

ENGLAND AND WALES / JUDGMENT

GQA Qualifications Limited v Michael Clayton

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Neutral Citation Number: [2026] EWHC 114 (KB) IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION Case No: KB-2024-003984 Royal Courts of Justice Strand, London, WC2A 2LL Date: 23 rd January 2026 Before : MR JUSTICE SHELDON

- ----- Between : GQA Qualifications Limited Claimant
- and – Michael Clayton Defendant
- -----
- ----- David Reade KC and Callum Rodgers (instructed by Addleshaw Goddard) for the Claimant Tamara Kagan and Alex Findley (instructed by Weil, Gotshal & Manges) for the Defendant Hearing dates: 18th-21st November 2025
- ----- Approved Judgment This judgment was handed down remotely at 10.30am on 23rd January 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives. MR JUSTICE SHELDON Judgment Approved by the court for handing down. Double-click to enter the short title Mr Justice Sheldon : 1. 2. 3. GQA Qualifications Limited (“GQA”) claims against Michael Clayton, its former Chief Executive Officer and director, for breach of contract, breach of statutory and fiduciary duties, and breach of the equitable duty of confidence. On 5 December 2024, an order containing undertakings to the Court (including non-disclosure of confidential information), and directions for a speedy trial, was made by His Honour Judge Shanks. That trial, which considered issues of liability only, took place before me on 18-21 November 2025. The issues in the case involved consideration of legal advice provided to GQA. That advice was subject to legal professional privilege and was confidential. So, as to protect the confidentiality of the advice, some of the hearing was conducted in private. It seemed to the Court that the fundamental principle of open justice should be derogated from, in the circumstances of the case, so as to ensure that all of the points that the parties wished to make could be canvassed without revealing the confidential information. I did not consider that it was necessary to set out or analyse the content of the legal advice in my judgment. There are, however, a small number of extracts from the confidential material that I am including in a confidential annexe. These extracts relate to a briefing document that was sent to Mr Neil Ashley in July 2024: see paragraphs 33-34 below. The Hearing 4. 5. At trial, the Court heard evidence from Shaun McAllister, Justin Ratcliffe and Antony Parsell on

behalf of GQA, and from Mr Clayton and Christopher Globe for the Defendant. I found that, in general, each of the witnesses was trying to help the Court. There were, however, instances where their oral evidence either conflicted with what they had said in their written evidence or was contradicted by the contemporaneous documentation, and I prefer the latter. I set out my findings with respect to the evidence on these matters at relevant points in the narrative below. I found Mr Parsell to be the most helpful witness, and I rely on Mr Parsell's account for much of the narrative set out below. Under cross-examination, Mr Parsell was somewhat curt and careful, but he answered all of the questions and did not seek to evade. He was not partisan, and at times was critical of the actions and motives of other members of the Board of GQA, in particular Mr McAllister. Mr Parsell's evidence was also in keeping with the documents that were available to the Court. The Claim 6. 7. On 29 November 2024, GQA issued proceedings against Mr Clayton claiming for: (i) breach of statutory and fiduciary duties; (ii) breach of employment contract; (iii) breach of the equitable duty of confidence; (iv) inducement of breach of contract and confidence; (v) conspiracy by lawful and/or unlawful means; and (vi) libel. Only the first three heads of claim were pursued at the hearing before me, and I shall say nothing further about the other heads of claim. The core of the claim brought by GQA was that, on or about 6 November 2024, Mr Clayton had (i) sought to thwart disciplinary action against him which he knew or Judgment Approved by the court for handing down. Double-click to enter the short title believed was imminent; (ii) sought to take control of GQA by unlawfully removing 5 of its 6 statutory directors from their offices; (iii) sought to take over ownership of GQA by unlawfully terminating the memberships of 5 of its 6 members; (iv) sought to bestow ownership of GQA on his close friends and acquaintances and for their financial benefit; and (v) misused and disclosed GQA's confidential information. Points (ii) to (v) were colourfully described by GQA as "the Attempted Coup" by Mr Clayton. 8. 9. Mr Clayton was also alleged to have disrupted GQA's business operationally by (i) instructing his solicitors to send misleading and threatening correspondence to the 5 directors; (ii) causing regulators (in particular Ofqual and SQA) to cause disruption to GQA's business; and (iii) disrupting GQA's business financially by interfering with its relationship with its key business partner, the Construction Skills Certification Scheme ("CSCS"). Mr Clayton submitted a Defence to the claim. On 4 March 2025, Mr Clayton admitted a number of facts, and agreed that (i) he owed duties of trust and confidence and fidelity to GQA; (ii) he owed statutory and fiduciary duties as a director; and (iii) he owed and continues to owe to GQA the equitable duty of confidence. The Facts 10. 11. 12. GQA is a private company limited by guarantee. According to GQA's Memorandum of Association, its objects include (i) the development, maintenance and awarding of National Qualifications in the glass-industry; and (ii) the approval of centres for the purpose of providing and delivering qualifications under its auspices. There is also an object "To carry on any other business of any description which may seem to the Company capable of being advantageously carried on in connection with or ancillary to any of the businesses of the Company". GQA is not a charity, and any profits that it makes have to be ploughed back into the business. By its Memorandum of Association, it is forbidden from distributing those profits to its members, either by way of dividend or bonus. GQA's income

and property is to be applied solely towards the promotion of its objects. If GQA is to be wound up or dissolved, any property is to given to some other charitable institution having similar objects. Since its formation, GQA has expanded its reach beyond the glass sector, and has increased its turnover and profit considerably. In 2003, GQA offered a suite of 14 glass-specific qualifications, and had a turnover of £310,000. In 2024, GQA was offering more than 200 qualifications across 16 sectors including Glass and Fenestration, Construction, Print, Nuclear, Petrochemical, Manufacturing and Processing Operations. GQA's turnover was £4,100,000 in March 2023. A substantial part of GQA's business was issuing a card from CSCS for those awarded the Level 1 Construction Health and Safety qualification. A valid CSCS card is compulsory for any person to enter a commercial construction site.

13. Mr Clayton commenced employment with GQA on 15 August 2005. He was appointed Chief Executive Officer in 2011. At the time, the Board of GQA was chaired by Michael Morris. There were no non-executive directors; and Mr Clayton enjoyed considerable autonomy in his role. Judgment Approved by the court for handing down. Double-click to enter the short title 14. In July 2022, Mr Ratcliffe was appointed Chairman of GQA, following Mr Morris' resignation due to ill health. In early February 2023, Mr Parsell, a qualified chartered accountant, conducted a review of the business. The executive summary of the report produced by Mr Parsell stated that GQA does "not have a share capital" and "operates on a not-for-profit basis". It was recommended that "The Memorandum and Articles of Association should be reviewed to ensure they are still fit for purpose, especially given the exponential growth in recent years and that that growth has come from activities other than glass." It was noted that the business had grown rapidly since 2017 and was "highly profitable and cash generative". It was recommended that "Board meetings should be monthly, and Board representation should include financial expertise as none currently exists". Mr Parsell also recommended the introduction of more detailed and accurate management accounts so that the Board could be better informed. He also suggested that GQA's cash reserves of around £5 million, that attracted only a nominal rate of interest (0.45% as compared to the base rate of 4%), should be invested to optimise interest rates and economic benefit for GQA. In his witness statement, Mr Parsell explained that: "Through my Review I came to realise that GQA, whilst profitable, lacked proper controls and was in reality a very basic business but one which had had the good fortune of stumbling across a highly-profitable revenue stream. As a result, the processes and systems were extremely basic (where they existed at all) and were no longer fit for purpose for the size of commercial entity which GQA had become." Project Gemini 15. In September 2023, Mr Parsell was contacted by Mr McAllister about becoming involved again in GQA. Mr Parsell was told that Mr McAllister and the other non- executive directors had crystallised an interest in exploring whether there might be scope to acquire GQA. Mr Parsell agreed to consider the matter, which became known internally as "Project Gemini". The Board, along with Mr Clayton and Mr Parsell, met on 14 November 2023, and decided to move forward with Project Gemini, being guided by Peter Wood, a partner at the law firm, Addleshaw Goddard ("AG"). Mr Parsell was appointed a non-executive director of GQA on 30 November

2023. He was nominated by the Board to serve as the point of contact with AG. Mr Clayton was also appointed a director of GQA on 30 November 2023.
16. Mr Parsell explained that he had identified that GQA's business needed to be restructured as it was heavily reliant on one revenue stream - from the construction cards for CSCS - which was likely to reduce significantly, and the constitution of the business was not fit for purpose. There was a need to diversify GQA's product offering, potentially through acquisition or development of new qualifications either within GQA or within another entity. GQA's constitution was unsuited to attracting external investment and unsuited to attracting high-performing talent because of its inability to provide a return or distribution of profits.
17. The CSCS cards were issued under licence, and a dispute with CSCS about the licence was resolved following an arbitration. Renewal of the licence was granted on Judgment Approved by the court for handing down. Double-click to enter the short title the basis of a joint action plan between CSCS and GQA to reduce over a period of five years the number of Level 1 cards in issue, so as to match perceived demand and to ensure that the correct card was issued for the right job. It appears that some people were obtaining the cheaper and easier Level 1 qualification when they should be obtaining skilled cards at Level 2 and above. It was well understood by GQA that the Level 1 qualification would reduce in volume over the next five years, thereby reducing revenue for GQA. This was confirmed by Mr McAllister in his witness statement where he had said that "the new license committed GQA to reducing its CSCS card issue over the next 3 years so this further drove the need to identify other revenue streams." During the course of cross-examination, Mr McAllister was insistent that it was not necessarily the case that fewer cards were going to be issued. This contradicted directly what he had set out in his witness statement, what was reflected in several other documents before the Court, as well as Mr Parsell's evidence. I preferred the latter. The accounting firm KPMG was also instructed by the Board of GQA to advise on any tax risks or implications that might arise. Initial exchanges with KPMG had identified "a rather large tax wrinkle" in the plans. KPMG presented an Options Summary document which was discussed by the Board at a meeting held on 18 and 19 January 2024. Three options were presented by KPMG. Option A involved the incorporation of a new company (limited by share capital), to be inserted between GQA and the 6 members of GQA. Subsequently, the trade and assets of the non-fenestration activities within GQA would be transferred to a Newco, which would carry out the business. Under this option, the fenestration activities would remain within GQA, and the Newco would be able to distribute surplus profits to the six shareholders. KPMG identified that there was a potential Employment Related Securities tax charge as a result of the legal amendment to GQA's articles, as that would result in value being created for the members. Option B was a de-merger by which the whole (or potentially part of) the business would transfer to a Newco. The ownership of the Newco would be held equally by the members/shareholders. The fenestration business could be transferred to a second Newco. KPMG identified that there was a material risk that a "dry income tax charge" (that is, a tax liability that arises without the taxpayer having received any funds to pay the tax owing) would be triggered on the value

of the distribution received from GQA, which would be deemed to be the market value of the business for tax purposes. Option C was similar to Option A but, instead of transferring the trade and assets of the non-fenestration activities to Newco, they would continue to be carried on by GQA. Going forwards, distributions of surplus profits would be made from GQA to Newco. The same potential Employment Related Securities tax charge risk applied to this option. 18. 19. 20. 21.

