a finding of dishonest assistance, it is necessary to find that a third party assisted a director in his breach of duty and that the assistance was dishonest.
27. Whether a third party provided assistance in breach of fiduciary duty is a question of fact. It is present where the third party's conduct (including by omission) in fact assists the fiduciary to do what was in breach of duty.
28. Dishonesty has the same meaning as in other contexts and the now well-known test stated by Lord Hughes in *Ivey v Genting Casinos* [2018] UKSC 67 at paragraph 74 applies: "When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."
29. Accordingly, when assessing the dishonest assistance allegations, it is necessary to determine what the relevant defendant did; whether it assisted Mr Shafie in breaching his duties; what the state of the relevant defendant's knowledge was when providing OFFICIAL OFFICIAL the assistance, and in the light of that knowledge, determine whether his conduct was dishonest by the standards of ordinary decent people. Unlawful Extraction of Data
30. DBL relies on the unlawful extraction of data as an unlawful means as part of its unlawful means conspiracy claim. It is well-established that a director owes an equitable duty of confidentiality to his company (see e.g. *Eurasian Natural Resources Corporation v Judge* [2014] EWHC 3556). As stated by ICC Judge Prentis in *Lahey v MacAbuag* [2023] EWHC 1800 (Ch), a director who is suspended as an employee and told not to access the company's computer network while suspended, is in breach of his duties if he hacks in and downloads material. A concern that the company would delete relevant documents is not an excuse or defence.
31. As was explained by Megarry J in *Coco v A N Clark (Engineers) Ltd* [1969] RPC 41, in order for information to be protected by the equitable duty of confidence:
 - (a) It must have the necessary quality of confidence about it;
 - (b) It must have been imparted in circumstances importing an obligation of confidence; and
 - (c) There must be unauthorised use of that information to the detriment of the party entitled to the confidence.

32. The downloading or copying of documents in breach of confidence, which may be relevant to future litigation or a future regulatory matter is not justified by those features. A party to litigation must rely on the court to ensure compliance with disclosure obligations. Self-help in breach of confidence is not permissible even where the party has a genuine fear that the other party will behave unlawfully and conceal material – see *Tchenguiz v Imerman* [2010] EWCA Civ 908 and *Brandeaux v Chadwick* [2011] EWHC 3241.
33. A consultant who downloads company documents on the instruction of an individual director cannot necessarily rely upon that director's authority to give such an instruction. This was made clear by *Norris J in Magical Marking Ltd v Holly* [2008] EWHC 2428 (Ch). He held that a director acting unilaterally in instructing IT consultants to download company documents while in dispute with his co-directors or the company does not have actual authority to do so. Such authority is vested in the board and not directors individually. *Norris J* further held that such a director does not necessarily have ostensible authority to direct such access to and downloading of confidential company documents, as where the instruction is given in abnormal OFFICIAL OFFICIAL circumstances which should put the consultant on enquiry, ostensible authority will not be present. Tort of Misuse of Private Information
34. DBL also relies on the tort of misuse of private information as an unlawful means as part of its unlawful means conspiracy claim. Mr O'Doherty submits that to make out the tort, a claimant needs to establish that it has a reasonable expectation of privacy in the relevant information and if so, that such an expectation is not outweighed by a countervailing interest. I agree.
35. Mr O'Doherty further submits that to establish the tort there must also have been actual misuse of the relevant information. I also agree.
36. Mr O'Doherty further points out that authorities on such misuse are concerned with the publication of the private information. He submits that DBL has not pleaded any misuse of such information and has not pleaded that any information said to be wrongfully downloaded is information in which DBL had a reasonable expectation of privacy. Mr O'Doherty also emphasises that the claim is brought by DBL and not by the directors or employees personally and that the claim can only relate to DBL's confidential information.
37. In my judgment, Mr O'Doherty's pleading point is well made. Just as Mr Shafie was unable to run a whistleblowing defence because he did not plead the necessary facts to make out such a defence, DBL does not plead all of the elements of a claim for the tort of misuse of private information, notably, its statement of case does not identify adequately or at all what is said to be DBL's private information and nor does it plead what is said was done which amounted to misuse of that information. In those circumstances, DBL cannot make out a claim in the tort of misuse of private information and its claim of an unlawful means conspiracy cannot rely on that tort as unlawful means. Computer Misuse Act 1990 and Data Protection Act 2018

38. DBL also relies on breaches of the Computer Misuse Act 1990 and the Data Protection Act 2018 as unlawful means for its unlawful means conspiracy claim. Section 1 of the Computer Misuse Act 1990 provides that a criminal offence is committed where:
- (a) A person causes a computer to perform any function with intent to secure access to any program or data held in any computer; and
 - (b) The intended access is unauthorised; and OFFICIAL OFFICIAL
 - (c) The person knows at the time of causing the computer to perform the function that the intended access is unauthorised.
39. Access is “unauthorised” within section 1, where a defendant is not entitled to control access of the relevant kind and does not have the consent from a person who is entitled to control access (see section 17(5) of the Act).
40. Section 170 of the Data Protection Act 2018 provides that an offence is committed by a person who knowingly or recklessly obtain or discloses personal data without the consent of the data controller. A statutory defence is made out where a defendant acted in the reasonable belief that they were acting with a legal right.
41. Section 170 provides for a number of defences. They include where the defendant can prove that their action was necessary for the purposes of preventing, investigating or detecting crime, that in the particular circumstances, the defendant’s act was justified as being in the public interest, and that the defendant acted in the reasonable belief that they had a legal right to do the act which would otherwise amount to the offence. Unlawful Means Conspiracy
42. As stated in Clerk & Lindsell on Torts (24th ed) at paragraph 23-108, an unlawful means conspiracy is committed where “two or more persons combine and take action which is unlawful in itself with the intention of causing damage to a claimant who does incur the intended damage. It is not necessary for the injured party to prove that causing him damage was the main or predominant purpose of the combination but that purpose must be part of the combiners’ intentions”.
43. Liability for the tort of unlawful means conspiracy does not require that the defendant know that the means were unlawful, as explained by the Court of Appeal in *Racing Partnership Ltd v Done Brothers* [2020] EWCA Civ 1300.
44. Mr O’Doherty submitted that the determination of whether there was an unlawful means conspiracy frequently requires careful examination of the particular facts. I agree. As Henshaw J observed in *Ivy Technology v Martin & Bell* [2022] EWHC 1218 (Comm) at paragraph 583: “It is necessary to look at all the particular facts of the case to establish whether there was a combination and whether someone participated, actively or passively, in the conspiracy. Being aware that someone was committing a potentially unlawful act, but (simply) not taking steps to stop it, may not suffice to demonstrate a combination, OFFICIAL

OFFICIAL but it all depends on the circumstances, and in particular the position of the individual concerned ...” Section 40 of the Companies Act 2006

45. Section 40 of the 2006 Act provides: “(1) In favour of a person dealing with a company in good faith, the power of the directors to bind the company, or authorise others to do so, is deemed to be free of any limitation under the company's constitution.
- (2) For this purpose–
- (a) a person “deals with” a company if he is a party to any transaction or other act to which the company is a party,
- (b) a person dealing with a company–
- (i) is not bound to enquire as to any limitation on the powers of the directors to bind the company or authorise others to do so, (ii) is presumed to have acted in good faith unless the contrary is proved, and (iii) is not to be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution.
- (3) The references above to limitations on the directors' powers under the company's constitution include limitations deriving–
- (a) from a resolution of the company or of any class of shareholders, or
- (b) from any agreement between the members of the company or of any class of shareholders.
- (4) This section does not affect any right of a member of the company to bring proceedings to restrain the doing of an action that is beyond the powers of the directors. But no such proceedings lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (5) This section does not affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.”
46. Mr O’Doherty submitted that this gives rise to a statutory presumption that Mr Mal and Infinite acted in good faith when dealing with DBL when they were acting on Mr Shafie’s instructions. He said that I should have the section in mind when considering some of the allegations against Mr Mal and Infinite. Mr O’Doherty submits that the section protects those dealing with any individual director whereas the section refers to the “directors” plural. If Mr O’Doherty is right, the section gives each individual OFFICIAL OFFICIAL director the unlimited power to commit the company to a party who contracts with him in good faith.
47. If that is correct, it would remove the need for a party contracting through an individual director to show that the particular director had ostensible or apparent authority to bind the company. This proposition is unlikely. So far as I am aware, it is not the subject of any authority. In my judgment, the ordinary meaning of the words used in section 40 is that someone dealing in good faith with the directors as a body or board need not enquire as to

whether they are subject to any limitation in the company's constitution. A number of matters favour this interpretation. Section 40 of the 2006 Act replaced section 35A of the Companies Act 1985. Unlike that section, it, does not refer to the "board" of directors. That section gave rise to problems in practice in establishing that "the board" was acting as a quorate body procedurally properly in some cases. The removal of the word "board" in section 40 removed that issue. The retention of the reference to "directors", plural, indicates that Parliament did not intend to change the law on ostensible authority as it applies to company directors. I am not aware that the law as to ostensible authority has proved particularly problematic in its application to company directors and I have not been referred to any authority that section 40 did so, nor to a *Pepper v Hart* analysis of section 40 which supports such a seemingly unlikely intention.

