Claim No E10CL755

IN THE COUNTY COURT AT CENTRAL LONDON

Thomas More Building
Royal Courts of Justice
Strand
London WC2A 2LL

Date: 6 July 2021

Before :

HIS HONOUR JUDGE MONTY QC

- -

Between :

(1) PAUL STEAD
(2) DARK KNIGHT VENTURES LLC
(3) WILLIAM BEETSON

Claimants

- and –

(1) DARREN SHIRLAW
(2) ANNA BARTON

Defendants

- -

Mr Paul Burton (instructed by **Tenet Law**) for the **Claimants**
Mr Darren Shirlaw and Ms Anna Barton (in person)

Hearing dates: 7-11, 14-17 December 2020

- -

Approved Judgment

HHJ Monty QC:

Introduction

1. Each of the Claimants was a purchaser of shares in Shirlaws Group Limited ("the Company"). The First Defendant was, at the material times of the share purchases, the CEO of the Company, and the Second Defendant was its head of strategy and later head of investor relations. The Claimants say that they bought the shares as the result of fraudulent misrepresentations, or alternatively negligent misstatements, by the Defendants as to the value of the company and therefore the value of those shares. The Defendants deny the claims, and the allegations of dishonesty, in their entirety.

2. The trial took place remotely using the Skype for Business platform over 9 days in December 2020. The first day was a reading day. There were a few technical issues using the remote platform, but nothing which caused any difficulty.

3. The Claimants were represented by Mr Burton of counsel.

4. The Defendants represented themselves. They did so with courtesy and competence. On occasion, they crossed the lines between factual and expert evidence, and evidence and submission, but it did not cause me to think that they were at a disadvantage at any stage by being litigants in person.

5. There were 11 witnesses for the Claimants (including the First and Third Claimants in person, and the Second Claimant's CEO Mr Cohen), and 8 witnesses for the Defendants, including the Defendants themselves.

6. I also heard evidence from the Claimants' expert valuer Mr Hamilton in relation to the valuation of the shares. There was no expert evidence advanced by the Defendants.

7. The trial bundle consisted of 12 lever-arch files of pleadings (1 file), witness statements and expert evidence (2 files), 8 files of documents and 1 file of inter-partes correspondence. This was made available in hard copy and bookmarked pdf format. I am very grateful to those whose hard work resulted in the bundles being so well prepared.

8. In this judgment, I will deal first with some background about the Company and the Defendants, before looking briefly at one of the central documents in the case, a valuation prepared in 2009, known after its author Mr Peter Harford as "the Harford Valuation". I then intend to look at each of the Claimants in turn, followed by each of their witnesses. I will deal with the evidence of the Defendants as part of the narrative in this judgment. I will then go on to comment on the witnesses called by the Defendants. I will then turn to the expert evidence given on behalf of the Claimants. I will look at the pleadings, the relevant law, and finally set out my conclusions.

9. A large number of issues and sub-issues and disputes of fact of varying degrees of relevance were raised during the trial and in the course of submissions. I have not referred to all of these in this judgment, although I have taken into account all of the written and oral submissions of both sides. I have concentrated on those matters which are necessary for me to resolve in order to decide this claim.

10. Following closing submissions, which were delivered orally on the final day of the trial, I received written submissions from Ms Barton on behalf of the Defendants, and in response a short email from Mr Burton. I have taken those submissions into account.

11. The central issues can be simply stated: Did the Defendants make misrepresentations about the true value of the Company, and if so, were they acting dishonestly? Did the Claimants rely on the representations when purchasing shares in the Company?

12. At the heart of the claim is the question of how to value the Company. The Defendants say that the main value was in off-balance sheet assets, and this was an asset-based valuation. The Claimants say that there was no value in these assets, and the true value of the Company was far less than that represented to them.

The Company and the two Defendants

13. Mr Shirlaw, the First Defendant, came across at trial as an impressive individual. I am not alone in thinking so.

14. Mr Stead, in his cross-examination by Ms Barton, described hearing Mr Shirlaw give a talk:

> "I was blown away by Darren's presentation. It was amazing, the IP, the tools, the frameworks. It was a revelation to me. … I was very impressed with Darren; he's an amazing presenter."

15. In his witness statement, Mr Ellis says that Mr Shirlaw was "an effervescent and impressive character" and "a great person to know and learn from." Mr Rixon described Mr Shirlaw as "exceptional".

16. Mr Cameron says that Mr Shirlaw "is a fascinating and exceptionally bright man. He is enormously charismatic."

17. I am not surprised to have heard Mr Shirlaw referred to in these terms. I saw many of these qualities during the course of the trial. However, much of Mr Shirlaw's evidence failed to focus on the central issues in the claim. On a number of occasions, I made it clear to both Defendants that they must concentrate on the evidence material to the central issues, but I agree with Mr Burton that despite this, both Mr Shirlaw and Ms Barton continued to focus on issues such as the attacks on Mr Cohen's running of the Company which provide no defence to the claims.

18. Mr Shirlaw's background is in fund management. He founded the Company as a parent and holding company for a number of subsidiary businesses which provided business coaching services to small and medium-sized enterprises ("SMEs"), with the goal of increasing the value of each SME and "exiting" them, that is, helping them sell all or part of their business for profit. Mr Shirlaw saw this as a combination of a coaching business and a private equity fund. The Company's subsidiaries would each have individuals trained in the coaching method developed by Mr Shirlaw, and would receive coaching fees and a commission. In turn, the Company would sell licences to a subsidiary which would give the subsidiary access to the coaching method and materials as well as the "Shirlaws" brand. Mr Shirlaw described the method and materials, which he designed and developed, as "the IP" (intellectual property).

19. In 1999, Mr Shirlaw gathered together 6 contacts to whom he made a business proposal, namely the establishment of a business coaching network across Australia (Mr Shirlaw's native country). One of those contacts was Mr Harford. Each of the 6, and Mr Shirlaw, invested $20,000 AUD. One of them, a Mr Lambert, left after 3 months. Each of them took on roles in the fledgling business, Shirlaws Pty (Ltd) ("SPL"). Mr Shirlaw was to develop the IP. Mr Harford was responsible for accountancy and legal issues and for business structuring. Mr Shirlaw took 20% equity in SPL and the remaining 80% was held in a pool for division amongst the 6 (remaining) individuals, with each of them being responsible for developing teams to generate revenue, each retaining 75% of earnings and putting 25% back into SPL.

20. SPL's first year revenue was $1.6m AUD, and in year 2 it was $2.8m AUD. By year 4, in 2003, fee revenue was $6m AUD and SPL was the seventh-fastest growing company in Australia, with a client base of 300, most of them small businesses.

21. A decision was made, in 2002, to expand the business internationally, with a particular eye on the US and the UK.

22. In July 2003, Mr Shirlaw moved to London, and 6 new partners for the new UK business were identified.

23. The corporate and operating structure for the business in the UK is not entirely easy to follow (a number of the witnesses who were involved at the centre of the Company or on the Board describe it as complex, which struck me as a bit of an understatement) but I will do my best to summarise it in one paragraph.

24. Shirlaws Global BVI ("Global") was set up as a holding company, and the Company was a subsidiary of Global. Shirlaws IP á Íslandi ehf.Av, a company incorporated in Iceland ("SIP") held the Master Licence (that is, the licence to use the Shirlaws brand and IP) and SIP issued a UK licence to the Company for a payment of £120,000, financed by 6 new partners in the UK in return for equity in the Company. The intention was for the Company to then sell sub-licences to new coaching teams across the country, with each partner retaining 75% of fee revenue, remitting the balance to the Company, which in turn would retain 20% and remit the remaining 5% to SIP. That later changed in 2004, from which time the Company retained 17.5% and remitted 7.5% to SIP. A partner would be able to purchase equity in the Company at a valuation approved by the Board of the Company.

25. Mr Shirlaw describes in his witness statement how by 2007 the aim of establishing a global coaching business had been achieved, and how Shirlaws was recognised as a top three global brand in the coaching industry.

26. There was a corporate restructuring in 2007, with Navitas Limited, incorporated in the BVI, becoming the holding company, under which sat Shirlaws Coaching Limited ("SCL") (the new name for Global), and underneath SCL were the various subsidiary companies such as the Company.

27. Mr Shirlaw said how by 2008 the Board estimated that group revenue would be $40m within 3 years; however, the business as a whole was not profitable. As Mr Shirlaw explained in his statement, it was never the intention that Navitas/SCL would generate revenue; Navitas/SCL would collect royalties and fees from licence sales, and in time

develop a digital platform which would enable the IP to be rolled out into new areas such as careers and retirement coaching. He said in his statement that by 2009 the Board required external investment to support the next growth phase and to fund these new business lines. This required a valuation, which was undertaken by Mr Peter Harford.

28. Ms Barton was described by Mr Cameron as "terrifically bright, fast-thinking and analytical" and as someone who "never suffered fools gladly". He said she is "fiercely loyal about what she does and radiated passion for the Company; you could have cut her in half and it would be written Shirlaws."

