Appeal from the Royal Court concerning a dispute over share allotment in Artemis Holdings Limited (AHL) that diluted the shareholding of Robert Sinclair, the appellant. The case stems from a Royal Court judgment that found no unfair prejudice against Sinclair when his shareholding was reduced from 49.27% to 24.94% following a resolution passed by the company's directors. The appeal addresses several grounds, including the applicability of a shareholders' agreement and whether Sinclair suffered any prejudice due to the dilution. Ultimately, the appeal was dismissed.

[2025]GCA026

IN THE GUERNSEY COURT OF APPEAL
(CIVIL DIVISION)
Court of Appeal Case No: 592

10TH April 2025

ON APPEAL FROM THE ROYAL COURT OF GUERNSEY
(ORDINARY DIVISION)

Before:

Jonathan Crow CVO, KC
David Perry KC
The Rt Hon James Wolffe KC

Between:

ROBERT ARCHBALD GILCHRIST SINCLAIR

Plaintiff / Appellant

-and-

(1) IAN CHARLES DOMAILLE
(2) DEBORAH JOAN GUILLOU
(3) MARK JONATHAN BRIGHT
(4) ARTEMIS HOLDINGS LIMITED

Defendants/Respondents

Counsel for the Appellant: Advocate R. Breckon
Counsel for the Respondents: Advocate S. Brehaut

Crow JA

Introduction

1. This is the judgment of the court on appeal from a judgment of the Royal Court (Judge Fionnuala Connolly, sitting with Jurats Stephen Jones OBE, Jonathan Hooley and Felicity Quevâtre) given on 29 November 2024. References to the judgment below are in the form "**RCJ, §xx**".

2. The subject matter of the proceedings is an allotment of shares in the Fourth Respondent ("**AHL**") in favour of the First Respondent ("**Mr Domaille**") which was authorised by

the Second and Third Respondents ("**Ms Guillou**" and "**Mr Bright**" respectively) as directors of AHL in August 2021, and which resulted in a dilution of the shareholding of the Appellant ("**Mr Sinclair**").

Background

3. The judgment of the Royal Court contains an agreed summary of the facts (RCJ, §14 – 26) together with a detailed review of the evidence given by Mr Sinclair (RCJ, §27 – 120), Mr Domaille (RCJ, §121 – 165), Ms Guillou (§166 – 237) and Mr Bright (§238 – 260). All of that material should be taken as read. It is sufficient for the purpose of this judgment to mention only the most significant features of the chronology.

4. In 2001, Mr Sinclair and Mr Domaille, together with two other individuals (Mr Gardner and Ms Hancock) left a local accountancy business and established a new partnership, under the name Artemis, Chartered Accountants ("**ACA**"), with a view to providing fiduciary services through a number of operating companies.

5. In particular, ACA together with four other individuals (Ms Guilbert, Ms Calderwood, Ms Gerrard and Ms Torode) were all shareholders in three limited companies: Artemis Trustees Limited ("**ATL**"), Athena Administration Limited ("**AAL**"), and Artemis Sarl ("**AS**"). ACA and the four individual shareholders signed a shareholders agreement dated 17 July 2002 ("**the SHA**").

6. At some point between July 2002 and November 2007 (the exact date being immaterial for the purpose of this appeal), AAL was wound up. The business of the partnership, ACA, was continued through ATL and AS.

7. At some point (the date again being immaterial) Mr Gardner and Ms Hancock left the partnership.

8. AHL was incorporated in this jurisdiction on 6 November 2007. It is common ground that its intended function was to operate as the holding company of ATL and AS in place of the partnership, ACA, which was dissolved. The initial shareholders and directors of AHL were Mr Sinclair, Mr Domaille, Ms Guilbert, Ms Calderwood and Ms Gerrard. AHL, together with ATL and AS, will be referred to as "**the AHL group**".

9. Over time, Ms Torode, Ms Guilbert, Ms Calderwood and Ms Gerrard all departed from the AHL group. By 2011, Mr Domaille and Mr Sinclair were the only remaining beneficial owners of AHL, with Mr Domaille owning 50.73% and Mr Sinclair owning 49.27%.

10. Following a period of ill health, Mr Sinclair ceased to be a director of each company in the AHL group in June or July 2019. There is a lack of clarity as to whether he resigned from all of his positions or was removed from some of them. In their written submissions, the Respondents sought to suggest that he was dismissed because of his conduct (§96 – 98 of their Skeleton in this court) but this suggestion was not pursued at the hearing. There was no finding to that effect by the Royal Court, and we are not in a position to make any findings of primary fact in that regard. At all events, it is

common ground that Mr Sinclair ceased to be a director in the summer of 2019, and no complaint is founded on the circumstances of his departure.

11. Following his departure as a director, there were some inconclusive negotiations for the acquisition of Mr Sinclair's shares in AHL. In the course of those negotiations, Mr Domaille commissioned KPMG to prepare a valuation of the company. In due course they produced a draft valuation at about £7 million. Mr Sinclair did not participate in the preparation of that valuation, which is why it remained in draft. Nevertheless, neither party has identified any relevant information that was withheld from KPMG, nor have they explained what input Mr Sinclair might have provided that would have materially altered the valuation figure. In the circumstances, the court is entitled to proceed on the basis that the KPMG draft valuation gives at least a reliable indicative value for AHL as at that date.

12. It is common ground that, as a fiduciary services company, the AHL group is required periodically to open bank accounts and provide similar services for their clients. In that connection, banks and other institutions regularly require the co-operation of the AHL group with client due diligence ("**CDD**") procedures. In some cases, this requires all persons with a beneficial interest of 25% or more in AHL to participate in the completion of certain paperwork, including the provision of identity documents (RCJ, §56).

13. During the course of 2020 and the first half of 2021, Mr Sinclair was asked by AHL to respond to a number of requests in this connection (RCJ, §62, §67 and §80). The extent to which he failed to co-operate, and the true reasons for his conduct, were explored in detail at trial.

14. It was the Defendants' case that Mr Sinclair's failure to co-operate was causing damage to the business, which risked losing clients. Advice was taken from Appleby, and a solution was proposed by which Mr Sinclair's shareholding would be reduced to just below 25% in order to obviate the need for his participation in any CDD functions. Mr Sinclair was warned of this proposed course of action in correspondence about a month before the plan was implemented (RCJ, §92 – 93 and §201).

15. In due course, a board meeting was held on 20 August 2021 at which a resolution was proposed authorising the allotment to Mr Domaille of a further 975,000 ordinary shares. Mr Domaille recused himself from the discussion. The resolution was accordingly considered only by Ms Guillou and Mr Bright. Ms Guillou had been appointed as a director less than two months earlier, on 1 July 2021. Mr Bright had been appointed as a director just over two weeks earlier, on 5 August 2021.

16. The resolution was duly passed. It resulted in Mr Domaille's holding being increased to 75.06%, and Mr Sinclair's holding being reduced to 24.94%.

The Proceedings in the Royal Court

17. Proceedings were commenced in November 2021. In his Amended Cause, Mr Sinclair alleged unfair prejudice (§22), breach of directors' duties (§24) and breach of the SHA (§26). The relief claimed (among other things) an order requiring Mr Domaille to purchase Mr Sinclair's shares (§3 of the prayer for relief), damages payable by the

directors to AHL (§4 of the prayer) and/or damages payable by Mr Domaille to Mr Sinclair (§6 of the prayer).

18. At trial, Mr Sinclair's principal case (as outlined in his Amended Cause and expanded in his Skeleton Argument) was that the share dilution involved unfair prejudice within s. 349 of the Companies (Guernsey) Law 2008 ("**the Companies Law**"), and on that basis he sought an order for the purchase of his shares under s. 350. The grounds upon which unfair prejudice was alleged (§85 – 86 of his Skeleton Argument at trial) were that the share dilution involved –
    (i) a breach of ss. 291 – 295 of the Companies Law, and hence also a breach of Article 2 of AHL's Articles of Association, which required shares to be issued for fair and reasonable consideration;
    (ii) a breach of clauses 5 and 6 of the SHA, which gave existing shareholders certain pre-emption rights in the event of a share allotment;
    (iii) a breach of the directors' duties to AHL;
    (iv) inequitable conduct in undermining the balance of power as between shareholders.

19. As an alternative to the claim based on unfair prejudice, Mr Sinclair pursued a derivative claim (§112 – 122 and §144 – 148 of his Skeleton Argument) under which he sought an order for damages payable by the directors to AHL.

20. The trial was heard over five days in May 2024, with oral evidence of fact from Mr Sinclair, Mr Domaille, Ms Guillou and Mr Bright. Expert evidence on valuation was also heard. The parties agreed the terms of nineteen questions for the Jurats (RCJ, §362). There was also a proposed twentieth question which was not agreed, but in the event the Royal Court did not find it necessary to resolve the dispute as to its wording (RCJ, §403).

