Neutral Citation Number: [2019] EWHC 873 (Ch)

Petition No: CR-2015-009042

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/04/2019

Before :

MR JUSTICE FANCOURT

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Between :

(1) ESTERA TRUST (JERSEY) LIMITED **(a company incorporated under the Laws of Jersey)** **(2) HERINDER SINGH**	**Petitioners**
- and –	
(1) JASMINDER SINGH **(2) VERITE TRUST COMPANY LIMITED** **(a company incorporated under the Laws of Jersey)** **(3) JEMMA TRUST COMPANY LIMITED** **(a company incorporated under the Laws of Jersey)** **(4) EDWARDIAN GROUP LIMITED** **(5) JASMINDER SINGH AND HERINDER SINGH** **(as trustees of the English Trusts)**	**Respondents**

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Mr Justin Fenwick Q.C. and Mr Alex Barden (instructed by **Arnold & Porter Kaye Scholer LLP**) for the **Petitioners**
Mr Ian Croxford Q.C. Mr Daniel Lightman Q.C. and Ms Emma Hargreaves (instructed by **Orrick, Herrington & Sutcliffe LLP**) for the **First Respondent**
Mr Andrew Green Q.C. and Mr Fraser Campbell (instructed by Baker & McKenzie LLP) for the **Fourth Respondent**

Hearing dates: 28, 29, 30, 31 January, 1, 5, 6, 7, 8, 11 February 2019

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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MR JUSTICE FANCOURT

Mr Justice Fancourt:

This judgment comprises the following sections:

1. Introduction

1. On 5 July 2018, I handed down judgment in the first part of this trial: neutral citation [2018] EWHC 1715 (Ch) ("the Judgment"). I granted relief to the Petitioners and held that the First Respondent, Jasminder Singh ("JS"), and the Fourth Respondent, Edwardian Group Limited ("the Company"), must buy the shares in the Company of the First Petitioner, Estera Trust (Jersey) Limited ("Estera"), and the Second Petitioner, Herinder Singh ("HS"). Together, HS and Estera own just under 20% of the ordinary shares in the Company.

2. I determined that a fair price for JS and the Company to pay was the aggregate of (a) the market value of the Petitioners' holdings and (b) half the marriage value released by JS's holding and the Petitioners' holdings becoming owned as a single block of shares by JS. My reasons for that conclusion are given in paras 637-653 of the Judgment. JS himself owns 5.28% of the ordinary shares in the Company, but the Second and Third Respondents' shares (which are in practice controlled by JS, as I explain in the Judgment) amount to a further 69.25% of the ordinary shares.

3. I therefore directed that the following valuations be carried out as at a valuation date of 30 June 2014 ("the Valuation Date"), in order to determine the price payable:

   i) the market value of HS's and Estera's combined holding ("A");

   ii) the value of JS's holding, taking into account his interest in and ability to influence the Second and Third Respondents and their holding ("B");

iii) the value of an aggregate holding comprising JS's, HS's and Estera's shares held by JS, taking into account his interest in and ability to influence the Second and Third Respondents and their holding ("C").

The price payable by JS and the Company will be A plus one-half of C-(A+B).

4. I also directed that for the purpose of the valuations notional adjustments should be made to the value of the assets of the Company, to compensate it for the effect of the breaches of fiduciary duty by JS and the excessive remuneration paid to JS in 2011, 2012 and 2014. Thus, £11 million is deemed to be added to the assets of the Company together with simple interest from 18 July 2008, and £2.35 million is deemed to be added with simple interest from the respective dates of payment to JS. The parties' valuers are agreed that this means that £15.8 million is notionally added to the net asset value of the Company on the Valuation Date.

5. In giving directions for the second part of the trial, I gave permission for the Petitioners and JS to adduce expert evidence from an expert in hotel valuation and a separate expert in share valuation. Pursuant to that direction, expert evidence was exchanged and the respective experts met and produced joint statements on matters on which they agreed and disagreed.

6. In seeking to agree the terms of a statement of the proposed approach to valuation of the shares, it became apparent that the parties were not agreed on the meaning and effect of one part of my judgment. This was the basis on which the marriage value released by JS's shares and the Petitioners' shares becoming owned by JS as a single block of shares was to be calculated. It is convenient to deal with that dispute at the outset.

2. Basis of calculation of price

7. In para 651 of my judgment, I said:

> "Even if (which is untested) there is a market for HS's and Estera's shares, to adopt the depressed market value for the shares is not, for the reasons that I have given, a fair basis of valuation. A fair basis would in my judgment be the price that would be likely to be agreed between commercially-minded but reasonable persons in the actual positions of HS and JS in notional arm's length negotiations, having regard to any marriage value that would be released on such a sale and purchase. In my judgment, that price would be the market value of HS's and Estera's shares plus 50% of any marriage value that would result from adding those shares to the existing holding of JS. Although JS is himself a minority shareholder, he is the CEO of the Company, has effective control of the board of the Company and, together with the Jasminder trusts, has voting control of the Company in general meeting. The acquisition of HS's and Estera's holdings will result in JS and the Jasminder trusts together having total control of the Company, taking their combined holdings above 75%. The share valuations should in my judgment proceed on that assumption, since that is the reality of the way in which JS and the Jasminder trusts are able to control the Company. That is so even though Verite and Jemma have professional duties as trustees to the whole class of beneficiaries of the Jasminder trusts, not just JS. They are required to have regard to JS's

wishes, which have since 1998 included treating the English and Jersey trusts' shares as one voting block of shares, and otherwise having regard to JS's wishes."

8. In the following paragraph, I then identified the need for the three valuations of the A, B and C tranches identified in paragraph 3 above, and stated that the price payable to HS/Estera would be calculated as A plus one half of C-(A+B).

9. The valuation of the A tranche therefore requires the market value of an aggregate 19.89% minority shareholding in the Company to be determined. The valuation of the B tranche requires the value of a 5.28% shareholding to someone in the position of JS (effectively controlling another 69.25%) to be determined. The valuation of the C tranche requires the value of an aggregate 25.17% shareholding to someone in the position of JS (effectively controlling another 69.25%) to be identified. The purpose of carrying out those three valuations is so that the full amount of the marriage value can be identified by deducting from the C value the aggregate of the A and B values. One half of that marriage value is then added to the value of the A tranche in order to identify the price payable for the Petitioners' shares.

10. In his opening submissions, JS contended that, in determining the value of the C tranche, the valuers are required not to value an aggregate shareholding of 25.17% but to add to the value of the B tranche the price that would be agreed for the A tranche by a reasonable but commercially-minded seller in the position of HS/Estera and a reasonable but commercially-minded buyer in the position of JS. That aggregate value would then be carried forward as input C in the formula for calculating the marriage value. This approach is said to result from the indication in para 651 of the Judgment that the price for HS/Estera's shares should be that likely to be agreed between commercially-minded but reasonable persons in the actual positions of HS and JS in notional arm's length negotiations, having regard to any marriage value that would be released. JS's stated concern is that the pre-existing additional value that his personal shareholding has, by reason of his influence over the Second and Third Respondents' majority holding, should not form part of the value to be shared with the Petitioners. JS has identified two variants of his suggested approach, depending on whether the price that would be agreed for the A tranche takes into account a resulting uplift in the value of the B tranche or ignores any such uplift.

11. The Petitioners contend that what is required is the valuation of an aggregate shareholding of 25.17% to someone in the position of JS, not the value of a 5.28% holding plus the price that someone in the position of JS would pay for a further 19.89% holding. Having heard the Petitioners' closing submissions and my observations during the argument, JS did not pursue the point in his closing submissions.

12. In my judgment, the Petitioners are plainly right. The purpose of valuing the C tranche is in order to identify the full amount of the marriage value. The C value is an input into the formula that calculates the amount of the marriage value. The amount of the marriage value is then halved and added to the market value of the A tranche in order to provide the price payable. If JS's approach is adopted, the marriage value arising from putting together the A tranche and the B tranche is split in identifying the price that JS would pay HS/Estera to acquire the A tranche. The value of the C tranche would then include only half the marriage value rather than the full amount.

Halving the amount produced by the formula would result in only one quarter of the marriage value being added to the price. That is an outcome that was plainly not intended, since para 651 of the Judgment expressly states that HS and Estera should be paid 50% of any marriage value. I do not consider that there is any ambiguity in the language of para 651 and 652, or in the concept of identifying and sharing the marriage value. In order that 50% of any marriage value is added to the price, the C tranche must be valued as an aggregate holding of 25.17% and not in the way that JS contends. There is no question of any pre-existing value (or enhanced value) of JS's holding being shared because it will be deducted as B in the formula, as well as being included in C. Only the additional value attributable to putting JS's existing holding together with the A tranche is shared.

13. It is therefore not necessary for me to consider further in this judgment the alternative bases of share valuation addressed by JS's expert share valuer in his expert report.

3. The issues

14. Applying the correct interpretation, the Petitioners contend that the price payable by JS and the Company is £184,900,000. This is based on their expert's valuation of the hotel assets of the Company in the aggregate sum of £1,405,800,000 and their expert's approach to share valuation. If JS's expert's valuation of the hotel assets in the sum of £1,210,600,000 is substituted, the price becomes £149,300,000. JS contends that, on the basis of his expert share valuer's approach, the price is £137,100,000 if the Petitioners' valuation of the hotels is correct and £109,900,000 if his expert's valuation of the hotels is correct. There is therefore up to £75,000,000 between the parties in this trial.

15. Despite the apparently large difference between these calculations, there are in fact only relatively few issues that divide the parties' valuation experts. So far as the hotel valuers are concerned, the only issues are the following:

i) whether a "portfolio premium" of 10% should be added to the aggregate of the values of the individual hotels, as the Petitioners' expert contends;

ii) the appropriate level of income and expense projections for the individual hotels in the portfolio;

iii) the appropriate capitalisation rate to apply to the net income of each of the hotels, and

iv) the appropriate projections and finance interest rate to be used in valuing a development project for a new hotel in Leicester Square.

Of these, the portfolio premium issue forms the majority of the difference between the hotel valuers. Ignoring the premium, the Petitioners' valuer's aggregate valuation of the hotels is £1,278,000,000. The difference between that figure and the Respondents' valuation of £1,210,600,000 is marginally over 5%, which the expert valuers agree in their joint statement to be within a reasonable range of generally accepted valuation tolerance. In other words, neither valuer would (or did) say that the other's aggregate valuation (ignoring the portfolio premium) was unreasonable in amount.

16. The hotel valuations have been used by the share valuers to inform their valuation of the net asset value of the Company. They have additionally had to assess the value at the Valuation Date of the Company's other assets and liabilities. In that regard, there are some very small differences between them. The only substantial issues on which the share valuers disagree are the following:

    i) whether a deduction of £30 million should be made from the cash assets of the Company because that amount of cash is needed for working capital or as an appropriate cash reserve for the Company's business;

    ii) the discount from a pro rata share of the equity of the Company that is appropriate to reflect the market value of a minority shareholding of 19.89% in the Company (the A tranche);

    iii) whether a premium or a small discount to pro rata value is appropriate in valuing the B and C tranches.

17. As regards the discount for the A tranche, the opinion of the Petitioners' expert witness was that 18.7% is an appropriate discount, reflecting: (a) a discount for lack of control; (b) a discount for lack of marketability or illiquidity; and (c) a premium for the benefit of future realisation of the pro rata value at an uncertain time. He also considered that a discount for lack of control should translate into a premium to pro rata value when valuing a holding that does enjoy control. JS's expert witness considered that an overall discount in the range of 50% to 70% for the A tranche is justified and made his best estimate of the right discount at 60%. He disputed that there is any countervailing premium attaching to the B and C tranches and argued that a small discount to pro rata value is appropriate for them.

4. The hotel valuations

I will consider first the valuation of the hotels. The principal assets of the Company are its hotels. At the valuation date there were 12 trading hotels: nine in central London, one near Canary Wharf, one at Heathrow airport and one in Manchester. The Company also owned the Theatre Royal in Manchester and had assembled a development site in Leicester Square, for which detailed planning permission had been granted in May 2014, shortly before the valuation date. The valuations of the individual assets and the differences between the opinions of the expert hotel valuers are shown on the following table:

Property Name	Mr Stoyle (for Ps)	Mr Craggs (for R1)	Variance
Trading Hotels			
Berkshire	£64,000,000	£62,600,000	-£1,400,000
Bloomsbury Street	£85,800,000	£82,800,000	-£3,000,000
Grafton	£69,000,000	£66,700,000	-£2,300,000
Hampshire	£73,150,000	£70,600,000	-£2,550,000
Heathrow	£70,000,000	£66,700,000	-£3,300,000
Kenilworth	£57,000,000	£51,800,000	-£5,200,000
Manchester	£49,500,000	£45,300,000	-£4,200,000
May Fair	£515,000,000	£493,400,000	-£21,600,000
Mercer Street	£85,300,000	£79,200,000	-£6,100,000
New Providence	£40,000,000	£40,200,000	£200,000

Wharf			
Sussex	£11,700,000	£12,600,000	£900,000
Vanderbilt	£30,300,000	£30,400,000	£100,000
Other			
Leicester Square Site	£123,000,000	£103,800,000	-£19,200,000
Theatre Royal	Not valued	£4,500,000	N/A
Aggregate value	£1,273,750,000	£1,210,600,000	-£65,315,000
Portfolio premium or discount?	10.00% premium	0.00%	
Total	**£1,405,800,000**	**£1,210,600,000**	**-£195,200,000**

18. From this can be seen that, in percentage terms, the more substantial differences between the expert valuers (i.e. more than 5%) arise in the case of the Kenilworth, Manchester and Mercer Street hotels and the Leicester Square site. There is also a substantial difference in amount between their valuations of the May Fair hotel, though in percentage terms the variance is small.