48. I therefore reject Mr O'Doherty's submission that section 40 displaces the common law doctrine of ostensible authority and entitles a party dealing with a single director among several to simply presume that the director has authority to bind the company in all cases and without enquiry. In my judgement, the section does not assist any of the Defendants in this case. Factual Findings
49. Having considered all of the evidence, I make the following factual findings going to issues of liability, for the reasons stated:
- (a) In the autumn of 2021, DBL was a fairly new business and required IT assistance. Mr Shafie offered to find that assistance. When Mr Shafie proposed that Infinite ICT provide IT services to DBL, there was no existing business providing such services. This is accepted by all of the Defendants.
 - (b) When the provision of IT services to DBL began in November 2021, "Infinite ICT" was simply a trading name for a business which was carried on as a sole trader. Infinite as a company was only incorporated on 14 September 2022. OFFICIAL OFFICIAL Accordingly, the business which began providing the IT services had no existing clients or customers and no track record of providing such services to other businesses. This is also accepted by each of the Defendants.
 - (c) Both Farshid Shafie and Mr Mal had IT expertise. Farshid Shafie had taught IT in a school for many years, and Mr Mal had been one of his students and at the relevant time worked as an IT consultant for the Department of Education. This is common ground.
 - (d) Mr Mal was the 'face' of Infinite and was the one who went into DBL's offices when such attendance was necessary. He did so only a few times a year as DBL generally used a helpline when assistance was required. These are agreed facts.
 - (e) When the IT services began to be provided, the business which dealt with DBL was owned and carried on by Farshid Shafie with the assistance of Mr Mal. I reject the evidence of Mr Shafie and of Farshid Shafie that it was Mr Mal's business and that Farshid Shafie was simply helping out for the following reasons: (i) the contemporaneous documents show that

Farshid Shafie was carrying on the business. Notably, the bank account used to operate the business and into which payments from DBL were received was in his name and his home address was the address for the account. The bank statements for the account show the name of the account holder and the address and money coming in from DBL in payment of invoices delivered in the name of “Infinite”. Further, money was taken out of the account by him and applied for his own benefit. The bank statements show that Farshid Shafie both put funds into the account and received payments out of it into another bank account in his name. They also show cash withdrawals from which it can be inferred were made by Farshid Shafie as it was his account and he did not suggest that they were made by anyone else. Payments from the account were also used to pay for items in restaurants near to Farshid Shafie’s home in Stourbridge. There is no indication of any such purchases close to Mr Mal’s home in Wolverhampton. The bank statements do show a couple of modest payments to Mr Mal. In each case, the reference for the payment is “Farshid” with no reference to Infinite or DBL. This indicates that Farshid Shafie was paying Mr Mal for work Mr Mal had done for Farshid. In my judgment, the bank statements record payments which are only consistent with Mr Mal helping Farshid OFFICIAL OFFICIAL Shafie and the movements on the bank account are not consistent with the business being that of Mr Mal and Farshid Shafie occasionally assisting him. (ii) It was Farshid Shafie who was preparing and sending the invoices, as is apparent from emails passing between him and Mr Shafie as to how to present those invoices and as he acknowledged during cross examination that he did so. (iii) Email correspondence relating to the provision of services to DBL by Infinite ICT in 2021 and the first three quarters of 2022 were exchanged between Mr Shafie and Farshid Shafie. (iv) (v) There were no such communications between Mr Shafie and Mr Mal. The Defendants did not point to any correspondence relating to the running of the business of Infinite ICT to which Mr Mal was a party. In my judgment, all of the contemporaneous documents to which I have been referred indicate that it was Farshid Shafie who was trading under the name “Infinite ICT” and contracting with DBL for the provision of IT services.

- (f) Before sending the first invoice to DBL at the outset of the relationship, Farshid Shafie sent a draft invoice to Mr Shafie seeking his comment and approval. Mr Shafie gave his approval, subject to the invoice being given a number which was not 001, even though it was the first ever invoice issued by Infinite ICT. This is apparent from emails passing between them and was accepted by them both in cross examination. I do not accept Mr Lewy’s submission that this is evidence that Mr Shafie was seeking to mislead others at DBL to believe that Infinite ICT was an established business with other clients. I accept his explanation that it was done to make the business appear more professional to the outside world more generally. However, I do consider this to be yet further evidence that it was Farshid Shafie who was “Infinite ICT” and operated its business.

- (g) That first invoice and all other invoices up to the incorporation of Infinite, were issued with the name “Infinite ICT Rakesh Mal” and then giving Mr Mal’s home address, together with the bank account number and sort code of the account in Farshid Shafie’s name to which I have referred but giving the account name “InfiniteICT”. This is apparent on the face of the invoices. OFFICIAL OFFICIAL
- (h) Following the incorporation of Infinite, the format of the invoices changed, and they were issued in the name of Infinite ICT Limited and the address given was the company’s registered office, which was the address of its accountants. There was a new bank account, with the same bank but in the name of Infinite. On every invoice, the “contact information” gave the name “Rakesh Mal” and an email address support@infiniteict.co.uk. This is all apparent on the face of those invoices.
- (i) The email address support@infiniteict.co.uk was one to which both Farshid Shafie and Mr Mal had access. This was their evidence, which I accept.
- (j) Farshid Shafie became a director of Infinite on 1 November 2022, about six weeks after it was incorporated, but his interest was not registered for about another eleven months. This was accepted by Farshid Shafie during cross examination.
- (k) Nowhere on any invoice or any item of correspondence passing between Infinite and DBL did Farshid Shafie’s name appear. I make this finding because I was not referred to any such document in which his name appeared and when asked, Farshid Shafie accepted that it was probably correct.
- (l) There was no reference to Farshid Shafie on any item of correspondence from or any publicly available document relating to Infinite until the transfer of shares in it into his name was registered at the Companies Registry in October 2023. I make this finding because I was not referred to any such document and because Farshid Shafie accepted that this was probably correct when asked about it.
- (m) When it was necessary for someone to attend DBL’s offices on behalf of Infinite, it was always Mr Mal and never Farshid Shafie. This was the evidence of each of the witnesses who gave evidence on the point, including both Mr Mal and Farshid Shafie. Notably, this is despite Mr Mal having a full-time job elsewhere and Farshid Shafie having no other employment of which I was informed.
- (n) The directors of DBL (other than Mr Shafie) were not aware that prior to its incorporation, the business of Infinite ICT was a business carried on by Farshid Shafie as a sole trader. They were also unaware that payments made by DBL in respect of invoices issued by Infinite ICT were being made into a bank account belonging to and in the name of Farshid Shafie. Further, they were not aware following its incorporation that Infinite was a company being run by Farshid Shafie. I make these findings because: OFFICIAL OFFICIAL (i) There is a direct conflict of oral evidence between the witnesses called by DBL on one side and Mr Shafie, supported by Farshid Shafie on the other as to whether DBL directors were informed

of Farshid Shafie's involvement with Infinite. The other directors say that they were not told and had no knowledge that Farshid Shafie was even involved with Infinite, let alone that it was a trading name used by him initially, and then a company in which he was interested. (ii) Mr Shafie and Farshid Shafie say that the directors were informed of his involvement. They do not say that Infinite was Farshid Shafie prior to incorporation and that it was a company in which he had a direct financial interest from incorporation, as I have found. (iii) This is consistent with their case that Infinite was Mr Mal's business with which Farshid Shafie helped out. However, it means that if I accept their evidence on this point, the directors were still not informed that Infinite was Farshid Shafie until incorporation or that money paid by DBL to Infinite was in fact being paid into a bank account belonging to Mr Shafie. (iv) There are no contemporaneous documents at all in which DBL is informed of Farshid Shafie's ownership of or even involvement with Infinite. (v) Farshid Shafie did not have an email address which included his name and never signed his name to any communication he sent to DBL. (vi) The invoices issued pre-incorporation presented Infinite ICT as the trading name of Mr Mal and that it was trading from his address while giving a bank account number and sort code for an account in the name of Farshid Shafie but with the account name "InfiniteICT". Mr Shafie did not attempt to explain this and simply said that it was a matter for Infinite ICT. Farshid Shafie could not explain it. Mr Mal did not offer any explanation, but in fairness to him, was not asked about it. (vii) I consider that it is inherently unlikely that there would be no reference at all to Farshid Shafie in any document given the extent of his activity unless he made a conscious decision to ensure that there was no such reference. It must have been a conscious decision to issue invoices as if they came from Mr Mal and giving an incorrect account name for the bank account into which payment was to be made rather than give Farshid Shafie's name. That decision must have been made by Farshid Shafie OFFICIAL OFFICIAL himself and by, or at least with the knowledge of Mr Shafie, who reviewed the first invoice and saw all of the invoices which presented Infinite as being Mr Mal. This contemporaneous documentary evidence, in my judgment, establishes that on the balance of probabilities, the directors of DBL were deliberately not told of Farshid Shafie's involvement in or with Infinite at all. I therefore reject the evidence of Mr Shafie that the directors were informed that Infinite was Mr Mal assisted by Farshid Shafie at the outset and/or at family social events and/or when the directors met Mr Shafie and Farshid Shafie when attending a football match at Manchester United.