22. Mr Parsell said that the Board discussed how much the members would receive as a dividend during the following year, subject to favourable advice being received. He said that there was a consensus that they would each receive £500,000 before tax. There was also a discussion about every other GQA employee receiving some sort of distribution annually and what this might look like. It was also agreed that Mr Parsell, Judgment Approved by the court for handing down. Double-click to enter the short title 23. 24. 25. 26. Mr Ratcliffe and Mr McAllister should become much more involved in the business. In recognition of this, terms of remuneration were agreed for all of the directors. This included a pay rise of £39,000 for Mr Clayton, so that he would be put on a par with the other directors in respect of their fees. Mr Clayton was said to have accepted this pay rise happily, and I accept that evidence. On 26 January 2024, Mr Parsell wrote to the Board to say that “we must maintain absolute confidentiality both within and without the company” in respect of Project Gemini. In his evidence to the Court, he said, and I accept, that he insisted on confidentiality as this was just good process. Whilst the process was ongoing, it would have been premature to say anything about it. On 1 March 2024, further advice from KPMG was circulated. This explored whether the Employment Related Securities Rules (“ERS”) applied and would give rise to a “dry tax charge” if GQA was to amend its Memorandum of Association to allow for distribution of its profits. At the top rate of income tax, this dry tax charge amounted to around £800,000 per member. KPMG suggested, however, that if the business was to be sold in the future, restructuring could be implemented as part of that transaction. Mr Parsell explained that whilst the same tax charge would arise, the members would have the funds from the purchase to pay it. Mr Parsell stated that, as a result, Project Gemini ceased to be a short-term project and defaulted to being a much longer-term turnaround project, with the turnaround being a prerequisite to attracting a future buyer and getting a reasonable valuation for the business. Although the option of GQA amending its Memorandum of Association and making distributions to members was not deemed to be practical as a result of the “dry tax charge”, the option to amend the constitution of GQA to allow for bonuses to be paid to the directors remained a possibility. KPMG had advised that a bonus was different to a dividend or distribution, as it was an expense in the normal course of business and was based on rewarding performance. As a result, the payment of a bonus would not trigger a “dry tax charge”. Mr McAllister was keen for a bonus payment to be made. He set this out in a document entitled “Gemini Update Proposal” on 13 May

2024. In this document, Mr McAllister proposed that the constitution of GQA be amended “to allow £500k to be paid to each Director through payroll in May 2024”. The question of paying a bonus was discussed at a Board meeting on 15 May 2024. Mr Parsell told the Court that he had already liaised with KPMG about this matter and, at the meeting, he reminded the Board that bonuses should be performance- related and proportionate. Further, that the past contributions made by the directors would not justify the payment of such a large bonus. Mr Parsell informed the Board that retrospective bonuses were a contentious issue; he also reminded the Board of their fiduciary duties and that they should avoid conflicts of interest such as “feathering one's own nest”.
27. Mr Parsell explained that Mr McAllister took a different view and pointed out that if the members were unanimous they should be able to approve the bonuses. Mr Parsell says that there was a heated discussion, in which Mr McAllister accused Mr Parsell of blocking progress and also complained about the quality of the advice that had been received. Mr Parsell told the Board that if the intention was to pay substantial retrospective bonuses at that point, he would not have any part of it. According to Mr Parsell, Mr Clayton remained silent throughout the meeting and did not express a Judgment Approved by the court for handing down. Double-click to enter the short title view. This was confirmed by Mr McAllister. To find a way forward, Mr Parsell said that if the point was not going to be accepted from him, the Board should seek formal legal advice. This was agreed and legal advice was provided by AG on 28 May 2024. 28. Before that legal advice was received, Mr McAllister emailed the other directors in the early morning of 28 May 20024, on the subject of “Directors Duties”. He stated that “so that I could have a better understanding, I sought my own legal advice with regards to the limits of and method to distribute cash reserves from within a company limited by guarantee and so I now have a much better understanding.” One of the questions that Mr McAllister asked, depending on the advice that they were to receive from AG, was: “Assuming the articles of GQA are amended and the majority of Directors/members agree, what Directors Duties would restrict the distribution of cash reserves to Directors/members through payroll assuming that once any distribution was complete, the balance of cash reserves remained extremely healthy (leaving cash reserves in excess of 2 years costs or 1 year of turnover) and the business outlook remained optimistic.” 29. 30. 31. Mr McAllister concluded the email by saying that depending on the advice from AG, “I may suggest we take alternative advice”. In cross-examination, Mr McAllister accepted that he was “determined” about Project Gemini and he wanted it to succeed. On 21 June 2024, a pay and reward consultancy called 3R Strategy was engaged to undertake a benchmarking exercise for bonuses to staff and directors and to design an appropriate bonus scheme and policy. 3R Strategy was also asked by Mr Parsell to advise specifically about whether bonuses could be paid retrospectively to the directors. On 10 July 2024, Mr McAllister wrote to the Board to say that he wanted a number of items to be included at their next meeting as “any other business” items. He said that “I believe that its important that we resolve once and for all the issues outstanding caused by the stalling of Gemini”. He proposed that Mr Ashley, a qualified barrister who had some familiarity with

GQA and was known to some of the Board members, he asked to do “a light touch review from the findings/outcome to date to see what options are open to us”. Mr McAllister said that he wished to understand “what the exit strategies are and what options are available to us”. He asked whether GQA’s constitution could be changed to pay a bonus to the directors. Mr McAllister also asked that the Board discuss the possibility of a “Directors Backflush Bonus” – that is, a retrospective bonus – “for previous efforts”, and proposed that this could be reviewed by Mr Ashley. A draft of the report prepared by 3R Strategy which included commentary on retrospective bonuses was circulated on 31 July 2024. Mr Clayton sent an email to Mr Parsell on that date which said that “At least page 30 identifies our concerns with a retrospective bonus”. Mr Parsell said in evidence that Mr Clayton had not previously expressed a view about the matter. I accept Mr Parsell’s evidence on this point. There is nothing in any of the documentation produced until that point which indicated that Judgment Approved by the court for handing down. Double-click to enter the short title Mr Clayton had any reservations about any aspect of Project Gemini, including the payment of £500,000 to each director, whether by way of dividend or bonus. 32. The final report from 3R Strategy was provided on 5 September 2024. Mr Parsell circulated the report to the Board on 15 September 2024. Mr Parsell explained to the Board that the key points to note from the report were that GQA salaries and proposed bonuses were in line with those of other organisations of a similar size and type as GQA, and that payment of retrospective bonuses was not standard, raised governance issues, and was not something that 3R Strategy saw in practice. The report had stated that: “Going forward, we recommend that discussions related to remuneration for executive and non-executive directors have appropriate board oversight, potentially including a review by external/independent parties, and excluding any beneficiaries from discussions to avoid conflicts of interest.” Mr Parsell said in evidence that all of the directors would have a conflict with respect to paying themselves a bonus of £500,000, and so would have to remove themselves from the decision-making. For Mr Parsell, the 3R Strategy Report had finally put to bed the issue of the large retrospective bonus. 33. In the meantime, the Board had agreed that Mr Ashley should carry out a review of Project Gemini. Mr Parsell was instructed by the Board to provide Mr Ashley with a briefing document in July 2024. A draft briefing document was shared by Mr Parsell on 21 July 2024, and commented upon by both Mr McAllister and Mr Clayton on 22 July 2024. There was some disagreement between Mr Clayton and Mr McAllister about how much information Mr Ashley should be given about the background to Project Gemini. Mr Clayton also made a number of comments on the draft briefing document that had been produced by Mr Parsell and edited by Mr McAllister. The edits from Mr McAllister, and the comments made by Mr Clayton, revealed their respective positions with respect to Project Gemini. 34. In an email that Mr McAllister sent to the directors on 22 July 2024, he explained that: “Knowing how I know how Neil works, I have added a footnote about fees. If he can pull this off, then I for one would have no hesitation in sharing some of the success with him. I think we need to give him an incentive to make this happen for all of us and him.” 35. From this point onwards, the other directors of GQA could have been in no doubt that Mr Clayton had significant reservations about aspects of Project Gemini. In an email sent to the other

directors on 22 July 2024, Mr McAllister said that he thought Mr Clayton's comments were: "really valuable and that this exercise had proved extremely worthwhile as it flushed out a number of different understandings of what Gemini actually is. Therefore, having read Micks comments, I think we need a frank open and honest Judgment Approved by the court for handing down. Double-click to enter the short title conversation so that we are clear on what is trying to be achieved by Gemini. As a consequence, it may be that some of us may not wish to be part of Gemini moving forward or part of GQA as a whole however, for all our sakes, we are much better knowing that now rather than operating under any misunderstanding moving forward." In his evidence to the Court, Mr McAllister said that the last paragraph was referring to himself. I accept that evidence. It was consistent with what he had included in his edits to Mr Parsell's draft briefing note for Mr Ashley.

36. Mr Ashley met with each of the directors individually in early September 2024. Mr Parsell said in evidence that, when he met with Mr Ashley, he told him that he could not see any scope for progressing Project Gemini in the short term, that the business needed a 3-5 year commitment and hard work to turn it around and get it ready for sale. Mr Parsell informed Mr Ashley that he had not been supportive of retrospective bonuses which had led to some tension with Mr McAllister. 37. 38. 39. 40. On 11 September 2024, one of the directors, Mr Ogilvie, sent an email to Mr Ratcliffe and Mr McAllister on their private email addresses, saying that he believed that Mr Ashley "can help unlock Gemini with a view to trying to meet all our individual aspirations as tax efficiently as possible, at a time when the project seems to have stalled. He can clearly think 'outside the box'." Mr Ogilvie commented that he wished to propose that Mr Ashley join the GQA Board "asap to deal with legal and HR issues. He can also help facilitate Gemini at the same time". On 13 September 2024, Mr Ratcliffe asked Mr Clayton to put the issue of appointing Mr Ashley to the Board on the agenda for the following week's meeting, following "formal requests" from both Mr McAllister and Mr Ogilvie, and as supported by himself. Mr Clayton was not happy with this, and emailed the Board to say that to invite Mr Ashley "without detailed discussion between all, is premature". He said that this should be discussed further at the Board meeting. The item was discussed at the meeting on 17 September 2024, and it was resolved that Mr Ashley be appointed to the Board. Mr Clayton was the sole dissenting voice. He said that he felt that Mr Ashley should have been asked to work on a consultancy basis without being appointed to the Board. On 18 and 19 September 2024, meetings were held to discuss the Strategic Review of GQA, a matter that had been worked on by Mr Ratcliffe and Mr McAllister for several months. Among other things, the Strategic Review contemplated changes in GQA's management structure and diversification of the business. It also contemplated changes in GQA's approach to marketing, which would involve a competitive exercise for the provision of marketing services. Mr Clayton accepted in evidence that this posed a significant threat to the income flows for Mr Globe's marketing company, which provided services to GQA.

41. Mr Ratcliffe spoke with Mr Clayton on 20 September 2024. In their conversation, Mr Clayton had said that he was not happy about the process for appointing Mr Ashley to Judgment Approved by the court for handing down. Double-click to enter the short title the Board, and felt that there must have been conversations about the appointment that he had not been privy to. He also commented that he was “not sure how he would vote” if the issues around “exit strategy (Gemini)” came up. Mr Clayton expressed deep concern that he was having to deal with staff asking questions about what was happening.
42. Mr Clayton and Mr Ratcliffe spoke again on 27 September 2024. In a note of their conversation that Mr Ratcliffe forwarded to Mr Ashley later that day, it was reported that: “• JR invited MC to discuss his concerns
- MC was quite emotional and said that he had written 5 emails to JR none of which he had sent. After sleeping on it he was glad that he had not sent them.
 - MC was concerned that the Board was not unified and he did not always feel included
 - MC then articulated that we might be trying to remove him from the Board. At this point JR interjected and said while he wanted MC to air his concerns, he could not accept this last point and noted how much support the Board and himself continued to show MC. JR also noted how important the Board had considered MC joining as a Director. JR also gave the example of the salary discussion concerning Tony Parsell and Shaun McAllister at the last Board Meeting where MC's input had been key in the final decision. MC then corrected himself acknowledging that it 'appeared that way' and that if there was a 4/5 v 1 situation the other Directors would try to remove the one who did not agree.
 - MC then said that he would not be able to accept the exit strategies being discussed and could not support something that he did not feel was in GQA's best interests.
 - MC expressed concern that it was difficult in the current situation to address the forthcoming GQA Conference (13 November) and Staff Meeting (8 October) in a positive manner. He also noted that a lot could happen in the 3 weeks between now and the Board meeting (he did not specify what this might be).
 - JR suggested that this discussion would be best served by MC having the opportunity at the next Board Meeting (9 October) of addressing the Directors with his concerns. JR reiterated that he had never limited any discussions where concerns had been raised including the last Board meeting. JR also said that MC could contact him at any time on any issue whatsoever. MC said that he had always been transparent in everything he had done and said. Judgment Approved by the court for handing down. Double-click to enter the short title
 - JR and MC then continued to review the minutes and agreed amicably that JR would send over a revised version that could be distributed for discussion/approval on 9 October. This was an easy process without argument.

- In addition, JR said that he would circulate the Strategy Day actions to MC so that they could try to get them agreed before distribution to the whole Board together with the Strategy presentation.” 43. The following day, 28 September 2024, Mr Ashley sent an email to Mr Ratcliffe and Mr McAllister which was very critical of Mr Clayton (referred to as “Mick”). Mr Ahsley stated that he had “just about finished my review of where we are from a governance point of view, but Justin’s note [see paragraph 42 above] today has garnered me into finishing the exercise. It is pretty dismal to be honest – much worse than I anticipated”. The points raised by Mr Ashley included the following: “I see little evidence of the board leading the organisation. On the contrary, there is anecdotal evidence that the board are viewed suspiciously by the staff. Managing that interface is a key responsibility of the CEO, but it seems that Mick Clayton has, if anything, been fostering a ‘them and us’ attitude with him positioning himself as being part of the staff body rather than leading it. There does not appear to be any understanding on his part of cabinet responsibility and I am aware (although have not seen it) that on at least one previous occasion he sent an email to the staff advising that he disagreed with the board. It is also clear that Mick has been running the company as his own, including deriving very substantial benefits and perks which should clearly be P11D (if permitted at all). Tony has advised that approximately 80% of the company’s corporate box at Sheffield FC is personal use by Mick and his family. Without wishing to put too fine a point on it, that’s a fraud on HMRC. He also seems to have built his ‘team’, both internally and externally, around his own friends and family and not necessarily having the interests of the company at the forefront of his mind in doing so. These sort of behaviours which will be visible to the staff body do nothing to set an appropriate culture and values in the business and will encourage improper practices by others; As I raised at the strategy day, the roles and responsibilities at board/exec level are hopelessly confused. In particular there is a lack of respect between the CEO and the Chairman (who, unusually, also reports into the CEO – which does nothing to assist the proper management of the relationship). The board’s desire to reach unanimity on all decisions has compounded Mick’s confidence I suspect, with him almost having acquired a power of ‘veto’ on any Judgment Approved by the court for handing down. Double-click to enter the short title decision which he does not like. There is no or no real recognition of the differences between the board, the company and the company members when, in fact, each of these should be seen as quite separate. There are no membership rules or byelaws and the board can currently expel members by a simple majority vote without any entitlement to be heard, which I find surprising. Whilst I am aware of the reasons why, it is also a little unsatisfactory that there are no board minutes available nearly 2 weeks after the board was held. The information flow is poor; The company’s documents of governance to the extent that they do exist have long since ceased to be fit for purpose and there are numerous examples of the board failing to be aware of or to comply with the articles or even in direct breach of them. Moreover, the company’s activities today bear little resemblance to the activities at the time of incorporation and whilst this is not unlawful, it would plainly be desirable that the company’s documents of governance reflect its actual activities . . . ”. The reference to a corporate box at “Sheffield FC” was an error; it should have been a reference to corporate

hospitality at Barnsley FC. I shall discuss the reference to the P11D and Barnsley FC later in this judgment.