29. As with what the witnesses said about Mr Shirlaw, I could see many of these qualities in Ms Barton.

30. However, I regret to say that I found Ms Barton quite oddly insouciant on occasion, and at times she answered questions from Mr Burton in a rather condescending way, as if he (along with every other "doubter", including the Claimants' expert Mr Hamilton) simply did not understand, through ignorance, how the Company was properly to be valued. As with Mr Shirlaw's evidence, there was too much concentration on issues which are not material.

The Harford Valuation

31. In 2003, Mr Harford had produced a paper which addressed amongst other things valuation of equity. The paper set out 4 potential valuation methodologies (discounted cash flow ("DCF"), capitalisation of future maintainable profits, value of net tangible assets on a going concern basis, and notional realisation of assets), and concluded that the appropriate methodology was capitalisation of future maintainable profits ("FMP").

32. In 2009, Mr Harford produced a valuation (the "Harford Valuation"). It figures prominently in the present litigation. It is at page 42 of a document entitled Company Overview, which is dated 17 September 2009.

33. The Harford Valuation applies an asset-based methodology:

"The Board of Navitas has applied a valuation policy which categorises asset values in three ways:

1. Discounted cash flow where future revenue streams are readily identifiable.

2. Implicit valuation where arms-length transactions have taken place and these transactions are used as the basis of an implied value for assets retained by the Navitas Group.

3. Projected valuations where past transactions are used to estimate the current value of new business opportunities.

Details of the current valuation applying these three methods are shown below:

Valuation method		Valuation USD$	USD$
Discounted cash flow	• Shirlaws IP • Shirlaws Coaching	25,442.682 7,749,500	33,192.183
Implicit valuation	• Shirlaws Aus – Corporate • Shirlaws UK – Mid tier • Shirlaws UK – Corporate • Shirlaws USA • Shirlaws NZ	1,391,304 3,453,288 2,639,344 1,985,100 333,922	9,802,959
Projected valuations	• Shirlaws territories – Europe (3) • Shirlaws territories – USA (3) • Shirlaws territories – Asia (3)	6,617,646 4,500,000 4,500,000	15,617,647
Total		USD$	58,612,789

Detailed working papers are attached to this document."

34. The DCF section was based on royalty projections of existing business lines. The implicit valuation was based on the 5 subsidiary companies as at 2009. The projected valuations were based on future licence sales. The working papers show that the Harford Valuation valued each licence at 2,000,000 local currency (for example, £2m, or $2m, or €2m depending on the territory for each licence).

35. Mr Shirlaw says in his statement that shortly after the publication of the Harford Valuation, a Middle East licence was sold for $3m and a Cayman Islands licence was sold for $500,000 (as I shall go on to find, both of these were not in fact as presented by Mr Shirlaw); the Board therefore revised the valuation to £40m (as opposed to US$58,612,789).

36. The figure of $58,612,789 equates to £35.7m. Mr Harford then applied a discount of 75% due to uncertainties regarding the assumptions underpinning the valuation to arrive at a valuation of £8.9m which he rounded up to £9.75m (equivalent to £100 per share).

37. The Board approved the Harford Valuation as the basis for the 2009 share price. In his evidence, Mr Shirlaw emphasised that valuation and share price were always for the Board to decide. It is apparent from Board minutes over the years that Mr Shirlaw is right about that. However, as I shall set out when dealing with Mr Walker's evidence below, the precise role of the Board was to approve the valuation (which it did) but in doing so, as I find as a fact, it did so on the basis of figures and advice put forward by Mr Shirlaw and Ms Barton.

38. There was what I think is a relatively minor issue at the trial, whether there was ever an independent valuation. Mr Shirlaw said that there was one by a Mr White, but no copy was available and it was suggested by Mr Burton to Mr Shirlaw in cross-examination that it never existed. I rather think that there was another valuation, by Mr White, as Mr Shirlaw referred to it in his presentations, but since no copy has been made available, there is no evidence as to what it said and what conclusions it reached.

The First Claimant, Mr Stead

39. I now move on to events in 2013, when the First Claimant, Mr Stead, attended an event in London at which Mr Shirlaw was a speaker. Following that event, Mr Stead and Mr Shirlaw met. Mr Stead described in his statement how Mr Shirlaw explained that they were looking for coaches to learn the IP, but Mr Stead was not interested in being a coach. The conversation then turned to the possibility of Mr Stead making an investment in the Company.

40. Mr Stead's case is that it was represented to him, by both Mr Shirlaw and Ms Barton, that the Company was worth around £60m; in an email to Mr Stead of 30 June 2013, Mr Shirlaw referred to a "current valuation of £61.3m" and on 3 October 2013, Ms Barton wrote to Mr Stead referring to £61.8m. Mr Stead was told that new partners (which Mr Stead would become, on the purchase of shares) were able to buy in at a 50% discount to the current valuation, namely at £30m. Mr Stead was also told by Mr Shirlaw that in January 2014, the price at which shares could be purchased would increase to £40m.

41. In cross-examination, Mr Shirlaw said that he was simply following the Board's instructions. There was no evidence of any such instruction (in relation to timing, in respect of any of the Claimants) and it was a common theme in relation not just to the Claimants but to the investments made by a number of other witnesses that Mr Shirlaw would try and hurry things along by referring to the imminence of a price increase. In my view, this was salesmanship and was not based on fact at all.

42. It was explained to Mr Stead that the valuation was asset-based. Mr Shirlaw told Mr Stead, at their initial meeting, that investors had initially come in at a valuation of £10m, but the valuation was now around £60m and that investors could buy in at half price. Mr Shirlaw later wrote the email of 30 June, in which he said that the minimum investment was £100,000; he also told Mr Stead that "serious investors go in at 1%, not £100,000", and in the email he said that most investors put in between £100-300,000. Mr Stead explained in his statement that he was particularly attracted by the 50% discount reflecting an immediate "gain" on the value of his investment. Mr Shirlaw said that the most recent investment had been that of Mr Graves, who had purchased 1%, and Mr Stead explained in his statement that he regarded this as a benchmark which he had to match (1% at a valuation of £60m, at a 50% discount, would mean an investment of £300,000; Mr Stead believed this represented an immediate uplift in the value of his shares).

43. Mr Kemp, the Company's finance manager, sent a number of documents to Mr Stead, including the accounts for 2010 and 2011, which Mr Stead reviewed and passed on to his accountant. Mr Stead said that he could not see how the valuation of £60m was reflected in the accounts, which showed (for 2010) fixed assets of under £5m and a profit of just under £220,000, and for 2011, a decline in turnover and an overall loss of

around £182,000. Mr Stead says, however, that he relied on what he was told by Mr Shirlaw, that the Company was not valued in "the traditional way" by looking at the profit and loss figures in the accounts, but was based on the assets of the Company. One of the key assets was licence sales. At a workshop attended by Mr Stead in August 2013, Mr Shirlaw referred to the importance of territory licence sales and to a recent licence sale in the Middle East for $3m (Mr Shirlaw refers to this sale in his statement, as I have noted above). At a partner retreat in September 2013, which Mr Stead also attended, Mr Shirlaw gave a presentation in which he referred to territorial licences as a key asset underpinning the valuation. Again Mr Shirlaw referred to a recent licence sale at $3m, and that there were at least 10 more territories for which licences could be sold. In the same presentation, Mr Shirlaw explained that the profit and loss valuation traditionally used by businesses missed the point – Mr Stead described this as "revolutionary to me". Another major asset as presented by Mr Shirlaw was the IP, which was the foundation of the territory licence sales.

44. It can be seen from Mr Shirlaw's presentation notes, which are in the trial bundle, that Mr Shirlaw placed great emphasis on licence sales and the potential for selling further licences to populate the asset base. The profit and loss side was said to be relevant to the territories which would be under licence; if a licence sold for $3m and the territory was doing good business, then the next licence might sell for $4m, and the next for $5m, and then the asset base would be growing (the value being potential licence sales) even if the number of available territories into which licences would be sold was reduced. As I have noted above, licence sales underpinned the Harford Valuation of £40m.

45. Mr Stead says in his witness statement that he felt pressured into purchasing the shares; he received an email from Mr Shirlaw's assistant, Mr Chidgey, about Mr Shirlaw being able to "lock in a 1% investment" for Mr Stead, if he acted quickly, and Mr Shirlaw emailed Mr Stead in October 2013 about agreeing an investment "on Friday" following which the valuation "will jump" in December. Mr Stead received a further email from Mr Chidgey on 18 December which said that Mr Shirlaw "wants to ensure that you invest before the Navitas valuation increases to £40m as from 1 January 2014." At a meeting with Mr Shirlaw at Mr Stead's home, Mr Shirlaw told Mr Stead (and noted the same in some sketches) that the valuation was currently £63.6m, the 50% discount meant a notional share buy-in value of £30m, and that as from 1 January 2014 it would be £40m.

46. Mr Stead proceeded to invest £299,802 in return for 1,108 shares on 31 December 2013.

47. In July 2015, Mr Stead sold half of his shares for £150,000 to a business acquaintance, Mr Wilson. Mr Stead asked Mr Shirlaw if he could do so, and Mr Shirlaw agreed.