- (o) Most of the services that Infinite agreed to provide to DBL were in fact subcontracted to a business known as Vibrant Networks ("Vibrant"). This is agreed by the parties. I accept Mr Mal's evidence that employees of DBL would in practice generally call Vibrant's help desk when they needed assistance, as he was usually at work so unable to provide much assistance.

- (p) Vibrant invoiced Infinite in respect of the services it provided to DBL and Infinite then invoiced DBL after adding a mark-up. The Defendants all accept in their evidence that this was how Infinite operated. Farshid Shafie said that the mark-up was a normal commercial practice and compensated Infinite for the work it did in organising the supply and providing help and support. He maintained that he believed that the charges reflected the services provided.
- (q) The mark-up charged was not a normal commercial fee for arrangement services. I so find because neither Farshid Shafie nor anyone else was able to explain any link between the items on which a markup was charged or the amount of that mark up, and the limited services that Infinite actually provided in arranging the support from Vibrant. Further, that Infinite's role was primarily to arrange support from Vibrant was not explained or disclosed to DBL at any time. Therefore, there was no agreement that any such mark-up be charged, let alone any agreement to what was frequently a very substantial mark-up.
- (r) Mr Byrne's evidence during cross examination was that he and DBL were not aware that Vibrant was involved with Infinite in providing IT services. When taken to documents which demonstrated that Vibrant was involved in IT matters such as the shutting down remotely of the laptop of an employee on garden leave OFFICIAL OFFICIAL and to inform him that Vibrant would take over machines remotely, he reluctantly accepted that he knew that Vibrant was providing some services but not IT services. Mr Greensmith gave similar evidence during cross examination. I reject that evidence. In my judgment, it is entirely clear from those documents that Vibrant had some involvement in the provision of IT services to DBL and therefore DBL's directors must have been aware that Vibrant had some involvement in the provision of IT services, albeit that they did not have any detailed knowledge of what it did or what the boundaries were between what Infinite did and what Vibrant did.
- (s) However, that is not the same as DBL being aware that Vibrant was in fact providing most of the services for which it paid Infinite and that Infinite charged a mark-up on top of Vibrant's charges. DBL's directors say that they were not so aware and there are no documents received by DBL which disclose the mark up. I find that the Defendants did not wish DBL to know of the mark up. This is clear from emails sent on 30 January 2023, following Vibrant having sent an email to DBL in error. Exchanges between Mr Shafie and Mr Mal make clear that DBL was not supposed to be aware of it and Mr Mal stated in his email to Mr Shafie that he will make sure that it does not happen again. Mr Shafie also tells Mr Mal what to put in the invoice that is to be sent to DBL to cover the Vibrant charges. In my judgment, these exchanges establish that on the balance of probabilities, Mr Shafie, Mr Mal and Infinite did not wish DBL to become aware of how Infinite was passing on Vibrant's charges after adding a mark-up and took steps to prevent it becoming so aware.

- (t) The evidence as a whole is that Mr Byrne and DBL were not aware of the extent to which Vibrant was in fact providing the services for which DBL was paying Infinite and were also not aware that in relation to most of the support it professed to be providing, Infinite had engaged Vibrant to provide the support and was passing on and adding a significant mark up to Vibrant's charges.
- (u) Infinite also charged a substantial mark up on computer equipment and software which it acquired for DBL. This is clear from documents showing Infinite purchasing items such as laptops and related software for supply to DBL and then invoicing DBL a significantly increased sum for those items. Mr Mal and Farshid Shafie accepted this. They say that it is also a normal business practice and that the mark up represents a fee legitimately charged by Infinite for arranging the OFFICIAL OFFICIAL purchase and also dealing with the set up and installation of the products purchased. I find that the adding of a fee for procuring and setting up new equipment is a common business practice. However, there is no explanation for the mark-ups added nor any link either expressed or apparent between the work required to be done and the mark-up added by Infinite. Further, there was no agreement between Infinite and DBL that a particular mark-up would be added or on a particular fee or basis of fee for such services.
- (v) On 3 February 2023, Mr Shafie sent an email to Farshid Shafie at his yahoo personal email address which included detailed information concerning DBL's clients. They both accept that this occurred. Mr Shafie said that the reason was that DBL needed IT assistance in putting together a bid for work from NHS Birmingham. His evidence is that he sent the information to his father for forwarding to a Doug Taylor, an IT expert known to them both, so that Mr Taylor could assist DBL. I accept Mr Shafie's evidence that this was done to enable such work to be carried out by Mr Taylor.
- (w) The data sent included details of prices and costs of NHS Birmingham. It was not marked confidential at any point when sent to Farshid Shafie and it was not encrypted when sent. This is clear on the face of the emails and accepted by Mr Shafie and Farshid Shafie. Nor was it specified that Mr Taylor should treat the information as confidential or that it should be sent to him and dealt with by him securely.
- (x) Infinite invoiced DBL £2,000 for this work, which was paid. The invoice did not disclose that Infinite had passed the work to Mr Taylor. It was suggested that Infinite charged a mark-up above what Mr Taylor charged. However, there is no evidence as to the extent of that mark up.
- (y) On 9 February 2023, Mr Shafie sent to Farshid Shafie at his yahoo personal email address an email forwarding DWP emails and data relating to a DWP digitalisation trial. The email trail from DWP had been forwarded to Mr Shafie from Mr Johns, who had in turn been forwarded it by a contact at DWP under cover of an email stating "don't share wider than Brad / Amir", being a reference to Mr Greensmith and Mr Shafie. That was the email forwarded to Mr Shafie and I therefore find that Mr Shafie had seen that DWP had asked that

he not share the DWP information in the emails more widely. Consequently, he knew that the information in the email was confidential in that DWP had a reasonable OFFICIAL expectation that it would be treated as received in confidence. It is common ground that DWP was a very important client of DBL. Mr Shafie's explanation for forwarding the email chain is that DBL needed to get ready to be able to house digital surveys and that required work to be done by Infinite as DBL's IT service provider. His evidence is that the work was done well and led to the generation of a substantial profit for DBL. I accept that evidence and so find. However, Mr Shafie was unable to provide any explanation for why the confidential information was sent to Farshid Shafie's personal yahoo email address and was not marked confidential. No evidence was advanced that DWP's data was treated as confidential and that appropriate steps were taken to keep it secure.

- (z) On 28 March 2023, Mr Mal sent to Mr Shafie by email a draft proposal from Infinite to DBL for the provision of support with staff data and time management. Mr Shafie accepts that he reviewed and amended the proposal and sent it back to Mr Mal. I find that the proposal was a pitch by Infinite to win work from DBL and that Mr Shafie assisted Infinite in the best presentation of a pitch to DBL to enable Infinite to win business and earn income from it.
- (aa) The same day, Mr Shafie sent another email to Mr Mal amending and adding to a draft email from Infinite to DBL which was sent as an explanation for the increase in the prices which Infinite was charging DBL for the provision of staff laptops. Mr Shafie accepts that he made changes to the draft before it was sent to DBL to justify increased charges. His evidence is that he does not recall whether he saw the increased charges for the laptops or whether he was aware of the amount of the mark-up which Infinite applied to laptops that it supplied to DBL. I find that Mr Shafie assisted Infinite in explaining and justifying increases in charges made by it to DBL. It is inherently unlikely that Mr Shafie would have been unaware of the increase in the charges for laptops when he was asked to review the draft email and I find that he was aware of the sum charged for the laptops. I further find that Mr Shafie was aware that Infinite added substantial mark ups to the prices it charged for laptops and other items it supplied to DBL. However, there is no evidence that Mr Shafie was aware of the particular mark-up applied by Infinite to the laptops which were the subject of the email and I therefore make no finding as to his knowledge of the particular mark-up.
- (bb) Mr Shafie's explanation for the pitch email was that the original draft of the pitch email was prepared by Farshid Shafie and he was providing business OFFICIAL OFFICIAL assistance to Infinite which was not commercially sophisticated. He said that he was assisting Infinite in providing DBL with the information it would require from the pitch in order to decide whether to proceed with the proposal and engage Infinite to provide the services included in the pitch. Mr Shafie said his recollection of the price increase email is limited but Mr Mal asked him to assist with the email, so he did so. He maintained that as Infinite was a start-up business, he and DBL had agreed to assist it with business development matters, but he did not specifically tell his fellow directors that he provided Infinite with assistance in making pitches to DBL to gain work from it or in explaining and justifying price increases which Infinite charged to DBL. Mr Byrne's evidence was that DBL was not aware that Infinite was a

