

JERSEY / JUDGMENT

Pender v Punter Southall Group Limited (Court of Appeal : Appeal (Civil) : Crow, Perry, Wolffe : Companies) [2026] JCA 039 (5 February 2026)

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Court of Appeal 5 February 2026 Before : Mr Jonathan Crow CVO KC, President; Mr David Perry KC JA, and; Rt Hon James Wolffe KC JA. Between Daniel Pender Plaintiff and Respondent And Punter Southall Group Limited Second Defendant and Appellant Advocate R. S. Christie for the Plaintiff and Respondent. Advocates M. St J. O'Connell and W. A. F. Redgrave for the Second Defendant and Appellant.

JUDGMENT

WOLFFE JA: 1. This is an appeal about the valuation of a shareholding. 2. Mr Pender, the plaintiff and respondent, formerly held 18% of the issued ordinary share capital in GGH (Jersey) Limited ("the Company"). Punter Southall Group Limited ("PSG"), the second defendant and appellant, holds 75% of the Company's issued share capital. Mr Pender brought a petition under Article 141 of the Companies (Jersey) Law 1991 contending that the affairs of the Company had been conducted in a manner which was unfairly prejudicial to his interests as a shareholder. 3. On 19 July 2023, the Royal Court held that the affairs of the Company had indeed been conducted in a manner which was unfairly prejudicial to Mr Pender and ordered PSG to buy out Mr Pender's interest in the Company for a sum equal to the fair value of his former shareholding. On 2 April 2025, the Royal Court ordered PSG to pay Mr Pender £42,728,862. PSG appeals against that order; and Mr Pender cross-appeals. 4. This is the judgment of the Court. For the reasons set out below - (i) we allow PSG's Ground of Appeal 5 in respect of the Royal Court's decision to take account of the Scottish Friendly Association Facility, (explained below), by deducting £11 million from the Enterprise Value of the Company; (ii) we otherwise dismiss PSG's appeal; and (iii) we dismiss Mr Pender's cross-appeal. The question of what, if any, adjustment falls to be made to the Enterprise Value of the Company to take account of the Scottish Friendly Association Facility will require to be re-considered by the Royal Court. General background 5. The Company is the ultimate parent of Guardian Financial Services Limited ("Guardian"), a company incorporated in 2017 which carries on a business selling term life insurance and critical illness insurance policies in the UK. Guardian is not itself an underwriter. Guardian is an appointed representative of Scottish Friendly Association ("SFA"). It sells and administers policies underwritten by SFA. 6. The relationship between SFA and Guardian is set out in an administration agreement which was entered into in May 2018 and subsequently amended. Under the relevant version of the

agreement - (i) SFA receives premiums collected by Guardian and pays claims to policy-holders; (ii) Guardian pays SFA an administration fee per policy per month; (iii) Guardian also pays SFA, as 'rent' of SFA's balance sheet, 2.25% of life policy premiums and 2.75% of income protection policy premiums; (iv) SFA pays Guardian commission which it pays on to intermediaries; and (v) SFA pays Guardian a profit share ("IP Fees"). 7. Since 2020, Guardian has also had the right to draw down, monthly, an advance from SFA against a part of the present value of future IP Fees, subject to an obligation to repay these advances with interest. The administration agreement calls this "SFA Advance Commission". The arrangement is also called the "SFA Facility". One of the issues in this case was how SFA Advance Commission should be accounted for in the valuation of Guardian (and, hence, of the Company). 8. The sale of a life insurance policy through an intermediary (such as an independent financial adviser) results in a net outflow of cash, in the shape of commission paid to the intermediary. If the policy is not cancelled, that outflow will typically be recouped over time, through the payment of premiums. Thus, in the early years, as a business such as Guardian is building up its book of business (its "in-force book"), its outgoings may well exceed its income but that does not necessarily mean that it is not a successful and valuable business. At the relevant time, Guardian was funding its activities by drawing on the SFA Facility as well as through borrowing and financial reinsurance. It was common ground between the parties to this appeal that Guardian was, at the relevant time, carrying over £200m of debt. 9. The valuation of the Company necessarily involved making forecasts about the Company's future performance. This essentially involved forecasting the future performance of Guardian's business. The Royal Court's judgment of May 2024 (*Pender v GGH (Jersey) Limited*

[2024] JRC 117) contains the following quotation (from H Liesen, *Starting a Business in the Life Sciences - from Idea to Market*): "Valuing early-stage, high-growth companies has always been an exercise fraught with immense difficulties due to the high uncertainty levels inherent in those situations." The Royal Court also quoted the following passage from the same work - "The value of a company lies mainly in its ability to generate economic profits in the future. As such, all valuation exercise is based on 'visioning' the future, rather than simply measuring the present situation. Value is grounded in the future, which means assumptions have to be made as to what that future may look like and what important strategic decisions will need to be made and when ... An intrinsic part of the valuation process is thus the ability to question the fundamental hypotheses and the company's ability to deliver on the promise." 10. There are particular issues which have to be addressed when the company being valued is, like Guardian, involved in the life and protection insurance business. That is because the business concerns the sale of long-term policies, which will pay out in the event of death or critical illness. Morbidity and mortality trends and lapse rates, as well as other factors which may affect the market over the long term, can have a significant impact on the future cash flow of the business. The value attributed to an insurer's in-force book accordingly depends on actuarial assessments about future events relevant to the long-term policies which make up the in-force book.

Procedural History

11. In November and December 2022, the Royal Court (Commissioner Binnington and Jurats Ronge and Christensen) heard a 23-day trial on liability and valuation. As well as the evidence directed to liability, the Court heard evidence relevant to valuation. This came from witnesses involved in the management of the Company, Ms Katya Maclean, Guardian's CEO, Mr Jeremy Gibson, Guardian's CFO, Mr Nischal Singh, Guardian's Actuarial Director, and from the experts instructed by the parties. These experts were Mr Amit Arora (instructed on behalf of Mr Pender) and Mr Paul Cliff (instructed on behalf of PSG). The Court had before it two reports from each of these experts and a Joint Statement. Both experts were cross-examined and they were subsequently recalled for 'hot tubbing'; that is, they gave evidence together in an effort to provide a clearer understanding of the points of disagreement. 12. Mr Cliff valued the Company using a discounted cashflow model. He concluded that, since the Company's debt and preference shares exceeded its Enterprise Value, determined using his model, of around £150 million, the Company had nil value. It followed, in his opinion, that Mr Pender's shareholding had a nil value. Mr Arora applied what has been described as a venture capital methodology. This brought out an Enterprise Value of the Company as at 30 November 2022 of £320m - £471m, which, after deduction of debt, would generate a valuation of Mr Pender's former shareholding of £24m - £51m. 13. On 19 July 2023, the Court handed down a judgment (*Pender v GGH (Jersey) Limited and Ors* [2023] JRC 124)("the July 2023 Judgment") holding that the affairs of the Company had been conducted in a manner which was unfairly prejudicial to Mr. Pender. The Court ordered PSG to buy out Mr Pender's interest in the Company for a sum equal to the fair value of his former shareholding. It further directed: (i) that the valuation should be undertaken according to the valuation methodology proposed by Mr Arora ("the Methodology Ruling"); (ii) that the valuation was to proceed on the basis of certain counterfactual assumptions which were intended to remedy the unfairly prejudicial conduct which the Court had found established; and (iii) that the valuation date was to be 19 July 2023 ("the Valuation Date Ruling"). None of these decisions has been appealed; and none of them is in issue before us. 14. The venture capital methodology approved by the Royal Court proceeds on the hypothesis that the Company will be sold in a specified year in the relatively near future (reflecting the date when a venture capitalist might seek to exit). The following are the steps required to apply the methodology. (i) Determine the Exit Year which is to be used for the purposes of the valuation. (ii) Determine the projected EBITDA (earnings before interest, taxation, depreciation and amortisation) of the Company in the Exit Year. (iii) Determine the multiplier which falls to be applied to the projected EBITDA of the Company in the Exit Year. The appropriate multiplier is derived from comparable transactions. (iv) Calculate the Exit Value of the Company by multiplying the projected EBITDA in the Exit Year by the multiplier. (v) Determine the projected free cash flow of the Company for each year from the valuation date to the Exit Year. (vi) Apply an appropriate discount rate to the Exit Value of the Company and to the projected free cash flows for the intermediate years. (vii) Determine the Enterprise Value of the Company by aggregating

the present (discounted) value of the Exit Value of the Company in the Exit Year, and the present (discounted) values of the projected free cash flows in the intermediate years. (viii) Deduct the Company's debt from the Enterprise Value of the Company, to obtain a net value for 100% of the ordinary share capital of the Company. (ix) It was common ground that, in this case, the value of Mr Pender's former shareholding would be 18% of that net value. No discount falls to be made for the fact that he held a minority shareholding. 15. Three key matters which the Court was required to determine were - (i) the forecast EBITDA in the proposed Exit Year; (ii) the multiplier to be applied to that forecast EBITDA; and (iii) the discount rate to be applied to the Exit Value of the Company and to the forecast cashflows in the intermediate years. Identifying the forecast EBITDA in the proposed Exit Year necessarily involved forecasting the Company's future performance. One of the key components was a forecast of future sales, captured in what was described as the " Sales APE Profile ", a profile of projected APE (Annual Premium Equivalent) Sales. 16. In the July 2023 Judgment, the Court addressed an issue between the experts about the valuation of Guardian's in-force book - namely, whether the valuation should reflect the " best estimate " (an estimate which is neither pessimistic nor optimistic), or should be adjusted downwards (applying what was described as an " IFRS adjustment ") to maintain a margin of prudence. In accounting for its business, Guardian itself applies an IFRS adjustment (IFRS being a reference to an international account standard). The Royal Court directed that, in valuing the Company for the purposes of this case, the same approach should be taken as that taken by comparator companies relied upon to identify the exit multiple. 17. The July 2023 Judgment left the various inputs required to give effect to the approved methodology to be determined at a subsequent hearing ("the Valuation Hearing"). At a directions hearing on 3 August 2023 ("the Directions Hearing"), the Royal Court gave directions for the preparation of expert witness reports and the preparation of a joint statement by the experts. Advocate Christie, for Mr Pender, sought clarification as to whether or not the parties' experts could take into account information generated after the Valuation Date. The Court directed that - "in relation to events taking place between 19 July 2023 and 29 September 2023, the Experts may take into account any information made available between those dates but only to the extent that it relates to PSG's performance up to 19 July 2023." 29 September 2023 was the date which the Court fixed for filing expert reports in anticipation of the Valuation Hearing in December 2023. The reference to " PSG's performance " was clearly intended to be a reference to the " Company's performance ". The effect of this direction, which Advocate Christie, on behalf of Mr Pender, called "the Hindsight Ruling", was the subject of debate before us. 18. At the Directions Hearing, the Court also ordered PSG to make an interim payment on account of damages of £9,432,254. PSG argues before us that in making the interim payment order the Royal Court prejudged the central issue which it had to decide. Neither party applied for leave to appeal against any of the orders made at the Directions Hearing. 19. The expert witnesses were unable to agree. Each of them prepared a further supplementary report, applying the approved methodology which we have described above. However, they used different inputs, and this resulted in very

significant differences between them. Mr Arora valued Mr Pender's interest at between £44.6 million and £59.6 million. Mr Cliff valued the same interest at between £0 and £4.1 million. As directed by the Court, the experts produced a second Joint Statement. 20. Very shortly before the Valuation Hearing, PSG produced a substantial volume of documents by way of discovery. This included documentation relating to PSG's instruction of Evercore Partners International LLP ("Evercore") to assist with a projected sale of Guardian. The parties filed the experts' supplementary reports, the second Joint Statement and further written material from the experts on various issues. PSG also filed additional affirmations by Ms Maclean and an affidavit by Mr McKelvey, a Director of PSG. 21. Ms Maclean's fourth affirmation, dated 28 November 2023, contained evidence about Guardian's sales performance. Mr. McKelvey's second affidavit, dated 27 November 2023, explained that PSG had decided to sell Guardian and had instructed Evercore as its sole financial advisor in connection with the proposed disposal. He stated that Evercore is "a premier global investment bank advisory firm". He annexed a document authored by Evercore, described as a "Summary Indicative Valuation Analysis" dated 13 October 2023 ("the Evercore Valuation"). The Evercore Valuation presented indicative findings of a likely enterprise value range of between £50 million and £80 million, with a broad possible valuation range between £21.1 million and £94.8 million. In his affidavit, Mr McKelvey explained that - "Evercore and the Guardian team are still in the process of building the marketing materials for Guardian. No approaches have yet been made to any third party and no indication that the business may be sold. As a result no offers have been received yet." Before us, PSG criticises the Royal Court's treatment of the Evercore Valuation. 22. The Valuation Hearing took place over four days in December 2023. Ms Maclean, Mr McKelvey, Mr Gibson (the Company's CFO until August 2023) and both experts were cross-examined. Amongst the issues explored in the evidence was which version of Guardian's forecasting model, an Excel spreadsheet called FM Lite, should be used. Following the Valuation Hearing, PSG filed a further affirmation of Ms MacLean (her fifth), exhibiting FM Lite v2.8. Ms MacLean explained that at a Board meeting on 5 December 2024, Guardian had approved a business plan based on FM Lite v2.8, superseding an earlier plan based on FM Lite v2.5. The parties filed detailed written closing submissions and reply submissions in December 2023 and January 2024. 23. On 17 May 2024 the Court issued a judgment ("the May 2024 Judgment") - Pender v GGH (Jersey) Limited and Ors

[2024] JRC 117 . The May 2024 Judgment determined many of the key inputs required to apply the approved methodology. The Court summarised these at paragraphs 144 to 153 of the May 2024 Judgment - "Choice of Model

144. The Experts are to use the latest approved model, being FM Lite v2.8, subject to the modelling error in relation to the EBITDA and value of the in-force book identified by Mr Arora being addressed, if it has not already been, before any reliance is placed upon it. ... Sales APE Profile

145. The valuation should be concluded on the basis of Mr Arora's Scenario 2 (which was indirectly based on the Company's forecasts from September 2022, adjusted by a 12.7% increase to reflect the outperformance in sales in 2023), in other words with Sales APE in 2027 of £111 million. Expenses Profile
146. A saving in relation to the Board Plan expenses of 4% should be applied to 2023 and all future years. In relation to the CBU re-charge, we order that the two experts review this and seek to agree what level of adjustment should be made to it. Failing agreement, they should state their respective positions and refer the matter to us for a decision. Adjustment to IFRS/BE ratio
147. The exit multiple is to be applied to the non-IFRS-adjusted EBITDA of the Company. Exit multiple
148. The exit multiple to be applied is that calculated by reference to the non-IFRS-adjusted EBITDA of PruProtect/ PruHealth , namely 15x (after adjustment for the passage of time). Exit year
149. The exit year is to be taken as 2028 but this will require further adjustments to the key assumption identified by Mr Arora under item 22 in the Second Joint Statement. Discount rate - Cost of Equity
150. We conclude that the appropriate cost of equity to apply is 21% (subject to any further adjustment for a 2028 exit year ...). SFA advance commission
151. The relevant cash flows are to be modelled out in the manner that Mr Arora suggested, rather than simply deducted from the exit value as suggested by Mr Cliff. Debt
152. We take the agreed figure of £187,009,433 net of the mezzanine counterfactual plus £13.4 million for the counterfactual relating to the money PSG put into the Company in January 2018. Yield curve
153. Both experts have used the 30 June 2023 yield curve which is up to date as at the Valuation Date." 24. The reference in paragraph 145, under the heading " Sales APE Profile ", to " Mr Arora's Scenario 2 " was a reference back to paragraph 35 of the May 2024 Judgment, in which the Court described two scenarios which Mr Arora had produced. Scenario 2 was based on FM Lite v2.5 but with a 12.7% increase applied to the APE Sales between 2024 and 2026. Mr Arora's reasons for applying that increase are set out in paragraph 34 of the May 2024 Judgment. In essence, as we shall explain later, the APE sales in 2023 had outperformed budget. The uplift reflected an expectation that the outperformance against budget would be maintained. 25. Paragraph 148 concerns the exit multiple. As we have explained above, this fell to be determined from comparable transactions. The only relevant comparator identified by the two experts was the sale in 2014 by the Prudential Assurance Company Limited of its remaining 25% stake in Prudential Health Holdings Limited (trading as "PruProtect" and " PruHealth ") to Discovery Group Europe Ltd. It followed that it was necessary for the Court to identify how PruProtect had valued the in-force book (ie whether

it used "best estimate" or applied a prudence margin) so that the same approach could be applied to Guardian. At paragraph 99 of the May 2024 Judgment, the Royal Court found that the PruProtect figures were likely to have been produced on a best estimate basis rather than being further adjusted to comply with any IFRS adjustment. 26. PSG challenges a number of the decisions reflected in the May 2024 Judgment, namely - (i) the choice of model; (ii) the Sales APE Profile; (iii) the finding that the PruProtect figures were likely to have been produced on a best estimate basis; and (iv) the decision that the appropriate cost of equity was 21%. PSG also criticises the way that the May 2024 Judgment dealt with the Evercore Valuation. 27. The Court concluded that further work would have to be undertaken before it could value the Company and, hence, determine the fair value of Mr Pender's former shareholding. In particular, the Court wished a potential modelling error in FM Lite v2.8 to be addressed and directed further work to be undertaken in relation to SFA Advance Commission. In his cross-appeal, Mr Pender criticises the latter decision. The Court directed the Company to provide certain further information, the parties' respective experts to complete and file their respective valuations, and the parties then to file closing submissions. 28. A Consequential Hearing took place on 17 June 2024. The Court ordered PSG to make a payment to account of £5 million. It granted PSG's application for an extension of time to appeal against the May 2024 Judgment until a date 28 days after the date when the Royal Court had made a final decision regarding valuation. The same time for appealing was subsequently extended to Mr Pender. On 17 June 2024, the Court also fixed a timetable for filing further reports and submissions. 29. The experts each filed a further report (their fourth reports), both dated 26 July 2024, dealing with the outstanding issues. The experts agreed that there was not, in fact, a modelling error in FM Lite v2.8. They addressed how SFA Advance Commission should be taken into account. As we shall explain, they took different approaches to that issue. Mr Arora assessed the value of Mr Pender's interest in the Company at £49.3 million. Mr Cliff assessed the value of Mr Pender's interest at £33.1 million but stated that it remained his opinion that the assumptions he had made in his previous report and during the Valuation Hearing had been reasonable and that these would bring out a significantly lower valuation. Mr Cliff subsequently produced a letter dated 5 August 2024 commenting on the approach which Mr Arora had taken to accounting for SFA Advance Commission. 30. The parties filed written submissions on 7 August 2024 and replies on 27 August 2024. PSG's submissions ("PSG's August 2024 Submission") relied on updated evidence about Guardian's performance in 2024 which disclosed, in particular, that the outperformance of sales against forecast which had been experienced in 2023 (and which had been the basis for directing that the Sales APE Profile should be based on the Company's forecasts with a 12.7% uplift) had not been sustained. PSG contended that the Court "could not" ignore this evidence. PSG submitted that if the Court was not minded to "correct its adjustment to Sales APE" (ie the 12.7% uplift to the Company's forecasts referred to in paragraph 145 of the May 2024 Judgment) it should, in any event, reassess its valuation in light of certain proposed "sense checks". PSG stated, inter alia, that despite continuing efforts by PSG and Evercore to attract outside investment or a purchaser for the business, PSG was yet to receive any firm indications of interest or bids at any price. PSG invited the

Court to fix a further oral hearing. 31. At paragraphs 167 and 168, after addressing the SFA Advance Commission issue, PSG's August 2024 Submission stated - "167. The Court has made several orders on how the valuations should be conducted, and what inputs and adjustments should be used. In most cases these orders were contrary to PSG's submissions and its evidence and were in line with Mr Pender and his expert.