48. In November 2015, Mr Stead decided he wanted to sell the rest of his shares. He asked Ms Barton for a copy of the share register together with prices paid, but Ms Barton told him in an email of 11 December 2015 that it would not be provided; however she was prepared to tell him "how many other people are on it and give you the current price that the board are selling shares for. The past 7 transactions have all occurred at £270 per share." Mr Stead did not sell his shares, although in January 2016 the Board had confirmed to him that the shares could be sold at £150,000 (the original purchase price).

49. Mr Shirlaw says that Mr Stead was a "highly sophisticated investor, who had very particular reasons for wishing to invest in the Company", namely to generate "lucrative referrals for his own business, which indeed he did".

50. I do not strictly need to make any findings in relation to these matters. For what it is worth, I accept Mr Stead's evidence, given in cross-examination by Ms Barton, that he was not a sophisticated investor, having generally avoided the markets and his only corporate investment experience was that he had invested in his own business when he was growing it.

51. The important point is that in his witness statement Mr Shirlaw accepts that the representations which I have summarised above in relation to value and the timing of the share purchase were made; and Ms Barton also accepts that she said what she said in her emails to Mr Stead.

52. Further, in a Response to Claimants' Notice to Admit Facts, signed on 16 October 2018 by both Ms Barton and Mr Shirlaw, it is stated:

> "As is set out in the Defence we made the representations that are the subject of this claim (which we did on behalf of the Company) by adopting a methodology for the valuation of the Company which was first adopted in 2009 and which was an assets-based valuation which included a consideration of intangible assets including brand, intellectual property (which in the present context meant the Company's methodologies, 'Know-how' and business tools), market and network access, market expertise and partner and coaching expertise and loyalty."

53. In the Defence, Mr Shirlaw and Ms Barton state,

> "It is averred that the Company and/or Group could indeed be said to have owned assets with a value of £60,000,000 at the material time."
>
> Similar words are used in relation to the £40m valuation in 2009.

54. In cross-examination by Ms Barton, Mr Stead was asked about his understanding of tangible and intangible assets. He gave as an example of the latter a brand, namely the uplift in value attributable to a brand name. He was pressed by Ms Barton to say how he would value intellectual property (he declined to do so on the basis that he was not an expert) or how he would define an asset and an income and in particular his understanding of the Company valuation. He said – and I accept – that he was "naïve" about how the business had been valued. Ms Barton characterised the discussions between Mr Stead and Mr Shirlaw as "sophisticated investor discussions", but I agree with Mr Stead that it would in fact be right to call these business conversations, and that Ms Barton sent him correspondence supporting those conversations.

55. I accept Mr Stead's evidence about reliance on what Mr Shirlaw and Mr Barton said to him about valuation. I can and do accept that Mr Stead found Mr Shirlaw "very credible" and that he "wanted to learn from him and be part of this dynamic business". I accept his answers to Ms Barton that he relied on Mr Shirlaw and on a note which (he later discovered) Ms Barton had written.

The Second Claimant, Dark Knight Ventures LLC, and Mr Cohen

56. Mr Cohen is the Chief Executive officer of Dark Knight Ventures LLC, the Second Claimant ("DKV"). Mr Cohen first came across Shirlaws in the US in 2006-7 when his family company, Cohen Financial, became a client. He explained in cross-examination by Mr Shirlaw that he received coaching, using the Shirlaws method, from Mr Stewart Gall between around 2008 to 2015 (initially corporate, and latterly personal). Mr Cohen was introduced to Mr Shirlaw in early 2015. Mr Cohen was looking for an investment opportunity. In June 2015, Mr Cohen was sent a number of documents including one entitled "Investor Update March 2014", which set out a history of valuation from 2003 to 2013. The 2013 valuation was said to be £61.3m, with "Equity offer" (the buy-in price) being £30m. The notes to the valuations refer to assets. Mr Cohen visited the UK where he had a number of meetings with Mr Shirlaw and several Shirlaws coaches. Mr Shirlaw told Mr Cohen that the Company had assets worth at least £66m, and in an email of 6 July 2015, Mr Shirlaw referred to share sales over the previous 18 months at £270 per share, which was a valuation of £33.7m (after the 50% discount).

57. Mr Cohen says in his witness statement that he felt "confusion about how the valuation was driven" and so he asked about the assumptions underpinning the valuation, in particular assets, in an email to Mr Shirlaw of 6 July 2015. Mr Cohen received a response from Ms Barton, who sent Mr Cohen a document which she called an "asset valuation schedule showing all the assets that make up our current valuation" and saying, "You will see that in all these we own the vast majority of equity in the assets". The valuation at 2015 was said to be £67.1m. Mr Cohen still had some questions. On 12 July 2015 he emailed Ms Barton, asking in particular about licence sales ("10m – on what basis?") and "Has there ever been a third party valuation of the stock?". He commented, "I'm truly trying to fight a first reaction that the valuation seems entirely arbitrary to me. My interest is in understanding how the various downstream lines of businesses and assets actually grow in equity value".

58. Mr Cohen said that at this point he started to receive some pressure from Mr Shirlaw to commit to an investment, otherwise the share price would increase. He was also told that "we have had the last 9 shareholders buy in at the £270 per share price". Mr Shirlaw referred to a potential partnership between Shirlaws and KPMG, the large accountancy firm, which would have a significant upward effect on the share price (Mr Shirlaw was later to email Mr Cohen about his discussions with KPMG, saying that they did not understand the valuation, that he told them it was about "deal flow", and that "People have just got to get their head around an asset valuation not a P&L valuation"). This led to a lengthy telephone discussion between Mr Cohen and Mr Shirlaw. Mr Cohen's notes of that discussion show that Mr Shirlaw described the valuation of the Company as "independent" and said that three separate valuations had been carried out, one by him, one by Mr Harford, and one independently, using different methodologies, each of which came up with a valuation of £40m. Mr Shirlaw therefore confirmed the current £66m valuation, the 50% discount, and the buy-in price of £270 per share. Mr Cohen then had a telephone meeting with Ms Barton, who told him that the way the Company was valued was "different to normal valuations", that the 2009 valuation was external and fundamentally based on the sale of licences.

59. Mr Cohen asked for further documents about the Company valuation, and he was sent by Ms Barton a document entitled "Company Information Outline – Shirlaws Group

June 2015". Ms Barton's covering email of 7 August 2015 stated, "Our assets are valued as per our inventory list at £66m – from the forecast on a £3.4m profit in 2016 on a 20x multiple the P&L now gives a £66m valuation. At £270 per share we are allowing investors to buy in on a 10x multiple currently (£33m)." This was a reflection of the figures and narrative in the accompanying document, which also referred to shareholders buying in at £270 per share.

60. Mr Cohen's response was that this was exactly what he was looking for, and he confirmed his decision to invest, expressing his excitement.

61. However, it is clear that Mr Cohen still had some underlying concerns. He commissioned a report from a private investigation agency called K2 Intelligence, which was dated 2 September 2015, about the Shirlaws business and Mr Shirlaw in particular. A copy of the report was in the trial bundle. Mr Cohen described it (in my view accurately) as "largely negative and [it] made for difficult reading." The summary section of the report refers to anecdotal evidence of the business being like a "Ponzi scheme" and being financed entirely by new investments rather than actual business income, as well as how K2 had been unable to independently verify any of the statements made by Mr Shirlaw about the business. Not surprisingly, the K2 report was the subject of a further telephone discussion between Mr Cohen and Mr Shirlaw, who dismissed the concerns and gave explanations which Mr Cohen describes in his statement as "credible and convincing". As Mr Cohen says in his statement, Mr Shirlaw persuaded him that the K2 report was wrong and he was right (in re-examination Mr Cohen said that Mr Shirlaw persuaded him that it was based upon what was said about the business by disgruntled coaches), that the K2 report was based upon misunderstandings and untruths, and there was really nothing to worry about.

62. Mr Cohen remained enthusiastic about investing in the Company (saying, after his discussion with Mr Shirlaw, "I remain a believer" and "I am not dissuaded"). He decided to invest. DKV is owned by four (family) trusts of which Mr Cohen is the trustee and investment advisor. The share purchase was effected by DKV which invested £328,552 ($500,000) on 11 September 2015 in return for 1,217 shares.

63. Mr Cohen came to London and in due course became CEO of the Company in May 2016. He became increasingly concerned about the financial side of the business, which by June 2016 he described as fragile. He resigned as CEO in December 2016, but remained determined to try to rebuild the business.

64. In his statement, Mr Shirlaw describes in some detail what he calls the breakdown in relationships between him and Mr Cohen, which led to a position where Mr Cohen "had conspired to drive me out of the Company of which I was majority shareholder, remove my shares from me and, in the process, destroy the Company." Similarly, Ms Barton refers to the "destruction of value" which she says was caused by Mr Cohen's involvement.

65. Again, there is no need to make any findings in relation to events subsequent to DKV's purchase, as Mr Shirlaw and Ms Barton accept that the representations were made (Mr Shirlaw says he has no recollection of certain telephone conversations, but accepts that it was possible that he would have said that the share price was going to increase, particularly because of KPMG). I have already referred to what is said in the pleadings.