start-up business and did not agree to the provision of such assistance. I was not taken to any documentation to which anyone other than Mr Shafie at DBL was party which referred to Infinite being a start-up business or indicated that DBL had agreed to provide such advice and assistance to it. Nor was I referred to any documentation evidencing the provision of such advice and assistance by anyone at DBL other than Mr Shafie himself. DBL was itself a fairly new and rapidly expanding business when it engaged Infinite. I consider it inherently unlikely that in such circumstances it would have engaged as a key supplier a business that it believed required such support or that it would have agreed to provide such free support. From this evidence, I find that Mr Shafie personally agreed to provide such support to Infinite to assist his father in establishing and growing the business, but that the other directors were not aware that he provided such support. Further, they were not aware that Mr Shafie provided assistance to Infinite in the preparation of the draft proposal from Infinite to DBL for the provision of support with staff data and time management in late March 2023 or that he provided assistance to Infinite in explaining and justifying price increases that Infinite charged to DBL. (cc) In or about early October 2023, Mr Byrne investigated the cost of the services which Infinite was providing to DBL and prepared a comparison document which set out the charges made by Infinite compared with the charges which another supplier, Coactive ICT (“Coactive”), would charge for those services. Mr Byrne presented the document to a board meeting on 7 October 2023 in support of a proposal that DBL engage Coactive in place of Infinite. In broad terms, the comparison showed that Infinite was charging about 50% more for the services OFFICIAL OFFICIAL than Coactive would charge. It is also notable that when compared with the charges which Vibrant levied to Infinite for the services that it was providing to DBL, Coactive’s charges were very similar. It was not suggested that Mr Byrne’s comparison document contained serious inaccuracies and I find that the figures included in it were a broadly accurate statement of the charges being levied by Infinite and of what Coactive was proposing to charge for the same services at that time. (dd) When asked about the document and the board meeting in cross examination, Mr Shafie’s evidence was that he was presented with it at a board meeting with about 20 minutes’ notice and the matter was voted on at the meeting following a discussion of only about 10 minutes. He therefore abstained on the vote on the basis that he did not know enough about the new proposal to vote either way. I find that Mr Shafie did abstain on the vote and did not mention that Infinite purchased services from Vibrant and added its own mark-up. The other directors voted in favour of the resolution. It was passed and DBL terminated its contract with Infinite and engaged Coactive as its IT services supplier shortly thereafter. (ee) Shortly after that, the relationship between Mr Shafie and the other directors of DBL began to break down. This is common ground. (ff) Mr Byrne’s evidence was that during 2023, Mr Shafie’s performance and behaviour at work had become unsatisfactory, that he became evasive and was frequently absent, often presented as unkempt and his behaviour was argumentative and obstinate; he would drink more than was sensible at business events and would become aggressive and embarrassing in his behaviour as a result; he would often leave meetings and sometimes the building to take long phone calls which were not explained. Both Mr Greensmith and Mr Johns said they

agreed. These general allegations are not supported by any contemporaneous documents. When questioned about them in cross examination, Mr Byrne spoke in generalities. Set against that is documentary evidence in October 2023 of a client making complimentary reports of Mr Shafie dealing with a difficult situation and unprofessional conduct of another DBL employee in a skilful and professional manner. In my judgment, the evidence put forward by DBL fails to establish that Mr Shafie was engaging in the general behaviour alleged during 2023 and I make no finding of any such behaviour. OFFICIAL OFFICIAL (gg) Mr Byrne, Mr Johns and Mr Greensmith also refer to some more specific examples of unprofessional behaviour by Mr Shafie. They said that in his calendar he put matters in as private appointments, meaning others could not see what he was doing and said that many of these were business development meetings with potential clients but failed to identify the potential clients. They also said that at board meetings he took to sitting at one end of the table and not facing each other as the other directors did and Mr Shafie had done previously. They also said that Mr Shafie was constantly on his phone and not fully participating in the meeting as the other directors did and he continuously referred to “ghost” employees. I make findings about the so-called “ghost” employees later in this judgment. Mr Johns also said that he received a report of Mr Shafie getting drunk on a business trip on 1 November 2023 and making derogatory remarks to a contractor about Mr Byrne and Mr Greensmith and attending a client meeting the following day visibly hungover, following which his lack of engagement was mentioned by the client. Again, these allegations are not supported by documents and there is no evidence from the contractor or the client to support them. However, Mr Shafie himself accepts that he was asking questions about “ghost” employees at this time. Having heard the oral evidence of the three DBL directors, I find that Mr Shafie was repeatedly asking questions about “ghost” employees and I accept that it was reported by a contractor that Mr Shafie did drink more than was wise on 1 November 2023 and a report was made by a contractor that he made the derogatory remarks. In the absence of hearing from the contractor and Mr Shafie being given the opportunity to cross examine him, I make no finding as to whether the report was true. I also accept the evidence that Mr Shafie’s apparent disengagement at a meeting the day after was referred to by DWP. Whilst I make these findings in relation to the specific allegations to which I have referred, I make no findings about the general allegations. (hh) On 19 October 2023, after DBL had notified Infinite that Coactive was to take over the provision of DBL’s IT support, Mr Byrne introduced Mr Mal to Coactive, and the two providers communicated with each other about the handover. This is agreed. There was liaison between them. On 6 November, Mr Mal explained to Coactive that Infinite needed to give 2 months’ notice to suppliers to end the supply. Coactive explained that it would implement the switch over of services OFFICIAL OFFICIAL manually, rather than automatically as Mr Mal had anticipated. Mr Mal repeatedly chased Coactive and stated that the MS licences that Infinite had obtained for DBL would expire in March 2024. All of this is evidenced by email exchanges between Mr Mal and Coactive. (ii) Infinite continued to provide some services to DBL until about February 2024. These services continued until Coactive had fully implemented the transfer of services to it and included work done by Infinite to facilitate the handover. Mr Byrne’s

evidence was that the handover was delayed as a result of Infinite's failure to deal with it in a proactive manner. However, he was unable to be specific as to Infinite's alleged failure and unable to identify any documents which supported this contention. In fact, in my judgment, the contemporaneous emails included in the trial bundle indicate that it was Mr Mal at Infinite who was being proactive and frequently chasing Coactive. I prefer the evidence of those emails to Mr Byrne's general but unspecific allegations and reject that part of his evidence. (jj) On 24 November 2023, DBL's bank forwarded to Mr Shafie the previous 12 months' bank statements following his request, and Mr Shafie forwarded those emails to Farshid Shafie at his personal yahoo email address. This is apparent on the face of the emails which I have seen and is accepted by Mr Shafie. The bank statements included details of payments paid and received by DBL, including sums received under its contract for the provision of services to the DWP and salary payments made to all DBL staff. Mr Shafie accepts this. (kk) In November 2023, the other directors were concerned about Mr Shafie's conduct and decided to undertake an internal investigation. Mr Byrne asked Coactive to give him access to Mr Shafie's email account. Mr Byrne looked at the email account and found evidence of the downloading of bank statements and sending them to Farshid Shafie's personal email account. He also found the emails showing that Mr Shafie sent other confidential information to Farshid Shafie and that he had reviewed and amended draft documents to be sent by Infinite to DBL including a quote for the supply of mobile phones which Mr Byrne considered to be ridiculously high and the email relating to the pitch and the email about the supply of services to which I have already referred. This was Mr Byrne's unchallenged evidence and I accept it. OFFICIAL OFFICIAL (ll) On 14 December 2023, Mr Shafie was suspended from his employment with DBL by a letter from Mr Byrne. The letter also informed him that he was suspended because he had acquired and forwarded information confidential to DBL to unauthorised third parties. The letter informed him that while suspended, he should not communicate with any clients, employees or contractors of DBL. It also stated that if Mr Shafie needed access to his place of work or to DBL's computer network he should contact Mr Byrne and DBL may arrange it under close supervision. (mm) Mr Shafie's evidence is that the relationship broke down because he objected to DBL purchasing a company owned by Mr Greensmith and because he suspected that DBL was acting dishonestly by charging DWP for staff that were not in fact provided. Mr Shafie relies on a number of documents produced by DBL in respect of particular projects which refer to "ghost" employees. Mr Byrne was cross examined at some length and by reference to a number of documents which refer to "ghost" employees. In my judgment, it is not appropriate or proportionate to refer to the cross examination or the documents at length. I find that the references in the documents to the term and the way it was used did raise grounds for suspicion, at least in the eyes of someone who does not know why the term is used or what it means. Mr Byrne was dismissive of them when asked about it and his answers to the questions he was asked about it did not satisfy me that there is a clear and reasonable explanation for the use of the term. Mr Johns provided a slightly more coherent explanation for the use of the term and sensibly accepted that to someone who did not know what it meant, it may appear suspicious. He stated that the documents referring to ghosts