168. PSG appreciates that it cannot relitigate those decisions before this Court. However, it invites the Court to acknowledge these basic propositions when considering the appropriate level of award in this case - a. No one has a crystal ball and no methodology is perfect; the valuation process is nothing more than an attempt to estimate a value, using information and experience, but it may well arrive at a number that will prove to be very wrong. b. Whatever methodology is used, valuing a young company means estimating its likely performance many years into the future, which is an inherently uncertain exercise. c. There are specific problems in valuing a life insurance business by applying an EBITDA multiple. As Mr Cliff explained, this approach treats the movements in the IFV as 'profit'. However, this movement is not itself cash, but is a figure obtained through the business's accounting and actuarial policies. These highly technical calculations are essentially actuarial issues ... d. There are many inputs to which the overall valuation is highly sensitive - a small percentage change to the choice of discount rate, or multiplier, or EBITDA, for example, can have a major impact, measured in millions of pounds. e. This effect is magnified if more than one of the inputs are wrong, and the effect in each case pushes the valuation in the same direction. f. The Court should therefore acknowledge that if the result of applying its chosen input to the chosen methodology is a value that common sense and other evidence shows must be too high, then it must accept that something is wrong and make an adjustment to correct for that (a 'sense check'). g. This adjustment could mean revising some of the inputs or it could be achieved by an overall reduction to bring the figure in line with a reasonable range of outcomes." 32. Mr Pender's reply submission contended that PSG's invitation to the Court to take into account updated sales figures (which Mr Pender did not, in any event, accept) ignored the Court's ruling of 3 August 2023. Mr Pender contended that PSG was effectively taking advantage of a "one-way bet. Had the Company's performance substantially improved in 2024 compared to expectations, they would of course have opposed that being taken into account. Such attempts to continually move the goalposts and prevent Mr Pender achieving a final resolution of these proceedings are unfair and oppressive". 33. The Royal Court did not order a further hearing. It issued a draft judgment in December 2024. Among other things, this intimated that the Court had concluded that the SFA Facility should be accounted for by making a deduction of £11 million from the Enterprise Value of Guardian. Both parties filed representations about the draft judgment in January 2025. Each party represented that the Court appeared to have misunderstood the evidence about the SFA Facility. On 2 April 2025, the Court handed down its judgment (Pender v GGH (Jersey) Limited

- [2025] JRC 094) ("the April 2025 Judgment"). The April 2025 Judgment is almost entirely in the same terms as the December 2024 draft, but with some additional explanation, at paragraph 108, of the Court's conclusion about the SFA Facility. 34. The April 2025 Judgment determined the outstanding issues. The Court valued the shares in the Company at £237,382,567. The Royal Court valued Mr Pender's shareholding at 18% of that figure, namely £42,728,862. PSG challenges this decision on the various grounds argued in this appeal. 35. The April 2025 Judgment mentioned, at paragraph 32, that " some of [the parties'] closing submissions sought to re-open issues that had already been determined ". At paragraphs 109 to 113, the Court quoted paragraph 168 of PSG's August 2024 Submission, which we have quoted above. The Court added these comments - "111. Whilst this approach may be superficially attractive we do not regard it as appropriate. The suggestion that the Court should make an adjustment by way of a 'sense-check' is to invite the Court to disregard the evidence of the experts and to come up with a final value, not based on expert evidence but on 'common sense', a concept which is easily said but wholly undefined.
112. We were invited by [PSG] in their closing statement to have a further oral hearing to 'avoid injustice and reduce the issues on any appeal'. We made clear in our judgment of 17 May 2024 that it was a matter of some regret that we found ourselves unable to make a final decision at the [Valuation Hearing] due to the significant differences between the experts and a number of unresolved issues which were likely to impact the valuation. We therefore gave directions both to [the Company] in relation to the alleged modelling error and to the Experts with a view to their completing and filing their respective valuations. The parties were then to file closing submissions which they have done.
113. In our view a further oral hearing would have served little purpose save for presenting an opportunity to re-litigate matters that have already been determined by the Court, a course which was adverted to in [PSG's] closing submissions where it was said that 'in order to avoid a grave error and an injustice we invite the Court, finally, to accept that the inputs it has ordered in this valuation exercise are wrong.'" PSG contends that the Royal Court should have revisited the decisions in the May 2024 Judgment in light of the updated performance information placed before it in August 2024. It further contends that the Royal Court should have applied sense checks to the valuation brought out by the approved methodology. 36. We were told that the judgment sum has been paid in full on the basis of an undertaking that it will be invested with a reputable bank. We were also told that a hearing on consequential matters, such as pre-judgment interest and costs, took place on 10 April 2025; that a draft judgment had been provided to the parties; and that PSG did not intend to appeal any of the decisions in that judgment. 37. PSG appeals against the May 2024 Judgment and the April 2025 Judgment. Mr Pender cross-appeals the Royal Court's decision in the April 2025 Judgment to take account of the SFA Facility by making a deduction of £11 million from the Enterprise Value of Guardian. The application to admit fresh evidence 38. In advance of the appeal hearing, PSG filed an application under rule 12 of the Court of Appeal (Civil) Rules 1964 to admit fresh evidence. The proposed evidence comprised - (i) reports disclosing

Guardian's sales performance from June 2024 to April 2025, to show that Guardian had continued to underperform against forecasts; and (ii) an affidavit from Mr McKelvey deponing that PSG had received no offers to purchase its business pursuant to the sales process to which Mr McKelvey had referred in his evidence before the Royal Court. This evidence was filed in support of PSG's contention that the Royal Court should have revisited its decision that the valuation should use a Sales APE Profile based on the Company's forecasts with an uplift of 12.7%. Mr Pender resisted the application to admit this evidence. We decided to rule on the application as part of our judgment on the appeal. The legal framework 39. In *Financial Technology Ventures v. EFTS Capital*

[2021] JCA 176 , this Court stated - "... In fixing the price at which a plaintiff's shares are to be acquired, the court is not conducting a 'valuation' as such. In other words, it is not performing an objective, mathematical exercise dictated by expert evidence and by reference to accountancy principles alone. Instead, it is conducting an evaluation. In other words, it is performing a remedial function involving a judgment call which is made in light of all the circumstances of the case and by reference to principles of fairness." 40. The principles to be applied by an appeal court to an evaluative judgment such as this are well-established. In the absence of some identifiable error, such as a material error of law, an appeal court will not interfere unless the first instance decision was plainly wrong, in the sense that it was one which no reasonable court could have reached or (to put it another way) was one which lies outside the bounds within which reasonable disagreement is possible. If the judgment cannot be impugned on one of these grounds, it is irrelevant that the appeal court would have reached a different decision if it had been deciding the issue for itself. 41. In *Financial Technology Ventures* , *supra* , the Court stated - "... this court fully recognises and respects the advantages which a trial court enjoys by virtue of sitting through the entire trial process, particularly when it has had the opportunity to consider oral testimony, the terms in which that testimony is couched and the demeanour of the witnesses ..." The Court went on to observe that it is: "... salutary to keep in mind all of the numerous justifications for this approach explained in *Fage UK Ltd v. Chobani UK Ltd*

[2014] FSR 29 at paragraphs 114-115, but ... we would draw particular attention to the fact that the trial court will have had regard to the whole sea of evidence presented to it, not all of which will necessarily have been expressly referred to in the judgment, and the significance of those matters which are discussed in the judgment below may not always convey the same weight when reviewed on appeal as they did to the trial court." These observations apply to expert evidence just as they apply to primary evidence of fact. 42. In his judgment in *Fage UK Ltd v Chobani UK Ltd*

[2014] FSR 29 , Lewison LJ stated that the reasons underpinning the approach of an appeal court to findings of fact include the following - " i . The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed. ii. The trial is not a dress rehearsal. It is the first and last night of

the show. iii. Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court and will seldom lead to a different outcome in an individual case. iv. In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping. v. The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence). vi. Thus even if it were possible to duplicate the role of the trial judge, it cannot in practice be done." 43. Fact-finding and the exercise of evaluative judgment are judicial functions of the trial court, which an appeal court should respect, except in the circumstances which we have described at paragraph 40 above. In Jersey, the fact-finding role of the Jurats gives this feature of the legal system a constitutional dimension which further underpins the approach which this Court takes to the findings of fact and evaluative judgments which have been made by the Royal Court. 44. An appeal court should proceed on the assumption that the first instance court has taken the whole of the evidence into consideration, unless there is a clear basis for the contrary conclusion. The mere fact that the judgment does not mention a specific piece of evidence does not mean that the first instance court overlooked it. Further, whilst the first instance court must consider all the material evidence (even if it does not specifically refer to it), it is for that court to assess and determine the weight which it attaches to particular pieces of evidence. An appeal court should not set aside a judgment on the basis of a contention that the first instance court failed to give the evidence a balanced consideration unless the first instance court's conclusion is rationally insupportable. 45. PSG advances various criticisms of the Royal Court's reasoning. It relies on the proposition that a judge owes an "obligation to address at least the central arguments raised by the losing party and to explain why they were rejected" (*Crinion v. IG Markets Ltd*

[2013] EWCA Civ 587 per Underhill LJ). Advocate Redgrave referred us to *Simetra Global Assets Ltd v. Ikon Finance Ltd*

[2019] 4 WLR 112, paragraph 46 per Males LJ - "First, succinctness is as desirable in a judgment as it is in counsel's submissions, but short judgments must be careful judgments. Second, it is not necessary to deal expressly with every point but a judge must say enough to show that care has been taken and that the evidence as a whole has been properly considered. Which points need to be dealt with and which can be omitted itself requires an exercise of judgment. Third, the best way to demonstrate the exercise of the necessary care is to make use of 'the building blocks of the reasoned judicial process' by identifying the issues which need to be decided, marshalling (however briefly and without needing to recite every point) the evidence which bears on those issues and giving reasons why the principally relevant evidence is either accepted or rejected as unreliable. Fourth, and in particular, fairness requires that a judge should deal with apparently compelling evidence, where it exists, which is contrary to the conclusion which he proposes to reach and explain why he does not accept it." 46. We will address PSG's specific criticisms where they arise. But we remind ourselves that, in introducing these comments, Males LJ also observed that " what

is required will depend on the nature of the case, and that no universal template is possible ". In D

v. Geneva Trust SA

[2025] JCA 058 , Matthews JA, giving the judgment of this Court, stated that " judges are not obliged to deal with every single point that is argued, or every piece of evidence tendered ". The decision as to which points should be addressed and which can be omitted itself requires an exercise of judgment. Matthews JA deprecated the tendency " to pick over the exact words used (or not used) by a court in its judgment and then to seek to subject them to a detailed critical analysis as though one were carrying out a scientific analysis of an unknown substance in order to determine its precise atomic composition" . The well-known observations of Lord Hoffmann in *Piglowska v. Piglowski*

[1999] 1 WLR 1360 , 1372, merit repetition - "The exigencies of daily court room life are such that reasons for judgment will always be capable of having been better expressed ... These reasons should be read on the assumption that unless he has demonstrated the contrary the judge knew how he should perform his functions and what matters he should take into account. ... An appellate court should resist the temptation to subvert the principle that they should not substitute their own discretion for that of the judge by a narrow textual analysis which allows them to claim that he misdirected himself." Lord Hoffmann's final observation applies to the exercise of evaluative judgment no less than to the exercise of discretion. 47. PSG also contends, under reference to *Group Seven v. Notable Services LLP*

[2020] Ch 129 , para. 21, that the restraint to be exercised by an appeal court should depend on " an advantage possessed by the trial judge, whether from a thorough immersion in all angles of the case or from first-hand experience of the testing of the evidence ". PSG argues that the relative advantage of the Royal Court in this case was diminished. PSG further contends that, since the final judgment on valuation was handed down in April 2025, some sixteen months after the Valuation Hearing, the Royal Court had dissipated any advantage which it might have had as a result of having heard the oral evidence. 48. Whilst PSG accepts that delay is insufficient to justify setting aside a judgment, it relies on *Bank of St Petersburg v. Arkhangelsky*

[2020] EWCA Civ 408 and *NatWest Markets plc v. Bilta (UK) Ltd*

[2021] EWCA Civ 680 for the proposition that delay is an important factor to be taken into account when an appellate court is considering the trial judge's treatment of the evidence, findings of fact and reasoning. PSG contends that, in light of the delay in the production of the April 2025 Judgment, it cannot be assumed that the Royal Court has dealt with arguments which it does not expressly address. Advocate O'Connell contends that the point has particular force in Jersey, because of the role of Jurats as lay finders of fact. 49. Whilst we accept that an unexplained delay can, in some circumstances, affect the integrity of a trial court's judgment, we do not otherwise accept PSG's submissions. 50. The justification for the approach taken by this Court to findings of fact and evaluative judgments made by the

Royal Court does not depend on showing that the Royal Court had some specific "advantage" over this Court. Lewison LJ's observations in *Fage UK Ltd* remind us that, for various reasons, "even if it were possible to duplicate the role of the trial judge, in practice it cannot be done". And, as we have explained, the constitutional role of the Jurats reinforces that approach. 51. In any event, the material which we have been shown confirms that the Royal Court did have significant advantages over this Court in valuing Mr Pender's shareholding. The Royal Court heard 23 days of evidence in late 2023 and a portion of that hearing was devoted to valuation issues. It subsequently heard a further four days of evidence specifically on valuation. At both hearings, the Court had evidence, both written and oral, from witnesses involved in the business of the Company. It received four successive reports from each of the two expert witnesses and two joint statements from those experts. The Commissioner and the Jurats had the benefit of hearing directly from the experts at the oral hearings, including in a 'hot tubbing' session, and of seeing how the experts responded to cross-examination. The parties' closing submissions and replies following the Valuation Hearing amounted to 111 pages (plus 7 pages of Appendix). Their further submissions and replies in August 2024 amounted to 93 pages (plus 4 pages of Appendix). Whilst we were taken to parts of the evidence and the written submissions, it was evident that this was only a fraction of the material which was before the Royal Court. 52. The authorities to which PSG has referred us support the proposition that where there is a lengthy period of unexplained delay between hearing and judgment, an appeal court may be justified in scrutinising carefully the trial court's reasoning. With hindsight, the sequential approach which the Royal Court took to the exercise did result in the proceedings, looked at overall, becoming prolonged. But although the Royal Court did not issue its final judgment until April 2025, there was substantial activity between the Valuation Hearing and that date - including an exchange of written submissions which concluded in January 2024, the preparation and issue of the May 2024 Judgment, further exchanges of expert reports and written submissions through to August 2024, the preparation and issue of the December 2024 draft (which the April 2025 Judgment substantially reflected) and representations on that draft. During this period, the Royal Court was, accordingly, from time to time engaged intensively with the valuation exercise. We do not find in that history any basis for concluding either that the Royal Court had "dissipated" its advantage over this Court in assessing the evidence. Nor, within that overall period do we find any period of such unexplained and lengthy delay as would justify us in applying a more exacting scrutiny to the Royal Court judgment than would otherwise be the case. The Grounds of Appeal 53. PSG advances six Grounds of Appeal. These advance, and elaborate on, the following headline contentions - (i) The Royal Court's valuation of Mr Pender's shareholding is "manifestly absurd and plainly wrong when considered against the real-world evidence". (ii) The Royal Court failed to exercise its judicial function properly. (iii) The Royal Court failed to take account of evidence which became available to it during the valuation process which showed that earlier decisions which the Court had made would lead to an unfair valuation and should therefore be revisited. (iv) The Royal Court erred in its findings on various specific inputs which were required to give effect to

its approved methodology. (v) The Royal Court erred in its analysis of the SFA Advance Commission issue. (vi) The Royal Court erred by not applying sense checks to its conclusions. 54. Advocate O'Connell, for PSG, told us that the Grounds of Appeal, to some extent, overlap. That was reflected in the oral presentation of the appeal. We propose to address the issues which have been raised in the following order. (i) Alleged prejudgment (Ground of Appeal 2a). (ii) PSG's criticisms of specific features of the May 2024 Judgment, namely the Court's decisions on the following points: · Evercore Valuation (Grounds of Appeal 1c, 2c ii); · Choice of model (Ground of Appeal 2c i); · APE Sales Profile (Ground of Appeal 3a ii); · IFRS/BE ratio (Ground of Appeal 4a); · Exit multiple (Ground of Appeal 4b); and · Discount rate (Grounds of Appeal 4c and 2c ii). (iii) The parties' criticisms of the Royal Court's decision in respect of the SFA Facility (PSG's Ground of Appeal 5; Mr Pender's cross-appeal). (iv) Ground of Appeal 3a ii - PSG's criticism of the Royal Court's decision not to take into account updated information about the Company's performance. (v) Ground of Appeal 3a i - PSG's criticism of the Royal Court for not revisiting its conclusions when it became apparent that there was no modelling error in FM Lite v2.8. (vi) PSG's contention that the Royal Court's valuation is "manifestly absurd and plainly wrong" (Ground of Appeal 1). (vii) PSG's contention that the Royal Court should have applied sense checks to the outcome of the valuation process (Ground of Appeal 6). (viii) PSG's criticism of the Royal Court for not revisiting its conclusions in response to new information bearing on the independence and credibility of Mr Arora (Ground of Appeal 3b:). (ix) PSG's contention that the Royal Court failed to act judicially (Ground of Appeal 2). (x) PSG's application to admit fresh evidence. Alleged Prejudgment 55. PSG emphasises at the outset of its written submissions that the unfair prejudice jurisdiction is not penal. Whilst the Court may, as it did in this case, direct that the valuation of a minority shareholding is to proceed on the basis of certain counterfactual assumptions intended to remedy the unfairly prejudicial conduct, thereafter the only question is what, applying those counterfactuals, is a fair valuation of the shareholding. The value may be low, or even nil. PSG contends that, contrary to this principle: "it appears that the Royal Court started with the assumption that Mr Pender would be entitled to a substantial award and throughout the process of valuation assumed that its valuation ought to result in a substantial award." 56. We have been shown no foundation for this allegation. Indeed, in the April 2025 Judgment, the Royal Court directly answered a similar contention (which had been advanced under reference to two quotations from earlier cases which the Royal Court had relied upon in the May 2024 Judgment), that the Court " may have been misled into serious error in concluding that the Court is entitled to inflate the valuation to reflect what it would like PSG to have to pay Mr Pender ". The Royal Court stated in response - "20. As [PSG] itself points out, and we agreed, the passages [which had been relied on by PSG] simply recognise that the award must reflect the financial loss caused by unfair prejudice. This does of course mean that a valuation may be adjusted to allow for the effect on the Company of any wrongs the Court has found that [PSG] has committed and, as [PSG] has accepted, this has already happened in this case: it was the basis for the counterfactuals imposed by the Trial Judgment ...