66. In cross-examination, Mr Cohen readily accepted that he conducted a good deal of due diligence before making his investment, but he said – and I accept – that he was ultimately relying on the resolution of the questions which he put about valuation, and which Mr Shirlaw answered. As he put it, "I was sure [about the investment] based on your word and what you said to me."

The Third Claimant, Mr Beetson

67. Mr Beetson is a practising barrister. As a result of the settlement of a claim against an NHS Trust arising from the difficult circumstances of his birth, in 2011 Mr Beetson found himself with money which he wanted to invest. He was introduced to Mr Shirlaw who put Mr Beetson in touch with a Mr Richard England. Mr Beetson invested £100,000 in a company called My Web Presenters ("MWP") following advice given to him by Mr England, but he became disillusioned and wanted out. He contacted Mr Shirlaw, and in November 2014 Mr Shirlaw emailed Mr Beetson with a number of options which included Mr Shirlaw buying out Mr Beetson's investment at cost or transferring the investment to the Company. Mr Beetson was attracted to the latter suggestion and he asked Mr Shirlaw for more information about the Company. Having reviewed what he had been sent, Mr Beetson decided that he simply wanted his investment back; he was minded to place it with Carrington Investments, a financial planning and wealth management firm with whom he had an investment portfolio.

68. A further option was then proposed to Mr Beetson, that he invest £50,000 in the Company in return for shares. This option was set out in an email from Mr Adam Walker, described by Mr Shirlaw as the Company's chairman, dated 28 May 2014. The email said, "The last five share issues have been at a valuation of £30m and the board have now set the issue price based on a valuation of £40m." The email referred to this being a guaranteed minimum valuation for any future sale, and this was confirmed by Mr Walker in another email.

69. This led Mr Beetson to contact Mr Shirlaw by telephone to discuss his options. Mr Shirlaw told Mr Beetson that the most recent share issues had been at a valuation of £40m and that Mr Beetson was getting a great bargain; he explained how the valuation had risen sharply over the last 2 years, and that Mr Beetson would be acquiring shares at discount of 50% to its actual value of £40m, which was an assets-based valuation.

70. Mr Beetson said in his statement that he believed from all of this that the Company had been valued recently either by an independent third party or by the Company himself, using an appropriate asset-based valuation method.

71. Mr Beetson invested £49,863 in the Company in the latter half of 2014 (there is some uncertainty about the precise date, but it does not matter for the purposes of this claim), and he received a bank transfer for the balance of his investment in MWP. He received 273 shares in the Company.

72. Unlike the other two Claimants, Mr Beetson had no discussions or emails with Ms Barton before his share purchase. His claim is against Mr Shirlaw alone.

73. Mr Beetson gave evidence and was cross-examined by Mr Shirlaw. Mr Beetson confirmed that he decided to invest after his telephone conversation with Mr Shirlaw and that in doing so he was accepting and relying on advice from Mr Shirlaw.

74. Mr Shirlaw denies making any representations to Mr Beetson. I accept Mr Beetson's evidence about the conversations he had with Mr Shirlaw.

75. Mr Shirlaw also suggested to Mr Beetson in cross-examination that he did not "technically" make any offer to Mr Beetson, since the email came from Mr Walker. I accept Mr Beetson's response, which was that it would be surprising if Mr Walker was acting unilaterally. In my view, Mr Walker was acting on instruction from and with the full knowledge of Mr Shirlaw, and the offer came from Mr Shirlaw on behalf of the Company. In any event, as with the other Claimants, the question is not who made the offer, but whether representations – which I accept were made by Mr Shirlaw – were made personally.

76. Mr Beetson said in cross-examination that his call with Mr Shirlaw lasted 50-60 minutes, and that he regarded the valuation issue as being "crucial". Mr Shirlaw denied having given any sort of valuation guarantee; I accept Mr Beetson's evidence that it was his very clear recollection that he did.

77. Mr Beetson was not cross-examined by Ms Barton.

78. I was impressed by Mr Beetson as a witness of truth. I accept his evidence.

The Claimants' witnesses

(A) Mr Kemp

79. Mr Kemp was the Chief Financial Officer of the Company between October 2008 and January 2019. He now works for the Company as an independent contractor. He is an accountant.

80. It was Mr Kemp who initiated the preparation of consolidated group accounts in 2012 (before that, the various companies had individual accounts). The first set of consolidated accounts was for the financial year 2014, and were prepared by independent external accountants, although these were not finalised until March 2016.

81. Mr Kemp was, not surprisingly, fully aware of the Harford Valuation, and in his evidence commented briefly on the assumptions made by Mr Harford. Of particular relevance was that in respect of the Middle East licence (see paragraph 35 above, and further below) the part-payment received for this was repaid or was due to be repaid by the Company and that 1 licence was sold in the Cayman Islands for $150k (again, see paragraph 35 above; Mr Shirlaw had said it was a sale at $500k, which was wrong as I accept Mr Kemp's evidence as to this sale). Further, as to the various share interests which the Company was said to have in various businesses, Mr Kemp said that in relation to most of them there was no or very little value to the Company.

82. Mr Kemp was briefly cross-examined. He struck me as a competent individual and a truthful witness. I accept his evidence.

(B) Mr Johnstone

83. Mr Johnstone is a partner and shareholder in Shirlaws Group in Australia.

84. Mr Johnstone and Mr Shirlaw had fallen out after a disagreement over a presentation given by Mr Shirlaw in October 2009, and in 2010 Mr Johnstone sold a tranche of his shares for £100 per share in 2010. He sold a further tranche (he says in March 2014; Mr Graves says it was late December 2013 – nothing turns on this) to Mr Stewart Graves, also for £100 per share. In cross-examination, he accepted that he had also sold £50k-worth of shares to Mr Shirlaw, which was not mentioned in his statement. He said that he has tried to sell his remaining shares, but there is no market for them (even at £20 per share).

85. I see no reason not to accept Mr Johnstone's evidence, although it did not seem to me to go to any of the main issues in this trial.

(C) Mr Harford

86. Since the Harford Valuation was constantly at the centre of the evidence in this case, Mr Harford's evidence was of considerable importance and assistance to me. I thought Mr Harford was doing his best to assist the court by giving truthful evidence and I accept his evidence.

87. Mr Harford describes in his statement having undertaken an internal valuation, referred to in this case as the Harford Valuation, in 2009. He explained the 3 elements of the valuation. First was the valuation of the 5 companies. Secondly, the projection of future licence sales, which Mr Harford said was discounted by 25% to reflect the likelihood of those sales being achieved, and which he also noted was discounted by a further 75% as were the other elements overall. Thirdly, the DCF of royalties, which in his statement he said was "the share of coaching fees paid by independent coaches using the Shirlaws brand and know-how". As he says, "Shirlaws Iceland owned the Group's IP (i.e., the know-how tools) and received 5% of revenue from each licensed territory for use of the IP and Shirlaws Coaching Limited received 2.5% of revenue of each licensed territory to provide pooled services such as website. Both of those companies were subsidiaries of the Company". Further, Mr Harford commented that his valuation "did account for intangible assets but only indirectly, not directly. There is no specific valuation for individual intangible assets such as the brand, IP etc."

88. Mr Harford confirmed that his actual valuation was not £40m but £9.75m, having applied an overall 75% discount. He also said that he had never been asked to update his valuation nor to assist anyone in doing so.

89. In cross-examination by Mr Shirlaw, Mr Harford said that the 25% discount for the licence sales was simply on the basis that they might only achieve 75% of the predicted licence sales, and that his overall 75% discount applied to the figure of $58.6m. He described the Harford Valuation as having a three-step process – methodology, valuation, and discount.

90. I accept Mr Harford's evidence.

91. It is surprising to me that anyone could ever have thought it appropriate to present the Harford Valuation as being £40m or anything like that figure. It was a valuation at £9.75m, not £40m, and was based upon assumptions made in 2009 which by the material time of the Claimants' investments had been proved to be either optimistic at best or mistaken at worst.

(D) Mr Walker

92. Between 2009 and 2018, Mr Walker was chair of the Board of the Company. Some time was taken at the trial discussing the role of Mr Shirlaw if any at Board meetings. Mr Walker says this:

> "It was [Mr Shirlaw] that in reality set and drafted the agenda for all Board meetings regardless of his title and role at the Company. Notwithstanding titles, it is clear that he was considered by those within the Company to be a member of the Board. He attended every Board meeting. The Board meetings were, more often than not, a discussion of the papers he presented…".

93. As to valuation issues, Mr Walker said:

> "…matters as to valuation and strategic development of the Company, and their applicability/opportunities, were led by [Mr Shirlaw]. The reality was that no key decisions of relevance to the operation of Shirlaws were taken that did not accord with [Mr Shirlaw's] view and recommendation. … Each year [Mr Shirlaw] would suggest to the Board what he considered to be an acceptable target share price for the Company based on his understanding of the Company, its revenue from royalties and assets. The Board relied on his held-out expertise in this area. He was trusted to represent accurate information to the Board on all matters including valuation matters. It was [Mr Shirlaw] and [Ms Barton] who held themselves out as having detailed and expert knowledge in the area of valuation concerning the Company. [Mr Shirlaw] held himself out as the expert on valuations. The Board relied wholly upon [Mr Shirlaw and Ms Barton's] purported expertise and knowledge."