21. In the event, the Royal Court only found it necessary to answer ten of the agreed questions. Its conclusions may be summarised as follows:

    (i) Prior to the board meeting in August 2021, Mr Sinclair's conduct had caused operational difficulties for the AHL group which posed a threat to its business (RCJ, §363 – 367).
    (ii) Mr Sinclair was put on notice of the proposed dilution before it was implemented (RCJ, §368 – 369).
    (iii) Ms Guillou and Mr Bright took steps to ensure that Mr Sinclair suffered no prejudice by giving certain undertakings that the directors would not issue any further shares in AHL without giving Mr Sinclair 28 days' notice (RCJ, §370 – 372).
    (iv) No material dividend had been declared and no other action had been taken in relation to the shares by Mr Domaille, Ms Guillou or Mr Bright since the board meeting in August 2021 (RCJ, §373 – 376).
    (v) The share dilution was not unfair to Mr Sinclair. That overall conclusion embraced a number of subsidiary findings: **(a)** the SHA did not apply to AHL (RSCJ, §379); **(b)** there had been no breach of ss. 291 – 295 of the Companies Law, and hence no breach of Article 2 of AHL's Articles of Association (RCJ, §380 – 382); **(c)** there had been no breach of the directors' duties (RCJ, §383 – 387); **(d)** there was no viable work-around

to avoid the need for Mr Sinclair's co-operation in relation to CDD matters (RCJ, §388); and **(e)** it was not clear whether Mr Sinclair and Mr Domaille had ever been in a quasi-partnership, but any such relationship would have ended when Mr Sinclair ceased to be a director in 2019 (RCJ, §389 – 390).

(vi) There was no prejudice to Mr Sinclair, because the undertakings were binding (RCJ, §393 – 395).

(vii) The share dilution was in the best interests of AHL in order to solve the operational difficulties caused by Mr Sinclair's conduct (RCJ, §396 – 397).

(viii) No specific valuation methodology had to be followed by AHL for the issue of new shares, and in particular no professional valuation was required (RCJ, §399).

(ix) The valuation methodology that was in fact adopted had been reasonable (RCJ, §400).

(x) The valuation of the shares allotted to Mr Domaille in August 2021 had been fair and reasonable (RCJ, 401).

22. The Royal Court also held that the derivative claim "*has not been pleaded in the Cause*" but in any event, in light of the Jurats' findings, there was no basis for a derivative claim to succeed (RCJ, §404).

23. For these reasons, the action was dismissed. Mr Sinclair now appeals to this court. He does so on ten Grounds.

The Test on Appeal

24. The parties agreed at trial that all of the nineteen questions were "*for the Jurats*". They involved findings of primary fact or exercises of evaluative judgment. It is important to recognise at the outset the limited grounds upon which this court can interfere with such decisions.

25. In order to succeed in this court on an appeal against a finding of fact, an appellant has to demonstrate that no reasonable body of Jurats could have reached the decision they did when instructed and assisted properly by the judge: *Khuller v. First International Trustees Ltd* [2020] GCA 051, at §29 – 31; *Simon v. Committee for Health and Social Care, States of Guernsey* [2020] GRC028, at §115; *Cyma Petroleum (CI) Ltd v. States of Guernsey* (Guernsey Judgment 38/2014), at §43; *Kazzaz v. SCTG* [2024] GCA058. Absent a material error of law, or a critical finding of fact which has no evidential basis, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, this court will only interfere if it is satisfied that the finding of fact cannot reasonably be explained or justified: *Simon*, at §117 – 119; *Cyma Petroleum*, at §43; *Environment Department v. Johns* [2007] GJ 44/200, citing *Island Development Committee v. Lainé* [2003] Guernsey Judgment 53/2003.

26. Not only is fact-finding constitutionally within the province of the Jurats (subject only to the presiding Judge's casting vote in the event of an equal division) but the trial court also had the benefit of seeing the key witnesses give oral evidence, and had an opportunity to review the entire universe of trial documents in light of the witnesses' testimony: *McGraddie v. McGraddie* [2013] UKSC 58, at §3 – 4; *Fage UK Ltd v.*

Chobani UK Ltd [2014] FSR 29, at §114 – 115. Whilst an appellate court can review transcripts and read other documents, it does not have the same insight into the dynamics of the trial as the Jurats. Merely by way of example, Mr Sinclair's pleaded case was that owing to "*serious health difficulties*" he had been "*unable reliably to attend to the day-to-day administration of his affairs*" (Amended Cause, §14). There was no professional evidence as to his health issues, and the trial court had the advantage of seeing him cross-examined in the course of which he admitted to holding several non-executive directorships in other companies, including one AIM listed company, in relation to which he attended seventeen board meetings and two audit committee meetings during the course of 2021: Day 2, transcript pp. 17 and 20 – 21. Mr Sinclair was also forced to retract an allegation made in his witness statement that the share allotment had been prompted by Mr Domaille's inability to raise sufficient finance to buy out Mr Sinclair's shares (RCJ, §96). This court is not in the same position as the court below to assess the impact of these developments on the credibility of Mr Sinclair. Such matters would also legitimately feed into the Royal Court's overall assessment of the fairness of his treatment.

27. In relation to an appeal against the exercise of a discretionary or evaluative judgment, it is trite law that an appellant must prove that the decision of the court below was based on an error of law, or failed to take into account a materially relevant factor, or took into account a materially irrelevant factor, or involved a decision that no reasonable decision-maker could have reached: *Simon*, at §118; *Re Cumana Ltd* [1986] BCLC 430, at 437*f – g*; *Hawkes v. Cuddy* [2010] BCC 597, at §80; *Re Sprintroom Ltd* [2019] BCC 1031, at §76 – 78; *Biogen Inc v. Medeva Plc* [1997] RPC 1, at 45.

Ground 1: The SHA

28. The issue under Ground 1 is whether the Royal Court was entitled to reach the conclusion that the SHA, "*or an agreement on materially the same terms*", did not apply in relation to the business of AHL. The significance of this issue is that, if the SHA applied, Mr Sinclair would say that there had been a breach of clauses 5 and 6, because the allotment pre-emption provisions were not operated.

29. It is apparent on the face of the SHA that AHL was not a party to the agreement, and that the stated purpose of the parties in entering into the agreement was "*to set out the terms governing their relationship as shareholders*" in each of ATL, AAL and AS (*i.e.* not in relation to AHL, which was not incorporated for another five years after the SHA was entered into).
30. In the circumstances, it is obvious that the express terms of the SHA did not and do not apply in relation to the business of AHL. Accordingly, the only question is whether the Royal Court should have found that a contract in identical terms to the SHA came into existence through the conduct of the parties, and that it was binding in relation to the affairs of AHL.

31. On appeal, Mr Sinclair's first point was that the Royal Court did not address this issue and made no finding on it. We reject that argument. The conclusion shortly stated at the end of RCJ, §379, was that: "*The Jurats found that the [SHA] does not apply to AHL, and consequently, was not relevant to the issue in dispute*." That was an answer to the twelfth agreed question, as posed (a point to which we return in §95 below). It must also be read in the context of the earlier recitation of the parties' competing

arguments: in particular, RCJ §293 had set out Mr Sinclair's argument that a contract on the terms of the SHA had arisen from the parties' conduct in relation to AHL after its incorporation; and RCJ §321 – 322 listed the Defendants' responsive arguments as to why the SHA had not in practice been operated as between the parties since AHL had been incorporated. Read in that context, it is apparent that RCJ, §379, was a rejection of Mr Sinclair's case on this point.

32. Furthermore, the Royal Court was, in our judgment, fully entitled to reject that case, for an accumulation of reasons:

    (i) When plans were being made for AHL to replace ACA as the holding entity for the business, Mr Sinclair provided a pack of documents to Ozannes under cover of a letter dated 31 October 2007 (RCJ, §322). It contained no proposal for a replacement SHA.
    (ii) Furthermore, one of the documents in the pack was headed "*Proposed revisions to Artemis Corporate Structure*" (RCJ, §98). It contained no reference to any application of the SHA to AHL, nor did it indicate any intention to prepare a replacement SHA.
    (iii) It emerged in cross-examination that Mr Sinclair had responsibility for the reorganisation of the business under AHL, and yet he took no steps to put in place a SHA in relation to its business: Day 2, transcript pp. 53 *et seq*.
    (iv) In the period leading up to the formation of AHL, there is no correspondence or other contemporaneous document indicating an intention on the part of Mr Sinclair, Mr Domaille or any other individual that the SHA or any comparable arrangement should apply in relation to AHL (RCJ, §322).
    (v) Similarly, the minutes of a board meeting of AHL on 28 November 2007 contained no suggestion of a replacement SHA (RCJ, §322).
    (vi) It is apparent that certain provisions in the SHA were not operated in relation to AHL, for example the requirement for employment contracts (RCJ, §103).
    (vii) Mr Sinclair accepted in cross-examination that "*there was no acknowledgment on the part of [Mr Domaille] that the [SHA] would apply*" (RCJ, §98).
    (viii) Mr Sinclair also accepted in cross-examination that **(a)** the terms of the SHA had not in fact been strictly adhered to even as between those originally party to the agreement when they departed as shareholders of AHL (RCJ, §322(e)); **(b)** he did not always account for external earnings in accordance with the terms of the SHA: Day 2, transcript p. 57; **(c)** he did not abide by the arbitration provision in the SHA (RCJ, §322(d)); and **(d)** he was not seeking to enforce the contractual terms as to share valuation under the SHA in relation to the purchase of his own shares: Day 2, transcript p. 55.