were not connected with invoicing and that Mr Shafie prepared the invoices so would know that DWP was not invoiced for staff who did not exist. This last point was not put to Mr Shafie, so I make no finding about it. I accept that the use of the term may have provided a basis for Mr Shafie to be suspicious. However, given his close involvement with the business until October 2023 and the documents he obtained after his departure which are referred to below, I would expect that he would be able to advance a case as to how any alleged fraud occurred if in fact it was occurring. Further, Mr Shafie himself also used the term “ghost”, for example in a WhatsApp conversation with the other directors on 16 September 2023 at 08.28. However, none of the documents taken individually or cumulatively made out a OFFICIAL OFFICIAL case that DBL was in fact charging DWP for employees which did not exist or was otherwise acting fraudulently. (nn) Mr Greensmith’s company was known as Safety Point and it sold pop-up safety boxes for use on construction sites. It was proposed that DBL purchase it. Mr Greensmith said that Mr Shafie did not object to the purchase in principle and was generally enthusiastic about the product, but he raised concerns about how the purchase was to be implemented. His evidence was that Mr Shafie raised queries about it during board meetings, but others did too. The way the directors operated was to raise possible objections to proposals and that he did not perceive Mr Shafie to be particularly hostile to the idea. In DBL’s grounds of resistance to Mr Shafie’s employment claim, DBL says that Mr Shafie was reluctant to agree to the purchase of Safety Point and wanted DBL to purchase his company instead, and that as a result, the purchase of Safety Point was done with just the other three directors participating and with no detriment to Mr Shafie. Mr Shafie does not give any evidence of substance about this subject. In my judgment, Mr Shafie’s stance over the acquisition of Safety Point did cause irritation to the other directors. Mr Shaffie has alleged that they received payments as part of the transaction (although I was not taken to any evidence to support that). Given that they arranged to buy it without involving him, it must have at least inconvenienced them and it would be surprising if they were not irritated by that. However, the evidence before me does not support a finding that it was the real reason that they suspended Mr Shafie. (oo) On 19 January and again on 16 February 2024, Mr Mal acting on the instructions of Mr Shafie, who at the time remained suspended from his employment by DBL, accessed DBL’s computer systems. On 19 January, he exported nearly 280,000 items, including the email mailboxes of Mr Byrne, Mr Johns and Mr Greensmith. That included all of their email records, including emails relating to personal matters sent from their DBL email accounts. On 16 February, Mr Mal searched through over 632,000 items of data but did not download material. Mr Shafie accepts that this occurred and that Mr Mal was acting on his instructions, he having instructed Mr Mal as to what he wanted from the DBL computer records. Mr Mal also accepted in cross examination that this is what occurred. Mr Mal’s evidence is that he took instructions from Mr Shafie as a director of DBL when doing so and that Mr Shafie explained that he was carrying OFFICIAL OFFICIAL out an investigation into possible misconduct by DBL, but Mr Mal accepted that with the benefit of hindsight, he should have spoken to the other directors or at least another director of DBL before doing so. (pp) The details of the searches and downloading are included in a forensic review produced for DBL by IntaForensics, who DBL

instructed to investigate access to its systems. Mr Shafie admits that the incidents took place and that the access was by Mr Mal acting on his instructions. Mr Shafie also said that he did not tell anyone at DBL when it was done. He maintains that it was done as part of his own investigation into the affairs of DBL. Mr Mal also said that he provided the downloaded material to Mr Shafie on a USB drive which was not encrypted or password protected. He did not retain a copy of the material or provide a copy to anyone else. I accept the evidence of Mr Shafie and Mr Mal that this is what occurred. (qq) DBL did not make payment of at least some of the invoices delivered by Infinite for work done in early 2024. This much is agreed. On 8 February 2024, Mr Mal sent an email to DBL stating that Infinite had locked down the MS Control Panel on DBL's system which prevented the transfer of the MS 365 licences in March 2024 when they expired. It did not prevent DBL staff using their laptops or DBL using its system. DBL had queried some items on invoices and had not paid the invoices. Following the sending of the email, DBL paid the invoices in full by 5 March. Following payment, Infinite unlocked the MS Control Panel, and it was taken over by Coactive who dealt with the renewal of licences. All of this is agreed. (rr) On 7 March 2024, DBL's email spam filter stopped working and that meant that DBL's email system ceased to function, causing major disruption to the operation of DBL's business. That much is agreed. DBL alleges that Infinite acting through Mr Mal was responsible. Mr Mal's case is that it and he was not. His evidence is that the spam filter is part of the cyber essential facility and that as Coactive took over the provision of cyber essentials to DBL, so far as he was concerned it took over provision of the spam filter. This is supported to some extent by an email sent by him to Mr Byrne on 7 November 2023 which refers to making arrangements for the switch over to Coactive of various functions which include the spam filter. In the absence of any evidence from DBL that Infinite retained control of the spam filter or that it prevented Coactive from taking it over, and in OFFICIAL OFFICIAL the absence of any invoice indicating that Infinite continued to charge for the spam filter in or even close to March 2024, I accept Mr Mal's evidence and find that the failure of DBL's spam filter was not caused by Infinite. (ss) DBL claims that Infinite retains control of its domain name, which is its property and which should be transferred to it. Mr Mal's evidence was that Infinite never had control of the domain name. He explained that whoever has the administrator rights for the domain name controls it and that was never Infinite. His evidence was that Mr Shafie may have control of the domain name. In the absence of any positive evidence that Infinite controls the domain name, I accept Mr Mal's evidence that it does not and never did. Mr Mal's statement that he thinks that Mr Shafie may control the domain name is not sufficient to support a finding that Mr Shafie does control it, in particular in circumstances where it was never put to Mr Shafie that he controls or did control it. (tt) On 28 February 2024, Mr Shafie resigned as an employee of DBL. He remained a director of DBL until he was removed in April 2024. Mr Shafie's case is that he resigned as a result of discovering that DBL had hired a private investigator to follow him during his period of paternity leave when his wife was pregnant and that the investigator had placed a tracking device on his car. DBL did not dispute that it did so. Mr Shafie said that on discovering these facts, he considered that his continued employment and involvement with DBL was untenable. I find that Mr Shafie was greatly

upset by these discoveries. However, it is not necessary for me to make any finding as why he resigned and I am conscious that it may be an important issue in separate proceedings in the Employment Tribunal. I therefore make no finding as why Mr Shafie resigned and did not attend the scheduled disciplinary hearing scheduled for the day after his resignation.

- (a) Was Mr Shafie's appointment of Infinite as DBL's IT provider done in breach of his directors' duties?
50. In my judgment, Mr Shafie's appointment of Infinite as DBL's IT provider was done in breach of some of the duties he owed as a director to DBL.
51. It was in breach of his duty under section 172 of the 2006 Act, since appointing a start-up business owned and operated by his father which had no real resources and which intended to operate predominantly by arranging for the supply of services and adding a mark-up was in breach of Mr Shafie's duty to act in good faith to promote OFFICIAL OFFICIAL the success of DBL. Knowing what he did about Infinite and how it proposed to operate, Mr Shafie's duty required him to go direct to a company such as Vibrant to arrange the provision of IT services and save DBL the extra charges that were to be added by Infinite.
52. For the same reasons, Mr Shafie was in breach of section 174 in failing to carry out his duties with reasonable skill and care. The breach of this duty adds nothing to the breach of section 172.
53. Mr Shafie's appointing of Infinite was also a breach of his duty under section 175 of the 2006 Act, to avoid any situation where his own interests conflicted or may conflict with the interests of DBL. As I have found, until its incorporation, Infinite was in fact his father, Farshid Shafie. The money paid by DBL to Infinite was paid to Farshid Shafie. Whenever the issue of payment of an invoice arose, there was a conflict of interest for Mr Shafie as he had to decide whether to approve the payment of DBL's money to his own father. Whenever Infinite wished to increase its charges or pitched for new work there was a conflict. Each of these situations was not only foreseeable, it was obvious.
54. I have found that Mr Shafie did not make full disclosure or any disclosure to the other directors of the fact that Infinite was in fact a trading name for his father. In my judgment, by reason of the matters to which I have referred in the preceding paragraph, it is objectively clear that there was a real sensible possibility of a conflict of interest arising from the appointment. It follows that in making the appointment of Infinite, Mr Shafie was in breach of section 177 of the 2006 Act.
55. I have found that in fact, Mr Shafie did not disclose that Infinite was a trading name of his father to the other directors informally at social events where the other directors met Farshid Shafie, as he claims. However, in my judgment, even if he had done so, he would not have avoided being in breach of section 177 as informal piecemeal disclosure would not be sufficient, as stated by Mummery LJ in *Gwembe Valley v Koshy*, to which I have referred above. (b) If so, are any or all of Farshid Shafie, Mr Mal and Infinite liable for dishonestly

assisting him in those breaches of duty?