19. The Petitioners' expert witness was Mr Tim Stoyle FRICS, a director of Savills. He is the head of hotel valuation at Savills and has been involved in valuing hotel property for more than 20 years. He has valued hotel properties for accounting, acquisition, development, litigation, regulatory and finance purposes. In the course of his lengthy oral evidence, he demonstrated a detailed understanding of the issues relating to hotel valuation and there is no doubt about his expertise. It was also apparent that he has experience of acting for purchasers and sellers in the market as well as substantial professional valuation experience. He confirmed that his valuations were carried out in accordance with the RICS Red Book definition of Market Value, namely:

> "The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion."

20. The First Respondent called Mr Graham Craggs MRICS, a director of JLL. He has specialised during his career in providing valuation and other advice in respect of hotel property. He has provided valuations to banks, owner operators (for internal and accounting purposes) and to investors and developers for acquisitions and disposals. He too demonstrated a detailed understanding of the valuation issues during the course of his evidence and I am satisfied of his relevant expertise and experience. He confirmed that his valuations were in accordance with the Red Book definition of Market Value. It became clear to me that his experience was more as a professional valuer and that he did not have the same degree of agency experience that Mr Stoyle has, though Mr Craggs did say that he was in touch with agency colleagues in his department on a daily basis.

21. Both expert hotel valuers have valued the trading hotels on a profits basis, and to that end each carried out a discounted cash flow forecast for each hotel. To do so, they had to make assumptions about the likely occupancy rate (that is to say the proportion of each hotel's available rooms that would be occupied on average over each year) and the average daily rate at which each hotel's rooms would be charged out, thereby calculating the amount of revenue per available room (or RevPAR, as it is known by valuers). From the RevPAR figure the total room revenue for the year for each hotel can be calculated, to which food and beverage and other operating revenue is added. The expenses of running each hotel are deducted. It is conventional in hotel profits valuations to deduct an annual amount for upkeep of and improvement to the fabric and furnishings of the hotel, usually 4% of turnover. The valuers also need to consider whether an allowance for further capital expenditure ("capex") should be made for more substantial improvements that a reasonable owner-operator of the hotel would expect to make after acquisition, with the aim of improving the standard of the hotel and increasing revenue. Once all these and other adjustments have been made, a net operating income figure for the year is derived. The valuers have made their predictions about growth (or otherwise) for the first 3 years from the valuation date, and thereafter the earnings are increased only by inflation to year 11. An appropriate exit yield (or capitalisation rate) is then applied to derive a capital value of the hotel at year 11. The 10 years' net income and the capital value are discounted back to net present value, using a selected discount rate, and the result is the current Market Value of the hotel.

22. This approach is common to Mr Stoyle and Mr Craggs and indeed is industry standard practice. I summarise it in this way because it helps to identify the inputs into the discounted cash flow that each valuer has to select, as an exercise of his judgement, and which go to produce the derived Market Value. The assumptions about RevPAR, expenditure and capex are not based on what the Company has achieved in the past or expects to achieve or do after the Valuation Date. They are based on what a reasonable operator of the hotel (the hypothetical purchaser) would expect to do and achieve, and the valuers have made their own assessments about this. The key inputs that give rise to the differences between Mr Stoyle's and Mr Craggs's valuations are the RevPAR figure and the capitalisation rate. In most (though not all) cases, Mr Stoyle's RevPAR figures are higher than Mr Craggs's and his capitalisation rate is lower. To that extent, it can be said that Mr Stoyle's assessments are more optimistic than Mr Craggs's. The Respondents contend that Mr Stoyle has been too optimistic, both in his assessment of likely revenue and expenditure and in his selection of a capitalisation rate to reflect the risk of the investment.

23. In accordance with my directions, the parties agreed a document called "Proposed Approach and Issues Relating to Valuation of the Shares". This stated that the market value of the issued ordinary shares in the Company would need to take account of the market value of each of the hotels owned by various companies within the Group. The hotel valuers were to exercise their own judgment on the market value of the hotel assets as at 30 June 2014, and it was agreed that they would be asked to consider a number of matters, including:

    i) Market conditions at the valuation date;

    ii) The values of the hotels as reported in the annual financial statements of the Group as at 31 December 2013;

iii) Available management accounts for the first six months of 2014;

iv) The reports of CBRE used for the 2013 accounts (these were Red Book valuations of the hotel assets conducted by CBRE at a valuation date of May 2013);

v) What if any adjustments should be made to the values reported in the 2013 accounts;

vi) In particular what adjustment should be made to the value shown for the Leicester Square site given that planning permission had been granted since the date of the accounts;

vii) What if any adjustment should be made to reflect the underlying business operations of the Group.

24. Apart from the CBRE valuations, there were in fact other valuations of the hotel properties that had been carried out by Mr Craggs himself: as at December 2011, as at January 2015 in the case of the Leicester Square site and as at December 2015 in the case of the other hotel properties. It was therefore possible to place the respective experts' valuations as at June 2014 in the context of other similar valuations carried out both before and after the Valuation Date. In their submissions, the Petitioners placed considerable reliance on the pattern shown by these valuations, alongside articles and indices relating to the general trends in the hotel industry over the relevant period. Their case is that Mr Stoyle's base valuations (leaving out the portfolio premium) fit very comfortably into the pattern of rising hotel values and improving sentiment over the period 2013 to 2015 in particular, and into the increasing valuations from December 2011 to December 2015, whereas Mr Craggs's June 2014 valuations sit very uncomfortably with that pattern of rising values and the valuations disclosed by his own earlier and later valuations and CBRE's valuations, to which the valuers were directed to have regard.

25. So far as market trends were concerned, there was a measure of agreement between the parties that the market was strengthening in 2014, was predicted to continue to grow during 2014 and 2015 and did grow, though the rate of growth in fact slowed during 2015. In light of that, subject to any particular factors affecting any of the hotels at any particular times, one would expect to see values rising from CBRE's valuation in 2013 to the parties' valuations in 2014 and further to Mr Craggs's valuations in 2015, always bearing in mind that there is an accepted range of values within which it is not possible to say that one valuer is wrong and another is right.

26. Relevant publications included PwC's UK hotels forecast 2014 (published in September 2013), which predicted modest growth in occupancy rate of 0.9% and growth in RevPAR of 2.4% for London for 2014, and equivalent growth rates of 0.4% and 1.8% in the provinces. An update to this forecast published in March 2014 was much more upbeat, talking of "high hopes for a record breaking year". It referred to a strong finish to 2013 and predicted RevPAR growth of 3.8% for 2014 and 5.2% for 2015. In the provinces, the predicted growth rates were now 3.0% and 4.3% respectively. London was predicted to see occupancy rates at almost 83%, the highest since the mid-1990s. However, 12,000 new rooms in London were predicted to

appear over the two-year period and the forecast also noted increasing costs. So the picture was not unqualified euphoria.

27. One of the difficulties that hotel valuers have is the relative lack of comparable transactions from which helpful evidence can be gleaned. Even where there are transactions, the experts agreed that there is usually a lack of transparency about the information that was available to the purchaser and the basis on which a bid was formulated and a price agreed. The full detail of the seller's actual trading and customer base and the buyer's assumptions about the future are unlikely to be available, other than to the firms who were involved in the transaction. Much of that information is required to be treated as confidential and so the market operates on the basis of only a broad summary of the transaction, which may and usually does enable an assessment of the initial yield of the investment to be made, though this may need to be adjusted depending on matters such as the amount of capex intended to be made by the purchaser. Moreover, an initial yield based on projected year 1 trading must not be confused with the exit yield (or capitalisation rate) used by the experts to capitalise the stabilised level of net income after a number of years' trading.

28. In this case, the hotel experts were able to point to a significant transaction of the InterContinental Hotel on Park Lane in March 2013, in which the purchaser bought (from different sellers) the leasehold and freehold interests but acquired the hotel subject to a long-term management agreement. Although Mr Stoyle originally considered that this reflected an initial yield of 4.31%, it was eventually common ground that, after allowing for capex, an initial yield of 4.2% was likely to be correct. The InterContinental is a well-known and well located 5 star hotel and the experts agreed that it was the best comparable for the purpose of valuing the 5 star May Fair hotel. Another transaction involved the acquisition in November 2011 of the 4 star Thistle by Kingsley Hotel in Bloomsbury – a rather less luxurious hotel but nevertheless one comparable to the standard of other mid-town hotels in the Edwardian Group portfolio, a number of which are in close proximity to the Thistle. This transaction was agreed to reflect an initial yield of 5%.

29. After referring to a substantial quantity of economic statistics and hotel publications, and strong transactional activity in 2013/2014, Mr Stoyle's opinion was that the market was strong by June 2014, with considerable optimism about the future, and that there would be strong demand for each of the Group's hotels. His individual hotel valuations do not assume any capex at a level greater than the 4% of turnover reflected in the standard FF&E allowance. He considered that the hotels were all well-maintained and in good condition in 2014 (and indeed when he inspected in 2018) and not in need of urgent capital expenditure to bring them up to standard. He considered that a potential buyer would necessarily be of a mindset expecting to achieve better levels of performance than had been obtained by the Edwardian Group, while acknowledging that there was no question of mismanagement by the Company.

30. While emphasising that he had considered not what the Company could achieve but what a reasonably efficient operator would assess as the fair maintainable turnover and operating profit, Mr Stoyle was comfortable with the fact that his year 1 trading predictions were generally a substantial increase on what the Company had recently achieved. He included increases in turnover up to and including year 3, but then added only an inflationary increase thereafter up to year 10 of his discounted cash flow forecast. Challenged in cross-examination with being unjustifiably over-optimistic on

both profit and capitalisation rates, he accepted that his valuation did reflect optimism but that that was justified by the market conditions, the general optimism of owner-operators buying hotels, and by the fact that there would be substantial demand for the hotels. Mr Stoyle also relied on the fact that his valuations were broadly comparable with CBRE's valuations of May 2013, after allowing for a year of improved market conditions in between the valuation dates.

31. The optimism of Mr Stoyle translated into capitalisation rates that were generally 0.25% lower than Mr Craggs's rates and operating profits that were higher. In some cases, Mr Craggs's turnover figures were higher than Mr Stoyle's, but he emphasised that he regarded significantly higher capex as being needed to achieve these returns, and as a result his net operating profits were generally lower. It is worth emphasising two matters here:

i) It is not appropriate, as both experts agreed, to focus intently on one input into a profits valuation and treat it as being "the difference" in the final value, at least where there are differences in other inputs too. A profits valuation, supported by a discounted cash flow model, is a balanced exercise, requiring careful judgment on the part of the valuer about the selection of all inputs. A small adjustment to one input alone can make a substantial difference to the valuation. Both experts said that they would and did cross-check against other valuation measures, such as price per room or price per square foot.

ii) In most cases, there is only a small difference between the respective experts' individual hotel valuations. In property valuations, unless there are very close comparables on which to rely, a divergence of up to 10% is often not an unreasonably wide range of values. The experts acknowledge this in their joint statement. They are in most cases within 5% of each other, which for a complex hotel valuation is very close.

32. The Respondents criticised Mr Stoyle for projecting substantial increases in net operating profits for years 1-3 without any greater capex allowance or identifying any specific reason for his increased net profits figures, and for using operating costs that were in some cases lower than the Company's accounts demonstrated, or that at least had not increased commensurately with the increase in profits. His answer to this was that he was basing himself on a hypothetical operator's projections, not on the Company's results, and that the mood was optimistic at the time. Mr Craggs accepted that the mood in the market was "cautiously upbeat" but the Respondents suggest that that is the limit of what can fairly be said about trading conditions at the Valuation Date.

33. Mr Craggs generally took a more cautious approach. He considered that enhanced performance in terms of turnover depended on substantial capex – more than the standard 4% FF&E allowance – and that significant income growth would be targeted by a purchaser by means of such expenditure, though this would necessarily impact on profits in years 1-3. Generally, Mr Craggs's capitalisation rates were higher. He considered that the capitalisation rate for the InterContinental transaction would have had to have been in the region of 5.75% to justify the price of £400 million, but the only basis on which he said so was that he recalled that he had worked the figures out in 2013, though he no longer had the piece of paper on which he had done so. Mr Craggs relied on prime West End office yields of between 3.75% and 4.5% at the

Valuation Date as a low risk investment that suggested that capitalisation rates for the Company's hotels had to be higher.

34. *The May Fair Hotel.* The parties spent much time examining the valuations of the May Fair. This was perhaps unsurprising since its value was close to half of the aggregate value of the hotel assets. It is out of character with all the other operating hotels in the Group, in that it has (as was agreed) a top quality ("AAA") location between Piccadilly and Berkeley Square and is a high quality 5 star hotel, if not in the same bracket as the "trophy" hotels in the West End like the Lanesborough, the Connaught or Claridge's. The difference in quality is reinforced by the fact that, unlike the other operating hotels, the May Fair is not marketed as a Radisson Edwardian hotel. The Radisson Edwardian Hampshire hotel on Leicester Square is ranked 5 star but in terms of location and quality is not comparable with the May Fair.