33. For these reasons, there was a clear evidential basis for the Royal Court to reach the conclusion that neither the SHA, nor any other agreement on the same terms as the SHA, operated as between the parties to this litigation in relation to the business of AHL.

34. Mr Sinclair drew our attention to the evidential material that could have led a tribunal of fact to reach a different conclusion: but that is not the question in this court. Furthermore, the material on which Mr Sinclair relied is by no means overwhelming:

    (i) He pointed to the share purchase agreements pursuant to which three former participants in the business (Ms Guilbert, Ms Gerrard and Ms Calderwood) departed after the dissolution of the partnership, ACA, and the reorganisation of the business under AHL. He claimed that they were "*bought out … on the basis of the [SHA]*" (§36.3 of his Skeleton in this court). However, in our judgment the terms of the various share purchase agreements do not bear out that assertion. Indeed, the very existence of the share purchase agreements demonstrates that each departure was negotiated on commercial terms. It was accepted before us by Mr Sinclair's Advocate that the valuation methodology under the SHA was not applied; and the time-lag between, for example, Ms Guilbert's departure (March 2008) and the acquisition of her shares (July 2009) illustrates the fact that the contractual timing provisions under the SHA were not operated either. It is apparent that the SHA was used as a reference point, and some of its provisions were adopted in the share purchase agreements, but that again serves only to demonstrate that the SHA was not operated according to its own terms.

    (ii) It is also apparent that Mr Sinclair himself did not seek to enforce the terms of the SHA when he departed as a director in the summer of 2019. He sought to contradict that by relying in argument on a letter he received from Ms Guillou dated 19 June 2020, written at a time when the parties were seeking to agree the terms of a consensual buy-out of his shares. In that letter, Ms Guillou said that, if the parties were unable to agree a valuation methodology, they would have to "*look to the existing Shareholders' Agreement dated 17 July 2002*". But that language does not support Mr Sinclair's argument that the SHA was treated as a binding contract. On the contrary, the letter is premised on the parties not being bound by the SHA, and instead seeking to achieve a freely-negotiated settlement, with the suggestion that resort might be had to the regime set out in the SHA as fall-back if no terms could be agreed.

35. Mr Sinclair also sought to argue that the reasoning of the judgment below on this issue is inadequate. We disagree. Whilst the conclusion is very shortly stated (RCJ, §379) the judgment must be read as a whole. Taking that approach, it must be recognised that all of the material mentioned in §32 and §34 above was discussed in the earlier parts of the judgment. There is no single model to which all judgments must conform, nor is there any objective standard dictating the detail in which a court's analysis must be given. In this case, although the Royal Court's reasoning could have been more fully stated under the heading "*Discussion*", nevertheless it is apparent from the judgment as a whole that the court took fully into account the whole body of evidence (RCJ, §14 – 264) and the parties' submissions (§282 – 361).

36. If the SHA had applied, there would have been a further argument whether clauses 5 and 6 were engaged on the facts of this case. In that regard, the Respondents pointed out that the allotment pre-emption rights would only be triggered if any of the companies "*wish to raise additional capital by the issue of shares*" and they said that

the purpose of the allotment in this case was not to raise additional capital but rather to reduce Mr Sinclair's holding below 25%. On that basis, the Respondents said that the allotment pre-emption provisions would not have applied in any event. It is unnecessary for this court to decide that issue, because we have upheld the ruling below that the SHA did not apply at all. If it had been necessary to decide the point, we would have held that the language on which the Respondents relied are words of description, not words of limitation: in other words, the clause was written on the assumed basis that further shares would only be issued if the company wished to raise further capital, and it was not thereby intended to limit the substantive operation of the allotment pre-emption rights to one category of share issue (raising capital) but disapply its provisions to another factual situation (such as adjusting the proportionate holdings of the shareholders).

37. As a fall-back argument, Mr Sinclair also submitted that, even if the SHA was not contractually binding, nevertheless it was "*inequitable for Mr Domaille not to follow the mechanism of the [SHA] when issuing new shares in AHL*" (§37 of his Skeleton in this court). That argument fits more naturally under Ground 9, dealing with the question of unfairness, and we will address it in that context.

38. For the reasons set out above, the appeal under Ground 1 is dismissed.

Ground 2: The effect of the share dilution

39. Ground 2 of the appeal was essentially an attack of the Royal Court's finding that Mr Sinclair did not suffer any 'prejudice' within the meaning of s. 349 of the Companies Law. Under this heading, Mr Sinclair advanced a number of related arguments which may conveniently be grouped under four headings: **(i)** the share allotment caused him economic and non-economic harm because it diluted the bundle of rights represented by his shareholding (*e.g.* the right to vote, and the right to receive dividends or a distribution in the event of a winding-up); **(ii)** the undertakings set out in the minutes of the board meeting on 20 August 2021 and in correspondence after the event did not mitigate that prejudice; **(iii)** the directors knew or ought to have known that the effect of the allotment would be prejudicial to Mr Sinclair; **(iv)** the Respondents accepted that the allotment needed to be undone.

40. The Royal Court reached the conclusion that Mr Sinclair suffered no prejudice (RCJ, §370 – 372, §384 and §393 – 395) on the basis that Mr Domaille, Ms Guillou and Mr Bright were bound by the undertakings set out in the board minutes of 20 August 2021 and in a letter from Appleby of 15 September 2021, and as a result in practical terms "*the economic benefit of the asset was not transferred from [Mr Sinclair] to [Mr Domaille]*" (RCJ, §395). Mr Sinclair's first two points under this heading can accordingly be taken together.

41. We do not consider that it was open to the Royal Court to reach the conclusion it did on the basis of the evidence at trial:

    (i) It is a fact that the share allotment necessarily diminished the economic value of Mr Sinclair's shareholding, reducing his proportionate ownership from 49.27% to 24.94%.

(ii) The board minutes contained no undertakings. Instead, they **(a)** recorded the fact that there was no present intention to pay dividends, and **(b)** stated that if, in the future, there was any likelihood of dividends being declared or a sale of the company "*the position could be reconsidered by the Board … based on the circumstances at the time*" (emphasis added). In our judgment, that wording was incapable of constituting any form of undertaking which would effectively protect the economic value of Mr Sinclair's shareholding.

(iii) Furthermore, Mr Domaille did not participate in the board's consideration of the proposed allotment, and accordingly there was no reasonable basis on which the Royal Court could have reached the conclusion that he was bound by anything written in the minutes.

(iv) The letter from Appleby dated 15 September 2021 contained no undertakings which preserved the economic value of Mr Sinclair's previous 49.27% shareholding either. In particular, there was no undertaking to reverse the allotment; there was no undertaking to treat Mr Sinclair as a 49.27% shareholder in the event of any sale of the business; and there was no undertaking either to refrain from issuing dividends or to treat Mr Sinclair as a 49.27% shareholder in the event that dividends were declared. The only undertakings in the letter were given by Mr Domaille and AHL, the broad effect of which was that: **(a)** no further shares would be issued without giving 28 days' prior notice, and **(b)** reconsideration would be given to the allotment which had taken place on 27 August. In our judgment, there was accordingly no reasonable basis on which the Royal Court could have come to the conclusion (as it did in RCJ, §395) that the undertakings resulted in no prejudice being suffered by Mr Sinclair.

(v) The letter of 15 September 2021 also stated in terms that the directors' purpose in reducing Mr Sinclair's shareholding below the regulatory threshold of 25% could not be achieved by putting a proportion of his shares in trust, because that would still leave him as the economic owner of those shares. Contrary to the understanding of the Royal Court (RCJ, §395), it was accordingly a necessary part of the arrangement that the "*economic benefit of the asset*" was transferred away from Mr Sinclair.

(vi) Leaving to one side the economic significance of the allotment, no undertakings were offered to mitigate its impact on the proportionate value of Mr Sinclair's voting rights. Most importantly, the reduction of his holding below 25% meant that he was no longer able to block a special resolution, which requires a 75% majority under s. 178 of the Companies Law. This issue was not addressed in the judgment below. We consider that its omission further undermines the conclusion reached by the Royal Court on the question whether Mr Sinclair suffered any prejudice.