21. Whilst the application of the counterfactuals will inevitably reflect the actions of [PSG], thereafter the Court simply has to arrive at a valuation with the assistance of the experts." 57. The only support for the contention that the Royal Court did not, in fact, approach matters in that way which has been placed before us is PSG's argument, in Ground of Appeal 2a, that, by ordering an interim payment on account of some £9.4 million following the Directions Hearing on 3 August 2023, the Royal Court prejudged the valuation issue. In advancing the point before us, Advocate O'Connell stated - "Our complaint is that the Royal Court was wrong to have done that, for the simple reason that there was no proper basis for the court to have done so. It had at that stage no expert evidence from the appellant in response to that provided by the respondent, and our submission is that the lower court was showing early signs of having prejudged the issue." 58. When the Royal Court made the interim payment award, it had already heard evidence at the first trial about valuation. Whilst Mr Cliff had given the Company a nil value, Mr Arora had valued Mr Pender's shareholding at £24m - £51m. The Court had determined that the valuation was to be undertaken according to Mr Arora's valuation methodology. In his written skeleton for the Directions Hearing, Advocate Christie, for Mr Pender, produced a calculation which brought out a valuation of £11.4 million. His submission was that the award requested (£10 million) was below the "realistic minimum figure" which the Court was likely to award. Advocate Christie told us that PSG had two months' notice of Mr Pender's application for an interim payment; and Advocate O'Connell acknowledged that PSG could have put in expert evidence on valuation for the Directions Hearing but had not done so. 59. In making an order for interim payment to Mr Pender, the Royal Court stated - "Having accepted Mr Arora's methodology and noting the resulting calculation, albeit this is subject to change in the light of the reports that both experts will produce, we are satisfied that an award in the region of what is requested would be below the minimum that Mr Pender is likely to receive." There was accordingly material before the Royal Court - namely, Mr Arora's valuation and the calculation produced by Advocate Christie - upon which the Court could take the view, at that time, that the figure which it decided to award by way of an interim payment was below the minimum that Mr Pender was likely to receive. The Royal Court was alive to the possibility that its view could change in light of the anticipated expert reports. The Court said so in terms. It also recognised that the payment might require to be reversed, in whole or in part. The award was made on the basis of an undertaking by Mr Pender's lawyers to satisfy any repayment which might subsequently be required. Those circumstances are destructive of the contention that the Court had, by making this award, prejudged the outcome of the case. 60. In any event, it was inherent in the making of an order for interim payment that this could and would be revisited in light of the evidence subsequently produced. Judges and Jurats are well able, in light of the evidence they hear at trial, to revisit and revise provisional views which they may have formed at an interlocutory hearing for the purposes of making interim orders. The making of an interim order (whether for interim payment or otherwise) does not, without more, ordinarily provide any foundation for a contention that a first instance court has prejudged the issue. PSG's criticisms of the May 2024 Judgment (i) The Evercore Valuation 61. We have described the background to the Evercore Valuation at paragraphs 20

and 21 above. At the Valuation Hearing, Advocate Christie cross-examined Mr McKelvey about the proposed sale of the business and the instruction of Evercore. He also took Mr Arora to the Evercore Valuation. Mr Arora made some comments on it, concluding - "... for me this looks like it is still a work in progress ... I have other comments on the valuation. I have taken a look at that. And I think there's a number of issues there which also suggests that this is work that is yet

- well, requires refinement." 62. In re-examination, Advocate O'Connell put to Mr Arora that his valuation was " conspicuously different " from others, including the Evercore Valuation. Mr Arora responded - " Yes, however I would disagree with those other valuations. I think clearly the disagreement with Mr Cliff is captured in the joint statement. I haven't had a chance to explain the difference to Evercore and my opinion on that and Nash was dealt with extensively at the last trial and the issues underlying the Nash values, the Nash valuations generally. I can obviously go into that if it's helpful. " Advocate O'Connell responded - " Well, these are very simple propositions I'm trying to put to you. They don't really provoke long answers." He did not explore with Mr Arora the reasons for his disagreement with the Evercore Valuation. In this passage of evidence, " Nash " is a reference to another valuation, to which reference was made in the Royal Court. 63. PSG's written submissions following the Valuation Hearing did not make significant reference to the Evercore Valuation, although it appeared, along with the Nash valuation and Mr Cliff's valuation, in a graphical presentation, to support the contention that Mr Arora's valuation was an " outlier ". 64. At paragraph 143 of the May 2024 Judgment, the Royal Court stated - "The Plaintiff drew our attention to further discovery that was produced by [PSG] not long before the valuation hearing. Included within the documentation were documents that related to an exercise that [PSG] had embarked upon whereby they had instructed a firm known as Evercore Partners International LLP to advise them on the valuation and marketing of the Company. We did not regard those documents as relevant to the exercise that we have to carry out. Evercore were not instructed as experts, their work post-dates the dates which the Experts were to consider and without a detailed examination of the documents and other evidence it would be difficult to reach any conclusions as to the basis upon which they were instructed and the basis for any valuation, tentative or otherwise, that they may have produced." 65. During the hearing of the appeal, Advocate O'Connell took us to certain parts of the Evercore Valuation. He relied on it principally in support of Grounds of Appeal 1 and 6, which we will consider later, as a document which contained " real-time, real world evidence of the marketplace " which he contended would be " useful to this court as a cross-check against the valuation arrived at by the lower court in this case. " But he also criticised the approach which the Royal Court took to the Evercore Valuation at paragraph 143 of the May 2024

Judgment.

66. We reject that criticism. Although Advocate O'Connell characterised the Evercore Valuation of Guardian as " an indicator of value in the real world " it was no less an opinion about value than the other valuation evidence which the Royal Court had before it. In light of the

evidence which the Royal Court had seen and heard, it cannot but have been alive to the complexity of the issues which were implicit in formulating such an opinion. Whilst the Royal Court had factual evidence from Mr McKelvey that the Evercore Valuation had been tendered to PSG, it had no evidence from the author of the Evercore Valuation explaining its basis or rationale. The Evercore Valuation had not been, nor could it be, tested in the way that the evidence of Mr Cliff and Mr Arora had been tested. 67. In these circumstances, the Royal Court had no proper basis in the evidence for assessing what weight, if any, it should attribute to Evercore's opinion about the value of Guardian. In any event - (i) Evercore had not been instructed as an expert for the purposes of the Court proceedings; and (ii) although the Evercore Valuation was dated only some three months after the Valuation Date, the Court had no basis for assessing, without evidence, whether it was relevant to the valuation of the Company as at the Valuation Date. The Royal Court was right, or was at least entitled, to exclude the Evercore Valuation from consideration for the reasons it set out in paragraph 143 of the May 2024

Judgment.

(ii) Choice of Model 68. At paragraph 24 above, we have explained that the Company used an Excel spreadsheet called FM Lite for financial forecasting. One of the issues which the Royal Court had to determine following the Valuation Hearing was which version of that model should be used. As noted above, at paragraphs 144 and 145 of the May 2024 Judgment, the Royal Court recorded the following decisions - "Choice of Model

144. The Experts are to use the latest approved model, being FM Lite v2.8, subject to the modelling error in relation to the EBITDA and value of the in-force book identified by Mr Arora being addressed, if it has not already been, before any reliance is placed upon it. ... Sales APE Profile
145. The valuation should be concluded on the basis of Mr Arora's Scenario 2 (which was indirectly based on the Company's forecasts from September 2022, adjusted by a 12.7% increase to reflect the outperformance in sales in 2023), in other words with Sales APE in 2027 of £111 million." 69. The Royal Court directed the Company to provide information to enable the putative modelling error to be addressed. As the Royal Court later recorded in the April 2025 Judgment, the experts were by then agreed that there was not, in fact, a modelling error in FM Lite v2.8. 70. Advocate O'Connell, for PSG, contends that the choice of model was plainly wrong. The Royal Court directed, in paragraph 144, that FM Lite v2.8 be used, but also directed, in paragraph 145, that the sales forecasts in that version of the model be replaced by sales forecasts made in 2022 uplifted by 12.7%. He criticised this as a " wholly synthetic outcome " which had not been supported by expert evidence. The contention is that the Royal Court could not properly decide to use the version of FM Lite which had most recently been approved by Guardian's management, whilst substituting other inputs for those which the management had approved. 71. We reject that criticism. This was precisely the sort of judgment which it fell to the Royal Court to make in light of its knowledge and

understanding of the valuation issues in the case. There was a basis in the evidence upon which the Royal Court could decide that FM Lite v2.8 should be used as the basic model; indeed, that was the version which PSG itself proposed should be used. Equally, as we shall explain in the next section of this judgment, there was a basis in the evidence upon which the Royal Court could properly conclude that the appropriate sales forecasts to use for the purposes of valuing Mr Pender's shareholding were those from FM Lite v2.5 uplifted by 12.7%. That being so, we cannot say that the approach which the Royal Court took to this issue was not within the range of reasonable judgments available to it. (iii) Sales APE Profile 72. As we have already recorded, in paragraph 145 of the May 2024 Judgment, the Royal Court recorded its decision that, as regards Sales APE Profile, the valuation: "... should be concluded on the basis of Mr Arora's Scenario 2 (which was indirectly based on the Company's forecasts from September 2022, adjusted by a 12.7% increase to reflect the outperformance in sales in 2023), in other words with Sales APE in 2027 of £111 million." The Royal Court explained this decision at paragraphs 33 to 44 of the May 2024 Judgment. At paragraph 34, it recorded that Mr Arora noted that the APE Sales " in YTD 2023 had been ahead of budget in all months " and took the view that the " historical underlying outperformance might be expected to continue in future periods ". At paragraph 36, the Court recorded that in the Second Joint Statement of experts, Mr Cliff stated that Mr Arora's Scenario 2 represented " a reasonable alternative scenario ", albeit that in his oral evidence he suggested that the increase which had been proposed by Mr Arora " could be tempered somewhat ". Whilst the evidence of the witnesses involved in the management of Guardian was more pessimistic, the Royal Court " was left with the distinct impression that [they] were seeking to minimise the likely growth of the Company's Sales APE " (paragraph 43). The Court found that Mr Gibson had in effect " reverse engineered " a spreadsheet to reach a predetermined sales forecast; and that Ms MacLean's evidence was " far from convincing ". 73. Advocate O'Connell contended that the Royal Court's conclusion on this issue was plainly wrong. The Court had erred, he said, in referring to an "historical underlying outperformance" without acknowledging that, until 2023, Guardian had consistently underperformed against its forecasts. The correct position, he said, was that what happened in early 2023 was nothing more than a temporary and unrepresentative improvement in sales which had not previously arisen, and which has never subsequently recurred. 74. We reject that criticism. Both experts agreed that the Company's sales forecasts should be uplifted in light of Guardian's 2023 performance. Mr Cliff accepted that Mr Arora's proposed approach (which included the uplift of 12.7%) was " a reasonable alternative scenario " even if he urged that this could be " tempered " somewhat. The Royal Court was apparently unimpressed by the management witnesses and was entitled to reject their more pessimistic evidence. The reference to an " historical underlying outperformance ", upon which Advocate O'Connell particularly relies, appears in the Court's summary of Mr Arora's evidence. The Court's use of that phrase in that context does not, in our view, justify concluding that it had an erroneous understanding of the true position. 75. We address later PSG's separate contention that the Royal Court erred in not revisiting this conclusion when PSG's August 2024 Submission provided updated information about the Company's

performance. (iv) IFRS/BE ratio 76. A component of Guardian's EBITDA was the change, in the Exit Year, in the value of the in-force book. As we have explained above, valuing the in-force book involves estimating the probabilities of future events (such as claims, cancellations and changes in the cost of administration) applicable to the in-force book. The Royal Court discusses this at paragraphs 66 to 99 of the May 2024 Judgment. It explains that Guardian values its in-force book on a "best estimate" basis, which is "neither optimistic nor pessimistic", and then makes an adjustment, described as an "IFRS adjustment". There was no dispute that Guardian was not obliged to make this adjustment, but that it did so on the basis of advice from its auditors that if a valuation undertaken by reference to the IFRS is more than 85% of the best estimate figure, the best estimate is not cautious enough. In those circumstances, Guardian's actuaries adjust the inputs until the IFRS/BE percentage is reduced below 85%. 77. The Royal Court heard evidence about this at the first trial from Mr Singh, Guardian's actuary, and the matter was discussed during the 'hot tubbing' of the experts. It was addressed by the parties in submissions. The July 2023 Judgment discusses the point at paragraphs 353 to 357. The Royal Court heard further evidence from the experts at the Valuation Hearing. Mr Arora placed before the Court two scenarios, with 100% and 85% IFRS/BE ratios. Mr Cliff also placed before the Court two scenarios, with 93% and 80% IFRS/BE ratios. PSG's position following the Valuation Hearing was that the Royal Court should use IFRS-adjusted figures. Mr Pender contended that the IFRS adjustment should be stripped out, and best estimate used. 78. Paragraph 147 of the May 2024 Judgment records that the Royal Court decided - "The exit multiple is to be applied to the non-IFRS-adjusted EBITDA of the Company." In other words, the experts were to use the "best estimate" value of the in-force book and not the IFRS adjusted value. The parties were agreed before us that the relevance of this issue to the valuation exercise, at least for present purposes, was to ensure consistency with the comparator transaction (ie the PruProtect transaction). Consistently with that common approach, it is evident that the reason for the Royal Court's decision on this matter was its conclusion, expressed at paragraph 99 of the May 2024 Judgment, that the PruProtect figures were likely to have been produced on a best estimate basis rather than being further adjusted to comply with any IFRS adjustment. 79. That conclusion follows a quotation by the Court from a passage in Mr Cliff's Second Supplementary Report - "The segmental financial information in the annual reports of Discovery Limited discloses the financial performance of UK Life with separate IFRS 4 reporting adjustments. In excluding the IFRS 4 adjustments, I have considered whether such adjustments in PruProtect/ PruHealth's EBITDA makes the methodology to calculate EBITDA more comparable to the methodology in Guardian's December 2022 Forecast or less comparable. I make the following observations regarding these IFRS 4 adjustments. The Discovery Limited annual reports state that the segmental information 'is presented on the same basis as reported to the Chief Executive Officers of the reportable segments. The segment total is then adjusted for accounting reclassifications and entries required to produce IFRS compliant results.' I consider that the segmental information as reported to the Chief Executive Officers of the reportable segments would be more comparable to Guardian's forecasts which are prepared for Guardian's management." 80. Advocate

Redgrave told us that the " nub of the appeal on this point " was that the Royal Court had no basis in the evidence for concluding that the PruProtect valuation did not involve an IFRS adjustment. The accounting information available about PruProtect was contained in the accounts of Discovery Limited, which included " segmental financial information ", including for the " UK Life " business. It was not possible to ascertain directly from the Discovery Limited accounts whether PruProtect did or did not apply an IFRS adjustment. Indeed, the written submissions for Mr Pender filed for this appeal state in terms that " it is extremely difficult to establish even to the level of likelihood, what PruProtect was doing ". Advocate Redgrave submitted that the passage which the Royal Court quoted from Mr Cliff's Second Supplementary Report did not support the Court's conclusion; indeed, Mr Cliff in his evidence, whilst he could not be sure, tended to the view that PruProtect was applying a margin. 81. Advocate Christie, for Mr Pender, accepted that it is not clear from the Discovery accounts whether PruProtect applies margins to the best estimate. He relies on two matters in support of the Royal Court's finding that the PruProtect figures were likely to have been produced on a best estimate basis. First, PruProtect was not required (by contrast with Discovery Life itself) to apply any such margin. Secondly, although Guardian does make an adjustment, this does not reflect a general practice in the sector. His basic point was that PSG did not, and could not, contend that the Royal Court had been wrong to make the finding which it did. The Court had to make a decision one way or the other, and had reached a decision that it was more likely than not that PruProtect did not apply a margin. The Court had been entitled to reach that conclusion. 82. As we understand it, there is no dispute that PruProtect was not required to apply any margin to best estimate. A full-stack insurer (such as Discovery Limited itself) which uses the IFRS accounting standards is obliged, by IFRS 4 (now IFRS 17) to apply prudence margins. Such businesses are subject to regulatory requirements directed to ensuring that they carry sufficient reserves. But these requirements do not apply to appointed representatives such as PruProtect or Guardian. The relevant accounting standards do not oblige such businesses to apply prudence margins, although, as the Royal Court explained, Guardian does so. 83. Advocate Christie vouched his second point, that Guardian's approach does not reflect any general practice in the sector, by showing us that at the first trial, Mr Singh stated in evidence that he did not know one way or the other whether other appointed representatives applied a margin. There was, Advocate Christie told us, no evidence from any witness that appointed representatives generally apply such a margin. He showed us documentation relating to Reviti Limited and Sunlife Limited, to support the conclusion that neither of these appointed representatives applies any prudence margin to best estimate or expected value. As paragraphs 82 and 83 of the May 2024 Judgment explain, this material was also placed before the Royal Court. PSG had not, Advocate Christie stated, shown the Court any appointed representative, other than Guardian itself, which did make an adjustment. 84. PSG advanced an argument that although Advocate Christie had put the information about Reviti Limited and Sunlife Limited before the Royal Court in his submissions, this material had not been referred to in the evidence of witnesses. The critical proposition in the Royal Court judgment is paragraph 86 of the May 2024 Judgment - "It appears to us that whilst the IFRS 4 adjustment may be

obligatory for a company that sells its own insurance contracts, it is not obligatory for insurance distributors to do so although they may, on the advice of their auditors, as was the case with the Company, choose what level of prudence margins to apply". We did not understand this proposition to be controversial between the parties. The reference to documentation concerning Reviti Limited and Sunlife Limited, in essence, supported the proposition that it is not obligatory for insurance distributors to make such an adjustment, and showed that there is no general practice of doing so. Even if that documentation were to be left out of account, the position would be that there was no evidence of any general practice that such an adjustment would be made. 85. In order to apply its approved methodology, the Royal Court had to decide whether or not to apply an IFRS adjustment to the EBITDA of the Company, and the parties were agreed that, in order to make this decision, the Court had to decide whether the only relevant comparator, PruProtect, did or did not apply such an adjustment. The Royal Court's conclusion that the PruProtect figures were likely to have been produced on a best estimate basis without an IFRS adjustment is a finding of primary fact. In order to succeed in this Ground of Appeal, PSG has to satisfy us that this finding was plainly wrong. We cannot interfere unless there was no basis for the finding in the evidence, or it was based on a material misunderstanding of the evidence, or no reasonable court could have made that finding. We bear in mind that the Court had to reach a conclusion one way or the other and that the finding only required to be made on the balance of probabilities. Whilst the evidence appears to have been thin, we accept that the fact that PruProtect was not obliged to make any adjustment, coupled with the absence of any evidence that there was a general practice of making such an adjustment, provided a basis upon which the Court was entitled to conclude that the balance favoured making the finding which has been criticised.

- (v) Exit multiple 86. The valuation method which the Royal Court approved required the EBITDA in the Exit Year to be multiplied by a multiplier derived from comparable transactions in similar businesses. As we have explained, the experts agreed that the only available comparable transaction was the PruProtect transaction. Mr Arora initially derived a 17x multiple from the PruProtect transaction, on the basis that an "IFRS 4 adjustment" should be made. Mr Cliff contended for a multiple of 13.4x or lower on the basis that no IFRS 4 adjustment should be made. 87. Shortly before the Valuation Hearing, Mr Arora filed a letter in which he stated that if the Royal Court decided against him on the IFRS 4 point, the 13.4x multiple should be increased because of the "passage of time". He stated that Comparable Listed Companies' multiples had increased significantly since 2018, so the use of a higher multiple than 13.4x would be "relevant". During the Valuation Hearing, Mr Arora suggested that 14.8x or 15x as a "starting point" of a range and somewhere between 15x and 16x "might be reasonable". Mr Cliff maintained his view that 13.4x was the appropriate multiple. 88. Paragraph 148 of the May 2024 Judgment records the Royal Court's decision that - "The exit multiple to be applied is that calculated by reference to the non-IFRS-adjusted EBITDA of PruProtect/ PruHealth, namely 15x (after adjustment for the passage of time)." 89. The Royal Court noted at paragraph 112 of the May 2024 Judgment that

Mr Cliff did not consider the Comparable Listed Companies, upon which Mr Arora relied, comparable to the Company for valuation purposes. This was (paragraph 113) because these were multinational listed brokerage companies. Mr Cliff rejected the proposition that the information was indicative of the movement of multiples in the insurance sector. He relied on the exit of Aegon from the market, which he took as an indicator that the market was competitive and that it was difficult for smaller companies to succeed. The Royal Court commented - " However, this ignored the fact that, as Ms Maclean had agreed in cross-examination, the Company had gained market share as a result of Aegon's exit ". 90.

Advocate Redgrave contended that the Royal Court erred and that we should substitute a multiple of 13.4x for the multiple selected by the Royal Court. He argued that the Court had not taken " a sufficiently objective and fair approach to the evidence on this issue ". The Court had, he said, not referred to demonstrable errors which Mr Arora had made. The idea that the " passage of time " should affect the multiple was an " eleventh hour " concept which Mr Arora had not suggested should be applied to his original proposed multiple of 17x. The Royal Court did not comment on that. The Court had, on the other hand, made " an unfair criticism of Mr Cliff for bringing up a perfectly relevant factor ". 91. There was clearly a basis in the evidence

- namely, in the evidence of Mr Arora - for the Royal Court's decision that a multiple of 15x should be applied. Both experts had derived a multiple of 13.4x from the PruProtect transaction on the hypothesis that there was no IFRS 4 adjustment - the hypothesis which the Court approved. Mr Arora showed the Court material in support of his conclusion that multiples had increased, and that a higher figure would, on that basis, be justified. Mr Cliff disagreed, but the Royal Court was entitled to accept Mr Arora's evidence. Advocate Redgrave's submission amounted, in essence, to an invitation to this Court to take a different view of the evidence from that taken by the Royal Court. We cannot say that the multiple of 15x was not within the realm of reasonable judgments on this issue available to the Royal Court. (vi) Discount rate 92. Once the Exit Value of the Company had been identified, the Court was required to apply an appropriate discount rate. The experts agreed two components of the discount rate - cost of debt and leverage ratio - but disagreed on the cost of equity. Mr Cliff contended for a cost of equity of 30%; Mr Arora for 20-22%. Paragraph 150 of the May 2024 Judgment records the Royal Court's decision - "We conclude that the appropriate cost of equity to apply is 21% (subject to any further adjustment for a 2028 exit year ...)." 93. The Court's explanation for this decision appears in paragraphs 125 to 127 of the May 2024 Judgment. Paragraphs 125 and 126 set out the positions of the two experts, with the respective justifications given by each expert for his proposed figure. Paragraph 127 refers to evidence from Mr McKelvey to the effect that the Company would apply a high discount rate to Guardian's business, which it viewed as relatively higher risk than other business opportunities. He said that PSG regarded Guardian as a " 30% discount rate business ". The judgment notes that Mr McKelvey acknowledged that the Evercore Valuation had used 20% or 15% " discount rates " depending on the scenario considered. The judgment observes that the Evercore Valuation in fact used 20% or 15% cost of equity rates. 94.