35. The difference in the parties' experts' valuations of the May Fair, though amounting to £21,600,000, was nevertheless only 4.4%. The differences were that (1) Mr Stoyle assumed net income in excess of the Company's budgeted figure for year 1 – which itself was significantly ahead of results for y/e 2013 – and Mr Craggs assumed even higher income but only at the price of an extra £5.64m of capex – and (2) Mr Craggs's capitalisation rate was in this case much higher than Mr Stoyle's, being 4.75% compared with 4%. Nevertheless, and as an example of the points made in para 32 above, if Mr Craggs's capitalisation rate were reduced by only 0.25% to 4.5%, his end valuation of the May Fair, based on his expenditure and income projections, would have been £6 million higher than Mr Stoyle's valuation. Mr Craggs accepted that he could not say that 4.5% was an inappropriate capitalisation rate to use for the May Fair.

36. The other individual hotels where there was a more than 5% difference between the experts are the Kenilworth (in Bloomsbury), the Manchester hotel, the Mercer Street hotel (Seven Dials, Covent Garden) and the Leicester Square site. I leave out of further analysis the Sussex Hotel, which it was accepted was quite different from the other hotels in terms of character, and because of its low value.

37. *The Kenilworth Hotel.* This is situated in Bloomsbury Way, directly opposite the Bloomsbury Hotel. Unlike the Bloomsbury Hotel, it had been performing particularly poorly for the Company before the Valuation Date. The hotel has a relatively large proportion of small ("single") rooms, which reduces the RevPAR figure significantly below that of the Bloomsbury Hotel. Notwithstanding the actual performance, both expert valuers project much higher turnover, Mr Stoyle slightly higher than Mr Craggs in year 1 but becoming progressively higher than Mr Craggs in years 2 and 3. Mr Craggs in this instance does not include a capex allowance greater than the FF&E allowance, and Mr Stoyle assumes a level of expenses below that actually incurred by the Company in the year's trading leading up to the Valuation Date. Mr Stoyle's capitalisation rate is 5.5%, compared with 5.75% for Mr Craggs. The rates used for the more valuable Bloomsbury Hotel are 5.25% and 5.5% respectively. The difference in valuation is therefore primarily a result of the slightly lower exit yield being applied by Mr Stoyle to a higher projected net operating profit.

38. *The Manchester hotel.* This is a 5 star hotel situated in the centre of Manchester. The market and the performance of the hotel were growing strongly in the first half of 2014. In this case, Mr Stoyle's projections are much higher than the results achieved

by the Company in the full year ending on the Valuation Date. This is as a result of his assessment of costs savings and assumed growth in income. His year 3 figures are 50% higher than the adjusted net operating profits for the year to 30 June 2014, whereas Mr Craggs's year 3 figure is 37% higher, but with an additional £2.8million of capex over the FF&E allowance. On the other hand, Mr Stoyle's capitalisation rate is 0.5% higher than Mr Craggs's rate in this case. So, while both valuers are optimistic about the increasing value of the Manchester hotel, Mr Stoyle has tempered his higher assessment of the trading prospects (without additional capex) with a higher capitalisation rate, whereas Mr Craggs has been more moderate in his projections but locked these into capital value at a lower yield, reflecting the long-term quality of the asset.

39. *The Mercer Street hotel*. This 4 star hotel is more modern, having recently been substantially refurbished, with a relatively large number of rooms that are on the small side for a top quality hotel. This time there is virtually nothing between the valuers' projections, save that Mr Stoyle's net operating profit figure for year 3 trading is slightly ahead of Mr Craggs's projection. No additional capex allowance is made by Mr Craggs in this case. Mr Stoyle capitalises at 4.75% to Mr Craggs's 5.0%. This is therefore another example of very modest differences between the experts' inputs into the cash flow forecast that are nonetheless capable of producing a variance of over 7% in their end valuations. The differences are that Mr Stoyle considers that further growth in net earnings can be extracted over 3 years without significant capex (Mr Craggs only allows for compounded growth over 3 years where there is such capex) and his capitalisation rates are one degree keener than Mr Craggs's, reflecting his more positive outlook at the valuation date.

40. *Leicester Square*. This is an unusual case because, on the Valuation Date, the property was an assembled development site with detailed planning permission for an ambitious 360-bedroom hotel. The purchaser of the hotel would need to demolish the buildings on site, excavate underground to facilitate the very substantial, multi-level basement accommodation and erect the new hotel and cinema before it could operate the site as an hotel. For this reason, the agreed approach of the experts is a residual valuation – i.e. one that identifies the residual value of the land after deducting all costs (including finance) of acquisition, development and sale and a profit allowance from the anticipated gross development value (GDV) of the project. Mr Stoyle values the site at £123 million and Mr Craggs at £103.8 million, a variance of over 15%.

41. There is a number of matters in dispute in relation to this valuation. The first is whether the valuers should have valued on the basis of a 350-room hotel or a 360-room hotel. Planning permission was obtained on 1 May 2014 for 360 rooms, but it is clear that by January 2015, when Mr Craggs valued the property for the Company's bankers, this had been replaced by a fully-costed 350-room design, which (presumably) had a smaller impact on the GDV than the reduction in construction costs associated with it. This would translate into an increase in the residual value of the unimproved site.

42. Which version of the development should be valued depends on what a hypothetical purchaser would have been provided with in June 2014 as part of the process of appraisal and due diligence during the marketing period. Mr Craggs has taken the view that he can only look at what was in existence in June 2014, and that anything that came into existence or happened after that date is irrelevant to his valuation. He

has therefore disregarded further detailed designs and costings that were in existence by October 2014.

43. That approach is only partly correct, in my judgment. It is true that any event that occurred after the Valuation Date that was not previously anticipated cannot be taken into account. It could not have impacted on the negotiations that led to an agreement and sale on the Valuation Date. But the question is not simply what documents the Company had in existence at that time. That is because there is an assumption, in valuing to market value, that the property has been appropriately marketed for a sufficient time to allow fully considered bids to be made for it. Accordingly, if the site had in fact been marketed in the period leading up to the Valuation Date, it is common ground that the seller would have prepared projections and analysis relating to the proposed development, in order to encourage bidders to form a positive view of the viability and profitability of the proposal. So the fact (if it is the case) that a detailed cost plan was not prepared until after the Valuation Date is not the answer. A similar plan would have been prepared by a seller if the site had been marketed prudently in June 2014 with the benefit of the planning permission. Mr Craggs accepted that that would have been so.

44. The relevant question is therefore: at what stage did the 350-bedroom plan (which is actually being pursued by the Company) materialise? If before the Valuation Date, it is inherently likely that details supporting that more beneficial development would have been prepared in support of a sale of the site. There was no direct evidence from the Company or JS about this, nor disclosure relating to the genesis of the 350-room design. The fact that planning permission for a 360-room development was only obtained on 1 May 2014 is not much of a guide, since the plans for that would have been prepared and lodged a substantial time before the grant of planning permission, and the Company would have been advised that it could expect to obtain approval of non-material amendments to the permission without needing to make a new planning application. A cost plan dated 30 October 2014 speaks to total estimated costs of the main construction works of £125,898,179. That appears to correspond to figures of £123,698,179 for hotel construction and £2,200,000 for demolition in Mr Craggs's "Argus" residual valuation attached to his 2015 valuation for the bank, which was based on the 350-bedroom scheme. So a cost plan for that scheme was in existence by the end of October 2014, four months after the valuation date.

45. If it were the case that the 350-bedroom scheme was only adopted after the Valuation Date, I am sure that the Company would have produced documents or evidence to that effect. Instead of doing so, JS sought to argue against Mr Stoyle's reliance on the content of Mr Craggs's 2015 valuation on the basis that it postdated the Valuation Date, and that the planning permission is "surely a better guide as to the Company's plans as at [the valuation] date". That was argued rather than adducing clear evidence of the true position, which the Respondents could have done, through JS or Mr Wason, or by disclosing relevant documents. In this regard, the Petitioners have complained about the Company's failure to comply with its disclosure duty, and I will revert to this issue when considering in Part 9 of this judgment the ability of the Company to pay the purchase price for the Petitioners' shares. The conclusion that I draw is that it is more likely than not that, at the Valuation Date, the Company had already moved to a 350-bedroom scheme, and that a scheme equivalent to that shown in the cost summary of October 2014 would have been prepared and provided prior to

the Valuation Date if the site had been marketed for sale. Accordingly, the valuation of the Leicester Square site should be based on the 350-room scheme.

46. The next issue is the finance rate of interest. Mr Stoyle uses 4.75% and Mr Craggs 6%. When asked about this, Mr Craggs explained that he was not an expert in development finance so he spoke to a colleague at JLL when preparing his report (in late 2018) and that person's view was that 6% would have been about right in June 2014. However, in his supplementary report, Mr Craggs states that his assessment of LIBOR plus 450 basis points (approximately 6%) was "based on my general experience". What Mr Craggs did not do was consider what rate he used in his 2015 valuation. That rate was 4.75%. Mr Craggs could not explain the difference, except to insist that he had not looked at his 2015 valuation because it was prepared after the Valuation Date and it was important that he tried to value as at June 2014. I consider that it is highly likely that, when valuing the site for the bank in 2015, Mr Craggs would have given such an important input into his residual valuation careful consideration, and that the views of colleagues that he would have sought at the time, in early 2015, are likely to have been more reliable than his own unaided view (or the retrospective view of someone that he asked) in 2018. It was common ground that there were no economic or political events between June 2014 and January 2015 that would have affected this question.

47. A further issue is the average room rate that the valuers used in calculating the GDV of the project. Mr Stoyle's projection for his first stabilised year of trading is £333.35, equating to £280 as at the Valuation Date. Mr Craggs's equivalent rates are £304.74 and £257.53: a difference of a little under 10%. Mr Craggs contends that, by comparison with an average rate of £254.99 in 2013 for a set of comparable hotels in the same location, his assumed rates are more appropriate. However, Mr Craggs's own average room rates in years 3, 4 and 5 of his 2015 valuation (his projections stabilised at year 5 level) were £330, £338 and £347 respectively, which compares to Mr Stoyle's £333. Mr Craggs confirmed that his 2015 projections were his own and were not based on the Company's projections, and that (as his 2015 report says) these projections were the likely projections that a potential purchaser would have adopted in January 2015. Allowing for 6 months of growth from June 2014 at a time of continued optimism, there is nevertheless broad correlation between Mr Stoyle's projections and those made by Mr Craggs shortly after the Valuation Date; but Mr Craggs's late 2018 retrospective projections are out of line and appear unduly conservative.

48. A final discrete point on the Leicester Square valuation is the allowance for contingencies, where Mr Craggs allows 7.5%, as he did in 2015, and Mr Stoyle allows only 5%. The Petitioners' argument is that an owner operator, as opposed to a developer, would be comforted by the fact that the 10% profit allowance in the residual valuation was all potentially available to support the contingency allowance. On this point I prefer Mr Craggs's view and reject the Petitioners' argument. The experts agreed that a residual valuation was appropriate to determine the market value of the site. There is not one market value for a developer and another value for an owner-operator: there is only one market and one market value. The project was expensive and inherently risky; not one that would ordinarily be undertaken by an hotelier as opposed to a developer. The 10% profit allowance is in any event very low for a developer's profit margin for a development such as this. I do not consider that

an owner-operator would have taken a more relaxed approach to risk than a developer. Mr Stoyle did not suggest that his lower contingency was a result of making a more generous assessment of build costs or any other input, so it was not compensated for elsewhere in the valuation.

49. Apart from questions of the Red Book market value of the site, the Petitioners had a further argument about adjustments to the Leicester Square valuation that should be made when valuing the shares of the Company. This was that an owner-operator such as the Company would not incur acquisition costs relating to land purchase, or seek to make a developer's profit, or incur selling costs on completion of the development, so that the value of the site to the Company is greater than the market value stated by the hotel valuers. On that basis, they contended, £42 million should be added back to the net asset value of the Company. I will revert to that argument when considering what assets are to be valued by the share valuers (at para 76).

50. All the parties were adamant in their submissions that I should resist any temptation to split the difference between the experts' valuations, notwithstanding the fact that the valuers agreed that their valuations were all within a reasonable degree of variance save for the Leicester Square project, which as I have explained has a number of distinct issues. Each of the Petitioners and the Respondents argued that the other side's valuer had been wrong and/or unreasonable in his approach in principle, and that to split the difference between them (disregarding the portfolio premium) would unfairly give the other side one half of the benefit of its expert's unreliable valuation. Since both experts accept that the other's valuation is a reasonable valuation, that cannot be the right approach. I am surprised that the expert witnesses were unable to narrow some of the differences between them in preparing their joint statement, and that neither of them identified in their supplementary reports a range of value for each hotel, but took a somewhat entrenched position as to the correctness of their own valuation.