44. Mr Ashley proposed to take responsibility for a number of matters including new membership byelaws and articles. Furthermore, Mr Ashley said that they needed to think how to tackle: “1. Mick’s behaviours generally;
2. Mick’s role and relationships with the board;
3. The rife nepotism and abuse of company facilities which absolutely must be brought under control so that we are legally compliant.” At the end of the email, Mr Ashley stated that: . . . it is obviously important that nothing is said to Mick until such time as we have properly discussed the issues and agreed upon a course of action.” In his oral evidence, Mr McAllister confirmed that the “course of action” which he, Mr Ratcliffe and Mr Ashley were looking to agree upon was one that would force Mr Clayton to get on board with Project Gemini, which included the distribution of a large payment to the directors. 45. On 30 September 2024, Mr Ashley emailed all of the directors to say that GQA had no byelaws and should have some. He provided a draft and asked for comments. One of the proposed byelaws was for membership of the company to “be terminated at any Judgment Approved by the court for handing down. Double-click to enter the short title 46. 47. time and without notice by a two-thirds vote of the Board of Directors for any reason including, but not limited to, conduct considered prejudicial to the Company or its objectives, failure to pay membership fees or failure to attend general meetings.” Mr Clayton commented on this proposal by saying that this was “particularly concerning for any member who may have a difference of opinion, and for the right reasons, to Directors, who could simply, terminate membership for ‘any reason’. Not that I have an alternative proposal.” On 3 October 2024, Mr Ratcliffe and Mr Clayton had an email exchange about proposed remuneration for Mr Ashley. Mr Clayton responded to say that “There seems to be a lot of bending over backwards and decisions being made without consultation. I am uncomfortable with the pension payment, and I am uncomfortable with the PMI”, a reference to the possibility of Mr Ashley joining GQA’s private medical insurance plan. Mr Ratcliffe responded by saying that he was “somewhat surprised” at Mr Clayton’s comments given that he, Mr Parsell and Hawsons (GQA’s auditors) had looked at the package and there was a cost saving for GQA. Mr Ratcliffe objected to the suggestion that they had been bending over backwards to bring on Mr Ahsley, and that decisions were being made without consultation. On the following day, 4 October 2024, Mr Ratcliffe wrote to Mr Clayton to say that he wanted to set up a Teams meeting the following week to run through the Board meeting in advance “but also to address some of the concerns you have raised in recent emails. . . It is important . . . that we are clear on each other’s positions before the Board meeting.” Mr Ratcliffe said that he was committed to helping GQA move forward and he believed that the next Board meeting “can be another very positive step”. He also said that he had made the other Board members aware that he would be allowing time for Mr Clayton to address them “with any issues of concern”.

48. Mr Clayton responded on 6 October 2024 to say that he was unsure that there was a need for a pre-Board meeting. He was grateful for Mr Ratcliffe making the other directors aware of his concerns, but commented that “as these are significant, I need time to fully consider, and will not respond at the meeting” the following week. Mr Clayton concluded by saying that “In my position as Chief Executive Officer since 2011, I have put my heart and soul into making GQA Qualifications a success, in an honest, professional and ethical manner, and I will retain this approach to seek the best for GQA”.
49. Mr Ratcliffe replied to Mr Clayton on 7 October 2024, saying that: “I am disappointed by your response to a straightforward request for a pre-Board meeting on Teams today, which I consider a reasonable management instruction. As Chair, I have a key role as link between yourself and the Board and it would appear that you have no respect for this. You have articulated before and confirmed in this email ‘your s ignificant concerns’ but are now not prepared to set these out before the Board on Wednesday as you and I had clearly agreed. What is more, you wish to discuss these concerns at a future date chosen by yourself. I can only deduct in this that Judgment Approved by the court for handing down. Double-click to enter the short title you see yourself as above the Board. I also think that this is disrespectful to both me and the other Board members. I need to make it clear that you have raised significant concerns about the appointment and onboarding of a new Director which has been agreed by the rest of the Board. Our Auditors, Hawsons, have also run through the financial arrangements have they which not raised an issue with. However, your view is that ‘there seems to be a lot of bending over backwards and decisions made without consultation’. I do not believe that this is a good look for me to have to explain to the Board in no uncertain terms just how annoyed and frustrated I am that not only do you not appear to accept the decisions of the Board but that having established an opportunity to address these on Wednesday October 9th at the Board meeting you have now changed your mind. I have always aimed to achieve a united and inclusive Board and you are simply not allowing me to do this. I am sure you can sense my utter frustration in this email. I have repeatedly gone out of my way over the last 13 years to support you as CEO and do my utmost – sometimes against the wishes of other Board members – to ensure that you could deliver your ideas or plans. Sadly, I just do not think your actions demonstrate that you recognise me as Chair any longer and this is a position ideas or plans.”
50. Mr Ratcliffe wrote to the Board (including Mr Clayton) on 7 October 2024 to say that Mr Clayton did not wish to discuss his “significant concerns” at the Board meeting but at a later date. Mr Ratcliffe said that he wished to add an item to the agenda under the heading “Chairman/Chief Executive Relationship”. In evidence to the Court, Mr Ratcliffe accepted that he wanted Mr Clayton “to put up, or shut up” with respect to his “concerns”. For Mr Ratcliffe those “concerns” included what Mr Clayton had said to him about “exit strategies”, which was a reference to what had been discussed and proposed by KPMG in January 2024, and included payments to members. 51. On 8 October 2024, Mr Ogilvie wrote to Mr Ratcliffe and Mr Clayton to say that: “Your four co-directors have discussed this email and the issues to which it alludes at length. It goes without saying that we are somewhat aghast at the

situation which has unfolded. Nevertheless, it is very clear to us that we need to address these points formally as a board. We are unanimous in our view that we simply cannot tolerate a situation whereby any director – let alone the CEO – is suggesting that there are matters of serious concerns which need to be brought to the board’s attention and yet he or she elects to keep their proverbial powder dry in relation to those Judgment Approved by the court for handing down. Double-click to enter the short title points. That proposition flies in the face of such director’s fiduciary responsibilities.” Mr Ogilvie proposed a timetable for Mr Ratcliffe and Mr Clayton to address the Board about the matters that had been raised.

52. Mr Clayton responded to say that no one was more disappointed than him at the current situation, and that “Before I respond in detail, I make it entirely clear that I am not electing to keep my ‘proverbial powder dry’. I politely asked Justin to allow me a short period of time to fully consider the situation as I felt that Wednesday’s Board meeting did not give me the opportunity to fully consider. I must also stress that I respect and strictly comply with my fiduciary duties at all times, as well as being consistently transparent in all my communications and actions. I am disappointed that my request to fully consider the situation before speaking with fellow directors has been refused. . . ” 53. The issues between Mr Ratcliffe and Mr Clayton were addressed at the meeting of 9 October 2024. Both Mr Ratcliffe and Mr Clayton explained how they perceived their relationship. In a speaking note that Mr Clayton had prepared for the meeting, he identified a number of concerns: “Concern 1 After reviewing the timelines of Neil’s engagement to discuss each director’s thoughts individually, including multiple meetings with Justin and Shaun, and a very brief meeting with me, I still have an issue with the process of appointing a new director when our normal process was not followed but started immediately following my meeting with him. Concern 2 The employment of the directors from January, February and March was originally with a view to determining whether there was resultant added value to the company, to be reviewed after six months, and subsequently moved to March 2024 to allow time for the strategic review to be completed. However, the Strategic Review carried out was actually presented as a fait accompli with staff and sub-contract professionals to report directly to directors. Concern 3 I have not been made aware of a number of meetings and have discovered activities after the event. Due to my concerns regarding the appointment of Neil Ashley, it appears that my Judgment Approved by the court for handing down. Double-click to enter the short title voice in relation is not being fairly heard. In terms, I have been side-lined. I am being directed and instructed to carry out tasks that until now would not fall within the ambit of my well- established role. Concern 4 The Directors approach to allowable expenses is a genuine matter of concern as a director. Concern 5 The tone of Justin’s email dated 7th October was unduly contentious, if not mildly threatening.” 54. The sub-committee of the Board provided Mr Clayton with a copy of a statement. This included their concern at the “obvious breakdown in the relationship between the CEO and the Chairman”. They set out their “provisional views” with respect to the various points that had been raised. With respect to the P11D issue, it was stated that: “The board was surprised to hear the CEO’s claim that his use of the corporate box at Barnsley FC was “on my P11D”. As

the CEO is aware, TP immediately advised that he was not aware this was recorded as a P11D issue and, having checked with Hawsons today, in fact it is not. The board were also surprised at the suggestion from the CEO that he intended i.e. had intended prior to the issue being raised with him during the meeting, to include this benefit in kind in his self-assessment tax return. Doing so would cause a discrepancy between the CEO's tax records and the company's tax records and the CEO's intention to do this had not been discussed at any point with TP". 55. The request for Mr Clayton to address the Board was regarded as the "individual issue which concerned the board the most". The provisional view of the exchanges was: "(i) the 4th October email from the Chairman was a perfectly reasonable and sensible managerial request for a meeting. No offence could sensibly be taken to this; (ii) the 6th October email from the CEO was, in contract, discourteous and insubordinate. The CEO effectively refused to comply with the Chairman's polite and reasonable request (but de facto it was an instruction) that they have a meeting. Moreover, this email seemed to imply that the CEO would be (more) interested in such requests from other directors but, by implication, not from the Chairman. We also note the final line to which we shall return shortly; (iii) we see nothing wrong in the Chairman's email of 7th October. He was entitled to be frustrated at the CEO's attitude Judgment Approved by the court for handing down. Double-click to enter the short title and to respond in terms which made his views clear. This email did not, read in context, cross any line; (iv) the CEO's final email of 7th October redounds to his discredit. Contrary to the statement in point 1, the CEO had indeed refused a reasonable management instruction. This email is dripping in innuendo and insinuation that whilst the CEO has integrity and will only ever act in the best interests of the company, the same cannot be said of the Chairman (or presumably other board members). This is the same sentiment as appears through the communications including that of 6th October." 56. The sub-committee added, "We note for the record that when the CEO was asked to explain his "significant concerns" to the board in summary, there was in fact nothing of substance and certainly nothing which remotely suggested any lack of integrity on the part of any other member of the board. Rather, they were in the nature of miscommunication and underpinned by the CEO's difficulty with the pace of change at board level. . . . The CEO is subject to solemn legal obligations to the company, including an important duty of confidentiality, and certainly should not discuss board business with other staff or indeed externally. As a board we do and would take such issues very seriously indeed. For the record, however, we wish to make it very clear to the CEO that should he ever have material concerns about any sort of impropriety in future, he should not hesitate to raise this with any member of the board. Simultaneously and at all times, the CEO also has the ability to complain to the company's regulators should he feel it necessary or appropriate to do so. This is his right and there would be no criticism of the CEO for ever raising such a concern in good faith." 57. The sub-committee identified a number of possible outcomes. They rejected the "Do nothing" option. Replacing both the Chair and the CEO would not be an appropriate and proportionate response, especially as the provisional findings were that Mr Clayton bore "the lion's share of the responsibility". They did not consider that they should take formal action to remove Mr Clayton, although this was something they came very close

to, as: “the CEO has immense corporate knowledge and experience, and a pivotal role to play in taking the business forward; and we were also impressed by the CEO’s calm response to these issues being raised and his efficient ‘business as usual’ attitude over the past 48 hours. It is also acknowledged that the CEO Judgment Approved by the court for handing down. Double-click to enter the short title has gone through a significant period of change in a short space of time in terms of his relationship with the board of directors and may have found it difficult to make the adjustment, for which we have some sympathy – although this does not justify the behaviours we have described.” 58. The only other viable option was to remove Mr Ratcliffe as Chairman of GQA. This was raised with Mr Ratcliffe and he indicated his willingness to step aside. The sub- committee considered that that could not be done without Mr Clayton acknowledging his responsibility. Mr Clayton was therefore offered a choice between three options:

- (i) proceed to a formal disciplinary hearing; (ii) request an ‘agreed outcome’ instead of proceeding with formal disciplinary action: “This would be on the basis that the CEO understood the gravity of the situation; acknowledged his unacceptable behaviours and attitudes towards the board and his fellow board members; and undertook to have a fresh start and move forward constructively under a new Chair to be forthwith elected by the board”; or (iii) enter into a “protected conversation” with a view to discussing terms to exit the business.
59. Mr Clayton accepted option (ii), stating in an email to Mr McAllister on 16 October 2024, that this was on the basis that “whatever my true intentions were at the time, my words and, on some occasions, my actions, have caused offence and have led to disruption. This was never my intention. But I do not seek to deny that this has been their effect.”
60. Mr McAllister responded later that day with what were described as “Agreed outcome terms”. This included Mr Clayton being given a final written warning, in lieu of the need for a formal disciplinary process. That warning would be placed on his employment file for one year.
61. Mr Clayton responded to the “Agreed outcome terms” letter in an email to Mr McAllister on 21 October 2024. Mr Clayton objected to the final written warning, stating that this had not been mentioned when the option of an “agreed outcome” had been put to him. Among other things, Mr Clayton stated that a final written warning could not “ever be justified in these particular circumstances”, and he asked for it to be removed. Mr McAllister replied later that day, having discussed the matter with the rest of the Board. He said that the offer of the “agreed outcome” remained open for acceptance until 4pm the following day. Mr McAllister stated that: “your position is based on a proposition which we simply cannot understand. You seem to think that notwithstanding the behaviours which you exhibited, many of which you admitted and some of which constitute very serious misconduct, you should not receive any formal sanction at all. Your admissions on the P11D issue alone, which you have repeated at least twice to Tony Parsell and which will likely require us self-reporting non-disclosures to HMRC, are very serious. Yet you seem to Judgment Approved by the court for

handing down. Double-click to enter the short title suggest that a proportionate outcome is simply that you express some ‘regret’; meanwhile, the board remove the Chairman, who is not at fault, from his role in order to ameliorate the breakdown in the relationship which you have caused. We find that surprising to say the least.”