94. Mr Walker disagreed with Mr Shirlaw's view that it was the Board which set the valuation. Whilst the Board approved the figure, it was "guided and recommended" by Mr Shirlaw:

> "[Mr Shirlaw] in particular and, [Ms Barton] to a lesser extent, both held themselves as experts in valuations, they would attend the Board and present a valuation based on their skill. The Board relied on their expertise and they would recommend this to the Board. In reality, Mr Shirlaw set and updated the Company valuation which we understood was based on the true worth of the assets of the Company. [Mr Shirlaw] and [Ms Barton] did not act as intermediaries between the Board and investors as they seek to argue. They were the authors of the valuation year on year after 2009 and took responsibility for the Company when negotiating to secure terms of investment with new investors."

95. Mr Walker referred to how Mr Shirlaw and Ms Barton "adopted" the Harford Valuation as the basis for a valuation year on year. He said in his statement how he now believes that the Harford Valuation should not have been "relied upon and recycled" in the way he says Mr Shirlaw and Ms Barton did.

96. Mr Walker was cross-examined at some length by Ms Barton about the board minutes, which I have to say I did not find of great assistance. It is not in dispute that the Board had to set the value of the shares; the real point is that it is clear to me from Mr Walker's evidence, which I accept, that it did so on the basis of information provided to it by Mr Shirlaw and Ms Barton.

97. It seems to me that this part of the Defendants' case was an attempt to distance themselves from the setting of the share price, and to lay responsibility for that solely at the door of the Company/the Board. In my view, based on the evidence I have seen and heard, that is not a course open to them.

98. Mr Walker had said in evidence that Ms Barton was present at the majority of Board meetings. He accepted in cross-examination that he was wrong about that. However, he confirmed that his "recollection is that 2 individuals, Darren Shirlaw and Anna Barton, held themselves out as experts on valuation and put forward figures with values. We were entitled to delegate [valuation issues] and to rely on that information."

99. I thought that Mr Walker's evidence was fairly impressionistic and there was some degree of generalised criticism of both Defendants, particularly Mr Shirlaw, but I have concluded that I accept the evidence that the Board made decisions based on figures presented to it by Mr Shirlaw as to the basis of valuation.

(E) Mr Davies

100. Currently a Board member and CEO of the Company, Mr Davies became a shareholder in 2007. He explained in his statement that he bought in at £164 per share, based on a March 2007 valuation of £16.4m which Mr Shirlaw said was an internal valuation based on global coaching revenue without reference to licence sales or externally-held assets.

101. Mr Davies described how he felt "overwhelmed with information" provided by Mr Shirlaw to the Board; he said in his statement, "In hindsight it was virtually impossible to get a handle on exactly what the Company was doing as there were so many Shirlaws named companies beneath the main Company that [Mr Shirlaw] had far superior knowledge of how it all worked and sat together than compared to the Board members." Rather ruefully, in my view, Mr Davies also referred to the various valuations placed on the Company by Mr Shirlaw in this way: "When you look back it is ridiculous." In cross-examination by Mr Shirlaw, Mr Davies said, "The volume of information led to an over-reliance on your summary at the meetings … we relied on the information credibility and experience of those presenting it to us."

102. Mr Davies' evidence is of a piece with Mr Walker's on this, and I accept it.

103. Ms Barton obtained a similar concession from Mr Davies, that she was not at every Board meeting ("although on occasion, you did attend"). I have to say that nothing really turns on that.

(F) Mr Chidgey

104. Having qualified as a solicitor in 2005 and having been in practice until being made redundant in 2008, Mr Chidgey became Mr Shirlaw's assistant in October 2010.

105. Mr Chidgey said that Mr Shirlaw often did not have a defined role at the Company, "but for all intents and purposes the Company and the Group was [Mr Shirlaw]. They are indistinguishable." He went on to say, "From my role it was clear that he was the person in control of the Company and the person who had the knowledge of its

finances, assets, liabilities and performance." He described Mr Shirlaw as "the primary interface with potential clients, often supported by Anna Barton."

106. As for Ms Barton, Mr Chidgey said that she was "treated and seen as a senior member of the Company and close professionally to [Mr Shirlaw]". He described her as "the 'numbers person'" and said that Mr Shirlaw "was not a detail person". Mr Chidgey confirmed that both Mr Shirlaw and Ms Barton, together, dealt with potential investors and provided information to them, including valuation material. This accords with the evidence of the Claimants. I accept it.

107. Mr Chidgey said that Mr Shirlaw, working with Ms Barton, prepared the valuation of the Company's shares. As for Board meetings, Mr Chidgey recalls that "all valuation discussion comprised of [Mr Shirlaw] setting the valuations and then just getting these signed off at Board meetings. … The Board was not involved at all in creating the valuation itself. It was approved by the Board based on [Mr Shirlaw's] advice, information and expertise." Mr Chidgey also said that Mr Shirlaw and Ms Barton always referred to the valuation as being asset-based.

108. Again, this accords with the other evidence I have summarised, and I accept it.

109. I also accept Mr Chidgey's evidence that he was instructed by Mr Shirlaw to have a common approach when emailing potential investors, namely that the shares were worth a certain amount, but that new investors would be offered shares at a 50% discount; and that Mr Shirlaw would also "sometimes inject a sense of urgency". This is all apparent from the evidence of Mr Stead, Mr Beetson and Mr Cohen.

110. Further, Mr Chidgey cast some doubt over whether it was right to use the KPMG discussions to justify putting pressure on Mr Cohen to act quickly.

111. Mr Chidgey was briefly asked some questions in cross-examination by Mr Shirlaw, but none of these questioned the accuracy of his statement, which I accept as fact. He was not cross-examined by Ms Barton.

(G) Mr Graves

112. Mr Graves was an investor in, and Board member of, the Company from 2013. He bought 370 shares in May 2013 at £270.58 per share. He dealt solely with Mr Shirlaw prior to purchase; Mr Shirlaw told him that the price would increase if he did not invest quickly (although Mr Graves did not proceed at a quicker pace than he would otherwise have done; the price did not increase).

113. In late December 2013, Mr Graves bought 1000 shares from Mr Johnstone at £100 a share in a transaction which he said was "brokered" by Mr Shirlaw. Mr Johnstone said this transaction was March 2014. Nothing turns on the difference in recollection.

114. Mr Graves gave evidence in his statement about the operation of the Board. He said that the "information flow" was one-way, from Mr Shirlaw to the Board. He recalls Ms Barton as being "buried in the financial detail and was basically doing what she was told by [Mr Shirlaw]." He describes her as Mr Shirlaw's "right hand" around business development. Mr Graves said his clear recollection is that the Board had "no say in the valuation of the shares of the Company … [Mr Shirlaw] decided what the valuation of

the Company was based on its assets was [*sic*] and the Board had no say in it whatsoever." He said that the selling of shares, and the sale strategy, was down to Mr Shirlaw. In answers given in cross-examination by Mr Shirlaw, he said that he had no doubt that Mr Shirlaw was a shadow director.

115. In his statement, Mr Graves dealt with the valuation of licences. He recognised that the potential licence sales were the Company's principal asset, and he took the view – which he expressed to the Board – that it was not right to ascribe any value to these potential sales as the Company was making no effort to market in those potential territories. Mr Shirlaw became aggressive and refused to deal with the detail.

116. Mr Graves was cross-examined by both Mr Shirlaw and Ms Barton, but not on the key evidence which I have set out above and which I accept.

(H) Mr Ellis

117. Mr Ellis's background is in financial services. He first met Mr Shirlaw in 2010. He bought 550 shares in the Company at £181.75 per share in October 2012. He made a further investment of £99,962.50 in October 2015, for 550 shares at £182 per share. His evidence about that further investment, and what he was told, again accords with the experience of the Claimants.

118. Mr Ellis says that he asked for more information about the valuation of the business and how the share price had been calculated; his query was passed to Ms Barton, who emailed Mr Ellis on 31 August 2015: "Current shares are trading at £270 per share which is at a £33m valuation. The current business asset valuation is £61m so the equity purchase represents at 48% discount." Ms Barton also provided Mr Ellis with the company overview document which gave the group valuation as £66m. Mr Ellis's accountant told him that there was no obvious value as assets either could not be identified or had no value, and in cross-examination by Mr Barton he said that his adviser was telling him he was putting money into an illiquid company where the balance sheet did not tie in to the professed valuation.

119. Mr Ellis describes himself as being persuaded by Mr Shirlaw and Ms Barton that

> "the Company's valuation was based on assets that had yet to fully turn into income generating assets. I attended numerous conferences where this method was taught and as such I just felt that my accountant did not understand an asset based valuation the way [Mr Shirlaw and Ms Barton] often explained it when justifying the value of the Company."

120. Mr Ellis described himself as being so convinced by Mr Shirlaw and Ms Barton that he over-rode the concerns expressed by his financial adviser.

121. The majority of Mr Shirlaw's cross-examination of Mr Ellis related to whether Mr Shirlaw was or was not giving Mr Ellis financial advice. Mr Ellis accepted he was not – he had an independent financial adviser – but it was clear from his witness statement and his oral evidence that he was relying on what Mr Shirlaw told him.