51. I will not, however, simply split the difference between two reasonable valuations because I am persuaded, on balance, that Mr Stoyle's values are more likely to be those that would be achieved on a notional sale of individual hotels on the Valuation Date. In reaching that conclusion, I recognise that Mr Stoyle's valuations of most of the hotels are likely to be at the top end of what would reasonably be assessed and bid (with the benefit of professional advice) by an investor or intending owner-operator in the market on 30 June 2014. My reasons for preferring Mr Stoyle's values are the following:

   i) There was a distinct improvement in market conditions in 2014. I accept Mr Stoyle's evidence that this was marked and was affecting sentiment in June 2014. The predictions at the time were for strong growth in 2014 and 2015. I accept Mr Stoyle's opinion that the market was optimistic at the Valuation Date.

   ii) I also accept that market sentiment is important and can have a significant effect on purchasers, making them more eager to buy, more optimistic in their forecasts and accordingly more generous in their bids. Mr Stoyle, I consider, has a better feel than Mr Craggs for the way in which the market operates, owing to his agency experience. Although Mr Stoyle made some mistakes with the technical aspects of his expert reports and Mr Craggs's reports were more polished and technically more precise, feel for the way in which the market operates is important when seeking to identify value at a particular point in time, particularly where there are few good comparables.

iii) I accept the evidence of Mr Stoyle that there was likely to be strong demand for these hotels if marketed individually. There would very likely have been competition for them, or at least the perception on the part of would-be purchasers that they were in a competitive market. Mr Stoyle considered that hotel owner-operators would be likely to have an optimistic mindset about their ability to achieve better results. I am persuaded by that evidence, particularly at a time of strong market growth. I accept that those bidding for hotels would not feel confined by the Company's historic results but would formulate their own predictions.

iv) Although I accept Mr Craggs's evidence that in many cases a purchaser will look to spend money to improve what the hotel offers, or to re-brand it, it is very difficult to predict what a purchaser will do. There can be a great difference in approach between different hoteliers as regards "aggressive" capex, designed to raise the quality of the hotel. Making a specific capex allowance above the standard 4% FF&E allowance is therefore necessarily speculative. Mr Craggs accepted that it was a matter of judgment for an individual hotelier. Since, with very few exceptions, the standard of the hotels was high and there was no obvious need for "defensive" capex to maintain existing standards, I consider that Mr Stoyle's approach of not using capex to justify higher future growth is better, and that his assessment of future net operating income is generally reliable, albeit at the higher, optimistic end of the scale.

v) Mr Stoyle took careful account of the 2013 CBRE valuation, as the instructions to the expert valuers required, and his hotel valuations generally fit well within the pattern of valuations, starting with Mr Craggs's December 2011 valuations, then CBRE's May 2013 valuation, and ending with Mr Craggs' own December 2015 valuations of the hotels (other than Leicester Square). Although the graphs Mr Stoyle used to seek to demonstrate the steadily upwards trend of values were faulty in various respects, the trend is established by the values. There are individual exceptions, such as the Heathrow hotel, where values have been affected by significantly increased competition since 2011. Subject to that, in the case of the hotels where the variance between the two experts was greatest, Mr Stoyle's valuations are very much in line with the increasing trend of value.

vi) Mr Craggs took a more blinkered, or purist, approach in his valuations. He did not consider CBRE's valuations except for the purpose of extracting any indications of the physical condition of the hotels in 2013, and he did not have any regard to his 2011 or 2015 valuations. He considered, rightly, that any events that happened after the valuation date were irrelevant to his valuation. He considered that this precluded him from reviewing (in the sense of standing back from and assessing) the values that he obtained as at the Valuation Date in the light of his other valuations and CBRE's valuation. In this respect I consider that he went too far. First, as already identified in relation to Leicester Square, he did not ask himself what material would have been available on the Valuation Date if the hotels had been appropriately marketed prior to that date; he only used such documents as were in fact available on that date, when in the real world no marketing had taken place. Second, although he was doubtless right to ignore his earlier and later valuations in the first place, to enable him to reach a provisional view on June 2014 values uninfluenced by other valuations, he should then have stood back and considered, in the light of other valuations available to him, whether he had reached a sound conclusion. That is particularly so as he (like Mr Stoyle) was seeking to value almost 4½ years after the event. It is notoriously more difficult in retrospect to capture the state of the market at a much earlier time. Both valuers had the benefit of top quality contemporaneous valuations before and after the Valuation Date, prepared for the Company's lenders, which established a trend of values. These would have been of assistance to a valuer in considering whether he had reached sound conclusions. I consider that Mr Craggs, acting as an independent witness whose primary duty was to assist the court, should have asked himself whether his values sat comfortably with these other valuations, particularly as two of them were his own valuations. That is of some importance, when instructed on behalf of one side in vigorously contested litigation where there is always a risk of some subconscious bias towards that side. Mr Craggs reached values that were (generally) the same as or (in aggregate) lower than his 2011 values, lower than CBRE's 2013 values, and substantially lower than his 2015 values. That is not to say that Mr Craggs's 2014 values were unreasonable but that, as part of the process of sense-checking his values and standing back from the technicality of the discounted cash flows and the residual valuation, he should have asked himself questions about why his 2014 values did not fit very well into the proven trend of values.

vii) Although December 2015 was 18 months after the Valuation Date, during which there had been continued growth in the market, though at a much reduced rate in 2015, there was no significant financial, economic or political change that would in itself explain a substantial difference in values from June 2014. In fact, Mr Craggs's 2015 values are significantly higher, more than 10% higher in aggregate. Mr Craggs stresses in his report that there are always factors that affect individual properties and their values and that values do not move in a linear fashion, which is doubtless correct; but on the other hand he does not identify any particular factors relating to particular hotels that explain the substantial difference between 2014 and 2015 values.

viii) The concern that Mr Craggs did not sufficiently stand back and review is especially acute in the case of Leicester Square, where his valuation for the bank was at a date only 6 months after the Valuation Date, and where various assumptions were required to be made as inputs into a residual valuation – a technique that, as both valuers accepted, is particularly sensitive to small changes in such inputs. Had Mr Craggs considered how in his January 2015 valuation he arrived at a value of £126 million whereas he now valued at £103.8 million, he might have asked why he was using a markedly higher finance rate and questioned whether what his experience told him (or his colleague had said) in 2018 was right, and whether his projections were too conservative compared with what he had considered to be appropriate in

January 2015. One difference was that Mr Craggs valued the 360-bedroom scheme at the earlier date, and it is fair to record that on Mr Stoyle's equivalent valuation (using the figure for construction costs that Mr Craggs took) this reduces the land value by £3m, compared with the 350-bedroom scheme. But this on its own does not explain why there is such a substantial difference between Mr Craggs's two valuations.

ix) In my view, Mr Craggs's capitalisation rate of 4.75% for the May Fair hotel was surprisingly high, given that he uses 5% for the Hampshire and that the analysis of the Thistle by Kingsley transaction in 2011 gives an initial yield of 5%. Although the Hampshire is nominally a 5 star hotel, it is of a different quality from the May Fair. One would expect the AAA location of the May Fair to attract a substantially lower capitalisation rate in comparison with such hotels. Mr Craggs accepted in evidence that 4.5% would be a reasonable rate to use, and with this his valuation of the May Fair would increase to £521million, in excess of Mr Stoyle's valuation (though admittedly this was based on some aggressive capex).

x) I was not persuaded by Mr Craggs's comparison with the yields on prime offices. He used this to justify a significant differential between them and the exit yield for the May Fair. As Mr Stoyle explained, an investor in a prime office building and an owner-occupier of a 5 star hotel are very different purchasers. The former is looking for ultra low-risk investment, where the location and quality of the property and strong covenant of the tenant guarantee an income stream that ratchets upwards in time. The latter is buying a business, where the risks are greater but so potentially are the rewards, which can increase on a yearly basis, not just once every five years under a standard commercial rent review clause.

xi) Although, as I have said, Mr Stoyle made some technical and presentational errors in his reports, I considered that his projections and capitalisation rates more accurately capture the tone of the market in June 2014 and the likelihood of keen interest in and competition for the hotels, and that Mr Craggs's figures were a little too conservative. For reasons explained below, I do not consider that Mr Stoyle's opinion about a portfolio premium is such as to damage his credibility as a witness, although in the end I do not accept that there should be any portfolio premium.

52. My preference for Mr Stoyle's valuations does not mean that Mr Craggs's valuations were unreasonable in amount or wrong. What it means is that I consider that the values spoken to by Mr Stoyle are more likely to represent the market value of the hotel assets on the Valuation Date than the values spoken to by Mr Craggs. In so deciding, I recognise that in some cases (the Sussex and Vanderbilt Hotels) Mr Craggs's values are higher than those of Mr Stoyle, but it would clearly be inappropriate to pick and choose between the valuations of each valuer for individual hotels, or the component parts of each valuation, given that all valuations are agreed to be reasonable valuations. They should not be dissected with scientific precision because valuations are ultimately informed judgments, not calculations, and moreover the variance between the two experts is in almost all cases small.

53. In the case of the Leicester Square site I prefer the approach of Mr Stoyle, for the reasons that I have given, save that I consider that a contingency allowance of 7.5% is appropriate in the residual valuation. The effect of that adjustment is that the residual value of the site becomes £120.4 million rather than the £123,000,000 in Mr Stoyle's valuation. With that single change, the aggregate value of the individual hotel assets becomes £1,275,400,000.

5. Portfolio premium

54. Mr Stoyle's evidence was that a portfolio premium of 10% should be added to the aggregate value of the individual hotels. That would add to the value of the portfolio some £127 million: a very substantial sum of money on top of aggregate hotel values of £1.27 billion. Mr Craggs rejects the idea that the hotels, if sold as a portfolio, would attract a higher bid.

55. There are logically two questions involved: would the hotels be marketed and sell as a portfolio, in a single transaction; if so, would the buyer pay more than would be likely to be achieved in aggregate if the hotels were sold singly?

56. Mr Stoyle said that, if advising the seller, he would advise that the hotel properties be offered as a portfolio, initially "off market" to targeted possible buyers, with a view to achieving a higher price at lower transaction costs. The targets would be sovereign wealth funds, ultra high net worth individuals and hotel groups looking to establish a foothold in the London market. I accept that a seller would first assess the possibility of a portfolio sale before marketing the hotels singly. It makes sense to do so. It cannot effectively be done the other way round, as Mr Craggs accepted. I also consider it likely that a seller would be advised (and as a prudent seller would accept the advice) to seek to sell as a portfolio. As Mr Stoyle accepted, there is only a limited number of potential targets for such a sale.

57. Mr Craggs considered that there might be three or four potential buyers who would have the means and the interest to invest such a large sum in London hotels. The attractions of a portfolio sale, to the buyer, are the ability to invest a large sum in one transaction, rather than piecemeal, and the benefit of the Radisson branding agreement, giving the Company exclusive use of the Radisson name within the M25 (with one exception) and thereby the benefit of significantly lower royalty and reservations fees. The buyer, if a hotel owner-operator, would be able to achieve similar synergy and cost savings through a group operation as the Company has been able to achieve. However, Mr Craggs considered that the type of buyer who might be attracted by such a large acquisition would only really be interested in the May Fair and the Hampshire; the other hotels were not of the requisite quality for the kind of purchaser that he could identify.

58. Mr Stoyle's expert report says:

> "There is no hard evidence that portfolio premiums were being achieved in the market and it is notoriously difficult to provide an accurate assessment of any premium (or discount) for a group sale. However, investor sentiment would suggest that premium prices have been paid where a group presents a unique opportunity or where there has been a specific

> opportunity to create a hotel platform and synergistic operational efficiencies." [22.16]
>
> "In my opinion, if a portfolio like this were introduced into the open market as a portfolio opportunity in June 2014 it is possible that a premium of up to 10% could have been achieved. This is due to the weight of investor demand for high value hotel platform, and resultant savings from incorporating the group into an existing portfolio/platform of similar hotels of which there are numerous examples. The subjectivity of this assessment should be noted." [22.19]

At that stage, his opinion was tentatively expressed. In his oral evidence, he firmed up considerably on this tentative opinion, ending up by saying that he was 75% certain that there would be a 10% premium paid for the whole portfolio.

59. He also explained that the opportunity to acquire a substantial number of good, Central London hotels was extremely rare (he had not seen something comparable in 20 years) and that this opportunity would be likely to attract substantial interest. Mr Craggs agreed that there was commercial logic in the collection of assets that the Company holds, albeit not a collection that would appeal to a sovereign wealth fund or an ultra high net worth individual.

60. I accept Mr Stoyle's evidence that there would be interest, though I am doubtful whether this portfolio would interest a sovereign wealth fund or an ultra high net worth individual. The reason is that the portfolio is an unusual mix of one hotel in an AAA location that could be made into a luxury 5 star hotel, one development site in Leicester Square, one other 5 star hotel in Leicester Square (though not in the same league as the May Fair), ten other operating hotels in Central London mostly of a 4 star rating, though two much lower in standard, and single hotels at Heathrow and in Manchester. While the May Fair might be viewed as a potential trophy asset, on account of its location, the other hotels are not. That is doubtless why the May Fair alone is not branded as a Radisson Blu Edwardian hotel. Yet the May Fair makes up only just less than half of the aggregate value of the hotels. Anyone particularly interested in the May Fair would have to pay a lot more than its value and acquire 13 other hotels.

61. It is easier to accept that an established hotel chain, looking to acquire a real presence in London, would be very interested in the majority of the hotels of the Company, but it would also have to pay over £500million for the May Fair too. And it would have to be the kind of purchaser with the appetite to become involved in the Leicester Square development (or sell it off). An investor might not be deterred by an expensive development prospect, but an hotelier might be. The portfolio is therefore of a quite different character from the 3 prestige hotels (The Connaught, Claridge's and The Berkeley) bought after the Valuation Date by the Maybourne group for a Middle Eastern sovereign fund, and the four modern 4 star Grange hotels that are currently being sold. Anyone who bought the portfolio with a view to re-selling certain of the properties would be unlikely to be adding premium value to its bid. The portfolio is therefore only likely to be particularly attractive as a whole to the kind of operator that the Company is, or alternatively a very substantial hotel chain that

wanted to add to its collection and had the necessary financial muscle to buy the May Fair and build out the Leicester Square development.