62. Mr Clayton responded on 22 October 2024 to say that the deadline that had been set did not give him sufficient time for consideration. He explained that the pressure being exerted was impacting on his health. He asked for an extension of the deadline to 25 October 2024. Mr Clayton’s request was rejected. Mr McAllister said he was sorry that Mr Clayton was feeling under stress, but said that this was “largely what you have brought upon yourself”. Mr McAllister said that the proposal of an agreed outcome was withdrawn as it was clear that Mr Clayton was “uncomfortable with the process and outcome offered”. 63. 64. 65. The P11D issue that was referred to by Mr Ashley in the email of 28 September 2024 (see paragraph 43 above), and by Mr McAllister in his email of 21 October 2024, involved Mr Clayton’s use of hospitality tickets for himself and his family at Barnsley FC. A P11D form is a tax form completed by employers for directors and employees who receive “benefits in kind”. The employer is required to set out the cash value of those benefits. At the Board meeting on 9 October 2024, Mr Clayton was asked to provide details about his attendance at Barnsley FC’s matches. GQA had agreed to a two-year sponsorship of the club’s Under 21 team. The cost of the sponsorship was about £23,000 per year. As part of the arrangement, a number of tickets were made available to GQA to attend home games of the senior team. Whilst those tickets were intended to be used by directors and managers at GQA to host suppliers and customers for business development purposes, they were actually used by Mr Clayton and his friends and family. In evidence to the Court, Mr Clayton said that he used the tickets, which also involved the lowest level of hospitality offered by the club, as he could not get people to come to the games. I accept this evidence: it was not challenged with any vigour by Mr Reade KC, acting for GQA. At the Board meeting, Mr Clayton said that he would declare the benefit on his self- assessment tax return. Mr Parsell raised the fact that it had not been declared on the P11D form, and there would be a disparity between his self-assessment and the P11D form that was submitted by GQA. This meant that GQA was at risk of non-compliance with its reporting obligations to HMRC. Furthermore, GQA would also have underpaid national insurance contributions on the benefit. As a result of this exchange, the Board instructed Mr Parsell to investigate the matter and to resolve it in the best interests of GQA, accounting to HMRC for any sums due. Mr Clayton was instructed to work with Mr Parsell to achieve that objective.
66. Mr Parsell said in evidence that, in the days after the meeting, he had been contacted by Mr Clayton who seemed keen to resolve the issue. Mr Parsell asked for certain information about the matches that had been attended and by whom, as well as the price of the tickets. Mr Clayton suggested that the price of the tickets was about £65 per match, and Mr Parsell told him that he estimated that the benefit amounted to around £2,500-£3,000. Mr Parsell told Mr Clayton that he needed to review the other information he had asked for to confirm this. Mr Parsell said that Mr Clayton seemed Judgment Approved by the court for handing

down. Double-click to enter the short title anxious to deal with the situation more quickly, but he advised him that the self- assessment return was not due to be submitted and paid until 31 January 2025, and it was better to get things right. Mr Clayton's response was that he wanted to finalise it before the end of October.

67. Mr Clayton provided Mr Parsell with the information that he had requested. On reviewing this, Mr Parsell said he needed further clarification. Mr Clayton said that he would need to ask the football club and would come back to him. He did not get back to Mr Parsell, however. On 4 November 2024, when Mr Parsell chased up Mr Clayton to see if they could agree the cost of the tickets, Mr Clayton responded to say that he had forwarded the information directly to GQA's auditors, Hawsons, to deal with the P11D. On 5 November 2024, Mr Parsell asked Mr Clayton why he had dealt directly with Hawsons, given that he had been tasked by the Board to deal with the matter. Mr Clayton did not respond. Instead, Mr Parsell obtained from Hawsons the correspondence that had been sent to them by Mr Clayton. 68. On 4 November 2024, Mr Clayton wrote to Hawsons to say that he had spoken to the club and that "you will see from the email below that the club do not place a value on the seats as they are given as part of the front of shirt sponsorship that we have with the under 21s". He says that he had calculated the cost of the meals to be £262.90 for the last tax year. The email referred to, and which Mr Clayton sent to Hawsons, was from Dan Hayward at Barnsley FC, dated 3 November 2024, and stated: "Morning Mick, Good to talk earlier. Regarding the hospitality tickets, this is something we have been asked about previously. The match tickets are part of the sponsorship package and aren't of additional individual value, however we do cost the pre-match food offering at £11.95 per head for self-assessment/Benefit in kind (BIK) calculations. I hope this helps, but if you need anything else please don't hesitate to let me know. Dan". The actual email that had been sent from Mr Hayward to Mr Clayton also included the wording "I hope this is OK, if not then please let me know." Those extra words had been deleted by Mr Clayton when he forwarded the email to Hawsons.
69. Mr Clayton was questioned about this deletion at the trial. He was asked whether the reason for removing that sentence was because if he had left it in it would have revealed that he had discussed and solicited the particular form of words that were used by Mr Hayward. His answer was that "That would not have been in my mind. It says the same thing to me". Mr Clayton was asked whether he was making sure that he could resist any suggestion that he had been guilty of misconduct. He answered in the negative. I reject Mr Clayton's evidence on these matters. It is clear from the correspondence that Mr Clayton had discussed with Mr Hayward the particular form of words that were used. Further, in my judgment, it is clear that Mr Clayton dealt with Barnsley FC directly towards the end of October 2024, as he wanted the matter Judgment Approved by the court for handing down. Double-click to enter the short title 70. 71. 72. 73. 74. 75. out of the way before he embarked on the action that he was planning to take against the other directors. That is why he dealt directly with Barnsley FC rather than let Mr Parsell deal with it. I also find that Mr Clayton edited the email from Mr Hayward so as to remove an obvious sign that he had been responsible for providing the

language used by the club about the value of the benefit in kind. At the time when the correspondence took place between Mr Clayton and Mr Hayward in early November 2024, Mr Clayton was planning with Mr Firman and Mr Globe a course of action against the other directors. Mr Firman was a former solicitor who had provided legal advice to GQA over the years. He ran a business called “The Legal Company”. Mr Globe ran a marketing company called Inside the Box Marketing Limited which provided services to GQA. He was also a director of Building Our Skills Academy Limited which was supported financially by GQA, and was another business to whom Mr Globe’s marketing company provided services. The Court was shown an email exchange between Mr Clayton, Mr Globe and Mr Firman dated 26 September 2024, about the three of them meeting up. They agreed to get together on 10 October 2024. Mr Clayton said in evidence that this was just a “catch up” meeting. Mr Globe said the same. I do not accept that evidence. At this point in time, Mr Ashley had been appointed to the Board of GQA, an appointment which Mr Clayton had objected to. I find that, at the very least, Mr Clayton wished to discuss developments at GQA with Mr Firman, as well as with Mr Globe who he regarded as a confidante. The Court has seen correspondence between Mr Clayton and Mr Firman which reveals Mr Clayton’s state of mind and what was troubling him. It also evidences the advice that Mr Clayton was being provided with by Mr Firman. On 8 October 2024, Mr Clayton forwarded Mr Firman a version of his “Concerns” document (see paragraph 53 above). Mr Firman responded to say that if he had more time he would “wish to redraft your list as I do believe it sounds too contentious/ bitter”. He advised Mr Clayton that the document needed “moderating and the adoption of a positive attitude – in extremely difficult circumstances. I can see them saying relations have broken and are irretrievable – giving them an opportunity to boot you out.” On 23 October 2024, Mr Clayton shared with Mr Firman correspondence from Mr McAllister in which he noted that Mr Ratcliffe was stepping down as Chairman of GQA and that he was prepared to take on the role. Mr Clayton commented that he did not trust Mr Ratcliffe “or any of them”. Mr Firman responded to say “I am clear in my own mind the proper and dynamic route to take. We all three have tasks assigned to us for tomorrow. Let’s move towards a solution.” On 24 October 2024, Mr Clayton emailed Mr Firman from his personal email account, adding to a timeline and attaching documents and emails. He said that this “hopefully . . . details the situation enough but if not then please do let me know”. The documents provided to Mr Firman included materials relating to Project Gemini – among them were legally privileged material belonging to GQA: instructions to counsel and advice from counsel -- and the documents relating to Mr Clayton’s personal situation at GQA, including the “agreed outcome” material. Judgment Approved by the court for handing down. Double-click to enter the short title 76. On 30 October 2024, Mr Clayton sent to Mr Globe and Mr Firman a message that had been sent to him from Mr McAllister which stated that “It says non profit on our linked page. Please get removed asap.” Mr Clayton commented that this did not add anything “but more paranoia around our not for profit status”. Mr Firman responded to say that was concerned about that message: “you are a company limited by guarantee. Unless counsel says otherwise . . . a company limited by guarantee is, by definition, not for profit. Moreover, despite what is said or inferred, you cannot circumvent this rule by conveniently

making the money disappear or trying to magically convert the current company to a conventional limited company. My opinion is that you would have to dissolve one and create a separate entity - ie the new company. The very idea that one can retrospectively make millions of pounds disappear smacks of Bernie Madoff rather than the real world. Indeed, it is so absurd that I find it difficult to follow how a barrister can be associated with the process. Which brings me to the conclusion: there is a possibility that a crime has been committed: conspiring to commit fraud. Just a thought at this stage but we should not underestimate the gravity of the situation and the unscrupulous and dishonest nature of what they are proposing to do. I actually believe that Addleshaw Goddard and KPMG must have been pleased to have taken the fee but horrified by what was being asked. MICK: I would like you to collate all documents which evidence their intention to extract this money by whatever means for their own benefit. And I do mean, every single document, whether I already have it or not. . . ” 77. 78. The reference to a “barrister” was to Mr Ashley. The reference to “counsel” was to the person who Mr Firman was seeking to obtain advice from to assist Mr Clayton. Mr Clayton has not waived privilege in the advice that was provided to him by counsel. The reference by Mr Firman to the other directors “conspiring to commit fraud” is the first time that we see a reference to “fraud” in the communications to or from Mr Clayton. There is no suggestion from this email that Mr Firman had used that term previously with Mr Clayton; and Mr Clayton did not suggest otherwise in his evidence to the Court. On 31 October 2024, Mr McAllister emailed the directors (other than Mr Clayton) to say that they needed to discuss how to deal with Mr Clayton given that he had decided not to accept the offer of an agreed outcome. Mr Ashley’s view was that terminating Mr Clayton’s employment was an option, but he did not think that he was “quite there yet (although very close tbh)”. He suggested that they should suspend Mr Clayton from the Board and review the situation in 12 months’ time, although he acknowledged that ‘In reality, I’d be surprised if he is still with us in 12 months’ time but that is rather down to Mick.’ Mr Ogilvie agreed with Mr Ashley’s suggestion. On 2 November 2024, Mr Ratcliffe responded to say that he supported Mr Ashley’s view. Judgment Approved by the court for handing down. Double-click to enter the short title 79. On 3 November 2024, Mr Clayton sent Project Gemini documents to Mr Firman. He sent the same documents to Mr Globe on the following day. On 5 November 2024, Mr Clayton shared further documents with Mr Firman and Mr Globe which they commented on. In one document, reference was made to a number of matters under a heading “Other”, with the text “Perhaps not for this document, but for us to have up our sleeve as the means ultimately to dismiss them are the following”. This listed allegations of fraudulent expense claims, bullying, conduct towards female employees, controlling and coercive behaviour, cronyism, wasting company time and resource to find ways to get around the proper legal advice of AG and KPMG, acting outside of the interests of GQA in contravention of their duties as directors, and abusing their positions as directors to try to engineer personal gain. In fact, some of these matters were included in the schedule of allegations appended to the letters that were sent to the individual directors, and it is clear that Mr Clayton contemplated that the other directors might be dismissed at the end of the process that he was planning with Mr Firman and Mr Globe. 80. On 6 November 2025, Mr