42. Mr Sinclair's third point under Ground 2 was that the directors knew or ought to have known that the allotment would cause prejudice to Mr Sinclair. Indeed, he asserted that this was "*the sole reason for issuing the shares*" (§50 of his Skeleton in this court). He relied in this regard on the board minutes of 20 August 2021, which stated that the purpose of making the allotment was "*to dilute the shareholding of the minority shareholder below 25%, which is the limit for a controller for AML purposes*". We reject this part of Mr Sinclair's argument:

(i) The Royal Court found that the share allotment was made in good faith by the directors in what they believed to be the best interests of AHL because of Mr Sinclair's failure to co-operate with CDD matters (RCJ, §383 – 384). There was a clear evidential basis for that finding in the testimony of Ms Guillou and Mr Bright: furthermore, the very passage in the board minutes on which Mr Sinclair relied demonstrates that the directors' intention was not to cause prejudice to Mr Sinclair, but rather to protect the interests of AHL. In the circumstances, we do not consider that Mr Sinclair has any basis for inviting this court to overturn the Royal Court's finding.

(ii) In any event, we are not persuaded that this is a relevant issue. It is (rightly) common ground that the answer to the question under s. 349 whether there has been prejudice depends on the application of an objective test: prejudice can be caused with the best of intentions, and conversely malice (if present) does not convert unprejudicial conduct into prejudicial conduct. In the context of addressing the question whether the affairs of the company have been conducted in a manner which is 'prejudicial' to Mr Sinclair (as opposed to the question whether the conduct has been 'unfairly' prejudicial), for the purposes of s. 349, the directors' state of mind is accordingly an irrelevance.

43. Mr Sinclair's fourth point under this heading was to assert that: "*Each Respondent conceded that the dilution should be undone or compensated for in some way*" (§52 of his Skeleton in this court, emphasis added). In the context of an appeal to this court, we do not consider that this line of argument goes anywhere, because it does not constitute an attack on any of the Royal Court's findings, and in fairness it was not pursued in oral argument. In any event, we do not consider that it is supported by the evidential material on which Mr Sinclair sought to rely. Indeed, his own Advocate described the evidence as "*contradictory and elusive*" (§56 of his Skeleton in this court), and his initially bold assertion that each Respondent had made a concession was then moderated in more realistic terms: "*the Respondents, or at least some of them, seem to have accepted, in principle, that the dilution would eventually need to be unwound or compensated for at some point in future*" (§56 of the Skeleton in this court, emphasis added). In our judgment, it is unrealistic to suggest in this court that the material on which Mr Sinclair relied in this regard should have been treated by the Royal Court as "*an admission of liability*" (as apparently alleged in §56 of Mr Sinclair's Skeleton in this court).

44. Nevertheless, for the reasons given in §41 above, Mr Sinclair's argument under Ground 2 is well founded: the Royal Court had no reasonable basis for rejecting his complaint that the share allotment caused him prejudice within the meaning of s. 349.

Ground 3: Stopping Cross-Examination on Remuneration

45. Under Ground 3, Mr Sinclair objected that the Royal Court wrongly stopped the cross-examination of Mr Domaille in relation to the increase in his salary from £120,000 in 2019 to *c.* £485,000 in 2023 on the basis that it was not a pleaded ground of unfair prejudice. Mr Sinclair accepted that the increase in Mr Domaille's salary was not specifically pleaded as a discrete ground of unfair prejudice, but nevertheless he contended that: **(i)** the Amended Cause, §29, specifically claimed that Mr Domaille should be restrained from increasing his salary, **(ii)** since Mr Domaille's witness

statement asserted that Mr Sinclair had suffered no prejudice because there had been no payment of dividends, it was legitimate to cross-examine him on the basis that there had been a significant increase in his salary instead, and **(iii)** the question whether the increase in salary was justified would have been relevant to the question of valuation. Mr Sinclair also cited *Jones v. National Coal Board* [1957] 2 QB 55, at p. 65, on the dangers inherent in a judge interrupting Counsel's cross-examination unnecessarily.

46. In our judgment, there is nothing in this ground:

    (i) As a general rule, the management of a trial is within the broad discretion of the trial judge, and it would require an exceptional case for this court to interfere with a decision of this kind. There is nothing exceptional in this case.
    (ii) The warnings in *Jones v. NCB* are not in point. The court was dealing there with excessive interruptions during the course of cross-examination, not with rulings on the relevance of a particular line of questioning.
    (iii) As Mr Sinclair recognised, the increase in Mr Domaille's salary was not a pleaded ground of unfair prejudice.
    (iv) As it happens, the fact that Mr Domaille's salary had increased, and the amount by which it had increased, was apparent from the expert evidence, in particular §8.15 of Mr Smethurst's Amended Supplementary Report, dated 24 April 2024, and pp. 16 – 17 of the experts' Supplementary Joint Statement, dated 1 May 2024. Furthermore, Advocate Breckon was able to put to Mr Domaille the increase in his salary before the cross-examination on that issue was terminated: Day 3, transcript pp. 34C – 35E. As such, there was an adequate evidential basis for Mr Sinclair to make any relevant submissions (should he so wish) in reliance on the increase in Mr Domaille's salary.

47. For these reasons, we dismiss the appeal under Ground 3.

Ground 4: Necessity for the Dilution

48. Under Ground 4, Mr Sinclair objected (in §81 of his Skeleton in this court) to the Royal Court's findings that his conduct had caused "*operational difficulties*" giving rise to "*grave harm to the company and that one client had threatened to terminate the relationship with [AHL]*" (RCJ, §397), and that "*action needed to be taken*" and that the "*only viable short-term solution*" was issuing shares to Mr Domaille (RCJ, §384).

49. It is important to recognise at the outset the precise nature of the Royal Court's findings. To be clear, the Royal Court did not reach an independent conclusion that it considered that "*action needed to be taken*" or that the "*only viable short-term solution*" was issuing shares to Mr Domaille. Rather:

> "*The Jurats found … that the Directors were concerned that the delays caused by the lack of responses from [Mr Sinclair] were a threat to the business of AHL and its subsidiaries and that action needed to be taken to remedy the problem in the short term. The Jurats considered that the Directors were justified in holding this view … They were satisfied that the Directors believed that the issue of additional shares to [Mr Domaille] was*

the only viable short-term solution and that they were justified in taking this view" (RCJ, §384, emphasis added).

50. In other words, the Royal Court was not adopting the directors' views as its own: rather, it was expressing its judgment on whether the directors' decisions were justifiable. There is an important distinction between the two, because it is not (in general) the court's function to second-guess the commercial judgments of company directors. The court can rule on the lawfulness of their conduct, and in order to do that it can determine whether (for example) their decisions were taken in good faith, or without due skill and care: but the court does not (in general) reach its own independent conclusion on whether it agrees with the merits of any commercial judgment, and the Royal Court did not do so in this case.

51. The distinction is important when it comes to understanding the nature of any appeal in this court. The question before us is not whether we, the Court of Appeal, consider that AHL was facing a grave threat, or whether a share allotment was the only solution; nor is the question whether this court considers that the Royal Court was entitled to reach the conclusion that AHL was facing a grave threat, or whether a share allotment was the only solution – because that was not the nature of its ruling. Rather, the question is whether Mr Sinclair can persuade us that the Royal Court was 'wrong' (in the relevant appellate sense, as explained above) in finding that honest and reasonably competent directors would have been justified in reaching the conclusion that AHL was facing a grave threat, and that a share allotment was the only solution.

52. As regards the perceived risks to the business, Mr Sinclair's first objection was that there was no contemporaneous documentary evidence containing a threat by any client to terminate its relations with the AHL group. That is true, but immaterial. There was extensive oral testimony from Mr Domaille (RCJ, 130 – 133), Ms Guillou (RCJ, §178 – 193) and Mr Bright (RCJ, §243) regarding the extent of Mr Sinclair's failure to co-operate, and the difficulties that was causing in providing a proper service to the AHL group's clients. Those difficulties were extensively canvassed in the correspondence at the time, and they were explored in detail in the course of Mr Sinclair's cross-examination (RCJ, §35 – 36, §45 – 63 and §67 – 81). Irrespective of whether there was any specific, documented threat by a client to terminate its relationship with the AHL group, the Royal Court was fully entitled to accept that Mr Sinclair's failure to co-operate was causing significant operational difficulties and that one client did indeed threaten to terminate its relationship.

53. Mr Sinclair's second objection was that the Royal Court ought not to have taken into account (as it did, in RCJ, §386 and §400) the fact that the directors took advice from Appleby. Under that heading, he made two points:

    (i) First, he submitted that taking legal advice "*cannot somehow render an unlawful exercise of directors' powers lawful*" (§91 of his Skeleton in this court). In our judgment, that begs the question, and is in any event overstated. It begs the question, because the Royal Court had to decide whether there was any unlawfulness. And it is overstated because, in so far as the claim was (for example) based on alleged breaches of the duty of good faith or the duty to use reasonable skill and care, the fact that the

directors took responsible legal advice and (if they did) followed it would be capable of providing evidence in rebuttal. In that context, we note that §5.13 of the board minutes of the meeting on 20 August 2021 state that Appleby had advised that the share dilution was "*the only effective solution*".