56. Infinite cannot have a liability in assisting with its own appointment because at the time that the appointment was made, it had not been incorporated. OFFICIAL OFFICIAL
57. Further, I do not see how on the evidence before me it can be said that either Farshid Shafie or Mr Mal as a matter of fact assisted Mr Shafie in the act of making the appointment of Infinite. That was an act done entirely by Mr Shafie himself. I have not been directed to anything that anyone else is said to have done as to the actual appointment of Infinite.
58. It follows that none of Farshid Shafie, Mr Mal or Infinite are liable for dishonestly assisting Mr Shafie in his breaches of duty in the act of appointing Infinite. (c) Did any of Mr Shafie's dealings with Infinite during the contract amount to breaches of directors' duties?
59. The answer to this question is "yes". In my judgment, the following dealings by Mr Shafie with Infinite during its contract with DBL which I have found occurred as a matter of fact amounted to breaches of the directors' duties indicated:
- (a) The causing of DBL to pay invoices from Infinite which were for services provided by Vibrant with a substantial mark-up and without the true position being disclosed to the other directors. This was a breach of the duty to act in good faith so as to promote the success of DBL under section 172 of the 2006 Act. It was not the result of a lack of care and is not properly characterised as a breach of section 174. It was also a breach of section 175 as knowing that payments made to Infinite were prior to its incorporation made to his father, and after that to a company in which his father was a substantial shareholder, meant that in processing such payments rather than passing the invoice to another director, Mr Shafie failed to avoid a situation where he had a conflict of interest. I do not find that the making of the payments was in breach of Mr Shafie's duty under section 177 as the paying of them did not entail the entering into of a transaction.
 - (b) Mr Shafie's failure to inform the other directors that Infinite was charging for services in fact provided by Vibrant and adding a substantial mark-up was a breach of section 172 of the 2006 Act. In my judgement, acting in good faith so as to promote the success of DBL required such disclosure.
 - (c) Mr Shafie's failure to inform the other directors that Infinite was adding a substantial mark-up to all items it supplied to DBL which was not related to the work done to procure the supply and/or set up the new equipment, was a breach of section 172 of the 2006 Act, for the same reason. OFFICIAL OFFICIAL
 - (d) Mr Shafie's sending to Farshid Shafie at his personal email account with yahoo details of DBL's clients on 3 February 2023 and confidential DWP data to the same account on 9 February 2023 were each a breach of Mr Shafie's duty under section 174 of the 2006 Act to carry out his duties as a director with reasonable care, skill and diligence. It was not the sending of the information per se that amounted to the breach but the sending of it to an insecure personal email account with yahoo and the failure to encrypt the data. In my

judgment, such dealing with confidential data belonging to DBL and to its clients was careless and fell below the standard of reasonable care to be expected of a director in Mr Shafie's position and with his knowledge and experience.

- (e) The forwarding of DBL's bank statements for the preceding 12 months to Farshid Shafie at his personal yahoo email address on 24 November 2023, was also a breach of his duties as a director by Mr Shafie. It was a breach of section 172 of the 2006 Act as it cannot have been in the best interests of DBL to do so. It was also a breach of section 174, as again, the sending of DBL's confidential information to an insecure personal email account with yahoo and sending it without encryption was careless.
 - (f) Mr Shafie's reviewing and amending emails to be sent by Infinite to pitch for work and to explain a price increase on 28 March 2023, was in each case a breach of his duty under section 172 of the 2006 Act. In each case, acting to assist Infinite in winning work from and recovering increased charges from DBL was not an act done in good faith to promote the success of DBL. It was in DBL's interest to only purchase work it required and to do so at the lowest price it could reasonably secure. Further, by agreeing to undertake such tasks, Mr Shafie placed himself in a situation where he had a conflict between his own interests in securing income for his father and the interests of DBL. As a result, he also breached his duty under section 175 of the 2006 Act in each case.
 - (g) Mr Shafie's instructing Mr Mal to access and download material from DBL's computer systems on 19 January and 16 February 2024 were also breaches of his duties under section 172. There appear to have also been breaches of his duty under section 171 of the 2006 Act (exercising powers for the purpose for which they were conferred) but that has not been alleged.
60. It follows that in my judgment, Mr Shafie committed six separate breaches of his duties owed as a director to DBL. However, not all of them caused DBL any loss. OFFICIAL OFFICIAL (d) If so, are any or all of Farshid Shafie, Mr Mal and Infinite liable for dishonestly assisting him in those breaches of duty?
61. In respect of Mr Shafie's breach of duty in causing of DBL to pay invoices from Infinite which were for services provided by Vibrant with a substantial mark-up, Farshid Shafie assisted him in that breach of duty since as I have found, he prepared and submitted the invoices. He knew that the other directors were not aware that he was Infinite until it was incorporated, and after that, he was one of the owners and controllers of Infinite. He also knew that DBL was not aware that Infinite purchased most of the services supplied to it from Vibrant and charged them on with a substantial mark-up. In my judgment, ordinary decent people would regard the rendering of such invoices in circumstances where DBL did not know that Infinite was the creature of Mr Shafie's father was dishonest. Therefore, Farshid Shafie is liable for dishonestly assisting Mr Shafie in that breach of duty.

62. Infinite submitted invoices following its incorporation. As a director and 50% shareholder, Farshid Shafie was a controlling mind of Infinite following its incorporation. Therefore, Infinite is also liable for dishonestly assisting Mr Shafie in causing DBL to pay the invoices submitted by Infinite following its incorporation.
63. I do not make any finding that Mr Mal did anything to assist the payment of the invoices. I therefore find that he is not liable for dishonestly assisting Mr Shafie in this breach of duty.
64. In respect of Mr Shafie's failure to inform the other directors that Infinite was charging for services in fact provided by Vibrant and adding a substantial mark-up, Farshid Shafie, Mr Mal and Infinite all took steps to try to prevent DBL from becoming aware that the services which DBL purchased from Infinite were mostly provided in such a way. The breach of duty consisted in Mr Shafie's failure to inform. While that was Mr Shafie's failure, it would not have been possible without the assistance of Farshid Shafie and after its incorporation, Infinite, in delivering invoices in the form that they did, making no mention of Vibrant or any mark-up or service charge and presenting on the invoice the service as being provided by Infinite. In my judgment, they did as a matter of fact thereby assist Mr Shafie in his breach of duty. As I have already found, they knew that DBL was being kept unaware of this modus operandi. In my judgment, ordinary decent people would regard such conduct as dishonest if they knew what I have found that Farshid Shafie, and through him OFFICIAL OFFICIAL Infinite, knew. Therefore, Farshid Shafie is also liable for dishonestly assisting Mr Shafie in this breach of duty and Infinite is also liable for dishonestly assisting him in the period after its incorporation.
65. In Mr Mal's case, I have found that in an email exchange on 23 January 2023, he assisted Mr Shafie in seeking to prevent DBL from becoming aware that Vibrant was the real service provider. I infer from that email that Mr Mal was aware prior to that of the intention to avoid DBL becoming aware of Vibrant's involvement. However, other than in the email, there is no evidence of his doing any act to assist Mr Shafie in his breach of duty and I am not persuaded that he assisted Mr Shafie by omission, since there is no evidence of any particular circumstance in which he was obliged or might reasonably be expected to inform DBL of Vibrant's role. Therefore, the only assistance which it has been shown that Mr Mal provided is the sending of the email.
66. It is clear on the face of the email that Mr Mal knew that it was intended that DBL not become aware of Vibrant's role. Mr Mal also knew of the modus operandi by which Infinite purchased services from Vibrant and supplied them on to DBL with a mark-up. In my judgment, ordinary decent people would regard assisting a business to purchase a service and then supply that service on to a purchaser while passing itself off as the actual supplier was dishonest. Therefore, I find that Mr Mal is liable for dishonestly assisting Mr Shafie in his breach of duty by taking steps to seek to prevent DBL from becoming aware that Infinite was presenting the services provided by Vibrant as its services.

67. In respect of Mr Shafie's failure to inform the other directors that Infinite was adding a substantial mark-up to all items it supplied to DBL, again, Farshid Shafie assisted him in the breach by preparing and delivering the invoices and Infinite also did so following its incorporation and taking over the supply of the services and delivery of the invoices. As I have found, Farshid Shafie was aware that DBL did not know of the substantial mark-ups, and Infinite was aware through him. In my judgment, ordinary decent people would regard the charging of substantial mark-ups to items procured without disclosing them as dishonest. Accordingly, Farshid Shafie and Infinite following its incorporation and the delivery of relevant invoices by it are liable for dishonestly assisting Mr Shafie in this breach of duty.
68. Whilst Mr Mal was likely to be aware of the substantial mark-ups, he was not involved in preparing the invoices and I have not found that he did anything to assist OFFICIAL OFFICIAL Mr Shafie in respect of this breach. Therefore, he is not liable for dishonestly assisting in this breach of duty.
69. Mr Shafie's sending to Farshid Shafie at his personal email account with yahoo details of DBL's clients on 3 February 2023 and confidential DWP data to the same account on 9 February 2023 were each acts done by him. As I have found, it was the sending of them to Farshid Shafie's personal account with yahoo without encryption that was the breach. Nobody else did anything to assist Mr Shafie in doing so. I do not consider that Farshid Shafie's having the account amounted to such assistance. Further, even if any of the other parties had encouraged Mr Shafie to send the materials to that account (and there is no evidence that they did) their doing so would not have been dishonest by the standards of ordinary decent people, but merely careless. Therefore, the other Defendants are not liable for dishonestly assisting Mr Shafie in this breach of duty.
70. The position is exactly the same in respect of the forwarding of DBL's bank statements for the preceding 12 months to Farshid Shafie at his personal yahoo email address on 24 November 2023. There is no evidence that Farshid Shafie assisted with or encouraged Mr Shafie to send the bank statements to his personal account or at all and Mr Mal had nothing to do with their sending. Accordingly, none of the other Defendants are liable for dishonestly assisting Mr Shafie in this breach of duty.
71. In respect of Mr Shafie's reviewing and amending emails to be sent by Infinite to pitch for work and to explain a price increase on 28 March 2023, was in each case a breach of his duty under section 172 of the 2006 Act, both emails were sent to him by Mr Mal and Mr Shafie's responses were sent to Mr Mal, who then sent emails reflecting the amendments to DBL. In my judgment, by his doing so, Mr Mal assisted Mr Shafie in his breach of duty. Mr Mal was aware that DBL did not know that Infinite was, by that point, a company in which Farshid Shafie had a substantial financial interest. In my judgment, ordinary decent people aware of these facts would regard the sending of drafts of emails to a director of a client company for review and approval before sending them to the company seeking orders to be placed and increased charges to be paid was dishonest. Therefore, Mr Mal is liable for dishonestly

assisting Mr Shafie in this breach of duty. Mr Mal was a director of and acting on behalf of Infinite when he did so and as a result, Infinite is also liable.