Advocate Redgrave explained to us that the cost of equity is a reflection of risk. He took us to studies upon which the experts had relied to show that as a business matures the cost of equity declines. He also showed us the Joint Statement of the Experts, which set out their respective contentions. Both experts had referred to the Pepperdine Reports, which report on estimated cost of capital based on surveys of privately held businesses. In the Joint Statement, the experts noted that the 2023 Pepperdine Report reported a cost of equity for "later" stage VC companies ranging between 18% (first quartile), 28% (median) and 33% (third quartile). 95. Mr Arora contended for a figure of 20-22%, noting that it fell within the range quoted for later stage VC companies. By referring to the first quartile figure, Mr Arora implicitly concluded that Guardian was less risky than the majority of businesses at that stage of development. Mr Cliff disagreed that Guardian was a later stage company and considered an earlier ("expansion") category to be more appropriate. In any event, he argued that it would be more reasonable to take the median figure rather than 21% which, for later stage companies, was "close to the first quartile". For expansion stage companies, the median figure was 28%. 96. Advocate Redgrave explained that the cost of equity applied by Evercore should be seen in the context of the sales profile used by Evercore, which was much lower than that which the Court assumed. In effect, he said, there was less risk that the lower sales profile would not be met. That submission was not vouched by reference to anything said in the Evercore Valuation itself. But his basic point in relation to the Court's reliance on the figure in the Evercore Valuation was that it was inconsistent with the Court's decision that it should leave the Evercore Valuation out of account. The Court had erred, he said, in using that figure without bearing in mind that there might be all sorts of reasons why it would not carry across to the valuation approach which the Court had ordered. 97. PSG's written submissions assert that "the Royal Court adopted Mr Arora's number without giving any reasoned explanation for doing so". The submissions contend that the Royal Court referred only in passing to the experts' respective analyses of the appropriate stage of development and did not engage with those analyses or with the dispute between the experts about which quartile should be used. It is said that "the Royal Court simply chose Mr Arora's figure, without explaining why" and that this leaves the objective observer wondering whether the Royal Court satisfactorily understood the evidence. 98. Mr Pender's written submissions invite us to look at the evidence of Mr Cliff and Mr Arora on this point, and to conclude that the former was "unimpressive", whilst the latter "gave thoughtful evidence". Advocate Christie took us to passages in the evidence in support of these submissions. In particular, he showed us passages which supported the view that PSG wanted a return of 30% and that Mr Cliff had factored that into his view about the appropriate cost of equity to apply. Advocate Christie further contends that there is no inconsistency involved in referring to the Evercore figures for cost of equity and that in any event the Court's reference to Mr McKelvey's evidence can be taken to be a reference to his evidence about the market generally, upon which the Court was entitled to rely. 99. We reject PSG's submission that the Royal Court did not provide any reasoned explanation for selecting a cost of equity of 21%. The Court's decision, expressed at paragraph 128 of the May 2024 Judgment, falls to be read against the background of paragraphs 125 to 127. These

paragraphs disclose - (i) that Mr Arora had proposed a cost of equity of 20-22%; (ii) that Mr Cliff had proposed a cost of equity of 30%; and (iii) that Mr Kelvey's evidence that the Company would regard Guardian as a " 30% discount rate business " (which the Court understood to be a reference to cost of equity) was challenged by reference to the figures of 20% and 15% cost of equity rates used by Evercore. 100. We do not consider it appropriate to engage in the exercise which Advocate Christie proposed, of reading the underlying evidence and forming our own view of the competing merits of the witnesses in order to supplement the Royal Court's reasoning. The Royal Court was presented with competing expert views. It referenced those in its judgment. The Court plainly rejected the figure of 30% proposed by Mr Cliff. It is a reasonable inference that the Royal Court took the mid-point of the small range proposed by Mr Arora, and that it found some support for taking a figure well below the figure proposed by Mr Cliff in the evidence of Mr McKelvey, in which he proactively mentioned that Evercore had used 20% and 15% " discount " rates (which the Court noted were in fact cost of equity rates). Notwithstanding the general approach which the Royal Court took - rightly, as we have held - to the Evercore Valuation, the Royal Court could legitimately, in our view, note that Mr McKelvey had told it that Evercore used the cost of equity figures which the Court quoted, and take that information into account, along with the evidence of Mr Arora, when rejecting the significantly higher figure proposed by Mr Cliff. Whilst the Royal Court could have explained more explicitly why it rejected Mr Cliff's figure and accepted the mid-point of the range proposed by Mr Arora, we accept that the conclusion which it reached on this matter was within the range of reasonable judgment open to it. The SFA Facility 101. As we have explained above, SFA Advance Commission was a right which Guardian had against SFA, under the relevant clause (clause 14) of the administration agreement between Guardian and SFA, to draw down advances against part of the present value of future IP Fees. Clause 14 is a complex provision. Its broad effect is that, in each month, Guardian is entitled to require SFA to pay it a sum up to an amount called "the Available SFA Advance Commission". That amount is calculated according to a contractual formula. Guardian is, at the same time, obliged by clause 14.6 to repay the SFA Advance Commission plus interest, and an amount of repayment is also calculated each month. 102. As the position was explained to us, these provisions envisaged future cash flows between Guardian and SFA. Over time the direction and size of those cash flows could be expected to change. In the early years, as the book of business was growing, the amounts which Guardian would be entitled to draw down by way of SFA Advance Commission would exceed the amount which Guardian would be obliged to repay SFA. In later years, as policies become more profitable, the repayments would increase at a higher rate than drawdowns, leading to net cashflows from Guardian to SFA. 103. Clause 14.13 entitles Guardian to cancel SFA's obligations to pay SFA Advance Commission for a period, and subsequently to reinstate those obligations. Although clause 14.6 provides for repayment of the SFA Advance Commission with interest, clause 14.9 provides that this clause shall cease to operate with respect to any SFA Advance Commission Balance (such that the relevant SFA Advance Commission Balance shall be extinguished) on - (a) the tenth anniversary of the date on which the relevant SFA Advance Commission was paid if it was paid on or before 31

December 2021; and (b) the fourteenth anniversary of the date on which it was paid, if after 31 December 2021. 104. At the Valuation Hearing, both experts included the SFA Advance Commission cashflows for the period 2023-8 in their respective assessments of the Enterprise Value of Guardian. This reflected the Court's direction that the experts should adopt a particular approach (" Scenario 2 ") set out in Mr Arora's second report. The experts disagreed as to whether or not any further adjustment should be made to the Enterprise Value. Mr Cliff contended that Guardian's liability to repay SFA Advance Commission as at the Exit Year should be treated as a debt and deducted in its entirety from the Enterprise Value. Mr Arora, on the other hand, took the view that SFA Advance Commission represented income or operational cashflow to Guardian, and that no further allowance or deduction should be made to the Enterprise Value. 105. At the end of Mr Arora's oral evidence, the Commissioner asked him a question which prompted the following exchange: "... it would be helpful to hear a bit more about your conclusions for not deducting the SFA liability, because that's something of a difficult concept to grasp. So one of the questions we wanted you to address is - firstly, would you agree that the methodology that the Court has ordered to be followed is in effect calculating the current value of future cash flows from policies? Is that a sort of fair description of the sort of methodology that essentially what we're doing is trying to work out the value from that? A - I think that's right. I think ultimately we did that explicitly for a number of years, the cash flows actually generated, and then we tried to capitalise essentially all future cash flows at exit. COMMISSIONER BINNINGTON - So, linking that to the SFA funding, if the SFA funding arrangements result in future cash flows being reduced by the amount needed to refund the SFA, or perhaps looking at it another way, to take into account the advances made by the SFA towards future cash flows, doesn't it logically follow that the current value of the amount advanced by the SFA, but discounted for the fact that it won't be paid to them immediately, ought to be deducted from the terminal value? A - Yes. So this is similar to FinRe in a way. Just because it would keep going and it would - essentially it's just an ongoing part of the business. You never just deduct a point in time working capital position when you're doing this analysis. It's just assumed to continue. And that's also why I've said the alternative, if you really did want to adopt that type of position, would be just to explicitly model out all the cash flows - and the board plan has this modelled out to 2060. You would model out those cash flows. And they are net - it's a net draw for about another ten years - I think maybe more than that - to 2034. There are positive cash flows coming into the company and then there are some negative cash flows. Now, when you put that into a discount rate back to today, because those positive cash flows are much sooner, it significantly outweighs the fact that overall a greater amount needs to be repaid. It will depend on your opinion of a discount rate. For example, if you - actually, conversely, the higher discount rate you use, the lower the value is. So ... when I tried doing it using Mr Cliff's starting discount rate, it ended up being overall positive value. So actually, the net benefit of this stream and the fact that you get cash flows for the first ten years, quite large cash flows, because your company hits scale, significantly outweighs the fact that you've got to pay back some large sums later. At my levels of discount rate, it was switched the other way round. But either way, they're single digit million

adjustments. There's a nuance to that, which is you do need to model the discount rate going forward, which is a challenge. And so in this I made a very simplistic adjustment. I would like to go back to it and do it in more detail, if it's helpful. But I just lowered the discount rate from 2027 to a rate of around 12% which is of the order that I said would be reasonable for this company going forward. Again that would be 10, 11, 12, 13. It could be any one of those. I could produce a matrix which would show the value at different rates. But ultimately, it's a small positive or a small negative. So even if you chose to do that, it's not actually going to impact the overall value by a significant amount just because of that discounting effect, and actually because it's a net benefit cash flow into the company for quite a period of time yet to come." The Royal Court quoted part of this passage at paragraphs 137 and 138 of the May 2024 Judgment. In paragraph 139 it summarised Mr Cliff's evidence, including his criticism of Mr Arora's approach, on the basis that it "resulted in GBP 122.2 million of net cash inflows between 2022 and 2027 without recognising any liability for that debt having to be repaid." 106. At paragraph 140 of the May 2024 Judgment, the Royal Court rejected both experts' positions. It stated - "We regard Mr Cliff's approach, of treating the SFA funding as if it were a straightforward commercial loan, as too simplistic, failing to recognise that it has different characteristics, in particular the extinguishment of liability if indebtedness is not repaid after a specified period. In our opinion, a purchaser of the Company would treat it as operational funding and would in all probability simply ensure that the existing arrangements were continued. However, we also regard Mr Arora's approach as somewhat simplistic, as he appeared to acknowledge in his response to the question that we put to him as referred to above. We therefore conclude that the relevant cash flows should be modelled out in the manner that Mr Arora suggested rather than simply deducted from the exit value as suggested by Mr Cliff". The Court directed the Company to provide any data required by the experts for the purpose of carrying out that exercise. 107. The Company supplied the experts with an updated version of FM Lite v2.8 which modelled the SFA Advance Commission cashflows to 2060. The experts approached the task in different ways in their respective reports. Mr Cliff modelled all of the SFA Advance Commission cashflows from 2023 onwards - ie both before and after the Exit Date. As we understand it, this involved removing the 2023-8 cashflows from his Enterprise Value of Guardian and then assessing the adjustment which should be made to that revised Enterprise Value to take account of the operation of the SFA Facility after 2023. Mr Arora, by contrast, took as his starting point the Enterprise Value of Guardian (which included £52m to reflect the net present value of SFA Advance Commission inflows up to the Exit Date) and modelled out the SFA Advance Commission cashflows for subsequent years. 108. Mr Arora's report explained that there were limitations in the updated FM Lite v2.8 model which made it "relatively unsuitable for presenting a reasonable set of ongoing SFA cashflows". The first limitation which he identified was that the model assumed the SFA Advance Commission incurred interest at a fixed rate, whereas after 2023, the rate would vary with the 5-year gilt rate which was projected to fall. Mr Arora also considered it likely that, as the business matured, the Company would seek to reduce the margin applied. The second limitation which Mr Arora identified was a question as to the longer-term forecasting of sales. When providing the

model, the Company had noted that figures beyond the initial 10-year time horizon were indicative only and " should not be relied upon - there is no rationale for these numbers ". The third limitation was that the model forced the facility to be paid off by 2060. Mr Arora expressed the opinion that the model would require extensive adjustments to amend for these factors, that this would be an extremely time-intensive process and would be constrained by technical limitations of the updated FM Ltd v2.8 spreadsheet. 109. Mr Arora expressed the view that the model could not be relied upon to provide an exact quantitative conclusion on the issues raised in the May 2024 Judgment. However, he then proceeded to carry out illustrative analyses which he stated would provide guidance on the " overall approximate level of the adjustment that is necessary ". He adjusted for a declining interest rate, reducing to a longer-term margin of 4.5%, which he justified by reference to the information about PruProtect. He offered two scenarios, postulating a slower and faster decline in rates. In order to adjust for the lack of longer-term growth, he made a " simplifying assumption of delaying the point at which there is a net repayment by (a) five years and then (b) then ten years ". He justified this approach on the basis that the issue was one for which adjustment was difficult. Ideally, adjustments for growth going forward would be made. This would have the effect of increasing the drawdown net of repayments in the near term, whilst delaying the point at which the drawdown net of repayments becomes negative (ie generates a net repayment). Mr Arora's conclusion was that although a deduction from Enterprise Value of between negative £11.3m (assuming a five-year moratorium on repayment and slower interest rate decline) to positive £4.4m (assuming a ten-year moratorium on repayment and faster interest rate decline) could be made, no such deduction should, in fact, be made. 110. Mr Cliff, for his part, considered various scenarios, all within the context of an approach which sought to model the SFA Advance Commission cashflows from 2023 (ie not simply from the Exit Date). The key variables were the date when it was assumed that Guardian would stop drawing cash down from SFA and the discount rate to be applied. Mr Cliff took the view that it was preferable to adopt the SFA interest rate as the discount rate. He selected as the most plausible drawdown scenario one in which Guardian stopped drawing down SFA Advance Commission once it started making a cash profit, which he forecast to be in 2035. He applied as a discount rate the interest rate on the SFA Advance Commission. This led him to the conclusion that the net impact of SFA Advance Commission over the entire period from 2023 was a negative figure of around £12.4m. However, he noted (at paragraph 5.152) of his report, that if he adopted the SFA interest rate, there was a " relatively narrow range of reduction to Guardian's Enterprise Value of between GBP 11.0 million GBP 13.6 million ". The lower figure in this range assumed that the drawdown period ended in 2026. 111. Mr Cliff also produced a letter dated 5 August 2024, which was put before the Court, in which he commented on and criticised Mr Arora's approach to the SFA Facility. In particular, he commented on, and explained, the effect of the two adjustments which Mr Arora had made - namely, the adjustment to the interest rate and the delay in the date when repayments would start to be made. 112. Advocate Christie's further closing written submissions, on behalf of Mr Pender, noted that the experts had modelled the SFA drawdowns " in a fundamentally different way ". He

contended that Mr Cliff's approach was not consistent with the Court's request and his own previous analysis. He addressed in detail various inputs and assumptions. The written submissions for PSG criticised Mr Arora's approach as " cursory " and " hard to follow ". They identified the two adjustments which he made, criticised those adjustments, and explained their impact. PSG's submissions set out what were said to be " fundamental defects " in Mr Arora's approach. PSG invited the Court to conclude that Mr Cliff's approach was " thorough, reliable and reasonable ". It was in this context that PSG's submissions invited the Court to fix a hearing, in the terms which we have quoted above. 113. In the December 2024 draft judgment, the Court set out the competing approaches taken by the two experts to modelling the SFA Facility cash flows and summarised aspects of the submissions. Under the heading "Conclusion on SFA drawdown", the draft contained the following observations - "107. This issue is one where we have not found the experts to be particularly helpful. It may be that the task that we set was more difficult than we or the experts expected. In Mr Arora's case he appears to have regarded the FM Lite v2.8 model as being inadequate to carry out the necessary modelling and his approach was described as 'cursory' by the Second Defendant, whilst Mr Cliff is alleged by the Plaintiff to have carried out an exercise which differed from that ordered by the Court.

108. Mr Arora's assessment was that a negative £11,000,000 to positive £4,000,000 impact on the Enterprise Value was appropriate, whilst Mr Cliff's assessment was a reduction to Guardian's Enterprise Value of between £11,000,000 and £13,600,000. We take the figure of negative £11,000,000 being the figure that is at the top of Mr Cliff's range and at the bottom of that of Mr Arora." 114. Both parties made representations to the Court about the terms of the draft. PSG made the point that Mr Arora's figures in his report were adjustments to an Enterprise Value at Exit Date, which had already been uplifted by £52.2m to take account of the positive SFA cashflows between the Valuation Date and the Exit Date. By contrast, PSG submitted, Mr Cliff's figures were taken at the Valuation Date, " so these are not comparable and the ranges do not converge. The difference between the experts is in fact £64.5m ". The representations on behalf of Mr Pender made essentially the same point. Those representations stated - "It is respectfully submitted that it is clear that the Court has understood ... that the way in which Mr Cliff has modelled the SFA cashflows is on a different basis from that previously done by him, and from that requested by the Court, in that he has excluded the benefit of the SFA cashflows between the Valuation Date and 2028 from his starting Enterprise Value. What this means is that when he says that the SFA cashflows have an effect of negative £12.4m, this is from a different starting point - one in which he removes £52.2m from the Enterprise Value of the Company being the present value of the SFA cashflows in 2023 to 2028 (with those values discounted back to present value at the 19 July 2023 valuation date). It is therefore common ground between the parties that - Mr Arora's proposed adjustment of zero is the present value (discounted back to the Valuation Date) of the future SFA Drawdown cashflows as at exit date in 2028 (as requested by the Court in its Valuation Judgment of May 2023). Mr Cliff's proposed adjustment of negative £12.3m is the present value (discounted back to the Valuation Date) of all of the SFA Drawdown cashflows from 2023 onwards. In order to apply

that proposed adjustment to the Enterprise Value, he has stripped out of the Enterprise Value the present value (discounted back to 2023) of the SFA Drawdown cashflows between 2023 and 2028. This is a negative adjustment of £52.2m to the Enterprise Value. Accordingly Mr Cliff's method of calculating the adjustment to the Enterprise Value arising as a result of the SFA Drawdown facility is £64.5m more negative than that adopted by Mr Arora." Mr Pender suggested some amendments to the wording of paragraph 108. 115. The April 2025 Judgment represents the Royal Court's definitive reasons. It addresses the Modelling of the SFA Drawdown cashflows in paragraphs 77-108. After some preliminary observations about the issue, the Court sets out the two experts' approaches. It notes some of the criticisms advanced of each approach. In particular, it sets out at some length Advocate Christie's contentions to the effect that Mr Cliff had not undertaken the exercise which the Court had requested. Paragraphs 107 and 108 of the April 2025 Judgment read as follows - "107. This issue is one where we have not found the experts to be particularly helpful. It may be that the task that we set was more difficult than we or the experts expected. In Mr Arora's case he appears to have regarded the FM Lite v2.8 model as being inadequate to carry out the necessary modelling and his approach was described as 'cursory' by the Second Defendant, whilst Mr Cliff is alleged by the Plaintiff to have carried out an exercise which differed from that ordered by the Court.

108. Mr Arora's assessment was that a negative £11,000,000 to positive £4,000,000 impact on the Enterprise Value was appropriate, whilst Mr Cliff's assessment was a reduction to Guardian's Enterprise Value of between £11,000,000 and £13,600,000. However, as we noted in paragraph 100 Mr Cliff had removed the SFA operational cashflows between 2023 and 2028 from the valuation model and modelled the entirety of the SFA cashflows separately. As the Plaintiff pointed out in his closing submissions this makes it very difficult to compare the modelling and inputs of the two experts and to analyse the reasons for any differences. We do not regard the methodology applied by Mr Cliff as being that requested by the Court, further noting that it does not appear to be consistent with what he had done previously. However, in our view, the Court was clear as to the exercise required, and we consider that we are entitled to take the expert evidence at face value as to the size of Mr Cliff's proposed adjustment, albeit that he may have calculated it in a different way. We therefore take the figure of negative £11,000,000, being the figure that is at the top of Mr Cliff's stated range in his conclusion and at the bottom of that of Mr Arora. We have endeavoured to achieve a just result in a complicated exercise, taking into account all of the submissions by the parties on the two respective SFA Drawdown calculation methodologies." 116. We have before us two criticisms of the approach taken to the SFA Facility in the May 2024 Judgment - (i) PSG contends that the Royal Court erred in rejecting Mr Cliff's approach that the SFA Advance Commission should be deducted as a debt from the Enterprise Value at the Exit Date. (ii) Mr Pender, in his cross-appeal, contends that the Royal Court erred in directing that the SFA cashflows should be modelled out and the valuation of Guardian adjusted as a result. We also have before us PSG's criticisms of the way that the Court ultimately dealt with the issue in the April 2025 Judgment. PSG's appeal - the Royal Court's rejection of Mr Cliff's approach

117. PSG contends, first, that the Royal Court erred " in accepting Mr Pender's contention that the SFA Advance Commission should not be deducted as a debt because it may not be repaid in full ". The focus of this submission is the first sentence of paragraph 140 of the May 2024 Judgment, which we have quoted above. PSG accepts that clause 14.9 of the agreement provides for extinguishment of the liability to repay. However, it points to passages in Mr Cliff's fourth report which, it contends - "demonstrated that as the repayments are netted off against the IP Fee and are therefore automatic and mandatory, the only scenario in which the debt is extinguished on either the tenth or fourteenth anniversary is if the IP Fee net of commissions is insufficient for such repayments to be taken ... As [Mr Cliff] demonstrated in these paragraphs extinguishment was not a realistic scenario - all the SFA cash would be repaid well within the extinguishment period, as an automatic result of the projected trading pattern ... Extinguishment is a red herring." PSG further contends that the Court's approach on this point " ignores a basic feature of the business - the entire income of Guardian is routed through SFA. It has no operating income other than that which it receives from or via SFA". Repayment of the SFA Advance Commission is, PSG observes, not optional.