(ii) Second, Mr Sinclair objected that legal privilege in the actual document containing the advice was not waived. This is an odd feature of the case. As noted above, board minutes reflect the content of at least some of the legal advice apparently given, and they also refer in terms to a separate Memorandum of advice from Appleby, which was not in evidence. The directors also expressly referred to the legal advice in their witness statements, and on that basis there would have been a good argument for saying that privilege in the actual document containing the advice had been waived: but Mr Sinclair chose not to make an application for specific disclosure, and the directors chose not to disclose the document. Nevertheless, it was Ms Guillou's evidence that **(a)** the tenor of Appleby's advice was reflected in the 20 August 2021 board minutes and in the correspondence from Appleby to Mr Sinclair's Advocate, and **(b)** the directors "*acted in accordance with the legal advice given*" (RCJ, §222). So, although the evidence at trial was in a less than perfect state (for which each side shares some blame) the fact remains that the Royal Court was left in the position of knowing that legal advice had been taken, and it had no objective basis for disbelieving the evidence given on behalf of the directors that they had followed that advice. In the circumstances, we do not consider that the Judge ought (as Mr Sinclair contends) to have directed the Jurats to ignore the evidence regarding legal advice altogether.

54. Mr Sinclair's third objection under this heading was that the board minutes indicated that the only alternatives to the share dilution that were considered at the board meeting were either issuing shares on trust for Mr Sinclair, or issuing Mr Domaille with shares that carried voting rights but no economic value – neither of which would have achieved the desired objective. Mr Sinclair contended by way of submission that other "*more sensible*" alternatives were available (§97 of his Skeleton in this court). Before dealing with each, it is appropriate to note that: **(i)** the Respondents have pointed out that, although Mr Sinclair's Advocate responded in some detail to the threatened dilution by letter dated 5 August 2021, none of these alternatives was proposed by Mr Sinclair or on his behalf in correspondence either before or immediately after the share allotment in August 2021: rather, they emerged by way of submission at trial; and **(ii)** none of the alternative options on which Mr Sinclair relied in argument was overlooked by the Royal Court in its judgment.

55. Turning to the various alternative options on which Mr Sinclair relied:

(i) First, he submitted that the directors could have proposed that he should execute a power of attorney. We do not consider that there is any realistic basis on which the Royal Court can be criticised for not having made any adverse findings against the directors for not having pursued this option. If Mr Sinclair had been willing to execute a power of attorney, he could have proposed it himself, but he did not. For their part, the difficulty the directors regarded themselves as facing was entirely caused by Mr Sinclair's lack of

co-operation, so there was no basis for the Royal Court to consider that the directors ought to have concluded that there was a realistic prospect of Mr Sinclair executing a power of attorney, particularly in circumstances where he had indicated his express refusal to allow any disclosures of information without his specific authority (RCJ, §388).

(ii) Second, it was suggested that further allowance could have been made for Mr Sinclair's ill health by affording him more time to deal with outstanding matters. Again, we do not consider that there is any realistic basis on which the Royal Court can be criticised for not having made any adverse findings against the directors for not having pursued this option. There was ample evidence that: **(a)** Mr Sinclair was selective in choosing which business affairs he attended to, and which he did not (RCJ, §64, §111, §116 and §331 – 338); and **(b)** in any event, at the time Mr Sinclair did not (or certainly did not consistently) attribute his lack of co-operation to health problems (RCJ, §33): instead, he suggested that requests for information were a "*scam*" (RCJ, §50 and §57 – 58), or that he "*did not understand*" them (RCJ, §81(i)), or admitted that he "*chose not to deal*" with them (RCJ, §51, §111 and §327).

(iii) Third, it was suggested that Mr Sinclair could have been bought out at a fair value. Again, we do not consider that there is any proper basis for criticising the Royal Court for having failed to make any adverse findings against the directors for not having pursued this option. **(a)** For the reasons discussed above, the SHA did not apply, and as a result there was no contractual regime in place for the acquisition of Mr Sinclair's shares. **(b)** He had not been excluded involuntarily from the business, and accordingly it could not be suggested that the other shareholder was under some equitable obligation to acquire his shares (which in other circumstances may be required in order to prevent an involuntary exclusion from being unfair). **(c)** Attempts had been made to negotiate a consensual buy-out in 2019 – 2020, but they had failed: there was no obvious reason why they would succeed in short order in 2021, when the operational difficulties facing the AHL group were considered to be pressing. In the absence of any contractual obligation on Mr Sinclair to accede to a buy-out, achieving this option was not in the gift of the directors, but would depend on co-operation from Mr Sinclair himself.

(iv) Fourth, it was suggested that a third-party investor could have been found to invest in the company, resulting in a proportionate dilution of both Mr Sinclair's and Mr Domaille's shareholdings. Yet again, we do not consider that there is any proper basis for criticising the Royal Court for having failed to make any adverse findings against the directors for not having pursued this option. In particular, no evidence has been drawn to our attention to suggest that there was any realistic likelihood of attracting a third-party investor, least of all in light of the enforcement action by the Guernsey Financial Services Commission ("**the GFSC**").

(v) Finally, it was suggested that the directors should have investigated whether Mr Sinclair might transfer his shares to a member of his family or other trusted person. Again, there is nothing in this point. Mr Sinclair had been given nearly a month's notice of the proposed share allotment. If he had had any willingness to find a solution to the problem by transferring shares to family members, he could easily have suggested it himself. He did not.

> The Royal Court cannot be criticised for failing to make any adverse findings against the directors for failing to pursue a solution which was not within their gift, and was wholly dependent on the initiative and co-operation of Mr Sinclair himself.

56. Finally under this heading, Mr Sinclair objected that the Royal Court should not have accepted the Respondents' evidence that the 'workaround' proposed by the Bank of New Zealand ("**BNZ**") was not viable. We consider that this is an illegitimate attempt to challenge an assessment of fact by the court below. The position can be summarised shortly. Since late 2020, certain documentation should have been completed in relation to an entity which has been anonymised as "Client Trust A". Mr Sinclair had failed to complete the necessary documentation by the summer of 2021. In a letter dated 19 August 2021, BNZ suggested that the necessary form could be completed by a director on Mr Sinclair's behalf. Ms Guillou's evidence was that she realised this would not be a viable solution because it would not be acceptable to compliance (RCJ, §227) and because of Mr Sinclair's express prohibition on providing information without his specific authority (RSCJ, §388). On the evidence, it was open to the Royal Court to accept that that was Ms Guillou's assessment at the time, and that it was formed honestly.

57. For these reasons, the appeal under Ground 4 is dismissed.

Ground 5: Proper Purposes

Introduction

58. Under Ground 5, Mr Sinclair contended that the Royal Court was wrong in holding that there was no breach of the 'proper purpose' rule. He submitted that the Royal Court mistakenly accepted the good faith of the directors in seeking to protect the business of the company as being equivalent to compliance with their duty to exercise the powers conferred on them for proper purposes (RCJ, §383 – 385).

The Law

59. The applicable law is not in doubt. The requirement for directors to exercise their powers for a 'proper purpose' is not satisfied by them acting in good faith, and the question whether they have acted in breach of the 'proper purpose' rule is not answered by examining whether the directors honestly believed that they were pursuing the best interests of the company: *Carlyle Capital Corporation Ltd v. Conway* (Guernsey Judgment 38/2017), at §410 and §473; *Hogg v. Cramphorn* [1967] Ch 254, at 268. Rather, the rule is based on the principle that company directors must exercise their powers for the proper purpose for which those powers were conferred on them: *Howard Smith Ltd v. Ampol Petroleum Ltd* [1974] AC 821, at 835; *Eclairs Group Ltd v. JKX Oil & Gas Plc* [2015] UKSC 71, [2016] 3 All ER 641, at §15.

60. In order to apply these principles in any given case, the court must accordingly identify the proper purpose of the specific power that was exercised, or the limits within which it can properly be exercised, and it must then identify the purpose (or the principal purpose) for which it was in fact exercised: *Howard Smith v. Ampol*, at 835F. From that will flow a conclusion as to whether it has been exercised for a proper purpose.

61. As Lord Sumption observed in *Eclairs Group*, at §16: "*One of the commonest applications of the principle in company law is to prevent the use of the directors' powers for the purpose of influencing the outcome of a general meeting*". The 'proper purpose' rule has often been invoked in relation to share allotments made in the context of disputed takeovers, in which case the question may be what is fair as between different categories of shareholder: *Mills v. Mills* [1938] HCA 4, 60 CLR 150, at 164. The leading authority, *Howard Smith v. Ampol*, was just such a case. Mr Sinclair sought to place particular reliance on the passage at 837F, where Lord Wilberforce said that "*it must be unconstitutional for directors to use their fiduciary powers over the shares in the company purely for the purpose of destroying an existing majority, or creating a new majority which did not previously exist*". A similar point was made more recently in *Tianrui (International) Holding Co Ltd v. China Shansui Cement Group Ltd* [2024] UKPC 36, [2024] 3 WLR 986, at §69.