62. Supposing such interest in a portfolio sale, would the purchaser pay a premium value? Mr Stoyle accepts that there is no precedent or evidence to support that conclusion. The Petitioners effectively invite me to conclude that it is obvious that the hotels have much greater value as a portfolio than on a "break up" basis. Mr Stoyle's instinct is that there would very likely be a substantial premium achieved. He accepted, however, that this depended on an assumption that there would be competition for the portfolio. If the hotels are being offered as a portfolio, whether "off market" or openly, then unless there is a perception of likely interest from a sovereign wealth fund or an ultra high net worth individual, or competition from another hotel operator, there is no reason for an interested hotelier to overbid substantially.

63. I am not persuaded that a hotel operator would add a substantial premium to its bid for the hotels. It is not obvious that there would be real competition for the whole portfolio. An hotelier's starting point would be Mr Stoyle's valuations of the individual hotels, where optimism about the ability to increase net operating profit substantially, without aggressive capex, is already "priced in" to the valuations, reflecting the fact that any purchaser would expect there to be competition for these assets sold individually. In accepting Mr Stoyle's individual valuations, I have already indicated that these values are quite aggressive. Mr Stoyle said that purchasers "tend to be reasonably aggressive in pricing, optimistic in pricing, in order to secure the asset". Mr Craggs considered that the value that the Company has been able to extract from them, as a group, is already "baked in" to the individual valuations. I did not understand him to say that he relied on the Company's actual results, when assessing what would be a fair level of trade. In that regard, it is not obvious why operating efficiencies of a group would already be included in his individual valuations. But Mr Craggs does point out that in a number of cases Mr Stoyle has projected operating expenses below the levels actually incurred by the Company, with the benefit of its economies of scale. To that extent it can be seen that a purchaser might struggle to see any premium value on top of the aggregate value of Mr Stoyle's values.

64. In short, I consider that any portfolio premium is too speculative. Mr Stoyle's first thoughts were that it was "possible" that a premium of up to 10% could be achieved, but said that the subjectivity of such an assessment should be noted. I would accept that evidence, but I do not accept a likelihood of 75% of achieving a 10% premium, as the Petitioners claim. It is possible that a premium of up to 10% could be paid, depending on various factors that are very hard to assess, in particular the identity of those who might have been interested in June 2014 in buying all the properties and on their perception of the likely interest of others in acquiring the whole portfolio. With more conservative valuations, such as those of Mr Craggs, the chances of a premium on top are greater, but with Mr Stoyle's more generous individual valuations I consider that less likely, particularly on the part of an intending owner-operator who has carefully considered its trading projections and fed them into the individual valuations. A premium is more likely to be paid by a fund or an investor, but the portfolio is, in my judgment, less likely to appeal to such a person. The chances of such an investor bidding aggressively for the portfolio is speculative.

65. The Petitioners then suggested that an allowance should be made for the chance of a 10% premium being obtained, even if it was not 75% certain. The suggested approach was that applied by the court when seeking to assess what loss is caused by a breach of duty where the causal connection depends in some way on the action of a third party, namely that if there is a real possibility of that action eventuating then a percentage likelihood should be used to determine the quantum of the loss (see Allied Maples v Simmons & Simmons [1995] 1 WLR 1602; Perry v Raleys Solicitors [2019] UKSC 5). That "loss of chance" approach is taken in damages claims to avoid the potential unfairness of a claimant recovering nothing if there is a 49% chance of the action being taken or of the defendant being liable for the full loss if there is a 49% chance of its not being taken. It also mitigates the potential difficulty that a claimant may have in proving what a third party would have done in circumstances that did not happen. In determining the market value of the hotel assets, however, one is seeking to make a best estimate of the price that would be bid and agreed by prudent and well-informed parties in the market on the valuation date. The price so determined will necessarily represent the best bid likely to be made by such a purchaser. That is the basis on which market value is established. It is not, in my view, appropriate to increase the price further to reflect a real possibility that a higher bid might be made, nor is it obvious why it should be based on a possibility of a 10% overbid rather than (say) a 5% or 2% overbid. There is no place in market valuations for analysis based on the loss of a chance.

66. In reaching my conclusion on the question of portfolio premium, I do not decide that Mr Stoyle's opinion is obviously wrong or unsustainable. Had the portfolio been sold in June 2014 he might have been proved right. Such matters are notoriously difficult to predict and agents' and valuers' expectations are often confounded. Assessing the question 4½ years after the event makes it more difficult to be confident about such matters. In my judgment there is insufficient evidence to support Mr Stoyle's firmed up opinion that a premium was likely; the inherent probability of its being achieved is not compelling. In that regard, I observe that no such likely premium value was mentioned in the CBRE valuation or in Mr Craggs's 2011 and 2015 valuations or included in the Company's financial statements.

67. The Petitioners had a further argument in support of a lower premium, namely that any purchaser buying all the hotels of the Company would in effect be buying the Company, which would be likely to be structured as a share sale rather than an asset sale, and accordingly the values placed on the hotels by Mr Stoyle should be increased by the stamp duty saving that the purchaser would thereby make. To explain this, both expert valuers valued the hotels net of buyer's costs. A purchase of an individual hotel asset would attract stamp duty (as at June 2014) of 4%. If the Company's shares were bought instead, the stamp duty would be ½%. The gross cost to the purchaser would therefore be about 3½% lower and as a result (suggest the Petitioners) the buyer would be able to bid 3½% more than the net value of the hotels and be in no worse position financially. That argument overlooks the fact that each of the hotel assets is held by a separate subsidiary company. So the stamp duty saving would potentially be available to the purchaser of an individual hotel in the same way; but that has not caused the expert valuers to adjust their market valuations on the basis that a purchaser would only have to pay ½% stamp duty. On that basis, the Petitioners' argument is flawed. In any event, a purchaser will not necessarily bid more than the market value of the property because he will not incur particular costs.

68. In those circumstances, no premium should be added to the aggregate valuation of the individual hotels. I find that the market value of the hotels is represented by Mr Stoyle's valuations (save only that the Leicester Square residual valuation should be adjusted to provide for a contingency of 7.5% instead of 5%). That reduces Mr Stoyle's valuation of this property to £[…..]

69. I accordingly find that the aggregate value of the Company's hotel assets at the Valuation Date is £1,275,400,000.

6. Company Assets

70. The hotels are fixed assets of the Company, whose value is therefore reflected in the value of the shares of the Company. The expert share valuers were directed by the agreed Proposed Approach and Issues Relating to Valuation of the Shares that the value of the relevant shareholdings can be assessed by reference to the market value on 30 June 2014 of all of the issued ordinary shares in the Company taken as a whole: the "valuation of the Group". It was further agreed that the valuation of the Group was to take account of:

i) The market value of each of the hotels

ii) Any other assets and liabilities

iii) Any other factors that, in the opinion of the share valuers, would serve to adjust the price that a reasonable purchaser buying at market value would be willing to pay for the Group, and

iv) The particular adjustments ordered by the Court.

71. It is common ground that the market value of all the ordinary shares in the Company taken as a whole is represented by the net asset value of the Company as at 30 June 2014. In the absence of audited financial statements up to that date, the basic approach that both share valuers have taken is a simple averaging of the other (non-hotel) assets and the liabilities of the Company shown on its year end 31 December 2013 and 31 December 2014 accounts. The asset and liability position as shown by those accounts is in fact very similar at both dates, so taking an average was regarded by both as a reasonable and proportionate way of valuing those assets and liabilities. However, Mr Bezant, the share valuation expert called by the First Respondent, has been instructed to make certain changes to that average based on information provided by the Company.

72. The Petitioners contend that other adjustments fall to be made. It is convenient to deal with them first before addressing the adjustments that Mr Bezant was instructed to make.

73. The Petitioners argue that, when considering the net asset value of the Company as distinct from the value of individual hotel assets, an adjustment to those values needs to be made, to reflect the true value of the hotel assets to a purchaser of all of the Company's shares. In relation to all the hotel assets except the Leicester Square site, they contend that the adjustment should be to add the costs of acquisition to the market value of the hotels. It is suggested by the Petitioners that this is most

appropriately done by uplifting the aggregate hotel values by 3.5%, to reflect the saving on stamp duty to a purchaser of the Company's shares rather than the hotel assets. It is therefore, in substance, the same adjustment that the Petitioners sought as their alternative case on the portfolio premium, though this time deployed as an argument for raising the net asset value of the Company as part of the share valuation.

74. I reject the argument. The hotel valuers have valued by reference to the contract sum that would be paid by a buyer to a seller: see Mr Stoyle's report at paras 9.10 to 9.12, which approach was confirmed by Mr Craggs in the witness box. Mr Giles, the share valuation expert called by the Petitioners, notes that this is so and expressly states that that is the correct basis for this valuation and that he believes "it is reasonable to assume the Savills valuations represent the best available estimate of the economic value of the Hotel Assets to the Group as at 30 June 2014". Mr Giles expresses the opinion in his report that "100% of the shares of the Company – owned as a single tranche – can be estimated to have had a value of £1,025.0 million on 30 June 2014", and his table 7 shows that figure to be based on Mr Stoyle's (then) aggregate valuation of £1,406,600,000 (including the portfolio premium). So there is no support in Mr Giles's evidence for the argument of the Petitioners that an adjustment to the asset value of the hotels is appropriate. Similarly, Mr Bezant valued the equity of the Company based on Mr Craggs's hotel valuations, without adjustment.

75. In relation to Leicester Square, the Petitioners argue that adjustments should be made to the residual land value to omit: the fees on acquisition (because the Company already owns the site), the fees on disposal after development (because the Company will retain and trade from the developed site) and the amount allowed for developer's profit (as the Company is itself the developer and is not looking for a profit on the development). The aggregate increase in the value of the site would in principle be £42 million.

76. No such argument was advanced as being an appropriate basis of share valuation by Mr Giles. In cross-examining Mr Bezant, the Petitioners obtained his agreement that if an hotelier intending to build and trade from the new hotel rather than a developer bought the site, the hotelier would not incur the sales fees on disposal of the completed development. He also agreed the proposition that if one were valuing the site for a company that already owned it, the acquisition fees would not be payable, and the company would itself keep the notional profit of 10%. However, that was put to Mr Bezant on the basis that it was not a Red Book approach to valuation and that the property would not be valued that way for the banks because the banks need to know what they can obtain for the site on a sale.

77. Although Mr Bezant was effectively agreeing that a site of this kind could be considered more valuable "in use" to its owner than would be shown by a residual valuation, that does not mean that the market value of the asset is different, or that the net asset value of the Company should be adjusted on this account. The hotel valuers were required to determine the market value of the hotel assets. A residual valuation is a way of identifying the market value of land. There is only one market value, not different values to different persons. The hotel valuers agreed that the appropriate valuation was to market value (contract sum) and this is what Messrs Stoyle and Craggs have done. These values inform the net asset value of the Company, which the share valuers have agreed represents the market value of all the Company's shares. As put elsewhere in the Petitioners' written closing submissions, "The value of the

hotels is the value which could be achieved on a sale. That is the way that assets have always been valued on the balance sheet".

78. Accordingly, any adjustment to the market value of the Leicester Square site is in my judgment inappropriate. Neither of the share valuers supported the argument that the net asset value of the Company should be adjusted in this way, nor has Leicester Square been valued on that basis in the Company's financial statements. Moreover, the issue in this claim is not the value of all the shares in the Company: it is the market value of the Petitioners' minority shareholdings and any marriage value released on a sale of those shareholdings to JS.

79. The adjustments made by Mr Bezant to the position shown in the Company's y/e 2013 and 2014 financial statements are the following:

i) A reduction in the cash assets of the Company from £56.8million to £26.8 million;

ii) A reduction in the value of stock from £1.1m to zero;

iii) An increase in the total debt of the Company from £430.9m (being midway between the figures in the 2013 and 2014 accounts) to £434.6m;

iv) The removal of a credit item for loan arrangement fees of £2.1m on the basis that this is not a realisable asset but only a prepayment;

v) The inclusion of an off-balance sheet hedging asset shown in the 2014 accounts as having a value of £200,000.

80. These adjustments are made at the direction of JS's lawyers, being, as they put it in their written closing submissions, adjustments "for economic realities which are obscured by necessary adherence to UK GAAP (this ignoring material financial information provided by the Company in respect of the position at the date of valuation)". What this amounts to is that the Respondents seek to adjust the position extrapolated from the Company's audited financial statements where the Company has given them evidence of the true position on the Valuation Date and where assets shown in the accounts "do not on proper analysis constitute realisable assets".

81. *Cash and stock*. These can be taken together because they raise the same issue. Mr Wason, on behalf of the Company, advanced the case that the Company needs a cash buffer of £30 million, so only £26.7 million can be regarded as "surplus" cash. The evidence in fact is that the cash buffer at the relevant time was £20 million, but that the Company intends to increase this to £30 million for the next 2 years. The remaining £10 million is working capital. The value of the stock is £1.1m.

82. JS's argument is that, since the hotel valuers did not advert to working capital or stock explicitly, and made no deduction in that regard, they must have valued the hotel assets with working capital and stock, otherwise they have overstated the values of the hotels. JS's lawyers contend: "The absence of any adjustment for a cash and stock float by the Hotel Valuers indicates that the valuers have implicitly valued both the Hotel Assets *and* the stock and working capital/'floats' they require", and that accordingly to value the cash floats would amount to double counting.