118. We reject this submission. The Royal Court was faced with competing characterisations of the SFA Advance Commission and competing approaches to accounting for it. The Court was entitled to reject Mr Cliff's treatment of the SFA Advance Commission as if it were a " straightforward commercial loan ". The Court's reason for doing so was that this characterisation failed " to recognise that it has different characteristics, in particular the extinguishment of liability if indebtedness is not repaid after a specified period ". The " different characteristics " included, but were not limited, to the extinguishment of liability. The extinguishment of the liability after a period of time was indeed a feature of the agreement. It was, on the face of it, inconsistent with the characterisation of the liability as a simple debt. The contractual arrangements had other characteristics which further differentiated them from an ordinary commercial loan, including the contractual mechanism for repayment envisaged in clause 14. This mechanism involved the netting of balances which would result in cash flowing from SFA to Guardian for a period and then result in cash flowing from Guardian to SFA. The Court was entitled, on the evidence, to take the view that a purchaser would likely treat this as " operational funding " and continue the arrangement. To treat the outstanding liability, in its entirety, as a debt as at the Exit Date would not, on the face of it, take account of the projected effect of the facility over time. The decision to reject Mr Cliff's approach was within the range of reasonable judgments open to the Royal Court.

Mr Pender's cross-appeal 119. Mr Pender's sole ground of cross-appeal is that the Royal Court erred in directing, at paragraphs 137-140 of the May 2024 Judgment, that the SFA cashflows should be modelled out and the valuation of Guardian adjusted as a result. Mr Pender's contention is that this decision failed to take into account that PruProtect had similar operational funding and that this feature was already " baked into " the EBITDA multiple derived from PruProtect. Mr Pender argues that, in order to compare like with like, the application of the PruProtect multiple to Guardian's EBITDA should have been done with the SFA cashflows " left intact ". 120. In support of this ground, Advocate Christie points out that the methodology directed by the Court (of modelling out the SFA cashflows) was not

proposed by either party or by either expert. He contends that Mr Arora's primary position was that the exercise was not one which would normally be undertaken, and that it would not make much difference to the result. The proposal to model out the cashflows arose, says Advocate Christie, during oral evidence, in response to questions from the Court, "on the spot without careful consideration". He points out that the Royal Court did not advise the parties that it proposed to direct the experts to undertake that modelling exercise; nor did it invite submissions on whether this "might be the right solution or even a good idea". In his closing submissions following the Valuation Hearing, Mr Pender referred to the comment which Mr Arora had made in evidence but, since he did not realise that the Court would order this exercise to be undertaken, he was deprived of the opportunity to argue that it offended against the "like for like" principle. The Royal Court erred in not appreciating that the "like for like" principle, which it had accepted in another context, also applied to "its own solution" of modelling out the SFA cashflows. 121. Advocate Christie contends that, in these circumstances, the Royal Court failed to take into account a material factor, namely that the modelling out of the SFA cashflows offended against the "like for like" principle on which the valuation methodology was based. It was therefore plainly wrong. No reasonable decision-maker properly informed could have directed the modelling out of the SFA cashflows. The Court was not properly informed about the arguments for and against the solution which it adopted. Nothing in the "sea of evidence" before the Royal Court was directed towards the solution which the Royal Court adopted. The passing comments of Mr Arora were not evidence which, on its own, reasonably supported the decision to make such an order. 122. In answer, PSG argues that there is no basis in the evidence for three propositions which underpin this Ground of Appeal, namely - (i) that PruProtect had a form of funding which was "exactly the same as" Guardian's SFA facility; (ii) that the existence of this form of funding was already "baked in" to the EBITDA multiple derived from PruProtect; and (iii) that the Court was wrong to make any adjustment to the valuation of Guardian in respect of the impact of the SFA Facility after 2028 if it wished to ensure that like was being compared with like. PSG refers us to various passages in the evidence to support the contention that the issues raised are more complex than Mr Pender's submissions would suggest. PSG further contends that Mr Pender's submission mis-characterises Mr Arora's evidence and, further, that at no point prior to the appeal did Mr Pender put this issue before the Royal Court. 123. We reject Mr Pender's Ground of Appeal. It challenges the decision in the May 2024 Judgment to direct the experts to undertake the exercise of modelling out the SFA cashflows. This was, on the evidence available at the Valuation Hearing, within the range of reasonable decisions open to the Court. The Court was, as we have already explained, entitled to reject Mr Cliff's approach as "too simplistic". The Court was, equally, on the evidence before it, entitled to take the view that it would be wrong to proceed, as Mr Arora did, on the basis that no account should be taken of the requirement, over time, to repay the SFA Advance Commission (the positive effect of which he had included in his Enterprise Value). In the exchange with the Commissioner at the end of his oral evidence, Mr Arora explicitly offered to undertake the exercise which the Court concluded should be undertaken. Whilst he explained some of the complications, he said, in

terms - "I would like to go back to it and do it in more detail, if it's helpful." In the explanation which he gave to the Court, he did not suggest that there was any fundamental methodological problem by reason of the "like for like" principle. 124. There was accordingly a basis in the evidence before the Court, which supported the conclusion that the further exercise which Mr Arora had offered to undertake should be done. We recognise that it was not an exercise for which either party had contended. However, at that stage, there was to be an exchange of expert reports on this matter, as well as further submissions from the parties. If there was, indeed, a fundamental methodological objection to the output of the exercise being used in the valuation of the Company, by reference to the "like for like" principle or otherwise, the parties or the experts would have the opportunity to draw that to the attention of the Royal Court. In these circumstances, we do not consider that it was unfair for the Court to issue the direction without inviting submissions from the parties. 125. Mr Arora's subsequent report emphasised the limitations of the exercise which he had been able to carry out, but he did not refer to the "like for like" principle as an objection in principle to carrying it out. Nor did Mr Cliff. Nor did either of the parties in their closing submissions. Whilst there was evidence before the Royal Court about the need to compare like with like, when deciding on the appropriate exit multiple, that evidence was directed to the IFRS/best estimate adjustment issue which we have already discussed. No party suggested, so far as has been shown to us, that it presented a methodological objection to the exercise with which this Ground of Appeal is concerned. Our exposure to some of the evidence in this case discloses just how complex the valuation issues were, and satisfies us that it would not be safe or appropriate for us, sitting as an appeal court, to extrapolate such an objection from the passages in the evidence to which we have been referred, when the issue was not raised by the parties in the Royal Court whether through expert reports or submissions. In these circumstances, we reject the contention that the Royal Court erred in not taking into account the "like for like" principle as a material factor when it came, in the April 2025 Judgment, to apply the fruits of the expert work on this issue. PSG's appeal - the April 2025 Judgment 126. PSG contends that, in the April 2025 Judgment, the Royal Court - (i) dealt with the evidence and submissions inadequately and cursorily, ignoring most of the important points; (ii) showed no signs of having understood the issue; (iii) failed to interrogate Mr Arora's adjustments or their impact; (iv) attempted to find common ground between the experts as a compromise, but failed in that attempt by mis-stating the experts' positions; and (v) failed even after its error had been explained to it, to acknowledge or correct it. 127. PSG also invites us to hold that the Royal Court's criticisms of Mr Cliff's approach to the exercise were unfounded. PSG adopts the submissions in that regard which it advanced before the Royal Court. These include the contention that both experts had, indeed, modelled out the SFA cashflows (albeit that they had done this in different ways) and that it had not been at all clear, at least to Mr Cliff and PSG, that the Court had intended the exercise to be undertaken as Mr Arora did it, or to be prescriptive as to how the modelling exercise should be presented. 128. We do not have cause to doubt the good faith of Mr Cliff or PSG in that regard. However, the essential criticism at paragraph 108 is not of their good faith, but simply that Mr Cliff had not, as a matter of fact, undertaken the exercise which the

Court had requested. The Royal Court's comments fall to be read against its narrative of the background at paragraphs 77-80 and of Advocate Christie's criticisms of Mr Cliff at paragraphs 100 to 104. The Court records that for the purposes of the Valuation Hearing, it had directed the experts to use Mr Arora's " Scenario ". This had included the operational cashflows during the valuation period up to the Exit Year within the Enterprise Value of Guardian. Mr Cliff, in his Second Supplemental Report (produced for the Valuation Hearing), had proceeded on that basis, but had then made an adjustment to take account of the liability to repay the SFA Advance Commission. The issue between the experts, on this issue, at the Valuation Hearing was whether any such adjustment should be made. Read in that context, it does appear to us that when the Royal Court directed the parties to model out the SFA Advance Commission cashflows, it had in mind an exercise concerning post-2029 SFA Advance Commission cashflows so that it could determine what, if any, adjustment should be made to the Enterprise Value as at the Exit Date. That being so, the comment that Mr Cliff's methodology did not reflect the exercise which the Court had requested was a fair one. 129. We turn now to PSG's substantive criticisms of the Royal Court's decision to make an £11 million deduction from Guardian's Enterprise Value. 130. It may well be that, as the Royal Court observed at paragraph 107 of the April 2025 Judgment, the exercise which it had directed the experts to undertake proved more difficult than anticipated, although Mr Arora had foreshadowed some of the challenges in the exchange which we have quoted. In the event, the Court's task was complicated by the different approaches which the two experts undertook. Quite apart from those differences of approach, it is apparent from an examination of the material which we were shown that in order to "model out" the SFA Advance Commission cashflows after the Exit Date rigorously it would be necessary to make significant assumptions, for example as to the profile of future cashflows and the discount rate. 131. Having instructed the experts to undertake the task of modelling out those cashflows, the Royal Court decided to deal with the matter in a broad way - to endeavour to " achieve a just result " in a complicated exercise. That approach was one which was open to the Court. Courts often make broad assessments of quantum where the evidence does not admit of precision. On the present issue, the Court could have rigorously addressed every issue upon which the experts and the parties disagreed and determined every assumption with a view to generating a precise number. But the Court also had before it an opinion from Mr Arora, which it was entitled to accept, that the available information could not, in fact, be relied upon to generate a precisely quantified conclusion - in effect, that the apparent precision which could have been obtained by rigorously analysing the material in that way would have been spurious. 132. Although the Royal Court was entitled to take a broad axe to the thickets of information before it on this issue, it was nevertheless required to provide a reason (even if briefly expressed) for the conclusion which it reached. The Court's reasons for applying a deduction of £11 million are set out in paragraph 108 of the April 2025 Judgment - "... in our view, the Court was clear as to the exercise required, and we consider that we are entitled to take the expert evidence at face value as to the size of Mr Cliff's proposed adjustment, albeit that he may have calculated it in a different way. We therefore take the figure of negative £11,000,000, being the figure that is at the top of Mr Cliff's stated

range in his conclusion and at the bottom of that of Mr Arora." 133. As PSG contends, these reasons do not stand up to scrutiny. The Court's reason for taking the figure of £11 million appears to be that this numerical value was within the range of figures given by each expert. But the use of the same number does not mean that these were the same adjustment and to treat them as if they were would represent a clear misunderstanding of the evidence. In fact, as both parties explained to the Royal Court in their representations on the draft judgment, the experts' adjustments were not being applied to the same starting point. It was not simply, as the Royal Court put it, that Mr Cliff had calculated the adjustment " in a different way "; it was that his adjustment was being applied to a different baseline. As the parties agreed in their representations on the draft judgment, the real difference between the two experts was very significant indeed - £64.5 million. 134. The explanation which the Royal Court gives for approaching the matter in that way is that " the Court was clear as to the exercise required, and we consider that we are entitled to take the expert evidence at face value as to the size of Mr Cliff's proposed adjustment, albeit that he may have calculated it in a different way ". If, in saying that it was entitled to take the size of Mr Cliff's proposed adjustment " at face value ", the Court considered that it could ignore the difference in starting point, we do not agree. The mere fact that the Court had been clear as to the exercise required could not rationally justify treating Mr Cliff's analysis as if it were commensurable with Mr Arora's, when, as the parties agreed and as is evidently the case, that was not in fact the position. Nor is it an answer that the Royal Court evidently understood, as is apparent from paragraph 105, that the experts had applied their adjustment to different starting points, and may be taken to have been aware, by reason of the parties' representations on the draft judgment, that the experts were in truth £64.5 million apart. Indeed, this would make it all the more difficult to understand (at least without some further explanation) how the Royal Court came to place reliance on the fact that the figure of £11 million was within the range stated by both experts. 135. For these reasons, we sustain PSG's Ground of Appeal 5, to the extent that it challenges the Royal Court's decision to make a deduction of £11 million from the Enterprise Value of Guardian at the Exit Date. 136. PSG invites us to rule that the Royal Court's figure for the impact of the SFA Facility, being plus £52m for 2023-2028 minus £11m, leaving a net increase of £41m, was wrong. PSG invites us to replace it either with Mr Cliff's figure of minus £12.4m overall, or minus £7.1m being the net effect of Mr Arora's modelling if his adjustments are reversed. To accede to PSG's invitation would require this Court to reach a conclusion on what adjustment, if any, it would be appropriate, in light of the evidence, to make to the Enterprise Value of Guardian. That is not an exercise which we can or should embark on, particularly when the appropriate conclusion on the evidence is not self-evident. The very fact that PSG offers us a choice makes the point that this is a matter which the Royal Court should address. 137. We do not regard the Royal Court's response to the parties' representations on the December 2024 draft judgment as a reason for not remitting this issue to the Royal Court. In light of this Court's conclusion on the matter, the Royal Court will require to address anew, after hearing such further submissions and evidence, if any, as it considers necessary, the question of what adjustment, if any, should be made to the

Enterprise Value of the Company to reflect the SFA Facility. Since we have decided to remit this issue to the Royal Court, we do not consider that we require to, or should, address the other criticisms which PSG has advanced of the Royal Court's decision on this issue, although we will have to say something about PSG's comments on the way that the Royal Court dealt with Mr Arora's adjustments when we consider Ground of Appeal 2 below. Ground of Appeal 3a ii - updated information about the Company's performance 138. Advocate O'Connell put at the heart of his submissions on behalf of PSG a critique of the Royal Court's response to PSG's August 2024 Submission. Advocate O'Connell reminded us that the Royal Court's decision, in the May 2024 Judgment, to use a Sales APE Profile based on the Company's forecasts with an uplift of 12.7% was founded on evidence that, during 2023, Guardian had outperformed its forecasts. The Court proceeded on the assumption that the outperformance would continue into the future. The updated information about the Company's performance put before the Royal Court in August 2024 vindicated the more pessimistic evidence which the management witnesses had given at the December 2023 hearing and which the Royal Court had rejected in the May 2024 Judgment. The same could be said of the fresh evidence which PSG sought to introduce into the appeal. 139. Against that background, Advocate O'Connell attacked the Royal Court's decision not to revisit the May 2024 Judgment in light of the updated information. He relied on the so-called " Bwllfa principle "

- namely, that when a Court is making findings, it should consider facts in preference to speculation. In elaborating on that principle, he relied on *Bwllfa and Merthyr Dare Steam Collieries (1891) Ltd v. Pontypridd Waterworks Ltd*

[1903] AC 426 , *The Golden Victory*

[2007] 2 AC 353 , *Phillips v. Brewin Dolphin Bell Lawrie*

[2001] 1 WLR 143 , *Bunge SA v. Nidera BV*

[2015] 3 All ER 1082 and the dissenting judgment of Arden LJ in *Gorne*

v. Scales

[2006] EWCA Civ

311. For the applicability of the general principle to unfair prejudice petitions, he relied on *Re Annacott Holdings Ltd*

[2013] EWCA Civ 119, *Re Watercor Ltd*

[2017] EWHC 1814 (Ch) , *Hollington on Shareholders' Rights* , paras. 8-62 and 8-63, and Joffe, *Minority Shareholders* (7th ed), para. 6.145. 140. Advocate O'Connell accepted that there was no strict rule that the Court must take into account post-Valuation Date evidence. Whether or not it should do so would depend on all the circumstances. His contention was that in the circumstances of this case the Royal Court should have taken the post-valuation date evidence into account. That evidence was not concerned with a change in the market

after the Valuation Date; rather it was evidence which allowed forecasts about future sales to be tested against the Company's actual performance. The data showed, he said, that the assumptions which had been made about performance had been " wildly inaccurate ". Advocate O'Connell's position was that a reasonable Court, directing itself properly, should, at the point when it actually came to determine the valuation of Mr Pender's shareholding, " stand back from the detail and look around at all the circumstances to see if ... it has arrived at a fair outcome ". The Royal Court should have had regard to the evidence which demonstrated that the assumptions which it had previously made were, in fact, wrong. If the Royal Court decided, notwithstanding that evidence, to arrive at a " huge valuation " based on " data that was out of date and demonstrably incorrect" , it would have to give cogent reasons. 141. Advocate O'Connell contended that, in the April 2025 Judgment, the Royal Court did not address the updated sales data. The reference to not relitigating decided issues was, he said, an inadequate explanation for the Court's decision. If this comment was to be interpreted as expressing a view that the Court did not consider that it could or should re-open a matter which it had already decided, that was, said Advocate O'Connell, plainly wrong. In the April 2025 Judgment, the Court determined the valuation of Mr Pender's shareholding, relying on a key assumption which was " demonstrably wrong " and " wholly out of kilter with the real-world performance of Guardian in terms of sales ". In ignoring that evidence, the Court had failed to take into account a consideration which was plainly relevant to identifying a fair valuation of the Company. 142. PSG's position before us was, as it had been before the Royal Court, that the Court should direct that the valuation be undertaken using the Company's own most recent forecasts in FM Lite v2.8. Guardian had adopted this model some five months after the Valuation Date. Advocate O'Connell did not invite us to use the actual sales figures in place of those forecasts, even though the actual figures showed an underperformance relative to the projections contained in FM Lite v2.8. 143. In responding to these submissions on behalf of Mr Pender, Advocate Christie's primary contention was that reliance on the updated information would have been incompatible with the Valuation Date Ruling and the Hindsight Ruling. He contended that PSG was seeking illegitimately to mount a collateral attack on these rulings, neither of which had been appealed. This point, said Advocate Christie, disposed of the issue without any need for further consideration of the merits. 144. Advocate Christie argued, further, that PSG had not relied on the Bwlffa principle before the Royal Court. Indeed, PSG had accepted that " it cannot relitigate " decisions which had already been made. If PSG had made an application before the Royal Court to vary the Hindsight Ruling, and had advanced an argument based on the Bwlffa principle, Mr Pender would have sought further disclosure as to the Company's " supposed weaker financial performance after the valuation data " to assess whether PSG's position was factually correct and whether its own conduct of the management of the Company had affected the Company's performance. PSG should not be allowed to advance this new argument on appeal. Advocate Christie referred us to *TA Picot (CI) Ltd v. Crills*

[1995] JLR 33 , *Reg's Skips Ltd v. Yates*

[2008] JLR 191 and Rhine Shipping v. Vitol

[2025] 1 All ER (Comm) 97. 145. Advocate Christie argued that, in any event, the Bwlffa case, and subsequent authorities, do not support the proposition that a court is obliged to value shares by reference to post-valuation date evidence. He distinguished between the approach to assessing damages for an anticipatory breach of contract (or equivalent exercise) where the Court must assess a claimant's future losses, and the approach in cases where the Court must value an asset at a particular valuation date. Properly analysed, the Bwlffa principle applied only to the former type of case. The authorities did not establish that the Court, when valuing shares in an unfair prejudice case, is obliged to take into account post-valuation date events. At most, they establish that the Court may do so in an appropriate case, in the exercise of its discretion. In addition to the cases to which Advocate O'Connell referred us, Advocate Christie referred to MDW Holdings v. Norvill