62. Care must be taken, however, not to impose too narrow a restriction on the proper purpose for which shares may be allotted. In particular, both *Howard Smith v. Ampol*, at 835C, and *Tianrui v. China Shansui*, at §69, expressly recognise that the power is not confined to raising capital. Neither of those cases gives any indication of what other purposes might be proper, but some assistance can be derived from other case-law. For example, in *Punt v. Symons & Co Ltd* [1903] 2 Ch 506, it was suggested *obiter*, at 516, that a share allotment might properly be made for the purpose of creating a sufficient number of shareholders to enable statutory powers to be exercised. So too, in *Isaac v. Tan* [2022] EWHC 2023 (Ch), at §111, it was accepted that a debt-for-equity swap could justify an allotment of shares, even though it would not improve the working capital position of the company. Similarly, in *Harlowe's Nominees Pty Ltd v. Woodside (Lakes Entrance) Oil Co NL* (1968) 12 CLR 483, shares had been allotted in order to secure the financial stability of the company. The allotment was upheld, even though it had the effect of defeating an attempt by the plaintiff to secure control by buying up the company's shares: *ibid* at 493. In particular, the court stated that the power to allot shares can be used for reasons other than raising capital "*so long as those reasons relate to a purpose of benefiting the company as a whole, as distinguished from a purpose, for example, of maintaining control of the company in the hands of the directors themselves or their friends*". That passage was cited with approval in *Howard Smith v. Ampol*, at 836C – F, as was a similar passage from *Teck Corporation Ltd v. Millar* (1972) 33 DLR (3d) 288, at 328, cited at 836G – 837B of *Howard Smith v. Ampol*.

The application of the law to this appeal

63. In the present case, the directors made no secret of the fact that the purpose of the share allotment was not to raise capital, but specifically to reduce Mr Sinclair's shareholding below the 25% threshold because of the operational difficulties the company was facing (RCJ, §134, §152 and §198). The directors' purpose in making the allotment had been made explicit in the warning letter from Appleby dated 29 July 2021, and also when the proposal was approved at the board meeting on 20 August 2021, in §5.5 of the minutes.

64. The judgment below states that the Judge directed the Jurats on the applicable case-law, indicating "*that she preferred the submissions of the Defendants*" (RCJ, §383). This is a reference back to RCJ, §312 – 315, which record the Defendants' submissions at trial that the purpose for which shares may properly be allotted is not limited to raising

capital, and that the proper purpose in this case was "*the protection of the business and the necessary steps which had to be taken in order that the business would continue to thrive*" (RCJ, §315). The Jurats accepted that approach (RCJ, §386).

65. Mr Sinclair objected that **(i)** the expression "*the protection of the business*" is "*so vague that it is practically meaningless*" (§136 of his Skeleton in this court) and **(ii)** the dilution of his shareholding could not be a proper purpose. We reject both parts of that argument. As to the first part, if it were taken in isolation, the expression "*the protection of the business*" might indeed appear vague: but it has to be read in context. Here, the court was clearly referring to the operational risks that the directors considered the business was facing as a result of Mr Sinclair's failure to co-operate, and the perceived need to find a solution. That purpose was sufficiently specific and, in light of the case-law discussed in §62 above, we consider that the Royal Court was entitled to reach the conclusion it did, namely that the allotment was made for a proper purpose.

66. To be clear: the facts of this case are entirely different from those considered in *Howard Smith v. Ampol* and in §16 of *Eclairs Group* (quoted in §61 above). What those cases were discussing was a share allotment which had been implemented by the directors so as to alter the balance of power at shareholder level. That involves one organ of the company (the directors) using the powers vested in them to alter the balance of power in another organ of the company (the shareholders). The directors and the shareholders are separate organs of a company. That is why Lord Wilberforce said in *Howard Smith v. Ampol* (at 837G) that it was "*unconstitutional*" for the directors' powers of corporate governance to be used to alter the outcome of decision-making at shareholder level. Lord Sumption made the same point §16 of *Eclairs Group*. Similarly, the court in *Tianrui v. China Shansui*, at §71, said that the proper purpose rule precluded "*an allotment and issue of shares which is deliberately aimed at altering the balance of power between shareholders, so as to advance the power of one (or one group) at the expense of another*" (emphasis added). That is not this case. As it happens, Mr Sinclair was already in a minority; but, more importantly, the avowed purpose of the allotment was not to alter the decision-making in general meeting or, for that matter, to pursue some other extraneous objective, such as entrenching the existing directors in office (which was another example of an improper purpose given in *Harlowe's Nominees*). Rather, the purpose of the allotment in this case was (as held in the judgment below) to obviate the need for Mr Sinclair's participation in the company's CDD obligations, so as to avoid the operational difficulties caused to the business by his failure to co-operate in that regard. As such, the Royal Court was fully entitled to reach the conclusion that that was "*a purpose of benefiting the company as a whole*" (in the words of *Harlowe's Nominees*).

Conclusion of Ground 5

67. For these reasons, we reject Mr Sinclair's contention that the Royal Court's decision in this case was inconsistent with *Hogg v. Cramphorn*, *Howard Smith v. Ampol* and *Eclairs Group*, and we dismiss the appeal under Ground 5. In doing so, we would emphasise that this is very much a decision on its own unique facts, and it does not purport to establish any legal principle. Rather, it involves the application of an entirely orthodox legal test to the particular circumstances of this case, which are unlikely to be replicated on other occasions.

Ground 6: The Terms of the Share Issue

68. Under Ground 6 of the appeal, Mr Sinclair challenged the Royal Court's findings in relation to the terms on which the shares were allotted to Mr Domaille. In particular, Mr Sinclair contended that the directors were obliged to obtain a reasonable price for the shares in compliance with their duty to use reasonable skill and care, and their duty under s. 295(1) of the Companies Law (also reflected in Article 2 of AHL's Articles of Association) to assess both the consideration for, and the terms of, any share issue. By analogy, he referred to the decision in *Re Sunrise Radio* [2009] EWHC 2893 (Ch), [2010] 1 BCLC 367, where the court observed (at §96) that "*the duty of the directors will ordinarily be to get the best price they can*" so that, although a minority shareholder who is not subscribing for further shares will be diluted, "*the adverse impact on the value of their shareholding will be minimised, if not wholly avoided*". Mr Sinclair's submission was that the Judge in this case did not give any separate direction to the Jurats on these issues.

69. The directors of AHL who voted on the share allotment in this case were fully aware of the requirements under ss. 295 – 296 of the Companies Law because they are set out in the board minutes of the meeting on 20 August 2021. The minutes also record the fact that the directors considered that, in view of the uncertainty facing the company as a result of the GFSC's enforcement action, any attempt to value the company "*would be problematic and open to challenge*". The price per share was accordingly calculated by reference to AHL's balance sheet as at 30 April 2021, which showed total net assets of £260,002. That figure was then divided by the number of shares then in issue, giving the figure of £0.26 per share. The total consideration for 975,000 shares was accordingly £253,500. The shares were issued part-paid, with only £0.01 payable per share, making a total sum of £9,750 immediately due. That amount was provided to Mr Domaille by means of a loan from the company. The net result of the allotment was accordingly that Mr Domaille paid nothing from his own resources, and the financial position of the company remained unaltered.

70. Mr Sinclair's appeal under this heading was founded on the following matters:

    (i) He relied on the fact that the terms on which the shares were allotted did not reflect the market value of the company at the time. The KPMG draft valuation suggested that the company was worth *c.* £7 million. There was also a broad measure of agreement between the expert witnesses that the value of a 49.27% shareholding as at the date of trial was in the region of £3.5 million (RCJ, §264). That implied a value of *c.* £1.5 million for the *c.* 25% shareholding allotted to Mr Domaille.
    (ii) Mr Sinclair submitted that the directors knew that the shares were not being allotted at market value. He relied in this regard on a letter he received from Ms Guillou dated 19 June 2020 which attributed a value of £2,161,607 to his 49.27% shareholding.
    (iii) Mr Sinclair submitted that the directors failed to take into account relevant considerations, because **(a)** they (or at least Mr Bright) did not regard

evidence relating to the market value of the company as a material factor in taking their decision (RCJ, §255), **(b)** they did not consider the need to obtain good value for the shares, and **(c)** they did not consider whether further capital might be required in the future.

(iv) Mr Sinclair relied on the fact that neither of the directors who voted to allot the shares made any attempt to negotiate better terms with Mr Domaille.

(v) He pointed out that no attempt was made to have the shares independently valued.

(vi) He submitted that it was irrational to rely on the book value of AHL's investments simply because the GFSC enforcement action created some element of uncertainty, not least because the KPMG valuation had been conducted in full knowledge of that enforcement action.