Clayton sent letters to each of the other directors purporting, in his capacity as a member and/or as the Chief Executive Officer and/or as a director of GQA to suspend them from their directorships and from their employment or engagement with the company. Allegations of fraud were made, and an independent investigation into those allegations was proposed. 81. The letters contained the following: “I am compelled to write to you concerning the current position of GQA Qualifications Limited (‘the company’) in my capacity as member of the company, as well as being the Chief Executive Officer and a recently appointed director. This communication is prompted, as a genuine and most regrettable measure of last resort, by a number of specific actions that you have personally taken in connection with the company, coupled with my continuing and unconditional determination and resolve to ensure that the company continues to operate ethically, lawfully and successfully at the present time and continues to do so in the future. I regard this as my duty as a director and as CEO but also as a member. The Company’s interests are paramount, as they have always been for me. You have left me with no possible alternative for reasons I shall explore further in this letter. It is a matter of public record that the Company is a Company limited by guarantee and also, specifically not for profit, a fact which, I believe, is not, and indeed cannot realistically be, in dispute. . . . I have over recent weeks become increasingly concerned that the actions you have taken, and indeed propose taking in the Judgment Approved by the court for handing down. Double-click to enter the short title immediate and longer-term future, put the existence of the company in urgent danger. I cannot, in good faith, ignore this ongoing threat any longer. I have a duty in all my capacities, and in particular as a member, to ensure that the interests of the Company are prioritised and fully respected. I now know this not to be the case at the present time, for reasons hereinafter appearing. . . . I have rights and obligations as a member of the Company to ensure that all the directors, including you in particular, fulfil your obligations towards the Company fairly, fully and transparently. I have unfortunately realised in recent times that you, together with others, have adopted a course of action where you have been deliberately guilty of a serious dereliction of duty as directors – patently putting your own interests first, rather than the interests of the Company. In truth, more to the point, you are indeed acting to the positive detriment of the Company and are fully aware of that fact. . . . Project Gemini: The non-executive directors in late 2023 embarked upon an unpublicised plan to access for themselves, and for their own pecuniary advantage, substantial retained profits in the Company, i.e. reserves in excess of £9 million. This initiative was named by you and your co-directors ‘Project Gemini.’ The objective was to reconstitute the Company or, in the alternative, incorporate a fresh company into which the GQA assets could be transferred (ie. to a private limited company – and therefore for profit.) Dividends would, it was envisaged, be payable to the directors. To cut to the chase, you were clearly seeking any means whatsoever whereby each of the members would receive an initial sum of £500,000 and by creating a conduit whereby the funds could be channeled elsewhere and into your own pockets. [reference to legal advice] On the 17 September 2024, Mr. Ashley was duly appointed a member and director. I dissented at the Board meeting. I was overruled. As a direct result, I was increasingly isolated and then asked to account for my behaviour on the false premise that I was being deliberately obstructive, when in fact I

was genuinely and greatly troubled regarding the Project which, it now appeared, was to be railroaded though in any event, whatever the proper legal advice might be. I rightly raised the matter with the Chairman in good faith and was immediately Judgment Approved by the court for handing down. Double-click to enter the short title regarded as obstructive, by which I mean legitimately obstructing a project or master plan [reference to legal advice]. I was acting purely in the interests of the Company. As far as my employment issue is concerned, this is not the issue about which I currently write but I can say that the personal attack on my bona fides was clearly designed merely as a pretext to ensure any obstruction to the project was removed and, if possible, at a stroke. It appears, furthermore, that this was an integral element of Mr. Ashley's brief. . . . Whilst there are several areas of profound concern, including examples of blatant and shameful bullying, other financial impropriety and significant breaches of fiduciary duties, I have as a member regrettably reached the conclusion that all other board members, despite the advice received, have now assigned the task to one of their own kin to proceed with Project Gemini – i.e. however it can be achieved, by fair or foul means, legal or not, to dissipate the assets of the Company and for each of the directors to benefit financially and substantially. This process is well advanced. Mr. Ashley is in place, offered a significant financial benefit to achieve the objective, directors have been given superfluous titles and paid accordingly and every effort has been made to distance the CEO from the decision-making process. In terms, the Board has well and truly 'thrown its dummy out.' The intention is that no-one will stand in their way. As a result of your action to date and continuing, the future of the Company is being placed at serious and imminent risk, as are the jobs of those colleagues who have worked diligently and loyally in their various posts for many years. More crucially, it is your declared intention to dissipate, by whatever route, the reserve fund owned by the Company in order to benefit financially in circumstances where it is unlawful to do so. It would therefore appear clear beyond any genuine doubt that fraud is being committed or, at the very least, contemplated. You are also treating the Project collectively and as a matter of urgency. The clear inference to be extracted from this is that there is a genuine suspicion of fraud and that your Project is currently being implemented and expedited as far as possible. Consequently, you are acting in breach of your fundamental duties as a director by seeking to defraud the Company and a pressing and unacceptable threat of further unwarranted and illegal dissipation is real and imminent. Judgment Approved by the court for handing down. Double-click to enter the short title In these circumstances, it is my decision as a member of the Company (and, if necessary, also in my capacity as CEO and/or director) that you face disciplinary proceedings for which purpose at this stage I attach to this letter a list of the allegations against you, which should, however, not yet be regarded as an exhaustive list. The allegation of fraud is so serious that I cannot allow this situation to continue any longer and, in my capacity as CEO, and/or member and/or director, I accordingly suspend you forthwith and without notice as director and you are similarly and separately suspended from your employment with the Company pending a thorough, independent investigation.” 82. On the same day, Mr Clayton instructed GQA's IT and mobile service providers to disable the other directors' access to GQA's systems. Mr Clayton also informed clients of GQA and the

regulators for the awards that GQA conferred that the other directors had been suspended pending an investigation. Mr Clayton told the regulators that: “Following legal advice, at 09.30 on Monday the 6th of November, 5 members of the GQA Board of Directors were suspended from their duties, pending independent investigation, due to activities including, but not limited to, allegedly seeking to defraud the company. Whilst we look to instigate the independent investigation into the allegations, my priority is for GQA to continue to function ... This situation has no effect on the day-to-day operations of GQA. Key contacts and suppliers have been informed of the situation, and we will be looking into temporary governance arrangements during the short term to ensure that we continue to meet the GCoR, and any Statement of Compliance requirements.”

83. Mr Clayton also held a meeting with staff to inform them of the suspension, and told staff not to communicate with the other directors. In the afternoon of 6 November 2025, Mr Clayton emailed Mr Firman, copying in Mr Globe. He said: “As expected, today has been something of a whirlwind. I have a couple of topics that i would appreciate your guidance on and have included some updates ahead of our 17.00 meeting: 1/ I need to confirm payroll arrangements for the month of November asap. . . 2/ Directors. As the Board are currently suspended, pending investigation, we have issues with the Bank mandate as we cannot change anything without 2 Directors signature, which Judgment Approved by the court for handing down. Double-click to enter the short title we are not going to get. is it possible for me to nominate a member and then propose as a Director during this time? 3/ I've spoken to the Regulators (Ofqual England, SQAA Scotland) and they have been sympathetic and asked to be kept informed. The most notable activity required is that of setting up an emergency governance committee / board - i am speaking to SQAA again tomorrow morning so will get more information from them on what they want. 4/ I am meeting PS3 investigators tomorrow . . .” 84. Later that day, Mr Globe wrote to Mr Clayton setting out his thoughts about staffing arrangements at GQA. Mr Globe suggested he should become an interim member of the team providing business support and communication services, that Mr Clayton should continue as Chief Executive Officer, and that Mr Firman should be an interim member of the team as Legal Counsel.
85. Mr Clayton sought to make changes to GQA's bank mandate with Barclays Bank. On 6 November 2026, he instructed Barclays to withdraw an application to add Mr McAllister to the bank mandate and sought to restore his name and that of another member of staff, Ms Kershaw, to the bank mandate. Mr Parsell was alerted to these matters by Barclays, and he prevented the changes from going ahead. 86. 87. On 7 November 2024, Mr Clayton spoke to Lisa Williamson, a Director at Achieve and Partners, a regulated Awarding Body, and sought her help in setting up an independent governance body for GQA until such time as the independent investigation could take place. Mr Clayton believed that this would ensure continuing compliance with the Regulatory Authorities. Mr Clayton also planned to meet with Jonathan Chapman from PS3 Limited, an independent investigator, on 7 November 2024. On 7 November 2024, Mr McAllister and Mr Ratcliffe sought access to GQA's premises. They were denied entry. An urgent Board meeting was arranged, which Mr Clayton declined

to attend. At this meeting, the Board decided to forfeit Mr Clayton's membership under the byelaws, thereby disqualifying him from acting as a director. Mr Clayton was also suspended as an employee pending investigation. The other directors regained control of GQA and its systems during 7 and 8 November 2024. 88. On 14 November 2024, Mr Clayton was summarily dismissed. Mr McAllister, signing himself as Chairman and Interim CEO of GQA, wrote to Mr Clayton to say that: "we have just learned that on top of your unlawful attempt to seize control of the company for yourself and of your defaming of the company and its directors to various parties including our regulators, you have breached the terms of your suspension by contacting members of staff. Not only is this a direct contravention of the conditions of your suspension, but you have placed the members of staff in a terrible position whereby potentially they could then face disciplinary action and further trauma. Judgment Approved by the court for handing down. Double-click to enter the short title The reality is that there are no circumstances in which you could ever be permitted to retain your employment with the company. Your behaviour has been utterly reprehensible and whilst we had every intention of giving you your opportunity to make representations, the reality is that any further hearing or process would be entirely futile. It is difficult to conceive of a clearer case where summary dismissal is the only reasonable and proportionate outcome. Quite contrary to your recent allegations, the other five of us were working very hard to maintain a relationship with you and to encourage you on what we hoped would be a long and rewarding journey as we turned around and grew the company. However, our trust in you was utterly and irreparably destroyed by your actions and by the further actions you intended." 89. Following his dismissal, Mr Clayton sent an email to Mr Kearns, the Group Chief Executive of CSCS, attaching some documents. Mr Clayton explained that this material "has also been shared with my legal representatives and the Regulatory Authorities for Awarding Organisations. The documents detail the allegations that I was seeking to instigate an independent investigation into". The documents shared with Mr Kearns included information relating to Project Gemini and to the legal advice that had been provided to GQA. In a witness statement, Mr Kearns has said that he held this information in confidence. This was not challenged by GQA at the trial. Legal Proceedings 90. 91. GQA issued proceedings against Mr Clayton on 29 November 2024. On 4 December 2024, Mr Clayton gave undertakings, pending an expedited trial, not to use or disclose GQA's confidential information, to preserve documents and to deliver up the company's property. These undertakings were reflected in a consent order made by His Honour Judge Shanks on 5 December 2024. On 15 January 2025, Mr Clayton issued proceedings in the Employment Tribunal against GQA, alleging unfair dismissal, automatically unfair dismissal (contrary to section 103A of the Employment Rights Act 1996 ("the ERA")), and detriment for making a protected disclosure contrary to section 47B of the ERA. The latter two claims are colloquially known as "whistleblowing claims". The Legal Framework 92. 93. There was general agreement between the parties as to the relevant legal principles that applied to the case. I shall outline those principles under the headings: (i) breach of contract; (ii) breach of statutory and fiduciary duties; and (iii) breach of confidence. (i) Breach of contract As an employee, Mr Clayton owed GQA the implied duty of trust and confidence. This duty

requires an employee “without reasonable and proper cause” not to conduct himself in a manner likely to destroy or seriously damage the relationship of Judgment Approved by the court for handing down. Double-click to enter the short title confidence and trust between employer and employee: see *Malik v BCCI SA (in compulsory liquidation)* [1998] 1 AC 20 at p.34A.