[2023] 4 WLR 33, Buckingham v. Francis

[1986] BCLC 353 738, Joiner v. George

[2003] BCC 298 and Ageas (UK) Ltd v. Kwikfit

[2014] Bus LR 1338. He referred to a number of unfair prejudice cases in which the Court had decided not take into account evidence of post-valuation date events - Re Natural Duvet and Pillow Co Ltd

[2011] EWHC 1834 (Ch); Shah v. Shah

[2011] EWHC 1902 (Ch); Re Scitec Group [2012] EWHC 661 (Ch); Estera Trust (Jersey) Ltd v. Singh

[2019] EWHC 873 (Ch) and Re Dinglis Properties Ltd (No. 3)

[2021] 1 All ER 685. 146. Advocate Christie drew our attention to the following passage in Mr Cliff's report, which was before the Royal Court: "One of the key underlying principles of valuation, as per IVS 20 [International Valuation Standard 20], is that the subject asset must be valued with reference to the information available, and market conditions, as at the valuation date - 'The assumed date of a transaction will influence what information and data a valuer considers in a valuation. Most bases of value prohibit the consideration of information or market sentiment that would not be known or knowable with reasonable due diligence on the measurement/valuation date by the participants.' Therefore, the valuer must, so far as practicable, refrain from reliance on any information, including general market information as well as financial data of the subject company, which would not have been known or knowable as at the selected valuation date." 147. Advocate Christie argued that the Hindsight Ruling was well within the bounds of the Royal Court's discretionary and case management powers. This Court, he said, had no proper basis for interfering with the Royal Court's decision. He pointed out that PSG had itself asked the Court to set a valuation date as at the date of trial on the basis of an argument that PSG would be prejudiced by a later valuation date. The Valuation Date chosen by the Court

reflected a reasonable allocation of risk as between the parties. There were sensible case management reasons for excluding evidence of post-Valuation Date events. This would avoid any incentive to PSG to suppress the Company's subsequent performance in order to obtain a lower valuation of Mr Pender's shareholding. It would also avoid the possibility of PSG making "an asymmetrical one-way bet in which it can decide to provide evidence of post-valuation date events if it suits its interests to do so but not otherwise". If post-Valuation Date evidence were to be admitted, fairness to Mr Pender would, said Advocate Christie, require an ongoing process of disclosure, so that, if the Company's performance would justify a higher valuation, he could urge that on the Court, and, in any event, so that he could test any argument being advanced by PSG in favour of a lower valuation. The approach which the Royal Court took was consistent with the importance to be attached to the finality of judgments. Advocate Christie founded, in particular, on *Re Dinglis Properties Ltd (No. 3)*, supra. Discussion 148. We reject this Ground of Appeal. The Royal Court was right, or was at least entitled, to take the view that it should not re-open issues which it had already determined in the May 2024 Judgment, specifically, in this context, the decision to use a Sales APE Profile based on the Company's forecasts with a 12.7% uplift. The "new argument" objection 149. We reject Advocate Christie's objection that this was a new argument. It is true that PSG's August 2024 Submissions accepted in terms, in paragraph 168, that PSG could not relitigate the decisions which the Royal Court had already made about the inputs and adjustments which should be used, at least before that Court. But those Submissions also explicitly invited the Court to take account of the updated information which PSG put before the Court. PSG contended (at paragraph 128) that "The Court cannot ignore this evidence of real performance" and invited the Court to order a valuation on the basis of the unadjusted sales forecast in FM Lite v2.8. Although the *Bwllfa* principle (and the other authorities now relied on by PSG) were not relied on before the Royal Court, the contention that the Royal Court should take into account the updated information about the Company's performance was put squarely before the Royal Court. In these circumstances, we do not consider that we should refuse to entertain the argument now advanced on the basis that it was not before the Royal Court. The Valuation Date 150. The decision in the July 2023 Judgment fixing the Valuation Date at 19 July 2023 was an important substantive decision, which necessarily conditioned the valuation exercise. PSG had argued for an earlier Valuation Date - namely, that Mr Pender's shareholding should be valued at the date of trial rather than the date of the Judgment. PSG observed that both experts agreed that the Company had become more valuable since Mr Pender's departure and contended that a later valuation date might give Mr Pender "an unearned windfall". In effect, PSG was, at that stage of the case, betting that the Company would outperform expectations, as proved to be the case in 2023. The Royal Court rejected PSG's submission on the basis, among other considerations, that the business was "not so very different from the one with which he was involved". The Court took the view that fixing the Valuation Date at the date of the July 2023 Judgment would be fair to both parties. The law on the use of hindsight 151. The parties' written submissions appeared to foreshadow a substantial dispute about the application of the so-called *Bwllfa* principle. In

the event, there was agreement that, in the context of unfair prejudice proceedings, the Court is not obliged to take into account information arising after the Valuation Date but may take such information into account at least if the information may properly be regarded as relevant to the value of the shareholding at the Valuation Date. PSG's submission was that in the particular circumstances of this case, the Royal Court should have taken into account the evidence put before it in August 2024 about the Company's subsequent performance. Advocate Christie resisted that proposition. He argued that the general tenor of the cases was against PSG. He pointed out that, in any event, none of the cases in which the court had taken into account information arising after the Valuation Date involved a request to the Court to re-open a decision which it had already made. 152. The so-called "Bwllfa principle" was articulated in a well-known passage in the speech of Lord Macnaghten in *The Bwllfa and Merthyr Dare Steam Collieries (1891) Ltd v. The Pontypridd Waterworks Company*, *supra*. The case concerned the assessment of the compensation due to the owner of a coal seam when a statutory notice served by a waterworks company precluded the working of the seam. The price of coal had risen significantly between the date of the notice and the date of judgment. Lord Macnaghten observed: "... the arbitrator's duty is to determine the amount of compensation payable. In order to enable him to come to a just and true conclusion it is his duty, I think, to avail himself of all information at hand at the time of making his award which may be laid before him. Why should he listen to conjecture on a matter which has become accomplished fact? Why should he guess when he can calculate? With the light before him, why should he shut his eyes and grope in the dark?" 153. Advocate Christie persuasively argued that Bwllfa itself was not concerned with the valuation of an asset at a particular date but with the assessment of loss of profit over a tract of time. At first instance, Phillimore J stated that "the true inquiry ... is not what is the value of the coalfield or of the coal, but what would the colliery company, if they had not been prohibited, have made out of the coal during the time it would have taken them to get it". He applied the price of the coal at the date of judgment. The Court of Appeal disagreed, taking the view that the case should be analysed as if the statutory notice effected a compulsory purchase of the coal, with the consequence the price of coal at the date of the notice was the measure of compensation. 154. The House of Lords overturned the Court of Appeal. The Earl of Halsbury LC quoted Phillimore J with approval and went on: "It was not a purchase of the coal, nor is it analogous to the purchase of the coal." Lord Robertson observed - "... what is due to the appellants is not the price on a transaction of sale, but compensation for a continued embargo on working." He added - "It follows that what is due to the appellants is not the price on a transaction of sale, but compensation for a continuing embargo on working. The sum to be paid would thus be whatever sum could best be made out to be the profit that would have been made by the appellants if they had been free to work. ... If the question thus presented has to be solved *ab ante*, the arbitrator ... must form the best conjecture he can of probable prices and probable wages during the period required to work out the area in question. But these calculations are resorted to merely in the absence of facts and not because the time to be considered is the

moment of time when the notice ... is presented. And if, owing to the course of the procedure, the period required for the working out of the coal in question has come to be matter of history, then estimate and conjecture are superseded by facts as the proper *media concludendi*." Lord Macnaghten's observations about "conjecture" and "established fact" accordingly fall to be read in the context of an inquiry into loss of profit over a tract of time rather than the valuation of an asset at a particular date. 155. Advocate O'Connell relied on the House of Lords decision in *Phillips v. Brewin Dolphin Bell Lawrie*, *supra* to support the conclusion that the *Bwllfa* principle does apply, or at least can apply, to asset valuation cases. *Phillips* was a case under section 258 of the Insolvency Act 1986, in which the liquidator of a company sought a declaration that a transaction by the company had been at an undervalue. In valuing an asset of the company (the covenant of a sublease of computer equipment), as at 10 November 1989, the House of Lords held that the winding up of the company and appointment in February 1990 and appointment of an administrative receiver (which would inevitably have led to the termination of the sublease) could be taken into account. 156. Lord Scott of Foscote (with whom the other judges agreed) observed (at paragraph 26) - "Where the events, or some of them, on which the uncertainties depend have actually happened, it seems to me unsatisfactory and unnecessary for the courts to wear blinkers and pretend that it does not know what happened." Lord Scott went on to observe - "Problems of a comparable sort may arise for judicial determination in many different areas of the law. The answers may not be uniform but may depend upon the particular context in which the problem arises. For the purposes of section 258(4) however, and the valuation of the consideration for which a company has entered into a transaction, reality should, in my opinion, be given precedence over speculation." The House of Lords in *Phillips* accordingly left open whether the same approach would fall to be applied in contexts beyond section 258. 157. In *Joiner v. George*, *supra*, a decision of the Court of Appeal of England & Wales, Sir Christopher Slade observed (at paragraph 71) that Lord Scott was "not stating any general principle with regard to valuation, still less with regard to the valuation of shares in a company". *Joiner* was a claim for damages for breach of contract in refusing to transfer shares in a company. Damages fell to be assessed by reference to the value of the shares at a specific date. In valuing the shares, the judge was required to estimate the maintainable profit. He preferred an approach which was based on actual trading figures available at the date of assessment rather than one based on forecast future revenues. With hindsight, the latter proved to have been "reasonably accurate" but the judge held that "hindsight ought to be excluded". 158. On appeal, Sir Christopher Slade concluded (at paragraph 73) that - "[n]one of the authorities on which Mr Joiner relies support the proposition that, for the purpose of valuing shares in a company at a fixed date, its trading results after the valuation date should be preferred to its trading results actually known at the valuation date". At paragraph 74, he continued - "Mr Joiner criticised the judge's short statement ... that 'hindsight ought to be excluded', because the judge did not support it by reference to reasons or decided cases. The judge, however, can in my opinion readily be excused for failing to spell out reasons for what he regarded as a statement of the general legal

principles of share valuation so well established as to require no amplification." 159. The specific point in Joiner was that, in assessing the valuation of the shares at the valuation date, the judge was entitled to prefer actual trading results available at the valuation date to forecast trading results. But the criticism of the trial judge was that, in deciding whether to rely on forecasts or on actual trading results, he should have taken into account the subsequent performance of the company which vindicated the forecasts. The Court of Appeal rejected that criticism, on the basis that it was inconsistent with " general legal principles of share valuation so well established as to require no amplification ". Joiner accordingly supports the proposition that, as a general rule, hindsight ought to be excluded. 160. Advocate O'Connell referred us to *The Golden Victory* , *supra*, and *Bunge SA v. Nidera BV* , *supra*. In *The Golden Victory* , the majority of the House of Lords held that, in assessing the damages occasioned by the repudiation of a charterparty, the Court should take into account the subsequent outbreak of war (which would, in any event, have given either party the right to cancel the contract). Lord Scott of Foscote observed - "The lodestar is that the damages should represent the value of the contractual benefits of which the claimant had been deprived by the breach of contract, no less but also no more. But if a terminating event had happened, speculation would not be needed, an estimate of the chance of such a happening would no longer be necessary and, in relation to the period during which the contract would have remained executory had it not been for the terminating event, it would be apparent that the earlier anticipatory breach of contract had deprived the victim of the breach of nothing." In *Bunge SA* , the majority of the UK Supreme Court agreed with this approach. Lord Sumption noted the importance of " what was being valued for the purpose of assessing damages ". The majority, rightly, were not valuing the charterparty " as an article of commerce in itself " but assessing the value of the services which would have been delivered under the charterparty over time. 161. The approach taken in these two cases cannot, accordingly, simply be read across to a case which does involve the valuation of an asset " as an article of commerce in itself " at a specific date. The point is made in *MDW Holdings Ltd*

- v. *Norvill* , *supra* . Newey LJ analysed *Bwllfa* , *Phillips* , *The Golden Victory* , *Bunge SA* and other cases. He articulated a number of principles, including the following - "(i) Where damages fall to be assessed in respect of an anticipatory breach of contract which was accepted, it is appropriate to consider what would have happened if the breach had not occurred and, in that context, events subsequent to the breach may be relevant. (ii) That principle has, however, no application where a party to a contract has, by failing to supply goods or services, committed an actual rather than anticipatory breach of contract. (iii) Further, where a claimant has been induced by deceit to buy something, the defendant cannot reduce its liability by showing that a contingency, which served to reduce the value of the item at the date of assessment did not eventuate. (iv) There is a strong case for saying that, in general, at least, the position should be similar in relation to warranties given on a share sale. Supposing the position to be that the true value of some shares is depressed by a contingency, someone buying them at a higher figure will have paid more than they were

worth even if the contingency never happens. Events subsequent to the purchase cannot affect the value at the time of the transaction. The price of a share could typically be said to be a product of a number of contingencies. If a particular risk does, or does not, occur, the price may rise or fall, but that will not retrospectively change the value of the share at an earlier date. In *Bunge*, Lord Sumption thought that the minority in the *Golden Victory* had been wrong to focus on the value of the charterparty itself, as opposed to the chartered service which would have been performed, observing that sections 50 and 51 of the Sale of Goods Act 1891 and the common law alike were concerned with 'the value of the goods or services which would have been delivered under the contract' not 'the value of the contract as an article of commerce in itself'. In contrast, a share sale relates to an existing asset which is recognised as 'an article of commerce in itself'.

- (v) If, none the less, there can be cases in which account can be taken of what happened subsequently as regards a contingency which existed on the date of assessment when determining what, if any, damages are payable for breach of a warranty on a share sale, they must be rare. They would doubtless involve situations in which the buyer might otherwise be said to have gained a 'windfall', but the mere fact that the value of the relevant shares has increased since the date of assessment cannot demonstrate such a 'windfall' - it is inherent in the selection of a date of assessment that subsequent changes in value can fall to be disregarded. ... (vi) There is no similar bar on using events subsequent to the date of assessment to cast light on events which had happened by that date." 162. Newey LJ's analysis supports the following propositions - (i) As a general rule, when valuing a shareholding, "[e]vents subsequent to the purchase cannot affect the value at the time of the transaction. The price of a share could typically be said to be a product of a number of contingencies. If a particular risk does, or does not, occur, the price may rise or fall, but that will not retrospectively change the value of the share at an earlier date. " (ii) Events subsequent to the date of assessment may be relied upon insofar as those " cast light on " events which had happened by that date. (iii) Other cases where subsequent events may properly be taken into account will be rare and may be confined to situations where failing to do so would result in a " windfall ". The mere fact that the value of the shares has changed since the valuation date does not demonstrate a " windfall " since it is inherent in the selection of a valuation date that subsequent changes in value fall to be disregarded. 163. Advocate O'Connell relied strongly on the dissenting judgment of Arden LJ in *Gorne v. Scales*, supra. This case concerned the assessment of damages, in which the critical question was the valuation, in May 1993, of a card index. One of the issues was whether it was appropriate to take into account the profits earned by the partnership which subsequently exploited the index. At paragraph 45, Arden LJ referred to *Bwllfa and Phillips* and stated that - " It is a general principle that, where the court is charged with determining the value of an income-earning asset at a particular date and the valuation falls to be made at a time when it is known what income it in fact earned, the court should take into account the information as to the profits actually earned ". Arden LJ observed (at paragraph 44) that " in the absence of evidence to the contrary, the best evidence of what profits would have

been projected as at May 1993 is the evidence of the profits which [the partnership] in fact made after that date ". 164. For the reasons we have already set out, we do not agree that Bwllfa and Phillips support a " general principle " in the terms stated by Arden LJ. In any event, as Advocate Christie pointed out, Arden LJ was in the minority of the Court in *Gorne*

- v. *Scales* . Ward LJ expressly disagreed that " subsequent events are capable of assisting in this case in establishing the value that could be placed upon this index at the time of the dissolution of the partnership ". He stated (at paragraph 88) - " The future profits ... would not have been known to a prospective purchaser who had to judge the matter at the time and on the basis of the information available at the time." He pointed out that Bwllfa was not concerned with the valuation of an asset at a specific date, and that in *Phillips* , Lord Scott had made clear that the approach might depend on the particular context in which the issue arose. Ward LJ expressed the view (paragraph 89) that how the partnership traded after the relevant date did not illuminate the question of what someone would have paid for the card index at that date. Moore-Bick LJ likewise characterised (at paragraph 19) as " powerful " the criticism that in relying on the partnership's subsequent trading results the expert had " moved away from the position in which any potential purchaser of the card index would have found himself in May 1993. ... the one thing he could not have known was how [the partnership] or anyone else would actually be able to exploit the index in the future ". The analysis of the majority of the Court of Appeal in *Gorne*
- v. *Scales* accordingly supports the proposition that, when valuing a profit-earning asset at a particular valuation date, it is not generally relevant to consider the profits actually earned after that date since that information could not have been available to a potential purchaser at that date. 165. Advocate O'Connell also relied on *Re Annacott Holdings Ltd* , *supra*. This was an unfair prejudice case, in which Arden LJ expressed the view, again under reference to *Phillips* , that Bwllfa " is binding on this court [ie the Court of Appeal of England & Wales] that in valuing a contingent liability the court should take into account events subsequent to the valuation date which shed light on its value ". That general statement, with the qualifier " which shed light on its value ", is unexceptional if it is confined to events subsequent to the valuation date which do in fact shed light on its value as at that date. But the proposition begs the question of when subsequent events may properly be relied upon to shed light on the value of an asset at the valuation date. 166. Advocate Christie, for his part, referred us to unfair prejudice cases in which the Court, consistently with the approach taken in *Joiner v. George* and by the majority in *Gorne*
- v. *Scales* , declined to apply hindsight. In *Re Natural Duvet and Pillow Co Ltd* , *supra*, Arnold J observed (at paragraph 17) - "It is well established that the basic rule when valuing shares as at a particular date is to exclude evidence of events which occurred after that date ... Counsel for Mr Crabtree relied upon the statement of Staughton J in *Buckingham v. Francis* [1986] BCLC 353 at 355 that 'The company must be valued in the light of facts that existed at 24 March 1981 ... But regard may be had to later events for the purpose only of deciding what forecasts for the future could reasonably have been made on 24 March 1981'. As counsel for

Mr Ng pointed out, however, the consequence of that approach was that Staughton J left out of account the company's figures for the year ended 31 December 1981. As he said, at 358, 'I resolutely exclude after events save for the purpose of checking what was a proper estimate at that date'. Moreover, in *Joiner v. George* at [73] the Court of Appeal rejected the proposition that, for the purpose of valuing shares in a company at a fixed date, its trading results after the valuation date should be preferred to its trading results actually known at the valuation date, even if the later results turned out to accord with a forecast made prior to the valuation date." 167. In *Re Scitec Group*, supra, David Donaldson QC, sitting as a Deputy High Court Judge, observed (at paragraph 16) - "In valuing the company at 13 March 2007 there is no warrant for using (even in part) accounts for a subsequent year, since that information was not available at the valuation date ... That prohibition cannot be circumvented by the plea that the later year is being used in lieu of a forecast." The judge approved the use of management accounts for the twelve months to 31 March 2007, on the basis that although this overshot the valuation date, it did so only by some 18 days. In *Shah v. Shah*, supra, one of the issues was the assessment of a contingent tax liability. Roth J applied the tax rate applicable at the valuation date and rejected the view of an expert that a subsequent reduction in the tax rate should be taken into account - "Speculation as to future rates of tax is a perilous exercise and there is no basis in this case for applying anything other than the rate pertaining on the valuation date". 168. Advocate O'Connell relied on *Re Watercor Ltd*, supra, where Mr Hollington QC, sitting as a Deputy Judge of the High Court made the following observations - "... it was common ground that the date of valuation was 31 December 2012. It was also said by counsel, rather diffidently I thought, to be common ground that the fundamental guiding legal principle was that the court had to put itself into the position of the hypothetical purchaser at that date and accordingly to limit itself to the information that would probably have been available to such a purchaser at that date, and therefore eschewing all knowledge with the benefit of hindsight. ... In their written evidence to this court, the parties addressed evidence which post-dated the valuation date. Given that there are issues as to whether it could be predicted that past and existing business would continue with particular customers and if so on what scale, in my view it would be a blinkered court which was not prepared to take into account, with caution and mindful of the overriding objective to arrive at a valuation at a given date, the direct evidence on those issues for at least a relatively short period after the valuation date. I would note that in the real world a purchaser and seller might well have agreed upon a formula which took into account the performance of the business for a similar period, and I do not see why in this case this court should adopt a completely different approach. My ultimate task is to arrive at a 'fair' or 'proper' sum of money which Mr Munro should pay Mr Edgar for his 50% shareholding." This cautious observation, with its reference to "a relatively short period after the valuation date" falls well short of any general principle (such as was articulated by Arden LJ in *Gorne*