71. The Royal Court addressed these issues in the following way:

(i) It noted the requirements of ss. 291 – 295 and Article 2 (RCJ, §380 – 381).

(ii) It observed that the directors' decision to allot shares to Mr Domaille was taken not because the company needed further capital but in order to solve the operational difficulties caused by Mr Sinclair's failure to co-operate (RCJ, §382).

(iii) Accordingly, it observed that the allotment "*was not a third-party commercial transaction*" (RCJ, §400) and the KPMG report was not relevant because it related to a proposed sale of shares (RCJ, §387).

(iv) On that basis, the Jurats concluded that the directors: **(a)** were not obliged to negotiate commercial terms with Mr Domaille (RCJ, §387); **(b)** were justified in their conclusion that the shares were issued at a price which was fair and reasonable (RCL, §382); and **(c)** were not in breach of their duty of care (RCJ, §387).

72. Mr Sinclair objected that these conclusions were illogical and wrong. We disagree. Although when issuing new shares the directors' duty will "*ordinarily*" be to obtain the best price they can (*Sunrise Radio*, at §96), once it is accepted that the power to allot shares is not necessarily confined to raising additional capital, it follows logically that the directors are not invariably required to obtain the best price they can: and that is not how the requirement under s. 295 is expressed. Here, the decision was avowedly taken not because the company needed further capital but in order to address the operational and regulatory difficulties to which we have referred. It was accordingly not a breach of the directors' duty of care or their duty under s. 295 to regard the market value of the company as an irrelevance. It was a matter of evaluation for the directors to determine the appropriate level of consideration; and it was a matter of evaluation for the Royal Court to determine whether the directors' evaluation was outside the boundaries within which differences of opinion could reasonably held. That being the nature of the debate in the court below, it would take an exceptional case for this court to interfere with the Royal Court's assessment. This is not such a case. In particular, there was expert evidence at trial to the effect that the valuation methodology adopted by the directors "*was not unreasonable*": §4.18 of the Report of Kirsty Wheadon, dated 5 June 2023. The Royal Court was entitled to rely on that evidence, as such this court cannot interfere with the Royal Court's conclusion.

73. For these reasons, the appeal based on Ground 6 is dismissed.

Ground 7: Quasi-Partnership

74. Under Ground 7, Mr Sinclair sought to persuade us that the Royal Court ought to have held that the relationship between him and Mr Domaille was one of quasi-partnership when the further shares were allotted in August 2021. The potential significance of this argument was that: **(i)** if Mr Sinclair failed to persuade us that there had been a breach of any legal duty, he contended that this court should nevertheless "*order relief as long as it considers Mr Domaille has treated him inequitably*" (§152.1 of his Skeleton in this court), and **(ii)** if the relationship between the parties was one of quasi-partnership, that would be an argument against applying a minority discount in the context of any buy-out order.

75. As noted already, the judgment below records the fact that the Jurats were undecided whether there had been a quasi-partnership before 2019, but they were clear that any such relationship ended once Mr Sinclair departed as a director in June/July 2019 (RCJ, §390 – 391). Mr Sinclair contended that **(i)** the Royal Court has failed to decide whether there was a quasi-partnership prior to June/July 2019, and that was a dereliction of its duty, **(ii)** the findings that it did make were unreasoned and demonstrably wrong, and **(iii)** those findings were also inconsistent with the Royal Court's apparent acceptance that the question of unfairness under s. 349 had to be decided by reference to the question whether the majority shareholders had used their powers "*in a way which equity would regard as contrary to good faith applying traditional equitable principles*" (RCJ, §378).

76. As to Mr Sinclair's first point, we do not consider that the Royal Court failed to reach a conclusion on whether there had been a quasi-partnership prior to the summer of 2019. It said in §390 that it was "*not clear on the evidence*". Since the onus was on Mr Sinclair, that means he had failed to discharge the relevant burden of proof. But in any event, we do not consider that it was a necessary part of the court's function to reach a decision on whether there had been a quasi-partnership prior to June/July 2019. The relevant question for the court was whether the allotment in August 2021 was unfairly prejudicial, and as such it was the conditions obtaining at that time that mattered. We would observe in this context that the question whether there had been a quasi-partnership before the summer of 2019 was not one of the nineteen agreed issues for the Jurats: if, as Mr Sinclair now contends, it was an essential step in determining the matters in dispute, one would have expected to see it listed as an issue for determination.

77. That leaves the question whether the Royal Court erred in rejecting Mr Sinclair's case as to the existence of a quasi-partnership in August 2021. So far as that is concerned, the applicable legal principles are correctly summarised in the judgment below (RCJ, §270 – 281) and they were not in issue in this court. In very short summary, there are two key elements:

    (i) First, in most cases and in most circumstances, the relations between those who participate in business through the medium of a limited company will be defined by reference to their legal rights and obligations, as laid down in the Articles of Association, statute law, the general law of directors' duties, and any specific contractual arrangements the parties may have entered into, such as employment contracts or shareholders agreements. Absent

any breach of a legal duty or violation of a legal right, a participant in a company will in general have no remedy.

(ii) Second, if a person seeks to pursue a claim (commonly for just and equitable winding-up, or for relief under ss. 349 – 350) which is not founded on a breach of any legal right or obligation, they must be able to establish (both by reference to legal principle and to the facts of the case in hand) that equity can properly be invoked to constrain the manner in which legal rights and powers could otherwise be lawfully exercised. The courts have not sought to define exhaustively the circumstances in which this might happen – indeed, Lord Wilberforce expressly deprecated any such attempt as being "*impossible, and wholly undesirable*": *Ebrahimi v. Westbourne Galleries Ltd* [1973] AC 360, at 379E. Nevertheless, he then proceeded to illustrate the circumstances in which equity might properly be invoked so as to constrain the exercise of legal rights by reference to situations where one or more of three features were present: **(a)** an association formed or continued on the basis of a personal relationship involving mutual confidence; **(b)** an agreement or understanding that all, or some, of the shareholders would participate in the management of the business; and **(c)** a restriction on the transfer of interests in the company.

78. Applying those principles, the Royal Court was fully entitled to reach the conclusion it did. Irrespective of whether, until the summer of 2019, AHL represented a continuation of the partnership business formerly conducted through ACA, the Royal Court was entitled to conclude that the business relationship between the individuals underwent an elementary transformation when Mr Sinclair departed as a director.

(i) The faint suggestion made in this court that Mr Sinclair continued to have some management function in AHL after his departure as a director was not sustained by the evidence: the only functions he continued to fulfil were the result of a number of positions he held in client structures (§23 – 24 of Mr Domaille's witness statement). That is something entirely different from participating in the management of AHL's corporate affairs. Mr Sinclair ceased to be a *de jure* director, and there was no suggestion that he was either a *de facto* or a shadow director.

(ii) Furthermore, there was no evidence to suggest that the parties agreed to enter into some new quasi-partnership with Mr Sinclair as a 'sleeping partner'. On the contrary, the negotiations for the sale and purchase of his shares that followed his departure indicate that the individuals regarded the business relationship as having essentially ended, subject only to agreeing the terms of any buy-out. As such, the Royal Court was entitled to conclude that there was thereafter no relationship between the individuals based on mutual confidence.

(iii) Finally, the Company's Articles contained no restriction on the transfer of shares and, for the reasons already given, the Royal Court was entitled to conclude that the SHA was not binding on Mr Domaille and Mr Sinclair in relation to AHL.

79. For these reasons, none of the three features identified by Lord Wilberforce was present in August 2021. Furthermore, it would appear that it was never put to Mr Domaille in cross-examination that there was a quasi-partnership after 2019. Accordingly, the

Royal Court's decision that there was no quasi-partnership at the relevant time cannot be impugned.

80. For completeness, we should add that we reject Mr Sinclair's argument (mentioned in §75(iii) above) that there was an inconsistency between the Royal Court's conclusion that there was no quasi-partnership (RCJ, §390 – 391) and the ruling that the question of unfairness should be decided by reference to questions of "*good faith*" and "*traditional equitable principles*" (RCJ, §378). There is no relevant inconsistency between the two. The former was a finding of fact by the Jurats, on which they had been correctly directed as to the law by reference to *Westbourne Galleries* (RCJ, §389). The latter was a direction of law by the Judge as to the applicable test for unfair prejudice: as it happens that direction was, if anything, unduly generous to Mr Sinclair, given the Jurats' finding on the absence of any quasi-partnership.

81. For the reasons set out above, the appeal under Ground 7 is dismissed.

Ground 8: Adequacy of Reasons

82. Under Ground 8 of his appeal, Mr Sinclair complained that the Royal Court judgment was inadequately reasoned. He relied in this regard on s. 16(1) of the Royal Court Reform (Guernsey) Law, 2008 ("**the 2008 Law**"), which requires that all judgments in civil proceedings "*shall be reasoned*", and on the observations made in *Flannery v. Halifax Estate Agencies Ltd* [2000] 1 WLR 377, at 382A – C, cited with approval in *Salem v. Sequent (CI) Ltd* [2024] GCA064, at §94. Mr Sinclair made a forensic point that the grounds of appeal are as extensive as they are because of the "*inadequacy of the Judgment*" (§165 of his Skeleton in this court).