83. I have no hesitation in rejecting this argument. The hotel assets are one item in the Company's accounts and the full amount of cash held is another. There has never been a suggestion of the hotels being valued with the benefit of a cash float or with stock. Mr Stoyle and Mr Craggs were both clear that they had not valued any cash, stock or other assets and this is expressly stated at item 1 of their joint statement. It was further confirmed orally by Mr Craggs: anything such as cash or working capital would be dealt with as an adjustment on completion, but otherwise cash is not included. It is a rather surprising proposition that, on purchase of one of the Company's hotels, the buyer would acquire – without anything in the contract to say so – a proportion (calculated on some unspecified basis) of the working capital and cash reserves that the Company found it necessary to have for the purposes of its business.

84. The question is not whether working capital is needed to operate an hotel, much less whether the Company could realise separately the full amount of the cash shown in its balance sheet or sensibly declare a dividend in that amount. These are irrelevant to questions of whether the cash was a separate asset of the Company and its value. I found Mr Bezant's evidence on this issue to be confused and Mr Giles's evidence clear and straightforward. The hotel valuations are valuations of assets, not of separate businesses. The only relevant question is whether the hotel valuers had valued hotels with stock, working capital or cash reserves included. The clear answer is that they had not. The full amount of the cash shown in the accounts is therefore a separate asset of the Company and the same applies to the stock.

85. *Debt*. The reason why Mr Bezant adjusted the total debt figure for the Company as he did is that he was informed by the Company's solicitors that the higher figure that he was given represents the gross value of the Company's debt at the Valuation Date. The value that Mr Giles has used is based on the average of the figures in the 2013 and 2014 accounts, but these are net of loan arrangement and legal fees, according to the Company's solicitors. In fact, Mr Bezant in his original report used different figures, which he acknowledged in his supplementary report were wrong. What appears to be the case is that certain transaction costs were deducted from two of the Company's loans, for the purpose of its financial statements, but how this adjustment relates to the prepayment of £2.1m (originally identified by Mr Bezant as £6.1m) is unclear. The reason why these matters are unclear is that the Company has failed to provide complete transparency on these issues. It did not call anyone from its accountants, Shah Dodhia, as it could have done to clarify these matters, nor has it provided full disclosure. Instead, it provided limited information to JS's solicitors, which Mr Bezant then used in his report; and then confirmed different information at a later date. Mr Bezant accepted that he did not have complete transparency about the Company's financial affairs in this regard.

86. In those circumstances, I do not accept that the Company's debt should be increased from an average of what is shown on its audited financial statements, or that the transaction fees of £2.1m should not be treated as an asset for the purpose of assessing the net asset value of the Company. The Respondents argue that £2.1m is merely an accounting requirement and that the prepayment does not represent a realisable asset of the Company. That may be so, but accounting requirements, however technical, are there to ensure that a company's audited financial statements give a true and fair view of a company's assets and liabilities. The relevant test is the net asset value of the

Company, not which of the Company's assets could be separately realised for cash. The Company's failure to provide proper transparency on these points means that there is insufficient clarity about the true overall effect of the Company's borrowing arrangements. This makes it appropriate to resolve any doubt against the Company to the extent that it is seeking to depart from its audited financial statements.

87. *Hedging asset*. The position here is even less clear. There is a swap asset noted in the 2014 accounts but not in the 2013 accounts, giving rise to the question whether it existed on 30 June 2014 and what if any value it then had. JS relies on a letter from the Company's solicitors of 29 November 2018, but this is wholly opaque as to the nature and amount of the value. The value is in any event trivial in the context of this case and the Petitioners are content to exclude it so it will be excluded.

88. Accordingly, the net asset value of the Company will be determined as comprising: £1,275,400,000 for the hotel assets, plus £56.7m for cash, £1.1m for stock, the Court ordered adjustment of £15.8m, equipment of £400,000 and the other adjustments that are agreed by the experts, less debt of £430.9m. That gives a net asset value on the Valuation Date of £894,200,000. Starting from that net asset value, the pro rata value of the A tranche of shares (held by the Petitioners), the B tranche (held by JS) and the C tranche (the aggregate of the A and B tranches) can be calculated.

7. Share valuation

89. In order to determine the price in accordance with the formula in the Judgment (repeated at para 3 above), it is necessary to determine the following values:

i) the market value of the A tranche;

ii) the value of the B tranche, and

iii) the value of the C tranche.

Valuation of the A Tranche

90. The A tranche comprises 19.89% of the ordinary shares in the Company. That is a minority shareholding that gives no control to the holder of the A tranche under the Company's articles of association or as a matter of law. The Company's articles restrict the ability of the holder to sell the shares but do not wholly prevent a sale, assuming that a purchaser is found. The valuation of the A tranche raises the question of what discount should be applied to its pro rata value to reflect the price at which it would reasonably be expected to be sold and bought in the open market. The market price will be likely to reflect the size of the holding, the rights and restrictions conferred and imposed by the Company's articles, and the perception that the market would have of the management and prospects of the Company's business, future dividends and any future exit from the investment.

91. In this regard, there were strong differences of opinion between the two expert share valuers. Mr Tim Giles M.Sc., a financial economist and a partner in Independent Economics and Finance LLP, considered that a discount of 18.7% from pro rata value was appropriate. Mr Mark Bezant FCA, a senior managing director of FTI Consulting LLP, considered that the discount would lie in the range of 50% to 70%

and said that 60% was his best estimate of the appropriate discount. Since the pro rata value of the A tranche is £177,900,000, the difference between their respective valuations of the A tranche is considerable.

92. Both Mr Giles and Mr Bezant have considerable experience of valuing minority shareholdings. The majority of Mr Giles's experience is as an expert witness. He is regularly instructed to advise or give evidence on corporate disputes in many jurisdictions. Following a masters degree in finance from the London Business School, he has specialised in valuation in the finance sector and consulting in many different industries. Mr Bezant too now specialises in litigation services relating to valuation, following his training and practice as a chartered accountant at Arthur Anderson and Deloitte and then in positions in business. I am satisfied that both have extensive experience and are appropriately qualified to give expert evidence on these share valuation issues. Both prepared detailed expert reports and supplementary reports following a joint statement in which they identified matters on which they were unable to agree.

93. The approaches of Mr Giles and Mr Bezant and the way in which they gave their evidence were markedly different. Mr Giles had a more scholarly approach and showed considerable confidence in his own way of looking at the issues, though he tended to become diffident under pressure. Mr Bezant was a very polished performer and appeared for the most part more at home in the courtroom environment, managing to sound balanced and reasonable in his views even when he was under considerable pressure from cross-examination. The different styles of the witnesses were only matters of personality and each of them was ultimately as confident as the other in the validity of his own opinion.

94. Mr Giles explained that in order to identify the right final discount, one had first to discount from the pro rata value to reflect lack of control for the holder of the A tranche, then add to that discounted value a sum to reflect the "realisation benefit", i.e. the value of the prospect at some uncertain time in the future of an exit at full value, and then finally discount further to reflect the illiquidity of the A tranche. The discounts for lack of control and illiquidity are conventionally known as Discount for Lack of Control (DLOC) and Discount for Lack of Marketability (DLOM). The "realisation benefit" was a rather more complicated calculation and involved identifying the net present value of the difference at an assumed exit in 20 years' time between the pro rata value of the shares and their market value as a minority holding (with no exit prospect) at that time. That at least is the way in which the Petitioners explained what Mr Giles had done in their closing written submissions (para 162).

95. To illustrate Mr Giles's approach, he started with a pro rata value for the A tranche of £203.8 million; deducted £40.8 million (20%) for lack of control; added £73.7 million for the realisation benefit and then deducted £71 million (30%) for illiquidity, leaving him with a market value of £165.7 million: an overall discount of 18.7%. The £73.7 million was the net present value of £324.3 million, being the difference in year 20 between the projected pro rata value of the shares (£759.3m) and the then market value of a minority holding with no exit prospect (£435m).

96. Mr Giles acknowledged that, were one to leave the realisation benefit out of the calculation, his successive discounts for lack of control and illiquidity would amount to a discount of 44% in total. He was challenged in cross-examination both at a

mathematical level, as to the validity of his approach to calculating the realisation benefit, and as a matter of common sense. It was suggested to him that a discount of 18.7% for an illiquid minority holding with no degree of control was manifestly too small. Mr Giles's answer was to deny that and invite the court to ask itself why the seller of the A tranche would be willing to sell for any greater discount. 18.7% was, using his starting point for the pro rata value, a reduction of nearly £40 million from that value. He considered it inconceivable that a willing seller of the A tranche would sell for a 44% discount, much less any greater discount such as that advocated by Mr Bezant. He argued that his realisation benefit was correct in principle because the possibility of a future exit at full value was of substantial value to anyone having or acquiring a minority interest in the Company. He considered that his assumption of an exit in year 20 was a reasonable assumption, given what was known about the Singh family's approach to running the Company and the terms of its lending arrangements (which included substantial charges for prepayment of some of the loans before 2032).

97. Mr Giles was challenged about the appropriateness of his realisation benefit allowance and acknowledged that it was not possible to find any reference to it in academic literature or any practice manual. He nevertheless considered that it was right in principle. The Petitioners argued that the discounts for lack of control and illiquidity did not reflect in any way the prospect of a future exit at full value, for which a separate allowance was needed. They contended that the discounts had the effect that no value was attributed to the possibility of future exit at full value and that the realisation benefit was needed to reflect that potential benefit.

98. While accepting that there must be value in the uncertain prospect of a pro rata exit in future, I am not persuaded by Mr Giles's realisation benefit argument. In applying his discounts and the realisation benefit allowance, Mr Giles starts with the full pro rata value of the A tranche. Unless the discounts that he applies for lack of control and illiquidity remove the benefit of the value of a pro rata exit in future, there can be no reason to make a realisation benefit allowance. The value of that possible benefit is already in the full pro rata value. So, logically, the first question must be: does the discount for lack of control, or the illiquidity discount, or a combination of both, remove all value attributable to the possibility of an exit at full value in future or reflect that value? Mr Giles's calculation of the realisation benefit demonstrates that he is adding the net present value of the value of an assumed exit in year 20, so his methodology cannot be valid unless his lack of control and illiquidity discounts remove the value of a future pro rata exit.

99. Mr Giles's discount of 20% for lack of control derives from his theory, based on a learned paper of Professor Damodoran, that a control premium of 15 to 20% exists in majority holdings in private companies, which necessarily translates into an equivalent discount for a minority stake (*Aswath Damodoran: The Value of Control; Implications for Control Premia, Minority Discounts and Voting Share Differentials (Stern School of Business, June 2005)*). Mr Giles considers that the discount should be at the higher end of the suggested range for a holding of less than 25% and he takes 20%. He does not explicitly state the significance of lack of control, but it was common ground between the two share valuation experts that it reflected at least the inability of a minority shareholder to influence the strategy and decision-making of the company's board, including the voting of dividends and the sale of the company

or its assets or a restructuring of the company. Mr Giles's discount of 30% for illiquidity derives from The International Private Equity and Venture Capital Valuation Guidelines 2006, which advocate a discount in the range of 10% to 30% depending on the particular circumstances of the company (30% where investor has no control but other like-minded shareholders not strongly opposed to realisation). Mr Giles identifies the potential obstacles and delay in selling a minority shareholding, by virtue of the articles of association conferring pre-emption rights and the absence of a liquid market, as being the main justification for an illiquidity discount.

100. Mr Bezant makes express reference to DLOC and DLOM in his expert report. He explains that the two discounts are different but interrelated, in that control gives the opportunity to pay a dividend or sell the business, thus curing in part the lack of marketability. He says that the DLOC is understood to relate to control or influence over business operations and strategy; access to information on the business; control or influence over financial policy (dividends, sale of the company, etc.) and removing exposure to the risk of unfair prejudice. He says that the DLOM is concerned with the ability to sell the asset, and that liquidity considerations also arise because the inability to exit the investment exposes the shareholder to uncertainty. In the case of the Company, Mr Bezant identifies the main consideration affecting the minority discount as being that the holder of the A tranche cannot control or influence the means of extracting a return, namely dividends and exit. As understood by him, therefore, the traditional discounts for lack of control and illiquidity relate in particular to the uncertainty of being able to control or derive financial benefit from the investment. Inability to exit and achieve the full pro rata value of the shares must therefore be an aspect of that lack of control and illiquidity.

101. It is unclear how if at all Mr Giles, in making his two discounts, reflects this lack of ability to exit the investment and achieve the full pro rata value of the A tranche. He does not say that the discounts assume an inability to exit in future at pro rata value. If they do not, the discounts must reflect any hope value of future exit at pro rata value and his realisation benefit adjustment necessarily amounts to double counting. That is because the amount of his realisation benefit is calculated as the difference between the deferred pro rata value and the deferred value with no exit prospect (as the Petitioners submit). This Mr Giles adds to the discounted value of the A tranche. This adjustment can only be appropriate if the discounts have somehow stripped out the value of a potential pro rata exit at a future time.

102. On the other hand, if Mr Giles's two discounts *have* stripped out all such value and assume that there can be no exit at pro rata value, the purchaser of the A tranche is buying only the hope of the Company declaring dividends where reasonable to do so and the prospect of capital growth in the value of the minority holding. Given the Company's history of declaring modest dividends, and only doing so when banking covenants and strategic development of the Company permit, a discount of only 44% intuitively seems very low indeed for an illiquid investment of that size.

103. I am left with the strong suspicion that Mr Giles's aggregate 44% discount is not made assuming that there can be no future exit at pro rata value but on the basis that the problem with lack of control and illiquidity may at some stage be cured by such an exit. That means that the addition of his realisation benefit double counts the value of that benefit. That would explain why Mr Giles ends up with a remarkably low overall discount of 18.7%. If what are conventional discounts for lack of control (DLOC) and

illiquidity (DLOM) remove all the value of a possible pro rata exit in future, it is remarkable that none of the literature and manuals relating to discounts for minority shareholdings warn of the need to place a value on those rights after having made the discounts.