72. There is no evidence that Farshid Shafie was involved in these actions and therefore he is not liable for dishonestly assisting Mr Shafie in these breaches of duty. OFFICIAL OFFICIAL (e) Is Mr Shafie entitled to relief from any liability for any breach of duty, in whole or part, pursuant to section 1157 of the 2006 Act?
73. Section 1157 of the 2006 Act provides: “(1) If in proceedings for negligence, default, breach of duty or breach of trust against–
- (a) an officer of a company, or
 - (b) a person employed by a company as auditor (whether he is or is not an officer of the company), it appears to the court hearing the case that the officer or person is or may be liable but that he acted honestly and reasonably, and that having regard to all the circumstances of the case (including those connected with his appointment) he ought fairly to be excused, the court may relieve him, either wholly or in part, from his liability on such terms as it thinks fit.”
74. Relief is discretionary, but before the court’s discretion is engaged, it must be satisfied that the director’s act or omission was both honest and reasonable.
75. The test of reasonableness is an objective one which is applied by reference to the knowledge and skill of the particular director, as explained in *Cullen Investments Ltd v Brown* [2017] EWHC 2793 (Ch). It is sufficient to determine this issue that in my judgment, none of the breaches which I have found Mr Shafie committed were in respect of acts which were reasonable by that test. In every case, Mr Shafie failed to act as any reasonable director would have acted. His breaches of duty were not innocent mistakes. They were deliberate and culpable. I accept that he did make reports to the relevant authorities of alleged wrongdoing. If the breaches related to the extraction of information had been the only breaches of duty the position may have been different, but those breaches occurred only after the other breaches had been identified by DBL. It is therefore not necessary for me to consider whether Mr Shafie acted honestly when committing the breaches of duty which I have found.
76. Further, even if Mr Shafie acted honestly, this is a case where Mr Shafie’s father benefited financially regularly and over a significant period following acts of deliberate concealment. In my judgment, it would not be a case where in all the circumstances Mr Shafie ought fairly to be excused. OFFICIAL OFFICIAL (f) Did the Defendants or any of them access DBL’s computer systems and copy data between January and March 2024 in breach of the Computer Misuse Act 1990 or otherwise unlawfully?

77. I have found that Mr Mal did access DBL's computer system on 19 January and 16 February 2024, and that on 16 February he downloaded a large volume of DBL's data and that he did so at the request of Mr Shafie, who at those times was a director and an employee of DBL, but one whose employment was under suspension.
78. Mr Shafie's action in instructing Mr Mal to gain access to DBL's systems and to download material from it was unlawful. The information accessed and downloaded included confidential information within the description of such information in the *Coco v A N Clark* case to which I have referred. Information about the pricing or work and fees charged and invoiced was certainly confidential. Indeed, it is obvious that in downloading the entire contents of email accounts of directors, Mr Mal will have downloaded confidential information belonging to DBL. Mr Shafie owed to DBL a duty of confidence and his causing the accessing and downloading of information during the period of his suspension as a director on terms that he was told not to access DBL's computer records was a breach of his duties as a director. Most obviously, it was a breach of his duty under section 171 of the 2006 Act, the duty to exercise his powers as a director for the purpose for which they were conferred, namely, to further the success of DBL. It was also a breach of section 172, the duty to act in good faith so as to promote the success of the company. The accessing and downloading in breach of confidence and contrary to the instructions in the suspension letter cannot have been done to promote the success of DBL. It was clearly done in order to advance Mr Shafie's own position as against DBL.
79. Mr Mal's evidence is that when acting on Mr Shafie's instructions he knew that Mr Shafie had been suspended as an employee, and he was told by Mr Shafie that Mr Shafie was concerned about fraud at DBL and that a private investigator instructed by DBL had placed a tracker on Mr Shafie's car. Mr Mal's evidence is that as he was acting on the instructions of a director of DBL, he believed that his access was legitimate. However, during cross examination, Mr Mal accepted that with hindsight he should have sought confirmation from the other directors.
80. Mr Mal's access to DBL's systems in this case has some similarities to what occurred in *Magical Marking Ltd v Holly* to which I have already referred. However, this case is less extreme as there is no allegation that Mr Mal changed passwords or that he was OFFICIAL part of a group of people who carried out what was described by Norris J in that case as a "raid" on the company's premises. Like the director in that case, Mr Shafie was not acting for the benefit of DBL or on its behalf when seeking the access and download. He therefore did not have actual authority to access the system through Mr Mal. Also like in that case, he did not have ostensible authority either. The circumstances of the request to Mr Mal and the downloading of data mean that Mr Mal cannot have believed that Mr Shafie was asking him on behalf of DBL to access the system and download copies from it. Indeed, Mr Mal's own evidence is not that he believed that Mr Shafie was acting on behalf of DBL.
81. As I have already noted, section 1 of the Computer Misuse Act 1990 makes the intentional access to a computer program or data which is unauthorised and which the person gaining access knows is unauthorised a criminal offence. Mr O'Doherty submitted that Mr Mal did

not know that the access was unauthorised and without his having such knowledge, the necessary intention for his acts to amount to the commission of an offence was not present. Mr O'Doherty said that Mr Mal believed at that time that he was authorised as he was being instructed by Mr Shafie, who was a director.

82. I was not addressed in any detail about the mental element required for the offence under section 1 to be established and I was not referred to any authority as to it. In those circumstances, it would not be appropriate for me to make a finding that a criminal offence was committed if it is not necessary for me to do so in order to determine this issue. In my judgment, it is not necessary. In the *Magical Marking* case, Norris J found that unauthorised access to and downloading of material from a company's computer system was an infringement of the company's intellectual property rights under section 16 of the Copyright, Designs and Patents Act 1988. In my judgment, Mr Mal was in breach of that section in this case.
83. That DBL owned the copyright in respect of its data is self-evident. Section 16 of the 1988 Act provides: "(1) The owner of the copyright in a work has, in accordance with the following provisions of this Chapter, the exclusive right to do the following acts in the United Kingdom —
- (a) to copy the work (see section 17);
 - (b) to issue copies of the work to the public (see section 18); (ba) to rent or lend the work to the public (see section 18A); OFFICIAL OFFICIAL
 - (c) to perform, show or play the work in public (see section 19);
 - (d) to communicate the work to the public (see section 20);
 - (e) to make an adaptation of the work or do any of the above in relation to an adaptation (see section 21); and those acts are referred to in this Part as the "acts restricted by the copyright".
- (2) Copyright in a work is infringed by a person who without the licence of the copyright owner does, or authorises another to do, any of the acts restricted by the copyright."
84. It is accepted by Mr Mal that he made a copy of the data he found on 19 January. He therefore breached section 16. That is sufficient to amount to unlawful means for the purposes of the alleged unlawful means conspiracy.
85. Accordingly, it is not necessary for me to make any finding as to whether or not Mr Mal committed an offence under section 1 of the Computer Misuse Act 1990. It is also unnecessary for me to make any finding as to whether Mr Mal committed an offence under section 170 of the Data Protection Act 2018. I was not addressed orally on that provision at all. In particular, I was not addressed on whether Mr Mal reasonably believed that he was acting with a legal right. Again, in those circumstances, it is not appropriate for me to make any finding as to whether Mr Mal committed such an offence where it is not necessary for

me to do so.