94. Mr Clayton also owed GQA the implied duty of fidelity. This duty was described by Haddon-Cave J in *QBE Management Services (UK) Ltd v Dymoke* [2012] EWHC 80 (QB) at [169]: “It is indisputable that an employee owes his employer a contractual duty of ‘fidelity,’ but how far it extends will depend on the facts of each case. The more senior the staff the greater the degree of loyalty, fidelity and diligence required. . . It is a breach of the duty of fidelity for an employee to misuse confidential information belonging to his employer. The court should ask whether the activities in which the employee is engaged affect his ability to serve his employer faithfully and honestly and to the best of his abilities.” (The authorities referred to by Haddon-Cave J have been removed from this quote). (ii) Breach of Statutory and Fiduciary Duties 95. 96. As a director of GQA, Mr Clayton owed fiduciary duties to the company. Similarly, as a senior employee, he could potentially owe fiduciary duties to his employer: see e.g. *Cobbets LLP v Hodge* [2009] EWHC 786 (Ch) at [89]-[98]; *Rukhadze & Ors v Recovery Partners & Anor* [2025] UKSC 10 at [240]. These duties go beyond contractual duties: “the duties of a director are in general higher than those imposed by law on an employee ... he is a fiduciary and with his fellow directors he is responsible for the success of the company’s business”: see *Fassihi v Item Software* [2004] BCC 944, per Arden LJ at p.1002 F. An incident of the fiduciary duty is a duty to disclose one’s own misconduct: see *Fassihi* at p.1004 B and H. Under the Companies Act 2006 (“the CA”), directors owe statutory duties: to act within their powers (section 171); to promote the success of the company (section 172); and to avoid conflicts of interest (section 75). These statutory duties are based on the common law rules and equitable principles that previously applied to directors: see section 170 of the CA. 97. Taking these statutory duties in turn. Section 171 of the CA provides that: “A director of a company must—

- (a) act in accordance with the company's constitution, and
- (b) only exercise powers for the purposes for which they are conferred.” 98. The focus of section 171(a) is on whether the action in question was within the scope of the director’s powers: see *Re Baker v Metson* [2022] EWHC 1988 (Ch) at [205]. This will be established objectively upon consideration of the director’s powers under the company’s articles (and any other part of the company’s constitution) and whether the director acted ultra vires. Judgment Approved by the court for handing down. Double-click to enter the short title 99. The duty at section 171(b) is assessed subjectively. In *Eclairs Group Ltd and Anor v JKX Oil and Gas plc* [2015] UKSC 71, Lord Sumption stated at [15] that the duty “is concerned with abuse of power, by doing acts which are within its scope but done for an improper reason. It follows that the test is necessarily subjective”. At [22], Lord Sumption approved the statement of the High Court of Australia in *Whitehouse v Carlton House Pty* (1987) 162 CLR 285, 294 that where

there are mixed purposes, section 171(b) of the CA will only be breached if “the impermissible purpose was causative in the sense that, but for its presence, the power would not have been exercised”. 100. The duty at section 171 of the CA will be breached even if the director has acted in accordance with his other duties, including the duty to act in good faith and in the interests of the company: see *Fairford Water Ski Club Ltd. v Cohoon* [2020] EWHC 290 (Comm) at [51(1)]. 101. Section 172 of the CA provides that: “(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—

- (a) the likely consequences of any decision in the long term,
- (b) the interests of the company's employees,
- (c) the need to foster the company's business relationships with suppliers, customers and others,
- (d) the impact of the company's operations on the community and the environment,
- (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
- (f) the need to act fairly as between members of the company. . . .” In the context of a company limited by guarantee, the duty to promote the success of the company is to promote its stated objectives: see section 172(2) of the CA. 102. In *Regentcrest plc v Cohen* [2001] BCC 494, Jonathan Parker J explained at [120] that: “the question is whether the director honestly believed that his act or omission was in the interests of the company. The issue is as to the director's state of mind. No doubt, where it is clear that the act or omission under challenge resulted in substantial detriment to the company, the director will have a harder task persuading the court that he honestly believed it to be in the Judgment Approved by the court for handing down. Double-click to enter the short title company's interest; but that does not detract from the subjective nature of the test.” 103. This approach was discussed by the Court of Appeal in the recent decision of *Saxon Woods Investments Ltd. v Costa* [2025] B. C. C. 92. The Court of Appeal observed at

[107] that “the core meaning of a requirement of good faith is that it requires honesty”. At [110], the Court of Appeal stated that the test as to whether a person has acted honestly or dishonestly requires “an objective assessment of the conduct of the relevant person, in the light of the facts as they knew or believed them to be when they embarked on their course of conduct”. This is the approach to honesty/dishonesty as reflected in the Supreme Court’s decision in *Ivey v Genting Casinos (UK) Ltd (trading as Crockfords Club)* [2018] AC 391.

104. At [122], the Court of Appeal stated that: “In our judgment, section 172 requires a director, in all he does, to act in good faith towards the company, in the way he considers would be most likely to promote the success of the company for the benefit of its members as a whole; and the requirement that the director acts in good faith includes, as a core fiduciary duty, a

requirement that the director acts honestly towards the company.” On the facts of that case, it was held at [123] that “Deliberately deceiving the board of a company must, either always or almost always, be inconsistent with a director’s duty under section 172.” 105. In *ClientEarth v Shell plc* [2023] EWHC 1897 (Ch), Trower J referred to *Regentcrest* and stated at [29]-[30] that: “[29] . . . there will be cases in which an absence of good faith can be inferred from the irrational nature of the conduct in issue, but it remains the case that the state of mind of the director concerned is what matters. For these purposes, good faith, not irrationality, is the cornerstone and an honest but unreasonable and mistaken belief that a particular course of action is in the company’s best interests is not sufficient to amount to a breach of s.172. . . .

[30] . . . So far as s.172 is concerned, irrationality is part of the mix when the court is assessing the evidential question of whether or not the directors acted in good faith, but it cannot stand as a ground of breach on its own. . . .”

106. Where the director’s motives are mixed, the parties were agreed that the Court looks at the predominant motive. If the director’s predominant motive was to act in the interests of the company, that would be sufficient, even if he had some other motive. Judgment Approved by the court for handing down. Double-click to enter the short title

107. Whether or not the director has considered the best interests of the company is a question of fact, and the burden lies on the claimant: see *Charterbridge Corp Ltd. v Lloyds Bank Ltd* [1970] Ch 62 at 74C. Where the director has not actually considered what is in the best interests of the company, the test is an objective one. In *Charterbridge*, Pennycuik J stated at p74E-F that the test was “whether an intelligent and honest man in the position of a director of the company concerned, could, in the whole of the existing circumstances, have reasonably believed that the transactions were for the benefit of the company”. See also *Argyle UAE Limited (in Liquidation) v McKellar* at [86]. 108. Section 175(1) of the CA provides that: “A director of a company must avoid a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.” 109. This is an objective test. In *Breitenfeld UK Ltd v Harrison* [2015] EWHC 399 (Ch), Norris J held at [67] that whether a director’s direct or indirect interest conflicts (or may conflict) with the interest of the company is to be ascertained by asking whether a reasonable person, looking at the relevant facts, would think that there was a real, sensible, possibility of conflict. (iii) Breach of Confidence 110. The obligation of confidentiality arises both under contract and in equity. The classic test is that set out by Megarry J in *Coco v AM Clark (Engineers) Ltd* [1968] FSR 415 at 419: (i) the information must have the necessary quality of confidence about it; (ii) that information must have been imparted in circumstances importing an obligation of confidence; and (iii) there must be an unauthorised use of that information to the detriment of the party communicating it.

111. A fourth requirement is that “the unauthorised use of information was without lawful excuse”: see *Racing Partnership Ltd v Sports Information Services Ltd* [2021] 2 W. L. R. 469 at [45]. This will apply where, for instance, disclosure is in the “public interest”.
112. Both parties were in agreement that with respect to the common law claim of breach of confidence, the Courts may take into consideration the statutory regime for whistleblowing under the Public Interest Disclosure Act 1998 (which amended the ERA), as a possible exemption to a duty of confidence. 113. For a disclosure to qualify as whistleblowing, the whistleblower must have had a “reasonable belief” that the disclosure (i) was in the public interest; and (ii) tended to show one or more of the matters set out at section 43B(1)(a)-(f) of the ERA. That is: “(a) that a criminal offence has been committed, is being committed or is likely to be committed,
- (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, . . . , or Judgment Approved by the court for handing down. Double-click to enter the short title
- (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.” The disclosure must contain “sufficient factual content and specificity” to show one of the specified matters, and must have been made to certain persons. This includes disclosure to a legal adviser. Section 43D of the ERA provides that “A qualifying disclosure is made in accordance with this section if it is made in the course of obtaining legal advice”. It also includes persons who have been “prescribed” for this purpose by the Secretary of State: see section 43FA of the ERA.
114. With respect to the equitable obligation, Mr Reade KC did not concede that the whistleblowing regime was equally applicable, but gave no reason for why the treatment should be different. The Parties’ Submissions
115. GQA was represented at the hearing by David Reade KC and Callum Rodgers. Mr Clayton was represented pro bono by Tamara Kagan and Alex Findley. I am grateful for their clear and concise submissions. Breach of Contract
116. Mr Reade KC contended that Mr Clayton was in substantial breach of his contract of employment. In breach of the duty of trust and confidence, Mr Clayton took unwarranted and drastic steps that inevitably entirely destroyed the relationship between himself and GQA, warranting his summary dismissal. Mr Reade KC referred to a number of actions by Mr Clayton, including misusing GQA’s confidential information by communicating it to Mr Globe and Mr Firman for the purposes of planning what he described as “the Attempted Coup”; disobeying instructions by dealing unilaterally with Hawsons, GQA’s auditors and Barnsley FC, to file an amended P11D having procured the use of specific wording for that purpose from Barnsley FC; purporting unilaterally to suspend the other directors; and seeking to exclude them from GQA’s premises, IT and mobile systems and bank mandate. Further, on 6 November 2024, Mr Clayton falsely communicated to GQA’s staff, key contacts

and suppliers, and the regulators, that the other directors were suspended and under investigation, alleging to some of the regulators that the other directors were “seeking to defraud the company”. 117. It was contended that Mr Clayton breached the duty of fidelity by misusing the confidential information (in particular the legally privileged information) to conspire against GQA. Mr Reade KC did not take any issue with Mr Clayton seeking to rely on the whistleblowing defence to a claim for breach of confidence even though it had not been pleaded. However, Mr Reade KC asserted that the whistleblowing defence was not made out because (i) Mr Clayton did not have a reasonable belief that a fraud, or any other unlawful act such as breach of fiduciary duty, was being committed or was likely to be committed; indeed with respect to fraud, that was a point made by Mr Firman upon receipt of the documents and not by Mr Clayton when he sent them; (ii) the disclosure to Mr Firman and Mr Globe of the confidential information was not a “qualifying disclosure” as it was not made “in the course of obtaining legal advice”: it was contended by Mr Reade KC that that provision covered disclosure to lawyers Judgment Approved by the court for handing down. Double-click to enter the short title (that is, those to whom legal professional privilege would apply) and Mr Firman was not a practising solicitor; and Mr Globe had no professional legal qualifications; and (iii) the disclosure to Mr Kearns at CSCS did not amount to a “qualifying disclosure”.

118. Ms Kagan contended that there had been no breach of contract by Mr Clayton. What he had done was entirely motivated to ensure that GQA continued to function profitably, ethically, and lawfully in accordance with regulatory requirements. The suspension of the directors was pending an independent investigation into their conduct; it was not a termination.
119. Ms Kagan argued that the issue relating to the P11D had been blown out of proportion. When the matter was first raised in October 2024, Mr Clayton immediately co-operated with the other directors to get it resolved.
120. With respect to the disclosure of confidential information to third parties Ms Kagan submitted that the disclosure to Mr Firman was lawful in any event as he was Mr Clayton’s legal adviser and, with the exception of the disclosure to Mr Kearns, the disclosure of that information by Mr Clayton fell within the whistleblowing protection. The disclosure to Mr Firman and Mr Globe was made “in the course of obtaining legal advice”. Mr Firman was giving legal advice, and Mr Globe was facilitating the giving of that advice. Ms Kagan accepted that the disclosure to Mr Kearns constituted a breach of confidence by Mr Clayton and there was no defence available to him. Breach of Statutory and Fiduciary Duty
121. Mr Reade KC submitted that Mr Clayton had acted in breach of section 171 of the CA as he had no power to effect the “Attempted Coup”. He had no relevant power to suspend the other directors as a member of the company, as the Chief Executive Officer, or as a director himself. GQA’s constitutional documents did not empower a sole director to exercise the powers of the Board unilaterally, and without passing a majority of votes. 122. If Mr Clayton did have such power, it was contended that he was in breach of section 171(b) of the CA as the steps he took against the other directors was for an improper purpose: namely, to

safeguard his position as Chief Executive Officer and to prevent the Board from properly holding him to account for his misconduct.