- v. Scales , supra) that " where the court is charged with determining the value of an income-earning asset at a particular date and the valuation falls to be made at a time when it is known what income it in fact earned, the court should take into account the information as to the profits actually earned ". 169. Advocate O'Connell placed particular reliance on the observations by Mr Hollington in the two final sentences quoted above. He contended that, given the uncertainties in the valuation of Mr Pender's shareholding, an arm's length purchaser would be likely to build in a mechanism for adjusting the price should the Company's performance not match the forecasts, and that this supported the contention that the Court should have been willing to revisit its earlier decision in light of the updated performance information available in August 2024. We observe, though, that Mr Hollington made the observation upon which Advocate O'Connell relied, not in support of any general departure from the " fundamental guiding legal principle ... that the court had to put itself into the position of the hypothetical purchaser at that date " but as part of the justification for the cautious and limited proposition that a Court should, in an appropriate case, be " prepared to take into account, with caution and mindful of the overriding objective to arrive at a valuation at a given date, the direct evidence on those issues for at least a relatively short period after the valuation date ". 170. We were shown two textbook discussions specifically concerned with unfair prejudice petitions. Hollington on Shareholders' Rights (10 th edn) states (paragraph 8-62) " once the date of valuation has been fixed, this will generally render immaterial and purposely so, for example, any change in the relevant market after the valuation date ". On the other hand, the author observes (paragraph 8-62) - " Evidence as to an offer made for the shares in the company after the valuation date, or as to any other occurrence which casts light on the financial position as at the valuation date, is admissible - the court will be reluctant to ignore available and material evidence ... ". Joffe et al, Minority Shareholders, 7th edn , contains a more expansive discussion (para. 6.145 and 6.146) - "It appears that: (a) the basic rule is that when valuing shares at a particular date, evidence of matters which occurred after that date should be ignored. ... in arriving at forecast cash flows for the purposes of carrying out a valuation, it is usual to base the forecasts on information extant at the date of valuation, rather than subsequent information. (b) Regard may be had to events subsequent to the valuation date for the purposes of deciding what forecasts for the future could reasonably have been made at the valuation date, and checking what a proper estimate was at that date. ... (c) Regard may also be had to events subsequent to the valuation date for the purposes of a cross check or sense check or a form of comfort ... (d) The court may be entitled to have regard to post-valuation events to demonstrate circumstances as at the valuation date ... (e) In valuing a contingent liability (such as a corporation tax liability) the court should take into account events subsequent to the valuation date which shed light on its value ... (f) The court may take a fairly open textured approach at least within the confines of a relatively short period after the valuation date Decisions (as the Court of Appeal indicated) are likely to turn on their facts. ..." 171. Paragraphs (a) and (b) in the extract from Joffe refer explicitly to forecasts. There are reasons of principle for the general approach described at paragraph (a), ie that forecasts should usually be based on information available at the date of valuation rather than

subsequently. As a general proposition, market participants pricing the hypothetical transaction at the Valuation Date can only know information which was available at that time. If forecasts which underpin the valuation are justified on the information available at the Valuation Date, the fact that those forecasts subsequently turn out to have been optimistic or pessimistic does not retrospectively affect the way that a hypothetical purchaser would have viewed the position at the Valuation Date. 172. *Buckingham v. Francis*, supra, the case referenced by Joffe in support of the proposition stated at paragraph (b) (ie that the Court may refer to subsequent information in order to inform its view as to what was a proper forecast at the Valuation Date or as a cross-check) emphasises the point. As Arnold J pointed out in the passage from *Re Natural Duvet and Pillow Co Ltd* which we have quoted above, Staughton J stated (pp. 741-2, emphasis added) - "The value of the company was the capitalised sum representing future profits. ... Proceeding by my preferred method, I must next find what was, on 24 March 1981 [the Valuation Date], the most likely figure or best realistic guess for the future maintainable profits of the company and make appropriate allowance for risk in doing so. I resolutely exclude after events, save for the purpose of checking what was a proper estimate as at that date ..." 173. As the final observation in the passage from Joffe indicates, the question of whether events occurring after the Valuation Date assist in determining the value of the company at the Valuation Date is likely to be highly fact-sensitive. For example, as *Re ESC Publishing Ltd*

[1990] BCC 335 shows, a third-party offer received shortly after the Valuation Date may be very good evidence of the value of the shares at that date. It does not follow that an offer received at a later date would carry the same evidential value. 174. From this discussion of the authorities, we draw the following conclusions about the general approach which falls to be taken, in the context of an unfair prejudice petition, to the valuation of shares at a specified Valuation Date. (i) The basic principle is that the Court should seek to put itself into the position of the hypothetical purchaser at the Valuation Date and, accordingly, should as a general rule leave out of account evidence of events which post-date the valuation date. (ii) Events which post-date the valuation date may, however, be taken into account, if they are relevant to determining the proper valuation of the shareholding as at the Valuation Date. (iii) The question of whether subsequent events relevantly cast light on the valuation of the shareholding as at the Valuation Date will be fact-sensitive. Events close in time to the Valuation Date are more likely to be relevant than events more remote in time. (iv) Insofar as the valuation depends on forecasts of future performance as at the Valuation Date, the Court requires to decide what would have been a reasonable or proper forecast as at that date. The Court may take into account information about subsequent performance to the extent that it considers that this casts light on what would have been a proper estimate of future performance at the Valuation Date. (v) There may be cases where the Court could, as envisaged by Newey LJ in *MDW Holdings Ltd v. Norvill*, supra, legitimately take into account events subsequent to the Valuation Date on the basis that a strict application of the principles would generate a "windfall" which would be inconsistent with the remedial purpose of the unfair prejudice jurisdiction. But the Court

should take care not to allow such an argument to undermine the logic of its decision that the valuation should be undertaken as at a particular Valuation Date. The "Hindsight Ruling" 175. As we have explained, on 3 August 2023, the Royal Court gave directions for the preparation of expert witness reports. These included a direction (characterised by Advocate Christie as "the Hindsight Ruling") in the following terms - "in relation to events taking place between 19 July 2023 and 29 September 2023, the Experts may take into account any information made available between those dates but only to the extent that it relates to PSG's performance up to 19 July 2023." 176. Before this Court, Advocate Christie renewed the argument which he advanced before the Royal Court, when responding to PSG's August 2024 Submissions, that PSG's invitation to the Court to take into account the updated sales information was inconsistent with the Hindsight Ruling. In resisting that submission, Advocate O'Connell contended that the Hindsight Ruling was an interlocutory or procedural ruling, which did not have the substantive effect for which Advocate Christie contended. He drew our attention to rule 12(5) of the Court of Appeal (Civil) Rules 1964 , which provides that the " powers of the Court in respect of an appeal shall not be restricted by reason of any interlocutory order from which there has been no appeal ". 177. We agree with Advocate O'Connell that it would have been open to the Royal Court to revisit the so-called Hindsight Ruling and that it may, accordingly, be regarded as an interlocutory ruling. It was one of a suite of directions concerning the preparation of expert evidence for the purposes of the Valuation Hearing. The other subparagraphs of the Act of Court (which set down a timetable for the preparation of expert reports, meetings of experts and the like) were plainly of a procedural nature, and could have been revisited, for example, to extend time for compliance. Equally, if, say, the Valuation Hearing had been postponed, it would have been open to the Court to vary the date for exchange of expert reports and, with that date, to adjust the cut-off date in relation to the evidence which the experts could take into account, albeit that, given the Valuation Date Ruling, such evidence would still have required to relate to PSG's performance up to 19 July 2023. 178. But that occasion for varying the ruling did not arise. The experts filed their reports. The Valuation Hearing proceeded on the anticipated dates. The Court subsequently issued the May 2024 Judgment. And the May 2024 judgment determined a number of the inputs (including the Sales APE Profile) required for the purposes of giving effect to the approved valuation methodology. The May 2024 Judgment 179. It follows that when, in August 2024, PSG invited the Royal Court to take into account updated information about the Company's performance, the question of what Sales APE Profile should be used for the purposes of valuation was no longer at large. The Court had already decided that issue on the basis of the evidence available at the Valuation Hearing. We read the passages in the April 2025 Judgment which we have quoted at paragraph 35 above, in which the Royal Court declined to accede to PSG's request to re-open or re-litigate " issues that had already been determined ", as directed to the request in PSG's August 2024 Submission. For the following reasons, we have concluded that the Royal Court was correct, or at least entitled, to take the view that it should not re-open the issues which it had already determined in the May 2024 Judgment. 180. Advocate O'Connell characterised

the valuation as a " huge valuation based on pretend data; data that was out of date and demonstrably incorrect ". We do not consider that the characterisation of the data upon which the Royal Court proceeded in the May 2024 Judgment as " pretend data " is a fair one. The data were real data. There is no dispute that in 2023 the Company was out-performing its own forecasts. The forecast of the Company's future performance upon which the Royal Court proceeded when it issued the May 2024 Judgment was justified by reference to the evidence which had been led before the Court at the Valuation Hearing. The information was not, at that time, out of date or incorrect. 181. It is of the essence of any forecast that, with the passage of time, it may prove to have been pessimistic or optimistic. The authorities to which we have referred support the conclusion that a Court may consider actual performance post-dating the Valuation Date insofar as that information assists the Court to determine what would have been a proper forecast as at the Valuation Date and, potentially, in support of an argument that a strict application of that principle would generate a " windfall ". But, as Advocate O'Connell accepted, the authorities do not support any general proposition that the Court is bound to take into account post-Valuation Date evidence. Far less do they support revisiting forecasts, which were justified on the information available at the Valuation Date, in light of the Company's subsequent performance. Indeed, as Advocate Christie contended, the decision of the Court of Appeal of England & Wales in *Joiner v. George* , *supra*, is to the contrary effect. 182. Even if the issue had come to be determined for the first time in August 2024 or April 2025, the Royal Court would have been entitled to proceed on the evidence that, at the Valuation Date and for a short period thereafter, the Company was out-performing. The Court would have been entitled to take the view that an appropriate forecast, for the purposes of assessing value as at the Valuation Date, was that the out-performance then being experienced by the Company would continue. After all, at the Valuation Hearing, Mr Cliff agreed that Mr Arora's approach, to that effect, was a reasonable one. The Royal Court would have been entitled to take that view, even though the later trading performance showed that this would have been an optimistic view. It would have been entitled to take the view that it should not assess the position with hindsight. 183. In the event, the issue did not fall to be determined for the first time in August 2024 or April 2025. The Royal Court had already issued the May 2024 Judgment. The essential question in the present case is accordingly not what the Royal Court should, or could, have done had matters been at large, but is whether the Royal Court was entitled to decline to re-open the matters which it had already decided in the May 2024 Judgment. 184. The analysis in *Re Dinglis Properties Ltd (No. 3)* , *supra*, is instructive. This was an unfair prejudice case. The Court pronounced an order in December 2019 that the Valuation Date should be 25 July 2019. In May 2020 the respondents applied for a variation of the order, to permit them to advance a case that the valuation of the shareholding should be adjusted downwards to take account of the intervening effects of the Covid-19 pandemic. Adam Johnson QC sitting as a Deputy Judge of the High Court of England & Wales, refused the application. He concluded that the December 2019 order was a final order. He observed - " The Order was intended to, and substantively did, determine finally between the parties a principal and significant issue

of contention between them, namely the appropriate date for the valuation of [the] minority shareholding. That was ... a determination of a part of the case ..." . 185. The Judge stated that his analysis would not change if the Order had been an interim one - " Finality is still a relevant and important factor - the disappointed litigant should not be given 'two bites at the cherry'." He further concluded that, accepting that the jurisdiction under section 996 of the UK Companies Act 2006 (which is equivalent to the jurisdiction of the Royal Court under section 141 of the Companies (Jersey) Law 1991) is a very broad one, which may be exercised at all points (even after trial) until the Court's order is carried into full effect, it was nevertheless not justifiable to adjust the valuation for changes in value which occurred after the Valuation Date. 186. Advocate O'Connell rightly points out that Re Dinglis Properties Ltd concerned a significant change in market conditions which could not have been anticipated at the Valuation Date. He says that this case is a different one. By the time the Court came to place a value on Mr Pender's shareholding, it was in a position to replace the forecasts, which may have been justified in June 2023, with actual performance data. Whilst we recognise that the case is a different one, we are not convinced that the difference is material. A hypothetical purchaser, considering the purchase of Mr Pender's shareholding in June 2023, would have valued the Company on the basis of the information then available and the forecasts justified on the basis of that information. That those forecasts proved, in light of subsequent information, to have been optimistic would not retrospectively invalidate that valuation. But we need not rest our decision on that basis. The real significance of the decision in Re Dinglis Properties Ltd for the present case lies in illustrating the relevance, in this context, of the principle of finality. 187. Whether the May 2024 Judgment is treated as a final judgment on part of the case or as an interim judgment, considerations of finality legitimately came into play. The Royal Court had decided to address the complex valuation issues which arose in this case sequentially. That was a sensible approach which was within the scope of the Court's case management powers. For example, in the July 2023 Judgment, the Court determined the Valuation Date and the methodology to be applied. That Judgment was intended to determine those issues as a matter of substance between the parties, so that the experts could focus their subsequent work. Likewise, the May 2024 Judgment determined a number of the inputs required to give effect to the Court's approved methodology. That judgment too was intended to determine those issues as a matter of substance between the parties. It follows that the Royal Court was entitled to decline to re-open them. 188. If the Court had been prepared to entertain PSG's application in August 2024, there would likely have been a substantial argument as to whether the Company's post-Valuation Date trading performance could or should be relied upon to revisit the forecasts which had been justified on the evidence available at the Valuation Hearing and thereby the Sales APE Profile which the Court had determined should be used. As the debate before us revealed, there would likely have been substantial argument even if the proposition was not that the Royal Court should revisit the Sales APE Profile, but should take into account the updated performance data in order to temper or adjust the valuation which it reached through the application of its approved methodology. Mr Pender would have been entitled

to discovery of documents, so that he could test the validity of the updated performance data and would have been entitled to test the reasons why the Company had failed to perform as anticipated. A hearing of evidence might well have been required. The Court might well have required to hear from the experts as to what, if anything, they took from the updated performance data. All of this would have taken time, and the Court would no doubt have taken further time to issue a judgment. By then, the Company's performance might, for aught yet seen, have changed again. That, on the information provided to us, it has continued to under-perform does not invalidate the point. 189. Ultimately, Advocate O'Connell's submission came to be a criticism of the adequacy of the Royal Court's reasons for rejecting PSG's August 2024 Submissions. The Court should, he said, have given " cogent reasons " for rejecting what he characterised as " real-time facts ". He pointed out that in the April 2025 Judgment, the Court did not even mention the updated performance data and argued that it is not clear whether the Court's reference to not re-opening issues which had already been decided encompassed this issue or, if it did, why the Court took that view. We do not agree with Advocate O'Connell's criticism. Whilst the publication of a reasoned judgment fulfils a number of purposes, its primary purpose is to communicate to the parties the Court's decision and why it reached that decision. The adequacy of the reasoning falls to be assessed under reference to the knowledge of the parties to whom the judgment is addressed including the submissions which they had advanced. On a fair reading of the April 2025 Judgment, the comments about not re-opening or re-litigating issues already determined referred to the invitation, contained in PSG's August 2024 Submission, to revisit the valuation of Mr Pender's shareholding in light of the updated performance data. It was a sufficient reason to reject that proposition that the Court had already determined the issues which it had dealt with in the May 2024 Judgment and was not prepared to re-open them. No further explanation was required. Ground of Appeal 3 a i - the model error point 190. Paragraphs 21 to 23 of the May 2024 Judgment refer to concerns expressed by Mr Pender, on the basis of Mr Arora's report, about what was thought to be a " persistent model error in the way that the FM Lite models operated ". Whilst the Royal Court directed that FM Lite v2.8 should be used by the experts, it directed that the " modelling error in relation to the EBITDA and value of the in-force book identified by Mr Arora being addressed, if it has not already been, before any reliance is placed on it." Thereafter, the two experts, in their respective fourth reports, agreed that FM Lite v2.8, in fact, contained no persistent model error. 191. In PSG's August 2024 Submissions, PSG argued that the Royal Court " attributed considerable significance to the notion " that there appeared to be a persistent model error and invited the Court to " revisit those decisions as well as its views about the Company's witnesses who were ambushed with questions about Mr Arora's analysis at trial ". The submissions did not specify the " decisions " in the May 2024 Judgment which were said to have been affected by this issue. At paragraphs 27-30 of the April 2025 Judgment, the Royal Court recorded the experts' agreement that there was no model error but the Court did not otherwise revisit its earlier conclusions. 192. PSG's written submissions to this Court in support of Ground of Appeal 3a i state that " It is possible that the Royal Court's incorrect view that there was a

persistent model error in previous models may have unfairly tainted its views of the witnesses in the May 2024 judgment and led it to reach the view it did on Sales APE." The submissions do not support that assertion by an analysis of the May 2024 Judgment. In fact, at paragraphs 24 and 25 of the May 2024 Judgment, the Royal Court records the responses of Mr Gibson and Ms MacLean to the point when it was raised with them. Neither passage suggests that this evidence caused the Court to form an adverse view of these witnesses (though the Court reflected adversely on other aspects of their evidence). The point being made in this Ground of Appeal is speculative and we reject it. PSG's contention that the Royal Court's valuation is "manifestly absurd and plainly wrong" 193. In support of PSG's Ground of Appeal 1, Advocate O'Connell contends that the finding that, at the Valuation Date, Guardian had an Enterprise Value of £437,792,000 is " manifestly absurd and plainly wrong ". He points out that the Company is only a few years old, has not yet turned a profit and has consistently under-performed against its sales forecasts. There is, he contends, nothing remarkable about its business. It operates in a mature and crowded market - indeed other businesses have exited the market - and is reliant on debt funding. 194. The Company is a start-up engaged in the insurance business. It was not in dispute before us that such a company's outgoings in its early years are likely to exceed its income, as it builds up its book of business. The fact that, as at the Valuation Date, the Company had not yet made a profit, and that it carried significant debt is, on that basis, unsurprising and does not imply that the Company is not a successful one. The valuation of the Company necessarily, as the Royal Court explained, depends on the value of the company's in-force book (which will generate a cashflow over a tract of future time) and forecasts about the company's future performance. At the Valuation Date, Guardian was, in fact, outperforming against forecasts and the Court had evidence before it that the outperformance could be expected to continue. This Court cannot, against that background, possibly conclude, on the basis of this high level submission, that the Royal Court's determination of valuation is " manifestly absurd and plainly wrong ". 195. Advocate O'Connell further contends that Mr Arora's valuation was a " conspicuous outlier ". He refers to certain " co-ordinates for a cross check " which he argues provide " independent real-world evidence of market valuation" . These are - (i) a valuation which had been undertaken by Nash (valuing the Company at £74.4 million); (ii) the discounted cashflow valuation which had been prepared by Mr Cliff (£170.5 million to £221.1 million); and (iii) the Evercore Valuation, which placed Guardian's enterprise value between £51.7 million and £103.5 million. Advocate O'Connell also referred us to information within the Evercore Valuation which showed that Guardian had around 2% of the individual protection market, that AIG Life had 10% market share and that AIG Life's value was around £460 million, around the same as the value attributed by the Royal Court to the Company. 196. As we have observed in addressing PSG's criticism of the approach which the Royal Court took to the Evercore Valuation, none of the valuations upon which PSG relies is " real-world evidence" any more than is Mr Arora's valuation. Each represents an opinion, based presumably on particular assumptions and inputs applied to particular methodologies. The Royal Court heard extensively from Mr Arora and Mr Cliff. It rejected

Mr Cliff's methodology and valuation. It was entitled to do so. For the reasons we have already explained, it was entitled to leave the Evercore Valuation out of account. We have not been shown the Nash valuation and can accordingly make nothing of the reference to it in the Ground of Appeal. The mere fact that Mr Arora's valuation was significantly different from these valuations does not justify concluding that he was wrong and they were right. We note the information about AIG Life in the Evercore Valuation to which Advocate O'Connell referred us; we were not shown any point where this information was put in evidence before the Royal Court. We cannot hold that the Royal Court's valuation was " manifestly absurd and plainly wrong " on the basis of an isolated piece of information which was not, apparently, put in evidence or tested before the trial court.