86. Farshid Shafie was not involved in the accessing of the DBL computer system. Further, I have not been referred to any evidence that Mr Mal was acting on behalf of Infinite when he did so. I therefore find that neither Farshid Shafie nor Infinite was involved in accessing the system and they can have no liability in respect of it.
87. As I have already noted, in order to amount to an unlawful means conspiracy, the conspirators, here Mr Shafie and Mr Mal, need not have known that the means were unlawful, so the fact that Mr Mal did not know that he was acting in breach of copyright does not assist him. However, they must act with the intention of causing damage to DBL, although that intention need not be the main or predominant purpose of their acting in combination. In my judgment, it is not established that Mr Mal did have such an intention. It was not put to him that he had any intention to cause DBL damage. I am not prepared to infer such an intention where Mr Mal gave live evidence at trial so there was an opportunity to put the point to him and it was not put. Further, his evidence, which I accept, was that he gave the extracted data to Mr Shafie and not to anyone else. OFFICIAL OFFICIAL
88. It follows that the claim of unlawful means conspiracy in respect of the data extraction is not made out. (h) Is Infinite liable for DBL's email system failure in March 2024?
89. It is common ground that DBL's email system failure in March 2024 was the result of the failure of its spam filter. I have found that the spam filter was part of the cyber essentials suite which Coactive took over from Infinite and found as a fact that the failure of the spam filter was not caused by Infinite. Therefore, Infinite is not liable for the failure of DBL's email system in March 2024. (i) Is Infinite obliged to handover usernames and passwords necessary for the controlling of DBL's domain name?
90. During his closing submissions, Mr Lewy rightly accepted that the evidence before the court indicated that Infinite does not have the usernames and passwords. Therefore, he did not pursue this part of DBL's claim. (j) What remedies is DBL entitled to and from whom by reason of any liability of the Defendants?
91. DBL has succeeded in its claims for breaches of fiduciary duty against Mr Shafie for the engagement, continued employment and payment of Infinite as its IT contractor and also succeeded in its claim against Farshid Shafie, Infinite and Mr Mal, in respect of dishonest assistance in all or some of those breaches of duty. It has also succeeded against Mr Shafie in respect of the data extraction. DBL is entitled to damages in respect of any loss that it can show that it incurred by reason of each. Engagement of Payment of Infinite
92. DBL claim damages in the amount of the difference between what it paid to Infinite and what it should have been charged for the services provided by Infinite (initially as a trading name of Farshid Shafie) for a period of 20 months. It claims that the difference was in the amount of £976.89 per month for 20 months based upon the evidence of what Coactive would have charged. That gives a total of £19,537.80 for the 20 months.

93. Mr O'Doherty submitted that DBL has not proved such loss and that it should have called expert evidence to prove what the market rate for the services provided by Infinite were. Given the evidence to which I have already referred which indicates OFFICIAL OFFICIAL that Coactive's charges were very similar to those charged by Vibrant to DBL during the period of the contract and that DBL has not pursued a claim in respect of every invoice or item charged as I have found that it could have but has limited itself to the monthly services charges, I am satisfied on the balance of probabilities that DBL suffered loss and damage as a result of the engagement and payment of Infinite of not less than £24,791.80, I find that Infinite has proved a claim for damages in that amount. In my judgment, the evidence before the court proves on the balance of probabilities that DBL suffered such loss as a result of the breaches of duty which I have found.
94. Mr Shafie is liable to DBL for damages in that amount. Farshid Shafie is also liable by reason of the findings that I have made of his dishonest assistance in breach of duty for that amount.
95. I have found that Infinite is liable for dishonest assistance in respect of the period from its incorporation to the termination of the contract, which is a period of 9 months. That period multiplied by a monthly loss of £976.89 gives a liability for it of £8,792.01.
96. I have also found that Mr Mal is liable for dishonest assistance in respect of the email dated 23 January 2023, but not otherwise. In my judgment, it follows that Mr Mal's dishonest assistance gives rise to a liability for damages to DBL for the period from then to the end of Infinite's contract, which was a period of 7 months. At a loss per month of £976.89, his liability is £6,838.23.
97. It follows that Mr Shafie and Farshid Shafie are jointly and severally liable to DBL for damages of £19,537.80, Infinite is jointly and severally liable for £8,792.01 of those damages and Mr Mal is jointly and severally liable for £6,838.23 of those damages.
98. DBL also advanced a claim for repayment of the invoices delivered by Infinite in relation to the handover to Coactive and which were paid by DBL following Infinite locking down its control panel until it was paid. However, I have not been taken to evidence which establishes that those sums were not reasonable charges by Infinite for the work it did for DBL or that the need for such work was caused by any breach of duty. Therefore, I make no award in respect of those invoices.
99. In respect of the data extraction claim, DBL claims damages of £18,450 in respect of costs incurred in investigating an apparent IT failure, legal fees in connection with OFFICIAL OFFICIAL notifying and liaising with the Information Commissioner's Office in relation to it and management time in dealing with it at a cost of £21,350. 100. DBL has produced invoices for investigatory work done by consultants of £6,480 and £1,140. Mr O'Doherty did not really challenge those, and I am satisfied on the balance of probabilities that the costs shown on those invoices were costs totalling £7,620 properly and reasonably incurred by DBL consequent on the data extraction. 101. DBL also claims for expenses of £3,599.70 in respect

of the costs of updates applied to its laptops on advice following the data extraction. These invoices appear to be for the purchase of new Windows software for DBL's laptops. I would expect that DBL would regularly keep the Windows software on its laptops up to date and therefore I would have expected it to incur these costs in any event. There is no particular evidence that the cost of this software is a cost incurred as a result of the data extraction and is not a cost which would be incurred in any event. I am therefore not satisfied that the cost of this software is loss caused by the data extraction. 102. DBL claims the costs of legal fees incurred in notifying the Information Commissioner in the amount of £20,674.33 and relies on solicitors' invoices to prove those sums. I have looked at the invoices. In my judgment, DBL acted reasonably in instructing specialist solicitors to assist it in dealing with the Information Commissioner in the circumstances. I also consider that the items of work for which charges are made were reasonable. Therefore, I am satisfied that DBL reasonably incurred those costs and that they were costs incurred as a result of the data extraction. In those circumstances, DBL is entitled to damages in the amount of £20,674.33 in respect of those costs. 103. Finally, DBL claims in respect of management time said to have been spent in dealing with the consequences of the data breach. The total claim is for 6 days in respect of each of Mr Byrne, Mr Johns and Mr Greensmith at a rate of £983 per day each, and 6 days of the time of Kerry Smith at a rate of £500 per day. In advancing this head of loss, Mr Lewy relied upon the decision of the Court of Appeal in *Aerospace Publishing v Thames Water* [2007] EWCA Civ 3 at paragraph 86. After reviewing the authorities on claims for staff costs, Lord Justice Wilson said in that paragraph: "I consider that the authorities establish the following propositions: OFFICIAL OFFICIAL

- (a) The fact and, if so, the extent of the diversion of staff time have to be properly established and, if in that regard evidence which it would have been reasonable for the claimant to adduce is not adduced, he is at risk of a finding that they have not been established.
- (b) The claimant also has to establish that the diversion caused significant disruption to its business.
- (c) Even though it may well be that strictly the claim should be cast in terms of a loss of revenue attributable to the diversion of staff time, nevertheless in the ordinary case, and unless the defendant can establish the contrary, it is reasonable for the court to infer from the disruption that, had their time not been thus diverted, staff would have applied it to activities which would, directly or indirectly, have generated revenue for the claimant in an amount at least equal to the costs of employing them during that time." 104. Mr Lewy relied in particular on sub-paragraph (c). I agree that the words there lend support to this part of DBL's claim but they only become relevant where it can establish that the matter in issue led to a diversion of staff time which caused significant disruption to its business. The only evidence advanced by DBL of such disruption is in the witness statement of Mr Byrne. That evidence refers to the email outage caused by the failure of the spam filter and the change to DBL's domain name. 105. Mr O'Doherty acknowledges that it is possible that the data breach may have led to some diversion of some management, but submits that this evidence does

not establish that it did or that if it did, how much of the time claimed for relates to it. I agree. In my judgment, DBL has not established on the evidence that the data breach caused significant disruption to DBL's business. The evidence in Mr Byrne's statement does indicate that the email outage linked to the spam filter and the domain name issue did so but it does not establish any particular disruption due to the data breach. Therefore, DBL has not made out a claim for damages in respect of management time consequent on the data breach. 106. It follows that DBL is entitled to the following by way of damages:

- (a) Against Mr Shafie, £19,537.80 in respect of sums paid to Infinite; £7,620 in respect of investigatory costs consequent on the data breach and £20,674.33 in respect of legal costs consequent on the data breach, giving a total of £53,086.13;
- (b) Against Farshid Shafie, £24,791.80, jointly and severally with Mr Shafie;
- (c) Against Infinite; £8,792.01, jointly and severally with Mr Shafie; and OFFICIAL OFFICIAL
- (d) Against Mr Mal, £6,838.23, jointly and severally with Mr Shafie.

Conclusion

107. DBL's claim succeeds in respect of the breaches of duty claim and the data extraction claim against Mr Shafie. DBL also succeeds in its claims of dishonest assistance in breach of duty against Farshid Shafie, and partially succeeds in its claims of dishonest assistance in breach of duty against Infinite and against Mr Mal. 108. This judgment will be handed down without attendance of the parties and a hearing via CVP to determine the form of order to be made consequential on this judgment will be listed. Time for any application for permission to appeal will be extended so as to run from the date of the consequentials hearing. OFFICIAL

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://caselaw.nationalarchives.gov.uk/ewhc/comm/2026/2292>

CASE PAGE <https://chat.esheria.ai/case-law/england-and-wales/del-bosque-limited-v-amir-shafie-and-ors-2026>

Prepared on 22 October 2026 · Esheria