104. Logically, the uncertain prospect of a pro rata exit would seem to be one aspect of determining the appropriate discounts for lack of control or illiquidity, as the beneficial prospect is something that may happen, to the considerable benefit of a minority shareholder, despite the fact that he has no control over the Company and no otherwise easy means of realising the value of his investment. The extent of the mitigation is likely to be highly sensitive to the facts of the particular company in question. All other things being equal, if the circumstances were such that a purchase of all the company's shares seemed very likely in the short term, the discount for a minority holding would be much smaller than it would be if there were no realistic prospect of such a transaction for upwards of 20 years.

105. For all these reasons, I consider that Mr Giles's three separate components in his assessment of the minority discount are unreliable, both in principle and as they apply on the facts of this case.

106. Mr Bezant's approach was very different. He did not attempt to identify separate DLOM and DLOC discounts but sought to apply an overall discount. He referred to well-known guidance from public bodies, such as HMRC, and industry and academic publications on the expected level of discount for minority shareholdings of varying sizes. Naturally, this is no more than broad guidance, and the range of the guidance is very broad. HMRC suggest 25-40% in the case of an influential minority holding, which the A tranche is not. A KPMG Australian Valuation Practice Survey of 2015 suggests a minority discount of up to 50% for holdings of 1-24%, though with a discount of 20% being the median.

107. Mr Bezant then considers three separate means of seeking to identify an appropriate level of discount for the A tranche, namely:

i) An option pricing model, known as the Finnerty model;

ii) The settlement reached in 2004 between the Company and Mr Gulhati for his 10% minority shareholding in the Company, and

iii) The levels of overall annual return implied by different levels of discount and holding periods.

Having considered the results produced by those methods, and applying his general experience and knowledge, Mr Bezant then identifies a range of 50-70% as being appropriate for the A tranche, and alights on 60% as his best estimate.

108. Consideration of the first two methods identified took up a considerable part of the time spent on the oral evidence of both share valuation experts. Dr Finnerty's attempts to identify discounts applicable to share options – where there is only a limited right to exercise the option at a defined future time – was of considerable interest, as an intellectual exercise, but in the end I found it to be of little assistance to me. That is because the models of Dr Finnerty that were considered by the expert

witnesses are not intended, and therefore not well-suited, to deal with circumstances such as those of minority shareholders in a private-owned company where any exit from the investment is likely to be deferred for very many years and is uncertain. Moreover, it is evident that Dr Finnerty has had several attempts to produce a model that has real value and has recently had third thoughts about the appropriateness of his earlier models. The first (2002) model (*John D. Finnerty: The Impact of Transfer Restrictions on Stock Prices*) was acknowledged in the second (2012) model (*John D. Finnerty: An Average-Strike Put Option Model of the Marketability Discount*) to have significant flaws, including a mathematical error, and to be unreliable for use with an extended period of holding of an investment. The second model itself demonstrably produces illogical results in the case of securities of high volatility and extended holding periods, with discounts peaking at little more than 30% and then declining with longer holding periods.

109. The third Finnerty model (2018) (*Measuring the Discount for Lack of Marketability: An Empirical Investigation*) may be considered to be an improvement on the first two and of some interest but it included two variants, one of which would have been better suited to the facts of this case, but neither expert has used that variant in his evidence. Arguments about which model was most suitable, and which variant of the 2018 model was appropriate, were lengthy but ultimately arid. The Court is concerned to judge not Dr Finnerty's methods and mathematics but the most appropriate discount for the A tranche in the light of the opinions of Mr Giles and Mr Bezant.

110. For what it is worth, Mr Bezant, who inexplicably relied on the flawed and unreliable 2002 model and did not use or mention the 2012 model, extracted from it a likely discount of 50-60% for a 10-year holding period: The 2012 model then considered and demonstrated by Mr Giles in the experts' joint statement (and by Mr Bezant in his supplementary report) produces a corresponding discount of 10-13% and not much higher than that for a 20-year holding period; and the 2018 model (but not the variant most appropriate to the circumstances of the Company and the A tranche) produces a corresponding discount of 29-37% and a discount of 50-61% for a 20-year period. Mr Bezant concluded that he would have used the 2018 model had he been aware of it when he wrote his report. He accepted that he had carried out the same exercise with the more appropriate 2018 variant and that he derived lower discounts from it, but (again inexplicably) did not refer to these results in his supplementary report (or in his oral evidence, save to the extent just mentioned). Mr Giles considered that the 2012 version of the model was the only authoritative model, because it was the only paper published in a peer-reviewed journal, as opposed to being published as a draft for academic consideration.

111. There is, of course, no certainty at all when, if ever, a pro rata exit from the Company might be achieved. The age of JS (63 at the Valuation Date) is one factor; the Singh Family Creed, referred to in my Judgment is another, and the potentially substantial charges on prepayment of the Company's debt before the 2030s a third. The vagaries of human nature and the inclination of younger generations to resist the dead hand of older generations can be added as others. In calculating his realisation benefit, Mr Giles made an assumption that 20 years was most likely to be about the time when a sale of the Company or a restructuring would afford the opportunity for a pro rata exit. Mr Bezant, while stressing that there was no certainty, appears to have used 10-15 years as the basis of his assessment. I consider that Mr Giles's assessment is likely

to be the most reasonable one to make in all the circumstances, given in particular JS's age, the influence of the Creed and the potentially punitive charges for prepayment of some of the Company's loans.

112. Given the generally acknowledged difficulty of valuing minority shareholdings in privately-owned companies, the fact that a sale of a minority shareholding in the Company took place about 10 years before the valuation date is of obvious potential interest. If reliable information about it exists then, subject to appropriate adjustments for size of holding and time, and making appropriate allowances for ways in which the 2004 sale differed from the open market transaction contemplated in the definition of market value, that transaction is likely to provide some helpful information about the relative value of minority holdings in the Company.

113. As explained in my Judgment, Mr Gulhati was until 2002 a director of the Company and his companies held about 10% of the ordinary shares. His companies brought an unfair prejudice petition under s.459 of the Companies Act 1985 claiming to be bought out at pro rata value, though not alleging that the Company was a quasi-partnership. The respondents argued that there should be no relief granted, alternatively a buy-out at market value only. Then, as now, JS effectively controlled the Company through the shares held by Verite as trustee of the Jasminder trusts. At that time, there was a long history of non-payment of dividends, save for the years 1998 and 1999 when large dividends were paid for the purpose of financing the exercise of the share options that allowed the family shareholders to recover control of the Company from the banks. The Company's net asset value in the y/e 2003 accounts (based on December 2002 property valuations) was £232.3 million. In the y/e 2004 accounts (based on December 2004 property valuations) the value had increased to £316.1 million. Mr Gulhati's claim was compromised at or following a mediation held in August 2004 by the payment of £19.2 million.

114. Mr Bezant rightly acknowledges that, in seeking to devalue that transaction, he does not know the pro rata and market values that each party to the negotiations had in mind, in particular what valuation information Mr Gulhati had available about the impact of the rising market in 2004, or the parties' respective assessments of the chances of success, or what other particular factors may have influenced the majority shareholders or the Company in wishing to acquire Mr Gulhati's shares. He does not make any allowance for the difference in dividend history at that time, compared with 2014, which would be likely to suppress the value of the shares and increase the discount.

115. Mr Bezant's analysis of that transaction is based on 2003 and 2004 net asset values, attributing first 25% then 50% to the prospects of Mr Gulhati succeeding in being bought out at pro rata value. His calculations show an implied discount of 30% based on 2003 values and a 25% chance of success, and an implied discount of 57% based on 2004 values and a 25% chance of success. Although the parties could not have had the 2004 property valuations in August 2004, it is evident from Mr Gulhati's mediation statement (and a matter of clear inference in any event) that both parties, who were sophisticated London hoteliers, would have had up-to-date valuation advice available to them and would have known of the strong growth in the property market at that time. That advice is likely to have shown August 2004 values nearer to the December 2004 values than the December 2002 values. I consider, however, that the parties would have known that the prospects of Mr Gulhati achieving a pro rata buy-

out were small. There was also some risk of his not succeeding at all, though given the events described in his mediation statement, I consider that the parties would largely have discounted that, on advice, particularly as the majority shareholders had a special interest in buying (or in having the Company buy) the shares.

116. Using Mr Bezant's method but with inputs of £300m for net asset value and 10% for the chance of a pro rata buy-out order, the implied minority discount becomes 45%. That illustrates the extent to which it is necessary to be careful when making assumptions in devaluing a transaction that is not a market transaction and when the facts available to the parties at the time and their private motivations are not fully known. The transaction was not at arm's length – the Singh family had a special interest in purchasing – and was not therefore direct market evidence of the value of Mr Gulhati's shares. It was at least some evidence of the basis on which the parties to that litigation at that time assessed the market value of his shares. Since useful evidence is very hard to find, it is of some value, in my judgment.

117. Mr Bezant's final method for assessing the discount was not really an assessment at all, but more in the nature of a cross-check of the results produced by other methods or the discounts suggested in published guidance. Mr Bezant uses a range of assumed holding periods and looks at the implied growth rates if minority discounts are applied and if the asset is assumed to grow at 10% p.a. Holding the asset for 15 years (which is as far as Mr Bezant goes in his table) at an assumed discount of 50% translates to implied growth of 15.2%. However, Mr Bezant does not give an opinion about what a market purchaser would expect by way of growth, or of his assumption about the cost of capital. If Mr Bezant's method is applied in the case of Mr Giles's 18.7% minority discount for 15 years, the implied annual return is 11.5%. Although, clearly, that return is less than 15.2%, the method does not assist with whether a purchaser would find that to be a good, reasonable or poor rate of return. If anything, this cross-check only enables Mr Bezant to form the view that a 70% discount might be too high, because this would imply an annual return of around 20%, which he regards as excessive.

118. Ultimately, therefore, the Court has the following evidence available to it, on the basis of which to decide what overall discount is appropriate for the A tranche:-

i) the opinion of Mr Giles, which appears to be based on flawed methodology, which is published or approved by no one but Mr Giles, and which produces a surprisingly small discount in percentage terms in comparison with other evidence;

ii) the opinion of Mr Bezant, who has made not very convincing use of the academic researches of Dr Finnerty and made assumptions about the basis of the settlement reached between Mr Gulhati and the Singh family that may be incorrect, thereby distorting the discount derived from that transaction, which gives a suggested range of 50-70%;

iii) published general guidance, which is non-specific.

119. I consider that a discount of 45% is justified overall by having some regard to each of the sources to which the experts have referred and seeking to moderate the views of the two expert witnesses by reference to the particular circumstances of the Company

at the Valuation Date. I consider that the general guidance establishes that a discount of 40-50% would be normal for a 20% shareholding where there is no control and only limited liquidity. The Finnerty 2018 model (albeit not the most suitable variant) gives a result of 50-60% for a 20-year holding period. The Gulhati transaction implies 45-55% for a smaller holding at a less attractive time for a purchaser (given the lack of regular dividends). In 2014, the Company had a good recent record of paying regular dividends; it had good prospects of growth; it was likely to remain subject to Singh family management for some time to come, in view of the age of JS, the existence of the Family Creed and the terms of the Company's borrowing arrangements, but there was some prospect that after about 20 years there would be the kind of corporate event that would enable a minority shareholder to exit at pro rata value. I consider that a willing purchaser of the A tranche would regard that as a real albeit long-term prospect, but he would require a substantial discount to compensate for tying up well over £100 million in one private company with no control in the meantime, with the risk of the Company's fortunes turning down before the exit could be achieved. The willing seller would sell because he desired to realise his investment in the short term, rather than receive only modest dividends and wait for 20 or more years for a greater return.

120. Accordingly, the minority discount to be applied to the A tranche is 45%.

Valuation of the B and C Tranches

121. On the basis of a 45% discount for the A tranche, Mr Giles would say that the majority shareholders (that is to say the Jasminder trusts and JS acting together) must enjoy a majority premium equal in value and opposite to the discount for the A tranche and other minority shareholders. I reject that argument. It seems to me to confuse the value of the Company with the aggregate value of its separate shareholdings. Majority shares may attract a premium bid where a purchaser for those shares is able to predict that, with control of the Company, it will be able to release more value and so increase the overall value of the shares. That is generally referred to as an acquisition premium and, in that sense, a majority holding may have premium value. But that does not mean that in any case where minority holdings are discounted in value by reason of lack of control or illiquidity extra value attaches to the majority holdings.

122. Mr Giles's theory that there is always an equal and opposite premium value added to the majority shareholdings seems to me to be a misreading of articles written by Professor Damodoran (*op. cit.*) and Shannon P. Pratt (*Business Valuation Discounts and Premiums* (2nd ed.) (2009)), which Mr Giles cited. They refer to the difference between the value of a majority and minority stakes in a company as being the minority discount, and to the premium attaching to the majority holding as being the same differential in value. Where Professor Damodoran refers to "clear evidence that practitioners apply control premiums in private company transactions, ranging from 15 to 20% for a majority stake; conversely, this translates into an equivalent discount for a minority stake" (*op. cit.*, p.58), it is clear in context that the reference is to the increased amount payable for a majority holding over and above the value of a minority holding. In other words, the premium is the difference between the value of the majority stake and the minority stake. It is one and the same thing as the minority discount but viewed from the opposite direction. It is not the same as saying that if a minority holding is discounted below pro rata value, the majority holding must

necessarily and correspondingly be increased in value above the pro rata value. Similarly, Dr Pratt treats control premium and minority discount as being the same difference between the value of control shares and the value of minority shares. Thus, his assumed industry-standard premium of 35% translates into a discount of 26%, that is the same difference between $1 per share and $1.35 per share, in his example at *op.cit.*, p.17.