123. Mr Reade KC submitted that Mr Clayton had acted in breach of section 172 of the CA, and in breach of his fiduciary duty to act in good faith to GQA. The steps taken by Mr Clayton to effect the “Attempted Coup” were not to promote the success of GQA. In reality, Mr Clayton was acting to protect his own position: given that he was facing disciplinary proceedings and was losing control of GQA, and even if Mr Clayton had mixed motives, the causative predominant purpose was his own, personal, interest.
124. Mr Reade KC contended that Mr Clayton did not have a genuine concern that a fraud had been committed, or was about to be committed. It was noted that (i) Mr Clayton had expressly voted for the distribution of £500,000 to each director as part of Project Gemini and had actively participated in the project for many months; and (ii) he had never raised any concerns about the lawfulness of the distribution internally. In any Judgment Approved by the court for handing down. Double-click to enter the short title event, at the time when Mr Clayton took his actions, there was no proposal for retrospective payment of a bonus of £500,000 on the table. Insofar as any future disbursement of assets to the directors was concerned, this would not be unlawful. This had been made very clear by Mr McAllister, who had expressly stated that none of the directors wanted to go to prison, and none of them wanted to do anything unlawful. 125. Furthermore, the actions that Mr Clayton had taken were so extreme – described by Mr Reade KC as taking “the nuclear course of publicly staging the Attempting Coup and ousting” the other directors – and were not the actions of a director with a genuine concern. Mr Clayton could simply have resigned as a director, raised the issue internally, or spoken confidentially to the police or the regulators. It was argued that no intelligent and honest person in the position of a director could, in the circumstances, have reasonably believed that Mr Clayton’s actions were in GQA’s best interests, applying a test set out in *Argyle UAE Limited (in Liquidation) v Robert McKellar* [2025] EWHC 1258 (Ch). 126. It was also contended that Mr Clayton did not have regard to the factors set out at (a) to (f) of section 172. Had he done so, Mr Clayton would have realised that his actions would inevitably harm the company. Further, there was no urgent need for action in respect of Project Gemini or the allegation of fraud: Mr Reade KC contended that there was no “fire” that needed urgently to be put out by Mr Clayton.
127. Mr Reade KC submitted that there was also a breach by Mr Clayton of section 175 of the CA, as his interest in not being dismissed conflicted with the interests of GQA.
128. Ms Kagan accepted that the purported suspension of the other directors was a breach of section 171(a) of the CA. Mr Clayton had no vires to effect such a suspension in any of the various capacities that he held: director, member or Chief Executive Officer.

129. Ms Kagan submitted, however, that there were no other breaches of the CA. Mr Clayton's actions were taken in accordance with his duty to promote the success of GQA. He acted in the way which he considered, in good faith, would be most likely to promote the success of GQA. If, as was submitted, Mr Clayton did act in what he considered to be the best interests of the company, then no conflict of interest arises on the facts. Breach of Equitable Duty of Confidence
130. Mr Reade KC submitted that Mr Clayton breached the duty of confidence by sending Mr Firman and Mr Globe confidential documents relating to Project Gemini, including the privileged legal advice. Mr Clayton did the same after his employment was terminated by sharing documents with Mr Kearns. There was no public interest in Mr Clayton disclosing this material and, insofar as they were relevant, the whistleblowing provisions were not made out. Mr Reade KC did not concede that the whistleblowing provisions provided a defence to equitable breach, but found it difficult to argue against.
131. Ms Kagan accepted that the disclosure to Mr Kearns was not protected by the whistleblowing provisions. Ms Kagan submitted, however, that the other disclosures Judgment Approved by the court for handing down. Double-click to enter the short title were protected. Discussion
132. I shall consider first of all the allegations of breach of the CA. I shall then look at the allegations of breach of confidence and breach of fiduciary duty: if there was a breach of the former, then the failure to disclose the wrongdoing would amount to a breach of the latter. I shall then consider the various allegations of breach of contract. (i) Breach of Statutory Duty
133. The actions taken by Mr Clayton on 6 November 2025 were drastic. He sought to remove the other directors from the Board of GQA and from involvement in the running of the business, temporarily at first and with the possibility that their removal would be permanent. He notified the key stakeholders in GQA's business - staff, regulators and significant clients - of what had been done. The regulators were told that allegations of fraud had been made against the other directors and that they were suspended pending an independent investigation. These actions were taken by Mr Clayton as a result of advice from Mr Firman. Whilst Mr Clayton may have provided some input into the course of action, the overall plan was designed by Mr Firman. 134. It has been accepted by Ms Kagan that Mr Clayton was in breach of section 171(a) of the CA in that he purported to suspend the other directors in circumstances where he had no vires to do so. That concession was rightly made. In the circumstances, there cannot have been a breach of section 171(b) of the CA as that only applies to intra vires conduct.
135. As for whether there has been a breach of section 172 of the CA, the key issues for the Court to determine are why these steps were taken by Mr Clayton and what was he intending to achieve. 136. 137. In my judgment, Mr Clayton had two key motivations: (i) to stop the other directors from progressing with those aspects of Project Gemini that would result in large payments being made to the members of GQA, which he regarded as not being in the best interests of GQA; and (ii) to protect his position at GQA, as a director, member and as Chief Executive Officer. In Mr Clayton's mind, these two key motivations were intertwined as he

believed that removing him from his position at GQA would mean that there was nothing, and nobody, to stop the other directors from progressing with Project Gemini, including the making of large payments to GQA's members. In my judgment, Mr Clayton's objection to the members receiving large payments from GQA was genuine and strongly held. Mr Clayton considered that this would amount to a plundering by the other directors of monies that had been built up by GQA over a number of years and which ought to be used for GQA's stated purposes, and for the benefit of the glass and broader fenestration industry, rather than to enrich the other directors. Mr Clayton considered that what the other directors were hoping to do was unfair, morally wrong, and may constitute a fraud on the company. 138. I find that Mr Clayton always had reservations about the making of large payments to the directors, even if he did not express his view about this until 22 July 2024 when he articulated reservations about aspects of Project Gemini in the draft briefing Judgment Approved by the court for handing down. Double-click to enter the short title document that was being prepared for Mr Ashley. The impression that Mr Clayton has given, both in the documentary evidence and from his evidence to the Court, is of a relatively modest man who is not financially sophisticated. The options provided by KPMG and the tax advice went over his head somewhat. Even though GQA had been a successful business, with considerable reserves, he had not sought out greater remuneration for himself, and whilst he enjoyed the corporate hospitality at Barnsley FC, the benefits received were not lavish. Mr Clayton was genuinely happy to receive the pay rise of £39,000 as director's fees, but balked about the payment of much larger sums to the directors. It is also clear that Mr Clayton was deeply unhappy with Mr McAllister's desire to involve Mr Ashley in thinking imaginatively about Project Gemini. This unhappiness increased after Mr Ashley held his one-to-one sessions with the directors, and when Mr Ashley was appointed to the Board of GQA in a process which Mr Clayton did not support and where decisions had clearly been made behind his back. The situation created real anxiety for Mr Clayton, as reflected in the fact that he composed, but did not send, 5 emails to Mr Ratcliffe late at night. Mr Clayton's unhappiness about the situation was exhibited by him in his two conversations with Mr Ratcliffe on 20 and then 27 September 2024. In their conversation of 27 September 2024, Mr Clayton stated that he did not always feel included, that he thought that they might be trying to remove him from the Board, that if there was a "4/5 v 1" situation the other directors would try to remove the one who did not agree, and he would not be able to accept exit strategies being discussed and "could not support something that he did not feel was in GQA's best interests". There is no dispute that these matters were said by Mr Clayton, and it was not suggested that he did not genuinely believe them. There is no reason to find that these were not his genuine thoughts. These matters were said by Mr Clayton before he had met with Mr Firman and Mr Globe. In my judgment they are the reason why Mr Clayton wanted to meet with Mr Firman and Mr Globe in the first place. 139. 140.

141. Mr Clayton's concern for his personal position at GQA increased in the following month. He was aggrieved at the reaction of Mr Ratcliffe to their conversations and to the suggestion that there had been an irretrievable breakdown between the two of them. Mr Clayton believed

that the charge against him had been concocted. His concerns increased after the “Agreed Outcome” of a final written warning was offered to him. Mr Clayton saw this as giving the other directors the opportunity to terminate his employment on the slightest of pretexts. The situation with the P11Ds was seen by Mr Clayton as an example of such a pretext, and was a driver for Mr Clayton to resolve that issue as quickly as possible. The other driver was the need to clear the matter up before the plan that was being drawn up with Mr Firman could be executed. 142. In cross-examination, Mr Clayton explained that “once I had gone they could do what they want”. He considered that there was “an urgent danger for both myself and the company”. This was consistent with what he had set out in his witness statement: the other directors “seemed hell bent upon plundering the company’s funds”, which Mr Clayton considered to be to the detriment of GQA and contrary to its purpose. He believed that he had to step in, but there was not enough time, and he did not have sufficient funds, to seek an injunction. Judgment Approved by the court for handing down. Double-click to enter the short title 143. In my judgment, the timing of the steps taken by Mr Clayton was dictated by his concern that he was about to lose his job with GQA. He genuinely believed that his job was in peril, even though that was not in fact the immediate plan of the other directors. For Mr Clayton, losing his job would not only deprive him of his livelihood, but it would also, in his mind, enable the other directors to pursue the aspects of Project Gemini with which he disagreed with no clear opposition. Whilst Mr Clayton was aware that Mr Parsell objected to the making of retrospective, or backflush, bonuses, he did not think that Mr Parsell objected to exit payments. For Mr Clayton, making exit payments to the directors would not be in GQA’s best interests. That was a position that he had articulated directly to Mr Ratcliffe in their conversation of 27 September 2024.

144. At the time when Mr Clayton sent the letters to the directors, and sought to suspend them from the business, I find that he believed that a fraud on GQA was being planned. Mr Clayton accepted in cross-examination that there was, in fact, no legal or tax advice to GQA suggesting that Project Gemini was a fraud or was unlawful in any way. Nevertheless, in the email sent to Mr Clayton on 30 October 2024, Mr Firman referred to his conclusion that “fraud” was taking place or was being planned by the other directors, that what they were proposing to do was “unscrupulous and dishonest”. There is nothing to suggest that Mr Firman did not genuinely hold that view when he sent the email; he wrote it as part of advice to Mr Clayton and there is no indication that he expected his email to be subject to scrutiny in a court of law. 145. 146. I consider that Mr Clayton accepted Mr Firman’s conclusion as expressed in the email of 30 October 2024. Furthermore, Mr Clayton considered that what he was being told by Mr Firman was a legal view. As already stated, Mr Firman was a former solicitor who had provided legal advice to GQA over the years. In cross-examination Mr Clayton was asked “So you knew that your central allegation for all the directors was not true, did you not?”, to which he answered “No. I felt that they wanted to commit a fraudulent act, that I deemed as fraudulent by trying to access the reserves of a not for profit company”. I accept that statement as being his genuine view. In considering these factual findings through the prism of section 172 of the CA, it is clear to me that Mr

Clayton did turn his mind to what he considered would be most likely to promote the success of the company for the benefit of its members, and for its stated objectives. Mr Clayton told Mr Ratcliffe directly that he did not consider it in the best interests of GQA to vote for an exit payment and, as I have already said, there is nothing to suggest that this was not his genuine belief, or that it was not honestly held by him applying the Saxon Woods test of looking at “an objective assessment of [Mr Clayton’s] conduct . . ., in the light of the facts as they knew or believed them to be when they embarked on their course of conduct”. Mr Clayton believed that if the other directors were not stopped in their tracks, and prevented from terminating his relationship with GQA, they would take steps to put Project Gemini in motion as regards the arrangements and structure for exit payments. Mr Clayton realised that it would or could take some time for those payments to be made to the exiting members, but without his presence on the Board or as Chief Executive Officer they would ultimately be made, and so he genuinely believed that he had to take steps immediately to protect both himself and the company. 147. I do not regard Mr Clayton’s actions as irrational which, had I reached a different view, can be taken into account when considering the evidential question as to Judgment Approved by the court for handing down. Double-click to enter the short title whether Mr Clayton acted in good faith. For Mr Clayton, GQA had been a successful business for some years and even if diversification of the business was required at some point to offset the decline in revenues from the CSCS cards, and even if some restructuring of the business was called for to bring in external investment, that did not have to be done in a way which led to substantial exit payments for the members, who were also the directors. Furthermore, Mr Clayton genuinely believed that the other directors were proposing to act fraudulently, or that there was a real risk of that. Rather than setting out a definitive view, however, Mr Clayton intended for that matter to be looked at through an independent investigation. 148. I also do not regard Mr Clayton’s actions as being disproportionate. Whilst there were, in theory, less drastic measures that could have been taken, they were not reasonably available to Mr Clayton based on his understanding of the circumstances, including what he perceived as the imminent peril to his position. Furthermore, the measures that were taken by Mr Clayton would not necessarily be permanent. They would protect the company whilst an investigation into the allegation of fraud was taking place. 149. In summary, therefore, I do not find that Mr Clayton acted in breach of section 172 of the CA by taking the drastic action that he did.