122. Ms Barton's cross-examination of Mr Ellis focussed on what she told him at the time he was attempting to place his second tranche of shares into a SIPP. During this period,

> Ms Barton told Mr Ellis in an email, "as we are an asset company our equity value is based on future potential of the assets we build and not the historic balance sheet … you will need to explain things carefully to your advisors as they won't be used to looking at things this way." Ms Barton said in her questioning of Mr Ellis that she was "trying to be helpful, open and straight with you." Mr Ellis responded that things were going round in circles (he described it all as "smoke and mirrors" in his statement) and said it was impossible to validate the Company's valuation to the satisfaction of the SIPP provider.

123. I accept Mr Ellis's evidence entirely.

The Defendants' witnesses

124. Before I look at the expert evidence on behalf of the Claimants, I need to say something about the Defendants' witnesses (other than the Defendants themselves).

(A) Mr Rixon

125. Mr Rixon is the largest shareholder in the Company and has been a partner since 2004, serving as CEO from 2012 to May 2013.

126. Mr Rixon says that Mr Shirlaw "was always absolutely clear that the Company was not a revenue generating company. The point of the model was to free coaches to go out and earn revenue themselves using the IP. In so doing, they would build the Shirlaws brand, which would help generate sales of territory licences". He described the IP as brilliant and the Company's greatest asset.

127. In oral evidence (in answer to a question put to him in re-examination by Mr Shirlaw), Mr Rixon told me that his understanding was that the income and equity model meant there was income (using the IP to go out and earn money) and it thereby created an asset which could eventually be sold.

128. Much of Mr Rixon's statement is opinion evidence about why each of the Claimants invested in the Company; none of this helps me in deciding the central issues in this claim.

(B) Mr Dwyer

129. Mr Dwyer was on the Company's Board between January 2016 and November 2017, and he remains a shareholder in the Company. He was not involved in the preparation of the Harford Valuation.

130. Most of his evidence went to support the Defendants' assertions that the business was destroyed by the decision to bring in Mr Cohen, which Mr Dwyer described as the worst decision the Company ever made. He described Mr Cohen as a "vindictive individual" and a bully. None of this is relevant to the issues in this claim. I do not need to make any findings in relation to any of it.

(C) Mr Cameron

131. Mr Cameron was a partner in the Company between 2009 and 2018 and is a shareholder. He was a corporate lawyer for many years before working in financial

public relations. Like Mr Dwyer, he was not involved in the preparation of the Harford Valuation.

132. I accept what Mr Cameron says about the ethos and culture of the Company.

133. Like Mr Dwyer and Mr Rixon who gave evidence before him, the main thrust of Mr Cameron's evidence was directed towards how the company had suffered under Mr Cohen, and how unfair and wrong the allegations in this claim are. The first point is irrelevant, and the second point is a matter for the court, not for the opinion of the witnesses.

(D) Mr Roundell

134. Mr Roundell sat on the Board between 2009 and 2013. He holds 2000 shares in the Company. His background is in chartered accountancy and investor relations.

135. Mr Roundell gave oral evidence about the operation of the share register. He said that he explained to Mr Stead that it was a buy/sell register which enabled seller to be matched with purchaser based on price. He said that he would have explained that shares were available for sale at less than the buy-in price but the register was only accessible after buy-in.

136. He also gave evidence about having explained to Mr Stead that this was an asset-based company so one needed to recognise the value of the asset and the projection of income streams.

137. I accept that evidence.

138. As to the Board and valuation, Mr Roundell said that there was a lot of discussion at Board meetings around valuation and share price; he gave no detail. On balance, I prefer the evidence of the Claimants' witnesses as to what happened at Board meetings.

(E) Mrs Shirlaw

139. Mrs Shirlaw is the wife of Mr Shirlaw. From 2001 to 2010, Mrs Shirley was initially Mr Shirlaw's PA and then the Company's operations manager.

140. Mrs Shirlaw's evidence was divided into a number of sections. She dealt with the background to her relationship with Mr Shirlaw, then the period from 2003 when they moved to London, followed by the period from 2015/16 onwards, where she dealt with the post-Mr Cohen period.

141. Mrs Shirlaw ceased to have any involved in the Company (save on what she said in cross-examination was "a personal level") in 2010. None of Mrs Shirlaw's evidence is of assistance in deciding the issues in the claim.

The valuation of the Company

142. Since there is no dispute that representations about value were made to Mr Stead and to Mr Cohen, and I have found that representations were made to Mr Beetson, it is apparent that the first central issue is whether the representations were true or not. This turns on the valuation of the Company.

143. The Claimants – in particular Mr Stead and Mr Cohen; Mr Beetson says little on this subject – go into some detail with their views of the true value of the Company and how they were misled into purchasing shares. All three, however, rely principally on the expert evidence of Mr James Hamilton, a forensic accountant. Permission was given to both sides to rely on expert valuation evidence. There was none served on behalf of the Defendants, who at the interlocutory stage of proceedings had opposed the need to have expert evidence at all.

Mr Hamilton's expert evidence

144. Mr Hamilton notes that the Harford Valuation underpinned all subsequent valuations of the Company.

145. I have set out the figures in the Harford Valuation at paragraph 33 above. Mr Hamilton's report sets out his understanding of the three figures which made up the Harford Valuation as follows.

146. First, the implicit valuation of the Company's interest in 5 other companies, which was calculated at $9.8m. These are as summarised in the table in the Harford Valuation which is set out at paragraph 33 above.

147. Secondly, the value attributable to future licence sales, calculated at $15.6m. As I have already noted, the Harford Valuation assumed that licences would be sold across 9 territories, for 2m in local currency, and then discounted the likelihood of achieving the sales by 25% to arrive at the figure of $15.6m.

148. Thirdly, income from royalties calculated at $33.1m. This was based on a 5% discounted cash flow of the royalty income (I have explained briefly how the royalty structure worked earlier in this judgment) over ten years.

149. Mr Hamilton notes that these 3 elements, totalling £35.7m, were discounted by Mr Harford by 75% and then rounded back up to £9.75m.

150. Mr Hamilton says that this is inconsistent with the view that the Harford Valuation was £40m; Mr Harford's valuation was £9.75m.

151. In cross-examination by Mr Shirlaw, Mr Hamilton observes that since there was no need to discount the licence sales twice, £9.75m actually represented a 90% discount. He said that he was not impressed with the Harford Valuation.

152. Mr Hamilton also comments that the assumptions in the Harford Valuation could have been fact-checked and reconsidered by the times of the Claimants' share purchases.

153. Mr Hamilton then has what in my view is a devastating critique of the valuations of the 5 companies which were used to calculate the implicit valuation of $9.8m.

154. I accept Mr Hamilton's evidence in relation to these 5 valuations used in the Harford Valuation.

    (1) By the time of the Claimants' investments ("the material time"), the value of the Company's shareholding in Shirlaws UK Limited was £205k in 2013,

£246k in 2014 and £537k in 2015, significantly less than the £2.1m in the Harford Valuation.

(2) Shirlaws Corporate (UK) Limited was not trading in 2013 or 2014 and had a net liability of (£165k) at the end of both those financial years. There have been no statutory accounts filed for this company since 2014. The company was dissolved on 24 May 2015, and Mr Hamilton says this suggests it had a negligible or nil value at the material time.

(3) Shirlaws USA Inc made a net profit of £137 in 2014 and had a negligible or nil value at the material time.

(4) Shirlaws Global NZ Limited ceased to be a registered company in 2008. It had a negligible or nil value at the material time.

155. As for future licence sales, the assumption in the Harford Valuation is the sale of licences across 9 territories for 2m each in local currency, discounted by 25% to reach a valuation of £9.5m. In fact, total cash receipts for licence sales between 2009 and 2016 was £590,532 against net costs of sale of £224,100, resulting in a net cash inflow of just £366,432 (of which £282,590 related to 2011 and earlier).

156. I have referred above to the sale of a licence in the Middle East for $3m, which Mr Shirlaw mentioned a number of times in support of what he said about the value of licence sales. In fact, as Mr Kemp said in his statement, and I accept, there was an initial payment of $800k but the balance was never received and eventually the $800k was repaid. It is clear, and I find as a fact, that there was no basis for relying on the Middle East licence as justifying the future projection of licence sales. It is also clear that there were no substantial licence sales, as Mr Hamilton summarises in his report.

157. In his cross-examination of Mr Stead, Mr Shirlaw said, "The value of the IP comes off the licensing at £2m". Mr Stead agreed and referred to Mr Shirlaw having said that $3m had been collected for a licence in the Middle East, to which Mr Shirlaw replied, "Yes, in our world we did", which I found a curious response, bearing in mind Mr Kemp's evidence; Mr Shirlaw was aware that the Middle East licensee had asked for its money back (but was not, apparently, aware that the licence had not been paid in full nor that the money paid had been returned).

158. Mr Hamilton concludes that the this second element of the Harford Valuation should – certainly by the material time – have been ascribed a nil or negligible value. I agree.

159. The third element is royalty income. The Harford Valuation ascribed £20.2m to this. Mr Hamilton says that the DCF approach was appropriate, but describes the assumption of 30% year on year net growth as aggressive and the 5% discount as being too low for a financially unproven unlisted company in the growth phase of development.