123. Thus, in my judgment, Mr Giles is wrong to convert his discount of 18.7% for the A tranche into a premium (above pro rata value) of 5.1% for the combined majority holding of JS and the Jasminder trusts. I consider that Mr Bezant is right to ask himself, independently of the amount of the minority discount for the A tranche, whether the 74.53% combined holding of JS and Verite merits a discount from pro rata value because it provides less than complete control of the Company. This is not a case of seeking to identify whether an outside purchaser would pay an acquisition premium for that combined holding. It is a case of valuing JS's holding of 5.28%, forming part of that combined holding. Both expert share valuers have approached the exercise as one of considering what discount (or premium) should attach to the 74.53% combined holding and then applying that discount (or premium) to the pro rata value of the 5.28% B tranche.

124. I accept Mr Bezant's evidence that a small discount is appropriate. He contends for a discount of 10%. The published guidance to which he refers provides a range of 0% to 15% for a majority shareholding of between 50% and 74.9%, but in this case the combined interest is only just short of a super-majority. JS has explained that, in practice, he and the Jasminder trusts are able to rely on the support of Mr Shah and the Sarean Trust, when needed, to provide that further level of control. A purchaser of the B tranche will not necessarily have that support. A discount of 10% for a 74.53% holding seems high in the circumstances, but in the absence of any other evidence or challenge to the amount of Mr Bezant's discount, I accept his evidence that a discount of 10% is appropriate.

125. Turning to the C tranche, Mr Giles's opinion is that a small premium over pro rata value is required to reflect the existence of other minority shareholdings apart from the Petitioners' holding. He calculates that premium as 1.2%. I reject that for the same reasons as I rejected his premium for the B tranche. I accept Mr Bezant's evidence that a small discount of 2.5% is appropriate to reflect a 95% aggregate shareholding and that, as both expert share valuers agree in principle, that discount should be applied to the 25.18% C tranche.

8. The Price

126. On the basis of these conclusions, the total marriage value represented by the formula C-(A+B) can be calculated. The value of the C tranche (2.5% discount from pro rata value) is £219,500,000; the market value of the A tranche (45% discount from pro rata value) is £97,900,000 and the value of the B tranche (10% discount from pro rata value) is £42,500,000. The marriage value so calculated amounts to £79,200,000 and one half of that sum, namely £39,600,000 falls to be added to the market value of the A tranche to give a total price for the Petitioners' shareholding of £137,400,000.

127. The components of the overall calculation are set out on the spreadsheet appended to this judgment.

9. Terms of Payment

128. The remaining area of dispute between the Petitioners and the Respondents relates to the terms on which the Respondents should be ordered to pay for the Petitioners' shares and the Petitioners should transfer them to the Respondents.

129. By the Order dated 5 July 2018, I ordered that JS and the Company, on a joint and several basis, must purchase the Petitioners' shares at the price and in a manner to be determined at Trial 2. Although the order was made against both JS and the Company, it has been recognised that, in practice, it will be the Company that purchases the Petitioners' shares. Given that the price payable is £137,400,000, it is impracticable for JS to buy all the shares. The Company proposes to borrow further money to do so.

130. At one time during the preparation for Trial 2, there was a significant difference between the Company and the Petitioners concerning how long the Company and JS were to be given after this judgment to pay for the shares. Happily, it is now agreed that, subject to a first payment to be made within 28 days of judgment, the Company (and JS if necessary) are to be allowed a period of 6 months from judgment to pay the remainder of the price. The six months are expected to be sufficient to enable the Company to negotiate new loans with its four principal lenders. The Company and JS are to have liberty to apply on an appropriate period of notice to the Petitioners in the event that unforeseen difficulties arise in that regard. It should be made clear that the period of six months is a period of grace for the Company, agreed at its request. The Petitioners are otherwise entitled to transfer their shares and be paid on judgment. That is relevant to the consideration of whether interest should be paid by the Respondents.

131. The remaining dispute is about the amount of the first payment and whether interest should be paid on the purchase price from the date of the Judgment (5 July 2018) or from the date of this judgment, and if so at what rate or rates.

132. It is common ground that I have a broad discretion on both matters, under the terms of section 996 of the Companies Act 2006. It is also, I believe, common ground that it would be an improper exercise of that discretion to make an order that the Company and JS could not comply with, or that would cause serious cash flow difficulties for the Company or risk placing it in breach of banking covenants. Given that the Company will be in the throes of seeking to negotiate further borrowing with which to pay the larger part of the price, that would be wholly counter-productive. If that is not common ground then I consider that it is nevertheless the correct approach. It is necessary to balance on the one hand the entitlement of the Petitioners to be bought out as soon as reasonably possible and on the other hand the legitimate interests of all the shareholders, employees and creditors of the Company in seeing its successful business continue without unnecessary risk. Any delay in payment after the date of this judgment can of course be compensated by an award of interest at an appropriate rate.

133. By the end of the trial, the Company was offering a first payment of £15m within 28 days. JS was offering nothing, on the basis (apparently) that it was a matter for the Company. That is not of course legally the right approach, as the Petitioners emphasise. JS is liable to pay the Petitioners the price for their shares and it is a matter

between JS and the Company how that money is funded. The Petitioners contend that a payment of 20% of the price is appropriate. i.e. about £27,500,000. They contend that the Company's evidence that a cash buffer of £20m is needed (increasing to £30m in 2020) in addition to working capital of £10m is unpersuasive, and that the Company should have cash surplus (over and above working capital) of £40m by mid-2019.

134. The Company's evidence about its likely financial position and cash surplus was, I consider, prepared with a view to minimise the need to part with cash in the short term. Mr Wason relied on financial projections that he and another had prepared for the hearing, which showed that the Company would hold cash and cash equivalents of £46.9 million by the end of 2019 (increasing from £40.2m at the end of 2018). It transpired, only after inexplicably late disclosure by the Company of budgets prepared for internal use and then further cross-examination of Mr Wason, that the projections prepared for this trial had assumed revenue growth of only 0.3%, as against actual growth of 3.5% in 2018 and an internal budget assumption of 14%. Mr Wason confirmed that projections prepared for the banks would have used 3 or 3.5% for assumed revenue growth. Growth of 3.5% rather than 0.3% would produce another £3.25m of cash by the end of 2019.

135. While it is understandable and not disputed that the Company needs working capital and that £10m is not an unreasonable amount of cash to hold for that purpose, the cash "buffer" of a further £20m or £30m finds expression only in the evidence that the Company has prepared for this trial. It is doubtless comforting to have large cash reserves – and given the Company's experience in the 1990s one can understand why that is the strong preference of JS and the board – but it is no more than a preference and an exercise in prudential management, not a need. I accept Mr Wason's evidence that 2019 is a very uncertain year, particularly for hotel businesses in London, and that caution is appropriate in that regard. I accept Mr Wason's and Mr Anscomb's evidence that the construction project in Leicester Square is another reason for caution, though the development loan for that project itself includes a buffer of £22.9m for unforeseen costs of the development itself, and the hotel will not open until spring 2020 at the earliest. There is therefore, in my judgment, no clear need for an extra "buffer" in 2019 to protect the Company against cash flow issues in connection with that project.

136. Taking into account the evidence of the Company's financial circumstances and its projections for 2019, so far as they are reliable, I consider that the first payment should be in a sum of £22,500,000. That is one half of the Company's likely cash holding in mid-2019, assuming straight-line growth of 3.5% in 2019. That will leave the Company with cash reserves of about £22,500,000 at that time, with £27,500,000 reasonably projected by the end of the year. Of course, the cash buffer can be reinstated as the Company sees fit, once its new borrowing has been obtained by no later than 6 months after the date of this judgment.

137. There is no reason why JS himself should not contribute to the first payment or lend money to the Company, as considered appropriate in the short term. On his evidence, as at 30 September 2018 he had about £2.5m of cash and was owed a further £2.5m by his Jersey trustees. If the Company is content in principle to buy all the Petitioners' shares, the Company can reimburse JS when it obtains further loans from the banks. I am satisfied that, given the admitted cash resources of the Company and

JS, an interim payment of £22,500,000 will not cause any significant risk of financial difficulty to either of them, particularly as the cash so deployed will be able to be replaced within a further 5 months, if not before.

138. In order to receive the first payment, the Petitioners must either transfer an appropriate proportion of their shares to the Company or JS, as the case may be, or by some other means provide security to the Company for the transfer of that proportion of shares. The Respondents are not obliged to pay money without receiving shares (or the means of receiving those shares) in return. The parties indicated in closing submissions that they expected to be able to agree appropriate machinery to give effect to this principle. When it comes to payment of the balance of the purchase price, the Company is only obliged to part with the purchase money in return for a transfer of the remainder of the Petitioners' shares.

139. Turning to the claim for interest, the Petitioners seek interest from 5 July 2018, on the basis that as from the date of the Judgment the Petitioners effectively had no further status or financial interest in the Company or benefit from the shares. That is supported by the fact that, for the first time in many years, no dividend was declared in December 2018. The reasons given in the Judgment for not awarding "quasi-interest" from June 2014 to July 2018 were, first, that 4 years' delay in the trial was the Petitioners' fault and, second, that modest interest at commercial rates would be approximately balanced out by the dividends that the Petitioners had received over that period. It is clear that I was only making that determination for the period from June 2014 to July 2018, because that was the 4-year adjustment in the valuation date that I considered appropriate on account of the Petitioners' culpable delay. I was not considering the question of whether there should be any interest from the date of Judgment onwards.

140. The Petitioners contend that neither of the reasons that I gave for refusing to order "quasi-interest" applies post-Judgment. On the other hand, it can fairly be said by the Respondents that until the price is determined they are unable to pay it, so interest should not be awarded to compensate the Petitioners for being kept out of their money. The Respondents also submit that "[b]ut for what the Court found to be culpable delay on the part of the Petitioners in bringing the Petition, it would have made a share purchase order valuing their shares as at the date of Trial 2. In that scenario, there would have been no question of the Petitioners being awarded any notional interest on the share purchase monies before the purchase of the shares". That may be so, but that is because there would have been no significant interval between the valuation date (Trial 2) and the determination of the price (judgment). Here on the other hand, because the valuation date was fixed at 30 June 2014, there is a delay of over four years and eight months before the determination of the price, of which only four years were the consequence of the Petitioners' culpable conduct and so did not attract interest. The Respondents therefore cannot say that the whole of the delay since June 2014 is attributable to the fault of the Petitioners or that interest has been rejected for the whole of that period.

141. In my judgment, therefore, modest interest should be awarded for the period from 5 July 2018 to the date of this judgment, to reflect the fact that there is further delay in the Petitioners receiving the 2014 value of their shares, during which period the Company has had the benefit of their capital but they have had no opportunity to share in the Company's growth. That interest is awarded not as judgment interest but

as a matter of discretion, under s.996 of the Act of 2006, as being a fair and equitable basis on which the Petitioners should be bought out. I consider that simple interest should run from 5 July 2018 until the date of this judgment at the rate of 1% above Bank of England base rate.

142. As for the period after this judgment, the delay in payment is a result of the need of the Respondents for time to raise the purchase money. The Respondents have asked for six months and the Petitioners have agreed it in principle, but the indulgence of a significant period in which to pay should not prejudice the Petitioners. Although, technically, as a result of my order the Respondents will not be obliged to pay before the specified dates for payment, the delay in payment (at their request) should be compensated by an award of interest under section 996. Although the Petitioners will retain their shares until the dates for payment, the shares are now of no value to them except as a means of obtaining the price. In exercising my discretion in this way I accept that, in a case where the party ordered to purchase only requires a conventional period of 14 or (perhaps) 28 days in which to arrange the mechanics of payment, a court would be unlikely to impose a requirement to pay interest in addition to the price. There, the delay is only a matter of administrative practicality. But this case is different as the Respondents are asking for a considerably greater indulgence, which if not compensated in the way that I propose would be unfair and prejudicial to the Petitioners.

143. Since interest is not awarded under the Judgments Act 1838 but under the broad discretion conferred by section 996 to grant relief that is just and equitable, I consider that a rate of 8% is unjustified and excessive. The Petitioners have not adduced any evidence of particular loss or prejudice caused by the delay in payment. On the other hand, the purpose of this interest is to compensate them for the effect of being deprived of their money for an extended period. Accordingly, I consider that a rate of 4% above Bank of England base rate is appropriate for the period from the date of this judgment until payment.

144. I reject JS's argument that interest should not be awarded, or only awarded in part, because under the (unknown) terms of the Petitioners' litigation funding a substantial part of the price may be payable to the funders. This wrongly invites the Court to speculate about what such terms may be, and in any event the terms agreed between the Petitioners and any such funder is *res inter alios acta* and no reason to deprive the Petitioners of what is otherwise appropriate relief. I also reject the argument that interest cannot be awarded because there is no pleaded claim to it. The appropriateness of an award of post-judgment interest arises from the Respondents' request for time in which to raise the completion money. The court's discretion under section 996 to do what is fair in all the circumstances, in granting ancillary relief, is not fettered by the terms of the petition.