150. As for section 175 of the CA, I do not consider that there was any contravention of that provision. Mr Clayton was not “in a situation in which he has, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the company.” The “interest” of Mr Clayton was his continued employment by GQA; that was not in conflict or possible conflict with the interests of the company, and (as discussed in more detail below when analysing the breach of the duty of trust and confidence) there was a reasonable basis for this position. 151. Section 175(2) sets out that the duty to avoid conflicts of interest “applies in particular to the exploitation of any property, information or opportunity (and it is immaterial whether the company could take advantage of the property, information or

opportunity)". That is not the present case. (ii) Breach of Confidence and Breach of Fiduciary Duty

152. As for the breach of confidence claim, it is clear that Mr Clayton did disclose confidential material to a number of persons. He disclosed material that was subject to legal professional privilege, as well as material relating to Project Gemini which had been provided to Mr Clayton subject to a duty of confidence and satisfied the *Coco v Clark* test, to Mr Firman, Mr Globe and Mr Kearns.
153. With respect to the disclosure to Mr Kearns, there is no defence available to Mr Clayton and so I must find that a breach of confidence occurred in this regard. The disclosure to Mr Kearns took place following the termination of Mr Clayton's employment, and so could not amount to a breach of contract. It was, however, a breach of the equitable obligation of confidence that Mr Clayton continued to owe to GQA. 154. There was also, in my judgment, a breach of confidence with respect to the disclosure of the material to Mr Firman and Mr Globe and, as a result, this amounted to a breach Judgment Approved by the court for handing down. Double-click to enter the short title 155. 156. of the fiduciary duty owed by Mr Clayton to GQA as he did not disclose his wrongdoing. It was agreed by the parties that where disclosure is made in circumstances that fall within the definition of a "qualifying disclosure" for the whistleblowing regime then this can constitute "lawful excuse" for what would otherwise be "the unauthorised use of information": as discussed in *Racing Partnership Ltd*, at common law. I consider that this is a correct statement of law. The principled basis for this analysis is that the whistleblowing regime is designed to protect workers from being subject to detriment when they seek to disclose information that tends to show iniquity, or potential iniquity. The circumstances in which that protection will apply is carefully controlled by the statutory framework. Accordingly, where the constituent elements of the statutory regime are satisfied, I consider that this would constitute a public interest defence to what would otherwise be a misuse of confidential information.
157. On the facts, the whistleblowing regime does not provide a defence to what would otherwise be a breach of the contractual duty of confidentiality with respect to the disclosure of privileged and other material to Mr Firman on 24 October 2024. At that date, I find that Mr Clayton did not have "a reasonable belief" that the disclosure was made in the public interest and tends to show "that a criminal offence has been committed, is being committed or is likely to be committed", or "that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject". 158. In *Darnton v University of Surrey* [2003] IRLR 133, the Employment Appeal Tribunal stated that: "[29] It is extremely difficult to see how a worker can reasonably believe that an allegation tends to show that there has been a relevant failure if he knew or believed that the factual basis was false, unless there may somehow have been an honest mistake on his part.

- [32] . . . for there to be a qualifying disclosure, it must have been reasonable for the worker to believe that the factual basis of what was disclosed was true and that it tends to show a relevant failure, even if the worker was wrong, but reasonably mistaken”. 159. This was approved by the Court of Appeal in *Babula v Waltham Forest College*
- [2007] EWCA Civ 174. At [82]: “In this context, in my judgment, the word belief in section 43B(1) is plainly subjective. It is the particular belief held by the particular worker. Equally, however, the belief must be reasonable. That is an objective test. Furthermore, like the appeal tribunal in *Darnton*, I find it difficult to see how a Judgment Approved by the court for handing down. Double-click to enter the short title worker can reasonably believe that an allegation tends to show that there has been a relevant failure if he knows or believes that the factual basis for the belief is false. In any event, these are all matters for the employment tribunal to determine on the facts.” 160. In the present case, I do not consider that, at the time when the disclosure of confidential information about Project Gemini was made to Mr Firman, Mr Clayton did in fact hold the belief that the information he was disclosing tended to show that a criminal offence had been committed, was being committed, or was likely to be committed by any of the other directors, or that any of them had failed, was failing or was likely to fail to comply with any legal obligation to which they were subject; and if he did hold such a belief it was not reasonable for him to have done so.
161. Whilst I accept that at the time when he disclosed the Project Gemini documents to Mr Firman on 24 October 2024, Mr Clayton regarded what was taking place as unethical or immoral, in that he perceived the other directors to be intent on (in his words) “plundering” the assets of GQA, there was no reasonable basis for him to believe that what the other directors were doing or were intending to do was criminal, or would involve their failure to comply with any legal obligation to which they were subject.
162. Mr Clayton accepted in cross-examination that there was no legal or tax advice provided to GQA suggesting that Project Gemini was a fraud or was unlawful in any way, and Mr Clayton had had sight of all that advice. Whilst Mr McAllister was clearly dissatisfied with the legal advice that had been received and hoped that Mr Ashley may be able to think his way more imaginatively around that advice, it had been made abundantly clear by Mr McAllister that he did not wish to go to prison or do anything unlawful, and Mr Clayton was aware of that. 163. It was only when Mr Firman mentioned his conclusion that there was “a possibility that a crime has been committed: conspiring to commit fraud”, and that “we should not underestimate the gravity of the situation and the unscrupulous and dishonest nature of what they are proposing to do” in the email to Mr Clayton on 30 October 2024, that Mr Clayton formed the view that a crime, or a breach of legal obligations, might be taking place, or might be contemplated by the other directors. That, however, was after he had disclosed the Project Gemini materials to Mr Firman, and so could not evidence what he had in mind, or what was reasonable for him to have in mind, when the disclosure to Mr Firman was initially made.

164. When Mr Clayton sent further Project Gemini documents to Mr Firman on 3 November 2024, and sent the same set of documents to Mr Globe on 4 November 2024, he did have a reasonable belief that the disclosure was made in the public interest and tends to show “that a criminal offence has been committed, is being committed or is likely to be committed”, or “that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject”, as that was the view that had been expressed to him by Mr Firman in the email of 30 October 2024 and which, I find, Mr Clayton himself believed following receipt of that email.
165. With respect to the disclosure to Mr Firman and Mr Globe on 3 and 4 November 2024 respectively, the question that needs to be considered is whether those disclosures Judgment Approved by the court for handing down. Double-click to enter the short title 166. 167. 168. were “made in the course of obtaining legal advice” (section 43D of the ERA). The interpretation of section 43D of the ERA has not been authoritatively considered by the Employment Appeal Tribunal or the senior courts. In my judgment, the proper interpretation is that it is not restricted to the obtaining of “legal advice” from a person whose advice would attract legal professional privilege, such as a qualified barrister or solicitor. Rather, it covers the obtaining of “legal advice” from any person who the worker believes is competent in providing them with advice on the relevant law. That would include a former solicitor, such as Mr Firman, whose business is entitled “The Legal Company”. In interpreting a statutory provision, the context of the wording is important. The context of the whistleblowing provisions will include the fact that it is well known that workers seek advice on the law from a variety of sources - trade union officials, Citizens Advice Bureaux or Law Centres – and not just from firms of solicitors or barristers. The worker will presume that those individuals will have access to qualified lawyers and may have been trained by those lawyers as to what the law is in different workplace disputes, or will confirm the advice that they provide with a qualified lawyer. The meaning of “in the course of obtaining legal advice” will therefore embrace the process of seeking legal advice from other persons who hold themselves as offering legal advice, which is not a reserved legal activity under the Legal Services Act 2007. This interpretation is supported by the authors of the leading textbook in this area of law: Whistleblowing, Law and Practice, (4th ed) Jeremy Lewis QC, John Bowers QC, Martin Fodder, and Jack Mitchell. At paragraph 6.49, the authors state that “Legal advice need not be provided by a lawyer. It would therefore apply to obtaining legal advice from a non-lawyer such as a union representative, the Citizens Advice Bureau, a lay adviser, or from other professionals who are not lawyers, such as an accountant advising on tax law or an auditor advising whether accounts are compliant with company law obligations”. The legislation needs, therefore, to cover a variety of situations where a worker might seek guidance as to their legal position (see paragraph 6.53). 169. I acknowledge that section 43B(4) of the ERA qualifies the definition of a “qualifying disclosure” by saying that: “A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to

whom the information had been disclosed in the course of obtaining legal advice.” This provision means that the onward disclosure of information by a qualified lawyer would not be a qualifying disclosure merely because the onward disclosure could attract a claim to legal professional privilege. The provision uses the language “in the course of obtaining legal advice” – the same language as set out in section 43D. That means that section 43D must include disclosure to a qualified lawyer. It does not mean, however, that all disclosures that fall within section 43D have to be to a qualified lawyer. Judgment Approved by the court for handing down. Double-click to enter the short title 170. 171. The disclosure to Mr Firman on 3 November 2024 was protected by section 43D as he was regarded by Mr Clayton as competent to provide him with legal advice. Accordingly, that disclosure was not a breach of confidence. The same does not apply to the disclosure to Mr Globe on 4 November 2024. Mr Globe did not hold himself out as someone who could provide the Claimant with legal advice, and Mr Clayton did not disclose documents to him for the purpose of obtaining legal advice from him. I also reject the argument made by Ms Kagan that the disclosure to Mr Globe was made “in the course of obtaining legal advice” as it was part of the process by which Mr Clayton was obtaining legal advice from Mr Firman. The language “in the course of” is, in my judgment, broad enough to encompass the disclosure to a third party who was assisting with the worker’s “obtaining” legal advice. That might be the case, for instance, where the third party was providing factual information to the person who was providing legal advice, and the disclosure to the third party of the information supported the third party in that process. The third party might be able to fill in the gaps, so that the person providing legal advice had the full information about a situation. To know what gaps needed to be filled, it was necessary to share the information with the third party. That was not Mr Globe’s involvement in the present case. He was not provided with Project Gemini information to assist Mr Firman in giving legal advice to Mr Clayton. He was not, for instance, filling in the gaps. (iii) Breach of Contract 172. The unauthorised disclosures of confidential information to Mr Firman on 24 October 2024, and to Mr Globe on 4 November 2024, were in breach of Mr Clayton’s contract of employment. Similarly, Mr Clayton’s editing of the correspondence from Barnsley FC constituted a breach of contract. The editing of the correspondence was an act of deception by Mr Clayton. He wished to avoid the other directors from learning that the message from the football club was based on is suggested wording. This was a serious matter, as the honesty of a Chief Executive Officer is fundamental to his role.

173. As for the drastic steps taken by Mr Clayton on 6 November 2024, I do not regard these as amounting to a breach of contract. Whilst as a director of GQA Mr Clayton did not have power to suspend the other directors – and his doing so was a breach of section 171(a) of the CA – he did have power as Chief Executive Officer of GQA to suspend the other directors from their executive roles, and shut them out from the day to day operations of the business. I do not find that Mr Clayton contravened the duty of trust and confidence owed by Mr Clayton to GQA by taking these steps. In my judgment, Mr Clayton had “reasonable and proper cause” to act in the way that he did, and that is a fundamental element of the duty of

trust and confidence duty.

174. Mr Clayton had reasonable and proper cause to believe that the steps that the other directors proposed to take would be detrimental to the best interests of GQA, and that they would be able to take those steps if he was removed from the company as he believed was about to take place. There was reasonable and proper cause in that there was a range of steps that the Board could take to promote and further the interests of the company, and making arrangements to restructure the business with a view to ensuring that the directors received a large exit payment was not the only path available to the other directors. Judgment Approved by the court for handing down. Double-click to enter the short title 175. 176. Furthermore, Mr Clayton had reasonable and proper cause to make the assertion that a fraud was taking place or might be proposed, and to suspend the other directors' involvement in the business pending an investigation into the allegation of fraud. As I have already discussed, whilst Mr Clayton accepted in cross-examination that there was no legal or tax advice to GQA that a fraud was or might be taking place, he had been told otherwise by Mr Firman on 30 October 2024, and it was not unreasonable for Mr Clayton to have accepted that advice from someone who had been a legal adviser to GQA over the years. I have no reason to doubt that that advice was Mr Firman's genuine view. I also have no doubt that Mr Clayton continued to hold that belief when the letters were sent to the other directors on 6 November 2024 and the other drastic steps were taken. The other steps taken by Mr Clayton were consequent on his suspension of the directors from their executive roles, and did not themselves amount to a breach of contract. I do not find that the steps taken by Mr Clayton were designed to bestow ownership of GQA on his close friends and acquaintances and for their financial benefit as has been alleged by GQA in the Particulars of Claim. The proposed involvement of various individuals, such as Mr Firman and Mr Globe, in the running of GQA's business on an interim basis was for the benefit of the company. They both had prior experience of the business and could assist Mr Clayton whilst the investigation into the allegations against the other directors was taking place. Furthermore, Mr Clayton's attempt to change the signatories on the bank mandate at Barclays was not for his financial advancement or for Ms Kershaw; rather, it was a step designed to prevent the directors from having access to the funds of GQA whilst the investigation was ongoing. 177. The parties did not invite the Court to make any finding as to whether fraud was taking place or was being proposed, and it would not be appropriate to do so. What is significant is that, in my judgment, there was a reasonable and proper basis for Mr Clayton to consider that the matter should be investigated, and that the only way to ensure that that could happen was by suspending the other directors at that point in time. It was reasonable for him, based on the correspondence and communications with the other directors, to act swiftly as he believed with good reason that he was about to be removed from GQA in the circumstances.

Conclusion

178. For the foregoing reasons, therefore, I find that: (i) The purported suspension of the other directors of GQA was a breach of section 171(a) of the CA; (ii) Mr Clayton breached the contract of employment by making an unauthorised disclosure of confidential information to Mr Firman on 24 October 2024, and to Mr Globe on 4 November 2024; and the failure to disclose this wrongdoing to GQA was a breach of fiduciary duty; (iii) Mr Clayton breached the contract of employment by editing the correspondence from Barnsley FC for the purposes of the P11D form; Judgment Approved by the court for handing down. Double-click to enter the short title (iv) Mr Clayton breached the equitable duty of confidence by making the unauthorised disclosure to Mr Kearns following his dismissal; and (v) The other alleged breaches are not made out.

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