197. Advocate O'Connell also relies on the fact, which was also put before the Royal Court in PSG's August 2024 Submission, that the efforts by PSG and Evercore to attract outside investment or a purchaser, had not received any firm indications of interest or bids at any price. The difficulty with that submission, as evidence in support of the contention that the Royal Court's valuation of the Company as at the Valuation Date is " manifestly absurd and plainly wrong ", is that it post-dated the Valuation Date by over a year. As at the Valuation Date, the marketing exercise had not even commenced. For the reasons which we have already given, the Royal Court was entitled, on the basis of the evidence before it at the Valuation Hearing, to decide, in the May 2024 Judgment, to use a Sales APE Profile based on the Company's forecasts with an uplift of 12.7%, and was entitled to decline to re-open that issue in light of information which subsequently became available including information about the subsequent marketing exercise. Failure to apply sense-checks 198. In PSG's August 2024 Submission, PSG invited the Court to stand back and apply " sense checks " to the valuation which the application of its chosen methodology had brought out. PSG pointed out that Mr Arora's valuation brought out an Enterprise Value of £474.1 million in the Exit Year and that this implied that the Company was worth over £900 million. PSG invited the Court to ask itself whether a valuation at that level " could be a realistic measure of the Company's worth ". The sense checks upon which PSG relied were the same features of the Company and of the market to which Advocate O'Connell referred us in support of PSG's Ground of Appeal 1. The Royal Court declined PSG's invitation in the terms set out in paragraph 111 of the April 2025 Judgment, quoted in paragraph 35 above. 199. In supporting PSG's Ground of Appeal 6, Advocate O'Connell pointed us to the decision of the Court of Appeal of England & Wales in *Chilukuri v. RP Explorer Master Fund*

[2013] EWCA Civ 1307 where Briggs LJ stated (at paragraph 52) - "It is axiomatic that in any complicated process of valuation, the valuer must take the relevant aspects of the world as he finds them (unless constrained by his instructions) and that he must, after looking at each element of the process, stand back and ask himself whether his provisional valuation makes commercial or business sense, viewed in the round." Advocate O'Connell contends that, in the present case, the Royal Court failed to do this. 200. We reject this Ground of Appeal. As the following two paragraphs of Briggs LJ's judgment explain, *Chilukuri* is an

extreme case, in which " the only conclusion on the largely undisputed facts is that no [reasonably prudent and well-advised prospective purchaser] would have touched these shares with a barge pole " (paragraph 54). The present case was quite different. It involved the admittedly difficult exercise of valuing a start-up company engaged in the insurance business. As we have already explained, it is unsurprising that such a company should, in its early years, make no profit and be supported by debt funding. That does not mean that the company is not successful and valuable. The valuation of such a company will depend on the value of the company's in-house book (which will generate a cashflow over the long-term) and on forecasts of its future performance. These involve the application of technical expertise and the exercise of judgment. The Royal Court had heard a substantial body of evidence bearing on these issues. Given the nature of Guardian's business, the Royal Court was entitled to take the view expressed in paragraph 111 of the April 2025 Judgment. Ground of Appeal 3b - new information bearing on Mr Arora's position as an expert 201. In the July 2023 Judgment, the Royal Court directed, for reasons which it gave, that the valuation of the Company should be undertaken using the methodology proposed by Mr Arora rather than that proposed by Mr Cliff. At paragraph 347 of the July 2023 Judgment, the Royal Court stated that it had been " impressed by the care that Mr Arora took not only to cross-check his results but also to apply sense-checks to his conclusions" . At paragraphs 348-352, the Court commented on " certain occasions when Mr Cliff, whose qualifications and competence as an expert witness we do not doubt demonstrated a certain lack of care ". 202. At the Valuation Hearing, PSG's counsel cross-examined Mr Arora under reference to the judgment of Richard Smith J in *Henderson & Jones Ltd v. Ross*

[2023] EWHC 1276 (Ch) . This was a case in the High Court of England & Wales, in which Mr Arora had given evidence. The judge in that case rejected Mr Arora's evidence, criticising him for adopting a " an overall approach which was methodologically precarious ". He said - " I am satisfied that this unrealistic approach to value was also calculated to put pressure on the defendants and it would have been apparent to the claimant that the value of its claim was, as I have also found by some distance, an outlier compared to the contemporaneous valuations undertaken ". Mr Arora accepted in evidence that the judge had not agreed with his position and had described his valuation as an " outlier " but also said " I might need to be a bit careful because this case is under appeal " and " I'm not sure how much as to the underlying detail I can really talk about on this case ... I would say there are a number of factors which were ignored " . 203. In its written closing submissions, PSG contended that Mr Arora's approach was not " even-handed or reasonable " and " not helpful to the Court ". It said that his valuation was an outlier, that he had made " significant mistakes ", that his oral evidence was unsatisfactory, that he was not an expert in the valuation of insurance companies, that his writing style was prolix, that he had failed to assist the Court on key issues, that he tended to disregard the views of Guardian's management and actuaries and that he failed to accept with candour when he had made a mistake. PSG relied on passages from Richard Smith J's judgment in

Henderson & Jones Ltd . The Royal Court did not refer to these matters in the May 2024 Judgment. 204. In PSG's August 2024 Submissions, PSG renewed its criticisms of Mr Arora. It referred, by way of example, to errors which he had made by reason of deriving data about the Pru Multiple from a database known as S&P Capital IQ rather than primary sources. It advised the Royal Court that the judge in Henderson & Jones Ltd had awarded indemnity costs, that the Court of Appeal had refused permission to appeal that decision and that the grounds of appeal had not focused on the criticisms of Mr Arora. It expressed concern about the way that Mr Arora had modelled the SFA Advance Commission cashflows. 205. The April 2025 Judgment contained the following passage - "The experts

22. We should at this point make some comment about the assistance provided by the experts.
23. During the Second hearing the Second Defendant put to Mr Arora in cross-examination certain criticisms that were made of his expert evidence by the High Court of England & Wales in a separate valuation case in which his approach was described as 'methodologically precarious', including 'double counting', and as an 'outlier'.
24. In its Additional Closing Submissions, [PSG] has suggested that the Court, by not referring to those criticisms in the May Judgment, may not have taken those criticisms into account. Whilst it is correct that the Court did not refer to this criticism in its judgment it was of course aware of it, but without a detailed examination of the basis of the criticism within the context of the relevant case, which the Court did not regard as a worthwhile exercise, we nevertheless took into account the criticism but did not regard it as highly persuasive.
25. Regrettably, we did not regard either expert as having been particularly helpful to the Court. Despite the experts owing duties to assist the Court, we found them to be somewhat partisan and more ready to criticise their counterpart than to help the Court navigate its way through a complex valuation exercise." 206. As the Royal Court recognised, expert witnesses owe duties to assist the Court. Among other things, an expert witness should provide independent assistance to the Court by way of objective unbiased opinion in relation to matters within his expertise and should never assume the role of an advocate. That does not mean, of course, that one expert may not criticise, even vigorously, the views of another expert, but the criticism must always be, and be seen to be, the product of the expert's objective unbiased opinion, uninfluenced by the exigencies of the litigation. The opinion evidence of an expert who does not meet these standards is inadmissible. 207. PSG does not go so far as to contend that, having found the experts to be " somewhat partisan ", the Royal Court should have concluded that Mr Arora's evidence was inadmissible. Rather, PSG submits that the Royal Court should have realised that its confidence in Mr Arora, expressed in the Trial Judgment and in the decisions it had made, in reliance on his evidence, in the May 2024 Judgment had been misplaced; and should have reconsidered whether its earlier decisions, based on his evidence, were reliable. PSG submits that the Royal Court should, at least, in relation to the remaining issues, have been sceptical of Mr Arora and should have applied a sense check to the result of a valuation process largely driven by inputs based on his evidence. 208. We reject this submission. If, in the course of a case, a trial court were to

come to the conclusion that an expert, upon whose opinion it has relied, has not, in fact, met the standards with which expert witnesses must comply if their evidence is to be admissible, the court would necessarily have to revisit any findings which it had made on the basis of that expert's opinion. But the Royal Court's observations in paragraphs 22-25 fall short of such a conclusion. Its observations at paragraph 24 are directed to a criticism of its own reasoning in the May 2024 Judgment. They explain that the Court had taken into account the criticisms of Mr Arora by reference to Henderson & Jones Ltd, but had not found them "highly persuasive". The observation that the experts were "somewhat partisan", which is directed at Mr Cliff as well as at Mr Arora, falls short of a finding that either of them so failed in his duties as an expert that his evidence was inadmissible. In the absence of such a finding, we do not consider that the Royal Court was bound either to revisit its earlier conclusions, or to apply some form of "sense check" to the valuation which it reached. Failure to fulfil the judicial function. 209. PSG's second Ground of Appeal is - "The Court failed to exercise its judicial function properly. The Court should have brought an open mind to the question of valuation and having assessed the competing evidence and submissions even-handedly and objectively, arrived at a fair valuation of the shares, giving reasons for its decisions - see, e.g. the guidance of the English Court of Appeal in *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] EWCA Civ

1413. Instead, the Court uncritically adopted or gave undue weight to expert evidence and submissions made on behalf of Mr Pender, while overlooking material arguments and evidence relied upon by PSG." 210. PSG relies on certain specific matters in support of that general ground. We have already addressed, and rejected, PSG's contention that the interim payment award in favour of Mr Pender disclosed that the Royal Court had prejudged the case. For the reasons we set out below, we also reject PSG's other contentions. 211. We remind ourselves of the principles set out at paragraphs 39 to 44 above. This Court must proceed on the assumption that the Royal Court took into account all of the evidence before it, unless there is a clear basis for concluding otherwise. It follows that we can accept the contention in the Ground of Appeal that the Royal Court overlooked "material ... evidence relied upon by PSG" only if there is a clear basis for so concluding. The weight to be attached to any particular evidence is a matter for the first instance court. The contention that the Royal Court gave "undue weight" to certain evidence by comparison with other evidence is not a basis upon which this Court can overturn the Royal Court's decision. To succeed in a contention that the Royal Court did not give a "balanced" account of the evidence, PSG must meet the high hurdle of satisfying us that the approach which that Court took was rationally insupportable. (i) Failure to address submissions and to give reasons 212. PSG contends that the Royal Court failed to address central arguments made by PSG and to give reasons for its decision on those arguments. It refers specifically, in this context, to the Royal Court's failure to consider evidence that PSG had historically underperformed (the point which it elaborates in Ground of Appeal 3) and to the criticisms of Mr Arora made by the English High Court. It refers also to the submissions which it advances in relation to Grounds of Appeal 4 and 5. 213. PSG acknowledges that at paragraph 32 of the

April 2025 Judgment, the Royal Court stated - "If we do not refer to specific submissions in this judgment, we do not mean any disrespect to the party advancing them and have taken all submissions fully into account." PSG contends that language such as this does not immunise the Royal Court's decision from " appropriate appellate audit " if there is no indication that the Court did in fact engage fully or at all with important submissions. 214. We agree with that general proposition; but it does not follow that the Royal Court was not entitled to express itself succinctly. The Court was concerned with a complex valuation exercise, in which it required to determine a number of specific inputs. It addressed each of those inputs and reached a conclusion on each of them. It was, in our view, entitled to do so relatively succinctly. We have addressed the reasoning of the Royal Court in respect of the specific matters criticised in the other Grounds of Appeal, and have been able to consider the substantive criticisms on their merits. We have also addressed the point about historical under-performance and have noted that the Royal Court, in its April 2025 Judgment, explained what it had made of the criticisms of Mr Arora in the English High Court. (ii) Lack of balance in evaluating the expert witnesses' reliability 215. In the Trial Judgment, the Royal Court expressly preferred the evidence of Mr Arora (who was described as " careful ") to that of Mr Cliff (who was said to have demonstrated a " lack of care "). Thereafter, PSG continued to submit that the Royal Court should not have confidence in Mr Arora's work because it produced what were said to be unrealistically high valuations. 216. PSG drew this Court's attention to specific matters which, it said, called his evidence into question, and which PSG contended had not been adequately addressed by the Royal Court. We have considered, at paragraphs 195-201 above, the specific criticism which PSG makes by reference to Henderson & Jones Ltd . PSG also relies, under this head, on Mr Arora's approach to two matters, which we have also already discussed - the PruProtect multiple; and the SFA Advance Commission. The contention which PSG advances under reference to these matters is that the Royal Court did not engage with criticisms, or potential criticisms, of Mr Arora's evidence. 217. As we have explained above, both experts derived a multiple from the PruProtect transaction. The source data for that transaction was in the Integrated Annual Report of Discovery Limited. Rather than use the raw data, Mr Arora used simplifying data generated by S&P Capital. This led him into two material errors - he applied the wrong exchange rate; and wrongly applied an accounting adjustment known as the "IFRS 4 adjustment". Mr Arora acknowledged the former error but did not admit the latter. The Royal Court accepted PSG's argument that this was an error but did not address the criticism of Mr Arora which, according to PSG, flowed from his approach to this issue. 218. As we have also explained above, Mr Arora's approach to modelling out the SFA Advance Commission cashflows involved him in making two adjustments to the Company information - he applied a declining interest rate rather than a fixed interest rate; and he inserted a moratorium on repayments. PSG characterises these adjustments as " bizarre and apparently arbitrary ". PSG criticises the Royal Court for not engaging with those adjustments, not least because, according to PSG, they went to Mr Arora's credibility. 219. It is true that the Royal Court does not, in the April 2025 Judgment, engage with these criticisms. It simply narrates that Mr Arora had made these adjustments. The context,

though, was the Court's decision not to engage in detail with the respective analyses, but to seek to reach a fair outcome on the basis that the experts' assessments should be taken " at face value ". We have explained why the Royal Court's reasoning on that matter is flawed above. Whether PSG's criticism of Mr Arora under reference to these adjustments is or is not fair is not a matter upon which we consider that we should adjudicate. Certainly, the adjustments are patent on the face of Mr Arora's report, and the report gives reasons for making them. Whether those are good reasons or not is a matter which the Royal Court may have to consider when it reconsiders whether an adjustment should be made to the Enterprise Value to reflect the SFA Facility. 220. It does not seem to us that the fact that the Royal Court did not grapple explicitly with the specific criticisms to which we have referred discloses a want of balance in its approach to the two experts, let alone such want of balance as could justify allowing the appeal on this ground. (iii) Inconsistent decisions 221. PSG contends that the Royal Court acted inconsistently, because, on the one hand it took the view that the Evercore valuation was irrelevant, for the reasons we have set out above, whilst on the other, it relied on information in the Evercore October 2023 document to make a finding adverse to PSG in relation to the discount rate. We have addressed this issue above. (iv) Reliance on submissions unfounded in any relevant expert evidence - the IFRS/BE issue 222. PSG contends that the Royal Court's decision in relation to the IFRS/BE ratio was based, not on expert evidence, but on submissions from Advocate Christie. At paragraph 76 of the May 2024 Judgment, the Royal Court recorded a difference in opinion between the experts on the application of the IFRS/BE ratio. It recorded that it had been referred by Mr Pender's advocate to the website of the IFRS and particular statements about reporting standards. It recorded submissions which he made about the nature of Guardian's business and submissions referring the Court to financial statements from other companies. PSG advanced substantial submissions about the lack of actuarial expertise and on the substantive question of the approach to the IFRS/BE issue. 223. The specific proposition for which PSG contends there was no proper basis in the evidence appears in the passage from paragraph 86 of the May 2024 Judgment quoted in paragraph 84 above. We have discussed the IFRS/BE adjustment issue above. As we have observed, this specific proposition does not appear to be controversial between the parties. The issue between them was whether, it being accepted that an adjustment was not obligatory for insurance distributors and there being no evidence of any general practice on the part of such businesses of making such an adjustment, the valuation should be undertaken on the basis of such an adjustment having been made. In these circumstances, we do not consider there to be merit in this point. The fresh evidence application 224. As we have explained above, PSG applied to this Court to admit fresh evidence - namely, updated evidence about the Company's performance, to confirm that it had continued to underperform against forecasts, and updated information about PSG's attempts to market the Company. We refuse that application. This is an appeal against a decision of the Royal Court. We have explained above that the Royal Court was entitled, on the basis of the evidence before it at the Valuation Hearing, to direct that the valuation should proceed on the basis of the Company's forecasts uplifted by 12.7%. We have also explained why the Royal Court was

entitled to decline to re-open that decision when presented with updated information about the performance of the Company. 225. The logic of PSG's position on the fresh evidence application has to be that where the Royal Court has valued a shareholding on the basis of forecasts about the company's performance, which were founded in the evidence before the Royal Court, we can interfere in that proper finding of the Royal Court simply because there is evidence now available which shows that those forecasts were optimistic. If that were correct, it would equally follow that this Court could interfere in the Royal Court's decision if the evidence now showed that the forecasts had been pessimistic. Either proposition would be destructive of the finality which, subject to the limited grounds on which an appeal may be advanced in this Court, attaches to the evaluative judgments made by the Royal Court. Conclusions 226. For all these reasons - (i) we allow PSG's Ground of Appeal 5 in respect of the Royal Court's decision to take account of the Scottish Friendly Association Facility by deducting £11 million from the Enterprise Value of the Company; (ii) we otherwise dismiss PSG's appeal; and (iii) we dismiss Mr Pender's cross-appeal. 227. The case will require to return to the Royal Court for reconsideration of that part of the appeal which we have sustained. Authorities Companies (Jersey) Law 1991. *Pender v GGH (Jersey) Limited*

[2024] JRC 117 . *Pender v GGH (Jersey) Limited and Ors*

[2023] JRC 124. *Pender v GGH (Jersey) Limited*

[2025] JRC 094 . *Court of Appeal (Civil) Rules 1964. Financial Technology Ventures v. EFTS Capital*

[2021] JCA 176 . *Fage UK Ltd v Chobani UK Ltd*

[2014] FSR 29 . *Crinion v. IG Markets Ltd* [2013] EWCA Civ 587. *Simetra Global Assets Ltd v. Ikon Finance Ltd*

[2019] 4 WLR 112 . *D*

v. Geneva Trust SA

[2025] JCA 058 . *Piglowska v. Piglowski*

[1999] 1 WLR 1360 . *Group Seven v. Notable Services LLP*

[2020] Ch 129 . *Bank of St Petersburg v. Arkhangelsky*

[2020] EWCA Civ 408. *NatWest Markets plc v. Bilta (UK) Ltd*

[2021] EWCA Civ 680. *Bwllfa and Merthyr Dare Steam Collieries (1891) Ltd v. Pontypridd Waterworks Ltd*

[1903] AC 426 . *The Golden Victory*

[2007] 2 AC 353 . *Phillips v. Brewin Dolphin Bell Lawrie*

[2001] 1 WLR 143 . *Bunge SA v. Nidera BV*

[2015] 3 All ER 1082 . Gorne

v. Scales

[2006] EWCA Civ 311. Re Annacott Holdings Ltd

[2013] EWCA Civ 119. Re Watercor Ltd [2017] EWHC 1814 (Ch). Hollington on Shareholders' Rights. Joffe, Minority Shareholders (7 th ed). TA Picot (CI) Ltd v. Crills

[1995] JLR 33 . Reg's Skips Ltd v. Yates

[2008] JLR 191 . Rhine Shipping v. Vitol [2025] 1 All ER (Comm) 97. MDW Holdings v. Norvill

[2023] 4 WLR 33 . Buckingham v. Francis [1986] BCLC 353. Joiner v. George [2003] BCC 298. Ageas (UK) Ltd v. Kwikfit

[2014] Bus LR 1338 . Re Natural Duvet and Pillow Co Ltd

[2011] EWHC 1834 (Ch) . Shah v. Shah

[2011] EWHC 1902 (Ch) . Re Scitec Group [2012] EWHC 661 (Ch). Estera Trust (Jersey) Ltd v. Singh

[2019] EWHC 873 (Ch) . Re Dinglis Properties Ltd (No. 3)

[2021] 1 All ER 685 . Re ESC Publishing Ltd [1990] BCC 335. Chilukuri v. RP Explorer Master Fund

[2013] EWCA Civ 1307. Henderson & Jones Ltd v. Ross

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Prepared on 22 October 2026 · Esheria