160. Mr Hamilton has prepared a table contrasting the forecast royalty revenue (in the Harford Valuation) with the actual royalty revenue received over a 10-year period (through to 2018). The shortfall of income against forecast is over that period, after year 1 (36% shortfall) between 71% and 97%. For most of the period, it is in the high 80s%-low 90s% range. Across the period there was a $69m shortfall (an average of

91%) against the Harford Valuation's forecast income. Actual royalty income failed to exceed forecasted income even for year 1.

161. Mr Hamilton concludes that expected royalties had a nil or negligible value at the material time.

162. Mr Hamilton's report then considers the other assets which were included in the valuation during the material time. These are in at between £23.1m and £27.1m and relate to the Company's shareholdings in other companies. Mr Hamilton concludes that these in fact were of nil or negligible value at the material time. I accept that evidence. These companies were either loss-making or had no assets and made negligible profits or were not trading. In some cases, the Company had no recorded shareholding in the relevant company at the material time.

163. Mr Hamilton's opinion on the value of the Company is based upon his being able to identify assets belonging to the Shirlaws Group with a total value of between £290k and £635k during the material time, as well as £65k (shareholding in Shirlaws Canada) and £20k (shareholding in The Sandpit Limited). Having examined the profit and loss accounts for the Company, which show that the Company's financial position deteriorated to the point that it was loss-making (£434k) by 2015, and again (£1.4m) in 2016, there was no material value in the Company based on underlying earnings. Having summarised the balance sheets for the Company for the years 2013, 2014 and 2015, these show net assets of £280k, £713k and £2.7m for those three years (the substantial increase in 2015 being due to the addition of around £1.8m of investments and goodwill).

164. Mr Hamilton therefore concludes that the value of the Company at the material time was between £290k and £635k, although he recognises that the accounts for 2015 show a potentially higher value of £2.7m. At paragraph 6.1.3 of his report, Mr Hamilton says:

> "I have seen no evidence justifying any valuation even approaching the Defendant's Valuations. I am not aware of any reasonable basis on which a competent external valuer, or a competent company director, could have concluded that the Defendant's Valuations were reasonable or accurate at the Material Time."

165. Mr Shirlaw and Ms Barton contend that Mr Hamilton has failed to attempt to value any of the assets on which they relied as justifying the valuation placed on the Company at the material time, in particular the IP and the brand. They drew a distinction between balance sheet assets (which Mr Hamilton had referred to) and off-balance sheet assets. As they put it, the Company was an IP company so it was always going to have off-balance sheet assets; time, resources, know-how and expenditure on developing the IP was not on the balance sheet. They stressed that at the material time the Company was in what they frequently referred to as "asset-building mode".

166. They both submitted that Mr Hamilton's report was technically flawed, for a number of reasons, the principal ones of which seem to me being these:

    (1) The report was a balance sheet analysis whereas in fact the Company was in asset building mode.

(2) It failed to take into account the value of the IP and brand – there was no attempt to value intangible assets at all. The Defendants submitted that Mr Hamilton did not know how to value off-balance sheet intangible assets at all.

(3) It ignored the book value of a licence.

(4) To describe the 30% assumption as aggressive ignores the fact that it was an average over 10 years.

(5) Mr Hamilton has used gross revenue not net profit on the net present value when looking at the Harford Valuation of £40m, leading him to conclude that the Harford discount of 75% had been ignored – it had not, it had simply been changed to 50%.

(6) Mr Hamilton used accounts which were not available to the Company or the Defendants at the material time.

167. In my judgment, these criticisms are without foundation.

168. Fundamental to the valuation is the question of how to approach or deal with the value attributable IP and the brand. Both Defendants contend that Mr Hamilton failed to deal with this, and therefore his conclusions as to value are wrong.

169. In simple terms, the Defendants assert that the IP and brand has a value – an off-balance sheet value – which has not been taken into account by Mr Hamilton.

170. This assertion is, in my judgment, wrong. From the start, the value of the IP and the brand was clearly in the licences. It is the "value" in the loose sense of the IP and brand which generates the licence sales for the Company, which in turn creates the royalty income. The Harford Valuation attributes no independent off-balance sheet or intangible asset value to the IP and brand, because any such value is reflected in the projected licence sales and, in turn, the royalties. In other words, without the IP and brand, there would be no licence sales at all. It is the brand and the IP which generates income, and the Harford Valuation recognises that the IP and brand has no intrinsic value save that it enables licence sales. At no point did the Company – or more accurately the Board – attribute any off-balance sheet value to the IP or brand. Instead, the Board took as its starting point the Harford Valuation and approved increases to it from time to time based on further optimistic forecasts provided by Mr Shirlaw and Ms Baron, each of which forecasts should have been – but was not – tested against actual performance. I really cannot fathom how it could have been thought appropriate to do this.

171. In my judgment, this was at times during the trial accepted by Mr Shirlaw. For example, in his cross-examination of Mr Stead, he referred to there being 9 intangible assets which "creates value in the licences".

172. Similarly, Mr Johnstone referred in his evidence to the Harford Valuation, saying that in his view "the off-balance sheet assets value was justified."

173. Further, this is the explanation of "how things worked" given by Mr Rixon in his statement (which I have set out at paragraph 126 above).

174. It is also reflected in what Mr Harford said about the DCF of royalties and the valuation of intangible assets such as IP and brand (see paragraph 87 above).

175. In her further closing submissions, provided as I have said after oral submissions had been completed, Ms Barton made the following points.

176. First, that the Company owned three main assets: the brand, the IP and the systems (the material by which the training was delivered by coaches. She says that she and Mr Shirlaw "absolutely believed these assets were owned by [the Company]; they had been built by the company since 1999. … These Assets enable Shirlaws to commercialise into companies … there was no attempt by the Expert Witness to value any of these assets". Again, Ms Barton draws the distinction between balance sheet assets and off-balance sheet assets.

177. Secondly, that the true valuation was indeed £60m, and she stressed that the projections were "heavily weighted towards the end of the 10 year period".

178. Thirdly, in respect of valuation methodology, that the majority of the value was based on future income streams. Again, the emphasis was on the Company being in "asset-building mode". Ms Barton's criticism of Mr Hamilton's approach can be summarised in this way.

    (1) The use of gross revenues instead of gross profit.

    (2) Taking license sales as cash up front, whereas the Company was building equity.

    (3) Looking at the historical performance instead of the Harford Valuation model of looking forward at anticipated revenues.

    (4) Regarding the Company as cash-starved.

    (5) Failing to recognise that the Company was working to a 10-year plan of which the first 6 years was asset-building.

179. Ms Barton submitted,

    "To cherry pick a date somewhere along that journey, change the methodology from FCF [I think she meant DCF] to Net Asset valuation changes the entire context from which we lived and breathed and believed in every day."

180. The further criticisms of Mr Hamilton set out in the written submissions again concentrate on the alleged failure to recognise the Company as being an asset-builder, and in particular the use of gross revenue not net profit and the failure to assess the value of intangible assets.

181. Mr Hamilton was in my judgment an impressive witness. He was sensible and moderate. I reject the Defendants' criticisms, in particular the alleged failure to take into account the value of the assets, for the reasons I have set out. I accept his evidence. I find as a fact that the Company was at the material times of the Claimants' respective share purchases clearly worth nothing like £60m. I accept Mr Hamilton's figures.

The representations

182. The pleaded express representations are set out in the Amended Particulars of Claim, paragraphs 17-18 (the First Claimant), 24-25 (the Second Claimant) and 30-37 (the Third Claimant). I set out the principal representations relied on below.

(1) Representations to Mr Stead

(a) The email from Mr Shirlaw dated 30 June 2013, which stated that:

"Our minimum investment into [the Company] is £100,000. The current valuation of £61.3m and we enable new partners to purchase equity at 50% of that value i.e. the last that we hare [sic] selling equity lo new investors is £30m. [...] Most investors place between £100k and £300k and treat the investment as a way to participate in the wider business activities, some use it as a stepping stone to fuller participation at a later date. Most executive partners hold between 2% and 9%."

(b) The email from Mr Shirlaw of 15 September 2013, valuing the Company at £30m after applying a 50% discount.

(c) The email from Mr Chidgey, acting on behalf of Mr Shirlaw, about locking in an investment of 1% at £300k (thus valuing the Company at £60m before the 50% discount).

(d) The email to Mr Stead from Ms Barton of 3 October 2013, copied to Mr Shirlaw, which said:

"Our current valuation is at £30m mark with our latest investor Stewart Graves buying in at this value. Our method of valuation is to value the assets we have built across the group which currently stands at £61.8m and then we offer a discount on this level to reward partners of the business. The board offers this at 50% thus the board is currently selling equity in [the Company] at £30m. You and [Mr Shirlaw] spoke about taking a 1% equity stake in [the Company] i.e. £300k."

(e) Mr Shirlaw's email to Mr Stead, on 28 October 2013, which said:

"We must agree investment in Navitas on Friday - the new Board is meeting soon, and it looks like the Investments team are about to place their first few deals and sign heads with the first family. This will mean valuation will jump from probably 1st December. Thus need to agree in/out next week with you to secure current valuation."