83. We reject this ground of appeal. We would repeat the observations made in §35 above. Similar observations were also made in §65 of *Landl v. Hogg* [2024] GCA027, also cited with approval in *Salem v. Sequent*, at §93. Mr Sinclair's objection that the section headed "*Discussion*" is only eight pages long is not, in our judgment, decisive. The Royal Court's judgment as a whole is nearly eighty pages, and it includes a detailed review of the evidence and of the parties' competing legal arguments. The "*Discussion*" section falls to be read in the context of the judgment as a whole. Furthermore, as Mr Sinclair himself acknowledged: "*Most of the key facts are not disputed*" (§8 of his Skeleton in this court). Against that background, it does not provide Mr Sinclair with any ground of appeal if the Royal Court stated in short order that the Judge preferred the Defendants' legal arguments, or if the Jurats' findings of fact were set out in conclusory form. Whilst we would certainly not encourage the Royal Court to give judgments in the future with such minimal explanations (a point to which we return in §95 below), we do not consider that the judgment in this case crossed the line between acceptable brevity and unacceptable inadequacy.

84. For these reasons, the appeal under Ground 8 is dismissed.

Ground 9: Unfair Prejudice

85. Ground 9 of Mr Sinclair's appeal sought to bring together the various strands from the previous grounds. He invited this court to hold that the Royal Court should have

accepted that there had been unfair prejudice, and on that basis it should have directed a buy-out.

86. For the reasons discussed in relation to Ground 2 above, we have reached the conclusion that Mr Sinclair suffered prejudice. That, however, is not the end of the analysis under s. 349: it is common ground that the test requires unfair prejudice, and that the two elements (unfairness, and prejudice) are distinct. In this regard, the Royal Court rightly quoted the relevant passage from *Re Saul D Harrison & Sons Plc* [1994] BCC 475, at 488 (RCJ, §274). The question therefore arises in this appeal whether the Royal Court was wrong in holding that there was no unfairness to Mr Sinclair.

87. This was the fifth of the agreed questions that the Royal Court answered (RCJ, §377 – 392). We would make the following observations on its answer:

(i) There has been no complaint from Mr Sinclair as regards the Judge's directions to the Jurats on the law (RCJ, §378). Indeed, as mentioned in §80 above, those directions were, if anything, more favourable to Mr Sinclair than necessary.

(ii) The various specific grounds on which Mr Sinclair sought to rely in support of his allegation that the prejudice he suffered was unfair have already been addressed under the previous grounds of appeal – namely, **(a)** the alleged non-compliance with the terms of the SHA (RCJ, §379), **(b)** the alleged breach of ss. 291 – 295 and Article 2 (RCJ, §380 – 382), **(c)** the alleged breach of fiduciary duty (RCJ, §383 – 387), **(d)** the allegation that the dilution was not necessary (RCJ, §388) and **(e)** the quasi-partnership allegation (RCJ, §389 – 391). For the reasons already given, there is nothing in the appeal on any of those grounds.

(iii) The Jurats specifically found that Mr Sinclair's failure to co-operate was not entirely attributable to ill-health (RCJ, §366). Having reviewed the evidence and the matters canvassed in the judgment below, we agree. It is apparent that: the operational difficulties caused by Mr Sinclair's failure to co-operate pre-dated any serious health issues, at least to some extent; his failure to co-operate was characterised at times by posturing (for example, claiming to be "*appalled*" that he had been addressed by his first name); Mr Sinclair was being selective as regards which business matters he chose to attend to (for example, his NEDs, or direct approaches from beneficiaries) and those he did not (compliance with requests from the AHL group); his failure to co-operate with the AHL group's CDD requirements was on occasion wilful; and he appears to have been seeking to engineer a situation in which Mr Domaille and/or the other directors were driven to make an offer for his shares which he found acceptable. We place particular reliance in this regard on the matters covered in RCJ, §50, §64 – 66, §74, §81, §111 and §116, and in the transcript of Day 2, pp. 35 – 36. We would also repeat the various matters discussed in §55 above, listing the available alternatives which Mr Sinclair did not suggest at the time. Indeed, the fact that Mr Sinclair has now suggested, by way of argument, that the directors ought to have considered a buy-out of his shares as an alternative to the dilution tends to support the overall inference that that was his objective.

In our judgment, all of this is relevant in answering question whether any prejudice he suffered was unfair.

88. For completeness, we will also deal under this heading with the point mentioned in §37 above, namely Mr Sinclair's argument that, even if the SHA did not apply as a contract, it was nevertheless "*inequitable for Mr Domaille not to follow the mechanism of the [SHA] when issuing new shares in AHL*" (§37 of his Skeleton in this court). In our judgment, there is nothing in this argument. If the SHA did not apply as a matter of contract, then it did not form part of the package of mutual rights and obligations between Mr Domaille and Mr Sinclair; and, since there was no quasi-partnership, there is no coherent basis on which Mr Sinclair can persuade this court that there was any equitable restraint on the exercise by the directors of the powers lawfully vested in them.

89. For these reasons, the Royal Court was entitled to reach the conclusion that there was no unfairness to Mr Sinclair. That conclusion was, however, reached in circumstances where the court below had decided (wrongly, in our judgment) that there had not been any prejudice. The question therefore arises whether the Royal Court's conclusion on unfairness can be sustained in circumstances where this court has decided that there was prejudice. In our judgment, the conclusion below on unfairness can indeed be sustained, for two distinct reasons:

    (i) It is apparent from the matters summarised in §87(ii) – (iii) above that the evidential and logical foundation of the Royal Court's ruling on unfairness was distinct from and not dependent on its finding that there had been no prejudice. Accordingly, the fact that this court has overturned the Royal Court's ruling on prejudice does not undermine the integrity of the Royal Court's ruling on unfairness.
    (ii) Separately, if it were necessary for this court to address the matter afresh, we would reach the independent conclusion that, for the reasons outlined in §87(ii) – (iii) above, there was no unfairness to Mr Sinclair.

90. For these reasons, the appeal under Ground 9 is dismissed.

Ground 10: The Derivative Claim

91. Mr Sinclair's final ground of appeal was that the Royal Court was wrong in dismissing his derivative claim on the basis that it had "*not been pleaded in the Cause*" (RCJ, §404).

92. In our judgment, the Royal Court was wrong in saying that a derivative claim had not been pleaded. Ms Guillou and Mr Bright were joined as Defendants on the grounds that they were the directors who took the impugned decision. The Amended Cause stated in terms at §1 that "*an aspect of the Plaintiff's cause is a derivative claim against the Company's directors*". The directors' duties were pleaded in §10, and breaches were alleged in §24. Loss and damage to the company was alleged in §25. The prayer for relief sought damages payable to the company under §4. In the circumstances, it is apparent that a derivative claim was properly pleaded.

93. The next question is whether the claim should have been allowed. In our judgment, it should not: the Royal Court was right in dismissing the derivative claim. By definition,

a derivative claim involves proceedings brought by a shareholder on behalf of a company in order to obtain a remedy for a wrong done to the company. Its success depends on the plaintiff establishing that an actionable wrong has been done to the company. In this case, the putative wrong was the alleged breach of duty by Ms Guillou and Mr Bright. For the reasons given in relation to Ground 5 above (the proper purpose rule) and in relation to Ground 6 above (the duty of care) this court has upheld the ruling of the Royal Court that there was no breach of the directors' duties. Advocate Breckon accepted, in the course of the hearing, that there was no argument raised in relation to the derivative claim additional to those being advanced in support of the unfair prejudice case. In the circumstances, the derivative claim was rightly dismissed at trial.

Conclusion

94. The Royal Court was wrong in holding that Mr Sinclair suffered no prejudice. It was also wrong in holding that a derivative claim had not been pleaded.

95. Furthermore, the judgment in the court below is uncomfortably light on explanations. Whilst we have dismissed the appeal on Ground 8, it would have been much better if the judgment had set out more fully the reasoning process which led to the court's various findings, rather than stating its conclusions in such summary form. Although s. 16(4) of the 2008 Law is expressed in permissive language (stating that the judge "*may … draft or participate in the drafting*" of the Jurats' findings) it would appear that the purpose underlying its enactment was to enable a reasoned judgment to be prepared in a manner that was not previously possible: see ***Roger v. Roger*** (Guernsey Judgment, 10/2003), at §17 – 18.

96. Separately, we would also observe that, if a list of questions is to be posed for answer by the Jurats, it would minimise the risk of subsequent argument if the questions were drafted with a greater degree of specificity than was the case here, and if appropriate care were taken to differentiate between questions that are purely factual and those that involve mixed questions of fact and law.

97. Nevertheless, for the reasons set out above, we have reached the overall conclusion that the appeal must be dismissed.