(f) Mr Chidgey's email to Mr Stead of 18 December 2013, referring to the need to invest by the year end "before the Navitas valuation increases to £40m as from 1 January 2014".

(g) The heads of agreement in relation to Mr Stead's purchase, which refer to a valuation of £30m after the 50% discount.

(h) Representations made by Mr Shirlaw to Mr Stead at a meeting on 20 December 2013, in which Mr Shirlaw said the Company was valued at £60m or £63.6m with a discounted value of £30m for Mr Stead's share valuation; the true value of the company was £80m, with a notional discounted value of £40m, and that would be confirmed in January 2014.

(2) Representations to Mr Cohen

(a) The table in the Investor Update March 2014, sent to Mr Cohen by Mr Chidgey on behalf of Mr Shirlaw, which gave a valuation of the Company of £61.3m or £30m after the 50% discount.

(b) The Company Information Outline Shirlaws Group 2015 statement that the group valuation was £66m and giving a current estimated valuation of £40m.

(c) The email from Ms Barton of 7 August 2015 saying that the asset-based valuation and the profit and loss valuation were aligned.

(d) Representations about valuation made by Mr Shirlaw to Mr Cohen in London, including that the Company was valued at £66m or £67.1m, that share buy-in would be at a 50% discount, that the valuation was an asset-based valuation.

(3) Representations to Mr Beetson

(a) Mr Shirlaw told Mr Beetson that recent share issues valued the Company at £40m, and that he could buy in at a notional £20m, i.e. a 50% discount.

183. The Defence admits that these representations – indeed, all of the pleaded representations – were made. This was confirmed in the evidence I have heard.

184. Indeed, it is the Defendants' firm position in this case that the Company was indeed properly valued as represented by them (and that the Claimants' case, backed by Mr Hamilton's valuation, is wrong).

185. For the reasons I have set out in this judgment, I entirely accept Mr Hamilton's evidence. The Company was not properly to be valued as represented by the Defendants.

Fraudulent misrepresentation

186. The relevant elements of actionable misrepresentation can be summarised as follows, *per* HHJ David Cooke sitting as a High Court Judge in *Dhaliwal v Hussain* [2017] EWHC 2655 (Ch) at [44] (in that case, these elements were common ground; in the present case, the Defendants have not directly addressed issues of law):

"i) The defendants (or their agent acting with their authority) must have made a statement of fact (as distinct from a pure statement of opinion or future intention) which is false.

> ii) The statement must have been intended to be relied on, or made in such circumstances that it would appear likely that it would be relied on.
>
> iii) The claimant must have been influenced by and acted in reliance on the statement (but it need not necessarily be the sole cause of her actions).
>
> iv) [The claimant] must have suffered loss as a result of acting in such reliance.
>
> v) If the claim is for fraudulent misrepresentation, equivalent to deceit, it must be shown the defendants knew the statement was untrue, or made it without believing it was true, or recklessly, without caring whether it was true or not (*Derry v Peek* (1889) 14 App Cas 337).
>
> vi) Even if fraud in this sense is not shown, the defendants are made liable by s 2(1) of the Misrepresentation Act 1967 unless they can show that they believed honestly and on reasonable grounds that the statement was true."

187. There were plainly representations made to each of the Claimants (in the case of DKV, to Mr Cohen). Those representations, on the evidence I have read and seen, were causative of the decisions by each Claimant to purchase the shares, in the sense that each was highly influenced and persuaded to invest by the representations as to value.

188. The representations were untrue, as I have found.

189. The representations were made by the Defendants or their agents (for example, Mr Chidgey) on the authority of Mr Shirlaw.

190. The representations were made with the intention that the parties to whom they were made – the Claimants – would rely on them and act on them.

191. I do not accept that Mr Shirlaw and Ms Barton had an honest belief that the Company was worth around £60m (before the 50% discount).

192. To have taken the Harford Valuation, and ignored the overall 75% discount and to have failed to have tested it against actual performance, and then to use it to encourage share purchases by giving a valuation which was based upon it, was in my view wilfully and deliberately dishonest.

193. I cannot see how Mr Shirlaw and Ms Barton can honestly have believed that the Company was worth what they said it was. The Company did not have assets worth £60m. It never did. The value attributable to the off-balance sheet assets was totally illusory, since as I have set out above the value of the IP and the brand was reflected in the projected licence sales, which never resulted in sales, nor did they generate the income, which underpinned the Harford Valuation which was used as the baseline. Mr Shirlaw and Ms Barton clearly knew this, in my view. I agree with Mr Burton that it is in fact inconceivable that they did not know the true value of the Company, because they were in my judgment fully aware that the Company did not have assets worth anything like £60m.

194. The Claimants relied on the representations, and their respective purchases were made in reliance on them. It is clear, and I find as a fact, that the representations were a

material influence on each Claimant (in the case of DKV, on Mr Cohen who was the decision-maker for DKV); indeed, the representations were not only intended to induce a purchase, they were designed so as to make it likely that they would. On these points, see the decision of the Court of Appeal in *Bv Nederlandse Industrie Van Eiprodukten v Rembrandt Enterprises, Inc.* [2019] EWCA Civ 596, which confirms that the test for inducement does not necessarily require consideration of the hypothetical question of what each Claimant would or might have done but for the fraudulent misrepresentation, and it is equally irrelevant to ask what each Claimant would have done had he known the truth.

195. As to loss, the position is as follows.

196. The Claimants' case is that the shares are now worthless. There was evidence from all the Claimants and their witnesses that this is so, and nothing from the Defendants to counter that. I accept that the shares are worthless.

197. Each Claimant gave convincing evidence that had they not purchased the shares, they would have invested their money elsewhere. Again, this was not countered by the Defendants.

198. The Defendants' submissions on loss is that none of the Claimants has suffered a loss because they remain shareholders. In the case of Mr Stead, he has a letter from the Company offering to buy back the shares, and Ms Barton described him as "just being impatient"; in the case of DKV and Mr Beetson, it is said that the Company has plans to build its digital platform and sell the Company within 2 years, so they (and Mr Stead) would in fact "gain from this transaction that they are now seeking to claim a loss for"; and as to Mr Beetson, it is said that he suffered no loss as he did not pay for the shares, which he still owns.

199. In my judgment, these submissions are all flawed. The Company has no value. Mr Beetson plainly did pay for the shares.

200. Damages for fraudulent misrepresentation are awarded to put the Claimant in the position he would have been in if the representation had not been made. In this case, I am satisfied that none of the Claimants would have invested. The representations were key to their investment decisions.

201. In my view, the proper measure of loss in each case is as pleaded.

    (1) The First Claimant

        (a) The price paid for the worthless shares, £150,000.

        (b) The additional loss based on the return which Mr Stead would have received had he instead invested in shares in his SIPP, £147,000.

        (c) The travel and other consequential costs, £11,223.18.

    (2) The Second Claimant

        (a) The price paid for the worthless shares, £328,552.

(b) An additional loss bases on 1.5 times the investment, for the reasons (which were not challenged in evidence) set out in Mr Cohen's statement, £492,828.

(c) The additional costs and expenses are not pleaded and are therefore not recoverable.

(3) The Third Claimant

(a) The price paid for the worthless shares, £49,863.45.

(b) The further alternative investment loss, £66,363.45.

202. The Claimants are entitled to interest, which in my judgment should be at 2%.

203. I therefore conclude that the Claimants have established their case on fraudulent misrepresentation.

Negligent misstatement

204. Where a duty of care is owed, and a false or misleading statement is made to the party to whom that duty is owed, and they rely on it and as a result sustain loss, they can recover damages.

205. A duty of care will be owed where there is an assumption of responsibility and reliance: *Hedley Byrne & Co v Heller & Prs* [1964] AC 465, *Henderson v Merrett Syndicates* [1995] AC 145, *Williams v Natural Life Health Foods* [1998]1 WLR 830.

206. The Defendants' position is that they did not owe a duty of care to any of the Claimants, because they were not asked to advise on the value of the Company, and it would not be fair to impose personal responsibility on either of them when they were not acting in their personal capacities. Further, they were "merely passing on the Company valuation (as subsequently updated by the Board) and the purchase price for shares in the Company which was set by the Board." They say that they did not know nor could they reasonably foresee that the Claimants would rely on any representations made, and if there was reliance, that was unreasonable.

207. It is clear from the evidence, which I have summarised above, that both Mr Shirlaw and Ms Barton assumed responsibility for the information they gave to the Claimants. I reject the suggestion that they were acting on the Board's instruction or simply as a mouthpiece, or that in some way the claim should have been brought not against them personally but against the Company. I am satisfied that they both intended that what they said should be relied on, and it was. The fact that added pressure was put on the Claimants (as it was with a number of other investors – as noted in the evidence of the Claimants' witnesses) made the representations as to value particularly egregious.

208. I therefore find for the Claimants in relation to negligent misstatement as well.

209. The Claimants' losses are to be calculated as set out above.

Conclusion

210. There will be judgment for the First and Second Claimants against both Defendants, and for the Third Claimant against the First Defendant in the sums indicated.